

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTIONS 13 AND 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended September 29, 2018

or,  
 TRANSITION REPORT PURSUANT TO SECTIONS 13 AND 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File No. 1-09453

ARK RESTAURANTS CORP.

(Exact Name of Registrant as Specified in Its Charter)

New York  
(State or Other Jurisdiction of  
Incorporation or Organization)

13-3156768  
(IRS Employer Identification No.)

85 Fifth Avenue, New York, NY  
(Address of Principal Executive Offices)

10003  
(Zip Code)

Registrant's telephone number, including area code: (212) 206-8800

Securities registered pursuant to section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, par value \$.01 per share	The NASDAQ Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the Registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulations S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendments to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller Reporting Company

Emerging Growth Company

Indicate by check mark whether the Registrant is a shell company (as defined in Exchange Act Rule 12b-2). Yes  No

As of March 31, 2018, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of voting and non-voting stock held by non-affiliates of the registrant was \$50,978,496.

At December 11, 2018, there were outstanding 3,474,681 shares of the Registrant's Common Stock, \$.01 par value.

DOCUMENTS INCORPORATED BY REFERENCE

(1) In accordance with General Instruction G (3) of Form 10-K, certain information required by Part III hereof will either be incorporated into this Form 10-K by reference to the registrant's definitive proxy statement for the registrant's 2018 Annual Meeting of Stockholders filed within 120 days of September 29, 2018 or will be included in an amendment to this Form 10-K filed within 120 days of September 29, 2018.

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PART I

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

On one or more occasions, we may make statements in this Annual Report on Form 10-K regarding our assumptions, projections, expectations, targets, intentions or beliefs about future events. All statements, other than statements of historical facts, included or incorporated by reference herein relating to management's current expectations of future financial performance, continued growth and changes in economic conditions or capital markets are forward looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended.

Words or phrases such as "anticipates," "believes," "estimates," "expects," "intends," "plans," "predicts," "projects," "targets," "will likely result," "hopes," "will continue" or similar expressions identify forward looking statements. Forward-looking statements involve risks and uncertainties which could cause actual results or outcomes to differ materially from those expressed. We caution that while we make such statements in good faith and we believe such statements are based on reasonable assumptions, including without limitation, management's examination of historical operating trends, data contained in records and other data available from third parties, we cannot assure you that our projections will be achieved. Factors that may cause such differences include: economic conditions generally and in each of the markets in which we are located, the amount of sales contributed by new and existing restaurants, labor costs for our personnel, fluctuations in the cost of food products, adverse weather conditions, changes in consumer preferences and the level of competition from existing or new competitors.

We have attempted to identify, in context, certain of the factors that we believe may cause actual future experience and results to differ materially from our current expectation regarding the relevant matter or subject area. In addition to the items specifically discussed above, our business, results of operations and financial position and your investment in our common stock are subject to the risks and uncertainties described in "Item 1A Risk Factors" of this Annual Report on Form 10-K.

From time to time, oral or written forward-looking statements are also included in our reports on Forms 10-K, 10-K/A, 10-Q, 10-Q/A and 8-K, our Schedule 14A, our press releases and other materials released to the public. Although we believe that at the time made, the expectations reflected in all of these forward-looking statements are and will be reasonable; any or all of the forward-looking statements in this Annual Report on Form 10-K, our reports on Forms 10-Q, 10-Q/A and 8-K, our Schedule 14A and any other public statements that are made by us may prove to be incorrect. This may occur as a result of inaccurate assumptions or as a consequence of known or unknown risks and uncertainties. Many factors discussed in this Annual Report on Form 10-K, certain of which are beyond our control, will be important in determining our future performance. Consequently, actual results may differ materially from those that might be anticipated from forward-looking statements. In light of these and other uncertainties, you should not regard the inclusion of a forward-looking statement in this Annual Report on Form 10-K or other public communications that we might make as a representation by us that our plans and objectives will be achieved, and you should not place undue reliance on such forward-looking statements.

We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. However, your attention is directed to any further disclosures made on related subjects in our subsequent periodic reports filed with the Securities and Exchange Commission on Forms 10-Q and 8-K and Schedule 14A.

Unless the context requires otherwise, references to "we," "us," "our," "ARKR" and the "Company" refer specifically to Ark Restaurants Corp. and its subsidiaries, partnerships, variable interest entities and predecessor entities.

Item 1.      Business

Overview

We are a New York corporation formed in 1983. As of the fiscal year ended September 29, 2018, we owned and/or operated 20 restaurants and bars, 19 fast food concepts and catering operations through our subsidiaries. Initially our facilities were located only in New York City. As of the fiscal year ended September 29, 2018, five of our restaurant and bar facilities are located in New York City, two are located in Washington, D.C., five are located in Las Vegas, Nevada, three are located in Atlantic City, New Jersey, one is located in the Faneuil Hall Marketplace in Boston, Massachusetts, two are located on the east coast of Florida and two are located on the gulf coast of Alabama.

In addition to the shift from a Manhattan-based operation to a multi-city operation, the nature of the facilities operated by us has shifted from smaller, neighborhood restaurants to larger, destination properties intended to benefit from high patron traffic attributable to the uniqueness of the location and catered events. Most of our properties which have been opened in recent years are of the latter description. As of the fiscal year ended September 29, 2018, these include the operations at the 12 fast food facilities in Tampa, Florida and Hollywood, Florida (2004); the *Gallagher's Steakhouse* and *Gallagher's Burger Bar* in the Resorts Atlantic City Hotel and Casino in Atlantic City, New Jersey (2005); *Durgin Park Restaurant* and the *Black Horse Tavern* in the Faneuil Hall Marketplace in Boston, Massachusetts (2007); *Yolos* at the Planet Hollywood Resort and Casino in Las Vegas, Nevada (2007); *Robert* at the Museum of Arts & Design at Columbus Circle in Manhattan (2010); *Broadway Burger Bar and Grill* at the New York New York Hotel and Casino in Las Vegas, Nevada (2011); *Clyde Frazier's Wine and Dine* in Manhattan (2012); *Broadway Burger Bar and Grill* in the Quarter at the Tropicana Hotel and Casino in Atlantic City, New Jersey (2013), *The Rustic Inn* in Dania Beach, Florida (2014), *Shuckers* in Jensen Beach, Florida (2016) and two *Original Oyster Houses*, one in Gulf Shores, Alabama and one in Spanish Fort, Alabama (2017).

The names and themes of each of our restaurants are different except for our two *Gallagher's Steakhouse* restaurants, two *Broadway Burger Bar and Grill* restaurants, and two *Original Oyster House* restaurants. The menus in our restaurants are extensive, offering a wide variety of high-quality foods at generally moderate prices. The atmosphere at many of the restaurants is lively and extremely casual. Most of the restaurants have separate bar areas, are open seven days a week and most serve lunch as well as dinner. A majority of our net sales are derived from dinner as opposed to lunch service.

While decor differs from restaurant to restaurant, interiors are marked by distinctive architectural and design elements which often incorporate dramatic interior open spaces and extensive glass exteriors. The wall treatments, lighting and decorations are typically vivid, unusual and, in some cases, highly theatrical.

The following table sets forth the restaurant properties we lease, own and operate as of September 29, 2018:

<u>Name</u>	<u>Location</u>	<u>Year Opened(1)</u>	<u>Restaurant Size (Square Feet)</u>	<u>Seating Capacity(2) Indoor- (Outdoor)</u>	<u>Lease Expiration(3)</u>
Sequoia	Washington Harbour Washington, D.C.	1990	26,000	600(400)	2032
Bryant Park Grill & Café	Bryant Park New York, New York	1995	25,000	180(820)	2025
America(4)	New York-New York Hotel and Casino Las Vegas, Nevada	1997	20,000	450	2023
Gallagher's Steakhouse(4)	New York-New York Hotel & Casino Las Vegas, Nevada	1997	5,500	260	2023
Gonzalez y Gonzalez(4)	New York-New York Hotel & Casino Las Vegas, Nevada	1997	2,000	120	2021
Village Eateries (4)(5)	New York-New York Hotel & Casino Las Vegas, Nevada	1997	6,300	400(*)	2021
Robert	Museum of Arts & Design New York, New York	2009	5,530	150	2035
Thunder Grill	Union Station Washington, D.C.	1999	10,000	500	2019
Gallagher's Steakhouse	Resorts Atlantic City Hotel and Casino Atlantic City, New Jersey	2005	6,280	196	2020
Gallagher's Burger Bar	Resorts Atlantic City Hotel and Casino Atlantic City, New Jersey	2005	2,270	114	2020

<u>Name</u>	<u>Location</u>	<u>Year Opened(1)</u>	<u>Restaurant Size (Square Feet)</u>	<u>Seating Capacity(2) Indoor-(Outdoor)</u>	<u>Lease Expiration(3)</u>
Durgin Park Restaurant and the Black Horse Tavern	Faneuil Hall Marketplace Boston, Massachusetts	2007	18,500	575	2032
Yolos	Planet Hollywood Resort and Casino Las Vegas, Nevada	2007	4,100	206	2026
Clyde Frazier's Wine and Dine	Tenth Avenue (between 37 <sup>th</sup> and 38 <sup>th</sup> Streets) New York, New York	2012	10,000	250	2032
Broadway Burger Bar and Grill	Tropicana Hotel and Casino Atlantic City, New Jersey	2013	6,825	225	2033
The Rustic Inn	Dania Beach, Florida	2014	16,150	575(75)	Owned
Southwest Porch (6)	Bryant Park New York, New York	2015	2,240	0(160)	2025
Shuckers	Jensen Beach, Florida	2016	7,310	220(170)	Owned
The Original Oyster House	Gulf Shores, Alabama	2017	9,230	300	Owned
The Original Oyster House	Spanish Fort, Alabama	2017	10,500	420	Owned

- (1) Restaurants are, from time to time, renovated, renamed and/or converted from or to managed or owned facilities. "Year Opened" refers to the year in which we, or an affiliated predecessor of us, first opened, acquired or began managing a restaurant at the applicable location, notwithstanding that the restaurant may have been renovated, renamed and/or converted from or to a managed or owned facility since that date.
- (2) Seating capacity refers to the seating capacity of the indoor part of a restaurant available for dining in all seasons and weather conditions. Outdoor seating capacity, if applicable, is set forth in parentheses and refers to the seating capacity of terraces and sidewalk cafes which are available for dining only in the warm seasons and then only inclement weather.
- (3) Assumes the exercise of all of our available lease renewal options.
- (4) Under the *America* lease, the sales goal is \$6.0 million. Under the *Gallagher's Steakhouse* lease the sales goal is \$3.0 million. Under the lease for *Gonzalez y Gonzalez* and the *Village Eateries*, the combined sales

goal is \$10.0 million. Each of the restaurants is currently operating at a level in excess of the minimum sales level required to exercise the renewal option for each respective restaurant.

- (5) We operate six small food court restaurants and one full-service restaurant in the *Village Eateries* food court at the New York-New York Hotel & Casino. We also operate that hotel's room service, banquet facilities and employee cafeteria.
- (6) This location is for a kiosk located at Bryant Park, New York, NY and all seating is outdoors.
- (\*) Represents common area seating.

The following table sets forth our less than wholly-owned properties that are managed by us, which have been consolidated as of September 29, 2018 – see Notes 1 and 2 to the Consolidated Financial Statements:

<u>Name</u>	<u>Location</u>	<u>Year Opened(1)</u>	<u>Restaurant Size (Square Feet)</u>	<u>Seating Capacity(2) Indoor-(Outdoor)</u>	<u>Lease Expiration(3)</u>
El Rio Grande (4)(5)	Third Avenue (between 38th and 39th Streets) New York, New York	1987	4,000	160	2029
Tampa Food Court(6)(7)	Hard Rock Hotel and Casino Tampa, Florida	2004	4,000	250(*)	2029
Hollywood Food Court(6)(7)	Hard Rock Hotel and Casino Hollywood, Florida	2004	5,000	250(*)	2029
Lucky Seven(6)	Foxwoods Resort Casino Ledyard, Connecticut	2006	4,825	4,000(**)	2026

- (1) Restaurants are, from time to time, renovated, renamed and/or converted from or to managed or owned facilities. "Year Opened" refers to the year in which we, or an affiliated predecessor of us, first opened, acquired or began managing a restaurant at the applicable location, notwithstanding that the restaurant may have been renovated, renamed and/or converted from or to a managed or owned facility since that date.
- (2) Seating capacity refers to the seating capacity of the indoor part of a restaurant available for dining in all seasons and weather conditions. Outdoor seating capacity, if applicable, is set forth in parentheses and refers to the seating capacity of terraces and sidewalk cafes which are available for dining only in the warm seasons and then only inclement weather.
- (3) Assumes the exercise of all our available lease renewal options.
- (4) Management fees earned, which have been eliminated in consolidation, are based on a percentage of cash flow of the restaurant.
- (5) We own a 19.2% interest in the partnership that owns *El Rio Grande*.

- (6) Management fees earned, which have been eliminated in consolidation, are based on a percentage of gross sales of the restaurant.
- (7) We own a 64.4% interest in the partnership that owns the *Tampa and Hollywood Food Courts*.
- (\*) Represents common area seating.
- (\*\*) Represents number of seats in the Bingo Hall at the Foxwoods Resort and Casino where our restaurant is located.

#### Leases

We are currently not committed to any significant projects; however, we may take advantage of opportunities we consider to be favorable, when they occur, depending upon the availability of financing and other factors.

#### Restaurant Expansion

On November 30, 2016, the Company, through newly formed, wholly-owned subsidiaries, acquired the assets of the Original Oyster House, Inc., a restaurant and bar located in the City of Gulf Shores, Baldwin County, Alabama and the related real estate and an adjacent retail shopping plaza and the Original Oyster House II, Inc., a restaurant and bar located in the City of Spanish Fort, Baldwin County, Alabama and the related real estate. The total purchase price was for \$10,750,000 plus inventory of approximately \$293,000. The acquisition is accounted for as a business combination and was financed with a bank loan from the Company's existing lender in the amount of \$8,000,000 and cash from operations.

The opening of a new restaurant is invariably accompanied by substantial pre-opening expenses and early operating losses associated with the training of personnel, excess kitchen costs, costs of supervision and other expenses during the pre-opening period and during a post-opening "shake out" period until operations can be considered to be functioning normally. The amount of such pre-opening expenses and early operating losses can generally be expected to depend upon the size and complexity of the facility being opened.

Our restaurants generally do not achieve substantial increases in revenue from year to year, which we consider to be typical of the restaurant industry. To achieve significant increases in revenue or to replace revenue of restaurants that lose customer favor or which close because of lease expirations or other reasons, we would have to open additional restaurant facilities or expand existing restaurants. There can be no assurance that a restaurant will be successful after it is opened, particularly since in many instances we do not operate our new restaurants under a trade name currently used by us, thereby requiring new restaurants to establish their own identity.

#### Investment in New Meadowlands Racetrack

On March 12, 2013, the Company made a \$4,200,000 investment in the New Meadowlands Racetrack LLC ("NMR") through its purchase of a membership interest in Meadowlands Newmark, LLC, an existing member of NMR. On November 19, 2013, the Company invested an additional \$464,000 in NMR through a purchase of an additional membership interest in Meadowlands Newmark, LLC resulting in a total ownership of 11.6% of Meadowlands Newmark, LLC, and an effective ownership interest in NMR of 7.4%, subject to dilution. In 2015, the Company invested an additional \$222,000 in NMR with no change in ownership. In February 2017 the Company funded its proportionate share (\$222,000) of a \$3,000,000 capital call bringing its total investment to \$5,108,000 with no change in ownership.



In addition to the Company's ownership interest in NMR, if casino gaming is approved at the Meadowlands and NMR is granted the right to conduct said gaming, the Company shall be granted the exclusive right to operate the food and beverage concessions in the gaming facility with the exception of one restaurant.

In conjunction with this investment, the Company, through a 98% owned subsidiary, Ark Meadowlands LLC ("AM VIE"), also entered into a long-term agreement with NMR for the exclusive right to operate food and beverage concessions serving the new raceway facilities (the "Racing F&B Concessions") located in the new raceway grandstand constructed at the Meadowlands Racetrack in northern New Jersey. Under the agreement, NMR is responsible to pay for the costs and expenses incurred in the operation of the Racing F&B Concessions, and all revenues and profits thereof inure to the benefit of NMR. AM VIE receives an annual fee equal to 5% of the net profits received by NMR from the Racing F&B Concessions during each calendar year.

On April 25, 2014, the Company loaned \$1,500,000 to Meadowlands Newmark, LLC. The note bears interest at 3%, compounded monthly and added to the principal, and is due in its entirety on January 31, 2024. The note may be prepaid, in whole or in part, at any time without penalty or premium. On July 13, 2016, the Company made an additional loan to Meadowlands Newmark, LLC in the amount of \$200,000. Such amount is subject to the same terms and conditions as the original loan discussed above. The principal and accrued interest related to this note in the amounts of \$1,928,000 and \$1,871,000, are included in Investment In and Receivable From New Meadowlands Racetrack in the Consolidated Balance Sheets at September 29, 2018 and September 30, 2017, respectively.

On June 7, 2018, the New Jersey State Legislature voted to legalize sports betting at casinos and racetracks in the state. Pursuant to this legislature NMR opened a sports book in partnership with Fanduel, a leading provider of daily fantasy sports, in June 2018.

#### Recent Restaurant Dispositions and Charges

*Lease Expirations* – The Company was advised by the landlord that it would have to vacate *The Grill at Two Trees* property at the Foxwoods Resort and Casino in Ledyard, CT, which had a no rent lease. The closure of this property occurred on January 1, 2017 and did not result in a material charge to the Company's operations.

*Other* – On November 18, 2016, Ark Jupiter RI, LLC ("Ark Jupiter"), a wholly-owned subsidiary of the Company, entered into a ROFR Purchase and Sale Agreement (the "ROFR") with SCFRC-HWG, LLC, the landlord (the "Seller") to purchase the land and building in which the Company operates its Rustic Inn location in Jupiter, Florida. The Seller had entered into a Purchase and Sale Agreement with a third party to sell the premises; however, Ark Jupiter's lease provided the Company with a right of first refusal to purchase the property. Ark Jupiter exercised the ROFR on October 4, 2016 and made a ten (10%) percent deposit on the purchase price of approximately \$5,200,000. Concurrent with the execution of the ROFR, Ark Jupiter entered into a Purchase and Sale Agreement with 1065 A1A, LLC to sell this same property for \$8,250,000. In connection with the sale, Ark Jupiter and 1065 A1A, LLC entered into a temporary lease and sub-lease arrangement which expired on July 18, 2017. The Company vacated the space in June. In connection with these transactions the Company recognized a gain in the amount of \$1,637,000 during the year ended September 30, 2017.

The Company transferred its lease and the related assets of *Canyon Road* located in New York, NY to a former employee. In connection with this transfer, the Company recognized an impairment loss in the

amount of \$75,000 which is included in depreciation and amortization expense for the year ended September 30, 2017.

#### Restaurant Management

Each restaurant is managed by its own manager and has its own chef. Food products and other supplies are purchased primarily from various unaffiliated suppliers, in most cases by our headquarter's personnel. Each of our restaurants has two or more assistant managers and sous chefs (assistant chefs). Financial and management control is maintained at the corporate level through the use of automated systems that include centralized accounting and reporting.

#### Purchasing and Distribution

We strive to obtain quality menu ingredients, raw materials and other supplies and services for our operations from reliable sources at competitive prices. Substantially all menu items are prepared on each restaurant's premises daily from scratch, using fresh ingredients. Each restaurant's management determines the quantities of food and supplies required and then orders the items from local, regional and national suppliers on terms negotiated by our centralized purchasing staff. Restaurant-level inventories are maintained at a minimum dollar-value level in relation to sales due to the relatively rapid turnover of the perishable produce, poultry, meat, fish and dairy commodities that are used in operations.

We attempt to negotiate short-term and long-term supply agreements depending on market conditions and expected demand. However, we do not contract for long periods of time for our fresh commodities such as produce, poultry, meat, fish and dairy items and, consequently, such commodities can be subject to unforeseen supply and cost fluctuations. Independent foodservice distributors deliver most food and supply items daily to restaurants. The financial impact of the termination of any such supply agreements would not have a material adverse effect on our financial position.

#### Competition

The hospitality industry is highly competitive and is often affected by changes in taste and entertainment trends among the public, by local, national and economic conditions affecting spending habits, and by population and traffic patterns. We believe that the principal means of competition among restaurants include the location, type and quality of facilities and the type, quality and price of beverage and food served.

Our restaurants compete directly or indirectly with many well-established competitors, both nationally and locally owned, some with substantially greater financial resources than we do. Their resources and market presence may provide advantages in marketing, purchasing and negotiating leases. We compete with other restaurant and retail establishments for sites and finding management personnel.

#### Employees

At November 30, 2018, we employed 2,102 persons (including employees at managed facilities), 585 of whom were full-time employees, and 1,517 of whom were part-time employees; 49 of whom were headquarters personnel, 135 of whom were restaurant management personnel, 1,323 of whom were kitchen personnel and 595 of whom were restaurant service personnel. A number of our restaurant service personnel are employed on a part-time basis. Changes in minimum wage levels may adversely affect our labor costs and the restaurant industry generally because a large percentage of restaurant personnel are paid at or slightly above the minimum wage. Our employees are not covered by any collective bargaining agreements.

#### Government Regulation

We are subject to various federal, state and local laws affecting our business. Each restaurant is subject to licensing and regulation by a number of governmental authorities that may include alcoholic beverage control, health, sanitation, environmental, zoning and public safety agencies in the state or municipality in which the restaurant is located. Difficulties in obtaining or failures to obtain the required licenses or approvals could delay or prevent the development and openings of new restaurants, or could disrupt the operations of existing restaurants.

Alcoholic beverage control regulations require each of our restaurants to apply to a state authority and, in certain locations, county and municipal authorities for licenses and permits to sell alcoholic beverages on the premises. Typically, licenses must be renewed annually and may be subject to penalties, temporary suspension or revocation for cause at any time. Alcoholic beverage control regulations impact many aspects of the daily operations of our restaurants, including the minimum ages of patrons and employees consuming or serving such beverages; employee alcoholic beverages training and certification requirements; hours of operation; advertising; wholesale purchasing and inventory control of such beverages; seating of minors and the service of food within our bar areas; and the storage and dispensing of alcoholic beverages. State and local authorities in many jurisdictions routinely monitor compliance with alcoholic beverage laws. The failure to receive or retain, or a delay in obtaining, a liquor license for a particular restaurant could adversely affect our ability to obtain such licenses in jurisdictions where the failure to receive or retain, or a delay in obtaining, a liquor license occurred.

We are subject to “dram-shop” statutes in most of the states in which we have operations, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to such person. We carry liquor liability coverage as part of our existing comprehensive general liability insurance. A settlement or judgment against us under a “dram-shop” statute in excess of liability coverage could have a material adverse effect on our operations.

Various federal and state labor laws govern our operations and our relationship with employees, including such matters as minimum wages, breaks, overtime, fringe benefits, safety, working conditions and citizenship requirements. We are also subject to the regulations of the Immigration and Naturalization Service. If our employees do not meet federal citizenship or residency requirements, their deportation could lead to a disruption in our work force. Significant government-imposed increases in minimum wages, paid leaves of absence and mandated health benefits, or increased tax reporting, assessment or payment requirements related to employees who receive gratuities could be detrimental to our profitability.

Our facilities must comply with the applicable requirements of the Americans With Disabilities Act of 1990 (“ADA”) and related state statutes. The ADA prohibits discrimination on the basis of disability with respect to public accommodations and employment. Under the ADA and related state laws, when constructing new restaurants or undertaking significant remodeling of existing restaurants, we must make them more readily accessible to disabled persons.

The New York State Liquor Authority must approve any transaction in which a shareholder of the licensee increases his holdings to 10% or more of the outstanding capital stock of the licensee and any transaction involving 10% or more of the outstanding capital stock of the licensee.

#### Seasonal Nature of Business

Our business is highly seasonal. The second quarter of our fiscal year, consisting of the non-holiday portion of the cold weather season in New York and Washington (January, February and March), is the poorest performing quarter. We achieve our best results during the warm weather, attributable to our

extensive outdoor dining availability, particularly at *Bryant Park* in New York and *Sequoia* in Washington, D.C. (our largest restaurants) and our outdoor cafes. However, even during summer months these facilities can be adversely affected by unusually cool or rainy weather conditions. Our facilities in Las Vegas are indoor and generally operate on a more consistent basis throughout the year.

#### Available Information

We make available free of charge through our Internet website, [www.arkrestaurants.com](http://www.arkrestaurants.com), our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, statements of beneficial ownership of securities on Forms 3, 4 and 5 and amendments to these reports and statements filed or furnished pursuant to Section 13(a) and Section 16 of the Securities Exchange Act of 1934 as soon as reasonably practicable after such materials are electronically filed with, or furnished to, the United States Securities and Exchange Commission, or SEC.

The above information is also available at the SEC's Office of Investor Education and Advocacy at United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-0213 or obtainable by calling the SEC at (800) 732-0330. In addition, the SEC maintains an Internet website at [www.sec.gov](http://www.sec.gov), where the above information can be viewed.

Our principal executive offices are located at 85 Fifth Avenue, New York, New York 10003, and our telephone number is (212) 206-8800. Unless the context specifically requires otherwise, the terms the "Company," "Ark," "we," "us" and "our" mean Ark Restaurants Corp., a Delaware corporation, and its consolidated subsidiaries.

#### Item 1A. Risk Factors

Not applicable.

#### Item 1B. Unresolved Staff Comments

Not applicable.

#### Item 2. Properties

Our restaurant facilities and our executive offices, with the exception of *The Rustic Inn* in Dania Beach, Florida, *Shuckers* in Jensen Beach, Florida and the two *Original Oyster House* properties in Alabama, are occupied under leases. Most of our restaurant leases provide for the payment of base rents plus real estate taxes, insurance and other expenses and, in certain instances, for the payment of a percentage of our sales at such facility. As of September 29, 2018, these leases (including leases for managed restaurants) have terms (including any available renewal options) expiring as follows:

<u>Fiscal Year Lease Terms Expire</u>	<u>Number of Facilities</u>
2019-2023	5
2024-2028	7
2029-2034	9
2034-2038	1

Our executive, administrative and clerical offices are located in approximately 8,500 square feet of office space at 85 Fifth Avenue, New York, New York. Our lease for this office space expires in 2025.

For information concerning our future minimum rental commitments under non-cancelable operating leases, see Note 10 of the Notes to Consolidated Financial Statements for additional information concerning our leases.

Item 3.        Legal Proceedings

In the ordinary course of our business, we are a party to various lawsuits arising from accidents at our restaurants and workers' compensation claims, which are generally handled by our insurance carriers.

Our employment of management personnel, waiters, waitresses and kitchen staff at a number of different restaurants has resulted in the institution, from time to time, of litigation alleging violation by us of employment discrimination laws. We do not believe that any of such suits will have a materially adverse effect upon us, our financial condition or operations.

Item 4.        Mine Safety Disclosures

Not Applicable.

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PART II

Item 5. Market For The Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market for Our Common Stock

Our Common Stock, \$.01 par value, is traded on the Nasdaq Capital Market under the symbol "ARKR."

As of December 11, 2018, there were 30 holders of record of our common stock and approximately an additional 1,654 beneficial owners.

Dividend Policy

On December 7, 2016, March 1, 2017, June 5, 2017, September 6, 2017, December 5, 2017, March 6, 2018, June 12, 2018, September 17, 2018 and December 5, 2018 our Board of Directors declared quarterly cash dividends in the amount of \$0.25 per share. We intend to continue to pay such quarterly cash dividends for the foreseeable future; however, the payment of future dividends is at the discretion of our Board of Directors and is based on future earnings, cash flow, financial condition, capital requirements, changes in U.S. taxation and other relevant factors.

Purchases of Equity Securities by Issuer and Affiliated Purchases

There were no purchases made during the fourth quarter of the issuer's fiscal year.

Securities Authorized for Issuance under Equity Compensation Plans

The Company has options outstanding under two stock option plans, the 2010 Stock Option Plan (the "2010 Plan") and the 2016 Stock Option Plan (the "2016 Plan"). Options granted under both plans are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted and expire ten years after the date of grant. No additional options are available for grant under the 2010 plan.

On August 10, 2018, options to purchase 5,000 shares of common stock were granted at an exercise price of \$20.36 per share and on September 4, 2018 options to purchase 20,000 shares of common stock were granted at an exercise price of \$22.30 per share. Both grants are exercisable as to 50% of the shares commencing on the date of grant and as to an additional 50% commencing on the first anniversary of the date of grant. Such options had an aggregate grant date fair value of approximately \$94,000. The Company did not grant any options during the year ended September 30, 2017.

During the year ended September 29, 2018, options to purchase 26,050 shares of common stock at a weighted average exercise price of \$18.60 per share expired unexercised or were forfeited. During the year ended September 30, 2017, options to purchase 90,000 shares of common stock at a weighted average exercise price of \$32.15 per share expired unexercised.

The following is a summary of the securities issued and authorized for issuance under our Stock Option Plans at September 29, 2018:

Plan Category	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted - average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by shareholders	378,750	\$18.46	475,000
Equity compensation plans not approved by shareholders <sup>1</sup>	None	N/A	None
Total	378,750	\$18.46	475,000

Of the 378,750 options outstanding on September 29, 2018, 173,625 were held by the Company's officers and directors.

(1) The Company has no equity compensation plan that was not approved by shareholders.

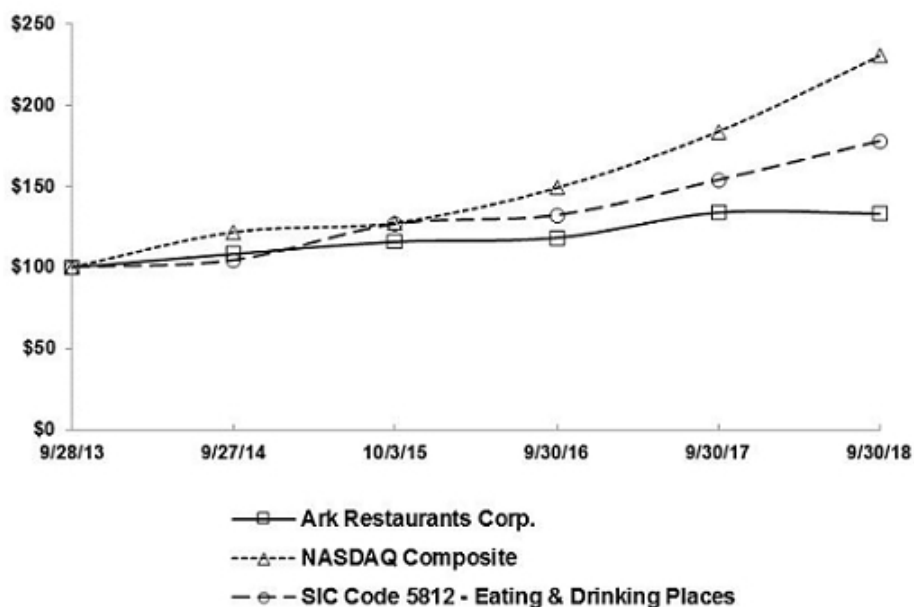
On April 5, 2016, the shareholders of the Company approved the 2016 Stock Option Plan and the Section 162(m) Cash Bonus Plan. Under the 2016 Stock Option Plan, 500,000 options were authorized for future grant and are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted. The options expire ten years after the date of grant. Under the Section 162(m) Cash Bonus Plan, compensation paid in excess of \$1,000,000 to any employee who is the chief executive officer, or one of the three highest paid executive officers on the last day of that tax year (other than the chief executive officer or the chief financial officer) will meet certain "performance-based" requirements of Section 162(m) and the related IRS regulations in order for it to be tax deductible.

Stock Performance Graph

The graph set forth below compares the yearly percentage change in cumulative total shareholder return on the Company’s Common Stock for the five-year period commencing September 28, 2013 and ending September 29, 2018 against the cumulative total return on the NASDAQ Market Index and a peer group comprised of those public companies whose business activities fall within the same standard industrial classification code as the Company. This graph assumes a \$100 investment in the Company’s Common Stock and in each index on September 28, 2013 and that all dividends paid by companies included in each index were reinvested.

**COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN\***

Among Ark Restaurants Corp., the NASDAQ Composite Index, and SIC Code 5812 - Eating & Drinking Places



\*\$100 invested on 9/28/13 in stock or 9/30/13 in index, including reinvestment of dividends. Indexes calculated on month-end basis.

	Cumulative Total Return					
	9/28/13	9/27/14	10/3/15	9/30/16	9/30/17	9/30/18
Ark Restaurants Corp.	\$100.00	\$ 108.06	\$115.69	\$118.17	\$133.70	\$132.91
NASDAQ Composite	100.00	121.64	127.37	148.79	183.54	230.21
SIC Code 5812 - Eating & Drinking Places	100.00	104.42	126.61	132.00	153.65	177.56



Item 6. Selected Consolidated Financial Data

Not applicable.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

**Overview**

As of September 29, 2018, the Company owned and operated 20 restaurants and bars, 19 fast food concepts and catering operations, exclusively in the United States, that have similar economic characteristics, nature of products and service, class of customer and distribution methods. The Company believes it meets the criteria for aggregating its operating segments into a single reporting segment in accordance with applicable accounting guidance. The Consolidated Statement of Income for the year ended September 30, 2017 includes revenues and operating income of approximately \$11,804,000 and \$1,243,000, respectively, related to the *Oyster House* properties on the gulf coast of Alabama, which were acquired on November 30, 2016.

*Accounting Period*

Our fiscal year ends on the Saturday nearest September 30. We report fiscal years under a 52/53-week format. This reporting method is used by many companies in the hospitality industry and is meant to improve year-to-year comparisons of operating results. Under this method, certain years will contain 53 weeks. The fiscal years ended September 29, 2018 and September 30, 2017 included 52 weeks.

*Seasonality*

The Company has substantial fixed costs that do not decline proportionally with sales. The first and second fiscal quarters, which include the winter months, usually reflect lower customer traffic than in the third and fourth fiscal quarters. However, sales in the third and fourth fiscal quarters can be adversely affected by inclement weather due to the significant amount of outdoor seating at the Company's restaurants.

*Results of Operations*

The Company's restaurant operating income of \$5,032,000 for the year ended September 29, 2018 decreased 6.3% compared to restaurant operating income of \$5,371,000 (which excludes the recognition of a gain in the amount of \$1,637,000 in connection with the sale of the real estate underlying our *Rustic Inn*, Jupiter, FL property) for the year ended September 30, 2017. This decrease resulted primarily from poor weather conditions in the Northeast during the fourth quarter of fiscal 2018, partially offset by: (a) an increase in operating income in 2018 at *Sequoia* in Washington, DC, which was closed for renovation for the second and third quarters of fiscal 2017, and (b) an increase in operating income at *The Rustic Inn* in Dania Beach, FL as a result of the completion of the road construction project in early fiscal 2018 that was started in the second quarter of fiscal 2016 by the local municipality.

The following table summarizes the significant components of the Company's operating results for the years ended September 29, 2018 and September 30, 2017, respectively:

	Year Ended		Variance	
	September 29, 2018	September 30, 2017	\$	%
(in thousands)				
<b>REVENUES:</b>				
Food and beverage sales	\$ 156,837	\$ 151,196	\$ 5,641	3.7%
Other revenue	3,153	2,681	472	17.6%
Total revenues	<u>159,990</u>	<u>153,877</u>	<u>6,113</u>	4.0%
<b>COSTS AND EXPENSES:</b>				
Food and beverage cost of sales	43,036	41,597	1,439	3.5%
Payroll expenses	55,620	53,074	2,546	4.8%
Occupancy expenses	18,577	17,100	1,477	8.6%
Other operating costs and expenses	21,437	20,690	747	3.6%
General and administrative expenses	11,214	11,504	(290)	-2.5%
Depreciation and amortization	5,074	4,541	533	11.7%
Total costs and expenses	<u>154,958</u>	<u>148,506</u>	<u>6,452</u>	4.3%
RESTAURANT OPERATING INCOME	5,032	5,371	(339)	-6.3%
Gain on sale of Ark Jupiter RI LLC	-	1,637	(1,637)	N/A
OPERATING INCOME	<u>\$ 5,032</u>	<u>\$ 7,008</u>	<u>\$ (1,976)</u>	-28.2%

### Revenues

During the Company's year ended September 29, 2018 ("fiscal 2018"), revenues increased 4.0% compared to the year ended September 30, 2017 ("fiscal 2017"). This increase resulted primarily from: (i) revenues related to the *Sequoia* in Washington, DC which was closed for renovation for the second and third quarters of fiscal 2017, (ii) revenues related to *The Oyster House* properties in Gulf Shores, Alabama (which were acquired on November 30, 2016), and (iii) the same-store sales impacts discussed below, partially offset by revenues related to the *Rustic Inn, Jupiter*, which was closed in June 2017.

*Food and Beverage Same-Store Sales*

On a Company-wide basis, same store food and beverage sales decreased 1.7% for the year ended September 29, 2018 as compared to the year ended September 30, 2017 as follows:

	Year Ended		Variance	
	September 29, 2018	September 30, 2017	\$	%
(in thousands)				
Las Vegas	\$ 47,852	\$ 45,852	\$ 2,000	4.4%
New York	39,636	39,887	(251)	-0.6%
Washington, DC	3,112	3,573	(461)	-12.9%
Atlantic City, NJ	7,406	7,536	(130)	-1.7%
Boston	2,839	3,235	(396)	-12.2%
Connecticut	2,120	2,156	(36)	-1.7%
Alabama	11,924	11,804	120	1.0%
Florida	28,068	26,467	1,601	6.0%
Same store sales	142,957	140,510	\$ 2,447	1.7%
Other	13,880	10,686		
Food and beverage sales	\$ 156,837	\$ 151,196		

Same-store sales in Las Vegas increased 4.4% primarily as a result of increased traffic near the properties where we operate our restaurant in connection with the opening of the T-Mobile Arena nearby. Same-store sales in New York decreased 0.6%, primarily as a result of poor weather conditions during the months in which our properties with outdoor seating areas are open, partially offset by strong catering revenues. Same-store sales in Washington, DC (which excludes *Sequoia*, which was closed for renovation for the second and third fiscal quarter of 2017) decreased 12.9% due to decreased traffic at our Thunder Grill property as a result of a major tenant vacating the adjacent space. Same-store sales in Atlantic City decreased 1.7% primarily due to decreased traffic at the properties in which we operate our restaurants as a result of the re-opening of two properties in June 2018. Same-store sales in Boston decreased 12.2% primarily as a result of decreased traffic at Faneuil Hall Marketplace where our property is located. Same-store sales in Connecticut decreased 1.7% due to declining traffic at the Foxwoods Resort and Casino where our properties are located. Same-store sales in Alabama were consistent with last year as expected. Same-store sales in Florida increased 6.0% as a result of the completion of the road construction project started in the second quarter of fiscal 2016 by the local municipality near *The Rustic Inn* in Dania Beach, FL. Other food and beverage sales consist of sales related to *Sequoia*, which was closed in for the entire second and third fiscal quarters of 2017, new restaurants opened or acquired during the applicable period (e.g. the *Oyster House* properties in 2017) and sales related to properties that were closed due to lease expiration and other closures.

Our restaurants generally do not achieve substantial increases in revenue from year to year, which we consider to be typical of the restaurant industry. To achieve significant increases in revenue or to replace revenue of restaurants that lose customer favor or which close because of lease expirations or other reasons, we would have to open additional restaurant facilities or expand existing restaurants. There can be no assurance that a restaurant will be successful after it is opened, particularly since in many instances we do not operate our new restaurants under a trade name currently used by us, thereby requiring new restaurants to establish their own identity.

*Other Revenue*

Included in Other Revenues are purchase service fees which represent commissions earned by a subsidiary of the Company for providing purchasing services to other restaurant groups, as well as license fees, property management fees and other rentals. The increase in Other Revenue for fiscal 2018 as compared to fiscal 2017 is primarily due to an increase in property management fees and other rentals partially offset by decreased purchase service fees.

**Costs and Expenses**

Costs and expenses for the years ended September 29, 2018 and September 30, 2017 were as follows (in thousands):

	Year Ended	% to	Year Ended	% to	Increase	
	September 29, 2018	Total Revenues	September 30, 2017	Total Revenues	(\$)	(%)
Food and beverage cost of sales	\$ 43,036	26.9%	\$ 41,597	27.0%	\$ 1,439	3.5%
Payroll expenses	55,620	34.8%	53,074	34.5%	2,546	4.8%
Occupancy expenses	18,577	11.6%	17,100	11.1%	1,477	8.6%
Other operating costs and expenses	21,437	13.4%	20,690	13.4%	747	3.6%
General and administrative expenses	11,214	7.0%	11,504	7.5%	(290)	-2.5%
Depreciation and amortization	5,074	3.2%	4,541	3.0%	533	11.7%
	<u>\$ 154,958</u>		<u>\$ 148,506</u>		<u>\$ 6,452</u>	

The small decrease in food and beverage costs as a percentage of total revenues for the year ended September 29, 2018 compared to the same period of last year is primarily the result of a better mix of catering versus a la carte business at our larger properties (i.e. *Bryant Park*, *Sequoia*) combined with a taking advantage of bulk purchasing discounts offset by higher commodity prices.

Payroll expenses as a percentage of total revenues for the year ended September 29, 2018 increased as compared to the same period of last year primarily as a result of minimum wage increases associated with changes to labor laws partially offset by a better mix of catering versus a la carte business at our larger properties.

Occupancy expenses as a percentage of total revenues increased as compared to the same period of last year as a result of rents that are paid based on a percentage of sales and base rent increase at our other properties, partially offset by higher sales at properties where rents are relatively fixed or where the Company owns the premises at which the property operates (*The Rustic Inn* in Dania Beach, FL, *Shuckers* in Jensen Beach, FL and *The Oyster House* properties in Gulf Shores, Alabama).

Other operating costs and expenses as a percentage of total revenues for fiscal 2018 were consistent with fiscal 2017.

General and administrative expenses (which relate solely to the corporate office in New York City) as a percentage of total revenues for fiscal 2018 decreased as compared to the same period of last year primarily as a result of lower headcount partially offset by annual wage increases.

Depreciation and amortization expense for fiscal 2018 increased as compared to the same period of last year primarily as a result of depreciation on the improvements made at our *Sequoia* property which were

placed in service in the fourth fiscal quarter of 2017, partially offset by additional depreciation in the amount of \$358,000 related to asset write-offs at *Sequoia* and *Canyon Road* (whose lease was transferred to an unrelated party) in fiscal 2017.

### Income Taxes

Our income tax expense, deferred tax assets and liabilities, and liabilities for uncertain tax positions reflect management's best estimate of current and future taxes to be paid. We are subject to income tax in numerous state taxing jurisdictions. Significant judgement and estimates are required in the determination of consolidated income tax expense. The provision for income taxes reflects federal income taxes calculated on a consolidated basis and state and local income taxes which are calculated on a separate entity basis.

For state and local income tax purposes, certain losses incurred by a subsidiary may only be used to offset that subsidiary's income, with the exception of the restaurants operating in the District of Columbia. Accordingly, our overall effective tax rate has varied depending on the level of income and losses incurred at individual subsidiaries.

Deferred income taxes arise from temporary differences between the tax bases of assets and liabilities and their reported amounts in the financial statements, which will result in taxable or deductible amounts in the future. In evaluating our ability to recover our deferred tax assets in the jurisdiction from which they arise, we consider all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax-planning strategies, and results of recent operations. The assumptions about future taxable income require the use of significant judgment and are consistent with the plans and estimates we are using to manage the underlying businesses.

On December 22, 2017 the U.S. government enacted comprehensive tax reform commonly referred to as the Tax Cuts and Jobs Act ("TCJA"). Under Accounting Standards Codification ("ASC") 740, the effects of changes in tax rates and laws are recognized in the period which the new legislation is enacted. The TCJA makes broad and complex changes to the U.S. tax code, including, but not limited to: (1) reducing the U.S. federal corporate tax rate from 35% to 21% effective January 1, 2018; (2) changing rules related to uses and limitations of net operating loss carryforwards created in tax years beginning after December 31, 2017; (3) accelerated expensing on certain qualified property; (4) creating a new limitation on deductible interest expense to 30% of tax adjusted EBITDA through 2021 and then 30% of tax adjusted EBIT thereafter; (5) eliminating the corporate alternative minimum tax; and (6) further limitations on the deductibility of executive compensation under IRC §162(m) for tax years beginning after December 31, 2017. As the reduction in the U.S. federal corporate tax rate is administratively effective on January 1, 2018, our blended U.S. federal tax rate for the year ended September 29, 2018 was approximately 24%.

In response to the TCJA, the U.S. Securities and Exchange Commission ("SEC") staff issued Staff Accounting Bulletin No. 118 ("SAB 118"), which provides guidance on accounting for the tax effects of TCJA. The purpose of SAB 118 was to address any uncertainty or diversity of view in applying ASC Topic 740, Income Taxes in the reporting period in which the TCJA was enacted. SAB 118 addresses situations where the accounting is incomplete for certain income tax effects of the TJCA upon issuance of a company's financial statements for the reporting period which include the enactment date. SAB 118 allows for a provisional amount to be recorded if it is a reasonable estimate of the impact of the TCJA. Additionally, SAB 118 allows for a measurement period to finalize the impacts of the TCJA, not to extend beyond one year from the date of enactment.

In connection with the TCJA, the Company recorded an income tax benefit of \$1,382,000 related to the re-measurement of our deferred tax assets and liabilities for the reduced U.S. federal corporate tax rate of 21%. The Company's accounting for the TCJA is complete as of September 29, 2018 with no significant differences from our provisional estimates recorded during interim periods.

The Company's overall effective tax rate in the future will be affected by factors such as the utilization of state and local net operating loss carryforwards, the generation of FICA tax credits and the mix of earnings by state taxing jurisdictions as Nevada does not impose a state income tax, as compared to the other major state and local jurisdictions in which the Company has operations. Our overall effective tax rate in the future will be affected by factors such as income earned by our VIEs, generation of FICA TIP credits and the mix of geographical income for state tax purposes as Nevada does not impose an income tax.

### Liquidity and Capital Resources

Our primary source of capital has been cash provided by operations and, in recent years, bank and other borrowings to finance specific transactions, acquisitions and large remodeling projects. We utilize cash generated from operations to fund the cost of developing and opening new restaurants and smaller remodeling projects of existing restaurants we own.

Net cash provided by operating activities for fiscal 2018 decreased to \$9,575,000 as compared to \$10,350,000 in fiscal 2017. This decrease was attributable to changes in net working capital primarily related to accounts receivable, prepaid, refundable and accrued income taxes and accounts payable and accrued expenses.

Net cash used in investing activities for fiscal 2018 was \$5,050,000 and resulted primarily from purchases of fixed assets at existing restaurants and costs associated with the renovation of *Sequoia*.

Net cash used in investing activities for fiscal 2017 was \$14,641,000 and resulted primarily from purchases of fixed assets at existing restaurants, costs associated with the renovation of *Sequoia* and the cash portion of the purchase of *The Oyster House* properties in the amount of \$3,043,000, partially offset by the net proceeds in the amount of \$2,474,000 from the sale of *The Rustic Inn* in Jupiter, Florida

Net cash used in financing activities for the years ended September 29, 2018 and September 30, 2017 of \$919,000 and \$1,542,000, respectively, resulted primarily from the payment of dividends, principal payments on notes payable and distributions to non-controlling interests, offset by borrowings under the credit facility.

The Company had a working capital deficiency of \$4,628,000 at September 29, 2018 as compared with a deficiency of \$16,072,000 at September 30, 2017. This decrease resulted primarily from the refinancing completed on June 1, 2018 as discussed in Note 9 – Notes Payable Bank. We believe that our existing cash balances, current banking facilities and cash provided by operations will be sufficient to meet our liquidity and capital spending requirements at least through December 31, 2019.

On January 4, 2018, April 4, 2018, July 6, 2018 and October 12, 2018, the Company paid quarterly cash dividends in the amount of \$0.25 per share on the Company's common stock. The Company intends to continue to pay such quarterly cash dividend for the foreseeable future; however, the payment of future dividends is at the discretion of the Company's Board of Directors and is based on future earnings, cash flow, financial condition, capital requirements, changes in U.S. taxation and other relevant factors.

### *Restaurant Expansion*

On November 30, 2016, the Company, through newly formed, wholly-owned subsidiaries, acquired the assets of the *Original Oyster House, Inc.*, a restaurant and bar located in the City of Gulf Shores, Baldwin County, Alabama and the related real estate and an adjacent retail shopping plaza and the *Original Oyster House II, Inc.*, a restaurant and bar located in the City of Spanish Fort, Baldwin County, Alabama and the related real estate. The total purchase price was for \$10,750,000 plus inventory of approximately \$293,000. The acquisition is accounted for as a business combination and was financed with a bank loan from the Company's existing lender in the amount of \$8,000,000 and cash from operations.

The opening of a new restaurant is invariably accompanied by substantial pre-opening expenses and early operating losses associated with the training of personnel, excess kitchen costs, costs of supervision and other expenses during the pre-opening period and during a post-opening "shake out" period until operations can be considered to be functioning normally. The amount of such pre-opening expenses and early operating losses can generally be expected to depend upon the size and complexity of the facility being opened.

Our restaurants generally do not achieve substantial increases in revenue from year to year, which we consider to be typical of the restaurant industry. To achieve significant increases in revenue or to replace revenue of restaurants that lose customer favor or which close because of lease expirations or other reasons, we would have to open additional restaurant facilities or expand existing restaurants. There can be no assurance that a restaurant will be successful after it is opened, particularly since in many instances we do not operate our new restaurants under a trade name currently used by us, thereby requiring new restaurants to establish their own identity.

We may take advantage of other opportunities we consider to be favorable, when they occur, depending upon the availability of financing and other factors.

### *Investment in and Receivable from New Meadowlands Racetrack*

On March 12, 2013, the Company made a \$4,200,000 investment in the New Meadowlands Racetrack LLC ("NMR") through its purchase of a membership interest in Meadowlands Newmark, LLC, an existing member of NMR. On November 19, 2013, the Company invested an additional \$464,000 in NMR through a purchase of an additional membership interest in Meadowlands Newmark, LLC resulting in a total ownership of 11.6% of Meadowlands Newmark, LLC, and an effective ownership interest in NMR of 7.4%, subject to dilution. In 2015, the Company invested an additional \$222,000 in NMR with no change in ownership. In February 2017 the Company funded its proportionate share (\$222,000) of a \$3,000,000 capital call bringing its total investment to \$5,108,000 with no change in ownership.

In addition to the Company's ownership interest in NMR, if casino gaming is approved at the Meadowlands and NMR is granted the right to conduct said gaming, the Company shall be granted the exclusive right to operate the food and beverage concessions in the gaming facility with the exception of one restaurant.

In conjunction with this investment, the Company, through a 97% owned subsidiary, Ark Meadowlands LLC ("AM VIE"), also entered into a long-term agreement with NMR for the exclusive right to operate food and beverage concessions serving the new raceway facilities (the "Racing F&B Concessions") located in the new raceway grandstand constructed at the Meadowlands Racetrack in northern New Jersey. Under the agreement, NMR is responsible to pay for the costs and expenses incurred in the operation of the Racing F&B Concessions, and all revenues and profits thereof inure to the benefit of

NMR. AM VIE receives an annual fee equal to 5% of the net profits received by NMR from the Racing F&B Concessions during each calendar year.

On April 25, 2014, the Company loaned \$1,500,000 to Meadowlands Newmark, LLC. The note bears interest at 3%, compounded monthly and added to the principal, and is due in its entirety on January 31, 2024. The note may be prepaid, in whole or in part, at any time without penalty or premium. On July 13, 2016, the Company made an additional loan to Meadowlands Newmark, LLC in the amount of \$200,000. Such amount is subject to the same terms and conditions as the original loan as discussed above.

#### *Recent Restaurant Dispositions and Charges*

*Lease Expirations* – The Company was advised by the landlord that it would have to vacate The Grill at Two Trees property at the Foxwoods Resort and Casino in Ledyard, CT, which had a no rent lease. The closure of this property occurred on January 1, 2017 and did not result in a material charge.

*Other* – On November 18, 2016, Ark Jupiter RI, LLC (“Ark Jupiter”), a wholly-owned subsidiary of the Company, entered into a ROFR Purchase and Sale Agreement (the “ROFR”) with SCFRC-HWG, LLC, the landlord (the “Seller”) to purchase the land and building in which the Company operated its Rustic Inn location in Jupiter, Florida. The Seller had entered into a Purchase and Sale Agreement with a third party to sell the premises; however, Ark Jupiter’s lease provided the Company with a right of first refusal to purchase the property. Ark Jupiter exercised the ROFR on October 4, 2016 and made a ten (10%) percent deposit on the purchase price of approximately \$5,200,000. Concurrent with the execution of the ROFR, Ark Jupiter entered into a Purchase and Sale Agreement with 1065 A1A, LLC to sell this same property for \$8,250,000. In connection with the sale, Ark Jupiter and 1065 A1A, LLC entered into a temporary lease and sub-lease arrangement which expired on July 18, 2017. The Company vacated the space in June 2017. In connection with these transactions the Company recognized a gain in the amount of \$1,637,000 during the year ended September 30, 2017.

The Company transferred its lease and the related assets of Canyon Road located in New York, NY to a former employee. In connection with this transfer, the Company recognized an impairment loss included in depreciation and amortization expense in the amount of \$75,000 for the year ended September 30, 2017.

#### **Critical Accounting Policies**

Our significant accounting policies are more fully described in Note 1 to our consolidated financial statements. While all of these significant accounting policies impact our financial condition and results of operations, we view certain of these policies as critical. Policies determined to be critical are those policies that have the most significant impact on our consolidated financial statements and require management to use a greater degree of judgment and estimates. Actual results may differ from those estimates.

We believe that given current facts and circumstances, it is unlikely that applying any other reasonable judgments or estimate methodologies would cause a material effect on our consolidated results of operations, financial position or cash flows for the periods presented in this report.



Below are listed certain policies that management believes are critical:

*Use of Estimates*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The accounting estimates that require management's most difficult and subjective judgments include allowances for potential bad debts on receivables, the useful lives and recoverability of its assets, such as property and intangibles, fair values of financial instruments and share-based compensation, the realizable value of its tax assets and determining when investment impairments are other-than-temporary. Because of the uncertainty in such estimates, actual results may differ from these estimates.

*Long-Lived Assets*

Long-lived assets, such as property, plant and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. In the evaluation of the fair value and future benefits of long-lived assets, we perform an analysis of the anticipated undiscounted future net cash flows of the related long-lived assets. If the carrying value of the related asset exceeds the undiscounted cash flows, the carrying value is reduced to its fair value. Various factors including estimated future sales growth and estimated profit margins are included in this analysis.

Management continually evaluates unfavorable cash flows, if any, related to underperforming restaurants. Periodically it is concluded that certain properties have become impaired based on their existing and anticipated future economic outlook in their respective markets. In such instances, we may impair assets to reduce their carrying values to fair values. Estimated fair values of impaired properties are based on comparable valuations, cash flows and/or management judgment.

*Recoverability of Investment in New Meadowlands Racetrack ("NMR")*

The carrying value of our Investment in Meadowlands Newmark LLC, which has a 63.7% ownership in NMR, is determined using the cost method. In accordance with the cost method, our initial investment is recorded at cost and we record dividend income when applicable, if dividends are declared. We review our Investment in NMR each reporting period to determine whether a significant event or change in circumstances has occurred that may have an adverse effect on its fair value.

As a result, we performed an assessment of the recoverability of our indirect Investment in NMR as of September 29, 2018 which involved critical accounting estimates. These estimates require significant management judgment, include inherent uncertainties and are often interdependent; therefore, they do not change in isolation. Factors that management estimated include, among others, the probability of gambling being approved in Northern New Jersey which is the most heavily weighted assumption and NMR obtaining a license to operate a casino, revenue levels, cost of capital, marketing spending, tax rates and capital spending.

In performing this assessment, we estimate the fair value of our Investment in NMR using our best estimate of these assumptions which we believe would be consistent with what a hypothetical marketplace participant would use. The variability of these factors depends on a number of conditions, including uncertainty about future events and our inability as a minority shareholder to control certain

outcomes and thus our accounting estimates may change from period to period. If other assumptions and estimates had been used when these tests were performed, impairment charges could have resulted.

As mentioned above, these factors do not change in isolation and, therefore, we do not believe it is practicable or meaningful to present the impact of changing a single factor. Furthermore, if management uses different assumptions or if different conditions occur in future periods, future impairment charges could result.

#### *Leases*

We recognize rent expense on a straight-line basis over the expected lease term, including option periods as described below. Within the provisions of certain leases there are escalations in payments over the base lease term, as well as renewal periods. The effects of the escalations have been reflected in rent expense on a straight-line basis over the expected lease term, which includes option periods when it is deemed to be reasonably assured that we would incur an economic penalty for not exercising the option. Percentage rent expense is generally based upon sales levels and is expensed as incurred. Certain leases include both base rent and percentage rent. We record rent expense on these leases based upon reasonably assured sales levels. The consolidated financial statements reflect the same lease terms for amortizing leasehold improvements as were used in calculating straight-line rent expense for each restaurant. Our judgments may produce materially different amounts of amortization and rent expense than would be reported if different lease terms were used.

#### *Deferred Income Tax Valuation Allowance*

We provide such allowance due to uncertainty that some of the deferred tax amounts may not be realized. Certain items, such as state and local tax loss carryforwards, are dependent on future earnings or the availability of tax strategies. Future results could require an increase or decrease in the valuation allowance and a resulting adjustment to income in such period.

#### *Goodwill and Trademarks*

Goodwill is recorded when the purchase price paid for an acquisition exceeds the estimated fair value of the net identified tangible and intangible assets acquired. Trademarks are considered to have an indefinite life. Goodwill and trademarks are not amortized, but are subject to impairment analysis at least once annually or more frequently upon the occurrence of an event or when circumstances indicate that a reporting unit's carrying amount is greater than its fair value. At September 29, 2018, the Company performed a qualitative assessment of factors to determine whether further impairment testing is required. Based on the results of the work performed, the Company has concluded that no impairment loss was warranted at September 29, 2018. Qualitative factors considered in this assessment include industry and market considerations, overall financial performance and other relevant events, management expertise and stability at key positions. Additional impairment analyses at future dates may be performed to determine if indicators of impairment are present, and if so, such amount will be determined and the associated charge will be recorded to the Consolidated Statements of Income.

#### *Stock-Based Compensation*

The Company measures stock-based compensation cost at the grant date based on the fair value of the award and recognizes it as expense over the applicable vesting period using the straight-line method. Excess income tax benefits related to share-based compensation expense that must be recognized directly in equity are considered financing rather than operating cash flow activities.

The fair value of each of the Company's stock options is estimated on the date of grant using a Black-Scholes option-pricing model that uses assumptions that relate to the expected volatility of the Company's common stock, the expected dividend yield of our stock, the expected life of the options and the risk free interest rate. The Company issues new shares upon the exercise of employee stock options.

#### **Recently Adopted and Issued Accounting Standards**

See Note 1 of Notes to Consolidated Financial Statements for a description of recent accounting pronouncements, including those adopted in fiscal 2018 and the expected dates of adoption and the anticipated impact on the Consolidated Financial Statements.

#### **Recent Developments**

See Note 15 of Notes to Consolidated Financial Statements for a description of recent developments that have occurred subsequent to September 29, 2018.

#### Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

#### Item 8. Financial Statements and Supplementary Data

Our Consolidated Financial Statements are included in this report immediately following Part IV.

#### Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None.

#### Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures.

As of September 29, 2018 (the end of the period covered by this report), management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended). Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, at the end of such period, our disclosure controls and procedures were effective and provided reasonable assurance that information required to be disclosed in our periodic SEC filings is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. However, in evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of such possible controls and procedures.

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Management's Annual Report on Internal Control Over Financial Reporting.

Management is responsible for establishing and maintaining adequate internal control over financial reporting as such term is defined in Exchange Act Rule 13a-15(f), and for performing an assessment of the effectiveness of internal control over financial reporting as of September 29, 2018. Internal control over financial reporting is a process designed by, or under the supervision of, our principal executive and principal financial officers, or persons performing similar functions, and effected by our Board of Directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Our internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U. S. generally accepted accounting principles, and that receipts and expenditures are being made only in accordance with authorizations; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

Management performed an assessment of the effectiveness of our internal control over financial reporting as of September 29, 2018 based upon the criteria set forth in Internal Control — Integrated Framework issued by the 2013 Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based on our assessment, management determined that our internal control over financial reporting was effective as of September 29, 2018.

This Annual Report does not include an attestation report of our independent registered public accounting firm regarding internal control over financial reporting as management's report was not subject to attestation by our independent registered public accounting firm pursuant to the permanent exemption of the SEC that permits us to provide only management's report in this annual report.

Changes in Internal Control Over Financial Reporting

On July 29, 2018, the Company's President and Chief Financial Officer, Robert J. Stewart, passed away at the age of 61. The Company hired a new Chief Financial Officer on September 4, 2018. There have been no other changes in our internal control over financing reporting that occurred during the quarter ended September 29, 2018 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B.      Other Information

None.

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PART III

Item 10. Directors, Executive Officers and Corporate Governance

Information relating to our directors and executive officers is incorporated by reference to the definitive proxy statement for our 2018 annual meeting of stockholders to be filed with the Securities and Exchange Commission (the “SEC”) pursuant to Regulation 14A no later than 120 days after the end of the fiscal year covered by this form (the “Proxy Statement”). Information relating to compliance with Section 16(a) of the Exchange Act is incorporated by reference to the Proxy Statement.

Code of Ethics

We have adopted a code of ethics that applies to our principal executive officer, principal financial officer, principal accounting officer or controller, and persons performing similar functions. A copy is available free of charge through our Internet website, [www.arkrestaurants.com](http://www.arkrestaurants.com), under the “Investors--Corporate Governance” caption.

Item 11. Executive Compensation

The information required by this item is incorporated herein by reference to the Proxy Statement.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this item is incorporated herein by reference to the Proxy Statement.

Item 13. Certain Relationships and Related Transactions

The information required by this item is incorporated herein by reference to the Proxy Statement.

Item 14. Principal Accountant Fees and Services

The information required by this item is incorporated herein by reference to the Proxy Statement.

PART IV

Item 15. Exhibits and Financial Statement Schedules

	<u>Page</u>
(a) (1) Financial Statements:	
<u>Report of Independent Registered Public Accounting Firm</u>	F-1
<u>Consolidated Balance Sheets --</u> <u>at September 29, 2018 and September 30, 2017</u>	F-2
<u>Consolidated Statements of Income --</u> <u>years ended September 29, 2018 and September 30, 2017</u>	F-3
<u>Consolidated Statements of Changes in Equity --</u> <u>years ended September 29, 2018 and September 30, 2017</u>	F-4
<u>Consolidated Statements of Cash Flows --</u> <u>years ended September 29, 2018 and September 30, 2017</u>	F-5
<u>Notes to Consolidated Financial Statements</u>	F-6
(2) Financial Statement Schedules	
None.	
(3) Exhibits:	
The exhibits required by Item 601 of Regulation S-K and filed herewith are listed in the Exhibit List immediately preceding the exhibits.	

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders  
Ark Restaurants Corp.

**Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of Ark Restaurants Corp. and Subsidiaries (the "Company") as of September 29, 2018 and September 30, 2017, and the related consolidated statements of income, changes in shareholders' equity, and cash flows for each of the years in the two-year period ended September 29, 2018, and the related notes (collectively referred to as the "financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of September 29, 2018 and September 30, 2017, and the results of its operations and its cash flows for each of the years in the two-year period ended September 29, 2018, in conformity with accounting principles generally accepted in the United States of America.

**Basis for Opinion**

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ CohnReznick LLP

We have served as the Company's auditors since 2004.  
Jericho, New York  
December 20, 2018

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(In Thousands, Except Per Share Amounts)

	September 29, 2018	September 30, 2017
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents (includes \$181 at September 29, 2018 and \$363 at September 30, 2017 related to VIEs)	\$ 5,012	\$ 1,406
Accounts receivable (includes \$354 at September 29, 2018 and \$367 at September 30, 2017 related to VIEs)	3,452	3,353
Employee receivables	386	399
Inventories (includes \$19 at September 29, 2018 and \$22 at September 30, 2017 related to VIEs)	2,094	1,992
Prepaid and refundable income taxes (includes \$241 at September 29, 2018 and \$226 at September 30, 2017 related to VIEs)	721	945
Prepaid expenses and other current assets (includes \$51 at September 29, 2018 and \$63 at September 30, 2017 related to VIEs)	1,547	1,988
Total current assets	13,212	10,083
FIXED ASSETS - Net (includes \$0 at September 29, 2018 and \$6 at September 30, 2017 related to VIEs)	45,264	45,215
INTANGIBLE ASSETS - Net	349	409
GOODWILL	9,880	9,880
TRADEMARKS	3,331	3,331
DEFERRED INCOME TAXES	2,988	1,491
INVESTMENT IN AND RECEIVABLE FROM NEW MEADOWLANDS RACETRACK	7,036	6,979
OTHER ASSETS (includes \$82 at September 29, 2018 and \$71 at September 30, 2017 related to VIEs)	2,677	2,679
<b>TOTAL ASSETS</b>	<b>\$ 84,737</b>	<b>\$ 80,067</b>
<b>LIABILITIES AND EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable - trade (includes \$158 at September 29, 2018 and \$116 at September 30, 2017 related to VIEs)	\$ 5,019	\$ 4,750
Accrued expenses and other current liabilities (includes \$348 at September 29, 2018 and \$260 at September 30, 2017 related to VIEs)	10,702	10,176
Dividend payable	868	857
Borrowings under credit facility	-	6,198
Current portion of notes payable	1,251	4,174
Total current liabilities	17,840	26,155
OPERATING LEASE DEFERRED CREDIT (includes (\$21) at September 29, 2018 and \$51 at September 30, 2017 related to VIEs)	3,301	3,648
NOTES PAYABLE, LESS CURRENT PORTION, net of deferred financing costs	19,860	7,824
<b>TOTAL LIABILITIES</b>	<b>41,001</b>	<b>37,627</b>
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>EQUITY:</b>		
Common stock, par value \$.01 per share - authorized, 10,000 shares; issued and outstanding, 3,470 shares at September 29, 2018 and 3,428 shares at September 30, 2017	35	34
Additional paid-in capital	12,897	12,639
Retained earnings	29,364	27,771
Total Ark Restaurants Corp. shareholders' equity	42,296	40,444
NON-CONTROLLING INTERESTS	1,440	1,996
<b>TOTAL EQUITY</b>	<b>43,736</b>	<b>42,440</b>
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$ 84,737</b>	<b>\$ 80,067</b>

See notes to consolidated financial statements.



**ARK RESTAURANTS CORP. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF INCOME**  
(In Thousands, Except Per Share Amounts)

	Year Ended	
	September 29, 2018	September 30, 2017
<b>REVENUES:</b>		
Food and beverage sales	\$ 156,837	\$ 151,196
Other revenue	3,153	2,681
Total revenues	<u>159,990</u>	<u>153,877</u>
<b>COSTS AND EXPENSES:</b>		
Food and beverage cost of sales	43,036	41,597
Payroll expenses	55,620	53,074
Occupancy expenses	18,577	17,100
Other operating costs and expenses	21,437	20,690
General and administrative expenses	11,214	11,504
Depreciation and amortization	5,074	4,541
Total costs and expenses	<u>154,958</u>	<u>148,506</u>
<b>RESTAURANT OPERATING INCOME</b>	<b>5,032</b>	<b>5,371</b>
Gain on sale of Ark Jupiter RI, LLC	-	1,637
<b>OPERATING INCOME</b>	<b>5,032</b>	<b>7,008</b>
<b>OTHER (INCOME) EXPENSE:</b>		
Interest expense	1,163	753
Interest income	(57)	(170)
Total other (income) expense, net	<u>1,106</u>	<u>583</u>
<b>INCOME BEFORE PROVISION (BENEFIT) FOR INCOME TAXES</b>	<b>3,926</b>	<b>6,425</b>
Provision (benefit) for income taxes	(1,147)	1,668
<b>CONSOLIDATED NET INCOME</b>	<b>5,073</b>	<b>4,757</b>
Net income attributable to non-controlling interests	(418)	(718)
<b>NET INCOME ATTRIBUTABLE TO ARK RESTAURANTS CORP.</b>	<b>\$ 4,655</b>	<b>\$ 4,039</b>
<b>NET INCOME PER ARK RESTAURANTS CORP. COMMON SHARE:</b>		
Basic	\$ 1.35	\$ 1.18
Diluted	\$ 1.31	\$ 1.14
<b>WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING:</b>		
Basic	3,439	3,424
Diluted	3,549	3,531

See notes to consolidated financial statements.

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY**  
**FOR THE YEARS ENDED SEPTEMBER 29, 2018 AND SEPTEMBER 30, 2017**  
(In Thousands, Except Per Share Amounts)

	Common Stock		Additional Paid-In Capital	Retained Earnings	Total Ark Restaurants Corp. Shareholders' Equity	Non- controlling Interests	Total Equity
	Shares	Amount					
BALANCE - October 1, 2016	3,423	\$ 34	\$ 12,942	\$ 27,158	\$ 40,134	\$ 2,570	\$ 42,704
Net income	-	-	-	4,039	4,039	718	4,757
Exercise of stock options	5	-	72	-	72	-	72
Tax benefit on exercise of stock options	-	-	14	-	14	-	14
Change in excess tax benefits from stock-based compensation	-	-	(389)	-	(389)	-	(389)
Distributions to non-controlling interests	-	-	-	-	-	(1,292)	(1,292)
Dividends paid - \$1.00 per share	-	-	-	(3,426)	(3,426)	-	(3,426)
BALANCE - September 30, 2017	3,428	34	12,639	27,771	40,444	1,996	42,440
Cumulative effect adjustment related to adoption of ASU 2016-09	-	-	(392)	392	-	-	-
BALANCE - October 1, 2017	3,428	34	12,247	28,163	40,444	1,996	42,440
Net income	-	-	-	4,655	4,655	418	5,073
Exercise of stock options	42	1	603	-	604	-	604
Stock-based compensation	-	-	47	-	47	-	47
Distributions to non-controlling interests	-	-	-	-	-	(974)	(974)
Dividends accrued and paid - \$1.00 per share	-	-	-	(3,454)	(3,454)	-	(3,454)
BALANCE - September 29, 2018	3,470	\$ 35	\$ 12,897	\$ 29,364	\$ 42,296	\$ 1,440	\$ 43,736

See notes to consolidated financial statements.

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In Thousands)

	Year Ended	
	September 29, 2018	September 30, 2017
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Consolidated net income	\$ 5,073	\$ 4,757
Adjustments to reconcile consolidated net income to net cash provided by operating activities:		
Stock-based compensation	47	-
Loss on closure of restaurants	-	120
Gain on sale of Ark Jupiter RI, LLC	-	(1,637)
Loss on disposal of assets	-	283
Deferred income taxes	(1,497)	1,550
Accrued interest on note receivable from NMR	(57)	(56)
Depreciation and amortization	5,074	4,132
Amortization of deferred financing costs	21	46
Operating lease deferred credit	(347)	72
Changes in operating assets and liabilities:		
Accounts receivable	(99)	397
Inventories	(102)	193
Prepaid, refundable and accrued income taxes	224	(1,373)
Prepaid expenses and other current assets	441	546
Other assets	2	(175)
Accounts payable - trade	269	1,874
Accrued expenses and other current liabilities	526	(379)
Net cash provided by operating activities	<u>9,575</u>	<u>10,350</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchases of fixed assets	(5,063)	(13,904)
Loans and advances made to employees	(136)	(121)
Payments received on employee receivables	149	175
Proceeds from the sale of Ark Jupiter RI, LLC	-	2,474
Purchase of the Oyster House	-	(3,043)
Additional investment in Meadowlands Newmark LLC	-	(222)
Net cash used in investing activities	<u>(5,050)</u>	<u>(14,641)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Principal payments on notes payable	(2,067)	(3,951)
Borrowings under credit facility	5,086	6,198
Payment of debt financing costs	(125)	-
Dividends paid	(3,443)	(2,569)
Proceeds from issuance of stock upon exercise of stock options	604	72
Distributions to non-controlling interests	(974)	(1,292)
Net cash used in financing activities	<u>(919)</u>	<u>(1,542)</u>
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	3,606	(5,833)
CASH AND CASH EQUIVALENTS, Beginning of year	1,406	7,239
CASH AND CASH EQUIVALENTS, End of year	<u>\$ 5,012</u>	<u>\$ 1,406</u>
<b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:</b>		
Cash paid during the year for:		
Interest	\$ 1,008	\$ 707
Income taxes	\$ 127	\$ 1,490
Non-cash financing activities:		
Note payable in connection with the purchase of the Oyster House	\$ -	\$ 8,000
Change in excess tax benefits from stock-based compensation	\$ -	\$ (389)
Refinancing of credit facility borrowings to term notes	\$ 4,430	\$ -
Accrued dividend	\$ 868	\$ 857

See notes to consolidated financial statements.

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**ARK RESTAURANTS CORP. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

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**1. BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

As of September 29, 2018, Ark Restaurants Corp. and Subsidiaries (the “Company”) owned and operated 20 restaurants and bars, 19 fast food concepts and catering operations, exclusively in the United States, that have similar economic characteristics, nature of products and service, class of customers and distribution methods. The Company believes it meets the criteria for aggregating its operating segments into a single reporting segment in accordance with applicable accounting guidance.

The Company operates five restaurants in New York City, two in Washington, D.C., five in Las Vegas, Nevada, three in Atlantic City, New Jersey, one in Boston, Massachusetts, two in Florida and two on the gulf coast of Alabama. The Las Vegas operations include four restaurants within the New York-New York Hotel & Casino Resort and operation of the hotel’s room service, banquet facilities, employee dining room and six food court concepts and one restaurant within the Planet Hollywood Resort and Casino. In Atlantic City, New Jersey, the Company operates a restaurant and a bar in the Resorts Atlantic City Hotel and Casino and a restaurant and bar at the Tropicana Hotel and Casino. The operation at the Foxwoods Resort Casino consists of one fast food concept. In Boston, Massachusetts, the Company operates a restaurant in the Faneuil Hall Marketplace. The Florida operations include the Rustic Inn in Dania Beach, Florida and Shuckers in Jensen Beach, Florida and the operation of five fast food facilities in Tampa, Florida and seven fast food facilities in Hollywood, Florida, each at a Hard Rock Hotel and Casino. In Alabama, the Company operates two Original Oyster Houses, one in Gulf Shores, Alabama and one in Spanish Fort, Alabama.

**Basis of Presentation** — The accompanying consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) and accounting principles generally accepted in the United States of America (“GAAP”). The Company’s reporting currency is the United States dollar.

The Company had a working capital deficiency of \$4,628,000 at September 29, 2018. We believe that our existing cash balances, current banking facilities and cash provided by operations will be sufficient to meet our liquidity and capital spending requirements at least through December 31, 2019.

**Accounting Period** — The Company’s fiscal year ends on the Saturday nearest September 30. The fiscal years ended September 29, 2018 and September 30, 2017 included 52 weeks.

**Use of Estimates** — The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The accounting estimates that require management’s most difficult and subjective judgments include allowances for potential bad debts on receivables, the useful lives and recoverability of its assets, such as property and intangibles, fair values of financial instruments and share-based compensation, the realizable value of its tax assets and determining when investment impairments are other-than-temporary. Because of the uncertainty in such estimates, actual results may differ from these estimates.

**Principles of Consolidation** — The consolidated financial statements include the accounts of Ark Restaurants Corp. and all of its wholly-owned subsidiaries, partnerships and other entities in which it has a controlling interest. Also included in the consolidated financial statements are certain variable interest entities (“VIEs”). All significant intercompany balances and transactions have been eliminated in consolidation.

**Non-Controlling Interests** — Non-controlling interests represent capital contributions, income and loss attributable to the shareholders of less than wholly-owned and consolidated entities.

**Seasonality** — The Company has substantial fixed costs that do not decline proportionally with sales. The first and second fiscal quarters, which include the winter months, usually reflect lower customer traffic than in

the third and fourth fiscal quarters. However, sales in the third and fourth fiscal quarters can be adversely affected by inclement weather due to the significant amount of outdoor seating at the Company's restaurants.

**Fair Value of Financial Instruments** — The carrying amount of cash and cash equivalents, receivables, accounts payable and accrued expenses approximate fair value due to the immediate or short-term maturity of these financial instruments. The fair values of notes receivable and payable are determined using current applicable rates for similar instruments as of the balance sheet date and approximate the carrying value of such debt instruments.

**Cash and Cash Equivalents** — Cash and cash equivalents include cash on hand, deposits with banks and highly liquid investments generally with original maturities of three months or less. Outstanding checks in excess of account balances, typically vendor payments, payroll and other contractual obligations disbursed after the last day of a reporting period are reported as a current liability in the accompanying Consolidated Balance Sheets.

**Concentrations of Credit Risk** — Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. The Company reduces credit risk by placing its cash and cash equivalents with major financial institutions with high credit ratings. At times, such amounts may exceed Federally insured limits. Accounts receivable are primarily comprised of normal business receivables such as credit card receivables that are paid off in a short period of time and amounts due from the hotel operators where the Company has a location, and are recorded when the products or services have been delivered. The Company reviews the collectability of its receivables on an ongoing basis, and provides for an allowance when it considers the entity unable to meet its obligation. The concentration of credit risk with respect to accounts receivable is generally limited due to the short payment terms extended by the Company and the number of customers comprising the Company's customer base.

As of September 29, 2018 the Company had accounts receivable balances due from two hotel operators totaling 47% of total accounts receivable. As of September 30, 2017, the Company had accounts receivable balances due from two hotel operators totaling 39% of total accounts receivable.

For the years ended September 29, 2018 and September 30, 2017, the Company made purchases from one vendor that accounted for 10% of total purchases.

As of September 29, 2018, all debt outstanding is with one lender (see Note 9 – Notes Payable – Bank)

**Inventories** — Inventories are stated at the lower of cost (first-in, first-out) or market, and consist of food and beverages, merchandise for sale and other supplies.

**Fixed Assets** — Fixed assets are stated at cost less accumulated depreciation and amortization. Depreciation is determined using the straight-line method over the estimated useful lives of the assets. Estimated lives range from three to seven years for furniture, fixtures and equipment and up to 40 years for buildings and related improvements. Amortization of improvements to leased properties is computed using the straight-line method based upon the initial term of the applicable lease or the estimated useful life of the improvements, whichever is less, and ranges from 5 to 30 years. For leases with renewal periods at the Company's option, if failure to exercise a renewal option imposes an economic penalty to the Company, management may determine at the inception of the lease that renewal is reasonably assured and include the renewal option period in the determination of appropriate estimated useful lives. Routine expenditures for repairs and maintenance are charged to expense when incurred. Major replacements and improvements are capitalized. Upon retirement or disposition of fixed assets, the cost and related accumulated depreciation are removed from the Consolidated Balance Sheets and any resulting gain or loss is recognized in the Consolidated Statements of Income.

The Company includes in construction in progress improvements to restaurants that are under construction or are undergoing substantial improvements. Once the projects have been completed, the Company begins depreciating and amortizing the assets. Start-up costs incurred during the construction period of restaurants, including rental of premises, training and payroll, are expensed as incurred.

**Intangible Assets** — Intangible assets consist principally of purchased leasehold rights, operating rights and covenants not to compete. Costs associated with acquiring leases and subleases, principally purchased leasehold rights, and operating rights have been capitalized and are being amortized on the straight-line method based upon

the initial terms of the applicable lease agreements. Covenants not to compete arising from restaurant acquisitions are amortized over the contractual period, typically five years.

**Long-lived Assets** — Long-lived assets, such as property, plant and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. In the evaluation of the fair value and future benefits of long-lived assets, the Company performs an analysis of the anticipated undiscounted future net cash flows of the related long-lived assets. If the carrying value of the related asset exceeds the undiscounted cash flows, the carrying value is reduced to its fair value. Various factors including estimated future sales growth and estimated profit margins are included in this analysis. Based on this analysis, no impairment charges were warranted at September 29, 2018. See Notes 4 and 10 for information regarding impairment charges for the year ended September 30, 2017.

**Goodwill and Trademarks** — Goodwill is recorded when the purchase price paid for an acquisition exceeds the estimated fair value of the net identified tangible and intangible assets acquired. Trademarks are considered to have an indefinite life. Goodwill and trademarks are not amortized, but are subject to impairment analysis at least once annually or more frequently upon the occurrence of an event or when circumstances indicate that a reporting unit's carrying amount is greater than its fair value. At September 29, 2018 and September 30, 2017, the Company performed qualitative assessments of factors to determine whether further impairment testing is required. Based on this assessment, no impairment losses were warranted at September 29, 2018 and September 30, 2017 as the fair value of the Company's equity is well in excess of its carrying amount. Qualitative factors considered in this assessment include industry and market considerations, overall financial performance and other relevant events, management expertise and stability at key positions. Additional impairment analyses at future dates may be performed to determine if indicators of impairment are present, and if so, such amount will be determined and the associated charge will be recorded to the Consolidated Statements of Income.

**Investments** — Each reporting period, the Company reviews its investments in equity and debt securities, except for those classified as trading, to determine whether a significant event or change in circumstances has occurred that may have an adverse effect on the fair value of such investment. When such events or changes occur, the Company evaluates the fair value compared to cost basis in the investment. For investments in non-publicly traded companies, management's assessment of fair value is based on valuation methodologies including discounted cash flows, estimates of sales proceeds, and appraisals, as appropriate. The Company considers the assumptions that it believes hypothetical marketplace participants would use in evaluating estimated future cash flows when employing the discounted cash flow or estimates of sales proceeds valuation methodologies.

In the event the fair value of an investment declines below the Company's cost basis, management is required to determine if the decline in fair value is other than temporary. If management determines the decline is other than temporary, an impairment charge is recorded. Management's assessment as to the nature of a decline in fair value is based on, among other things, the length of time and the extent to which the market value has been less than the cost basis; the financial condition and near-term prospects of the issuer; and the Company's intent and ability to retain the investment for a period of time sufficient to allow for any anticipated recovery in market value.

**Leases** — The Company recognizes rent expense on a straight-line basis over the expected lease term, including option periods as described below. Within the provisions of certain leases there are escalations in payments over the base lease term, as well as renewal periods. The effects of the escalations have been reflected in rent expense on a straight-line basis over the expected lease term, which includes option periods when it is deemed to be reasonably assured that the Company would incur an economic penalty for not exercising the option. Tenant allowances are included in the straight-line calculations and are being deferred over the lease term and reflected as a reduction in rent expense. Percentage rent expense is generally based upon sales levels and is expensed as incurred. Certain leases include both base rent and percentage rent. The Company records rent expense on these leases based upon reasonably assured sales levels. The consolidated financial statements reflect the same lease terms for amortizing leasehold improvements as were used in calculating straight-line rent expense for each restaurant. The judgments of the Company may produce materially different amounts of amortization and rent expense than would be reported if different lease terms were used.

**Revenue Recognition** — Company-owned restaurant sales are comprised almost entirely of food and beverage sales. The Company records revenue at the time of the purchase of products by customers. Included in Other Revenues are purchase service fees which represent commissions earned by a subsidiary of the Company for providing purchasing services to other restaurant groups, as well as license fees, property management fees and other rentals.

The Company offers customers the opportunity to purchase gift certificates. At the time of purchase by the customer, the Company records a gift certificate liability for the face value of the certificate purchased. The Company recognizes the revenue and reduces the gift certificate liability when the certificate is redeemed. The Company does not reduce its recorded liability for potential non-use of purchased gift cards. As of September 29, 2018 and September 30, 2017, the total liability for gift cards in the amounts of approximately \$170,000 and \$158,000, respectively, are included in Accrued Expenses and Other Current Liabilities in the Consolidated Balance Sheets.

Additionally, the Company presents sales tax on a net basis in its consolidated financial statements.

**Occupancy Expenses** — Occupancy expenses include rent, rent taxes, real estate taxes, insurance and utility costs.

**Defined Contribution Plan** — The Company offers a defined contribution savings plan (the “Plan”) to all of its full-time employees. Eligible employees may contribute pre-tax amounts to the Plan subject to the Internal Revenue Code limitations. Company contributions to the Plan are at the discretion of the Board of Directors. During the years ended September 29, 2018 and September 30, 2017, the Company did not make any contributions to the Plan.

**Income Taxes** — Income taxes are accounted for under the asset and liability method whereby deferred tax assets and liabilities are recognized for future tax consequences attributable to the temporary differences between the financial statement carrying amounts of assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized.

The Company has recorded a liability for unrecognized tax benefits resulting from tax positions taken, or expected to be taken, in an income tax return. It is the Company’s policy to recognize interest and penalties related to uncertain tax positions as a component of income tax expense. Uncertain tax positions are evaluated and adjusted as appropriate, while taking into account the progress of audits of various taxing jurisdictions.

Non-controlling interests relating to the income or loss of consolidated partnerships includes no provision for income taxes as any tax liability related thereto is the responsibility of the individual minority investors.

**Income Per Share of Common Stock** — Basic net income per share is calculated on the basis of the weighted average number of common shares outstanding during each period. Diluted net income per share reflects the additional dilutive effect of potentially dilutive shares (principally those arising from the assumed exercise of stock options). The dilutive effect of stock options is reflected in diluted earnings per share by application of the treasury stock method. Under the treasury stock method, if the average market price of a share of common stock increases above the option’s exercise price, the proceeds that would be assumed to be realized from the exercise of the option would be used to acquire outstanding shares of common stock. The dilutive effect of awards is directly correlated with the fair value of the shares of common stock.

**Stock-based Compensation** — Stock-based compensation represents the cost related to stock-based awards granted to employees and non-employee directors. The Company measures stock-based compensation at the grant date based on the estimated fair value of the award and recognize the cost (net of estimated forfeitures) as compensation expense on a straight-line basis over the requisite service period. Upon exercise of options, all excess tax benefits and tax deficiencies resulting from the difference between the deduction for tax purposes and the stock-based compensation cost recognized for financial reporting purposes are included as a component of income tax expense.

**Recently Adopted Accounting Standards** — In March 2016, the Financial Accounting Standard Board (the “FASB”) issued Accounting Standards Update (“ASU”) No. 2016-09, *Compensation – Stock Compensation – Improvements to Employee Share-Based Payment Accounting*, which contains amended guidance for share-based payment accounting. We adopted the provisions of this standard during the first quarter of 2018. Under ASU 2016-09, all excess tax benefits and tax deficiencies resulting from the difference between the deduction for tax purposes and the stock-based compensation cost recognized for financial reporting purposes are included as a component of income tax expense as of October 1, 2017. Prior to the implementation of ASU 2016-09, excess tax benefits were recorded as a component of Additional paid-in capital and tax deficiencies were recognized either as an offset to accumulated excess tax benefits or in the income statement if there were no accumulated excess tax benefits. As a result of the adoption of ASU 2016-09 we have recorded a cumulative effect adjustment as of October 1, 2017 in the amount of \$392,000 and reduced income tax expense by approximately \$135,000 for the year ended September 29, 2018. The ASU clarifies the classification of certain share based payment activities within the statements of cash flows. We have elected to prospectively present the amount of excess tax benefits related to stock compensation as a component of cash flows from operating activities and not adjust prior periods. Additionally, cash payments made to taxing authorities on an employee’s behalf when directly withholding shares for tax-withholding purposes, which were previously included as cash flows from operating activities, are now required to be presented as cash flows from financing activities within the statement of cash flows. Such amounts were not material to our consolidated financial statements.

**New Accounting Standards Not Yet Adopted** — In May 2014, the FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers*. The guidance provides a comprehensive new revenue recognition model that requires a company to recognize revenue to depict the transfer of goods or services to a customer at an amount that reflects the consideration it expects to receive in exchange for those goods or services. The guidance also requires additional disclosure about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts. This update is effective for the Company in the first quarter of fiscal 2019, which is when we plan to adopt these provisions. This update permits the use of either the retrospective or cumulative effect transition method, however we have not yet selected a transition method. Upon initial evaluation, we do not believe this guidance will have a significant impact on our recognition of revenue from company-owned restaurants, which is our primary source of revenue. We are continuing to evaluate the effect this guidance will have on other, less significant revenue sources, including catering revenues. The Company continues to monitor additional changes, modifications, clarifications or interpretations being undertaken by the FASB, which may, in conjunction with the completion of the Company’s overall assessment of the new guidance, impact the Company’s current conclusions.

In January 2016, FASB issued ASU No. 2016-01, *Financial Instruments-Overall: Recognition and Measurement of Financial Assets and Financial Liabilities*. The guidance will require equity investments in unconsolidated entities (other than those accounted for using the equity method of accounting) to be measured at fair value with changes in fair value recognized in net income. The amendments in this update will also simplify the impairment assessment of equity investments without readily determinable fair values by requiring a qualitative assessment to identify impairment, eliminate the requirement for public business entities to disclose the method and significant assumptions used to estimate the fair value that is required to be disclosed for financial instruments measured at amortized cost on the balance sheet and require these entities to use the exit price notion when measuring fair value of financial instruments for disclosure purposes. This guidance also changes the presentation and disclosure requirements for financial instruments as well as clarifying the guidance related to valuation allowance assessments when recognizing deferred tax assets resulting from unrealized losses on available-for-sale debt securities. The amendments in this guidance are effective for the Company in the first quarter of fiscal 2019. Early adoption is permitted for financial statements of fiscal years and interim periods that have not been issued. The Company is currently assessing the potential impact of this guidance on its consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, *Leases*. This update requires a lessee to recognize on the balance sheet a liability to make lease payments and a corresponding right-of-use asset. The guidance also requires certain qualitative and quantitative disclosures about the amount, timing and uncertainty of cash flows arising from leases. This update is effective for the Company in the first quarter of fiscal 2020, which is when we plan to adopt these provisions. We plan to elect the available practical expedients on adoption and we expect our balance sheet presentation to be materially impacted upon adoption due to the recognition of right-of-use assets



and lease liabilities for operating leases. We are continuing to evaluate the effect this guidance will have on our consolidated financial statements and related disclosures.

In August 2016, FASB issued ASU No. 2016-15, *Classification of Certain Cash Receipts and Cash Payments*. This update provides clarification regarding how certain cash receipts and cash payments are presented and classified in the statement of cash flows and addresses eight specific cash flow issues with the objective of reducing the existing diversity in practice. This update is effective for annual and interim periods beginning after December 15, 2017, which will require us to adopt these provisions in the first quarter of fiscal 2019 using a retrospective approach. Early adoption is permitted. We do not expect the adoption of this guidance to have a material impact on our consolidated financial statements.

In October 2016, the FASB issued ASU No. 2016-16, *Income Taxes: Intra-Entity Transfers of Assets Other than Inventory*. The amendments in this guidance address the income tax consequences of intra-entity transfers of assets other than inventory. Current guidance prohibits the recognition of current and deferred income taxes for an intra-entity asset transfer until the asset has been sold to an outside party. In addition, interpretations of this guidance have developed in practice over the years for transfers of certain intangible and tangible assets. The amendments in the update will require recognition of current and deferred income taxes resulting from an intra-entity transfer of an asset other than inventory when the transfer occurs. This update is effective for us in the first quarter of fiscal 2019, which is when we plan to adopt these provisions using a modified retrospective approach. We do not expect the adoption of this guidance to have a material impact on our consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-01, *Business Combinations: Clarifying the Definition of a Business*. This update provides that when substantially all the fair value of the assets acquired is concentrated in a single identifiable asset or a group of similar identifiable assets, the set is not a business. This update will be effective for the Company in the first quarter of 2019. We do not expect the adoption of this guidance to have a material impact on our consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles-Goodwill and Other: Simplifying the Test for Goodwill Impairment*. The update simplifies how an entity is required to test goodwill for impairment by eliminating Step 2 from the goodwill impairment test. Step 2 measures a goodwill impairment loss by comparing the implied fair value of a reporting unit's goodwill with the carrying amount. The new rules will be effective for the Company in the first quarter of 2021. The Company is currently evaluating the potential impact adoption of this guidance on its consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-16 *Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*, which provides guidance for the accounting for implementation costs of hosting arrangements that are considered service contracts. This pronouncement is effective for annual periods beginning after December 15, 2020 and interim periods within annual periods after December 15, 2021. We do not expect the adoption of this guidance to have a material impact on our consolidated financial statements. .

## 2. CONSOLIDATION OF VARIABLE INTEREST ENTITIES

The Company consolidates any variable interest entities in which it holds a variable interest and is the primary beneficiary. Generally, a variable interest entity, or VIE, is an entity with one or more of the following characteristics: (a) the total equity investment at risk is not sufficient to permit the entity to finance its activities without additional subordinated financial support; (b) as a group the holders of the equity investment at risk lack (i) the ability to make decisions about an entity's activities through voting or similar rights, (ii) the obligation to absorb the expected losses of the entity, or (iii) the right to receive the expected residual returns of the entity; or (c) the equity investors have voting rights that are not proportional to their economic interests and substantially all of the entity's activities either involve, or are conducted on behalf of, an investor that has disproportionately few voting rights. The primary beneficiary of a VIE is generally the entity that has (a) the power to direct the activities of the VIE that most significantly impact the VIE's economic performance, and (b) the obligation to absorb losses or the right to receive benefits that could potentially be significant to the VIE.

The Company has determined that it is the primary beneficiary of three VIEs and, accordingly, consolidates the financial results of these entities. Following are the required disclosures associated with the Company's consolidated VIEs:

	September 29, 2018	September 30, 2017
	(in thousands)	
Cash and cash equivalents	\$ 181	\$ 363
Accounts receivable	354	367
Inventories	19	22
Prepaid and refundable income taxes	241	226
Prepaid expenses and other current assets	51	63
Due from Ark Restaurants Corp. and affiliates (1)	338	534
Fixed assets - net	-	6
Other assets	82	71
Total assets	<u>\$ 1,266</u>	<u>\$ 1,652</u>
Accounts payable - trade	\$ 158	\$ 116
Accrued expenses and other current liabilities	348	260
Operating lease deferred credit	(21)	51
Total liabilities	<u>485</u>	<u>427</u>
Equity of variable interest entities	781	1,225
Total liabilities and equity	<u>\$ 1,266</u>	<u>\$ 1,652</u>

(1) Amounts due from Ark Restaurants Corp. and affiliates are eliminated upon consolidation.

The liabilities recognized as a result of consolidating these VIEs do not represent additional claims on the Company's general assets; rather, they represent claims against the specific assets of the consolidated VIEs. Conversely, assets recognized as a result of consolidating these VIEs do not represent additional assets that could be used to satisfy claims against the Company's general assets.

### 3. RECENT RESTAURANT EXPANSION

On November 30, 2016, the Company, through newly formed, wholly-owned subsidiaries, acquired the assets of the *Original Oyster House, Inc.*, a restaurant and bar located in the City of Gulf Shores, Baldwin County, Alabama and the related real estate and an adjacent retail shopping plaza and the *Original Oyster House II, Inc.*, a restaurant and bar located in the City of Spanish Fort, Baldwin County, Alabama and the related real estate. The total purchase price was for \$10,750,000 plus inventory of approximately \$293,000. The acquisition is accounted for as a business combination and was financed with a bank loan from the Company's existing lender in the amount of \$8,000,000 and cash from operations. The fair values of the assets acquired, none of which are amortizable, were allocated as follows (amounts in thousands):

Inventory	\$ 293
Land and buildings	6,650
Furniture, fixtures and equipment	395
Trademarks	1,720
Goodwill	1,985
	<u>\$ 11,043</u>

The Consolidated Statement of Income for the year ended September 30, 2017 includes revenues and pre-tax income of approximately \$11,804,000 and \$1,243,000, respectively, related to the *Oyster House* properties. The unaudited pro forma financial information set forth below is based upon the Company's historical Consolidated Statements of Income for the year ended September 30, 2017 and includes the results of operations for the *Oyster House* properties for the periods prior to acquisition. The unaudited pro forma financial information is presented for informational purposes only and may not be indicative of what actual results of operations would have been had the acquisition of the *Oyster House* properties occurred on the dates indicated, nor does it purport to represent the results of operations for future periods.

	<u>Year Ended</u> <u>September 30,</u> <u>2017</u> <u>(unaudited)</u>
Total revenues	\$ 155,690
Net income	\$ 4,246
Net income per share - basic	\$ 1.24
Net income per share - diluted	\$ 1.20
Basic	3,424
Diluted	3,531

#### 4. RECENT RESTAURANT DISPOSITIONS

**Lease Expirations** – The Company was advised by the landlord that it would have to vacate *The Grill at Two Trees* property at the Foxwoods Resort and Casino in Ledyard, CT, which had a no rent lease. The closure of this property occurred on January 1, 2017 and did not result in a material charge.

**Other** – On November 18, 2016, Ark Jupiter RI, LLC (“Ark Jupiter”), a wholly-owned subsidiary of the Company, entered into a ROFR Purchase and Sale Agreement (the “ROFR”) with SCFRC-HWG, LLC, the landlord (the “Seller”) to purchase the land and building in which the Company operated its *Rustic Inn* location in Jupiter, Florida. The Seller had entered into a Purchase and Sale Agreement with a third party to sell the premises; however, Ark Jupiter's lease provided the Company with a right of first refusal to purchase the property. Ark Jupiter exercised the ROFR on October 4, 2016 and made a ten (10%) percent deposit on the purchase price of approximately \$5,200,000. Concurrent with the execution of the ROFR, Ark Jupiter entered into a Purchase and Sale Agreement with 1065 A1A, LLC to sell this same property for \$8,250,000. In connection with the sale, Ark Jupiter and 1065 A1A, LLC entered into a temporary lease and sub-lease arrangement which expired on July 18, 2017. The Company vacated the space in June 2017. In connection with these transactions the Company recognized a gain in the amount of \$1,637,000 during the year ended September 30, 2017.

The Company transferred its lease and the related assets of *Canyon Road* located in New York, NY to a former employee. In connection with this transfer, the Company recognized an impairment loss included in depreciation and amortization expense in the amount of \$75,000 for the year ended September 30, 2017.

#### 5. INVESTMENT IN AND RECEIVABLE FROM NEW MEADOWLANDS RACETRACK

On March 12, 2013, the Company made a \$4,200,000 investment in the New Meadowlands Racetrack LLC (“NMR”) through its purchase of a membership interest in Meadowlands Newmark, LLC, an existing member of NMR with a 63.7% ownership interest. On November 19, 2013, the Company invested an additional \$464,000 in NMR through a purchase of an additional membership interest in Meadowlands Newmark, LLC resulting in a total ownership of 11.6% of Meadowlands Newmark, LLC, and an effective ownership interest in NMR of 7.4%, subject to dilution. In 2015, the Company invested an additional \$222,000 in NMR and on February 7, 2017, the

Company invested an additional \$222,000 in NMR, both as a result of capital calls, bringing its total investment to \$5,108,000 with no change in ownership. This investment has been accounted for based on the cost method.

In addition to the Company's ownership interest in NMR through Meadowlands Newmark, LLC, if casino gaming is approved at the Meadowlands and NMR is granted the right to conduct said gaming, neither of which can be assured, the Company shall be granted the exclusive right to operate the food and beverage concessions in the gaming facility with the exception of one restaurant.

In conjunction with this investment, the Company, through a 97% owned subsidiary, Ark Meadowlands LLC ("AM VIE"), also entered into a long-term agreement with NMR for the exclusive right to operate food and beverage concessions serving the new raceway facilities (the "Racing F&B Concessions") located in the new raceway grandstand constructed at the Meadowlands Racetrack in northern New Jersey. Under the agreement, NMR is responsible to pay for the costs and expenses incurred in the operation of the Racing F&B Concessions, and all revenues and profits thereof inure to the benefit of NMR. AM VIE receives an annual fee equal to 5% of the net profits received by NMR from the Racing F&B Concessions during each calendar year. We have determined that AM VIE is a variable interest entity. However, based on qualitative consideration of the contracts with AM VIE, the operating structure of AM VIE, the Company's role with AM VIE, and that the Company is not obligated to absorb any expected losses of AM VIE, the Company has concluded that it is not the primary beneficiary and not required to consolidate the operations of AM VIE.

The Company's maximum exposure to loss as a result of its involvement with AM VIE is limited to a receivable from AM VIE's primary beneficiary (NMR, a related party) which aggregated approximately \$0 and \$9,000 at September 29, 2018 and September 30, 2017, respectively, and are included in Prepaid Expenses and Other Current Assets in the Consolidated Balance Sheets.

On April 25, 2014, the Company loaned \$1,500,000 to Meadowlands Newmark, LLC. The note bears interest at 3%, compounded monthly and added to the principal, and is due in its entirety on January 31, 2024. The note may be prepaid, in whole or in part, at any time without penalty or premium. On July 13, 2016, the Company made an additional loan to Meadowlands Newmark, LLC in the amount of \$200,000. Such amount is subject to the same terms and conditions as the original loan discussed above. The principal and accrued interest related to this note in the amounts of \$1,928,000 and \$1,871,000, are included in Investment In and Receivable From New Meadowlands Racetrack in the Consolidated Balance Sheets at September 29, 2018 and September 30, 2017, respectively.

In accordance with the cost method, our initial investment is recorded at cost and we record dividend income when applicable, if dividends are declared. We review our Investment in NMR each reporting period to determine whether a significant event or change in circumstances has occurred that may have an adverse effect on its fair value, such as the defeat of the referendum for casino gaming in Northern New Jersey in November 2016. No events or changes in circumstances have occurred during the year ended September 29, 2018 that have had a significant adverse effect on the fair value our Investment in NMR. As a result of the above, no impairment was deemed necessary as of September 29, 2018.

## 6. FIXED ASSETS

Fixed assets consist of the following:

	September 29, 2018	September 30, 2017
	(In thousands)	
Land and building	\$ 18,029	\$ 17,164
Leasehold improvements	53,310	50,127
Furniture, fixtures and equipment	37,910	35,978
Construction in progress	59	980
	<u>109,308</u>	<u>104,249</u>
Less: accumulated depreciation and amortization	<u>64,044</u>	<u>59,034</u>
	<u>\$ 45,264</u>	<u>\$ 45,215</u>

Depreciation and amortization expense related to fixed assets for the years ended September 29, 2018 and September 30, 2017 was \$5,014,000 and \$4,096,000, respectively.

Management continually evaluates unfavorable cash flows, if any, related to underperforming restaurants. Periodically it is concluded that certain properties have become impaired based on their existing and anticipated future economic outlook in their respective markets. In such instances, we may impair assets to reduce their carrying values to fair values. Estimated fair values of impaired properties are based on comparable valuations, cash flows and/or management judgment. Included in 2017 are impairment charges of \$75,000 related to *Canyon Road* (see Note 4), \$45,000 related to *Branches*, which is included in other operating costs and expenses, and \$283,000 related to *Sequoia* (see Note 10).

## 7. INTANGIBLE ASSETS, GOODWILL AND TRADEMARKS

Intangible assets consist of the following:

	September 29, 2018	September 30, 2017
	(In thousands)	
Purchased leasehold rights (a)	\$ 2,395	\$ 2,395
Noncompete agreements and other	253	253
	<u>2,648</u>	<u>2,648</u>
Less accumulated amortization	<u>2,299</u>	<u>2,239</u>
Total intangible assets	<u>\$ 349</u>	<u>\$ 409</u>

(a) Purchased leasehold rights arose from acquiring leases and subleases of various restaurants.

Amortization expense related to intangible assets for the years ended September 29, 2018 and September 30, 2017 was \$60,000 and \$42,000, respectively. Amortization expense for each of the next five years is expected to be \$38,000.

Goodwill is the excess of cost over fair market value of tangible and intangible net assets acquired. Goodwill is not presently amortized but tested for impairment annually or when the facts or circumstances indicate a possible impairment of goodwill as a result of a continual decline in performance or as a result of fundamental changes in

a market. Trademarks, which have indefinite lives, are not currently amortized and are tested for impairment annually or when facts or circumstances indicate a possible impairment as a result of a continual decline in performance or as a result of fundamental changes in a market.

The changes in the carrying amount of goodwill and trademarks for the years ended September 29, 2018 and September 30, 2017 are as follows:

	<u>Goodwill</u>	<u>Trademarks</u>
	(In thousands)	
Balance as of October 1, 2016	\$ 7,895	\$ 1,611
Acquired during the year	1,985	1,720
Impairment losses	-	-
Balance as of September 30, 2017	9,880	3,331
Acquired during the year	-	-
Impairment losses	-	-
Balance as of September 29, 2018	<u>\$ 9,880</u>	<u>\$ 3,331</u>

#### 8. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

	<u>September 29, 2018</u>	<u>September 30, 2017</u>
	(In thousands)	
Sales tax payable	\$ 820	\$ 813
Accrued wages and payroll related costs	3,226	2,475
Customer advance deposits	4,439	4,186
Accrued occupancy and other operating expenses	2,217	2,702
	<u>\$ 10,702</u>	<u>\$ 10,176</u>

**9. NOTES PAYABLE – BANK**

Long-term debt consists of the following:

	<u>September 29, 2018</u>	<u>September 30, 2017</u>
	(In thousands)	
Promissory Note - Rustic Inn purchase	\$ 4,327	\$ 2,290
Promissory Note - Shuckers purchase	5,015	3,083
Promissory Note - Oyster House purchase	5,346	6,667
Credit Facility	<u>6,568</u>	<u>6,198</u>
	21,256	18,238
Less: Current maturities	(1,251)	(10,372)
Less: Unamortized deferred financing costs	<u>(145)</u>	<u>(42)</u>
Long-term debt	<u>\$ 19,860</u>	<u>\$ 7,824</u>

On June 1, 2018, the Company refinanced its then existing indebtedness with its current lender, Bank Hapoalim B.M. (“BHBM”), by entering into an amended and restated credit agreement (the “New Revolving Facility”), which expires on May 31, 2021. The New Revolving Facility provides for total availability of the lesser of (i) \$10,000,000 and (ii) \$25,000,000 less the then aggregate amount of all indebtedness and obligations to BHBM. Borrowings under the New Revolving Facility are payable upon maturity of the New Revolving Facility with interest payable monthly at LIBOR plus 3.25%, subject to adjustment based on certain ratios. As of September 29, 2018 and September 30, 2017, borrowings of \$6,568,000 and \$6,198,000, respectively, were outstanding under the Revolving Facility and had a weighted average interest rate of 5.4% and 4.7%, respectively.

In connection with the refinancing, the Company also amended the principal amounts and payment terms of its outstanding term notes with BHBM as follows:

- *Promissory Note – Rustic Inn purchase* – On February 25, 2013, the Company issued a promissory note to BHBM for \$3,000,000. The note bore interest at LIBOR plus 3.5% per annum, and was payable in 36 equal monthly installments of \$83,333, commencing on March 25, 2013. On February 24, 2014, in connection with the acquisition of *The Rustic Inn*, the Company borrowed an additional \$6,000,000 from BHBM under the same terms and conditions as the original loan which was consolidated with the remaining principal balance from the original borrowing at that date. The new loan was payable in 60 equal monthly installments of \$134,722, which commenced on March 25, 2014. In connection with the above refinancing, this note was amended and restated and increased by \$2,783,333 of credit facility borrowings. The new principal amount of \$4,400,000, which is secured by a mortgage on *The Rustic Inn* real estate, is payable in 27 equal quarterly installments of \$73,334, which commenced on September 1, 2018, with a balloon payment of \$2,419,990 on June 1, 2025 and bears interest at LIBOR plus 3.25% per annum.
- *Promissory Note – Shuckers purchase* – On October 22, 2015, in connection with the acquisition of *Shuckers*, the Company issued a promissory note to BHBM for \$5,000,000. The note bore interest at LIBOR plus 3.5% per annum, and was payable in 60 equal monthly installments of \$83,333, commencing on November 22, 2015. In connection with the above refinancing, this note was amended and restated and increased by \$2,433,324 of credit facility borrowings. The new principal amount of \$5,100,000, which is secured by a mortgage on the *Shuckers* real estate, is payable in 27 equal quarterly installments of \$85,000, which commenced on September 1, 2018, with a balloon payment of \$2,804,988 on June 1, 2025 and bears interest at LIBOR plus 3.25% per annum.

- *Promissory Note – Oyster House purchase* – On November 30, 2016, in connection with the acquisition of the *Oyster House* properties, the Company issued a promissory note under the Revolving Facility to BHBM for \$8,000,000. The note bore interest at LIBOR plus 3.5% per annum, and was payable in 60 equal monthly installments of \$133,273, commencing on January 1, 2017. In connection with the above refinancing, this note was amended and restated and separated into two notes. The first note, in the principal amount of \$3,300,000, is secured by a mortgage on the *Oyster House Gulf Shores* real estate, is payable in 19 equal quarterly installments of \$117,854, which commenced on September 1, 2018, with a balloon payment of \$1,060,717 on June 1, 2023 and bears interest at LIBOR plus 3.5% per annum. The second note, in the principal amount of \$2,200,000, is secured by a mortgage on the *Oyster House Spanish Fort* real estate, is payable in 27 equal quarterly installments of \$36,667, which commenced on September 1, 2018, with a balloon payment of \$1,209,995 on June 1, 2025 and bears interest at LIBOR plus 3.25% per annum.

Deferred financing costs incurred in connection with the Revolving Facility in the amount of \$125,000 are being amortized over the life of the agreements on a straight-line basis and included in interest expense. Amortization expense was \$21,000 and \$46,000 for the years ended September 29, 2018 and September 30, 2017, respectively.

Borrowings under the Revolving Facility, which include all of the above promissory notes, are secured by all tangible and intangible personal property (including accounts receivable, inventory, equipment, general intangibles, documents, chattel paper, instruments, letter-of-credit rights, investment property, intellectual property and deposit accounts) and fixtures of the Company.

The loan agreements provide, among other things, that the Company meet minimum quarterly tangible net worth amounts, as defined, maintain a fixed charge coverage ratio of not less than 1.1:1 and minimum annual net income amounts, and contain customary representations, warranties and affirmative covenants. The agreements also contain customary negative covenants, subject to negotiated exceptions, on liens, relating to other indebtedness, capital expenditures, liens, affiliate transactions, disposal of assets and certain changes in ownership. The Company was in compliance with all of its financial covenants under the Revolving Facility as of September 29, 2018.

As of September 29, 2018, the aggregate amounts of notes payable maturities are as follows:

2019	\$ 1,251
2020	1,251
2021	1,251
2022	1,251
2023	2,076

## 10. COMMITMENTS AND CONTINGENCIES

**Leases** — The Company leases its restaurants, bar facilities, and administrative headquarters through its subsidiaries under terms expiring at various dates through 2033. Most of the leases provide for the payment of base rents plus real estate taxes, insurance and other expenses and, in certain instances, for the payment of a percentage of the restaurants' sales in excess of stipulated amounts at such facility and in one instance based on profits.



As of September 29, 2018, future minimum lease payments under noncancelable leases are as follows:

Fiscal Year	Amount (In thousands)
2019	\$ 9,529
2020	9,041
2021	7,993
2022	7,496
2023	6,759
Thereafter	31,578
Total minimum payments	<u>\$ 72,396</u>

In connection with certain of the leases included in the table above, the Company obtained and delivered irrevocable letters of credit in the aggregate amount of approximately \$388,000 as security deposits under such leases.

Rent expense was approximately \$14,649,000 and \$13,547,000 for the fiscal years ended September 29, 2018 and September 30, 2017, respectively. Contingent rentals, included in rent expense, were approximately \$5,454,000 and \$4,420,000 for the fiscal years ended September 29, 2018 and September 30, 2017, respectively.

On January 12, 2016, the Company entered into an Amended and Restated Lease for its Sequoia property in Washington D.C. extending the lease for 15 years through November 30, 2032 with one additional five-year option. Annual rent under the new lease is approximately \$1,200,000 increasing annually through expiration. Under the terms of the agreement, the property was closed January 1, 2017 for renovation and reconcepting which cost approximately \$11,000,000. In connection with this closure, the Company recognized an impairment loss related to fixed asset disposals in the amount of \$283,000, which is included in depreciation and amortization expense for the year ended September 30, 2017. The restaurant re-opened in June 2017.

**Legal Proceedings** — In the ordinary course its business, the Company is a party to various lawsuits arising from accidents at its restaurants and workers' compensation claims, which are generally handled by the Company's insurance carriers. The employment by the Company of management personnel, waiters, waitresses and kitchen staff at a number of different restaurants has resulted in the institution, from time to time, of litigation alleging violation by the Company of employment discrimination laws. Management believes, based in part on the advice of counsel, that the ultimate resolution of these matters will not have a material adverse effect on the Company's consolidated financial position, results of operations or cash flows.

The Company's defined contribution savings plan is currently under examination by the United States Department of Labor. The Company does not expect a material liability to result from this examination.

## 11. STOCK OPTIONS

The Company has options outstanding under two stock option plans, the 2010 Stock Option Plan (the "2010 Plan") and the 2016 Stock Option Plan (the "2016 Plan"). Options granted under both plans are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted and expire ten years after the date of grant.

On August 10, 2018, options to purchase 5,000 shares of common stock were granted at an exercise price of \$20.36 per share and on September 4, 2018 options to purchase 20,000 shares of common stock were granted at an exercise price of \$22.30 per share. Both grants are exercisable as to 50% of the shares commencing on the date of grant and as to an additional 50% commencing on the first anniversary of the date of grant. Such options had an aggregate grant date fair value of approximately \$94,000. The Company did not grant any options during the fiscal year 2017. The Company generally issues new shares upon the exercise of employee stock options.

The fair value of each of the Company's stock options is estimated on the date of grant using a Black-Scholes option-pricing model that uses assumptions that relate to the expected volatility of the Company's common stock, the expected dividend yield of the Company's stock, the expected life of the options and the risk free interest rate. The assumptions used for the 2018 grant include a risk free interest rates of 2.87% - 2.90%, volatility of 30.7%, a dividend yield of 5.6% and an expected life of 10 years.

During the year ended September 29, 2018, options to purchase 26,050 shares of common stock at a weighted average price of \$18.60 per share expired unexercised or were forfeited. During the year ended September 30, 2017, options to purchase 90,000 shares of common stock at an exercise price of \$32.15 per share expired unexercised. No options were granted during the year ended September 30, 2017. The following table summarizes stock option activity under all plans:

	2018			2017			
	Shares	Weighted Average Exercise Price	Weighted Average Contractual Term	Aggregate Intrinsic Value	Shares	Weighted Average Exercise Price	Aggregate Intrinsic Value
Outstanding, beginning of period	421,800	\$ 17.86	5.2 Years		518,608	\$ 20.29	
Options:							
Granted	25,000	\$ 21.91			-		
Exercised	(42,000)	\$ 14.39			(6,808)	\$ 17.15	
Canceled or expired	(26,050)	\$ 18.60			(90,000)	\$ 32.15	
Outstanding and expected to vest, end of period	<u>378,750</u>	\$ 18.46	4.8 Years	<u>\$1,824,400</u>	<u>421,800</u>	\$ 17.86	<u>\$2,745,156</u>
Exercisable, end of period	<u>366,250</u>	\$ 18.35	4.6 Years	<u>\$1,807,300</u>	<u>421,800</u>	\$ 17.86	<u>\$2,745,156</u>
Shares available for future grant	475,000				500,000		

Compensation cost charged to operations for the fiscal years ended September 29, 2018 and September 30, 2017 for share-based compensation programs was approximately \$47,000 and \$0, respectively. The compensation cost recognized is classified as a general and administrative expense in the Consolidated Statements of Income.

As of September 29, 2018, there was approximately \$47,000 of unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a period of one year.

The following table summarizes information about stock options outstanding as of September 29, 2018:

Range of Exercise Prices	Options Outstanding			Options Exercisable		
	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining contractual life (in years)	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining contractual life (in years)
\$12.04	35,000	\$ 12.04	0.6	35,000	\$ 12.04	0.6
\$14.40	141,750	\$ 14.40	3.7	141,750	\$ 14.40	3.7
\$22.50	177,000	\$ 22.50	5.7	177,000	\$ 22.50	5.7
\$20.26 - \$22.30	<u>25,000</u>	\$ 21.91	9.9	<u>12,500</u>	\$ 21.91	9.9
	<u>378,750</u>	\$ 18.46	4.8	<u>366,250</u>	\$ 18.35	4.6

The Company also maintains a Section 162(m) Cash Bonus Plan. Under the Section 162(m) Cash Bonus Plan, compensation paid in excess of \$1,000,000 to any employee who is the chief executive officer, or one of the three highest paid executive officers on the last day of that tax year (other than the chief executive officer or the chief financial officer) will meet certain “performance-based” requirements of Section 162(m) and the related IRS regulations in order for it to be tax deductible.

## 12. INCOME TAXES

On December 22, 2017 the U.S. government enacted comprehensive tax reform commonly referred to as the Tax Cuts and Jobs Act (“TCJA”). Under Accounting Standards Codification (“ASC”) 740, the effects of changes in tax rates and laws are recognized in the period which the new legislation is enacted. The TCJA makes broad and complex changes to the U.S. tax code, including, but not limited to: (1) reducing the U.S. federal corporate tax rate from 35% to 21% effective January 1, 2018; (2) changing rules related to uses and limitations of net operating loss carryforwards created in tax years beginning after December 31, 2017; (3) accelerated expensing on certain qualified property; (4) creating a new limitation on deductible interest expense to 30% of tax adjusted EBITDA through 2021 and then 30% of tax adjusted EBIT thereafter; (5) eliminating the corporate alternative minimum tax; and (6) further limitations on the deductibility of executive compensation under IRC §162(m) for tax years beginning after December 31, 2017. As the reduction in the U.S. federal corporate tax rate is administratively effective on January 1, 2018, our blended U.S. federal tax rate for the year ended September 29, 2018 was approximately 24%.

In response to the TCJA, the U.S. Securities and Exchange Commission (“SEC”) staff issued Staff Accounting Bulletin No. 118 (“SAB 118”), which provides guidance on accounting for the tax effects of TCJA. The purpose of SAB 118 was to address any uncertainty or diversity of view in applying ASC Topic 740, Income Taxes in the reporting period in which the TCJA was enacted. SAB 118 addresses situations where the accounting is incomplete for certain income tax effects of the TJCA upon issuance of a company’s financial statements for the reporting period which include the enactment date. SAB 118 allows for a provisional amount to be recorded if it is a reasonable estimate of the impact of the TCJA. Additionally, SAB 118 allows for a measurement period to finalize the impacts of the TCJA, not to extend beyond one year from the date of enactment.

In connection with the TCJA, the Company recorded an income tax benefit of \$1,382,000 related to the re-measurement of our deferred tax assets and liabilities for the reduced U.S. federal corporate tax rate of 21%. The Company’s accounting for the TCJA is complete as of September 29, 2018 with no significant differences from our provisional estimates recorded during interim periods.

The provision for income taxes consists of the following:

	<b>Year Ended</b>	
	<b>September 29, 2018</b>	<b>September 30, 2017</b>
	(In thousands)	
Current provision (benefit):		
Federal	\$ 30	\$ (144)
State and local	320	287
	<u>350</u>	<u>143</u>
Deferred provision (benefit):		
Federal	(798)	1,391
State and local	(699)	134
	<u>(1,497)</u>	<u>1,525</u>
	<u>\$ (1,147)</u>	<u>\$ 1,668</u>

The effective tax rate differs from the U.S. income tax rate as follows:

	Year Ended	
	September 29, 2018	September 30, 2017
	(In thousands)	
Provision at Federal statutory rate (24% in 2018 and 34% in 2017)	\$ 953	\$ 2,185
State and local income taxes, net of tax benefits	-	255
Tax credits	(789)	(632)
Income attributable to non-controlling interest	(102)	(244)
Changes in tax rates	181	8
Impact of Federal tax reform	(1,382)	-
Change in valuation allowance	(43)	-
Other	35	96
	<u>\$ (1,147)</u>	<u>\$ 1,668</u>

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting and tax purposes. Significant components of the Company's deferred tax assets and liabilities are as follows:

	September 29, 2018	September 30, 2017
		(In thousands)
Deferred tax assets:		
State net operating loss carryforwards	\$ 4,141	\$ 3,210
Operating lease deferred credits	513	826
Deferred compensation	364	580
Tax credits	802	-
Other	98	99
	<u>5,918</u>	<u>4,715</u>
Deferred tax assets, before valuation allowance	5,918	4,715
Valuation allowance	<u>(311)</u>	<u>(354)</u>
Deferred tax assets, net of valuation allowance	<u>5,607</u>	<u>4,361</u>
Deferred tax liabilities:		
Depreciation and amortization	(2,080)	(2,160)
Partnership investments	(329)	(291)
Prepaid expenses	<u>(210)</u>	<u>(419)</u>
Deferred tax liabilities	<u>(2,619)</u>	<u>(2,870)</u>
Net deferred tax assets (liabilities)	<u>\$ 2,988</u>	<u>\$ 1,491</u>

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income. In the assessment of the valuation allowance, appropriate consideration was given to all positive and negative evidence including recent operating profitability, forecasts of future earnings and

the duration of statutory carryforward periods. The Company recorded a valuation allowance of \$311,000 and \$354,000 as of September 29, 2018 and September 30, 2017, respectively; attributable to state and local net operating loss carryforwards which are not realizable on a more-likely-than-not basis. During fiscal 2018, the Company's valuation allowance decreased by approximately \$43,000 as the Company determined that certain state net operating losses became realizable on a more-likely-than-not basis.

As of September 29, 2018, the Company had General Business Credit carryforwards of approximately \$802,000 which expires in fiscal 2038. In addition, the Company has New York State net operating losses of approximately \$21,544,000 and New York City net operating loss carryforwards of approximately \$19,963,000 that expire through fiscal 2038.

During fiscal 2017, certain equity compensation awards expired unexercised. As such, the Company reversed the related deferred tax asset in the amount of approximately \$389,000 as a charge to Additional Paid-in Capital as there was a sufficient pool of windfall tax benefit available.

A reconciliation of the beginning and ending amount of unrecognized tax benefits excluding interest and penalties is as follows:

	<u>September 29, 2018</u>	<u>September 30, 2017</u>
	(In thousands)	
Balance at beginning of year	\$ 152	\$ 367
Additions based on tax positions taken in current and prior years	125	15
Settlements	(167)	(134)
Decreases based on tax positions taken in prior years	-	(96)
Balance at end of year	<u>\$ 110</u>	<u>\$ 152</u>

The entire amount of unrecognized tax benefits if recognized would reduce our annual effective tax rate. As of September 29, 2018, the Company accrued approximately \$66,000 of interest and penalties as a component of income tax expense. The Company expects that its unrecognized tax benefits will further decline over the next 12 months to the anticipated resolution of various tax examinations.

The Company files tax returns in the U.S. and various state and local jurisdictions with varying statutes of limitations. The 2015 through 2018 fiscal years remain subject to examination by the Internal Revenue Service and most state and local tax authorities.

### 13. INCOME PER SHARE OF COMMON STOCK

Basic earnings per share is computed by dividing net income attributable to Ark Restaurants Corp. by the weighted-average number of common shares outstanding for the period. Our diluted earnings per share is computed similarly to basic earnings per share, except that it reflects the effect of common shares issuable upon exercise of stock options, using the treasury stock method in periods in which they have a dilutive effect.

A reconciliation of the numerators and denominators of the basic and diluted per share computations for the fiscal years ended September 29, 2018 and September 30, 2017 follows:

	Net Income Attributable to Ark Restaurants Corp. (Numerator)	Weighted- Average Number of Shares (Denominator)	Earnings Per Share Amount
(In thousands, except per share amounts)			
<b>Year ended September 29, 2018</b>			
Basic	\$ 4,655	3,439	\$ 1.35
Effect of dilutive securities:			
Stock options	-	110	(0.04)
Diluted	<u>\$ 4,655</u>	<u>\$ 3,549</u>	<u>\$ 1.31</u>
<b>Year ended September 30, 2017</b>			
Basic	\$ 4,039	3,424	\$ 1.18
Effect of dilutive securities:			
Stock options	-	107	(0.04)
Diluted	<u>\$ 4,039</u>	<u>\$ 3,531</u>	<u>\$ 1.14</u>

#### 14. RELATED PARTY TRANSACTIONS

Employee receivables totaled approximately \$386,000 and \$399,000 at September 29, 2018 and September 30, 2017, respectively. Such amounts consist of loans that are payable on demand and bear interest at the minimum statutory rate (1.63% at September 29, 2018 and 1.29% at September 30, 2017).

Prior to joining the Company on September 4, 2018, the Chief Financial Officer was a member of a firm that provided consulting services to the Company. Total fees billed by this firm were \$303,000 and \$178,000 for the years ended September 29, 2018 and September 30, 2017, respectively. The Company ceased utilizing the services of this firm upon hiring of the Chief Financial Officer.

#### 15. SUBSEQUENT EVENTS

On October 12, 2018, the Company filed a registration statement on Form S-8 to register the 500,000 shares of common stock under the Company's 2016 Plan.

On December 3, 2018, the Board of Directors declared a quarterly dividend of \$0.25 per share on the Company's common stock to be paid on January 3, 2019 to shareholders of record at the close of business on December 18, 2018.

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Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ARK RESTAURANTS CORP.

By: /s/ Michael Weinstein  
Michael Weinstein  
Chairman of the Board and Chief Executive Officer  
(Principal Executive Officer)

Date: December 20, 2018

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been duly signed by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Michael Weinstein</u> (Michael Weinstein)	Chairman of the Board and Chief Executive Officer	December 20, 2018
<u>/s/ Vincent Pascal</u> (Vincent Pascal)	Senior Vice President and Director	December 20, 2018
<u>/s/ Anthony J. Sirica</u> (Anthony J. Sirica)	Chief Financial Officer and Director (Principal Financial and Accounting Officer)	December 20, 2018
<u>/s/ Marcia Allen</u> (Marcia Allen)	Director	December 20, 2018
<u>/s/ Steven Shulman</u> (Steven Shulman)	Director	December 20, 2018
<u>/s/ Paul Gordon</u> (Paul Gordon)	Senior Vice President and Director	December 20, 2018
<u>/s/Bruce R. Lewin</u> (Bruce R. Lewin)	Director	December 20, 2018
<u>/s/ Arthur Stainman</u> (Arthur Stainman)	Director	December 20, 2018
<u>/s/ Stephen Novick</u> (Stephen Novick)	Director	December 20, 2018

Exhibits Index

- 3.1 Certificate of Incorporation of the Registrant, filed with the Secretary of State of the State of New York on January 4, 1983.
- 3.2 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on October 11, 1985.
- 3.3 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on July 21, 1988.
- 3.4 [Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on May 13, 1997.](#)
- 3.5 [Certificate of Amendment of the Certificate of Incorporation of the Registrant filed on April 24, 2002 incorporated by reference to Exhibit 3.5 to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 30, 2002 \(the "Second Quarter 2002 Form 10-Q"\).](#)
- 3.6 By-Laws of the Registrant, incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-18 filed with the Securities and Exchange Commission on October 17, 1985.
- 10.1 Amended and Restated Redemption Agreement dated June 29, 1993 between the Registrant and Michael Weinstein, incorporated by reference to Exhibit 10.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 2, 1999 ("1994 10-K").
- 10.2 Form of Indemnification Agreement entered into between the Registrant and each of Michael Weinstein, Ernest Bogen, Vincent Pascal, Robert Towers, Jay Galin, Robert Stewart, Bruce R. Lewin, Paul Gordon and Donald D. Shack, incorporated by reference to Exhibit 10.2 to the 1994 10-K.
- 10.3 [Ark Restaurants Corp. 2004 Stock Option Plan, as amended, incorporated by reference to the Registrant's Definitive Proxy Statement pursuant to Section 14\(a\) of the Securities Exchange Act of 1934 filed on January 26, 2004.](#)
- 10.4 [Ark Restaurants Corp. 2010 Stock Option Plan, incorporated by reference to the Registrant's Definitive Proxy Statement pursuant to Section 14\(a\) of the Securities Exchange Act of 1934 filed on February 1, 2010.](#)
- 10.5 [Securities Purchase Agreement, by and between the Registrant and Estate of Irving Hershkowitz, incorporated by reference to Exhibit 10.01 to the Registrant's Current Report on Form 8-K filed on December 15, 2011.](#)
- 10.6 [Promissory Note, in the principal amount of \\$2,125,000, issued by the Company to Estate of Irving Hershkowitz, incorporated by reference to Exhibit 10.02 to the Registrant's Current Report on Form 8-K filed on December 15, 2011.](#)
- 10.7 [Promissory Note made by the Registrant to Bank Hapoalim B.M., issued as of February 25, 2013, incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on March 1, 2013.](#)



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- 10.8 [Asset Purchase Agreement dated as of November 22, 2013 by and between W and O, Inc. and Ark Rustic Inn LLC, incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on November 26, 2013.](#)
- 10.9 [Amended and Restated Promissory Note made by the Company to Bank Hapoalim B.M., issued as of February 24, 2014, incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed on February 28, 2014.](#)
- 10.10 [Term or Installment Loan Rider to Promissory Note to Bank Hapoalim B.M., incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed on February 28, 2014.](#)
- 10.11 [Commercial Contract Agreement and Rider to Commercial Contract Agreement both dated as of August 10, 2015 by and between Ark Shuckers Real Estate LLC and D.C. Holding Company, Inc., incorporated by reference to Exhibit 10.1 and 10.2 to the Registrant's Current Report on Form 8-K filed on October 28, 2015.](#)
- 10.12 [Restaurant Asset Purchase Agreement dated as of August 10, 2015 by and between Ark Shuckers LLC and Ocean Enterprises, Inc. incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed on October 28, 2015.](#)
- 10.13 [Management Purchase Agreement dated as of August 10, 2015 by and between Ark Island Beach Resort LLC and Island Beach Resort, Inc. incorporated by reference to Exhibit 10.4 to the Registrant's Current Report on Form 8-K filed on October 28, 2015.](#)
- 10.14 [Credit Agreement \(Term Facility\) between the Company and Bank Hapoalim B.M. issued as of October 21, 2015 incorporated by reference to Exhibit 10.5 to the Registrant's Current Report on Form 8-K filed on October 28, 2015.](#)
- 10.15 [Term Promissory Note issued by the Company in favor of Bank Hapoalim B.M. on October 21, 2015 incorporated by reference to Exhibit 10.6 to the Registrant's Current Report on Form 8-K filed on October 28, 2015.](#)
- 10.16 [Credit Agreement \(Revolving Facility\) and Form of Revolving Promissory Note between the Company and Bank Hapoalim B.M. issued as of October 21, 2015 incorporated by reference to Exhibit 10.7 and 10.8 to the Registrant's Current Report on Form 8-K filed on October 28, 2015.](#)
- 10.17 [Asset Purchase Agreement dated as of October 21, 2016, by and between Ark Gulf Shores Real Estate, LLC, Ark Oyster House Gulf Shores I, LLC, Original Oyster House, Inc. and Premium Properties, Inc. including the Real Estate Purchase and Sale Agreement incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed on November 16, 2016.](#)
- 10.18 [Asset Purchase Agreement dated as of October 21, 2016, by and between Ark Oyster House Causeway II, LLC, Ark Causeway Real Estate, LLC, Original Oyster House II, Inc. and Gumbo Properties, L.L.C. including the Real Estate Purchase and Sale Agreement incorporated by reference to Exhibit 2.2 to the Registrant's Current Report on Form 8-K filed on November 16, 2016.](#)
- 10.19 [ROFR Purchase and Sale Agreement dated as of October 13, 2016 by and between SCFRC-HWG, LLC and Ark Jupiter RI, LLC incorporated by reference to Exhibit 2.3 to the Registrant's Current Report on Form 8-K filed on November 16, 2016.](#)
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- 10.20 [Purchase and Sale Agreement between Ark Jupiter RI, LLC and 1065 A1A, LLC, incorporated by reference to Exhibit 2.4 to the Registrant's Current Report on Form 8-K filed on November 16, 2016.](#)
  - 10.21 [Second Amendment to Credit Agreement \(Revolving Facility\) dated as of November 30, 2016, by and between Ark Restaurant Corp. and Bank Hapoalim B.M incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K/A filed on January 27, 2017.](#)
  - 10.22 [Mortgage and Security Agreement \(Alabama\) dated as of November 30, 2016, by and between Ark Gulf Shores Real Estate LLC and Ark Causeway Real Estate LLC and Bank Hapoalim B.M incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K/A filed on January 27, 2017.](#)
  - \*10.23 [Amended and Restated Credit Agreement \(Revolving Facility\) dated as of June 1, 2018, by and between Ark Restaurants Corp. and Bank Hapoalim B.M.](#)
  - \*10.24 [Amended and Restated Promissory Note, dated as of June 1, 2018, by and between Ark Restaurants Corp. and Bank Hapoalim B.M. that restates and renews the Term Promissory Note, dated October 21, 2015 secured by the assets of Ark Shuckers Real Estate LLC.](#)
  - \*10.25 [Amended and Restated Promissory Note, dated as of June 1, 2018, by and between Ark Restaurants Corp. and Bank Hapoalim B.M. that restates and renews the Term Promissory Note, dated February 24, 2014 secured by the assets of Ark Rustic Inn Real Estate LLC.](#)
  - \*10.26 [Amended and Restated Promissory Note, dated as of June 1, 2018, by and between Ark Restaurants Corp. and Bank Hapoalim B.M. that restates and renews the Term Promissory Note, dated November 30, 2016 secured by the assets of Ark Gulf Shores Real Estate LLC.](#)
  - \*10.27 [Amended and Restated Promissory Note, dated as of June 1, 2018, by and between Ark Restaurants Corp. and Bank Hapoalim B.M. that restates and renews the Term Promissory Note, dated November 30, 2016 secured by the assets of Ark Causeway Real Estate LLC.](#)
  - 14 [Code of Ethics, incorporated by reference to Exhibit 14.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 27, 2003.](#)
  - \*21 [Subsidiaries of the Registrant.](#)
  - \*23 [Consent of CohnReznick LLP.](#)
  - \*31.1 [Certification of Chief Executive Officer.](#)
  - \*31.2 [Certification of Chief Financial Officer.](#)
  - \*32 [Section 1350 Certification.](#)
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101.INS\*\* XBRL Instance Document

101.SCH\*\* XBRL Taxonomy Extension Schema Document

101.CAL\*\* XBRL Taxonomy Extension Calculation Linkbase Document

101.DEF\*\* XBRL Taxonomy Extension Definition Linkbase Document

101.LAB\*\* XBRL Taxonomy Extension Label Linkbase Document

101.PRE\*\* XBRL Taxonomy Extension Presentation Linkbase Document

\* Filed herewith.

\*\* Pursuant to Rule 406T of Regulation S-T, the Interactive Data Files on Exhibit 101 hereto are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, are deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and otherwise are not subject to liability under those sections.

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AMENDED AND RESTATED CREDIT AGREEMENT  
(REVOLVING FACILITY)

between

ARK RESTAURANTS CORP.

and

BANK HAPOALIM B.M.

dated as of

June 1, 2018

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**AMENDED AND RESTATED CREDIT AGREEMENT  
(REVOLVING FACILITY)**

**Dated as of: June 1, 2018**

This **AMENDED AND RESTATED CREDIT AGREEMENT (REVOLVING FACILITY)** is made and entered into as of the date set forth above by and between **ARK RESTAURANTS CORP.**, a New York corporation ("Borrower"), and **BANK HAPOLIM S.M.** ("Bank") and amends and restates the Prior Agreement (as hereinafter defined). For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Borrower and Bank hereby agree as follows:

§1. TERMINOLOGY AND INTERPRETATION.

§1.1 Definitions of Capitalized Terms. When used herein, each capitalized term listed below shall have the meaning indicated below:

"AC" shall mean Ark AC Burger Bar LLC, a Delaware limited liability company.

"AC Security Agreement" shall have the meaning given that term in §5.1.

"AC Collateral" shall mean all of AC's tangible and intangible personal property (including accounts, inventory, equipment, general intangibles, documents, chattel paper, instruments, letter-of-credit rights, investment property, Intellectual Property and deposit accounts) and fixtures, whether now owned or hereafter acquired, whether now existing or hereafter created or arising and wherever located.

"Advances" shall mean loans made by Bank to Borrower under or pursuant to this Agreement and Advances made under the Prior Agreement that are outstanding on the date hereof (but excluding two such Advances made in or about November, 2016 in the principal amounts of \$4,450,000.00 and \$3,550,000.00 respectively).

"Agreement" shall mean this Credit Agreement, as amended and/or restated from time to time.

"Agreement Date" shall mean the date as of which this Agreement is dated.

"Applicable Law" shall mean (a) all applicable common law and principles of equity and (b) all applicable provisions of all (i) constitutions, statutes, rules, regulations and orders of Governmental Authorities, (ii) Governmental Approvals and (iii) orders, decisions, judgments and decrees of all courts and arbitrators.

"Applicable LIBOR Margin" shall mean a percentage based on the prevailing Fixed Charge Coverage Ratio as set forth in the table below. Any change in the Applicable LIBOR Margin shall become effective five (5) Business Days after Bank's receipt of a Compliance Certificate and related quarterly financial statements containing a quarterly Fixed Charge Coverage Ratio computation. If at any time such a Compliance Certificate and related quarterly financial statements are not delivered within the time period specified herein, the Applicable LIBOR Margin shall be 3.25% until five (5) Business Days after actual receipt by Bank of such Compliance Certificate and related quarterly financial statements.

**Fixed Charge Coverage  
Ratio**

**Applicable LIBOR Margin**

Less than 1.25:1	3.25%
Greater than or equal to 1.25:1, but less than or equal to 1.50:1	3.00%
Greater than 1.50:1	2.75%

Notwithstanding the foregoing, the Applicable LIBOR Margin during any Interest Period which is in effect on the Agreement Date shall be 3.50% for the remainder of such Interest Period.

“Applicable Non-Use Fee Rate” shall mean a percentage based on the prevailing Fixed Charge Coverage Ratio as set forth below:

**Fixed Charge Coverage  
Ratio**

**Applicable Non-Use  
Fee Rate**

Less than or equal to 1.50:1	.35%
Greater than 1.50:1	.25%

Any change in the Applicable Non-Use Fee Rate shall become effective five (5) Business Days after Bank’s receipt of a Compliance Certificate and related quarterly financial statements with a quarterly Fixed Charge Coverage Ratio computation. If at any time such Compliance Certificate and related quarterly financial statements are not delivered within the time period specified herein, the Applicable Non-Use Fee Rate shall be .35% until five (5) Business days after actual receipt by Bank of such Compliance Certificate and related quarterly financial statements.

“Approved Project Budget” shall mean, with respect to a Project a line item budget for the Project Costs of that Project submitted by Borrower to Bank and approved by Bank in writing.

“Authorized Representative” shall mean any of Borrower’s President, its Chief Executive Officer, or its Chief Financial Officer, or any other Person expressly designated by the Board of Directors of Borrower (or the appropriate committee thereof) as an Authorized Representative, as set forth from time to time in a certificate in a form provided or approved by Bank.

“Beginning Cash on Hand” shall mean, with respect to any time period, Borrower’s and the Subsidiaries’ cash on hand at the beginning of that period.

“Borrower Security Agreement” shall have the meaning given that term in §5.1.

“Borrower Collateral” shall mean all of Borrower’s tangible and intangible personal property (including accounts, inventory, equipment, general intangibles, documents, chattel paper, instruments, letter-of-credit rights, investment property, Intellectual Property and deposit accounts) and fixtures, whether now owned or hereafter acquired, whether now existing or

hereafter created or arising and wherever located.

“Borrower Security Agreement” shall mean the security agreement described in § 5.1(b) amended and/or supplemented as set forth in that section.

“Borrowing Account” shall mean a demand deposit account established by Borrower with Bank (or any substitute account established by Borrower with Bank).

“Borrowing Notice” shall mean a notice delivered by an Authorized Representative in connection with an Advance in the form of Exhibit A-1, A-2 or A-3 hereto, whichever is applicable (with such modifications as Bank may require from time to time).

“Business Day” means any day on which both (a) banks are regularly open for business in New York, New York and (b) Bank’s office in New York, New York is open for ordinary business.

“Capital Securities” shall mean, with respect to a Project Subsidiary, the shares of stock, membership interests or other equity interest in that Project Subsidiary.

“Cash Management Agreement” shall mean any agreement between Borrower and Bank or any agreement between any Subsidiary and Bank pursuant to which Bank agrees to provide cash management services, including treasury, depository, overdraft, bank card products, electronic funds transfer or other cash management arrangements.

“Change of Control” shall mean when any “person” or “group” (each as used in §§13(d)(3) and 14(d)(2) of the Securities Exchange Act of 1934) other than the present controlling group either (i) becomes the “beneficial owner” (as defined in Rule 13d-3 of the Securities Exchange Act of 1934), directly or indirectly, of Voting Securities of Borrower or any Subsidiary (or securities convertible into or exchangeable for such Voting Securities) representing more than 50 percent of the combined voting power of all Voting Securities of Borrower or any Subsidiary or (ii) otherwise attains the ability, through an express contractual arrangement, to elect a majority of the board of directors of Borrower or board of directors of any Subsidiary that is a corporation or the manager or managing member of any Subsidiary that is a limited liability company.

“Collateral” shall mean the Borrower Collateral and the Project Subsidiary Collateral, collectively.

“Commitment Termination Date” shall mean three years less one day after the Agreement Date.

“Compliance Certificate” shall mean a certificate made pursuant to §9.1(b).

“Condominium Acquisition Advance” shall have the meaning given that term in §2.3.

“Condominium Unit” shall mean a residential condominium unit in Island Beach Club, a Condominium, located in St. Lucie County, Florida.

“Consistent Basis” shall mean, in reference to GAAP, that the accounting principles observed in such period are comparable in all material respects to those applied in the preparation of the audited financial statements of Borrower referred to in §9.1(a).



“Controlled by Borrower” shall mean, with respect to a corporation or limited liability company, that Borrower has the power to elect or appoint a majority of such corporation’s directors or such limited liability company’s managers.

“Contract” shall mean an indenture, agreement (other than this Agreement and any other Credit Document), other contractual restriction, lease or instrument (other than the Notes).

“Copyright” shall mean any of the following: any copyright or general intangible of like nature (whether registered or unregistered), any registration or recording thereof, and any application in connection therewith, including any registration, recording and application in the United States Copyright Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof.

“CPLD” shall mean, for any period, the portion of Borrower’s and the Subsidiaries’ long-term debt which becomes due and payable during that period.

“Credit Documents” shall mean this Agreement, the Note, the Security Agreements, the Pledge Agreements, the Mortgages, the SBLC Agreements and any other documents at any time delivered by an Obligor or Obligors to Bank in connection with this Agreement, all as amended or restated from time to time.

“Credit Extensions” shall mean Advances and SBLCs.

“Credit Facility” shall mean the Credit Extensions collectively.

“Debt” shall mean any of the following: (i) indebtedness or liability for borrowed money, (ii) obligations evidenced by bonds, notes, or other similar instruments, (iii) obligations for the deferred purchase price of property (excluding trade obligations incurred in the ordinary course of Borrower’s business), (iv) obligations as lessee under capital leases, (v) current liabilities in respect of unfunded vested benefits under plans covered by the Employee Retirement Income Security Act of 1974, as amended, (vi) obligations under letters of credit or acceptance facilities, (vii) guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, or otherwise to assure creditors against loss, and (viii) obligations secured by any mortgage, lien, pledge or security interest or other charge or encumbrance on property, whether or not the obligations have been assumed.

“Declaration of Condominium” shall mean that certain Declaration of Condominium of Island Beach Club, a Condominium, and amendments thereto, recorded in Official Records Book 343, at Page 372 of the Public Records of St. Lucie County, Florida.

“Default” shall mean any condition or event which constitutes an Event of Default or which, with the giving of notice or lapse of time or both would, unless cured or waived (or, in the case of a judgment, action or proceeding, dismissed), become an Event of Default.

“Default Rate” shall mean a per annum rate equal to 2.00 percent above the interest rate otherwise applicable to Advances hereunder from time to time.

“Distributions” shall mean dividends or other distributions made by Borrower to its shareholders.

“Dollars” and “\$” shall mean lawful money of the United States of America.

“EBITDA” shall mean, for any Fiscal Period, the sum of (a) the amount of Net Income for that Fiscal Period, plus (b) the amount of Interest Expense for that Fiscal Period (to the extent taken into account in computing that Net Income), plus (c) the amount of Income Taxes accrued during that Fiscal Period (to the extent taken into account in computing that Net Income), plus (d) the amount of Borrower’s depreciation accrued during that Fiscal Period (to the extent taken into account in computing that Net Income) determined on a consolidated basis, plus (e) the amount of Borrower’s amortization accrued during that Fiscal Period (to the extent taken into account in computing that Net Income), determined on a consolidated basis and adjusted for non-controlling interests.

“Employee Benefit Plan” shall mean any employee benefit plan within the meaning of Section 3(3) of ERISA which (i) is maintained for employees of Borrower or any of its ERISA Affiliates or is assumed by Borrower or any of its ERISA Affiliates in connection with any Acquisition or (ii) has at any time been maintained for the employees of Borrower or any current or former ERISA Affiliate.

“Environmental Law” shall mean any federal, state or local statute, law, ordinance, code, rule, regulation, order, decree, permit or license regulating, relating to, or imposing liability or standards of conduct concerning, any environmental matters, conditions, protection or conservation, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the Superfund Amendments and Reauthorization Act of 1986, as amended; the Resource Conservation and Recovery Act, as amended; the Toxic Substances Control Act, as amended; the Clean Air Act, as amended; the Clean Water Act, as amended; together with all regulations promulgated thereunder, and any other “Superfund” or “Superlien” law.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as in effect from time to time.

“ERISA Affiliate”, shall mean, with respect to Borrower, any Person or trade or business which is a member of a group which is under common control with Borrower, and which, together with Borrower, is treated as a single employer within the meaning of Section 414(b) and (c) of the Code.

“Equity Certificates” shall mean, with respect to any Project Subsidiary, the shares of stock in, or other certificates evidencing ownership of an equity interest in, that Project Subsidiary.

“Event of Default” shall have the meaning given that term in §10.1.

“Fiscal Period” shall mean each quarterly period consisting of three (3) successive calendar months of each Fiscal Year, the first of such quarterly periods beginning on the first day of the first calendar month of each Fiscal Year, the second of such quarterly periods beginning on the first day of the fourth calendar month of each Fiscal Year, the third of such quarterly periods beginning on the first day of the seventh calendar month of each Fiscal Year, and the fourth of such quarterly periods beginning on the first day of the tenth calendar month of such Fiscal Year.

“Fiscal Year” shall mean each 52-week period ending on or around a September 30th.

“Fixed Charge Coverage Ratio” shall mean, with respect to any Fiscal Period, the ratio of (a) EBITDA for that Fiscal Period, plus the amount of Beginning Cash On Hand for that Fiscal Period, less the amount of Unfinanced CAPEX for that Fiscal Period, divided by (b) the amount of Fixed Charges for that Fiscal Period.

“Fixed Charges” shall mean, for any Fiscal Period, the sum of (a) the amount of Interest Expense for that Fiscal Period, plus (b) the amount of CPLD for that Fiscal Period, plus (c) the amount of Distributions made during that Fiscal Period, plus (d) the amount of Income Taxes accrued during that Fiscal Period.

“GAAP” shall mean accounting principles that are consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors, as in effect in the United States from time to time.

“Governmental Approval” shall mean an authorization, consent, approval, license or exemption of, registration or filing with, or report or notice to, any Governmental Authority, including, without limitation, any such approval required under ERISA or by the PBGC.

“Governmental Authority” shall mean any Federal, state, municipal, national or other governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with the United States of America, a state thereof, or a foreign entity or government.

“Hazardous Material” shall mean any pollutant, contaminant or hazardous, toxic or dangerous waste, substance or material (including without limitation petroleum products, asbestos-containing materials and lead) the generation, handling, storage, transportation, disposal, treatment, release, discharge or emission of which is subject to any Environmental Law.

“Income Taxes” shall mean income and franchise taxes owed by Borrower or any of the Subsidiaries.

“Information” shall mean written data, services, reports, statements (including, but not limited to, financial statements delivered pursuant to or referred to in §9.1), opinions of counsel, documents and other written information, whether, in the case of any such in writing, it was prepared by Borrower or any other Person on behalf of Borrower and delivered by Borrower to Bank.

“Intangible Assets” shall mean those assets of Borrower which are: (a) Intellectual Property and other similar assets which would be classified as intangible assets on a balance sheet of Borrower prepared in accordance with GAAP, (b) unamortized debt, discount and expense and (c) assets located outside of the United States.

“Intellectual Property” shall mean all licenses, Patents, Copyrights, Trademarks, trade names and customer lists in which Borrower has any interest and all technology, know-how and processes relating to any inventory of Borrower.

“Interest Expense” shall mean, for any Fiscal Period, Borrower’s and the Subsidiaries’ total interest expense for that Fiscal Period, whether paid or accrued (including the interest

component of capital leases), determined on a consolidated basis in accordance with GAAP (but specifically excluding intercompany interest expense incurred by Borrower or any of its Subsidiaries).

“Interest Periods” shall mean, with respect to any Advance, successive periods of either one (1) week or one (1) month (or such other period as Borrower and Bank agree to in writing) each as selected by Borrower in its Borrowing Notice (or, if no such selection is timely made, one (1) week) the first of which begins on the date such Advance is made and each subsequent one of which begins when the previous one ends; provided that, if and after a Project Costs Advance has been termed-out pursuant to §3.2(a), the Interest Periods for such Project Costs Advance shall be periods of one (1) month each, the first of which begins on the first day of the Term-Out Commencement Date for such Project Costs Advance and each subsequent one of which begins when the previous one ends.

“Las Vegas” shall mean Ark Las Vegas Restaurant Corp., a Nevada corporation.

“Las Vegas Pledge Agreement” shall have the meaning given that term in §5.1.

“Las Vegas Collateral” shall mean the shares of stock owned by Las Vegas which are currently covered by the Las Vegas Pledge Agreement.

“LIBOR Rate” shall mean, with respect to any Interest Period, the per annum rate of interest (carried out to the fifth decimal if available) equal to the rate determined by Bank to be the offered rate on a page or service (whether provided by Bridge Telerate, Reuters, Bloomberg, Globai-Rates.com or another comparable internationally recognized service selected by Bank) that displays an average ICE Benchmark Administration Limited Interest Settlement Rate for deposits in Dollars (for delivery on the first Working Day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Working Days prior to the first Working Day of such Interest Period. At Borrower’s request, Bank shall provide Borrower with identifying information with respect to the page of service so used by Bank. If Bank determines that the rate referred to in the first sentence of this paragraph is not available, then “LIBOR” shall mean, with respect to any Interest Period, the rate determined by Bank (a) on the basis of the offered rates and deposits in Dollars for the term equivalent to such Interest Period which were offered by four major banks selected by Bank in the London interbank market at approximately 11:00 a.m. (London time) on the Working Day that is two Working Days prior to the first Working Day of such Interest Period or (b) by applying such other recognized source of London Eurocurrency deposit rates (or their equivalent) as Bank may select from time to time. If the reporting service used by Bank refers to thirty (30) days rather than one (1) month, references in this definition to one (1) month shall be read as references to thirty (30) days. If the reporting service used by Bank refers to seven (7) days rather than one week, references in this definition to one week shall be read as references to seven (7) days.

“Lien” shall mean, with respect to any Obligor, any lien, security interest or other charge or encumbrance upon or with respect to any properties or assets of such Obligor, excluding liens existing as of the date of this Agreement in an amount less than \$1,000.00 in any one instance and less than \$5,000.00 in the aggregate and listed in the judgment, tax lien and litigation search results for Borrower delivered to Bank prior to the date of this Agreement.

“Material Adverse Effect” shall mean any material and adverse effect (whether occasioned by one or a number of concurrent events) upon (a) one or more Obligors’ assets,

business operations, properties or condition, financial or otherwise or (b) the ability of Borrower to make payment as and when due of all or any part of the Obligations.

“Material Management Change” shall mean any material change in Borrower’s Authorized Representatives or in the president, chief executive officer, chief financial officer, manager or managing member of a Subsidiary which Bank judges to be material.

“Maturity Date” shall mean the date that falls three (3) years after the Agreement Date.

“Mortgage” shall have the meaning given that term in §5.2(c).

“Net Income” shall mean, for any Fiscal Period, the net income (loss) of Borrower and the Subsidiaries (inclusive of net income attributable to non-controlling interests) for such Fiscal Period, determined on a consolidated basis in conformity with GAAP.

“Net Income Attributable to Borrower and Subsidiaries” shall mean, for any Fiscal Period, the net income (loss) of Borrower and Subsidiaries (exclusive of net income attributable to non-controlling interests) for such Fiscal Period determined in conformity with GAAP.

“Notes” shall mean the Revolving Note and any and all Term Notes.

“Obligations” shall mean all indebtedness, liabilities, obligations and duties of Borrower and the Project Subsidiaries (or any of them) to Bank arising under or in connection with this Agreement, the Notes or any other Credit Documents, or under or in connection with any Cash Management Agreement, direct or indirect, absolute or contingent, due or not due, in contract or tort, liquidated or unliquidated, arising by operation of law or otherwise, now existing or hereafter arising, and whether or not for the payment of money or the performance or non-performance of any act, including, but not limited to, all actual damages which Borrower may owe to Bank by reason of any breach by Borrower of any Representation and Warranty, covenant, agreement or other provision of this Agreement or any of the other Credit Documents.

“Obligors” shall mean Borrower, Project Subsidiaries, Permitted Real Estate Subsidiary, and any Subsidiary which has granted to Bank a security interest or mortgage.

“Overall Facility Exposure” shall mean at any time the sum of (a) the then total outstanding principal amount of Advances, plus (b) the total amount then available (or potentially available) under then open or outstanding SBLCs and (c) the aggregate amount theretofore paid by Bank under SBLCs that has not yet been reimbursed to Bank.

“Overall Facility Limit” shall mean at any time the lesser of (a) \$10,000,000.00 and (b) \$25,000,000.00 minus the Total Term Note Exposure at that time.

“PBGC” shall mean the Pension Benefit Guaranty Corporation.

“Patent” shall mean any of the following: (a) patents and letters patent of the United States or any other country, and all registrations and recordings thereof and applications therefor, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country, and (b) all reissues, continuations or extensions of any of the foregoing.

“Payment Address” shall mean Bank’s offices at 1120 Avenue of the Americas, New York, New York 10036-2790, provided that, if Bank notifies Borrower of another address for payments hereunder to be made to Bank, the term shall mean such other address.

“Pension Plan” shall mean any employee pension benefit plan within the meaning of Section 3(2) of ERISA, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA or Section 412 of the Code and which (i) is maintained for employees of Borrower or any of its ERISA Affiliates or is assumed by Borrower or any of its ERISA Affiliates in connection with any Acquisition or (ii) has at any time been maintained for the employees of Borrower or any current or former ERISA Affiliate.

“Permitted Condominium Business” shall have the meaning given to that term in §7.1(c). “Permitted Condominium Unit” shall mean either (i) a Condominium Unit Permitted Real

Estate Subsidiary’s acquisition of which has not been financed by any Debt and for which an Agreement Not to Transfer or Encumber Property substantially in the form of Exhibit C hereto (or as otherwise required by Bank) has been duly authorized, executed and delivered by the Permitted Real Estate Subsidiary and recorded in the Public Records of St. Lucie County, Florida or (ii) a Condominium Unit Permitted Real Estate Subsidiary’s acquisition of which has been financed through a Condominium Acquisition Advance and which is encumbered by a mortgage that has been duly authorized, executed and delivered by the Permitted Real Estate Subsidiary, that is recorded in the Public Records of St. Lucie County, Florida, that secures the Revolving Note and that is otherwise satisfactory to Bank in form and content.

“Permitted Liens” shall have the meaning given that term in §7.4.

“Permitted Real Estate Subsidiary” shall mean Ark Island Beach Real Estate, LLC, a Delaware limited liability company.

“Person” shall mean an individual, corporation, partnership, limited liability company, trust or unincorporated organization or a government or any agency or political subdivision thereof.

“Prime Rate” shall mean the Prime Rate as quoted or otherwise established by Bank from time to time (or, if Bank fails or ceases to quote or otherwise establish a Prime Rate, a comparable index selected by Bank) (the Prime Rate is purely a discretionary benchmark and is not necessarily the lowest or most favorable rate at which Bank extends credit to its customers).

“Prior Agreement” shall mean that certain Credit Agreement (Revolving Facility), dated as of October 24, 2015, between Borrower and Bank, as amended by that certain First Amendment to Credit Agreement, dated as of a date in June, 2016, between Borrower and Bank, by that certain Second Amendment to Credit Agreement (Revolving Facility), dated as of a date in November 30, 2016, between Borrower and Bank, by that certain Third Amendment to Credit Agreement, dated as of June 19, 2017, between Borrower and Bank, and by that certain Fourth Amendment to Credit Agreement, dated as of a date in December, 2017, between Borrower and Bank.

“Prohibited Transaction” shall mean a transaction that is prohibited under Section 4975 of the Code or Section 406 of ERISA and not exempt under Section 4975 of the Code or Section 408 of ERISA.

“Project” shall mean, with respect to a Restaurant, any one or more of the following: acquiring the Restaurant, building out or renovating the Restaurant and furnishing and equipping the Restaurant financed either partly or completely by Advances.

“Project Costs” shall mean, with respect to a Project, the costs and expenses incurred in carrying out the Project.

“Project Costs Advance” shall have the meaning given that term in §2.3 and shall include Advances heretofore or hereafter made with respect to the Sequoia Restaurant in Washington, D.C.

“Project Draw Period “ shall mean, with respect to a Project, the period beginning on the date the first Advance for such Project is made and ending on the earlier to occur of: (i) six months thereafter and (ii) six months before Commitment Termination Date.

“Project Subsidiary” shall mean a wholly owned Subsidiary of Borrower which owns or leases a Restaurant which is the subject of a Project.

“Project Subsidiary Collateral” shall mean all tangible and intangible personal property (including accounts, inventory, equipment, general intangibles, documents, chattel paper, instruments, letter-of-credit rights, investment property, Intellectual Property and deposit accounts) and fixtures owned by Project Subsidiaries, and, at Bank’s discretion, all Real Estate owned by Project Subsidiaries, whether now owned or hereafter acquired, whether now existing or hereafter created or arising and wherever located.

“Project Subsidiary Security Agreement” shall have the meaning given that term in §5.2(a).

“Rate Hedging Obligations” shall mean any and all obligations and liabilities of Borrower to Bank, whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (i) any and all agreements, devices or arrangements designed to protect at least one of the parties thereto from the fluctuations of interest rates, exchange rates or forward rates applicable to such party’s assets, liabilities or exchange transactions, including but not limited to Dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts, warrants and those commonly known as interest rate “swap” agreements; and (ii) any and all cancellations, buybacks, reversals, terminations or assignments of any of the foregoing.

“Real Estate” shall mean real property now or hereafter owned in fee or leased by a Project Subsidiary or Borrower.

“Representation and Warranty” shall mean each representation and/or warranty made by Borrower pursuant to or under (i) §6 or any other provision of this Agreement or any other Credit Document, (ii) any amendment of or waiver or consent under this Agreement, (iii) any Schedule to this Agreement or any such amendment, waiver or consent, or (iv) any statement contained in any certificate, financial statement, or other instrument or document delivered by or on behalf of Borrower pursuant to any Credit Document, whether or not (except as expressly provided to the contrary herein), in the case of any representation or warranty referred to in

clause (i), (ii), (iii) or (iv) of this definition, the information that is the subject matter thereof is within the knowledge of Borrower.

“Restaurant” shall mean a restaurant (and, where applicable, adjoining gift shop) or a kiosk or concession stand selling food and/or beverages, in any case located in the continental United States and owned or leased by a Project Subsidiary.

“Revolving Note” shall mean the Replacement Revolving Promissory Note, of even date herewith, made by Borrower to Bank’s order in the face principal amount of \$10,000,000.00, and any modification, renewal or consolidation thereof or substitute therefor.

“Rio” shall mean Rio Restaurant Associates L.P., a New York limited partnership.

“Rio Security Agreement” shall have the meaning given that term in §5.1(d).

“Rio Collateral”- shall mean all tangible and intangible personal property (including accounts, inventory, equipment, general intangibles, documents, chattel paper, instruments, letter-of-credit rights, investment property, Intellectual Property and deposit accounts) and fixtures, whether now owned or hereafter acquired, whether now existing or hereafter created or arising and wherever located.

“SBLCs” shall mean the standby letters of credit listed on Schedule 1 attached hereto, and any other standby letters of credit issued by Bank for the account of Borrower or for the account of Borrower and a Project Subsidiary jointly.

“SBLC Agreement” shall mean a letter of credit application and agreement under which an SBLC is applied for on or after the Agreement Date or was applied for prior to the Agreement Date.

“SBLC Exposure” shall mean at any time the sum of (a) the amount then available (or potentially available) under then open or outstanding SBLCs plus (b) the aggregate amount theretofore paid by Bank under SBLCs that has not yet been reimbursed to Bank.

“SBLC Facility Limit” shall mean \$1,500,000.00.

“Security Agreements” shall mean the Borrower Security Agreement and the Project Subsidiary Security Agreements.

“Sequoia” shall mean Ark Potomac Corporation, a Washington, D.C. corporation.

“Single Employer Plan” shall mean any employee pension benefit plan covered by Title IV of ERISA in respect of which Borrower or any Subsidiary is an “employer” as described in Section 4001(b) of ERISA and which is not a Multiemployer Plan.

“Solvent” shall mean, when used with respect to any Person, that at the time of determination: (a) the fair value of its assets (both at fair valuation and at present fair saleable value on an orderly basis) is in excess of the total amount of its liabilities, including contingent Obligations; (b) it is then able and expects to be able to pay its debts as they mature; and (c) it has capital (after taking into account proceeds available under this Agreement) sufficient to carry on its business as conducted and as proposed to be conducted.



“Subsidiary” shall mean any corporation or limited liability company 50 percent or more of the outstanding Voting Securities of which or 50 percent or more of all the equity interests of which are owned directly or indirectly by Borrower and/or by one or more Subsidiaries, or which is otherwise Controlled by Borrower.

“Tangible Net Worth” shall mean, at any date of determination, Borrower’s assets minus Borrower’s Intangible Assets and minus Borrower’s direct (not contingent) liabilities and minus Borrower’s non-controlling interests, all determined in conformity with GAAP by Bank in its sole discretion based upon Bank’s review of the statements described in §9.1.

“Tax” shall mean any federal, state or foreign tax, assessment or other governmental charge or levy (including any withholding tax) upon a Person or upon its assets, revenues, income or profits other than income and franchise taxes imposed upon Bank by the federal government or the State of Florida (or any political subdivision thereof).

“Term Credit Agreement” shall mean that certain Omnibus Credit Agreement (Term Loans), dated on or about the date hereof, by and between Bank and Borrower, as amended or restated from time to time.

“Term Facility Notes” shall mean those certain four term promissory notes, of approximately even date herewith, made by Borrower to Bank’s order, in an aggregate principal amount of \$15,000,000.00, and any modification, renewal or consolidation thereof or substitute therefor.

“Term Note” shall have the meaning given that term in §3.2(a).

“Termination Event” shall mean: (i) a “Reportable Event” described in Section 4043 of ERISA and the regulations issued thereunder (unless the notice requirement has been waived by applicable regulation); or (ii) the withdrawal of Borrower or any ERISA Affiliate from a Pension Plan during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or was deemed such under Section 4068(f) of ERISA; or (iii) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination under Section 4041 of ERISA; or (iv) the institution of proceedings to terminate a Pension Plan by the PBGC; or (v) any other event or condition which would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; or (vi) the partial or complete withdrawal of Borrower or any ERISA Affiliate from a Multiemployer Plan; or (vii) the imposition of a Lien pursuant to Section 412 of the Code or Section 302 of ERISA; or (viii) any event or condition which results in the reorganization or insolvency of a Multiemployer Plan under Section 4241 or Section 4245 of ERISA, respectively; or (ix) any event or condition which results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by the PBGC of proceedings to terminate a Multiemployer Plan under Section 4042 of ERISA.

“Term-Out Commencement Date” shall have the meaning given that term in §3.2(b).

“Total Term Note Exposure” shall mean, at any time, the sum of the total outstanding principal balances of any and all Term Notes at that time plus the total outstanding principal balances of the Term Facility Notes at that time.

“Trademark” shall mean any of the following: (a) trademarks, trade names, corporate

names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), now owned or existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof; and (b) all reissues, extensions or renewals thereof.

“Treasury Obligation” shall mean a note, bill or bond issued by the United States Treasury Department as a full faith and credit general obligation of the United States.

“Unfinanced CAPEX” shall mean, with respect to any Fiscal Period, Borrower’s capital expenditures for that Fiscal Period that were paid by Borrower or a Subsidiary from cash flow and not through financing.

“Voting Securities” shall mean, with respect to any Person, Capital Securities of such Person entitling the holder thereof to vote in the election of directors or managers of such Person.

“Working Capital Advance” shall have the meaning given that term in §2.3.

“Working Day” shall mean a Business Day on which most banks are open for ordinary business in London.

#### §1.2 Other Definitional and Interpretive Provisions.

(a) When used in this Agreement, “herein,” “hereof” and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, and “Section” (and/or “§”) or “subsection” and “Schedule” and “Exhibit” shall refer to sections and subsections of, and Schedules and Exhibits to, this Agreement unless otherwise specified.

(b) Whenever the context so requires, when used in this Agreement the neuter gender shall include the masculine or feminine, and the singular number shall include the plural, and vice versa.

(c) In this Agreement, in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding.”

(d) The words “includes” and “including” when used herein are not limiting.

(e) When used herein, unless specifically provided herein otherwise, the phrase “acceptable to Bank” or “satisfactory to Bank” shall mean “acceptable and satisfactory to Bank in its reasonable discretion.”

§1.3 Accounting Terms and Matters. Unless the context otherwise requires, all accounting terms herein (including capitalized terms) that are not specifically defined herein shall be interpreted and determined under GAAP applied on a Consistent Basis. Unless otherwise specified herein, all accounting determinations hereunder and all computations

utilized by Borrower in complying with the covenants contained herein shall be made, and all financial statements requested to be delivered hereunder shall be prepared, in accordance with GAAP applied on a Consistent Basis.

§1.4 Representations and Warranties. All Representations and Warranties shall be made at and as of the Agreement Date, at and as of the time of each Advance, and, in addition, in the case of any particular Representation and Warranty, at such other time or times as such Representation and Warranty is made or deemed made in accordance with the provisions of this Agreement or the document pursuant to, under, or in connection with which such Representation and Warranty is made or deemed made, except to the extent that any such Representation or Warranty expressly states that it relates to a different specified date.

§1.5 Captions. Section and subsection captions in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

§1.6 Neutral Interpretation. This Agreement and each other Credit Document has been thoroughly reviewed by Obligor's counsel. No provision of this Agreement or other Credit Document shall be construed less favorably to Bank because it was drafted by Bank's counsel.

§1.7 Severability, Conflicts, Etc. Any provision of any Credit Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. It is the intention of the parties to this Agreement that if any provision of any Credit Document is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, the provision shall have the meaning which renders it valid.

## §2. COMMITMENT; PURPOSE; AND AVAILABILITY.

§2.1 Commitment for Advances. Bank agrees, upon and subject to the terms and conditions hereinafter set forth, to make Advances on revolving basis from time to time during the period from the Agreement Date to (and including) the Commitment Termination Date. Each Advance shall be the amount of \$250,000.00 or integral multiples of \$100,000.00 above that amount.

§2.2 Commitment for SBLCs. Bank agrees, upon and subject to the terms and conditions hereinafter set forth, to issue SBLCs during the period from the Agreement Date to (and including) the Commitment Termination Date. Each SBLC shall have an expiry that is not later than one year after the date of its issuance and shall otherwise be in form and substance satisfactory to Bank.

§2.3 Use of Advances. Each Advance shall be used either to pay the Project Costs of a Project (in which case it is sometimes referred to herein as a "Project Costs Advance"), to purchase one or more Condominium Units (in which case it is sometimes referred to herein as a "Condominium Acquisition Advance") or for the working capital needs approved by Bank of Borrower or one or more Subsidiaries (in which case it is sometimes referred to herein as a "Working Capital Advance"). Each Advance shall be deposited in the Borrowing Account. In the case of a Project Costs Advance, Borrower shall then contribute the funds thus deposited to the Project Subsidiary that owns or leases the Restaurant that is the subject of the related Project. Borrower shall ensure that the funds thus contributed are used exclusively to

pay the Project Costs for that Project in accordance with the related Approved Project Budget. No more than five (5) Project Costs Advances shall be made for any one Project, the Project Cost Advances for any one Project shall not exceed a total of \$5,000,000.00 and all Project Costs Advances for any one Project shall be made only during the Project Draw Period applicable to the Project Costs Advances for that Project. In the case of a Condominium Acquisition Advance, Borrower shall then contribute the funds deposited in the Borrower Account to Permitted Real Estate Subsidiary. Borrower shall ensure that the funds thus contributed are used exclusively to pay the costs of acquiring one or more Condominium Units. Condominium Acquisition Advances shall not exceed in the aggregate \$1,000,000.00 in any Fiscal Year. In the case of a Working Capital Advance, Borrower shall either use the funds deposited in the Borrower Account for its own working capital needs or shall contribute them to one or more Subsidiaries to be used by them for their working capital needs; and, in the latter case, Borrower shall ensure that the funds thus contributed are used exclusively for such Subsidiaries' working capital needs. No Condominium Acquisition Advance or Working Capital Advance shall be made after the Commitment Termination Date (though any Advance that is made after the Commitment Termination Date shall be subject to and governed by the Credit Documents). Notwithstanding the first sentence of § 2.3, Bank may, in its discretion, apply any part of any Advance to pay any Debt owed by Obligor that is secured by a Lien (other than a Permitted Lien) on any of the Collateral.

§2.4 Requesting Advances. Each Advance shall be requested only by Borrower and by its submitting to Bank a completed, signed Borrowing Notice in the form of Exhibit A-1, A-2 or A-3 hereto, as applicable (with whatever modifications Bank requires from time to time). Bank reserves the right to require any Borrowing Notice to be submitted at least two (2) Business Days before the date the Advance is requested to be made. Each Borrowing Notice shall be irrevocable and binding on Borrower.

§2.5 Use of and Requests for SBLCs. Each SBLC shall be issued to the landlord of a Restaurant to meet a requirement in a Project Subsidiary's lease of the Restaurant. Each SBLC must be requested using a duly completed and executed SBLC Agreement provided by Bank and duly executed by Borrower and the applicable Project Subsidiary.

§2.6 Limits. At no time may the Overall Facility Exposure exceed the Overall Facility Limit, and at no time may the SBLC Exposure exceed the SBLC Facility Limit.

### §3. PAYMENT TERMS.

§3.1 Interest Rates and Payments. (a) Interest shall accrue on the outstanding principal amount of each Advance from the date made, during each Interest Period for such Advance, at a per annum rate equal to the sum of (a) the then Applicable LIBOR Margin plus (b) the LIBOR Rate for that Interest Period. Borrower shall pay accrued interest on each Advance on the last day of each Interest Period for such Advance (or, if the Interest Period is longer than one-month, at whatever more frequent intervals Bank requires) and on the Maturity Date (and, in the case of interest accruing after such maturity, on demand). Notwithstanding the foregoing, after the maturity of an Advance and, if Bank elects, while an Event of Default exists prior to such maturity, interest shall accrue on the outstanding principal amount of such Advance at a per annum rate equal to the Default Rate.

(b) If any present or future law, governmental rule, regulation, policy, guideline, directive or similar requirement (whether or not having the force of law) imposes, modifies, or deems applicable any capital adequacy, capital maintenance or similar requirement which

affects the manner in which Bank allocates capital resources to its commitments (including any commitments hereunder), and as a result thereof, in the reasonable opinion of Bank, the rate of return on Bank's capital with regard to the Advances is reduced to a level below that which Bank could have achieved but for such circumstances, then in such case and upon prior written notice from Bank to Borrower, from time to time, Borrower shall pay to Bank such additional amount or amounts as shall compensate Bank for such reduction in Bank's rate of return. Such notice shall contain the statement of Bank with regard to any such amount or amounts, which shall, in the absence of manifest error, be binding upon Borrower. In determining such amount, Bank may use any reasonable method of averaging and attribution that it deems applicable. For the avoidance of doubt, the foregoing provisions shall apply to all requests, rules, guidelines or directives concerning capital adequacy issued in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or the United States financial regulatory authorities, regardless of the date adopted, issued, promulgated or implemented.

(c) If at any time Bank, in the reasonable exercise of its discretion, determines that for any period (i) Dollar deposits for the applicable Interest Period are not available to Bank in the London interbank market, (ii) the LIBOR Rate does not reflect the cost to Bank of maintaining the Advances, (iii) any change in financial, political or economic conditions or the currency exchange rates makes it impractical for Bank to accrue interest on Advances at a rate based upon the LIBOR Rate, or (iv) any change in Applicable Law makes it unlawful for Bank to accrue interest on Advances at a rate based upon LIBOR Rate, and so notifies Borrower, thereafter the outstanding principal amount of Advances shall, prior to their maturity, bear interest during that period at a per annum rate equal to 0.50 percent per annum above the Prime Rate, with the rate changing simultaneously with each change in the Prime Rate and accrued interest being due and payable monthly on a day of the month selected by Bank.

(d) If the adoption of or any change in any applicable law or regulation or in the interpretation or application thereof or compliance by Bank with any request or directive (whether or not having the force of law) from any central bank or other governmental authority made subsequent to the date hereof, shall (a) subject Bank to any tax of any kind whatsoever with respect to the Advances, or change the basis of taxation of payments in respect thereof (except for changes in the rate of tax on the overall net income of Bank), (b) impose, modify, or hold applicable, any reserve, special deposit, compulsory loan, or similar requirement against assets held by, deposits or other liabilities in, or for the account of, advances, loans, or other extension of credit (including participations therein) by, or any other acquisition of funds by, any office of Bank which is not otherwise included in the determination of the LIBOR Rate hereunder, or (c) shall impose on Bank any other condition, in each case to the extent imposed on lenders generally; and the result of any of the foregoing is to materially increase the cost to Bank of making or maintaining Advances, or to reduce any amount receivable hereunder, then, in any such case, Borrower shall promptly pay to Bank, upon its demand (a copy of which demand shall also be delivered to Bank), any additional amounts necessary to compensate Bank for such additional costs or reduced amount receivable which Bank reasonably deems to be material as determined by Bank. A certificate as to any additional amounts payable pursuant to this paragraph submitted by Bank to Borrower shall be presumptive evidence of such amounts owing (absent manifest error).

§3.2 Principal and Other Payments.

(a) Regular Payment(s). Borrower shall repay the principal of each Advance on the Maturity Date. Notwithstanding the foregoing, Bank may, at its discretion, at any time more than one (1) month after the final Project Costs Advance for a Project is disbursed, notify Borrower that monthly principal payments on such Project Costs Advance will be required to be made by Borrower; and if Bank so notifies Borrower, then, on a date specified by Bank in its notification (the "Term-Out Commencement Date" for such Project Costs Advances), all of such Project Costs Advances for such Project shall be consolidated on a date specified by Bank, one month after that Term-Out Commencement Date and every month thereafter, Borrower shall make to Bank monthly payments of principal each in an amount equal to one-sixtieth of the aggregate principal amount of such Project Costs Advances on that Term-Out Commencement Date and shall pay to Bank the entire amount of such aggregate principal amount then remaining unpaid 60 months after that Term-Out Commencement Date. Borrower shall duly execute and deliver to Bank, at least five (5) Business Days before any Term-Out Commencement Date for a group of Project Costs Advances, a Term Note in the form of Exhibit B hereto with appropriate insertions satisfactory to Bank and evidencing those Project Costs Advances (each a "Term Note") and, if Borrower fails to do so, those Project Costs Advances shall immediately be due and payable in full (together with any and all accrued interest thereon) on such Term-Out Commencement Date (without jeopardizing Bank's right to declare an Event of Default based on the failure).

(b) Initial and Overage Payments. Borrower acknowledges to Bank that, as of the date hereof, it owes to Bank with respect to the Credit Facility principal in the amount of \$11,236,648.30 plus accrued but unpaid interest. On the Agreement Date, Borrower shall make to Bank a prepayment of Working Capital Advances as provided in §3.2 of the Term Credit Agreement. If at any time the Overall Facility Exposure exceeds the Overall Facility Limit, Borrower shall, within two Business Days after Bank's demand, prepay the principal of Advances in the amount of the excess. If at any time the SBLC Exposure exceeds the SBLC Facility Limit, Borrower shall, within two Business Days after Bank's demand, deposit with and assign to Bank as collateral for the Obligations, cash collateral in the amount of the excess. Nothing in this §3.2(b) shall be construed to restrict Bank's right to accelerate the Obligations or pursue its other remedies under §10 based on the Overall Facility Limit's or the SBLC Facility Limit's being exceeded.

(c) Prepayments. Borrower may on any Business Day prepay the principal amount of any Advance in whole or in part provided, however, that (a) Borrower gives Bank at least two Business Days prior written notice of such prepayment specifying the date of prepayment and the principal amount to be prepaid, (b) each such partial prepayment shall be in an integral amount of \$100,000.00, and (c) in no event shall any such prepayment be made on any day other than the last day of the Interest Period for the Advance prepaid unless Borrower pays to Bank with the prepayment all amounts due and owing under §3.2(d) with respect to the prepayment. No prepayment of an Advance made during the Term-Out Period for such Advance shall result in a deferral or reduction of scheduled principal payments with respect to such Advance unless and until such Advance is repaid in full.

(d) Breakage Costs. Concurrently with any prepayment of an Advance made on other than the last day of an Interest Period for that Advance, Borrower shall pay to Bank the following amount: the excess, if any, of (a) the amount of interest which would have accrued on the amount prepaid during the period from the date of such prepayment to the last day of that Interest Period at the applicable interest rate provided for herein over (b) the amount of interest (as reasonably determined by Bank) which would have accrued to the holder of a Treasury Obligation selected by Bank in the amount (or as close to such amount as feasible) of the

amount prepaid and having a maturity date on (or as soon after as feasible) the last day of that Interest Period, would earn if the Treasury Obligation were purchased in the secondary market on the date the prepayment is made to Bank and were held to maturity. Borrower agrees that the aforescribed amount shall be based on amounts which a holder of a Treasury Obligation would receive under the foregoing circumstances, whether or not Bank actually invests the amount prepaid in any Treasury Obligation. Borrower acknowledges that determining the actual amount of costs and expenses resulting from a prepayment on other than the last day of an Interest Period may be difficult or impossible to determine in a specific instance and that, accordingly, the amount set forth above is a reasonable estimate of such costs and expense.

(e) SBLC Reimbursements. Borrower shall pay to Bank, immediately upon the drawing, the amount of each and any drawing under a SBLC, together with interest (from the date of the drawing to the date of payment in full) at the higher of the rate then applicable to Advances and the rate specified in the related SBLC Agreement. If any SBLC is extended beyond one year after its issuance, or beyond the Commitment Termination Date, Borrower shall deposit with Bank, and grant to Bank a security interest satisfactory to Bank in, cash collateral in an amount equal to 105% of the amount available under that SBLC.

(f) SBLC Fees. When an SBLC is issued and each time it is renewed or extended, Borrower shall pay to Bank a commission at the rate of 2.50 percent per annum based on the face amount of the SBLC (computed in accordance with Bank's standard practices) and such other fees and charges with respect thereto as Bank customarily charges its customers with respect to standby letters of credit issued by it.

(g) Non-Use Fee. For each day during the period between the Agreement Date and the Commitment Termination Date, Borrower shall pay to Bank a non-use fee (the "Non-Use Fee") equal to the product of (a) the amount by which the Overall Facility Limit exceeds the Overall Facility Exposure on that day times (b) the quotient of the Applicable Non-Use Fee Rate divided by 360. Such Non-Use Fee shall be paid in arrears at the end of each calendar quarter and on the Commitment Termination Date and may be deducted by Bank without notice from the Borrowing Account or any other deposit account of Borrower with Bank.

§3.3 Commitment Fee. On or before the Agreement Date, Borrower shall pay to Bank a non-refundable facility fee in the amount of \$50,000.00.

§3.4 Late Charges. Without limiting or waiving any rights or remedies of Bank contained herein or under Applicable Law, and without implying that Bank has the obligation to declare or to notify Borrower of the occurrence of any Event of Default, if Bank has neither declared nor notified Borrower of the occurrence of an Event of Default, and if any amount of any required payment of principal, interest or fees hereunder or under a Note is not paid in full within 10 days after the same is due, then, in addition to all other interest and other amounts due hereunder, Borrower shall pay to Bank on demand a late charge equal to five percent of the delinquent payment. Each such late charge is intended to compensate Bank for administrative and other costs associated with not receiving a payment when due and is neither a penalty nor interest.

#### §3.5 Payments and Computations.

(a) Borrower shall make each payment hereunder by 1:00 p.m. (New York City time) on the day when due, in lawful money of the United States of America and immediately available funds without *setoff* or deduction of any kind, to Bank at the Payment Address.

(b) All computations of interest, commissions and fees hereunder shall be made by Bank on the basis of a year of 360 days and the actual number of days (including the first day but excluding the last day) for the period for which such interest, commission or fee is payable. Each payment under this Agreement or a Note shall be applied in such order and manner as Bank determines.

(c) Whenever any payment to be made under this Agreement or any other Credit Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day (or, if the next succeeding Business Day falls in the next calendar month, on the immediately preceding Business Day), and such extension of time shall in such case be reflected in the computation of interest, commissions or fees, as the case may be.

(d) Bank is irrevocably authorized (but not required) to charge against any deposit account in Borrower's name with Bank any amount that is due under this Agreement or other Credit Document, even if doing so creates an overdraft.

(e) Bank's computation of interest and other amounts owing hereunder shall, in the absence manifest error, be conclusive and binding on Borrower.

§3.6 Evidence of Indebtedness; Impaired Note. The Advances and Borrower's obligations to repay them, with interest in accordance with the terms of this Agreement, shall be evidenced by this Agreement, the records of Bank, and the Notes. The records of Bank shall be prima facie evidence (absent fraud or manifest error) of the Advances and the other indebtedness of Borrower under this Agreement, of accrued interest thereon, of accrued fees, and of all payments made in respect of any thereof. Upon Borrower's receipt from Bank of (a) reasonably satisfactory evidence of the loss, theft, destruction or mutilation of a Note (an "Impaired Note") and (b) (i) in the case of mutilation, such Impaired Note for cancellation and (ii) in all cases, indemnity reasonably satisfactory to Borrower and reimbursement of Borrower's reasonable out-of-pocket expenses incidental thereto, Borrower shall make and deliver to Bank a new replacement Note of like tenor, date and principal amount in lieu of the Impaired Note.

#### §4. COLLATERAL.

§4.1 Borrower Collateral. The Obligations (together with all indebtedness, obligations and duties of Borrower to Bank arising under or in connection with the Term Credit Agreement, or any other Credit Documents, as that term is defined in the Term Credit Agreement) shall be secured at all time by a perfected, first priority security interest in all of the Borrower Collateral. Without limiting the generality of the preceding sentence, the Obligations shall be secured at all times by a perfected (both by filing and possession by Bank of the related Equity Certificates), first-priority security interest in and pledge of all of the Capital Securities of each Project Subsidiary.

§4.2 Project Subsidiary and Condominium Unit Collateral. The Obligations shall be secured at all times by perfected, first-priority security interest in the Project Subsidiary Collateral owned by the Project Subsidiary for each Project. In addition, the Obligations shall be secured by a perfected, first-priority mortgage on, collateral assignment of and security interest in each Condominium Unit acquired with a Condominium Acquisition Advance and all related fixtures and personal property. In addition, Bank may, in its discretion, require the Obligations to be secured by perfected, first-priority fee or leasehold mortgage or deed-of-trust on any Real Estate and related property relating to a Project.



§5. CONDITIONS OF LENDING.

§5.1 Documentary Conditions Precedent to be Satisfied Before Closing. The obligation of Bank to make the initial Advance after the Agreement Date and each other Advance thereafter is subject to the condition precedent that Bank shall have received, on or before the Agreement Date, the following, all in form and substance satisfactory to Bank:

(a) The Revolving Note duly executed by Borrower;

(b) An Amended and Restated Security Agreement duly executed by Borrower in favor of Bank (the "Borrower Security Agreement"), together with (i) financing statements (form UCC-1) duly filed under the Uniform Commercial Code of all jurisdictions as may be necessary or, in Bank's reasonable opinion, desirable to perfect the security interests created by the Borrower Security Agreement; and (ii) reports acceptable to Bank listing the financing statements referred to in clause (i) above and no other financing statements;

(c) An Amended and Restated Security Agreement duly executed by Rio in favor of Bank, (the "Rio Security Agreement") with (i) financing statements (form UCC-1) duly filed under the Uniform Commercial Code of all jurisdictions as may be necessary or, in Bank's reasonable opinion, desirable to perfect the security interests created by the Rio Security Agreement; and (ii) reports acceptable to Bank listing the financing statements referred to in clause (i) above and no other financing statements;

(d) An Amended and Restated Security Agreement duly executed by AC in favor of Bank (the "AC Security Agreement"), together with financing statements (form UCC-1) duly filed under the Uniform Commercial Code of all jurisdictions as may be necessary or, in Bank's reasonable opinion, desirable to perfect the security interests created by the AC Amended and Restated Security Agreement; and (ii) reports acceptable to Bank listing the financing statements referred to in clause (i) above and no other financing statements;

(e) An Amended and Restated Pledge and Security Agreement duly executed by Las Vegas in favor of Bank, (the "Las Vegas Pledge Agreement"), together with (i) financing statements (form UCC-1) duly filed under the Uniform Commercial Code of all jurisdictions as may be necessary or, in Bank's reasonable opinion, desirable to perfect the security interests created by the Las Vegas Pledge Agreement; and (ii) reports acceptable to Bank listing the financing statements referred to in clause (i) above and no other financing statements;

(f) A Security Agreement, duly executed by Sequoia in favor of Bank (the "Sequoia Security Agreement") together with (i) financing statements (UCC-1) duly filed under the Uniform Commercial Code of all jurisdictions as may be necessary or, in Bank's reasonable opinion, desirable to perfect the security interests created by the Sequoia Security Agreement; and (ii) reports acceptable to Bank listing the financing statements referred to in (i) above and no other financing statements; and (iii) a Supplement to Credit Agreement with respect to the Collateral owned by Sequoia, duly executed by Borrower;

(g) Six Amended and Restated Security Agreements, each duly executed by one of Ark Shuckers LLC, Ark Island Beach Resort, LLC, Ark Rustic Inn, LLC, Ark Oyster House Causeway II, LLC, Ark Oyster Gulf Shores I, LLC, and Ark Superb Foods, LLC, each a Delaware limited liability company, together with (i) financing statements (form UCC-1) duly filed under the Uniform Commercial Code of all jurisdictions as may be necessary or, in Bank's reasonable opinion, desirable to perfect the security interests created by the aforesaid Amended

and Restated Security Agreements; and (ii) reports acceptable to Bank listing the financing statements referred to in clause (i) and no other financing statements;

(h) An Amended and Restated Control Agreement, duly executed by Borrower, Las Vegas and Davidoff Hutcher and Citron LLP;

(i) An Amended and Restated Contribution/Reimbursement Agreement by Borrower, duly executed by Borrower in favor of Rio, AC, Las Vegas, Sequoia and the Term Loan Subsidiaries (as that term is defined in the Term Credit Agreement);

U) An Instruction to Register Pledge by Borrower, duly executed by Borrower, to Ark Museum LLC, a Delaware limited liability company;

(k) A Confirmation Statement and Instruction Agreement, duly executed by Ark Museum LLC, a Delaware limited liability company, to Borrower and Bank;

(l) An Instruction to Register Pledge by Borrower, duly executed by Borrower, to Ark Bryant Park LLC, a Delaware limited liability company;

(m) A Confirmation Statement and Instruction Agreement, duly executed by Ark Bryant Park LLC, a Delaware limited liability company, to Borrower and Bank;

(n) Evidence of the issuance of all insurance policies and loss payee endorsements required by the terms of the Borrower Amended and Restated Security Agreement, the Rio Amended and Restated Security Agreement, the AC Amended and Restated Security Agreement, the Las Vegas Rio Amended and Restated Pledge Agreement or this Agreement;

(o) Judgment, tax lien and litigation searches in all relevant jurisdictions showing that there are no outstanding judgments, tax liens or pending lawsuits against Borrower or any property of Borrower in excess of \$5,000.00 except as disclosed herein;

(p) A certified copy of the resolutions of the Board of Directors of Borrower approving and authorizing each Credit Document to which it is a party and of all documents evidencing other necessary corporate action and Governmental Approvals, if any, with respect to each such Credit Document;

(q) A certificate of the Secretary or an Assistant Secretary of Borrower certifying the name and true signatures of its officers authorized to sign each Credit Document to which it is a party and the other documents to be delivered by it hereunder;

(r) A certificate of status issued by the New York Secretary of State with respect to Borrower; a copy of Borrower's articles of incorporation certified by such Secretary of State; and a copy of Borrower's bylaws certified as true and complete by an Authorized Representative;

(s) A certified copy of the resolutions of the board of directors of the general partner of Rio approving and authorizing each document to which Rio is a party and all documents evidencing or requiring other necessary corporate action and Governmental Approvals, if any, with respect to each such document;

(t) A certificate of the Secretary or an Assistant Secretary of the general partner of Rio certifying the name and true signatures of its officers to sign each document to which Rio is a party and the other documents to be delivered by Rio hereunder;

(u) A certificate of status issued by the New York Secretary of State with respect to Rio and its general partner, a copy of the articles of incorporation of the general partner of Rio certified by such Secretary of State; a copy of the certificate of limited partnership of Rio certified by such Secretary of State; a copy of the bylaws of the general partner of Rio certified as true and complete by its Secretary or Assistant Secretary and a copy of the limited partnership agreement of Rio certified by true and complete by the general partner of Rio;

(v) A certified copy of the resolutions of the sole member of AC approving and authorizing each document to which AC is a party and of all documents evidencing or requiring other necessary limited liability company action and Governmental Approvals; if any, with respect to each such Credit Document;

(w) A certificate of the Secretary or Assistant Secretary of AC certifying the name and true signatures of its officers authorized to sign each document to which AC is a party and the other documents to be delivered by AC hereunder;

(x) A certificate of status issued by the Delaware Secretary of State with respect to AC; a copy of AC's certificate of formation certified by such Secretary of State; and a copy of AC's operating agreement certified as true and complete by the Secretary or Assistant Secretary of AC;

(y) A certified copy of the resolutions of the board of directors of Las Vegas approving and authorizing each document to which it is a party and of all documents evidencing other necessary or required corporate action and Governmental Approvals, if any, with respect to each such document;

(z) A certificate of the Secretary or Assistant Secretary of Las Vegas certifying the name and true signatures of its officers authorized to sign each document to which it is a party and the other documents to be delivered by it hereunder;

(aa) A certificate of status issued by the Nevada Secretary of State with respect to Las Vegas; a copy of Las Vegas' articles of incorporation certified by such Secretary of State; and a copy of Las Vegas' by laws certified as true and complete by the Secretary or Assistant Secretary of Las Vegas;

(bb) A favorable opinion of Law Offices of Koepfel Law Group, P.L., counsel for Obligors, covering such matters as Bank may require;

(cc) Evidence of payment of all taxes imposed by any Governmental Authority with respect to the Note or other Credit Documents;

(dd) A certificate of the Secretary or Assistant Secretary of Sequoia certifying the name and true signatures of its officers authorized to sign each document to which Sequoia is a party and the other documents to be delivered by Sequoia hereunder;

(ee) A certificate of status issued by the Secretary of State of Washington D.C. with respect to Sequoia; a copy of Sequoia's certificate of formation certified by such Secretary of

State; and a copy of Sequoia's articles of incorporation and by-laws certified as true and complete by the Secretary or Assistant Secretary of Sequoia;

(ff) A certified copy of the resolutions of the Board of Directors of Sequoia approving and authorizing each document to which it is a party and all documents evidencing other necessary or required corporate action and Government Approvals, if any, with respect to each such document;

(gg) Evidence of payment by Borrower (or, if already paid, reimbursement to Bank for) all reasonable costs and expenses in connection with the preparation, execution, delivery, and filing of the Credit Documents, including the reasonable fees and out-of-pocket expenses of counsel for Bank with respect thereto and all other costs incurred by Bank in connection therewith; and

(hh) Such other approvals, opinions, consents and documents as Bank may reasonably request.

§5.2 Documentary Conditions Precedent for Project Costs Advances. The obligation of Bank to make the initial and each other Project Costs Advance for a Project is subject to the condition precedent that Bank shall receive, at least twenty (20) Business Days before the initial Project Costs Advance for the Project, the following, all in form and substance satisfactory to Bank:

(a) A Security Agreement (each, a "Project Subsidiary Security Agreement") duly executed by the related Project Subsidiary and covering the Project Subsidiary Collateral that is owned or to be acquired by such Project Subsidiary; together with (i) financing statements (form UCC-1) duly filed under the Uniform Commercial Code of all jurisdictions as may be necessary or, in Bank's reasonable opinion, desirable to perfect the security interest created by that Security Agreement; and (ii) reports acceptable to Bank listing the financing statements referred to in clause (i) above and no other financing statements;

(b) A Pledge and Security Agreement (each a "Pledge Agreement") duly executed by Borrower and covering all the Capital Securities of such Project Subsidiary; and such Project Subsidiary's Equity Certificates together with a stock power or other appropriate transfer instrument duly executed by Borrower in blank;

(c) If Bank requests it, a mortgage or deed of trust (whichever Bank determines to be appropriate) encumbering Real Estate related to the Project and duly executed by the Project Subsidiary owning or leasing (or to own or lease) that Real Estate (each, a "Mortgage"), together with whatever title searches, title insurance policies, surveys and flood zone determinations Bank may require in connection with that Mortgage;

(d) A Contribution/Reimbursement Agreement duly executed by Borrower in favor of the related Project Subsidiary and an Agreement for Mutual Credit Enhancement, Contribution and Indemnity duly executed by such Project Subsidiary and each other then existing Project Subsidiary;

(e) If the related Restaurant is leased by the related Project Subsidiary, a Landlord's Lien Waiver and Fixtures Disclaimer Agreement duly executed by the owner of that Restaurant;

(f) Evidence of the issuance of all insurance policies and loss payee endorsements required by the terms of the Project Subsidiary Security Agreement referred to in paragraph (a) above or the mortgage or deed of trust referred to in clause (d) above;

(g) Judgment, tax lien and litigations searches and all relevant jurisdictions showing that there are no outstanding judgments, tax liens or pending lawsuits against the related Project Subsidiary or any property of the related Project Subsidiary except as disclosed herein;

(h) A certified copy of the resolutions of the Board of Directors or other managing body of the related Project Subsidiary approving and authorizing each Credit Document to which that Project Subsidiary is a part of and of all documents evidencing such necessary corporate and other action and Governmental Approvals, if any, with respect to each such Credit Documents;

(i) A certificate of the Secretary or an Assistant Secretary of the related Project Subsidiary certifying the name and true signatures of its officers authorized to sign each Credit Document to which it was a party and any other documents to be delivered by hereunder;

U) A certificate of status issued by the Secretary of State (or other appropriate Governmental Authority) with respect to the related Project Subsidiary, and a copy of that Project Subsidiary's articles of incorporation or operating agreement certified as true and complete by an Authorized Representative;

(k) An Approved Project Costs Budget for the related Project;

(l) An opinion of Law Offices of Joel Koepfel, P.A., counsel to such Project Subsidiary;

(m) Evidence of payment by Borrower (or, if already paid, reimbursement to Bank for) all reasonable costs and expenses in connection with respect to the Project the preparation, execution, delivery, recording and filing of the Project Subsidiary Security Agreement, the Pledge Agreement, the Mortgage and all other documents required by this §5.2 with respect to the Project, including the reasonable fees and out-of-pocket expenses of counsel for Bank with respect to the Project, all surveying costs, appraisal fees, environmental review costs, title insurance premiums, collateral inspection expenses and all other costs reasonably incurred by Bank with respect to the Project; and

(n) Such other approvals, opinions, consents and documents as Bank may reasonably request.

§5.3 Documentary Conditions to Condominium Acquisition Advances. The obligation of Bank to make each Condominium Acquisition Advance is subject to the conditions precedent to Bank shall receive, at least ten (10) business days before such Condominium Acquisition Advance is disbursed, the following, all in form and substance satisfactory to Bank:

(a) A copy of the purchase agreement for the Condominium Unit or Condominium Units to be financed with such Condominium Acquisition Advance;

(b) A mortgage encumbering said Condominium Unit or Condominium Units, duly executed by Permitted Real Estate Subsidiary (the "Mortgage" for such Condominium

Acquisition Advance), together with whatever title searches, title insurance policies, surveys and flood zone determinations Bank may require in connection with that Mortgage;

(c) Evidence of payment by Borrower, or, if already paid, reimbursement to Bank for, all reasonable fees and costs and expenses in connection with respect to the Condominium Unit(s), the preparation, execution and delivery, recording and filing of the Mortgage for such Condominium Acquisition Advance, and all other documents required by this §5.3 with respect to said Condominium Unit(s), including the reasonable fees and out-of-pocket expenses of counsel for Bank with respect thereto, all surveying costs, appraisal fees, environmental review costs, title insurance premiums, collateral inspection expenses and all other costs reasonably incurred by Bank with respect to said Condominium Unit(s) and such Condominium Acquisition Advance.

§5.4 Other Conditions Precedent to Advances. The obligation of Bank to make each Advance, including the initial Advance on or after the Commencement Date, is subject to the fulfillment of each of the following conditions to Bank's satisfaction:

(a) Each of the Representations and Warranties shall, in the determination of Bank in its reasonable discretion, be true and correct in all material respects at and as of the time of such Advance, with and without giving effect to such Advance and to the application of the proceeds thereof, except those expressly stated to be made as of a particular date which shall be true and correct in all material respects as of such date;

(b) No Default or Event of Default shall have occurred and be continuing at the time of such Advance, with or without giving effect to such Advance and to the application of the proceeds thereof;

(c) Receipt by Bank, within a reasonable time after Bank's request, of such materials as may have been requested pursuant to §9 as, when and to the extent required to be delivered thereunder;

(d) Such Advance will not contravene any Applicable Law;

(e) All legal matters incident to such Advance and the other transactions contemplated by this Agreement shall be reasonably satisfactory to counsel for Bank;

(f) No Federal tax liens or other Liens (besides Permitted Liens) shall have been filed against any of the Collateral or any of the Real Estate;

(g) Each Obligor is Solvent and will be so after giving effect to such Advance; and

(h) No limitation set forth in §2.6 will be exceeded after such Advance is made.

Each Borrowing Notice shall constitute a Representation and Warranty by Borrower, made as of the time of the making of the Advance requested by it, that, to Borrower's actual knowledge, the conditions specified in clauses (a) through (h) above have been fulfilled as of such time, unless notice to the contrary is included in the paragraph entitled "Disclosure" in the Borrowing Notice for the making of such requested Advance. To the extent that Bank agrees to make any Advance after receipt of a Borrowing Notice containing notice in the paragraph entitled "Disclosure" that any of the conditions specified in clauses (a) through (h) above have not been fulfilled, the Representations and Warranties pursuant to the preceding sentence shall

be deemed made as modified by the contents of such statement and repeated at the time of the making of such Advance as so modified.

§5.5 No Waiver. No failure by Bank to insist on fulfillment, before it makes a particular Advance, of any condition precedent specified in §5.1, §5.2, §5.3 or §5.4 shall operate as a waiver of or otherwise impair its right to insist on such condition precedent's fulfillment before it makes any other Advance, and any failure to fulfill such condition precedent immediately upon demand shall constitute a default of a covenant or agreement hereunder.

§5.6 SBLCs. Prior to the issuance of any SBLC, Bank shall receive a duly executed SBLC Agreement for the SBLC in form and substance acceptable to Bank and Borrower shall fulfill all the conditions set forth in §5.1, §5.2 and §5.3 as though an Advance were being made rather than an SBLC being issued, and any failure to do so immediately upon demand shall constitute a default of a covenant or agreement hereunder.

§6. CERTAIN REPRESENTATIONS AND WARRANTIES OF BORROWER.

In order to induce Bank to enter into this Agreement and to make or issue Credit Extensions, Borrower represents and warrants to Bank as follows (and will continue to do so as long as this Agreement is in effect):

§6.1 Organization: Power; Qualification; Compliance; Approval. Each Obligor is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization, has the power and authority to own its properties and to carry on its businesses as now being and proposed to be hereafter conducted, and is duly qualified, in good standing, and authorized to do business, in all jurisdictions in which the character of its properties or the nature of its businesses requires such qualification, good standing or authorization. Each Obligor and each other Project Subsidiary is conducting its business in material compliance with all Applicable Law.

§6.2 Subsidiaries. As of the Agreement Date, the only Subsidiaries are the companies listed in Schedule 6.2 herein. Borrower owns 50 percent or more of the issued and outstanding Capital Securities of each Project Subsidiary or such Project Subsidiary is otherwise Controlled by Borrower.

§6.3 Solvency. Each Obligor is and will be Solvent after giving effect to the transactions contemplated by the Credit Documents.

§6.4 Authorization and Compliance of Agreement and Note. Each Obligor has the corporate power, and has taken all necessary corporate and other (including stockholder and member, if necessary) action to authorize it to execute, deliver and perform the Credit Documents to which it is a party in accordance with their respective terms, to incur its other obligations under and each of the Credit Documents to which it is a party and to borrow or guaranty (as the case may be) hereunder. Each of the Credit Documents delivered on the Agreement Date has been duly executed and delivered by the Obligor party thereto and is a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms. The execution, delivery and performance of the other Credit Documents by each Obligor party thereto in accordance with their respective terms, and the incurring of obligations thereunder by the Obligor, do not and will not (a) require (i) any Governmental Approval or (ii) any consent or approval of the stockholders or members of such Obligor that has not been obtained, or adversely affect in any way the validity or enforceability of

any Credit Document, (b) violate or conflict with, result in a breach of, or constitute a default under, (i) any Contract to which such Obligor is a party or by which its or any of its properties may be bound, (ii) any Applicable Law, unless in any such case the violation would not have a Material Adverse Effect or adversely affect in any way the validity or enforceability of any Credit Document or (iii) such Obligor's articles of incorporation or organization or its bylaws or operating agreement, or (c) result in or require the creation of any Lien upon any assets of such Obligor (other than Permitted Liens).

§6.5 Litigation. Except as set forth on Schedule 6.5 hereto, as of the Agreement Date there are not, in any court or before any arbitrator of any kind or before or by any governmental or non-governmental body, any actions, suits or proceedings, pending (or to the knowledge of Borrower overtly threatened in writing), against or in any other way relating to or affecting any Obligor or other Subsidiary, or the business or any property of any Obligor or other Subsidiary, except actions, suits or proceedings that, if adversely determined, would not (i) result in liability more than \$150,000.00 above the amount of insurance coverage in effect with respect thereto or (ii) have a Material Adverse Effect.

§6.6 Burdensome Provisions. No Obligor is a party to or bound by any Contract that is likely to have a Material Adverse Effect.

§6.7 No Material Adverse Change or Event. Between the date of the financial statement most recently provided by Borrower to Bank and the Agreement Date, no change in the business, assets, liabilities, financial condition or results of operations of Borrower or its Subsidiaries has occurred, and no event has occurred or failed to occur, which has had or constituted or would reasonably be expected to have or constitute, either alone or in conjunction with all other such changes, events and failures, a Material Adverse Effect.

§6.8 No Adverse Fact. No fact or circumstance is known to Borrower as of the date hereof which Bank could not reasonably be expected to be aware of and which, either alone or in conjunction with all other such facts and circumstances, has had a Material Adverse Effect that has not been set forth or referred to in the financial statements referred to in §9.1 or in a writing specifically captioned "Disclosure Statement" and delivered to Bank prior to the date hereof. If a fact or circumstance disclosed in such financial statements or Disclosure Statement, or if an action, suit or proceeding disclosed in Schedule 6.5, should in the future have or constitute a Material Adverse Effect upon Borrower or any Subsidiary or upon this Agreement or any other Credit Document, such Material Adverse Effect shall be a change or event subject to §6.8 notwithstanding such disclosure.

§6.9 Title to Properties. Borrower has, as of the date of such financial statements or Forms 10-Q or 10-K, as the case may be, title to its properties reflected on the financial statements referred to in §9 or its most recent Form 10-Q or Form 10-K subject to no Liens or material adverse claims except Permitted Liens.

§6.10 Patents, Trademarks, Etc. Borrower and Subsidiaries each owns, or is licensed or otherwise has the lawful right to use, all Intellectual Property used in or necessary for the conduct of its business as currently in any material respect conducted. To Borrower's knowledge, the use of such Intellectual Property by Borrower or such Subsidiary does not infringe on the rights of any Person.

§6.11 Margin Stock; Etc. The proceeds of the Advances will be used by Borrower and Project Subsidiaries only for the purposes expressly authorized herein. None of such



proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any margin stock or for the purpose of reducing or retiring any Debt which was originally incurred to purchase or carry margin stock or for any other purpose which might constitute any of the Advances a "purpose credit" within the meaning of Regulation U. Neither Borrower nor any agent acting in its behalf has taken or will take any action which might cause this Agreement or any of the documents or instruments delivered pursuant hereto to violate any regulation of the Board of Governors of the Federal Reserve Board or to violate the Securities Exchange Act of 1934, as amended, or the Securities Act of 1933, as amended, or any state securities laws, in each case as in effect on the date hereof.

§6.12 Investment Company. Borrower is not an "investment company," or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended (15 U.S.C. §80a-1, et seq.). The application of the proceeds of the Advances and repayment thereof by Borrower and the performance by Borrower of the transactions contemplated by the Credit Documents will not violate any provision of that statute, or any rule, regulation or order issued by the Securities and Exchange Commission thereunder, in each case as in effect on the date hereof.

§6.13 ERISA.

(a) Borrower and each ERISA Affiliate is in material compliance with all applicable provisions of ERISA and the regulations and published interpretations thereunder and in material compliance with all Foreign Benefit Laws with respect to all Employee Benefit Plans except for any required amendments for which the remedial amendment period as defined in Section 401(b) of the Code has not yet expired and except for circumstances where the failure to comply could not reasonably be expected to have a Material Adverse Effect. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has been determined to be exempt under Section 501(a) of the Code. No material liability has been incurred by Borrower or any ERISA Affiliate which remains unsatisfied for any taxes or penalties with respect to any Employee Benefit Plan or any Multiemployer Plan;

(b) Neither Borrower nor any ERISA Affiliate has (i) engaged in a nonexempt prohibited transaction described in Section 4975 of the Code or Section 406 of ERISA affecting any of the Employee Benefit Plans or the trusts created thereunder which could subject any such Employee Benefit Plan or trust to a material tax or penalty on prohibited transactions imposed under Internal Revenue Code Section 4975 or ERISA, (ii) incurred any material accumulated funding deficiency with respect to any Employee Benefit Plan, whether or not waived, or any other material liability to the PBGC which remains outstanding, other than the payment of premiums (and there are no premium payments which are due and unpaid which could reasonably be expected to have a Material Adverse Effect), (iii) failed to make a required material contribution or payment to a Multiemployer Plan, or (iv) failed to make a material required installment or other required payment under Section 412 of the Code, Section 302 of ERISA or the terms of such Employee Benefit Plan;

(c) No Termination Event has occurred or is reasonably expected to occur with respect to any Pension Plan or Multiemployer Plan, and neither Borrower nor any ERISA Affiliate has incurred any unpaid withdrawal liability with respect to any Multiemployer Plan;

(d) The present value of all vested accrued benefits under each Employee Benefit Plan which is subject to Title IV of ERISA, did not, as of the most recent valuation date for each

such plan, exceed the then current value of the assets of such Employee Benefit Plan allocable to such benefits;

(e) Each Employee Benefit Plan maintained by Borrower or any ERISA Affiliate, has been administered in accordance with its terms in all material respects and is in compliance in all material respects with all applicable requirements of ERISA and other Applicable Law, except for circumstances where the failure to comply or accord could not reasonably be expected to have a Material Adverse Effect;

(f) The making of the Advances will not involve any prohibited transaction under ERISA which is not subject to a statutory or administrative exemption; and

(g) No material proceeding, claim, lawsuit and/or investigation exists or, to the best knowledge of Borrower after due inquiry, is threatened concerning or involving any Employee Benefit Plan.

§6.14 No Default. As of the Agreement Date, to the best of Borrower's knowledge, there exists no Default or Event of Default.

§6.15 Hazardous Materials. Each Obligor is in compliance with all applicable Environmental Laws in all material respects. Borrower has not been notified in writing of any action, suit, proceeding or investigation which, and Borrower is not aware of any facts which, (a) calls into question, or could reasonably be expected to call into question, compliance by any Obligor with any Environmental Laws, (b) seeks to suspend, revoke or terminate any license, permit or approval necessary for the generation, handling, storage, treatment or disposal of any Hazardous Material, or (c) seeks to cause any property of any Obligor to be subject to any restrictions on ownership, use, occupancy or transferability under any Environmental Law to which such Obligor is not currently subject, which in the case of any matter described in items (a), (b) or (c) above would result in a Material Adverse Effect.

§6.16 Employment Matters. (a) Except as set forth in Schedule 6.16, none of the employees of Borrower or any Subsidiary is subject to any collective bargaining agreement and there are no strikes, work stoppages, election or decertification petitions or proceedings, unfair labor charges, equal opportunity proceedings, or other material labor/employee related controversies or proceedings pending or, to the best knowledge of Borrower, overtly threatened in writing against Borrower or any Subsidiary or between Borrower or any Subsidiary and any of its employees, other than those which would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; and

(b) Except as set forth in Schedule 6.16 or to the extent a failure to maintain compliance would not have a Material Adverse Effect, Borrower and each Subsidiary are in compliance in all respects with all Applicable Law pertaining to labor or employment matters, including without limitation those pertaining to wages, hours, occupational safety and taxation and there is neither pending nor to Borrower's knowledge overtly threatened in writing any litigation, administrative proceeding nor, to the knowledge of Borrower, any investigation, in respect of such matters which, if decided adversely, would individually or in the aggregate have a Material Adverse Effect.

§6.17 RICO. Neither Borrower nor any Subsidiary is engaged in or has engaged in any course of conduct that would subject any of its properties to any Lien, seizure or other

forfeiture under any criminal law, racketeer influenced and corrupt organizations law (civil or criminal) or other similar laws.

§6.18 Permitted Condominium Units. Schedule 6.18 sets forth a true and complete list of the Permitted Condominium Units owned by Permitted Real Estate Subsidiary. Borrower shall update Schedule 6.18 by written notice to Bank promptly upon any change to the information set forth therein.

§7. CERTAIN GENERAL COVENANTS.

As long as this Agreement is in effect, unless Bank shall otherwise consent in writing, Borrower shall perform and observe the following:

§7.1 Preservation of Existence and Properties, Scope of Business, Compliance with Law, Payment of Taxes and Claims. (a) Preserve and maintain its corporate existence and all of its other franchises, licenses, rights and privileges, (b) preserve, protect and obtain all Intellectual Property, and preserve and maintain in good repair, working order and condition all other properties, required for the conduct of its business as presently conducted, all in accordance with customary and prudent business practices, (c) engage only in the business in which it is engaged as of the Agreement Date and related businesses that in Bank's reasonable judgment are closely related thereto, provided, that Permitted Real Estate Subsidiary may acquire fee simple title to, own, lease after the acquisition of fee simple title to, and sell, fee simple title to Permitted Condominium Units from time to time (the "Permitted Condominium Business"), in each case, to the extent permitted by and subject to the terms and conditions of this Agreement, including, without limitation, §7.15, §7.16, and §7.17, (d) comply with all Applicable Laws (including all Environmental Laws and all racketeer influenced and corrupt organizations law), (e) except to the extent permitted otherwise in §§7.4(a) and 7.4(b), pay or discharge when due all Taxes owing by it or imposed upon its property (for the purposes of this clause, such Taxes shall be deemed to be due on the date after which they become delinquent), and all liabilities which might become a Lien (other than a Permitted Lien) on any of the Collateral, (f) take all action and obtain all Governmental Approvals required so that its obligations under the Credit Documents will at all times be valid and binding and enforceable in accordance with their respective terms, and (g) obtain and maintain all licenses, permits and approvals of Governmental Authorities and as are required for the conduct of its business as presently conducted, except where failure to do any of the foregoing would not have a Material Adverse Effect.

§7.2 Insurance. Maintain property, liability and flood insurance with responsible insurance companies acceptable to Bank against such risks and in such amounts as is customarily maintained by similar businesses or as may be required by Applicable Law or the Security Agreements.

§7.3 Use of Proceeds. Use each Advance only for the purposes described in §2.3 and refrain from using proceeds of any Advance to purchase or carry, or to reduce or retire or refinance any credit incurred to purchase or carry, any margin stock (within the meaning of Regulation U) or to extend credit to others for the purpose of purchasing or carrying any margin stock. If requested by Bank, Borrower shall furnish to Bank statements in conformity with the requirements of Federal Reserve Form U-1 referred to in Regulation U.

§7.4 Liens. Not incur, create or permit to exist any Lien with respect to any of the Collateral or Real Estate now owned or hereafter acquired by Borrower or any Subsidiary, other than the following ("Permitted Liens"):

(a) Liens imposed by law for taxes, assessments or charges of any Governmental Authority for claims which either are not yet delinquent or which are being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves or other appropriate provisions are being maintained in accordance with GAAP;

(b) statutory and contractual Liens of landlords, carriers, warehousemen, mechanics or materialmen on Borrower's equipment and inventory and other Liens on such equipment and inventory imposed by law or created in the ordinary course of business for amounts either which are not yet due or which are being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves or other appropriate provisions are being maintained in accordance with GAAP;

(c) Liens incurred or deposits made in the ordinary course of business (including without limitation surety bonds and appeal bonds) in connection with workers' compensation, Taxes, unemployment insurance and other types of social security benefits or to secure the performance of tenders, bids, leases, Contracts (other than for the repayment of Debt), statutory obligations and other similar obligations or arising as a result of progress payments under government Contracts;

(d) easements (including reciprocal easement agreements and utility agreements), rights-of-way, covenants, consents, reservations, encroachments, variations and zoning and other restrictions, charges or encumbrances (whether or not recorded), which do not interfere materially with the ordinary conduct of the business of Borrower and the Subsidiaries taken as a whole and which do not materially detract from the value of the property to which they attach or materially impair the use thereof to Borrower and the Subsidiaries;

(e) Liens for an amount less than \$1,000.00 in any one instance and less than \$5,000.00 in the aggregate.

§7.5 Merger and Consolidation. (a) Not consolidate with or merge into any other Person, or (b) permit any other Person to merge into it, or (c) liquidate, wind-up or dissolve or sell, transfer or lease or otherwise dispose of all or a substantial part of its assets; provided, however, after notice thereof to Bank, (i) any Subsidiary may merge, sell, transfer, lease or otherwise dispose of, all or substantially all of its assets into or consolidate with Borrower or any Subsidiary wholly owned by Borrower, (ii) any Subsidiary may liquidate, windup or dissolve so long as all of its assets (subject to its liabilities) are transferred to Borrower or to another Subsidiary, (iii) any other Person may merge into or consolidate with Borrower or any Subsidiary wholly owned by Borrower.

§7.6 Debt. Not incur or allow to exist Debt (excluding Debt described on Schedule 7.6 and Debt owed to Bank) in excess of \$100,000.00 at any one time outstanding in the aggregate, and not incur or allow to exist any Debt in connection with any Permitted Condominium Unit other than Debt resulting from a Condominium Acquisition Advance.

§7.7 Compliance with ERISA. With respect to any Pension Plan, Employee Benefit Plan or Multiemployer Plan, not:

- (a) permit the occurrence of any Termination Event which would result in a material liability on the part of Borrower or any ERISA Affiliate to the PBGC; or
- (b) permit the present value of all benefit liabilities under all Pension Plans to exceed the current value of the assets of such Pension Plans allocable to such benefit liabilities; or
- (c) permit any material accumulated funding deficiency (as defined in Section 302 of ERISA and Section 412 of the Code) with respect to any Pension Plan, whether or not waived; or
- (d) fail to make any contribution or payment to any Multiemployer Plan which Borrower or any ERISA Affiliate may be required to make under any agreement relating to such Multiemployer Plan, or any law pertaining thereto; or
- (e) engage, or permit Borrower or any ERISA Affiliate to engage, in any prohibited transaction under Section 406 or ERISA or Sections 4975 of the Code for which a civil penalty pursuant to Section 502(i) of ERISA or a tax pursuant to Section 4975 of the Code may be imposed and which would reasonably be expected to result in a Material Adverse Effect; or
- (f) permit the establishment of any Employee Benefit Plan providing post-retirement welfare benefits or establish or amend any Employee Benefit Plan which establishment or amendment could result in liability to Borrower or any ERISA Affiliate or increase the obligation of Borrower or any ERISA Affiliate to a Multiemployer Plan where such establishment or amendment would reasonably be expected to result in a Material Adverse Effect; or
- (g) fail, or permit any ERISA Affiliate to fail, to establish, maintain and operate each Employee Benefit Plan in compliance in all material respects with the provisions of ERISA, the Code and all other Applicable Law and interpretations thereof.

§7.8 Fiscal Year. Not change its Fiscal Year.

§7.9 Dissolution, etc. Not wind up, liquidate or dissolve (voluntarily or involuntarily) or commence or suffer any proceedings seeking any such winding up, liquidation or dissolution.

§7.10 Limitations of Sales and Leasebacks. Not enter into any arrangement with any Person providing for the leasing by Borrower or any Subsidiary of real or personal property, whether now owned or hereafter acquired in a related transaction or series of related transactions, which has been or is to be sold or transferred by Borrower or any Subsidiary to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of Borrower or any Subsidiary.

§7.11 Change in Control. Not cause or permit to occur any Change of Control or Material Management Change.

§7.12 Negative Pledge Clauses. Not enter into or cause, suffer or permit to exist any agreement with any Person other than Bank pursuant to this Agreement or any other Credit Documents which prohibits or limits the ability of Borrower or any Subsidiary to create, incur, assume or suffer to exist any Lien upon any of its property, except in connection with Permitted Liens.

§7.13 Intellectual Property. Not sell, assign, encumber or otherwise dispose of any of its Intellectual Property, except for the licensing of Intellectual Property in the ordinary course of business and sales, assignments or other dispositions of Intellectual Property no longer used or useful in Borrower's business; and maintain each Trademark useful in its business.

§7.14 Deposit Relationship. Maintain with Bank a cash concentration account for cash needed above regular operations plus any other amount needed for performance of this Agreement and the Notes.

§7.15 Permitted Real Estate Business. Ensure that Permitted Real Estate Subsidiary shall not acquire or own any (i) real property, other than Permitted Condominium Units owned by Permitted Real Estate Subsidiary in fee simple absolute; or (ii) personal property other than personal property related to the ownership of the Permitted Condominium Units and operation thereof.

§7.16 Compliance with Condominium Laws. Cause Permitted Real Estate Subsidiary to comply with all Applicable Laws in respect of the Permitted Real Estate Business, including, without limitation, all federal and state securities laws, and to comply with all requirements of the Declaration of Condominium.

§7.17 Cash Flow Cap. Ensure that the aggregate amount of expenditures in respect of acquisitions by Permitted Real Estate Subsidiary of Permitted Condominium Units does not exceed \$1,000,000 during any Fiscal Year.

§7.18 Condominium Debt and Liens. Ensure that Permitted Real Estate Subsidiary does not incur, create or permit to exist (i) any Debt owed by it (including, without limitation, any Debt owed by it in respect of any Permitted Condominium Unit) (other than Debt resulting from a Condominium Acquisition Advance), or (ii) any Lien on any of its assets other than a Lien on a Permitted Condominium Unit securing the Condominium Acquisition Advance through which that Permitted Condominium Unit was financed.

§7.19 Subsidiaries. Cause each Subsidiary to comply with each covenant contained in this §7 as though references therein to Borrower were references to such Subsidiary.

#### §8. CERTAIN FINANCIAL COVENANTS.

§8.1 Tangible Net Worth. As long as this Agreement is in effect, Borrower shall maintain a Tangible Net Worth of not less than \$22,000,000.00. Borrower's compliance or non-compliance with this covenant shall be tested at least quarterly at the end of each Fiscal Period using the statements described in §9.1(a) and §9.1(b).

§8.2 Fixed Charge Coverage Ratio. As long as this Agreement is in effect, Borrower shall maintain a Fixed Charge Coverage Ratio of not less than 1.1:1. Borrower's compliance or non-compliance with this covenant shall be tested quarterly for each Fiscal Period on a trailing 12-month basis using the statements described in §9.1(a) and §9.1(b).

§8.3 Net Income. As long as this Agreement is in effect, Borrower shall maintain a Net Income Attributable to Borrower and Subsidiaries of not less than \$2,000,000.00.

Borrower's compliance or non-compliance with this covenant shall be tested annually for each Fiscal Year using the statements described in §9.1(a).

§9. INFORMATION.

§9.1 Financial Statements and Information to be Furnished. As long as this Agreement is in effect, Borrower shall deliver to Bank:

(a) Year-End Statements; Accountants' and Officer's Certificates. As soon as available and in any event no later than that date which is the later of: (x) 90 days after the end of each Fiscal Year and (y) the filing of Borrower's Form 10-K if an extension was properly filed with the Securities and Exchange Commission and such Form 10-K is filed within the permitted extension (or, in the case of the certificates specified in clause (ii) below 120 days after the end of each Fiscal Year), (i) consolidated balance sheets of Borrower and the Subsidiaries as at the end of each Fiscal Year, and the notes thereto, and related consolidated statements of income, shareholders' equity and cash flow, and the respective notes thereto, for such Fiscal Year, setting forth comparative financial statements for the preceding Fiscal Year, all prepared in accordance with GAAP applied on a Consistent Basis and containing, with respect to the financial statements, opinions of independent certified public accountants of national standing selected by Borrower and reasonably acceptable to Bank, which are unqualified as to the scope of the audit performed and as to the "going concern" status of Borrower and the Subsidiaries and without any exception and (ii), within 30 days thereafter, a certificate signed by an Authorized Representative and demonstrating compliance with §§8.1, 8.2 and 8.3 and Borrower's other covenants herein.

(b) Quarterly Statements; Officer's Certificates. As soon as available and in any event within 45 days after the end of each Fiscal Period, (i) consolidated balance sheets of Borrower and the Subsidiaries as of the end of such Fiscal Period and related consolidated statements of income, shareholders' equity and cash flow, all prepared in accordance with GAAP (except for normal year-end adjustments) and (ii) within 30 days thereafter, a certificate signed by an Authorized Representative and demonstrating compliance with §§8.1, 8.2 and 8.3 and Borrower's other covenants herein.

(c) Annual Projections. As soon as available and in any event within 120 days after the end of each Fiscal Year, projections for the succeeding two (2) Fiscal Years including a balance sheet, income statement and statement of cash flow, all on a consolidated basis.

(d) Additional Materials.

(i) Promptly upon Borrower's becoming aware thereof, notice of each federal statutory Lien, tax or other state or local government Lien or other Lien (other than Permitted Liens) filed against the property of Borrower or any Subsidiary;

(ii) From time to time and within a reasonable time after Bank's request, such data, certificates, reports, statements, or further information regarding this Agreement, any other Credit Document, any Credit Extension, any Collateral or any other transaction contemplated hereby, or the business, assets, liabilities, financial condition, results of operations or business prospects of Borrower and the Subsidiaries, as Bank may request, in each case in form and substance, with a degree of detail, and certified in a manner, reasonably satisfactory to Bank.

(e) Notice of Defaults, Litigation and other Matters. Promptly after Borrower obtains knowledge thereof, notice of: (i) any Default; (ii) the commencement of any action, suit or proceeding or investigation in any court or before any arbitrator of any kind or by or before any Governmental Authority or non-governmental body against or in any other way relating adversely to or materially adversely affecting (A) Borrower or any Subsidiary, or any of its businesses or properties, that, if adversely determined, singly would result in liability more than \$150,000.00 above the amount covered by insurance or (2) otherwise would, singly or in the aggregate, have a Material Adverse Effect, or (B) in any material way this Agreement or the other Credit Documents or any transaction contemplated hereby or thereby; (iii) any amendment of the articles of incorporation or bylaws of Borrower or of the articles of incorporation, bylaws, certificate of formation or operating agreement of any Subsidiary; and (iv) any significant material adverse development in any lawsuits described in Schedule 6.5.

§9.2 Accuracy of Financial Statements and Information.

(a) Historical Financial Statements. Borrower hereby represents and warrants to Bank: (i) that the financial statements heretofore furnished to Bank are complete and correct and present fairly in all material respects, in accordance with GAAP applied on a Consistent Basis throughout the periods involved, the financial position of Borrower and the Subsidiaries on a consolidated basis as at their respective dates and the results of operations, retained earnings and, as applicable, the changes in financial position or cash flows of Borrower and Subsidiaries for the respective periods to which such statements relate, and (ii) that, except as disclosed or reflected in such financial statements, Borrower and the Subsidiaries have no liabilities, contingent or otherwise, nor any unrealized or anticipated losses as of the respective date(s) of such financial statements and required to be included in such financial statements, that, singly or in the aggregate, have had or are likely to have a Material Adverse Effect.

(b) Future Financial Statements. All financial statements delivered pursuant to §9.1, shall be complete and correct and present fairly in all material respects, in accordance with GAAP applied on a Consistent Basis (except to the extent Bank approves in writing any departures from GAAP), the financial position of Borrower and the Subsidiaries, as at their respective dates and the results of operations, retained earnings, and cash flows of Borrower and the Subsidiaries for the respective periods to which such statements relate, and their furnishing to Bank shall constitute a Representation and Warranty by Borrower made on the date they are furnished to Bank to that effect and to the further effect that, except as disclosed or reflected in such financial statements, as at the respective dates thereof, Borrower and its Subsidiaries, to Borrower's knowledge, had no liability, contingent or otherwise, nor any unrealized or anticipated loss as of the respective date(s) of such financial statements and required to be included in such financial statements, that, singly or in aggregate, has had or is likely to have a Material Adverse Effect.

(c) Historical Information. Borrower hereby represents and warrants to Bank that, to Borrower's actual knowledge, all Information furnished to Bank in writing by or at the direction of Borrower prior to the Agreement Date in connection with or pursuant to this Agreement and the relationship established hereunder, at the time it was so furnished, but in the case of Information dated as of a prior date, as of such date, (i) in the case of any such prepared in the ordinary course of business, was complete and correct in all material respects in the light of the purpose prepared, and, in the case of any such the preparation of which was requested by Bank, was complete and correct in all material respects to the extent necessary to give Bank true and accurate knowledge of the subject matter thereof, (ii) did not contain any untrue statement of a material fact, and (iii) did not omit to state a material fact necessary in order to make the



statements contained therein not misleading in the light of the circumstances under which they were made; provided, however, Borrower represents and warrants that all plans, projections and forecasts of future events or future financial results were prepared to the best of Borrower's knowledge, but does not represent or warrant the achievement of the future results or the occurrence of the future events.

(d) Future Information. All Information furnished to Bank in writing by or at the direction of Borrower on and after the Agreement Date in connection with or pursuant to this Agreement or in connection with or pursuant to any amendment or modification of, or waiver under, this Agreement, to Borrower's actual knowledge, shall, at the time it is so furnished, but in the case of Information dated as of a prior date, as of such date, (i) in the case of any such prepared in the ordinary course of business, be complete and correct in all material respects in the light of the purpose prepared, and, in the case of any such required by the terms of this Agreement or the preparation of which was requested by Bank, be complete and correct in all material respects to the extent necessary to give Bank true and accurate knowledge of the subject matter thereof, (ii) not contain any untrue statement of a material fact, and (iii) not omit to state a material fact necessary in order to make the statements contained therein not misleading, and the furnishing of them to Bank shall constitute a Representation and Warranty by Borrower made on the date they are furnished to Bank to the effect specified in clauses (i), (ii) and (iii); provided, however, that as to all plans, projections and forecasts of future events or future financial results Borrower does not represent or warrant the achievement of the future results or the occurrence of the future events.

§9.3 Additional Agreements Relating to Disclosure. As long as this Agreement is in effect, Borrower shall perform and observe the following:

(a) Accounting Methods and Financial Records. Maintain a system of accounting, and keep such books, records and accounts (which shall be true and complete), as may be required or necessary to permit (i) the preparation of financial statements required to be delivered pursuant to §9.1 and (ii) the determination of Borrower's compliance with the terms of this Agreement and the other Credit Documents.

(b) Visits and Inspections. Permit representatives (whether or not officers or employees) of Bank, from time to time during normal business hours, and as often as may be reasonably requested, to (i) visit and, upon reasonable prior notice, inspect any properties of Borrower and the Subsidiaries, (ii) inspect and make extracts from the books and records (including but not limited to management letters prepared by Borrower's independent accountants), (iii) discuss with principal officers of Borrower and the Subsidiaries and the independent accountants of each the businesses, assets, liabilities, financial conditions, results of operations and business prospects of Borrower and the Subsidiaries and (iv) inspect the Collateral and the premises upon which any thereof is located, and verify the amount, quality, quantity, value and condition thereof of, or any other matter relating thereto.

#### §10. DEFAULT.

§10.1 Events of Default. Each of the following shall constitute an Event of Default, whatever the reason for such event and whether it is voluntary or involuntary, or within or without the control of Borrower, or is effected by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any Governmental Authority or quasi-governmental body:

(a) Borrower fails to pay when due any amount in respect of principal of or interest on any Advance or any Note or any amount owing with respect to an SBLC; or Borrower fails to pay when due any other Obligation which failure is not cured within any applicable cure period; or

(b) Any Representation and Warranty at any time proves to have been incorrect, misleading or incomplete when made or deemed made; or

(c) Borrower defaults in the performance or observance of any covenant contained in §8 or §9 hereof; or

(d) Borrower defaults in the performance or observance of any term, covenant, condition or agreement contained in this Agreement (other than a default described in §10.1(a) or (c)) and, if the default is reasonably capable of being cured, such default shall remain uncured for a period of 30 days after written notice thereof to Borrower; or

(e) Any Obligor defaults in the performance or observance of any term, covenant, condition or agreement contained in any Credit Document (other than this Agreement) and, if the default is reasonably capable of being cured, such default remains uncured for a period of 30 days after written notice thereof to Borrower or such Obligor; or

(f) (i) Borrower or any Subsidiary (A) commences a voluntary case under the Federal bankruptcy laws (as now or hereafter in effect) or under any other bankruptcy or insolvency law of any jurisdiction, (B) files a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, (C) consents to, or fail to contest in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other laws, (D) applies for, or consent to, or fails to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its assets, domestic or foreign, (E) admits in writing its inability to pay, or generally not be paying, its debts (other than those that are the subject of bona fide disputes) as they become due, (F) makes a general assignment for the benefit of creditors, or (G) takes any corporate action for the purpose of effecting any of the foregoing; or

(ii) A case or other proceeding is commenced against Borrower or any Subsidiary in any court of competent jurisdiction seeking (A) relief under the Federal bankruptcy laws (as now or hereafter in effect) or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of Borrower or any Subsidiary of all or any substantial part of the assets, domestic or foreign, of Borrower or such Subsidiary or, and, in each case, such case or proceeding shall continue undismissed or unstayed for a period of 60 days, or an order granting the relief requested in such case or proceeding against Borrower or such Subsidiary (including, but not limited to, an order for relief under such Federal bankruptcy laws) shall be entered; or

(g) A judgment or order for the payment of money in an amount that exceeds by \$150,000.00 the amount of insurance coverage applicable thereto is entered against Borrower or any Subsidiary by any court and either (A) such judgment or order shall continue undischarged and/or unbonded or unstayed for a period of 30 days or (B) enforcement proceedings shall have been commenced upon such judgment or order; or

(h) Any Obligor makes any written statement or brings any action challenging the enforceability or binding effect of any of the Credit Documents; or

(i) The dissolution of any Obligor occurs, except as expressly permitted herein; or

U) A Change of Control or a Material Management Change occurs; or

(k) Borrower or any Subsidiary engages, or is indicated for engaging, in any conduct or activity that constitutes a felony (or the equivalent thereof under Applicable Law); or

(l) All or a substantial part of the Collateral is nationalized, expropriated, seized or otherwise appropriated, or custody or control of such property or of any Collateral or Real Estate is assumed by any Governmental Authority or any court of competent jurisdiction at the instance of any Governmental Authority and the same has or is reasonably likely to have a Material Adverse Effect; or

(m) Borrower breaches any of the material terms or conditions of any agreement under which any Rate Hedging Obligation is created and such breach continues beyond any applicable grace period, or any action is taken by Borrower to discontinue (except with the consent of Bank if it is a counterparty to such agreement) or assert the invalidity or unenforceability of any such agreement or Rate Hedging Obligation; or

(n) Bank fails or ceases to have a perfected, first-priority (subject to Permitted Liens) security interest in any of the Collateral; or

(o) Bank determines in good faith that it is insecure, that a material adverse change in any Obligor's financial condition has occurred, or that any Obligor's ability to perform its or his obligations under any Credit Document has been materially impaired; or

(p) There occurs an Event of Default under or as defined in any agreement made by an Obligor with or in favor of Bank with respect to an SBLC; or

(q) A Project Subsidiary's lease of a Restaurant is terminated; or

(r) Borrower or any Project Subsidiary defaults in the payment of any Debt in excess of \$100,000.00; or

(s) Borrower or any Project Subsidiary makes any transfer of assets owned by it for less than their equivalent value; or

(t) There occurs an Event of Default as that term is defined in any credit agreement, security agreement, note or mortgage made by Borrower or a Subsidiary with or in favor of Bank (other than a Credit Document), including, but not limited to, an Event of Default as that term is defined in the Term Credit Agreement.

§10.2 Remedies. (a) If and at any time after a Default occurs, Bank's obligation to make Advances hereunder shall, at Bank's sole option, be suspended; provided, however, if Borrower cures such event or condition to Bank's satisfaction prior to its becoming an Event of Default, such obligation shall be reinstated. Upon the occurrence of an Event of Default, Bank's obligation to make Advances hereunder shall, at Bank's option, terminate.

(b) At any time after the occurrence of an Event of Default, Bank may, by notice to Borrower, (i) declare the Notes and all Advances and interest accrued thereon and all other amounts (including contingent obligations) owing under the Credit Documents to be immediately due and payable, whereupon the Notes, all Advances, all such interest and all such other amounts shall become and be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Borrower and (ii) direct Borrower to pay to Bank as cash collateral an amount equal to 105 percent of the maximum amount that may potentially be drawn or required to be paid under SBLCs then outstanding or open, whereupon such amount shall be and become immediately due and payable; provided, however, that upon the occurrence of an Event of Default described in §10.1(f), such obligation of Bank shall automatically terminate, the Notes, all Advances, all such interest and all such other amounts shall automatically become and be due and payable in full without presentment, demand, protest or notice of any kind and the aforesaid amount of cash collateral shall automatically become and be due and payable in full without demand or notice.

§10.3 No Waiver; Remedies Cumulative. No failure on the part of Bank to exercise, and no delay in exercising, any right under any Credit Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Credit Document preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Credit Documents are cumulative and not exclusive of any remedies provided by Applicable Law or the other Credit Documents.

#### §11. MISCELLANEOUS.

§11.1 Amendments, Etc. No amendment or waiver of any provision of this Agreement or other Credit Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the amendment or waiver is in writing and signed by the party against whom enforcement is sought and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

§11.2 Costs. Expenses and Taxes. Borrower shall pay (or, if already paid, reimburse Bank for) on demand: (a) all reasonable costs and expenses in connection with the preparation, execution, delivery, filing, recording and administration of the Credit Documents, including the reasonable fees and out-of-pocket expenses of counsel for Bank, with respect thereto, with respect to any modifications thereof, with respect to reviewing and evaluating any Collateral and with respect to advising Bank as to its rights and responsibilities under the Credit Documents after an Event of Default or Default, (b) all costs and expenses (including reasonable counsel fees and expenses, including those incurred at the appellate level and in any insolvency proceedings) in connection with the enforcement of the Credit Documents, and (c), without limiting the generality of clause (a) above, all surveying costs, all appraisal fees, all environmental review costs, all title insurance premiums, all search costs, all filing fees and all Collateral inspection expenses. Bank is hereby irrevocably authorized (but not required) to deduct any of the foregoing items from any account of Borrower with Bank or to make an Advance to pay for it (whether or not requested); provided, that Bank shall provide to Borrower a statement of such items before any such deduction. In addition, Borrower shall pay on demand any and all documentary stamp, intangibles and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing or recording of the Credit Documents or in connection with any Advances, and agrees to indemnify and save Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees. Without limiting the force or effect of the immediately preceding sentence, Borrower hereby authorizes Bank to deduct from the amount

of any Advance that is disbursed to Borrower the amount of any intangibles or documentary stamp tax that may be payable in connection with such Advance.

§11.3 Certain Collateral. As security for all Obligations, Borrower hereby grants Bank a continuing lien on and security interest in all deposit accounts (whether now existing or hereafter established) of Borrower with Bank or any affiliate thereof and all other property of Borrower that is now or hereafter owed by or in the possession or control of any branch or affiliate of Bank. At any time after an Event of Default, Bank may set off and apply any such deposit accounts against any and all obligations of Borrower under the Credit Documents, provided Bank shall have made demand on Borrower under a Credit Document. Bank shall endeavor to promptly notify Borrower after any such setoff has been made but shall not be liable to Borrower for failing to do so.

§11.4 No Joint Venture. Nothing contained in any Credit Document shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or joint venture or of any association between Bank and Borrower other than the relationship of creditor and debtor.

§11.5 Survival. All covenants, agreements and Representations and Warranties made by Borrower in this Agreement shall, notwithstanding any investigation by Bank, be deemed material and have been relied upon by Bank and shall survive the execution and delivery to Bank of this Agreement.

§11.6 Further Assurances. Borrower shall, upon the request of Bank, execute and deliver such further documents and do such further acts as Bank may reasonably request in order to fully effectuate the purposes of any Credit Document. In addition, without limiting the generality of the foregoing, Borrower shall promptly do (and shall cause any Obligor to do) whatever Bank requests to cure any obvious error (including any omission) in any of the Credit Documents.

§11.7 Sovereign Immunity; Government Interference. To the extent that Borrower or a Subsidiary has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment in aid of execution, attachment prior to judgment, execution or otherwise) with respect to itself or its property, Borrower hereby irrevocably waives such immunity in respect of its obligations hereunder or any other Credit Documents. In addition, Borrower hereby irrevocably waives, as a defense to any action arising out of or relating hereto, the interference of any administrative or governmental authority of the jurisdiction(s) in which Borrower is domiciled or the impossibility of performance resulting from any law or regulation, or from any change in the law or regulations, of such jurisdiction(s).

§11.8 Assignment. This Agreement may not be assigned by Borrower without Bank's prior written consent and any such assignment or attempted assignment without such prior written consent shall be null and void. Bank, without Borrower's consent, but with prior written notice, may assign, in whole or in part, this Agreement, any other Credit Documents and any Advances and, in connection therewith, may make whatever disclosures regarding Borrower, any Subsidiaries or any of the Collateral or Real Estate it considers desirable. This Agreement shall be binding upon and shall inure to the benefit of Borrower's and Bank's respective successors and assigns. With respect to Borrower's successors and assigns, such successors and assigns shall include any receiver, trustee or debtor-in-possession of or for Borrower.

§11.9 Notices. All notices, requests, approvals, consents and other communications provided for hereunder shall be in writing and hand-delivered by a reputable national courier service such as FedEx, if to Borrower, at its address at 85 Fifth Avenue, New York, New York 10003, Attention: Chief Financial Officer, and if, to Bank, at its address at 1120 Avenue of the Americas, New York, New York 10036-2790, Attention: General Counsel, or, as to each party, at such other address as shall be designated by such party in a written notice to the other party. All such communications shall, when hand-delivered, be effective when received or refused except that notices to Bank shall not be effective unless and until received by an officer of Bank.

§11.10 Taxes. All payments provided for herein or in any other Credit Documents shall be made free and clear of any deductions for any present or future Taxes. If any Taxes are imposed or required to be withheld from any payment, then, to the extent such Taxes are generally paid by other borrowers of Bank, Borrower shall (a) increase the amount of such payment so that Bank will receive a net amount (after deduction of all Taxes) equal to the amount due hereunder and (b) promptly pay all Taxes to the appropriate taxing authority for the account of Bank and, as promptly as possible thereafter, send Bank an original receipt showing payment thereof, together with such additional documentary evidence as Bank may from time to time reasonably require. Borrower shall indemnify Bank from and against any and all Taxes (irrespective of when imposed) and any related interest and penalties that may become payable by Bank as a consequence of Borrower's failure to perform any of its obligations under the preceding sentence.

§11.11 Entire Agreement. This Agreement and the other Credit Documents supersede all prior negotiations, communications and agreements (written or oral), discussions and correspondence concerning the subject matter hereof. Borrower and Bank agree that any inconsistency or discrepancy between the provisions of this Agreement and any other documentation evidencing the Obligations of Borrower to Bank, shall be resolved in the manner most favorable to Bank.

§11.12 Counterparts; Electronic Transmission. This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original and all of which, taken together, shall constitute one and the same Agreement. Delivery of any executed counterpart of this Agreement by electronic transmission shall be effective as delivery of a manually executed counterpart hereof. Borrower acknowledges that information and documents relating to this Agreement and the credit accommodations provided for herein may be transmitted through electronic means.

§11.13 Patriot Act Notice; OFAC. Bank hereby notifies Borrower and the Subsidiaries that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended (the "Patriot Act"), and Bank's policies and practices, Bank is required to obtain, verify and record certain information and documentation that identifies Borrower and the Subsidiaries, which information includes the name and address of Borrower and the Subsidiaries and such other information that will allow Bank to identify Borrower and the Subsidiaries in accordance with the Patriot Act. Borrower represents and covenants that neither it nor any Subsidiary will knowingly become a person (individually, a "Prohibited Person" and collectively "Prohibited Persons") listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury (the "OFAC List") or otherwise subject to any other prohibitions or restriction imposed by laws, rules, regulations or executive orders, including Executive Order No. 13224, administered by OFAC (collectively the "OFAC Rules"). Borrower represents and

covenants that neither it nor any Subsidiary (a) is or will become directly or indirectly owned or controlled by a Prohibited Person, (b) is acting or will knowingly act for or on behalf of a Prohibited Person, (c) is (to Borrower's knowledge) otherwise associated with or will knowingly become associated with a Prohibited Person, (d) is providing or will knowingly provide any material, financial or technological support for or financial or other service to or in support of acts of terrorism or a Prohibited Person. Borrower will not knowingly transfer any interest in Borrower to a Prohibited Person and will ensure no Subsidiary does so. Borrower shall immediately notify Bank if Borrower or any Subsidiary has knowledge that any member or beneficial owner of Borrower or a Subsidiary or any constituent entity thereof is or becomes a Prohibited Person or (i) is indicted on or (ii) arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Borrower will not enter into any transaction or undertake any activities related to the Credit Extensions in violation of the federal Bank Secrecy Act, as amended ("BSA"), 31 U.S.C. §5311, et seq. or any federal or state laws, rules, regulations or executive orders, including, but not limited to, 18 U.S.C. §§1956, 1957 and 1960, prohibiting money laundering and terrorist financing (collectively, "Anti-Money Laundering Laws") and will ensure no Subsidiary does so. Borrower shall (A) not use or knowingly permit the use of any proceeds of the Credit Extensions in any way that will violate either the OFAC Rules or Anti-Money Laundering Laws and will ensure no Subsidiary does so, (B) comply and cause all of the Subsidiaries to comply with applicable OFAC Rules and Anti-Money Laundering Laws, (C) provide information as Bank may require from time to time to permit Bank to satisfy its obligations under the OFAC Rules and/or the Anti-Money Laundering Laws and (D) not knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the foregoing, and ensure that no Subsidiary does so.

§11.14 Severability. The provisions of this Agreement and each other Credit Document are severable and if any provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall not in any manner affect or invalidate such provision in any other jurisdiction or any other provision of any of the Credit Documents in any jurisdiction.

§11.15 No Third-Party Reliance; Not a Fiduciary, Etc. (a) The agreements of Bank hereunder are made solely for the benefit of Borrower and the benefit of Bank, as applicable, and may not be relied upon or enforced by any other person.

(b) Borrower hereby acknowledges that Bank is acting pursuant to a contractual relationship on an arm's-length basis, and the parties hereto do not intend that Bank act or be responsible as a fiduciary to Borrower, Borrower's management, stockholders, creditors or any other person. Borrower and Bank hereby expressly disclaim any fiduciary relationship and agree each party is responsible for making its own independent judgments with respect to any transactions entered into between the parties. Borrower also hereby acknowledges that Bank has not advised and is not advising Borrower as to any legal, accounting, regulatory or tax matters, and that Borrower is consulting its own advisors concerning such matters to the extent Borrower deems it appropriate.

§11.16 Further Assurances; Corrections of Defects. Borrower intending to be legally bound hereby, agrees to promptly correct any defect, error or omission, upon the request of Bank, which may be discovered in the contents of any of the Credit Documents, or in the execution or acknowledgement hereof, and Borrower shall execute, or re-execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Bank to satisfy the terms and conditions of the Credit Documents,

and all documents executed in connection therewith, including but not limited to the recording, filing or perfecting of any document given for securing and perfecting liens, mortgages, security interests and interests to secure the obligations evidenced by the Credit Documents, and shall cause each Project Subsidiary to do so.

§11.17 Usury Savings Clause. Borrower and Bank intend that interest not be charged at a rate or in an amount exceeding the maximum rate or amount permitted by Applicable Law. Should any interest or other charges paid or payable hereunder result in the computation or earning of interest in excess of the maximum rate or amount of interest permitted by Applicable Law, such excess interest and charges shall be (and the same hereby are) waived by Bank, and the amount of such excess paid shall be automatically credited against, and be deemed to have been payments in reduction of, the principal then due hereunder, and any portion of such excess paid which exceeds the principal then due hereunder shall be paid by Bank to Borrower.

§11.18 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to any conflicts-of-law rule or principle that would give effect to the law of another jurisdiction.

§11.19 Jurisdiction. Borrower hereby irrevocably agrees that any action or proceeding relating to any Credit Document that is brought by Bank may be tried by the courts of the State of New York sitting in or for New York County, New York, or the United States district courts sitting in or for such county. Borrower hereby irrevocably submits, in any such action or proceeding, to the non-exclusive jurisdiction of each such court and irrevocably waives the defense of an inconvenient forum with respect to any such action or proceeding.

§11.20 Illegality. Bank shall have no obligation to make any Advance or issue any SBLC if its doing so would or might violate any Applicable Law.

§11.21 Approvals and Consents. Bank may grant or deny any approval or consent contemplated hereby in its reasonable discretion, except as otherwise provided herein.

§11.22 No Representations Regarding Renewal, Etc. Borrower acknowledges that Bank has not agreed with or represented to Borrower that the facility created hereby will be renewed or extended past the Commitment Termination Date or that any Advances will be made on or after the Commitment Termination Date.

§11.23 Indemnification; Limitation of Liability. Borrower shall indemnify and hold harmless Bank and each of its affiliates and their respective officers, directors, employees, agents and advisors (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities, costs and expenses (including without limitation reasonable attorneys' fees) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including without limitation in connection with any investigation, litigation, or proceeding or preparation of defense in connection therewith) the Credit Documents, any Collateral, any of the transactions contemplated herein or the actual or proposed use of the proceeds of any Advance or the manufacture, storage, transportation, release or disposal of any Hazardous Material on, from, over or affecting any of the Collateral or any of the assets, properties or operations of Borrower, any Subsidiary or any predecessor in interest, directly or indirectly, except to the extent such claim, damage, loss, liability, cost or expense results from such Indemnified Party's gross negligence or willful misconduct or willful breach of this Agreement. In the case of an



investigation, litigation or other proceeding to which the indemnity in this §11.23 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by Borrower, its directors, shareholders or creditors or an Indemnified Party or any other Person or any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. Borrower hereby waives and agrees not to assert any claim against Bank, any of its affiliates, or any of their respective directors, officers, employees, attorneys, agents and advisers, on any theory of liability, for special, indirect, consequential, or punitive damages arising out of or otherwise relating to the Credit Documents, any of the transactions contemplated herein or therein or the actual or proposed use of the proceeds of any Advance. To the extent that any of the indemnities required from Borrower under this §11.23 are unenforceable because they violate any Applicable Law or public policy, Borrower shall pay the maximum amount which it is permitted to pay under Applicable Law.

§11.24 Acknowledgement, Waiver and Release. Borrower acknowledges that no Default or Event of Default exists as of the date hereof under the Prior Agreement, acknowledges that it has no defense, counterclaim or offset, or any rights therefor, with respect to its obligations under the Prior Agreement or any of the Credit Documents referred to therein, and waives and releases any such defense, counterclaim or offset, or any rights therefor that it may have. Neither this Agreement nor any of the other Credit Documents shall constitute a novation of the indebtedness and security interests in effect on the date hereof with respect to any of the Advances outstanding on the Agreement Date. BORROWER HEREBY RELEASES BANK, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND AFFILIATES FROM ANY CLAIMS, CAUSES OF ACTION, COSTS OR EXPENSES ORIGINATING IN WHOLE OR IN PART BEFORE THE DATE OF THIS AGREEMENT WITH RESPECT TO ANY ADVANCES, THE DOCUMENTATION THEREFOR AND THE COLLATERAL THEREFOR.

§11.25 Reaffirmation of Liens. Borrower hereby ratifies, confirms and reaffirms the grant by it of all liens and security interests in the Borrower Collateral and its obligations under each and any security agreement, pledge agreement and other Credit Document heretofore made in favor of Bank, hereby confirms that this Agreement does not constitute a novation, payment or termination of the Obligations and the other Credit Documents as in effect prior to the Agreement Date and hereby confirms that all of the Borrower Collateral will continue to secure the payment and performance of all of the Obligations (including as any such Obligations may be amended, extended, renewed or replaced under this Agreement). Without limiting the generality of the foregoing, that certain Amended and Restated Security Agreement, dated October 21, 2015, made by Borrower in favor of Bank shall henceforth secure without limitation, and the term "the Obligations" as used therein shall henceforth include without limitation, all obligations of Borrower now or hereafter existing under this Agreement, the Term Credit Agreement, the Notes and the Term Facility Notes. Furthermore, Borrower agrees and acknowledges that the provisions of that certain Amended and Restated Control Agreement, dated as of October 21, 2015, by and among Borrower, Ark Las Vegas Restaurant Corp., Bank and Davidoff Hutcher & Citron, LLP shall remain in full force and effect, notwithstanding that some or all of the documents and credit extensions referred to in the "BACKGROUND" section thereof have been replaced, added to and/or restructured by the Credit Documents.

§11.26 Jury Trial Waiver. BORROWER AND BANK HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY AND ALL RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY CLAIMS, CROSS CLAIMS OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENTS TO WHICH EITHER IS A PARTY. BORROWER HEREBY CERTIFIES THAT NO

REPRESENTATIVE OR AGENT OF BANK NOR BANK'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. BORROWER ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION HAVE BEEN A MATERIAL INDUCEMENT TO BANK TO ENTER INTO THIS AGREEMENT AND TO MAKE ADVANCES HEREUNDER.

**(Signature pages follow)**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date hereof.

**ARK RESTAURANTS CORP.**

By: /s/ Robert J. Stewart

Name: Robert J. Stewart

Title: President

Signature Page to  
Amended and Restated Credit Agreement (Revolving Facility)  
(Ark Restaurants Corp.)

**BANK HAPOALIM B.M.**

By: /s/ Mitchell Barnett  
Name: MITCHELL BARNETT  
Title: Executive Vice President

Signature Page to  
Amended and Restated Credit Agreement (Revolving Facility)  
(Ark Restaurants Corp.)

**EXHIBIT A-1**

**FORM OF BORROWING NOTICE FOR  
PROJECT COSTS ADVANCE**

**BORROWING NOTICE**

Bank Hapoalim B.M.  
1120 Avenue of the Americas  
New York, New York 10036-2790  
Attention: \_\_\_\_\_

Date: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Borrowing Notice No.: \_\_\_\_\_

Re: Amended and Restated Credit Agreement (Revolving Facility) dated as of a date in April, 2018 (the "Credit Agreement") by and between Ark Restaurants Corp., a New York corporation ("Borrower") and Bank Hapoalim B.M. ("Bank")

1. Pursuant to the Credit Agreement, Borrower hereby requests a Project Costs Advance in the amount of\$ \_\_\_\_\_ to be contributed by Borrower to \_\_\_\_\_ [insert name of Project Subsidiary] ("Project Subsidiary") to be used to pay Project Costs for [insert name of Project] (the "Project") in accordance with the Approved Project Budget for that Project. Capitalized terms used herein but not otherwise defined herein shall have the meanings given such terms in the Credit Agreement. Borrower acknowledges that the amount of the requested Advance is subject to inspection, verification and available funds.

2. Borrower agrees to provide, if requested by Bank, a listing of all vendors showing the name and the amount currently due each party for whom Project Subsidiary is obligated for labor, material and/or services supplied with respect to the Project. This information would be provided in support of the amount of the Advance requested in this Borrowing Notice.

3. Borrower hereby represents and warrants that, except as otherwise disclosed in Section 7 hereof:

(a) Borrower is in compliance with all of the conditions precedent to the Advance requested hereby set forth in the Credit Agreement;

(b) All Representations and Warranties made hereunder or under any of the Credit Documents are true and correct in all material respects as of the date hereof, except to the extent such Representation and Warranty is made as of a specified date, in which case such Representation and Warranty is true and correct in all material respects as of such specified date;

(c) No Default or Event of Default exists as of the date hereof, with or without giving effect to such Advance and to the application of the proceeds thereof;

(d) All Advances previously disbursed to Borrower have been used for the purposes set forth in the Credit Agreement;

(e) All outstanding claims for labor, materials and/or services furnished for the Project prior to the date hereof have been paid or will be paid with the Advance requested hereby;

(f) All Project Costs for the Project incurred prior to the date hereof are in substantial compliance with the Approved Project Budget for the Project;

(g) Borrower understands that this Borrowing Notice is made for the purposes of inducing Bank to make a Project Costs Advance to Borrower and that, in making such Advance, Bank will rely upon the accuracy of the matters stated herein.

4. Disbursement of the requested Advance may be subject to the receipt by Bank of fulfillment of the conditions set forth in a title report or certificate from a title company stating that no claims have been filed of record adversely affecting the title of Project Subsidiary to the Project Subsidiary Collateral subsequent to the filing of the Mortgage.

5. Borrower hereby certifies that the statements made in this Borrowing Notice and any documents submitted herewith an identified herein are true and correct in all material respects. Borrower further certifies that it has caused this Borrowing Notice to be signed on its behalf by the undersigned, who is an Authorized Representative.

6. Borrower requests that this Advance be made to, and the funds for such Advance be deposited in, the Borrowing Account with Bank.

7. Disclosure: \_\_\_\_\_

**IN WITNESS WHEREOF**, Borrower has executed and delivered this Borrowing Notice to Bank as of the date set forth above.

**ARK RESTAURANTS CORP.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A-2**

**FORM OF BORROWING NOTICE FOR  
WORKING CAPITAL ADVANCE**



**BORROWING NOTICE**

Bank Hapoalim B.M.  
1120 Avenue of the Americas  
New York, New York 10036-2790  
Attention: \_\_\_\_\_

Date: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Borrowing Notice No.: \_\_\_\_\_

Re: Amended and Restated Credit Agreement (Revolving Facility) dated as of a date in April, 2018 (the "Credit Agreement") by and between Ark Restaurants Corp., a New York corporation ("Borrower") and Bank Hapoalim B.M. ("Bank")

1. Pursuant to the Credit Agreement, Borrower hereby requests a Working Capital Advance in the amount of \$ \_\_\_\_\_ to be used as follows:

Capitalized terms used herein but not otherwise defined herein shall have the meanings given such terms in the Credit Agreement. Borrower acknowledges that the amount of the requested Advance is subject to inspection, verification and available funds.

2. Borrower hereby represents and warrants that, except as otherwise disclosed in Section 5 hereof:

(a) Borrower is in compliance with all of the conditions precedent to the Advance requested hereby set forth in the Credit Agreement;

(b) All Representations and Warranties made hereunder or under any of the Credit Documents are true and correct in all material respects as of the date hereof, except to the extent such Representation and Warranty is made as of a specified date, in which case such Representation and Warranty is true and correct in all material respects as of such specified date;

(c) No Default or Event of Default exists as of the date hereof, with or without giving effect to such Advance and to the application of the proceeds thereof;

(d) All Advances previously disbursed to Borrower have been used for the purposes set forth in the Credit Agreement;

(e) Borrower understands that this Borrowing Notice is made for the purposes of inducing Bank to make a Working Capital Advance to Borrower and that, in making such Advance, Bank will rely upon the accuracy of the matters stated herein.

3. Borrower hereby certifies that the statements made in this Borrowing Notice and any documents submitted herewith an identified herein are true and correct in all material respects. Borrower further certifies that it has caused this Borrowing Notice to be signed on its behalf by the undersigned, who is an Authorized Representative.

4. Borrower requests that this Advance be made to, and the funds for such Advance be deposited in, the Borrowing Account with Bank.

5. Disclosure: \_\_\_\_\_

**IN WITNESS WHEREOF**, Borrower has executed and delivered this Borrowing Notice to Bank as of the date set forth above.

**ARK RESTAURANTS CORP.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A-3**

**FORM OF BORROWING NOTICE FOR  
CONDOMINIUM ACQUISITION ADVANCE**

**BORROWING NOTICE**

Bank Hapoalim B.M.  
1120 Avenue of the Americas  
New York, New York 10036-2790  
Attention: \_\_\_\_\_

Date: \_\_\_\_\_

Borrowing Notice No.: \_\_\_\_\_

Re: Amended and Restated Credit Agreement (Revolving Facility) dated as of a date in April, 2018 (the "Credit Agreement") by and between Ark Restaurants Corp., a New York corporation ("Borrower") and Bank Hapoalim B.M. ("Bank")

1. Pursuant to the Credit Agreement, Borrower hereby requests a Condominium Acquisition Advance in the amount of \$ \_\_\_\_\_ to be contributed by Borrower to Ark Island Beach Real Estate, LLC ("Permitted Real Estate Subsidiary") to be used by Permitted Real Estate Subsidiary to purchase the following Condominium Unit(s) in Island Beach Club, a Condominium, in St. Lucie County, Florida (the "Units"): \_\_\_\_\_

Attached hereto is a copy of the purchase contract(s) for the Units. Capitalized terms used herein but not otherwise defined herein shall have the meanings given such terms in the Credit Agreement. Borrower acknowledges that the amount of the requested Advance is subject to inspection, verification and available funds.

2. Borrower hereby represents and warrants that, except as otherwise disclosed in Section 6 hereof:

(a) Borrower is in compliance with all of the conditions precedent to the Advance requested hereby set forth in the Credit Agreement;

(b) All Representations and Warranties made hereunder or under any of the Credit Documents are true and correct in all material respects as of the date hereof, except to the extent such Representation and Warranty is made as of a specified date, in which case such Representation and Warranty is true and correct in all material respects as of such specified date;

(c) No Default or Event of Default exists as of the date hereof, with or without giving effect to such Advance and to the application of the proceeds thereof;

(d) All Advances previously disbursed to Borrower have been used for the purposes set forth in the Credit Agreement;

(e) Borrower understands that this Borrowing Notice is made for the purposes of inducing Bank to make a Condominium Acquisition Advance to Borrower and that, in making such Advance, Bank will rely upon the accuracy of the matters stated herein.

3. Disbursement of the requested Advance will be subject to fulfillment of the conditions set forth in §5.3 of the Credit Agreement.

4. Borrower hereby certifies that the statements made in this Borrowing Notice and any documents submitted herewith an identified herein are true and correct in all material respects. Borrower further certifies that it has caused this Borrowing Notice to be signed on its behalf by the undersigned, who is an Authorized Representative.

5. Borrower requests that this Advance be made to, and the funds for such Advance be deposited in, the Borrowing Account with Bank.

6. Disclosure: \_\_\_\_\_

**IN WITNESS WHEREOF**, Borrower has executed and delivered this Borrowing Notice to Bank as of the date set forth above.

**ARK RESTAURANTS CORP.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT B**

**FORM OF TERM NOTE**

**TERM PROMISSORY NOTE**

\$ \_\_\_\_\_

Date: \_\_\_\_\_, 20 \_\_\_\_

**FOR VALUE RECEIVED**, the undersigned, **ARK RESTAURANTS CORP.**, a New York corporation, ("**Borrower**") hereby absolutely and unconditionally promises to pay to the order of **BANK HAPOALIM B.M.** ("**Bank**"):

- a. The principal amount of \_\_\_\_\_ and no/100 Dollars (\$ \_\_\_\_\_), which shall be due and payable at the times and in the manner set forth in §3.2(a) of the Credit Agreement referred to below; provided, that any and all principal hereof then remaining unpaid shall be due and payable on \_\_\_\_\_, 20 \_\_\_\_; and
- b. Interest on the principal amount hereof from time to time outstanding from the date hereof through and including the date on which such principal amount is paid in full, at the times, at the rates and in the manner provided in the Credit Agreement referred to below.

This Term Promissory Note (this "**Note**") has been issued by Borrower in accordance with the terms of §3.2(a) of that certain Amended and Restated Credit Agreement (Revolving Facility) dated as of a date in April, 2018, between Borrower and Bank, as amended, modified, supplemented or restated and in effect from time to time (the "**Credit Agreement**") and is a Term Note referred to in the Credit Agreement. This Note constitutes a renewal of the outstanding principal amount of those Advances made by Bank to Borrower under the Credit Agreement, and under that certain Replacement Revolving Promissory Note dated in April, 2018 issued by Borrower to the order of Bank in the face principal amount of \$10,000,000.00 (the "**Revolving Note**"), with respect to \_\_\_\_\_ [insert name of Project Subsidiary] for the \_\_\_\_\_ Project defined or described in Borrowing Notice(s) submitted by Borrower to Bank for such Project pursuant to the Credit Agreement. This Note constitutes a renewal of only those Advances described in the preceding sentence made to \_\_\_\_\_ [insert name of Project Subsidiary] with respect to such Project and is not intended to be, and shall not be construed as, a renewal of the outstanding principal amount of any other Advances evidenced by the Revolving Note with respect to any other Project Subsidiary or other Project. Bank and any holder hereof is entitled to the benefits of the Credit Agreement and may enforce the agreements of Borrower contained therein, and any holder hereof may exercise the remedies provided for thereby or otherwise available in respect thereof, all in accordance with the terms thereof. Borrower may not reborrow principal repaid under this Note. All capitalized terms used in this Note and not otherwise defined herein shall have the same meanings herein as in the Credit Agreement.

If any one or more Events of Default shall occur, the entire unpaid principal amount of this Note and all of the unpaid interest accrued thereon may become or be declared due and payable in the manner and with the effect provided in the Credit Agreement.

No delay or omission on the part of Bank or any holder hereof in exercising any right hereunder shall operate as a waiver of such right or of any other rights of Bank or such holder, nor shall any delay, omission or waiver on any one occasion be deemed a bar or waiver of the same or any other right on any future occasion.

Borrower and any and every endorser and guarantor of this Note or the obligation represented hereby waive all requirements of diligence in collection, presentation, demand, notice, protest, notice of intent to accelerate, notice of acceleration, and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note, assent to any extension or postponement of the time of payment or any other indulgence, and to the addition or release of any other party or person primarily or secondarily liable.

This Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to any conflicts-of-law rule or principle that would give effect to the law of any other jurisdiction.

BORROWER AND (BY ACCEPTANCE HEREOF) BANK EACH WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING HEREUNDER OR RELATING HERETO.

**IN WITNESS WHEREOF**, Borrower has caused this Note to be signed under seal by its duly authorized officer as of the date first set forth above.

**ARK RESTAURANTS CORP.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT C**

**FORM OF AGREEMENT NOT TO TRANSFER OR ENCUMBER PROPERTY**

Prepared by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



SPACE ABOVE THIS LINE FOR

RECORDING DATA

NOTE TO CLERK OF CIRCUIT COURT: This instrument is not intended to secure a debt or to constitute a lien on real property. Accordingly, no documentary stamp tax or intangibles tax is due with respect to this instrument.

**NON-TAXABLE AGREEMENT NOT TO TRANSFER OR ENCUMBER PROPERTY**

KNOW ALL MEN BY THESE PRESENTS: Ark Island Beach Real Estate, LLC, a Delaware limited liability company ("Owner"), for good and valuable consideration (the receipt and adequacy of which are hereby acknowledged) and for the purpose of inducing Bank Hapoalim B.M. ("Bank") to extend credit to Ark Restaurants Corp. (the "Borrower") and/or others, Owner hereby warrants to and agrees with Bank as follows:

1. Owner owns fee simple title to the condominium parcels described in Exhibit "A" hereto (the "Property") free of any liens or other encumbrances.
2. Without Bank's prior written consent (which may be arbitrarily withheld), Owner shall not (a) convey or transfer the Property or any interest therein or (b) create or permit any lien or other encumbrance to exist on or in the Property or on or in any interest therein or any rents or other proceeds thereof.
3. This instrument shall be released if and when (and only if and when) all obligations owing to Bank under that certain Amended and Restated Credit Agreement (Revolving Facility), dated as of a date in or about May, 2018 (as from time to time amended, supplemented or otherwise modified, the "Credit Agreement" or the "Agreement"), by and between Borrower and Bank, and the other Credit Documents (as that term is defined in the Credit Agreement) are paid in full, the Credit Documents are all satisfied and cancelled and there is no further commitment by Bank to extend credit

to Borrower or any of its subsidiaries or affiliates, or upon any earlier date specified in the Credit Agreement for the release thereof.

4. Owner believes that no Florida documentary stamp or intangibles taxes are payable with respect to this Agreement. However, if any such taxes ever do become payable with respect to it, Owner shall pay such taxes (including any interest and penalties) and shall indemnify and hold harmless Bank from and against any liability for such taxes (including any interest and penalties). The agreements in this Paragraph 4 shall survive termination or release of this Agreement.

5. This instrument shall be governed by Florida law. It may not be modified or amended except by a written instrument signed by both Owner and Bank.

(Signatures on next page)

Executed as of \_\_\_\_\_ by:

ARK ISLAND BEACH REAL ESTATE, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NEW YORK            )  
  ) SS  
COUNTY OF NEW YORK        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of ARK ISLAND BEACH REAL ESTATE, LLC, a Delaware limited liability company, on behalf of the company. He is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of New York  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(SEAL)

**EXHIBIT A**

Apartments Nos. [            ], ISLAND BEACH CLUB, A CONDOMINIUM, according to the Declaration of Condominium recorded in Official Records Book 343, at Page 372, and all exhibits and amendments thereof, Public Records of St. Lucie County, Florida, together with the undivided share of common elements and the limited common elements appurtenant thereto.

**SCHEDULE 1**

**EXISTING STANDBY LETTERS OF CREDIT**

1. [Standby Letter of Credit No. S1-1156 issued by Bank in the amount of \$238,426.51 for the account of Rio.
2. Standby Letter of Credit No. S1-1163 issued by Bank in the amount of \$150,000.00 for the account of AC.]

**SCHEDULE 6.2**

**SUBSIDIARIES**

Subsidiary	Trade name(s)	Jurisdiction of Incorporation
1. Ark AC Burger Bar LLC	Broadway Burger Bar and Grill	Delaware
2. Ark Atlantic City Corp.	Gallagher's Burger Bar	Delaware
3. Ark Atlantic City Restaurant Corp.	Gallagher's Steakhouse	Delaware
4. Ark Basketball City Corp.		New York
5. Ark Boston RSS Corp.	Durgin Park and Blackhorse Tavern	Delaware
6. Ark Bryant Park LLC	Bryant Park Grill & Cafe	Delaware
7. Ark Connecticut Corp.		Delaware
8. Ark Connecticut Branches Corp.	The Grill at Two Trees	Delaware
9. Ark Connecticut Investment LLC		Delaware
10. Ark Connecticut Pizza LLC		Delaware
11. Ark Connecticut Poker LLC		Delaware
12. Ark Fifth Avenue Corp.		New York
13. Ark D.C. Kiosk, Inc.	Center Cafe	District of Columbia
14. Ark Hollywood/Tampa Corp.		Delaware
15. Ark Hollywood/Tampa Investments LLC		Delaware
16. Ark Hollywood LLC		Delaware
17. Ark Las Vegas Restaurant Corp.		Nevada
18. Ark Mad Events LLC		Delaware
19. Ark Meadowlands LLC		Delaware
20. Ark Museum LLC	Robert	Delaware
21. Ark Operating Corp.	El Rio Grande	New York
22. Ark Potomac Corporation	Sequoia	District of Columbia
23. Ark Rio Corp.	El Rio Grande	New York

24. Ark Rustic Inn LLC		Delaware
25. Ark Rustic Inn Real Estate LLC		Delaware
26. Ark Southwest D.C. Corp.	Thunder Grill	District of Columbia
27. Ark Union Station, Inc.	America	District of Columbia
28. ArkMod, LLC		New York
29. Chefmod, LLC		New York
30. Clyde Ark LLC	Clyde Frazier's Wine and Dine	New York
31. Las Vegas America Corp.	America	Nevada
32. Las Vegas Festival Food Corp.	(1) Gonzalez y Gonzalez (2) Village Eateries (New York-New York Hotel Food Court) (3) Broadway Burger Bar	Nevada
33. Las Vegas Planet Mexico Corp.	Yolos	Nevada
34. Las Vegas Steakhouse Corp.	Gallagher's Steakhouse	Nevada
35. Las Vegas Venice Deli Corp.	Towers Deli (Venetian Food Court) (closed)	Nevada
36. Las Vegas Venice Food Corp.	Shake N Burger (Venetian Food Court)	Nevada
37. Las Vegas Whiskey Bar, Inc.	VBAR (closing 10/31/15)	Las Vegas
38. MEB on First LLC	Canyon Road Grill	New York
39. Rio Restaurant Associates, L.P.		New York
40. Rio Restaurant Associates Holdings, L.P.		New York
41. Ark Bryant Park Southwest LLC	Southwest Porch	Delaware
42. Ark 37 38 Events, LLC		Delaware
43. Ark Shuckers LLC		Delaware
44. Ark Shuckers Real Estate LLC		Delaware
45. Ark Island Beach Resort LLC		Delaware
46. Ark Causeway Real Estate, LLC		Delaware



47. Ark Gulf Shores Real Estate, LLC	Delaware
48. Ark Oyster House Causeway II, LLC	Delaware
49. Ark Oyster Gulf Shores I, LLC	Delaware
50. Ark Island Beach Real Estate, LLC	Delaware
51. Ark Superb Foods, LLC	Delaware

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**SCHEDULE 6.5**

**LITIGATION**

None

69

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**SCHEDULE 6.16**

**EMPLOYMENT MATTERS**

None

70

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**SCHEDULE 6.18**

**CONDOMINIUM UNITS OWNED BY PERMITTED REAL ESTATE SUBSIDIARY**

Apartments 109, 112,202,212,301, 302,316 and 408 of Island Beach Club, A Condominium

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**SCHEDULE 7.6**

**PERMITTED DEBT**

None

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**Document Type:** EX-10.24

**Description:**

**File:** c92483\_EX10-24.HTM

**AMENDED AND RESTATED PROMISSORY NOTE**

\$5,100,000.00

Date: June 1, 2018

FOR VALUE RECEIVED, **ARK RESTAURANTS CORP.**, a New York corporation, ("**Borrower**") unconditionally promises to pay to the order of **BANK HAPOAL, IM B.M.** ("**Bank**"), Five Million One Hundred Thousand and no/100ths United States Dollars (\$5,100,000.00) with interest thereon, as provided hereinbelow. Borrower further agrees as follows:

1. **Definitions.** Unless otherwise defined in this Section, capitalized terms used in this Amended and Restated Promissory Note ("**this Note**") shall have the meanings ascribed to them in the Credit Agreement (as defined below). As used herein, the following terms shall have the following meanings:

"**Applicable Margin**" shall mean a per annum rate of interest equal to 3.50%.

"**Credit Agreement**" shall mean that certain Omnibus Credit Agreement (Term Loans), of even date herewith, between Borrower and Bank, as amended, modified or renewed from time to time.

"**Default Rate**" shall mean the lesser of: (i) the maximum rate of interest permitted by applicable law which may be charged on the outstanding principal amount of this Note and (ii) the LIBOR Rate plus the Applicable Margin or "the Variable Rate", in each instance as then in effect, plus 2.00% per annum.

"**Interest Payment Dates**" shall mean the last Business Day of each applicable Interest Period.

"**Interest Period**" shall mean the one-month period commencing on the date hereof and succeeding one-month periods, each beginning when the previous one ends, provided that the last such period shall end on the Maturity and no Interest Period shall extend the Maturity. If any Interest Period would otherwise come to an end on a day that is not a Working Day, its termination shall be postponed to the next day that is a Working Day unless it would otherwise terminate in the next calendar month, in which case such Interest Period shall terminate on the immediately preceding Working Day.

"**LIBOR Rate**" shall mean, with respect to any Interest Period, the rate per annum (carried out to the fifth decimal) equal to the rate determined by Bank to be the offered rate on a page or service (whether provided by Bridge Telerate, Reuters, Bloomberg or any other service) that displays an average ICE Benchmark Administrative Limited Interest Settlement Rate for deposits in U.S. dollars (for delivery on the first Working Day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two (2) Working Days prior to the first Working Day of such Interest Period. At Borrower's request, Bank will provide Borrower with identifying information with respect to the page or service so used by Bank. If Bank determines that the rate referenced in the first sentence of this paragraph is not

Documentary stamp tax required by law was paid on the mortgage securing this Note.

available, then "LIBOR" will mean, as applicable to any Interest Period, the rate determined (i) on the basis of the offered rates for deposits in U.S. dollars with a term equivalent to such Interest Period, which are offered by four major banks selected by Bank in the London interbank market at approximately 11:00 a.m. London time, on the Working Day that is two (2) Working Days prior to the first Working Day of such Interest Period, or (ii) by applying such other recognized source of London Eurocurrency deposit rates (or their equivalent) as Bank may determine from time to time.

"Loan" shall mean the loan evidenced by this Note.

"Maturity" shall mean the date that falls seven (7) years after the date of this Note.

"Payment Address" shall mean Bank's offices at 1120 Avenue of the Americas, New York, New York 10036-2790, provided that, if and after Bank notifies Borrower of another address for payments to be made to Bank, the term shall mean such other address.

"Prime Rate" shall mean the Prime Rate as quoted or otherwise established by Bank from time to time (or, if Bank fails or ceases to quote or otherwise establish a Prime Rate, a comparable index selected by Bank) (the Prime Rate is purely a discretionary benchmark and is not necessarily the lowest or most favorable rate at which Bank extends credit to its customers).

"Principal Payment Date" shall mean the third Interest Payment Date and every third Interest Payment Date thereafter.

"Treasury Obligation" shall mean a note, bill or bond issued by the United States Treasury Department as a full faith and credit general obligation of the United States.

"Variable Rate" shall mean the Prime Rate, as in effect from time to time, plus 0.50% per annum.

"Working Day" shall mean a Business Day on which banks are regularly open for business in London.

2. Interest Rate. Interest shall accrue on the outstanding principal amount of this Note, during each Interest Period, at a per annum rate equal to the LIBOR Rate for such Interest Period plus the Applicable Margin; provided, however, from and after the occurrence of any Event of Default, interest shall accrue on the outstanding principal amount of this Note, during each Interest Period, at the Default Rate. Interest shall be computed based on a 360-day year counting the actual number of days elapsed.

3. Interest and Principal Payments. On each Interest Payment Date and on the Maturity, Borrower shall make to Bank a payment of all the then accrued but unpaid interest on this Note. On each Principal Payment Date, Borrower shall make to Bank a payment of the principal of this Note in the amount of \$85,000.43, provided that, on the



Maturity, Borrower shall pay to Bank the entire then unpaid principal amount of this Note and all other amounts then owing under this Note and the other Credit Documents.

4. Additional Costs; Unavailability of Dollar Deposits.

(a) In the event that any applicable law or regulation or the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof (whether or not having the force of law) (i) shall change the basis of taxation of payments to Bank of any amounts payable by Borrower hereunder (other than taxes imposed on the overall net income of Bank) or (ii) shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by Bank, or (iii) shall impose any other condition with respect to this Note, and the result of any of the foregoing is to increase the cost to Bank of making or maintaining the loans evidenced by this Note or to reduce any amount receivable by Bank hereunder, and Bank reasonably determines that such increased costs or reduction in amount receivable was attributable to the LIBOR Rate basis used to establish the interest rate hereunder, then Borrower shall, from time to time, upon demand by Bank, pay to Bank additional amounts sufficient to compensate Bank for such increased costs (the "Additional Costs"). A detailed statement as to the amount of such Additional Costs, prepared in good faith and submitted to Borrower by Bank, shall be conclusive and binding in the absence of manifest error.

(b) If Bank determines in its sole discretion acting in good faith at any time (the "Determination Date") that it can no longer make, fund or maintain LIBOR-based loans for any reason, including without limitation illegality, or LIBOR cannot be ascertained or does not accurately reflect Bank's cost of funds, or Bank would be subject to Additional Costs that cannot be recovered from Borrower, then, from and after such Determination Date, interest shall accrue on the unpaid principal amount of this Note at a per annum rate equal to the Variable Rate, with such rate changing with each change in the Prime Rate.

(c) If any present or future law, governmental rule, regulation, policy, guideline, directive or similar requirement (whether or not having the force of law) imposes, modifies, or deems applicable any capital adequacy, capital maintenance or similar requirement which affects the manner in which Bank allocates capital resources to its commitments (including any commitments hereunder), and as a result thereof, in the reasonable opinion of Bank, the rate of return on Bank's capital with regard to the Loan is reduced to a level below that which Bank could have achieved but for such circumstances, then in such case and upon prior written notice from Bank to Borrower, from time to time, Borrower shall pay to Bank such additional amount or amounts as shall compensate Bank for such reduction in Bank's rate of return. Such notice shall contain the statement of Bank with regard to any such amount or amounts, which shall, in the absence of manifest error, be binding upon Borrower. In determining such amount, Bank may use any reasonable method of averaging and attribution that it deems applicable. For the avoidance of doubt, the foregoing provisions shall apply to

all requests, rules, guidelines or directives concerning capital adequacy issued in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or the United States financial regulatory authorities, regardless of the date adopted, issued, promulgated or implemented.

5. Prepayments.

(a) Borrower may at any time and from time to time prepay the outstanding principal amount of this Note in whole or in part, subject to prior notice in accordance with this Paragraph 5. Borrower shall notify Bank in writing of any prepayment hereunder not later than 11:00 a.m., New York, New York time, five (5) Business Days before the date of the prepayment. Each such notice shall specify the prepayment date and the principal amount to be prepaid. Each Prepayment shall be accompanied by accrued interest on the principal amount prepaid and any amount required to be paid pursuant to Paragraph 5(b) hereof.

(b) Concurrently with any prepayment made on other than the last day of an Interest Period, Borrower shall pay to Bank the following amount: the excess, if any, of (i) the amount of interest which would have accrued on the amount prepaid during the period from the date of such prepayment to the last day of that Interest Period at the applicable interest rate provided for herein over (ii) the amount of interest (as reasonably determined by Bank) which would have accrued to the holder of a Treasury Obligation selected by Bank in the amount (or as close to such amount as feasible) of the amount prepaid and having a maturity date on (or as soon after as feasible) the last day of that Interest Period, would earn if the Treasury Obligation were purchased in the secondary market on the date the prepayment is made to Bank and were held to maturity. Borrower agrees that the aforescribed amount shall be based on amounts which a holder of a Treasury Obligation would receive under the foregoing circumstances, whether or not Bank actually invests the amount prepaid in any Treasury Obligation. Borrower acknowledges that determining the actual amount of costs and expenses resulting from a prepayment on other than the last day of an Interest Period may be difficult or impossible to determine in an specific instance and that, accordingly, the amount set forth above is a reasonable estimate of such costs and expense.

(c) No prepayment shall result in a deferral or reduction of scheduled principal payments unless and until this Note is repaid in full.

(d) Amounts prepaid on this Note may not be reborrowed.

6. Manner and Application of Payments. Each payment under this Note shall be applied first to any late charges and costs, next to accrued but unpaid interest, and the remainder, if any, against the principal amount outstanding, provided that, while an

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Event of Default exists, each such payment may be applied in whatever order Bank elects. All payments hereunder shall be made in lawful money of the United States of America and immediately available funds at the Payment Address, without setoff, counterclaim or deduction of any kind. If a payment to be made hereunder is stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest.

7. Late Charges. Borrower shall pay Bank upon demand a late charge of five percent of any installment of interest or principal not received by Bank within 10 days after the installment is due. Such late charge is intended to compensate Bank for administrative and other costs associated with not receiving a payment when due and is neither a penalty nor interest. Each such late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to Bank.

8. Usury Negation. Nothing herein shall be construed or operate so as to require Borrower to pay interest hereunder in an amount or at a rate greater than the maximum allowed by applicable law. Should any interest or other charges paid or payable hereunder result in the computation or earning of interest in excess of the maximum rate or amount of interest which is allowed under applicable law, any and all such excess interest shall be (and the same hereby is) waived by Bank, and the amount of such excess paid shall be automatically credited against, and be deemed to have been payments in reduction of, the principal then due hereunder, and any portion of such excess paid which exceeds the principal then due hereunder shall be paid by Bank to Borrower.

9. Events of Default. Any of the following events or conditions shall constitute an Event of Default hereunder:

(a) Borrower's failure to make within five days after the date when it is due any payment of principal of, or interest on, this Note; and

(b) The occurrence of an Event of Default (as that term is defined in the Credit Agreement).

10. Remedies. Upon and at any time after the occurrence of an Event of Default, this Note shall, at Bank's option, become immediately due and payable, without notice, presentment, protest or demand (which are hereby waived); provided that, upon the occurrence of an Event of Default described in §11.1(g) of the Credit Agreement, this Note shall automatically become immediately due and payable without notice, presentment, protest or demand (which are hereby waived). No failure by Bank to exercise such option upon the occurrence of any Event of Default shall affect its right to exercise it upon the subsequent occurrence of an Event of Default. Borrower shall pay Bank, within three (3) Business Days after Bank's demand, all costs and expenses (including reasonable counsel fees and expenses, including those at the appellate level

and in bankruptcy proceedings) in connection with the enforcement of this Note, whether or not suit be brought.

11. Waivers. Borrower and any endorsers, sureties, guarantors, and all others who are, or may become liable for the payment hereof severally: (a) waive presentment for payment, demand, notice of demand, notice of non-payment or dishonor, notice of acceleration, protest and notice of protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default, or enforcement of the payment of this Note, (b) waive any exemption of disposable earnings from attachment or garnishment under Florida Statutes § 222.11, (c) consent to all extensions of time, renewals, postponements of time of payment of this Note or other modifications hereof from time to time prior to or after the maturity date hereof, whether by acceleration or in due course, without notice, consent or consideration to any of the foregoing, (d) agree to any substitution, exchange, addition, or release of any of the security for the indebtedness evidenced by this Note or the addition or release of any party or person primarily or secondarily liable hereon, and (e) agree that Bank shall not be required first to institute any suit, or to exhaust its remedies against the undersigned or any other person or party to become liable hereunder or against the security in order to enforce the payment of this Note.

12. Benefit of Credit Agreement. This Note is the New Shuckers Note referred to in, and is entitled to the benefits of, the Credit Agreement, as amended from time to time, and the other Credit Documents referred to therein.

13. Security. Payment of this Note is secured by, inter alia, a Mortgage, Assignment of Rents and Security Agreement executed by Ark Shuckers Real Estate LLC, a Delaware limited liability company, in favor of Bank, and encumbering certain properties situate in St. Lucie County, Florida, as amended and/or restated from time to time (the "Mortgage").

14. Notices. Any notice or demand given by Bank to Borrower hereunder may be given in the manner set forth in the provision of the Credit Agreement referred to above captioned "Notices."

15. Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of New York (without giving effect to any New York principles of conflicts of law that would give effect to the laws of any other jurisdiction).

16. Consent to Jurisdiction. Borrower irrevocably agrees that any action or proceeding arising hereunder or relating hereto that is brought by Borrower shall be tried by the courts of the State of New York sitting in or for New York County, New York or the courts of the State of Florida sitting in or for St. Lucie County, Florida or the United States District Courts sitting in or for New York County, New York or St. Lucie County, Florida. Borrower irrevocably submits, in any such action or proceeding that is brought by Bank, to the non-exclusive jurisdiction of each such court and irrevocably

waives the defense of an inconvenient forum with respect to any such action or proceeding.

17. Waiver of Jury Trial. BORROWER AND (BY ACCEPTANCE HEREOF) BANK HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY CLAIMS, CROSS CLAIMS OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS NOTE. BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF BANK OR BANK'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. EACH BORROWER ACKNOWLEDGES THAT THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN A MATERIAL INDUCEMENT TO BANK TO CONTINUE AND/OR MAKE THE LOAN EVIDENCED BY THIS NOTE.

18. Amendment and Restatement; Mortgage Taxes. This Note amends and restates and renews (but does not extinguish the indebtedness evidenced by) that certain Term Promissory Note, dated October 21, 2015, made by Borrower to the order of Bank in the original principal amount of \$5,000,000.00 (the "Renewed Note") for the \$2,666,676.00 outstanding principal balance thereof on the date hereof and increases that principal balance by \$2,433,324.00 (the "Increase"), all without adding any obligor. Florida documentary stamp tax and intangibles tax were paid on the Mortgage as recorded in Florida O.R. Book 3801, Page 2615 of the St. Lucie County, Florida Public Records and Florida documentary stamp tax and intangibles tax in the combined amount of \$13,383.55 are being paid on the Notice of Future Advance and Modification of Mortgage being recorded in those Public Records in conjunction herewith. Pursuant to s.201.09 and s.199.145, Florida Statutes, no Florida documentary stamp tax or intangibles tax is owed with respect to this Note other than with respect to the Increase. The indebtedness evidenced by the Renewed Note is not being repaid or extinguished but will henceforth be evidenced by and repaid pursuant to this Note. The Renewed Note is attached hereto. Borrower shall indemnify and hold Bank harmless from and against any and all liability (including liability for interest and penalties) which Bank may incur in connection with any documentary stamp tax or intangibles tax that may become payable as a result of or in connection with this Note (or the Renewed Note) and/or any instrument securing the same. The foregoing indemnity shall survive payment and satisfaction of this Note.

(signature page follows)

Executed on the date set forth above by:

**BORROWER:**

ARK RESTAURANTS CORP.

By: /s/ Robert J. Stewart

Name: Robert J. Stewart

Title: President

Signature Page to  
Amended and Restated Promissory Note  
(\$5,100,000.00)

**Document Type:** EX-10.25

**Description:**

**File:** c92483\_EX10-25.HTM

**AMENDED AND RESTATED PROMISSORY NOTE**

\$4,400,000.00

Date: June 1, 2018

FOR VALUE RECEIVED, **ARK RESTAURANTS CORP.**, a New York corporation, ("**Borrower**") unconditionally promises to pay to the order of **BANK HAPOALIM B.M.** ("**Bank**"), Four Million Four Hundred Thousand and no/100ths United States Dollars (\$4,400,000.00) with interest thereon, as provided hereinbelow. Borrower further agrees as follows:

1. Definitions. Unless otherwise defined in this Section, capitalized terms used in this Amended and Restated Promissory Note ("this Note") shall have the meanings ascribed to them in the Credit Agreement (as defined below). As used herein, the following terms shall have the following meanings:

"Applicable Margin" shall mean a per annum rate of interest equal to 3.50%.

"Credit Agreement" shall mean that certain Omnibus Credit Agreement (Term Loans), of even date herewith, between Borrower and Bank, as amended, modified or renewed from time to time.

"Default Rate" shall mean the lesser of: (i) the maximum rate of interest permitted by applicable law which may be charged on the outstanding principal amount of this Note and (ii) the LIBOR Rate plus the Applicable Margin or "the Variable Rate", in each instance as then in effect, plus 2.00% per annum.

"Interest Payment Dates" shall mean the last Business Day of each applicable Interest Period.

"Interest Period" shall mean the one-month period commencing on the date hereof and succeeding one-month periods, each beginning when the previous one ends, provided that the last such period shall end on the Maturity and no Interest Period shall extend the Maturity. If any Interest Period would otherwise come to an end on a day that is not a Working Day, its termination shall be postponed to the next day that is a Working Day unless it would otherwise terminate in the next calendar month, in which case such Interest Period shall terminate on the immediately preceding Working Day.

"LIBOR Rate" shall mean, with respect to any Interest Period, the rate per annum (carried out to the fifth decimal) equal to the rate determined by Bank to be the offered rate on a page or service (whether provided by Bridge Telerate, Reuters, Bloomberg or any other service) that displays an average ICE Benchmark Administrative Limited Interest Settlement Rate for deposits in U.S. dollars (for delivery on the first Working Day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two (2) Working Days prior to the first Working Day of such Interest Period. At Borrower's request, Bank will provide Borrower with identifying information with respect to the page or service so used by Bank. If Bank determines that the rate referenced in the first sentence of this paragraph is not

Documentary stamp tax required by law was paid on the mortgage securing this Note.



available, then "LIBOR" will mean, as applicable to any Interest Period, the rate determined (i) on the basis of the offered rates for deposits in U.S. dollars with a term equivalent to such Interest Period, which are offered by four major banks selected by Bank in the London interbank market at approximately 11:00 a.m. London time, on the Working Day that is two (2) Working Days prior to the first Working Day of such Interest Period, or (ii) by applying such other recognized source of London Eurocurrency deposit rates (or their equivalent) as Bank may determine from time to time.

"Loan" shall mean the loan evidenced by this Note.

"Maturity" shall mean the date that falls seven (7) years after the date of this Note.

"Payment Address" shall mean Bank's offices at 1120 Avenue of the Americas, New York, New York 10036-2790, provided that, if and after Bank notifies Borrower of another address for payments to be made to Bank, the term shall mean such other address.

"Prime Rate" shall mean the Prime Rate as quoted or otherwise established by Bank from time to time (or, if Bank fails or ceases to quote or otherwise establish a Prime Rate, a comparable index selected by Bank) (the Prime Rate is purely a discretionary benchmark and is not necessarily the lowest or most favorable rate at which Bank extends credit to its customers).

"Principal Payment Dates" shall mean the third Interest Payment Date and every third Interest Payment Date thereafter.

"Treasury Obligation" shall mean a note, bill or bond issued by the United States Treasury Department as a full faith and credit general obligation of the United States.

"Variable Rate" shall mean the Prime Rate, as in effect from time to time, plus 0.50% per annum.

"Working Day" shall mean a Business Day on which banks are regularly open for business in London.

2. Interest Rate. Interest shall accrue on the outstanding principal amount of this Note, during each Interest Period, at a per annum rate equal to the LIBOR Rate for such Interest Period plus the Applicable Margin; provided, however, from and after the occurrence of any Event of Default, interest shall accrue on the outstanding principal amount of this Note, during each Interest Period, at the Default Rate. Interest shall be computed based on a 360-day year counting the actual number of days elapsed.

3. Interest and Principal Payments. On each Interest Payment Date and on the Maturity, Borrower shall make to Bank a payment of all the then accrued but unpaid interest on this Note. On each Principal Payment Date, Borrower shall make to Bank a payment of the principal of this Note in the amount of \$73,333.70, provided that, on the

Maturity, Borrower shall pay to Bank the entire then unpaid principal amount of this Note and all other amounts then owing under this Note and the other Credit Documents.

4. Additional Costs; Unavailability of Dollar Deposits.

(a) In the event that any applicable law or regulation or the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof (whether or not having the force of law) (i) shall change the basis of taxation of payments to Bank of any amounts payable by Borrower hereunder (other than taxes imposed on the overall net income of Bank) or (ii) shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by Bank, or (iii) shall impose any other condition with respect to this Note, and the result of any of the foregoing is to increase the cost to Bank of making or maintaining the loans evidenced by this Note or to reduce any amount receivable by Bank hereunder, and Bank reasonably determines that such increased costs or reduction in amount receivable was attributable to the LIBOR Rate basis used to establish the interest rate hereunder, then Borrower shall, from time to time, upon demand by Bank, pay to Bank additional amounts sufficient to compensate Bank for such increased costs (the "Additional Costs"). A detailed statement as to the amount of such Additional Costs, prepared in good faith and submitted to Borrower by Bank, shall be conclusive and binding in the absence of manifest error.

(b) If Bank determines in its sole discretion acting in good faith at any time (the "Determination Date") that it can no longer make, fund or maintain LIBOR-based loans for any reason, including without limitation illegality, or LIBOR cannot be ascertained or does not accurately reflect Bank's cost of funds, or Bank would be subject to Additional Costs that cannot be recovered from Borrower, then, from and after such Determination Date, interest shall accrue on the unpaid principal amount of this Note at a per annum rate equal to the Variable Rate, with such rate changing with each change in the Prime Rate.

(c) If any present or future law, governmental rule, regulation, policy, guideline, directive or similar requirement (whether or not having the force of law) imposes, modifies, or deems applicable any capital adequacy, capital maintenance or similar requirement which affects the manner in which Bank allocates capital resources to its commitments (including any commitments hereunder), and as a result thereof, in the reasonable opinion of Bank, the rate of return on Bank's capital with regard to the Loan is reduced to a level below that which Bank could have achieved but for such circumstances, then in such case and upon prior written notice from Bank to Borrower, from time to time, Borrower shall pay to Bank such additional amount or amounts as shall compensate Bank for such reduction in Bank's rate of return. Such notice shall contain the statement of Bank with regard to any such amount or amounts, which shall, in the absence of manifest error, be binding upon Borrower. In determining such amount, Bank may use any reasonable method of averaging and attribution that it deems applicable. For the avoidance of doubt, the foregoing provisions shall apply to

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all requests, rules, guidelines or directives concerning capital adequacy issued in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or the United States financial regulatory authorities, regardless of the date adopted, issued, promulgated or implemented.

5. Prepayments.

(a) Borrower may at any time and from time to time prepay the outstanding principal amount of this Note in whole or in part, subject to prior notice in accordance with this Paragraph 5. Borrower shall notify Bank in writing of any prepayment hereunder not later than 11:00 a.m., New York, New York time, five (5) Business Days before the date of the prepayment. Each such notice shall specify the prepayment date and the principal amount to be prepaid. Each Prepayment shall be accompanied by accrued interest on the principal amount prepaid and any amount required to be paid pursuant to Paragraph 5(b) hereof.

(b) Concurrently with any prepayment made on other than the last day of an Interest Period, Borrower shall pay to Bank the following amount: the excess, if any, of (i) the amount of interest which would have accrued on the amount prepaid during the period from the date of such prepayment to the last day of that Interest Period at the applicable interest rate provided for herein over (ii) the amount of interest (as reasonably determined by Bank) which would have accrued to the holder of a Treasury Obligation selected by Bank in the amount (or as close to such amount as feasible) of the amount prepaid and having a maturity date on (or as soon after as feasible) the last day of that Interest Period, would earn if the Treasury Obligation were purchased in the secondary market on the date the prepayment is made to Bank and were held to maturity. Borrower agrees that the aforescribed amount shall be based on amounts which a holder of a Treasury Obligation would receive under the foregoing circumstances, whether or not Bank actually invests the amount prepaid in any Treasury Obligation. Borrower acknowledges that determining the actual amount of costs and expenses resulting from a prepayment on other than the last day of an Interest Period may be difficult or impossible to determine in an specific instance and that, accordingly, the amount set forth above is a reasonable estimate of such costs and expense.

(c) No prepayment shall result in a deferral or reduction of scheduled principal payments unless and until this Note is repaid in full.

(d) Amounts prepaid on this Note may not be reborrowed.

6. Manner and Application of Payments. Each payment under this Note shall be applied first to any late charges and costs, next to accrued but unpaid interest, and the remainder, if any, against the principal amount outstanding, provided that, while an

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Event of Default exists, each such payment may be applied in whatever order Bank elects. All payments hereunder shall be made in lawful money of the United States of America and immediately available funds at the Payment Address, without setoff, counterclaim or deduction of any kind. If a payment to be made hereunder is stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest.

7. Late Charges. Borrower shall pay Bank upon demand a late charge of five percent of any installment of interest or principal not received by Bank within 10 days after the installment is due. Such late charge is intended to compensate Bank for administrative and other costs associated with not receiving a payment when due and is neither a penalty nor interest. Each such late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to Bank.

8. Usury Negation. Nothing herein shall be construed or operate so as to require Borrower to pay interest hereunder in an amount or at a rate greater than the maximum allowed by applicable law. Should any interest or other charges paid or payable hereunder result in the computation or earning of interest in excess of the maximum rate or amount of interest which is allowed under applicable law, any and all such excess interest shall be (and the same hereby is) waived by Bank, and the amount of such excess paid shall be automatically credited against, and be deemed to have been payments in reduction of, the principal then due hereunder, and any portion of such excess paid which exceeds the principal then due hereunder shall be paid by Bank to Borrower.

9. Events of Default. Any of the following events or conditions shall constitute an Event of Default hereunder:

(a) Borrower's failure to make within five days after the date when it is due any payment of principal of, or interest on, this Note; and

(b) The occurrence of an Event of Default (as that term is defined in the Credit Agreement).

10. Remedies. Upon and at any time after the occurrence of an Event of Default, this Note shall, at Bank's option, become immediately due and payable, without notice, presentment, protest or demand (which are hereby waived); provided that, upon the occurrence of an Event of Default described in §11.1(g) of the Credit Agreement, this Note shall automatically become immediately due and payable without notice, presentment, protest or demand (which are hereby waived). No failure by Bank to exercise such option upon the occurrence of any Event of Default shall affect its right to exercise it upon the subsequent occurrence of an Event of Default. Borrower shall pay Bank, within three (3) Business Days after Bank's demand, all costs and expenses (including reasonable counsel fees and expenses, including those at the appellate level

and in bankruptcy proceedings) in connection with the enforcement of this Note, whether or not suit be brought.

11. Waivers. Borrower and any endorsers, sureties, guarantors, and all others who are, or may become liable for the payment hereof severally: (a) waive presentment for payment, demand, notice of demand, notice of non-payment or dishonor, notice of acceleration, protest and notice of protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default, or enforcement of the payment of this Note, (b) waive any exemption of disposable earnings from attachment or garnishment under Florida Statutes § 222.11, (c) consent to all extensions of time, renewals, postponements of time of payment of this Note or other modifications hereof from time to time prior to or after the maturity date hereof, whether by acceleration or in due course, without notice, consent or consideration to any of the foregoing, (d) agree to any substitution, exchange, addition, or release of any of the security for the indebtedness evidenced by this Note or the addition or release of any party or person primarily or secondarily liable hereon, and (e) agree that Bank shall not be required first to institute any suit, or to exhaust its remedies against the undersigned or any other person or party to become liable hereunder or against the security in order to enforce the payment of this Note.

12. Benefit of Credit Agreement. This Note is the New Rustic Inn Note referred to in, and is entitled to the benefits of, the Credit Agreement, as amended from time to time, and the other Credit Documents referred to therein.

13. Security. Payment of this Note is secured by, inter alia, a Mortgage, Assignment of Rents and Security Agreement executed by Ark Rustic Inn Real Estate, LLC, a Delaware limited liability company, in favor of Bank, and encumbering certain properties situate in Broward County, Florida, as amended and/or restated from time to time (the "Mortgage").

14. Notices. Any notice or demand given by Bank to Borrower hereunder may be given in the manner set forth in the provision of the Credit Agreement referred to above captioned "Notices."

15. Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of New York (without giving effect to any New York principles of conflicts of law that would give effect to the laws of any other jurisdiction).

16. Consent to Jurisdiction. Borrower irrevocably agrees that any action or proceeding arising hereunder or relating hereto that is brought by Borrower shall be tried by the courts of the State of New York sitting in or for New York County, New York or the courts of the State of Florida sitting in or for Broward County, Florida or the United States District Courts sitting in or for New York County, New York or Broward County, Florida. Borrower irrevocably submits, in any such action or proceeding that is brought by Bank, to the non-exclusive jurisdiction of each such court and irrevocably

waives the defense of an inconvenient forum with respect to any such action or proceeding.

17. Waiver of Jury Trial. BORROWER AND (BY ACCEPTANCE HEREOF) BANK HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY CLAIMS, CROSS CLAIMS OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS NOTE. BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF BANK OR BANK'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. EACH BORROWER ACKNOWLEDGES THAT THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN A MATERIAL INDUCEMENT TO BANK TO CONTINUE AND/OR MAKE THE LOAN EVIDENCED BY THIS NOTE.

18. Amendment and Restatement; Mortgage Taxes. This Note amends and restates and renews (but does not extinguish the indebtedness evidenced by) that certain Amended and Restated Promissory Note, dated February 24, 2014, made by Borrower to the order of Bank in the original principal amount of \$8,083,333.37 (the "Renewed Note") for the \$1,616,666.81 outstanding principal balance thereof on the date hereof and increases that principal balance by \$2,783,333.19 (the "Increase"), all without adding any obligor. Florida documentary stamp tax and intangibles tax were paid on the Mortgage as recorded in Florida O.R. Book 50606, Page 1212 of the Broward County, Florida Public Records and Florida documentary stamp tax and intangibles tax in the combined amount of \$15,308.57 are being paid on the Notice of Future Advance and Modification of Mortgage being recorded in those Public Records in conjunction herewith. Pursuant to s.201.09 and s.199.145, Florida Statutes, no Florida documentary stamp tax or intangibles tax is owed with respect to this Note other than with respect to the Increase. The indebtedness evidenced by the Renewed Note is not being repaid or extinguished but will henceforth be evidenced by and repaid pursuant to this Note. The Renewed Note is attached hereto. Borrower shall indemnify and hold Bank harmless from and against any and all liability (including liability for interest and penalties) which Bank may incur in connection with any documentary stamp tax or intangibles tax that may become payable as a result of or in connection with this Note (or the Renewed Note) and/or any instrument securing the same. The foregoing indemnity shall survive payment and satisfaction of this Note.

(Signature Page Follows)

Executed on the date set forth above by:

**BORROWER:**

ARK RESTAURANTS CORP.

By: /s/ Robert J. Stewart

Name: Robert J. Stewart

Its: President

Signature Page to  
Amended and Restated Promissory Note  
(\$4,400,000.00)

**Document Type:** EX-10.26

**Description:**

**File:** c92483\_EX10-26.HTM



**AMENDED AND RESTATED PROMISSORY NOTE**

\$3,300,000.00

Date: June 1, 2018

FOR VALUE RECEIVED, **ARK RESTAURANTS CORP.**, a New York corporation, ("**Borrower**") unconditionally promises to pay to the order of **BANK HAPOALIM B.M.** ("**Bank**"), Three Million Three Hundred Thousand and no/100ths United States Dollars (\$3,300,000.00) with interest thereon, as provided hereinbelow. Borrower further agrees as follows:

1. Definitions. Unless otherwise defined in this Section, capitalized terms used in this Amended and Restated Promissory Note ("this Note") shall have the meanings ascribed to them in the Credit Agreement (as defined below). As used herein, the following terms shall have the following meanings:

"Applicable Margin" shall mean a per annum rate of interest equal to 3.50%.

"Credit Agreement" shall mean that certain Omnibus Credit Agreement (Term Loans), of even date herewith, between Borrower and Bank, as amended, modified or renewed from time to time.

"Default Rate" shall mean the lesser of: (i) the maximum rate of interest permitted by applicable law which may be charged on the outstanding principal amount of this Note and (ii) the LIBOR Rate plus the Applicable Margin or "the Variable Rate", in each instance as then in effect, plus 2.00% per annum.

"Interest Payment Dates" shall mean the last Business Day of each applicable Interest Period.

"Interest Period" shall mean the one-month period commencing on the date hereof and succeeding one-month periods, each beginning when the previous one ends, provided that the last such period shall end on the Maturity and no Interest Period shall extend the Maturity. If any Interest Period would otherwise come to an end on a day that is not a Working Day, its termination shall be postponed to the next day that is a Working Day unless it would otherwise terminate in the next calendar month, in which case such Interest Period shall terminate on the immediately preceding Working Day.

"LIBOR Rate" shall mean, with respect to any Interest Period, the rate per annum (carried out to the fifth decimal) equal to the rate determined by Bank to be the offered rate on a page or service (whether provided by Bridge Telerate, Reuters, Bloomberg or any other service) that displays an average ICE Benchmark Administrative Limited Interest Settlement Rate for deposits in U.S. dollars (for delivery on the first Working Day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two (2) Working Days prior to the first Working Day of such Interest Period. At Borrower's request, Bank will provide Borrower with identifying information with respect to the page or service so used by Bank. If Bank determines that the rate referenced in the first sentence of this paragraph is not

available, then "LIBOR" will mean, as applicable to any Interest Period, the rate determined (i) on the basis of the offered rates for deposits in U.S. dollars with a term equivalent to such Interest Period, which are offered by four major banks selected by Bank in the London interbank market at approximately 11:00 a.m. London time, on the Working Day that is two (2) Working Days prior to the first Working Day of such Interest Period, or (ii) by applying such other recognized source of London Eurocurrency deposit rates (or their equivalent) as Bank may determine from time to time.

"Loan" shall mean the loan evidenced by this Note.

"Maturity" shall mean the date that falls five (5) years after the date of this Note.

"Payment Address" shall mean Bank's offices at 1120 Avenue of the Americas, New York, New York 10036-2790, provided that, if and after Bank notifies Borrower of another address for payments to be made to Bank, the term shall mean such other address.

"Prime Rate" shall mean the Prime Rate as quoted or otherwise established by Bank from time to time (or, if Bank fails or ceases to quote or otherwise establish a Prime Rate, a comparable index selected by Bank) (the Prime Rate is purely a discretionary benchmark and is not necessarily the lowest or most favorable rate at which Bank extends credit to its customers).

"Principal Payment Dates" shall mean the third Interest Payment Date and every third Interest Payment Date thereafter.

"Treasury Obligation" shall mean a note, bill or bond issued by the United States Treasury Department as a full faith and credit general obligation of the United States.

"Variable Rate" shall mean the Prime Rate, as in effect from time to time, plus 0.50% per annum.

"Working Day" shall mean a Business Day on which banks are regularly open for business in London.

2. Interest Rate. Interest shall accrue on the outstanding principal amount of this Note, during each Interest Period, at a per annum rate equal to the LIBOR Rate for such Interest Period plus the Applicable Margin; provided, however, from and after the occurrence of any Event of Default, interest shall accrue on the outstanding principal amount of this Note, during each Interest Period, at the Default Rate. Interest shall be computed based on a 360-day year counting the actual number of days elapsed.

3. Interest and Principal Payments. On each Interest Payment Date and on the Maturity, Borrower shall make to Bank a payment of all the then accrued but unpaid interest on this Note. On each Principal Payment Date, Borrower shall make to Bank a payment of the principal of this Note in the amount of \$117,857.14, provided that, on the

Maturity, Borrower shall pay to Bank the entire then unpaid principal amount of this Note and all other amounts then owing under this Note and the other Credit Documents.

4. Additional Costs; Unavailability of Dollar Deposits.

(a) In the event that any applicable law or regulation or the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof (whether or not having the force of law) (i) shall change the basis of taxation of payments to Bank of any amounts payable by Borrower hereunder (other than taxes imposed on the overall net income of Bank) or (ii) shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by Bank, or (iii) shall impose any other condition with respect to this Note, and the result of any of the foregoing is to increase the cost to Bank of making or maintaining the loans evidenced by this Note or to reduce any amount receivable by Bank hereunder, and Bank reasonably determines that such increased costs or reduction in amount receivable was attributable to the LIBOR Rate basis used to establish the interest rate hereunder, then Borrower shall, from time to time, upon demand by Bank, pay to Bank additional amounts sufficient to compensate Bank for such increased costs (the "Additional Costs"). A detailed statement as to the amount of such Additional Costs, prepared in good faith and submitted to Borrower by Bank, shall be conclusive and binding in the absence of manifest error.

(b) If Bank determines in its sole discretion acting in good faith at any time (the "Determination Date") that it can no longer make, fund or maintain LIBOR-based loans for any reason, including without limitation illegality, or LIBOR cannot be ascertained or does not accurately reflect Bank's cost of funds, or Bank would be subject to Additional Costs that cannot be recovered from Borrower, then, from and after such Determination Date, interest shall accrue on the unpaid principal amount of this Note at a per annum rate equal to the Variable Rate, with such rate changing with each change in the Prime Rate.

(c) If any present or future law, governmental rule, regulation, policy, guideline, directive or similar requirement (whether or not having the force of law) imposes, modifies, or deems applicable any capital adequacy, capital maintenance or similar requirement which affects the manner in which Bank allocates capital resources to its commitments (including any commitments hereunder), and as a result thereof, in the reasonable opinion of Bank, the rate of return on Bank's capital with regard to the Loan is reduced to a level below that which Bank could have achieved but for such circumstances, then in such case and upon prior written notice from Bank to Borrower, from time to time, Borrower shall pay to Bank such additional amount or amounts as shall compensate Bank for such reduction in Bank's rate of return. Such notice shall contain the statement of Bank with regard to any such amount or amounts, which shall, in the absence of manifest error, be binding upon Borrower. In determining such amount, Bank may use any reasonable method of averaging and attribution that it deems applicable. For the avoidance of doubt, the foregoing provisions shall apply to

all requests, rules, guidelines or directives concerning capital adequacy issued in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or the United States financial regulatory authorities, regardless of the date adopted, issued, promulgated or implemented.

5. Prepayments.

(a) Borrower may at any time and from time to time prepay the outstanding principal amount of this Note in whole or in part, subject to prior notice in accordance with this Paragraph 5. Borrower shall notify Bank in writing of any prepayment hereunder not later than 11:00 a.m., New York, New York time, five (5) Business Days before the date of the prepayment. Each such notice shall specify the prepayment date and the principal amount to be prepaid. Each Prepayment shall be accompanied by accrued interest on the principal amount prepaid and any amount required to be paid pursuant to Paragraph 5(b) hereof.

(b) Concurrently with any prepayment made on other than the last day of an Interest Period, Borrower shall pay to Bank the following amount: the excess, if any, of (i) the amount of interest which would have accrued on the amount prepaid during the period from the date of such prepayment to the last day of that Interest Period at the applicable interest rate provided for herein over (ii) the amount of interest (as reasonably determined by Bank) which would have accrued to the holder of a Treasury Obligation selected by Bank in the amount (or as close to such amount as feasible) of the amount prepaid and having a maturity date on (or as soon after as feasible) the last day of that Interest Period, would earn if the Treasury Obligation were purchased in the secondary market on the date the prepayment is made to Bank and were held to maturity. Borrower agrees that the aforescribed amount shall be based on amounts which a holder of a Treasury Obligation would receive under the foregoing circumstances, whether or not Bank actually invests the amount prepaid in any Treasury Obligation. Borrower acknowledges that determining the actual amount of costs and expenses resulting from a prepayment on other than the last day of an Interest Period may be difficult or impossible to determine in an specific instance and that, accordingly, the amount set forth above is a reasonable estimate of such costs and expense.

(c) No prepayment shall result in a deferral or reduction of scheduled principal payments unless and until this Note is repaid in full.

(d) Amounts prepaid on this Note may not be reborrowed.

6. Manner and Application of Payments. Each payment under this Note shall be applied first to any late charges and costs, next to accrued but unpaid interest, and the remainder, if any, against the principal amount outstanding, provided that, while an

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Event of Default exists, each such payment may be applied in whatever order Bank elects. All payments hereunder shall be made in lawful money of the United States of America and immediately available funds at the Payment Address, without setoff, counterclaim or deduction of any kind. If a payment to be made hereunder is stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest.

7. Late Charges. Borrower shall pay Bank upon demand a late charge of five percent of any installment of interest or principal not received by Bank within 10 days after the installment is due. Such late charge is intended to compensate Bank for administrative and other costs associated with not receiving a payment when due and is neither a penalty nor interest. Each such late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to Bank.

8. Usury Negation. Nothing herein shall be construed or operate so as to require Borrower to pay interest hereunder in an amount or at a rate greater than the maximum allowed by applicable law. Should any interest or other charges paid or payable hereunder result in the computation or earning of interest in excess of the maximum rate or amount of interest which is allowed under applicable law, any and all such excess interest shall be (and the same hereby is) waived by Bank, and the amount of such excess paid shall be automatically credited against, and be deemed to have been payments in reduction of, the principal then due hereunder, and any portion of such excess paid which exceeds the principal then due hereunder shall be paid by Bank to Borrower.

9. Events of Default. Any of the following events or conditions shall constitute an Event of Default hereunder:

(a) Borrower's failure to make within five days after the date when it is due any payment of principal of, or interest on, this Note; and

(b) The occurrence of an Event of Default (as that term is defined in the Credit Agreement).

10. Remedies. Upon and at any time after the occurrence of an Event of Default, this Note shall, at Bank's option, become immediately due and payable, without notice, presentment, protest or demand (which are hereby waived); provided that, upon the occurrence of an Event of Default described in §11.1(g) of the Credit Agreement, this Note shall automatically become immediately due and payable without notice, presentment, protest or demand (which are hereby waived). No failure by Bank to exercise such option upon the occurrence of any Event of Default shall affect its right to exercise it upon the subsequent occurrence of an Event of Default. Borrower shall pay Bank, within three (3) Business Days after Bank's demand, all costs and expenses (including reasonable counsel fees and expenses, including those at the appellate level

and in bankruptcy proceedings) in connection with the enforcement of this Note, whether or not suit be brought.

11. Waivers. Borrower and any endorsers, sureties, guarantors, and all others who are, or may become liable for the payment hereof severally: (a) waive presentment for payment, demand, notice of demand, notice of non-payment or dishonor, notice of acceleration, protest and notice of protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default, or enforcement of the payment of this Note, (b) waive any exemption of disposable earnings from attachment or garnishment under Florida Statutes § 222.11, (c) consent to all extensions of time, renewals, postponements of time of payment of this Note or other modifications hereof from time to time prior to or after the maturity date hereof, whether by acceleration or in due course, without notice, consent or consideration to any of the foregoing, (d) agree to any substitution, exchange, addition, or release of any of the security for the indebtedness evidenced by this Note or the addition or release of any party or person primarily or secondarily liable hereon, and (e) agree that Bank shall not be required first to institute any suit, or to exhaust its remedies against the undersigned or any other person or party to become liable hereunder or against the security in order to enforce the payment of this Note.

12. Benefit of Credit Agreement. This Note is the New Gulf Shores Note referred to in, and is entitled to the benefits of, the Credit Agreement, as amended from time to time, and the other Credit Documents referred to therein.

13. Security. Payment of this Note is secured by, inter alia, a Mortgage and Security Agreement executed by Ark Gulf Shores Real Estate, LLC, a Delaware limited liability company, in favor of Bank, and encumbering certain properties situate in Baldwin County, Florida, as amended and/or restated from time to time (the "Mortgage").

14. Notices. Any notice or demand given by Bank to Borrower hereunder may be given in the manner set forth in the provision of the Credit Agreement referred to above captioned "Notices."

15. Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of New York (without giving effect to any New York principles of conflicts of law that would give effect to the laws of any other jurisdiction).

16. Consent to Jurisdiction. Borrower irrevocably agrees that any action or proceeding arising hereunder or relating hereto that is brought by Borrower shall be tried by the courts of the State of New York sitting in or for New York County, New York or the courts of the State of Alabama sitting in or for Baldwin County, Alabama or the United States District Courts sitting in or for New York County, New York or Baldwin County, Alabama. Borrower irrevocably submits, in any such action or proceeding that is brought by Bank, to the non-exclusive jurisdiction of each such court and irrevocably

waives the defense of an inconvenient forum with respect to any such action or proceeding.

17. Waiver of Jury Trial. BORROWER AND (BY ACCEPTANCE HEREOF) BANK HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY CLAIMS, CROSS CLAIMS OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS NOTE. BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF BANK OR BANK'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. EACH BORROWER ACKNOWLEDGES THAT THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN A MATERIAL INDUCEMENT TO BANK TO CONTINUE AND/OR MAKE THE LOAN EVIDENCED BY THIS NOTE.

18. Amendment and Restatement; Mortgage Taxes. This Note amends and restates and renews (but does not extinguish the indebtedness evidenced by) that certain Term Promissory Note, dated November 30, 2016, made by Borrower to the order of Bank in the original principal amount of \$4,450,000.00 (the "Replaced Note"). The indebtedness evidenced by the Replaced Note is not being repaid or extinguished but will henceforth be evidenced by and repaid pursuant to this Note. The Replaced Note is attached hereto. Borrower shall indemnify and hold Bank harmless from and against any and all liability (including liability for interest and penalties) which Bank may incur in connection with any mortgage tax that may become payable as a result of or in connection with this Note (or the Replaced Note) and/or any instrument securing the same. The foregoing indemnity shall survive payment and satisfaction of this Note.

(signature page follows)

Executed on the date set forth above by:

**BORROWER:**

ARK RESTAURANTS CORP.

By: /s/ Robert J. Stewart

Name: Robert J. Stewart

Title: President

Signature Page to  
Amended and Restated Promissory Note  
(\$3,300,000.00)



**Document Type:** EX-10.27

**Description:**

**File:** c92483\_EX10-27.HTM

**AMENDED AND RESTATED PROMISSORY NOTE**

\$2,200,000.00

Date: June 1, 2018

FOR VALUE RECEIVED, **ARK RESTAURANTS CORP.**, a New York corporation, ("**Borrower**") unconditionally promises to pay to the order of **BANK HAPOALIM B.M.** ("**Bank**"), Two Million Two Hundred Thousand and no/100ths United States Dollars (\$2,200,000.00) with interest thereon, as provided hereinbelow. Borrower further agrees as follows:

1. Definitions. Unless otherwise defined in this Section, capitalized terms used in this Amended and Restated Promissory Note ("this Note") shall have the meanings ascribed to them in the Credit Agreement (as defined below). As used herein, the following terms shall have the following meanings:

"Applicable Margin" shall mean a per annum rate of interest equal to 3.50%.

"Credit Agreement" shall mean that certain Omnibus Credit Agreement (Term Loans), of even date herewith, between Borrower and Bank, as amended, modified or renewed from time to time.

"Default Rate" shall mean the lesser of: (i) the maximum rate of interest permitted by applicable law which may be charged on the outstanding principal amount of this Note and (ii) the LIBOR Rate plus the Applicable Margin or "the Variable Rate", in each instance as then in effect, plus 2.00% per annum.

"Interest Payment Dates" shall mean the last Business Day of each applicable Interest Period.

"Interest Period" shall mean the one-month period commencing on the date hereof and succeeding one-month periods, each beginning when the previous one ends, provided that the last such period shall end on the Maturity and no Interest Period shall extend the Maturity. If any Interest Period would otherwise come to an end on a day that is not a Working Day, its termination shall be postponed to the next day that is a Working Day unless it would otherwise terminate in the next calendar month, in which case such Interest Period shall terminate on the immediately preceding Working Day.

"LIBOR Rate" shall mean, with respect to any Interest Period, the rate per annum (carried out to the fifth decimal) equal to the rate determined by Bank to be the offered rate on a page or service (whether provided by Bridge Telerate, Reuters, Bloomberg or any other service) that displays an average ICE Benchmark Administrative Limited Interest Settlement Rate for deposits in U.S. dollars (for delivery on the first Working Day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two (2) Working Days prior to the first Working Day of such Interest Period. At Borrower's request, Bank will provide Borrower with identifying information with respect to the page or service so used by Bank. If Bank determines that the rate referenced in the first sentence of this paragraph is not

available, then "LIBOR" will mean, as applicable to any Interest Period, the rate determined (i) on the basis of the offered rates for deposits in U.S. dollars with a term equivalent to such Interest Period, which are offered by four major banks selected by Bank in the London interbank market at approximately 11:00 a.m. London time, on the Working Day that is two (2) Working Days prior to the first Working Day of such Interest Period, or (ii) by applying such other recognized source of London Eurocurrency deposit rates (or their equivalent) as Bank may determine from time to time.

"Loan" shall mean the loan evidenced by this Note.

"Maturity" shall mean the date that falls seven (7) years after the date of this Note.

"Payment Address" shall mean Bank's offices at 1120 Avenue of the Americas, New York, New York 10036-2790, provided that, if and after Bank notifies Borrower of another address for payments to be made to Bank, the term shall mean such other address.

"Prime Rate" shall mean the Prime Rate as quoted or otherwise established by Bank from time to time (or, if Bank fails or ceases to quote or otherwise establish a Prime Rate, a comparable index selected by Bank) (the Prime Rate is purely a discretionary benchmark and is not necessarily the lowest or most favorable rate at which Bank extends credit to its customers).

"Principal Payment Date" shall mean the third Interest Payment Date and every third Interest Payment Date thereafter.

"Treasury Obligation" shall mean a note, bill or bond issued by the United States Treasury Department as a full faith and credit general obligation of the United States.

"Variable Rate" shall mean the Prime Rate, as in effect from time to time, plus 0.50% per annum.

"Working Day" shall mean a Business Day on which banks are regularly open for business in London.

2. Interest Rate. Interest shall accrue on the outstanding principal amount of this Note, during each Interest Period, at a per annum rate equal to the LIBOR Rate for such Interest Period plus the Applicable Margin; provided, however, from and after the occurrence of any Event of Default, interest shall accrue on the outstanding principal amount of this Note, during each Interest Period, at the Default Rate. Interest shall be computed based on a 360-day year counting the actual number of days elapsed.

3. Interest and Principal Payments. On each Interest Payment Date and on the Maturity, Borrower shall make to Bank a payment of all the then accrued but unpaid interest on this Note. On each Principal Payment Date, Borrower shall make to Bank a payment of the principal of this Note in the amount of \$36,666.85, provided that, on the

Maturity, Borrower shall pay to Bank the entire then unpaid principal amount of this Note and all other amounts then owing under this Note and the other Credit Documents.

4. Additional Costs; Unavailability of Dollar Deposits.

(a) In the event that any applicable law or regulation or the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof (whether or not having the force of law) (i) shall change the basis of taxation of payments to Bank of any amounts payable by Borrower hereunder (other than taxes imposed on the overall net income of Bank) or (ii) shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by Bank, or (iii) shall impose any other condition with respect to this Note, and the result of any of the foregoing is to increase the cost to Bank of making or maintaining the loans evidenced by this Note or to reduce any amount receivable by Bank hereunder, and Bank reasonably determines that such increased costs or reduction in amount receivable was attributable to the LIBOR Rate basis used to establish the interest rate hereunder, then Borrower shall, from time to time, upon demand by Bank, pay to Bank additional amounts sufficient to compensate Bank for such increased costs (the "Additional Costs"). A detailed statement as to the amount of such Additional Costs, prepared in good faith and submitted to Borrower by Bank, shall be conclusive and binding in the absence of manifest error.

(b) If Bank determines in its sole discretion acting in good faith at any time (the "Determination Date") that it can no longer make, fund or maintain LIBOR-based loans for any reason, including without limitation illegality, or LIBOR cannot be ascertained or does not accurately reflect Bank's cost of funds, or Bank would be subject to Additional Costs that cannot be recovered from Borrower, then, from and after such Determination Date, interest shall accrue on the unpaid principal amount of this Note at a per annum rate equal to the Variable Rate, with such rate changing with each change in the Prime Rate.

(c) If any present or future law, governmental rule, regulation, policy, guideline, directive or similar requirement (whether or not having the force of law) imposes, modifies, or deems applicable any capital adequacy, capital maintenance or similar requirement which affects the manner in which Bank allocates capital resources to its commitments (including any commitments hereunder), and as a result thereof, in the reasonable opinion of Bank, the rate of return on Bank's capital with regard to the Loan is reduced to a level below that which Bank could have achieved but for such circumstances, then in such case and upon prior written notice from Bank to Borrower, from time to time, Borrower shall pay to Bank such additional amount or amounts as shall compensate Bank for such reduction in Bank's rate of return. Such notice shall contain the statement of Bank with regard to any such amount or amounts, which shall, in the absence of manifest error, be binding upon Borrower. In determining such amount, Bank may use any reasonable method of averaging and attribution that it deems applicable. For the avoidance of doubt, the foregoing provisions shall apply to

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all requests, rules, guidelines or directives concerning capital adequacy issued in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or the United States financial regulatory authorities, regardless of the date adopted, issued, promulgated or implemented.

5. Prepayments.

(a) Borrower may at any time and from time to time prepay the outstanding principal amount of this Note in whole or in part, subject to prior notice in accordance with this Paragraph 5. Borrower shall notify Bank in writing of any prepayment hereunder not later than 11:00 a.m., New York, New York time, five (5) Business Days before the date of the prepayment. Each such notice shall specify the prepayment date and the principal amount to be prepaid. Each Prepayment shall be accompanied by accrued interest on the principal amount prepaid and any amount required to be paid pursuant to Paragraph 5(b) hereof.

(b) Concurrently with any prepayment made on other than the last day of an Interest Period, Borrower shall pay to Bank the following amount: the excess, if any, of (i) the amount of interest which would have accrued on the amount prepaid during the period from the date of such prepayment to the last day of that Interest Period at the applicable interest rate provided for herein over (ii) the amount of interest (as reasonably determined by Bank) which would have accrued to the holder of a Treasury Obligation selected by Bank in the amount (or as close to such amount as feasible) of the amount prepaid and having a maturity date on (or as soon after as feasible) the last day of that Interest Period, would earn if the Treasury Obligation were purchased in the secondary market on the date the prepayment is made to Bank and were held to maturity. Borrower agrees that the aforescribed amount shall be based on amounts which a holder of a Treasury Obligation would receive under the foregoing circumstances, whether or not Bank actually invests the amount prepaid in any Treasury Obligation. Borrower acknowledges that determining the actual amount of costs and expenses resulting from a prepayment on other than the last day of an Interest Period may be difficult or impossible to determine in an specific instance and that, accordingly, the amount set forth above is a reasonable estimate of such costs and expense.

(c) No prepayment shall result in a deferral or reduction of scheduled principal payments unless and until this Note is repaid in full.

(d) Amounts prepaid on this Note may not be reborrowed.

6. Manner and Application of Payments. Each payment under this Note shall be applied first to any late charges and costs, next to accrued but unpaid interest, and the remainder, if any, against the principal amount outstanding, provided that, while an

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Event of Default exists, each such payment may be applied in whatever order Bank elects. All payments hereunder shall be made in lawful money of the United States of America and immediately available funds at the Payment Address, without setoff, counterclaim or deduction of any kind. If a payment to be made hereunder is stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest.

7. Late Charges. Borrower shall pay Bank upon demand a late charge of five percent of any installment of interest or principal not received by Bank within 10 days after the installment is due. Such late charge is intended to compensate Bank for administrative and other costs associated with not receiving a payment when due and is neither a penalty nor interest. Each such late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to Bank.

8. Usury Negation. Nothing herein shall be construed or operate so as to require Borrower to pay interest hereunder in an amount or at a rate greater than the maximum allowed by applicable law. Should any interest or other charges paid or payable hereunder result in the computation or earning of interest in excess of the maximum rate or amount of interest which is allowed under applicable law, any and all such excess interest shall be (and the same hereby is) waived by Bank, and the amount of such excess paid shall be automatically credited against, and be deemed to have been payments in reduction of, the principal then due hereunder, and any portion of such excess paid which exceeds the principal then due hereunder shall be paid by Bank to Borrower.

9. Events of Default. Any of the following events or conditions shall constitute an Event of Default hereunder:

(a) Borrower's failure to make within five days after the date when it is due any payment of principal of, or interest on, this Note; and

(b) The occurrence of an Event of Default (as that term is defined in the Credit Agreement).

10. Remedies. Upon and at any time after the occurrence of an Event of Default, this Note shall, at Bank's option, become immediately due and payable, without notice, presentment, protest or demand (which are hereby waived); provided that, upon the occurrence of an Event of Default described in §11.1(g) of the Credit Agreement, this Note shall automatically become immediately due and payable without notice, presentment, protest or demand (which are hereby waived). No failure by Bank to exercise such option upon the occurrence of any Event of Default shall affect its right to exercise it upon the subsequent occurrence of an Event of Default. Borrower shall pay Bank, within three (3) Business Days after Bank's demand, all costs and expenses (including reasonable counsel fees and expenses, including those at the appellate level

and in bankruptcy proceedings) in connection with the enforcement of this Note, whether or not suit be brought.

11. Waivers. Borrower and any endorsers, sureties, guarantors, and all others who are, or may become liable for the payment hereof severally: (a) waive presentment for payment, demand, notice of demand, notice of non-payment or dishonor, notice of acceleration, protest and notice of protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default, or enforcement of the payment of this Note, (b) waive any exemption of disposable earnings from attachment or garnishment under Florida Statutes § 222.11, (c) consent to all extensions of time, renewals, postponements of time of payment of this Note or other modifications hereof from time to time prior to or after the maturity date hereof, whether by acceleration or in due course, without notice, consent or consideration to any of the foregoing, (d) agree to any substitution, exchange, addition, or release of any of the security for the indebtedness evidenced by this Note or the addition or release of any party or person primarily or secondarily liable hereon, and (e) agree that Bank shall not be required first to institute any suit, or to exhaust its remedies against the undersigned or any other person or party to become liable hereunder or against the security in order to enforce the payment of this Note.

12. Benefit of Credit Agreement. This Note is the New Spanish Fort Note referred to in, and is entitled to the benefits of, the Credit Agreement, as amended from time to time, and the other Credit Documents referred to therein.

13. Security. Payment of this Note is secured by, inter alia, a Mortgage, Assignment of Rents and Security Agreement executed by Ark Causeway Real Estate, LLC, a Delaware limited liability company, in favor of Bank, and encumbering certain properties situate in Baldwin County, Alabama, as amended and/or restated from time to time (the "Mortgage").

14. Notices. Any notice or demand given by Bank to Borrower hereunder may be given in the manner set forth in the provision of the Credit Agreement referred to above captioned "Notices."

15. Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of New York (without giving effect to any New York principles of conflicts of law that would give effect to the laws of any other jurisdiction).

16. Consent to Jurisdiction. Borrower irrevocably agrees that any action or proceeding arising hereunder or relating hereto that is brought by Borrower shall be tried by the courts of the State of New York sitting in or for New York County, New York or the courts of the State of Florida sitting in or for Baldwin County, Alabama or the United States District Courts sitting in or for New York County, New York or Baldwin County, Alabama. Borrower irrevocably submits, in any such action or proceeding that is brought by Bank, to the non-exclusive jurisdiction of each such court and irrevocably

waives the defense of an inconvenient forum with respect to any such action or proceeding.

17. Waiver of Jury Trial. BORROWER AND (BY ACCEPTANCE HEREOF) BANK HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY CLAIMS, CROSS CLAIMS OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS NOTE. BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF BANK OR BANK'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. EACH BORROWER ACKNOWLEDGES THAT THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN A MATERIAL INDUCEMENT TO BANK TO CONTINUE AND/OR MAKE THE LOAN EVIDENCED BY THIS NOTE.

18. Amendment and Restatement; Mortgage Taxes. This Note amends and restates (but does not extinguish the indebtedness evidenced by) that certain Term Promissory Note, dated November 30, 2016, made by Borrower to the order of Bank in the original principal amount of \$3,550,000.00 (the "Replaced Note"). The Indebtedness evidenced by the Replaced Note is not being repaid or extinguished but will henceforth be evidenced by and repaid pursuant to this Note. The Replaced Note is attached hereto. Borrower shall indemnify and hold Bank harmless from and against any and all liability (including liability for interest and penalties) which Bank may incur in connection with any mortgage tax that may become payable as a result of or in connection with this Note (or the Replaced Note) and/or any instrument securing the same. The foregoing indemnity shall survive payment and satisfaction of this Note.

(signature page follows)



Executed on the date set forth above by:

**BORROWER:**

ARK RESTAURANTS CORP.

By: /s/ Robert J. Stewart

Name: Robert J. Stewart

Title: President

Signature Page to  
Amended and Restated Promissory Note  
(\$2,200,000.00)

**Document Type:** EX-21

**Description:**

**File:** c92483\_EX21.HTM

## Subsidiaries of the Registrant

<u>Subsidiary</u>	<u>Trade name(s)</u>	<u>Jurisdiction of Incorporation</u>
Ark 37 38 Events, LLC	N/A	Delaware
Ark AC Burger Bar LLC	Broadway Burger Bar and Grill	Delaware
Ark Atlantic City Corp.	Gallagher's Burger Bar	Delaware
Ark Atlantic City Restaurant Corp.	Gallagher's Steakhouse	Delaware
Ark Boston RSS Corp.	Durbin Park and Blackhorse Tavern	Delaware
Ark Bryant Park LLC	Bryant Park Grill & Café	Delaware
Ark Bryant Park Southwest LLC	Southwest Porch	Delaware
Ark Causeway Real Estate LLC	N/A	Delaware
Ark Connecticut Corp.	N/A	Delaware
Ark Connecticut Investment LLC	N/A	Delaware
Ark Connecticut Pizza LLC	N/A	Delaware
Ark Fifth Avenue Corp.	N/A	New York
Ark Gulf Shores Real Estate LLC	N/A	Delaware
Ark Hollywood/Tampa Corp.	N/A	Delaware
Ark Hollywood/Tampa Investments LLC	N/A	Delaware
Ark Hollywood LLC	N/A	Delaware
Ark Island Beach Real Estate LLC	N/A	Delaware
Ark Island Beach Resort LLC	N/A	Delaware
Ark Las Vegas Restaurant Corp.	N/A	Nevada
Ark Mad Events LLC	N/A	Delaware
Ark Meadowlands LLC	N/A	Delaware
Ark Museum LLC	Robert	Delaware
Ark Operating Corp.	El Rio Grande	New York
Ark Oyster House Causeway II, LLC	The Original Oyster House	Delaware
Ark Oyster House Gulf Shores I, LLC	The Original Oyster House	Delaware
Ark Private Events LLC	N/A	Delaware
Ark Potomac Corporation	Sequoia	District of Columbia
Ark Rio Corp.	El Rio Grande	New York
Ark Rustic Inn LLC	N/A	Delaware
Ark Rustic Inn Real Estate	N/A	Delaware
Ark Shuckers LLC	Shuckers	Delaware
Ark Shuckers Real Estate LLC	N/A	Delaware
Ark Southwest D.C. Corp.	Thunder Grill	District of Columbia
Ark Superb Foods, LLC	N/A	Delaware
Ark Tampa LLC	N/A	Delaware
ArkMod LLC	N/A	New York
Chefmod LLC	N/A	New York
Clyde Ark LLC	Clyde Frazier's Wine and Dine	New York
Las Vegas America Corp.	America	Nevada

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Las Vegas Festival Food Corp.	(1) Gonzalez y Gonzalez and (2) Village Eateries (New York-New York Hotel Food Court) (3) Broadway Burger Bar	Nevada
Las Vegas Planet Mexico Corp.	Yolos	Nevada
Las Vegas Steakhouse Corp.	Gallagher's Steakhouse	Nevada
Rio Restaurant Associates, L.P.	N/A	New York

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**Document Type:** EX-23

**Description:**

**File:** c92483\_EX23.HTM

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in Registration Statement Nos. 333-165369, 333-145424 and 333-227801 of Ark Restaurants Corp. on Form S-8 of our report dated December 20, 2018 on our audits of the consolidated financial statements of Ark Restaurants Corp. and Subsidiaries as of September 29, 2018 and September 30, 2017 and for each of the years in the two-year period ended September 29, 2018 appearing in this Annual Report on Form 10-K of Ark Restaurants Corp. for the year ended September 29, 2018.

/s/ CohnReznick LLP  
Jericho, New York  
December 20, 2018

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**Document Type:** EX-31.1

**Description:**

**File:** c92483\_EX31-1.HTM

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, Michael Weinstein, certify that:

1. I have reviewed this annual report on Form 10-K of Ark Restaurants Corp.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's accountants and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: December 20, 2018

/s/ MICHAEL WEINSTEIN

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**Michael Weinstein**  
*Chairman and Chief Executive Officer*  
(Principal Executive Officer)



**Document Type:** EX-31.2

**Description:**

**File:** c92483\_EX31-2.HTM

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER**

I, Anthony J. Sirica, certify that:

1. I have reviewed this annual report on Form 10-K of Ark Restaurants Corp.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's accountants and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: December 20, 2018

/s/ Anthony J. Sirica

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**Anthony J. Sirica**  
*Chief Financial Officer*  
(Authorized Signatory and Principal Financial and Accounting Officer)

**Document Type:** EX-32

**Description:**

**File:** c92483\_EX32.HTM

**Certificate of Chief Executive and Chief Financial Officers**

**The following statement is being made to the Securities and Exchange Commission solely for purposes of Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1350), which carries with it certain criminal penalties in the event of a knowing or willful misrepresentation.**

In accordance with the requirements of Section 906 of the Sarbanes-Oxley Act of 2002 (18 USC 1350), each of the undersigned hereby certifies that:

- (i) this report on Form 10-K for the year ended September 29, 2018 fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (ii) the information contained in this report fairly presents, in all material respects, the financial condition and results of operations of Ark Restaurants Corp.

Dated as of this 20<sup>th</sup> day of December 2018

/s/ Michael Weinstein  
\_\_\_\_\_  
Michael Weinstein  
*Chairman and Chief Executive Officer*  
(Authorized Signatory and Principal Executive Officer)

/s/ Anthony J. Sirica  
\_\_\_\_\_  
Anthony J. Sirica  
*Chief Financial Officer*  
(Authorized Signatory and Principal Financial and  
Accounting Officer)