

ARK RESTAURANTS CORP  
Form 10-Q  
August 11, 2017  
SECURITIES AND EXCHANGE COMMISSION  
  
Washington, D.C. 20549

FORM 10-Q

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended July 1, 2017

Commission file number 1-09453

**ARK RESTAURANTS CORP.**

(Exact name of registrant as specified in its charter)

New York	13-3156768
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

85 Fifth Avenue, New York, New York	10003
(Address of principal executive offices)	(Zip Code)

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

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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 (the "Exchange Act") during the preceding 12 months (or for 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 Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) 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 whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See 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 ☒

In an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

☐ Yes ☐ No

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☒

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

Class	Outstanding shares at August 4, 2017
(Common stock, \$.01 par value)	3,425,681

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

On one or more occasions, we may make statements in this Quarterly Report on Form 10-Q 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," "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" in Part I of our Annual Report on Form 10-K for the fiscal year ended October 1, 2016 ("Form 10-K") as may be updated by the information contained under the caption "Item 1A. Risk Factors" in Part II of this Quarterly Report on Form 10-Q.

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 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 Quarterly Report on Form 10-Q, 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 Quarterly Report on Form 10-Q 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

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subjects in our subsequent periodic reports filed with the Securities and Exchange Commission on Forms 10-K, 10-K/A, 10-Q, 10-Q/A 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.

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**Part I. Financial Information****Item 1. Consolidated Condensed Financial Statements****ARK RESTAURANTS CORP. AND SUBSIDIARIES  
CONSOLIDATED CONDENSED BALANCE SHEETS**

(In Thousands, Except Per Share Amounts)

	July 1, 2017  (unaudited)	October 1, 2016  (see Note 1)
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents (includes \$397 at July 1, 2017 and \$889 at October 1, 2016 related to VIEs)	\$ 320	\$7,239
Accounts receivable (includes \$515 at July 1, 2017 and \$429 at October 1, 2016 related to VIEs)	3,558	3,750
Employee receivables	388	453
Inventories (includes \$22 at July 1, 2017 and \$23 at October 1, 2016 related to VIEs)	2,111	1,892
Prepaid expenses and other current assets (includes \$258 at July 1, 2017 and \$228 at October 1, 2016 related to VIEs)	2,412	2,662
Total current assets	8,789	15,996
FIXED ASSETS - Net (includes \$9 at July 1, 2017 and \$22 at October 1, 2016 related to VIEs)	44,107	29,546
INTANGIBLE ASSETS - Net	418	526
GOODWILL	9,880	7,895
TRADEMARKS	3,331	1,611
DEFERRED INCOME TAXES	2,949	3,416
INVESTMENT IN AND RECEIVABLE FROM NEW MEADOWLANDS RACETRACK	6,966	6,701
OTHER ASSETS (includes \$71 at July 1, 2017 and October 1, 2016 related to VIEs)	2,339	2,564
<b>TOTAL ASSETS</b>	<b>\$ 78,779</b>	<b>\$68,255</b>
<b>LIABILITIES AND EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable - trade (includes \$88 at July 1, 2017 and \$114 at October 1, 2016 related to VIEs)	\$ 4,536	\$2,876
Accrued expenses and other current liabilities (includes \$212 at July 1, 2017 and \$238 at October 1, 2016 related to VIEs)	9,857	10,555
Accrued income taxes	1,699	606
Borrowings under credit facility	3,887	-
Current portion of notes payable	4,040	2,617
Total current liabilities	24,019	16,654
OPERATING LEASE DEFERRED CREDIT (includes \$56 at July 1, 2017 and \$73 at October 1, 2016 related to VIEs)	3,607	3,576

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NOTES PAYABLE, LESS CURRENT PORTION, net of deferred financing costs	9,011	5,321
TOTAL LIABILITIES	36,637	25,551
COMMITMENTS AND CONTINGENCIES		
EQUITY:		
Common stock, par value \$.01 per share - authorized, 10,000 shares; issued and outstanding, 3,426 shares at July 1, 2017 and 3,423 shares at October 1, 2016	34	34
Additional paid-in capital	12,588	12,942
Retained earnings	27,316	27,158
Total Ark Restaurants Corp. shareholders' equity	39,938	40,134
NON-CONTROLLING INTERESTS	2,204	2,570
TOTAL EQUITY	42,142	42,704
TOTAL LIABILITIES AND EQUITY	\$ 78,779	\$68,255

See notes to consolidated condensed financial statements.

**ARK RESTAURANTS CORP. AND SUBSIDIARIES****CONSOLIDATED CONDENSED STATEMENTS OF INCOME (Unaudited)**

(In Thousands, Except Per Share Amounts)

	13 Weeks Ended		39 Weeks Ended	
	July 1, 2017	July 2, 2016	July 1, 2017	July 2, 2016
<b>REVENUES:</b>				
Food and beverage sales	\$40,507	\$40,935	\$112,374	\$111,385
Other revenue	694	298	1,697	1,111
Total revenues	41,201	41,233	114,071	112,496
<b>COSTS AND EXPENSES:</b>				
Food and beverage cost of sales	11,227	10,656	30,814	29,440
Payroll expenses	13,776	12,895	39,402	38,982
Occupancy expenses	4,541	3,309	13,037	11,891
Other operating costs and expenses	5,398	4,999	15,390	14,485
General and administrative expenses	2,955	2,956	8,699	8,996
Depreciation and amortization	1,006	1,109	3,541	3,384
Total costs and expenses	38,903	35,924	110,883	107,178
RESTAURANT OPERATING INCOME	2,298	5,309	3,188	5,318
Gain on sale of Rustic Inn, Jupiter	-	-	1,637	-
OPERATING INCOME	2,298	5,309	4,825	5,318
<b>OTHER (INCOME) EXPENSE:</b>				
Interest expense	194	116	470	316
Interest income	(16 )	(12 )	(126 )	(36 )
Other (income) expense, net	(149 )	(217 )	(339 )	(439 )
Total other (income) expense, net	29	(113 )	5	(159 )
INCOME BEFORE PROVISION FOR INCOME TAXES	2,269	5,422	4,820	5,477
Provision for income taxes	585	1,362	1,338	1,398
CONSOLIDATED NET INCOME	1,684	4,060	3,482	4,079
Net income attributable to non-controlling interests	(298 )	(693 )	(755 )	(1,036 )
NET INCOME ATTRIBUTABLE TO ARK RESTAURANTS CORP.	\$1,386	\$3,367	\$2,727	\$3,043
<b>NET INCOME PER ARK RESTAURANTS CORP. COMMON SHARE:</b>				
Basic	\$0.40	\$0.99	\$0.80	\$0.89
Diluted	\$0.39	\$0.96	\$0.77	\$0.87
<b>WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING:</b>				
Basic	3,424	3,418	3,424	3,418
Diluted	3,549	3,494	3,532	3,504

See notes to consolidated condensed financial statements.





**ARK RESTAURANTS CORP. AND SUBSIDIARIES****CONSOLIDATED CONDENSED STATEMENTS OF CHANGES IN EQUITY (Unaudited)****FOR THE 39 WEEKS ENDED JULY 1, 2017 AND JULY 2, 2016**

(In Thousands, Except Per Share Amounts)

	<b>Common Stock</b>		<b>Additional Paid-In</b>	<b>Retained</b>	<b>Treasury</b>	<b>Total Ark Restaurants Corp. Shareholders' Equity</b>	<b>Non- controlling Interests</b>	<b>Total Equity</b>
	<b>Shares</b>	<b>Amount</b>	<b>Capital</b>	<b>Earnings</b>	<b>Stock</b>			
BALANCE - October 3, 2015	4,774	\$ 48	\$ 25,682	\$ 26,548	\$(13,220)	\$ 39,058	\$ 2,173	\$ 41,231
Net income	-	-	-	3,043	-	3,043	1,036	4,079
Exercise of stock options	-	-	1	-	-	1	-	1
Stock-based compensation	-	-	286	-	-	286	-	286
Retirement of treasury shares	(1,356)	(14 )	(13,206 )	-	13,220	-	-	-
Distributions to non-controlling interests	-	-	-	-	-	-	(734 )	(734 )
Dividends paid - \$0.75 per share	-	-	-	(2,565 )	-	(2,565 )	-	(2,565 )
BALANCE - July 2, 2016	3,418	\$ 34	12,763	\$ 27,026	\$-	\$ 39,823	\$ 2,475	\$ 42,298
BALANCE - October 1, 2016	3,423	\$ 34	\$ 12,942	\$ 27,158	\$-	\$ 40,134	\$ 2,570	\$ 42,704
Net income	-	-	-	2,727	-	2,727	755	3,482
Exercise of stock options	3	-	36	-	-	36	-	36
Tax benefit on exercise of stock options	-	-	7	-	-	7	-	7
Change in excess tax benefits from stock-based compensation	-	-	(397 )	-	-	(397 )	-	(397 )
Distributions to non-controlling interests	-	-	-	-	-	-	(1,121 )	(1,121 )
Dividends paid - \$0.75 per share	-	-	-	(2,569 )	-	(2,569 )	-	(2,569 )
BALANCE - July 1, 2017	3,426	\$ 34	\$ 12,588	\$ 27,316	\$-	\$ 39,938	\$ 2,204	\$ 42,142

See notes to consolidated condensed financial statements.



**ARK RESTAURANTS CORP. AND SUBSIDIARIES****CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS (Unaudited)**

(In Thousands)

	39 Weeks Ended	
	July 1, 2017	July 2, 2016
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Consolidated net income	\$3,482	\$4,079
Adjustments to reconcile consolidated net income to net cash provided by operating activities:		
Loss on closure of restaurant	-	16
Gain on sale of Rustic Inn, Jupiter	(1,637 )	-
Loss on disposal of assets	283	-
Deferred income taxes	77	540
Stock-based compensation	-	286
Depreciation and amortization	3,258	3,384
Amortization of deferred financing costs	35	32
Operating lease deferred credit	31	(190 )
Changes in operating assets and liabilities:		
Accounts receivable	192	(111 )
Inventories	74	98
Prepaid, refundable and accrued income taxes	1,069	(594 )
Prepaid expenses and other current assets	324	(350 )
Other assets	189	(373 )
Accounts payable - trade	1,660	(103 )
Accrued expenses and other current liabilities	(698 )	(426 )
Net cash provided by operating activities	8,339	6,288
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchases of fixed assets	(11,843 )	(1,482 )
Loans and advances made to employees	(69 )	(161 )
Payments received on employee receivables	134	164
Proceeds from the sale of the Rustic Inn, Jupiter	2,474	-
Purchase of Oyster House	(3,043 )	-
Additional investment in Meadowlands Newmark LLC	(222 )	-
Purchase of Shuckers	-	(717 )
Net cash used in investing activities	(12,569 )	(2,196 )
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Principal payments on notes payable	(2,932 )	(1,879 )
Borrowings under credit facility	3,897	-
Payment of debt financing costs	-	(131 )
Dividends paid	(2,569 )	(2,565 )
Proceeds from issuance of stock upon exercise of stock options	36	1
Distributions to non-controlling interests	(1,121 )	(734 )
Net cash used in financing activities	(2,689 )	(5,308 )

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NET DECREASE IN CASH AND CASH EQUIVALENTS	(6,919 )	(1,216 )
CASH AND CASH EQUIVALENTS, Beginning of period	7,239	9,735
CASH AND CASH EQUIVALENTS, End of period	\$320	\$8,519

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:

Cash paid during the period for:

Interest	\$458	\$316
Income taxes	\$192	\$1,486
Non-cash financing activities:		
Note payable in connection with the purchase of Oyster House	\$8,000	\$-
Change in excess tax benefits from stock-based compensation	\$(397 )	\$-
Note payable in connection with the purchase of Shuckers	\$-	\$5,000
Retirement of 1,356 treasury shares	\$-	\$13,220

See notes to consolidated condensed financial statements.

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**ARK RESTAURANTS CORP. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

July 1, 2017

(Unaudited)

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**1. CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

The consolidated condensed balance sheet as of October 1, 2016, which has been derived from audited financial statements included in the Company's annual report on Form 10-K for the year ended October 1, 2016 ("Form 10-K"), and the unaudited interim consolidated condensed financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information and pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC"). Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted. All adjustments that, in the opinion of management are necessary for a fair presentation for the periods presented, have been reflected as required by Article 10 of Regulation S-X. Such adjustments are of a normal, recurring nature. These consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Form 10-K. The results of operations for interim periods are not necessarily indicative of the operating results to be expected for the full year or any other interim period.

The Company had a working capital deficiency of \$15,230,000 at July 1, 2017 as a result of our purchase of the *Oyster House* properties in November 2016 and costs associated with the renovation of our *Sequoia* property in Washington, DC. 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 the next 12 months.

**PRINCIPLES OF CONSOLIDATION** — The consolidated condensed interim 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, collectively herein referred to as the "Company". Also included in the consolidated condensed interim financial statements are certain variable interest entities ("VIEs"). All significant intercompany balances and transactions have been eliminated in consolidation.

**RECLASSIFICATIONS** — Certain reclassifications of prior period balances for the 39-weeks ended July 2, 2016 related to the statement of income presentation of \$883,000 of certain administrative fees related to catering revenue received have been reclassified from payroll expense to revenue to conform to the current period presentation.

**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. In addition, 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 consolidated condensed 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 condensed 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.

For the 39-week periods ended July 1, 2017 and July 2, 2016, the Company did not make purchases from any one vendor that accounted for 10% or greater of total purchases for the respective period. For the 13-week period ended July 1, 2017, the

Company made purchases from one vendor that accounted for approximately 11% of total purchases. For the 13-week period ended July 2, 2016, the Company did not make purchases from any one vendor that accounted for 10% or greater of total purchases for the respective period.

**SEGMENT REPORTING** — As of July 1, 2017, 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.

**NEW ACCOUNTING STANDARDS NOT YET ADOPTED** — In January 2017, the Financial Accounting Standards Board (“the FASB”) issued guidance clarifying the definition of a business. The 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. The new rules will be effective for the Company in the first quarter of 2019. The Company is currently evaluating the potential impact adoption of this guidance on its Consolidated Condensed Financial Statements.

In January 2017, the FASB guidance 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 Condensed Financial Statements.

## **2. 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:

	July 1, 2017	October 1, 2016
	(in thousands)	
Cash and cash equivalents	\$ 397	\$ 889
Accounts receivable	515	429
Inventories	22	23
Prepaid expenses and other current assets	258	228
Due from Ark Restaurants Corp. and affiliates (1)	306	-
Fixed assets - net	9	22
Other assets	71	71
Total assets	\$ 1,578	\$ 1,662
Accounts payable - trade	\$ 88	\$ 114
Accrued expenses and other current liabilities	212	238
Due to Ark Restaurants Corp. and affiliates (1)	-	173
Operating lease deferred credit	56	73
Total liabilities	356	598
Equity of variable interest entities	1,222	1,064
Total liabilities and equity	\$ 1,578	\$ 1,662

(1) Amounts Due from and to 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 October 22, 2015, the Company, through its wholly-owned subsidiaries, Ark Shuckers, LLC and Ark Shuckers Real Estate, LLC, acquired the assets of *Shuckers Inc.* ("*Shuckers*"), a restaurant and bar located at the Island Beach Resort in Jensen Beach, FL, and six condominium units (four of which house the restaurant and bar operations). In addition, Ark Island Beach Resort LLC, a wholly-owned subsidiary of the Company, acquired Island Beach Resort Inc., a management company that administers a rental pool of certain condominium units under lease. The total purchase price was \$5,717,000. The acquisition is accounted for as a business combination and was financed with a bank loan in the amount of \$5,000,000 and cash from operations.

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 were allocated as follows (amounts in thousands):

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

The Consolidated Condensed Statements of Income for the 13 and 39-weeks ended July 1, 2017 include revenues and income of approximately \$5,569,000 and \$12,015,000 and \$864,000 and \$1,387,000, respectively, related to the *Shuckers* and *Oyster House* properties. The 13 and 39-weeks ended July 2, 2016 include revenues and income of approximately \$3,667,000 and \$6,959,000 and \$878,000 and \$676,000, respectively, related to *Sequoia DC* which was closed from January 1, 2017 through June 23, 2017. The unaudited pro forma financial information set forth below is based upon the Company's historical Consolidated Condensed Statements of Income for the 13 and 39-weeks ended July 1, 2017 and July 2, 2016 and includes the results of operations for *Shuckers* and 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 *Shuckers* and the *Oyster House* properties occurred on the dates indicated, nor does it purport to represent the results of operations for future periods.

13 Weeks Ended      39 Weeks Ended

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	July 1, 2017	July 2, 2016	July 1, 2017	July 2, 2016
Total revenues	\$41,201	\$45,132	\$115,884	\$121,594
Net income	\$1,386	\$4,345	\$2,934	\$4,430
Net income per share - basic	\$0.40	\$1.27	\$0.86	\$1.30
Net income per share - diluted	\$0.39	\$1.24	\$0.83	\$1.26
Basic	3,424	3,418	3,424	3,418
Diluted	3,549	3,494	3,532	3,504

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#### 4. RECENT RESTAURANT DISPOSITIONS

*Lease Expirations* – On November 30, 2015, the Company’s lease at the *V-Bar* located at the Venetian Casino Resort in Las Vegas, NV expired. The closure of this property did not result in a material charge.

The Company was advised by the landlord that it would have to vacate the *Center Café* property located at Union Station in Washington, DC which was on a month-to-month lease. The closure of this property occurred in February 2016 and did not result in a material charge.

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 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 Five Million Two Hundred Thousand Dollars (\$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 Eight Million Two Hundred Fifty Thousand Dollars (\$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 13-weeks ended December 31, 2016.

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 13-weeks ended December 31, 2016.

#### 5. 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 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. At July 1, 2017, it was 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 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 \$231,000 and \$164,000 at July 1, 2017 and October 1, 2016, respectively, and are included in Prepaid Expenses and Other Current Assets in the Consolidated Condensed 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 as discussed above. The principal and accrued interest related to this note in the amounts of \$1,858,000 and \$1,815,000, are included in Investment In and Receivable From New Meadowlands Racetrack in the Consolidated Balance Sheets at July 1, 2017 and October 1, 2016, 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. State law prohibits the issue from being put on the ballot before voters for the following two years. As a result, we performed an assessment of the recoverability of our indirect Investment in NMR as of October 1, 2016 which included estimates requiring 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 NJ 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 estimated 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 a result of the above, no impairment was deemed necessary as of July 1, 2017.

## 6. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

	July 1, 2017	October 1, 2016
	(In thousands)	
Sales tax payable	\$1,162	\$942
Accrued wages and payroll related costs	2,256	2,495
Customer advance deposits	3,520	4,077
Accrued occupancy and other operating expenses	2,919	3,041
	\$9,857	\$10,555

## 7. NOTES PAYABLE – BANK

Long-term debt consists of the following:

	July 1, 2017	October 1, 2016
	(In thousands)	
Promissory Note - Rustic Inn purchase	\$2,694	\$3,907
Promissory Note - Shuckers purchase	3,333	4,084
Promissory Note - Oyster House purchase	7,067	-
	13,094	7,991
Less: Current maturities	(4,040 )	(2,617 )
Less: Unamortized deferred financing costs	(43 )	(53 )
Long-term debt	\$9,011	\$5,321

On February 25, 2013, the Company issued a promissory note to Bank Hapoalim B.M. (the “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

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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 is payable in 60 equal monthly installments of \$134,722, which commenced on March 25, 2014.

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 bears interest at LIBOR plus 3.5% per annum, and is payable in 60 equal monthly installments of \$83,333, commencing on November 22, 2015.

Also on October 22, 2015, the Company also entered into a credit agreement (the "Revolving Facility") with BHBM which expires on October 21, 2017 and provides for total availability of the lesser of (i) \$10,000,000 and (ii) \$20,000,000 less the then aggregate amount of all indebtedness and obligations to BHBM. Borrowings under the Revolving Facility are evidenced by a promissory note (the "Revolving Note") in favor of BHBM and will be payable over five years with interest at an annual rate equal to LIBOR plus 3.5% per year.

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 bears interest at LIBOR plus 3.5% per annum, and is payable in 60 equal monthly installments of \$133,273, commencing on January 1, 2017.

During the 13-weeks ended July 1, 2017, the Company borrowed \$3,897,000 under the Revolving Facility to finance a portion of the renovation of its *Sequoia DC* property. As of July 1, 2017, such borrowings had a weighted average interest rate of 4.7%.

Deferred financing costs incurred in connection with the Revolving Facility in the amount of \$130,585 are being amortized over the life of the agreements on a straight-line basis and included in interest expense. Amortization expense of approximately \$12,000 and \$11,000 is included in interest expense for the 13-weeks ended July 1, 2017 and July 2, 2016, respectively. Amortization expense of \$35,000 and \$32,000 is included in interest expense for the 39-weeks ended July 1, 2017 and July 2, 2016, 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 July 1, 2017 except for the fixed charge coverage ratio covenant. On August 11, 2017, we were issued a waiver for this covenant as of July 1, 2017.

## 8.COMMITMENTS AND CONTINGENCIES

**Leases** — The Company leases several restaurants, bar facilities, and administrative headquarters through its subsidiaries under terms expiring at various dates through 2032. 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 restaurant's sales in excess of stipulated amounts at such facility and in one instance based on profits.

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 \$10,000,000, of which approximately \$8,500,000 has been incurred as of July 1, 2017. 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 13-weeks ended December 31, 2016. The restaurant re-opened in June 2017.

**Legal Proceedings** — In the ordinary course of its business, the Company is a party to various lawsuits arising from accidents at its restaurants and worker's 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, from time to time, in 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.

**Share Repurchase Plan** — On July 5, 2016, the Board of Directors authorized a share repurchase program authorizing management to purchase up to 500,000 shares of the Company's common stock during the next twelve months. Any repurchase



under the program will be effected in compliance with Rule 10b-18 under the Securities Exchange Act of 1934 “Purchases of Certain Equity Securities by the Issuer and Others”, funded using the Company’s working capital and be based on management’s evaluation of market conditions and other factors. No repurchases were made during the 39-weeks ended July 1, 2017 and July 2, 2016.

## 9. STOCK OPTIONS

The Company has options outstanding under two stock option plans, the 2004 Stock Option Plan (the “2004 Plan”) and the 2010 Stock Option Plan (the “2010 Plan”), which was approved by shareholders in the second quarter of 2010. Effective with this approval, the Company terminated the 2004 Plan. This action terminated the 400 authorized but unissued options under the 2004 Plan, but it did not affect any of the options previously issued under the 2004 Plan. Options granted under the 2004 Plan 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. Options granted under the 2010 Plan 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.

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.

During the quarter ended December 31, 2016, options to purchase 90,000 shares of common stock at an exercise price of \$32.15 per share expired unexercised.

No options or performance-based awards were granted during the 39-week period ended July 1, 2017.

A summary of stock option activity is presented below:

2017			
	Shares	Weighted Average Exercise Price	Weighted Average Contractual Term
			Aggregate Intrinsic Value

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Outstanding, beginning of period	518,608	\$ 20.33	5.1 Years	
Options:				
Granted	-			
Exercised	(4,308 )	\$ 18.74		
Canceled or expired	(90,000 )	\$ 32.15		
Outstanding and expected to vest, end of period	424,300	\$ 17.84	5.4 Years	\$2,719,000
Exercisable, end of period	424,300	\$ 17.84	5.4 Years	\$2,719,000

Compensation cost charged to operations for each of the 13-week periods ended July 1, 2017 and July 2, 2016 was \$0 and \$79,000, respectively, and for the 39-week periods ended July 1, 2017 and July 2, 2016 was \$0 and \$286,000, respectively. The compensation cost recognized is classified as a general and administrative expense in the Consolidated Condensed Statements of Income.

As of July 1, 2017, there was no unrecognized compensation cost related to unvested stock options.

## 10. INCOME TAXES

The Company's provision for income taxes consists of Federal, state and local taxes in amounts necessary to align the Company's year-to-date provision for income taxes with the effective tax rate that the Company expects to achieve for the full year. Each quarter, the Company updates its estimate of the annual effective tax rate and records cumulative adjustments as deemed necessary. The income tax provisions for the 39-week periods ended July 1, 2017 and July 2, 2016 reflect effective tax

rates of approximately 28% and 25%, respectively. The Company expects its effective tax rate for its current fiscal year to be lower than the statutory rate as a result of the generation of FICA tax credits and operating income attributable to the non-controlling interests of the VIEs that is not taxable to the Company. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from current estimates.

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 jurisdiction 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.

During the 13-weeks ended December 31, 2016, certain equity compensation awards expired unexercised. As such, the Company reversed the related deferred tax asset in the amount of approximately \$397,000 as a charge to Additional Paid-in Capital as there was a sufficient pool of windfall tax benefit available.

## **11. INCOME PER SHARE OF COMMON STOCK**

Net income per share is calculated on the basis of the weighted average number of common shares outstanding during each period plus, for diluted net income per share, the additional dilutive effect of potential common stock. Potential common stock using the treasury stock method consists of dilutive stock options.

For the 13- and 39-week periods ended July 1, 2017, the treasury stock impact of options to purchase 66,000, 158,800 and 199,500 shares of common stock at exercise prices of \$12.04, \$14.40 and \$22.50 per share, respectively, were included in diluted earnings per share.

For the 13- and 39-week periods ended July 2, 2016, the treasury stock impact of options to purchase 66,000 and 164,700 shares of common stock at exercise prices of \$12.04 and \$14.40 per share, respectively, were included in diluted earnings per share. Options to purchase 203,000 shares of common stock at an exercise price of \$22.50 per share and options to purchase 90,000 shares of common stock at an exercise price of \$32.15 were not included in diluted earnings per share as their impact would be anti-dilutive.

## **12. DIVIDENDS**

On June 5, 2017, the Board of Directors declared a quarterly dividend of \$0.25 per share on the Company's common stock to be paid on July 5, 2017 to shareholders of record at the close of business on June 19, 2017. The Company intends to continue to pay such quarterly cash dividends 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.



Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

**Overview**

As of July 1, 2017, 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 Condensed Statements of Income for the 13 and 39-weeks ended July 1, 2017 include revenues and income of approximately \$5,569,000 and \$12,015,000 and \$864,000 and \$1,387,000, respectively, related to *Shuckers*, which was acquired on October 22, 2015 and the *Oyster House* properties, 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 periods ended July 1, 2017 and July 2, 2016 each included 39 weeks.

*Seasonality*

The Company has substantial fixed costs that do not decline proportionately with sales. At our properties located in the northeast, 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 operating income for the 13 weeks ended July 1, 2017 was \$2,298,000 as compared to \$5,309,000 for the 13 weeks ended July 2, 2016. This decrease resulted primarily from: (i) increased losses in the amount of \$2,437,000 related to *Sequoia* in Washington, DC which was closed for renovation on January 4, 2017, (ii) the reversal in the 13-weeks ended July 2, 2016 of commercial rent tax liabilities in the amount of \$945,000, and (iii) the correction of an immaterial error in the 13-weeks ended July 2, 2016 related to an overstatement of a rent liability in the amount of \$261,000, partially offset by operating income of \$527,000 related to the *Oyster House* properties in Gulf Shores, Alabama (which were acquired on November 30, 2016).

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The following table summarizes the significant components of the Company's operating results for the 13- and 39-week periods ended July 1, 2017 and July 2, 2016, respectively:

	13 Weeks Ended		Variance			39-Weeks Ended		Variance		
	July 1, 2017	July 2, 2016	\$	%		July 1, 2017	July 2, 2016	\$	%	
	(in thousands)					(in thousands)				
REVENUES:										
Food and beverage sales	\$40,507	\$40,935	\$(428 )	-1.0 %		\$112,374	\$111,385	\$989	0.9 %	
Other revenue	694	298	396	132.9%		1,697	1,111	586	52.7 %	
Total revenues	41,201	41,233	(32 )	-0.1 %		114,071	112,496	1,575	1.4 %	
COSTS AND EXPENSES:										
Food and beverage cost of sales	11,227	10,656	571	5.4 %		30,814	29,440	1,374	4.7 %	
Payroll expenses	13,776	12,895	881	6.8 %		39,402	38,982	420	1.1 %	
Occupancy expenses	4,541	3,309	1,232	37.2 %		13,037	11,891	1,146	9.6 %	
Other operating costs and expenses	5,398	4,999	399	8.0 %		15,390	14,485	905	6.2 %	
General and administrative expenses	2,955	2,956	(1 )	0.0 %		8,699	8,996	(297 )	-3.3 %	
Depreciation and amortization	1,006	1,109	(103 )	-9.3 %		3,541	3,384	157	4.6 %	
Total costs and expenses	38,903	35,924	2,979	8.3 %		110,883	107,178	3,705	3.5 %	
RESTAURANT OPERATING INCOME	2,298	5,309	(3,011)	-56.7 %		3,188	5,318	(2,130)	-40.1 %	
Gain on sale of Rustic Inn, Jupiter	-	-	-	0.0 %		1,637	-	1,637	N/A	
OPERATING INCOME	\$2,298	\$5,309	\$(3,011)	-56.7 %		\$4,825	\$5,318	\$(493 )	-9.3 %	

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## Revenues

During the Company's 13- and 39-week periods ended July 1, 2017, revenues decreased 0.1% and increased 1.4%, respectively, as compared to revenues in the 13- and 39-week periods ended July 2, 2016. These changes resulted primarily from: (i) revenues related to the *Oyster House* properties in Gulf Shores, Alabama (which were acquired on November 30, 2016) and (ii) the same-store sales impacts discussed below, offset by the closure for renovation of *Sequoia DC* in Washington, DC on January 4, 2017 and the permanent closures of *Center Café* in Washington, DC and the *V Bar* in Las Vegas as a result of lease expirations.

### Food and Beverage Same-Store Sales

On a Company-wide basis, same-store sales decreased 7.9% during the third fiscal quarter of 2017 as compared to the same period last year as follows:

	13 Weeks Ended		Variance	
	July 1, 2017	July 2, 2016	\$	%
	(in thousands)			
Las Vegas	\$11,222	\$11,161	\$61	0.5 %
New York	12,082	12,360	(278 )	-2.2 %
Washington, DC	1,586	4,648	(3,062)	-65.9 %
Atlantic City, NJ	1,938	1,705	233	13.7 %
Boston	891	941	(50 )	-5.3 %
Connecticut	543	557	(14 )	-2.5 %
Florida	6,994	6,888	106	1.5 %
Same-store sales	35,256	38,260	\$(3,004)	-7.9 %
Other	5,251	2,675		
Food and beverage sales	\$40,507	\$40,935		

Same-store sales in Las Vegas were relatively flat as expected. Same-store sales in New York decreased 2.2%, primarily as a result of poor weather conditions. Same-store sales in Washington, DC, which excludes *Center Café* which closed in February 2016, decreased 65.9%, as a result of the closure of *Sequoia DC* on January 4, 2017 for renovation. Same-store sales in Atlantic City increased 13.7%, primarily due to increased traffic at properties in which we operate our restaurants as other casinos closed. Same-store sales in Boston decreased 5.3%, primarily as a result of decreased traffic at Faneuil Hall Marketplace where our property is located. Same-store sales in Florida increased 1.5% as the impacts of the road construction project started in the second quarter of fiscal 2016 by the local municipality at *The Rustic Inn* in Dania Beach, FL have stabilized. Other food and beverage sales consist of sales related to new restaurants opened or acquired during the applicable period (e.g. the *Oyster House* properties) and sales related to properties that were closed due to lease expiration and other closures.

**Costs and Expenses**

Costs and expenses for the 13- and 39-weeks ended July 1, 2017 and July 2, 2016 were as follows (in thousands):

	13 Weeks Ended		13 Weeks Ended		Increase		39 Weeks Ended		39 Weeks Ended		Increase	
	July 1, 2017	% to Total Revenue	July 2, 2016	% to Total Revenue	(Decrease)		July 1, 2017	% to Total Revenue	July 2, 2016	% to Total Revenue	(Decrease)	
					\$	%					\$	%
Food and beverage cost of sales	\$11,227	27.2%	\$10,656	25.8%	\$571	5.4%	\$30,814	27.0%	\$29,440	26.2%	\$1,374	4.7%
Payroll expenses	13,776	33.4%	12,895	31.3%	881	6.8%	39,402	34.5%	38,982	34.7%	420	1.1%
Occupancy expenses	4,541	11.0%	3,309	8.0%	1,232	37.2%	13,037	11.4%	11,891	10.6%	1,146	9.6%
Other operating costs and expenses	5,398	13.1%	4,999	12.1%	399	8.0%	15,390	13.5%	14,485	12.9%	905	6.2%
General and administrative expenses	2,955	7.2%	2,956	7.2%	(1)	0.0%	8,699	7.6%	8,996	8.0%	(297)	-3.3%
Depreciation and amortization	1,006	2.4%	1,109	2.7%	(103)	-9.3%	3,541	3.1%	3,384	3.0%	157	4.6%
	\$38,903		\$35,924		\$2,979		\$110,883		\$107,178		\$3,705	

The increases in food and beverage costs as a percentage of total revenues for the 13 and 39-weeks ended July 1, 2017 compared to the same periods of last year are primarily the result of higher food costs as a percentage of sales associated with *The Oyster House* properties, which were acquired on November 30, 2016, seafood restaurants which, consistent with the industry, operate at a higher food cost structure.



Payroll expenses as a percentage of total revenues for the 13-weeks ended July 1, 2017 increased as compared to the same period of last year primarily as a result of pre-opening and training costs related to *Sequoia DC*. Payroll expenses as a percentage of total revenues for the 39-weeks ended July 1, 2017 decreased as compared to the same period of last year primarily as a result of better labor management and the increasing mix of sales in markets where labor costs are lower, offset by pre-opening and training costs related to *Sequoia DC*.

Occupancy expenses as a percentage of total revenues, excluding the impacts in the 13- and 39-weeks ended July 2, 2016 of the reversal of commercial rent tax liabilities in the amount of \$945,000 and the correction of an immaterial error related to an overstatement of a rent liability in the amount of \$261,000, for the 13- and 39-weeks ended July 1, 2017 were consistent with the same periods of last year.

Other operating costs and expenses as a percentage of total revenues for the 13 and 39-weeks ended July 1, 2017 increased as compared to the same periods of year as a result fixed costs associated with *Sequoia DC*, which was closed for renovation on January 4, 2017, and fixed costs associated with properties where sales declined.

General and administrative expenses (which relate solely to the corporate office in New York City) as a percentage of total revenues for the 13-weeks ended July 1, 2017 were consistent with the same period of last year and for the 39-weeks ended July 1, 2017 decreased slightly as a result of lower headcount partially offset by transaction costs of approximately \$187,000 incurred in connection with the purchase of the *Oyster House* properties.

Depreciation and amortization expense for the 13-weeks ended July 1, 2017 decreased as compared to the same period of last year as a result of the closure of properties discussed above. Depreciation and amortization expense for the 39-weeks ended July 1, 2017 increased as compared to the same period of last year as a result of additional depreciation in the amount of \$358,000 related to asset write-offs at *Sequoia* (which is undergoing a major renovation) and *Canyon Road* (whose lease was transferred to an unrelated party).

## Income Taxes

The Company's provision for income taxes consists of Federal, state and local taxes in amounts necessary to align the Company's year-to-date provision for income taxes with the effective tax rate that the Company expects to achieve for the full year. Each quarter, the Company updates its estimate of the annual effective tax rate and records cumulative adjustments as deemed necessary. The income tax provisions for the 39-week periods ended July 1, 2017 and July 2, 2016 reflect effective tax rates of approximately 28% and 25%, respectively. The Company expects its effective tax rate for its current fiscal year to be lower than the statutory rate as a result of the generation of FICA tax credits and operating income attributable to the non-controlling interests of the VIEs that is not taxable to the Company. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from current estimates.

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 jurisdiction, 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.

### **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 and acquisitions. We utilize cash generated from operations to fund the cost of developing and opening new restaurants and remodeling existing restaurants we own.

Net cash provided by operating activities for the 39-weeks ended July 1, 2017 increased to \$8,339,000 as compared to \$6,288,000 provided by operations in the same period of last year. This increase 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 the 39-week period ended July 1, 2017 was \$12,569,000 and resulted primarily from purchases of fixed assets at existing restaurants, costs associated with the renovation of *Sequoia DC* 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 investing activities for the 39-week period ended July 2, 2016 was \$2,196,000 and resulted primarily from purchases of fixed assets at existing restaurants and the cash portion of the purchase of *Shuckers* in the amount of \$717,000.

Net cash used in financing activities for the 39-week periods ended July 1, 2017 and July 2, 2016 of \$2,689,000 and \$5,308,000, 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 \$15,230,000 at July 1, 2017 as compared with a deficiency of \$658,000 at October 1, 2016. This increase resulted primarily from our purchase of the *Oyster House* properties in November 2016 and costs associated with the renovation of our *Sequoia* property in Washington, DC, as discussed below. 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 the next 12 months.

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 to cost approximately \$10,000,000, of which approximately \$8,500,000 has been incurred as of July 1, 2017. In connection with this closure, the Company recognized an impairment loss related to fixed asset disposals as of December 31, 2016 in the amount of \$283,000, which is included in Depreciation and Amortization Expense for the 39-weeks ended July 1, 2017. The restaurant re-opened in June 2017.

On June 5, 2017, the Board of Directors declared a quarterly dividend of \$0.25 per share on the Company's common stock to be paid on July 5, 2017 to shareholders of record at the close of business on June 19, 2017. The Company intends to continue to pay such quarterly cash dividends 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.

The Company was in compliance with all of its financial covenants under its Revolving Facility as of July 1, 2017 except for the fixed charge coverage ratio covenant. On August 11, 2017, we were issued a waiver for this covenant as of July 1, 2017.

### **Recent Restaurant Expansion**

On October 22, 2015, the Company, through its wholly-owned subsidiaries, Ark Shuckers, LLC and Ark Shuckers Real Estate, LLC, acquired the assets of *Shuckers Inc.* ("*Shuckers*"), a restaurant and bar located at the Island Beach Resort in Jensen Beach, FL, and six condominium units (four of which house the restaurant and bar operations). In addition, Ark Island Beach Resort LLC, a wholly-owned subsidiary of the Company, acquired Island Beach Resort Inc., a management company that administers a rental pool of certain condominium units under lease. The total purchase price was \$5,717,000. The acquisition was accounted for as a business combination and was financed with a bank loan in the amount of \$5,000,000 and cash from operations.

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.

### Recent Restaurant Dispositions

**Lease Expirations** – On November 30, 2015, the Company's lease at the *V-Bar* located at the Venetian Casino Resort in Las Vegas, NV expired. The closure of this property did not result in a material charge.

The Company was advised by the landlord that it would have to vacate the *Center Café* property located at Union Station in Washington, DC which was on a month-to-month lease. The closure of this property occurred in February 2016 and did not result in a material charge.

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 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 Five Million Two Hundred Thousand Dollars (\$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 Eight Million Two Hundred Fifty Thousand Dollars (\$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 13-weeks ended December 31, 2016.

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 13-weeks ended December 31, 2016.

### **Critical Accounting Policies**

The preparation of financial statements requires the application of certain accounting policies, which may require the Company to make estimates and assumptions of future events. In the process of preparing its consolidated condensed financial statements, the Company estimates the appropriate carrying value of certain assets and liabilities, which are not readily apparent from other sources. The primary estimates underlying the Company's consolidated condensed financial statements include allowances for potential bad debts on accounts and notes receivable, leases, the useful lives and recoverability of its assets, such as property and intangibles, fair values of financial instruments, the realizable value of its tax assets and other matters. Management bases its estimates on certain assumptions, which it believes are reasonable in the circumstances, and actual results could differ from those estimates. Although management does not believe that any change in those assumptions in the near term would have a material effect on the Company's consolidated financial position or the results of operations, differences in actual results could be material to the consolidated condensed financial statements.

The Company's critical accounting policies are described in the Company's Form 10-K for the year ended October 1, 2016. There have been no significant changes to such policies during fiscal 2017 other than those disclosed in Note 1 to the Consolidated Condensed Financial Statements.

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

See Note 1 to the Consolidated Condensed Financial Statements for a description of recent accounting pronouncements, including those adopted in fiscal 2017 and the expected dates of adoption and the anticipated impact on the Consolidated Condensed Financial Statements.

### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

The Company purchases commodities such as chicken, beef, lobster, crabs and shrimp for the Company's restaurants. The prices of these commodities may be volatile depending upon market conditions. The Company does

not purchase forward commodity contracts because the changes in prices for these items have historically been short-term in nature and, in the Company's view, the cost of the contracts is in excess of the benefits.

The Company's business is also highly seasonal and dependent on the weather. Outdoor seating capacity, such as terraces and sidewalk cafes, is available for dining only in the warm seasons and then only in inclement weather.

#### **Item 4. Controls and Procedures**

##### *Evaluation of Disclosure Controls and Procedures*

Under the supervision and with the participation of management, including our principal executive officer and principal financial officer, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this quarterly report as such term is defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Based on this evaluation, our management, including our principal executive officer and principal financial officer, concluded that our disclosure controls and procedures were effective as of July 1, 2017 to ensure that all material information required to be disclosed by us in reports that we file or submit under the Exchange Act is accumulated and communicated to them as appropriate to allow timely decisions regarding required disclosure and that all such information is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

The scope of management's assessment of the effectiveness of the internal control over financial reporting includes all of our subsidiaries except for the *Oyster House* properties, which were acquired on November 30, 2016. Our consolidated revenue for the 13- and 39-weeks ended July 1, 2017 were \$41,201,000 and \$114,071,000, respectively, which includes \$4,098,000 and \$7,638,000 related to the *Oyster House* properties and our total assets as of July 1, 2017 were \$78,779,000, of which the *Oyster House* properties represented \$1,062,000.

*Changes in Internal Control over Financial Reporting*

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that occurred during the third quarter of fiscal 2017 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

*Limitations of the Effectiveness of Internal Control*

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the internal control system are met. Because of the inherent limitations of any internal control system, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected.

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## **PART II**

### **OTHER INFORMATION**

#### **Item 1. Legal Proceedings**

The Company is not subject to pending legal proceedings, other than ordinary claims incidental to its business, which the Company does not believe will materially impact results of operations.

#### **Item 1A. Risk Factors**

The most significant risk factors applicable to the Company are described in Part I, Item 1A (Risk Factors) of the Company's Annual Report on Form 10-K for the fiscal year ended October 1, 2016 (the "2016 Form 10-K"). There have been no material changes to the risk factors previously disclosed in the 2016 Form 10-K. The risks described in the 2016 Form 10-K are not the only risks facing the Company. Additional risks and uncertainties not currently known to management may materially adversely affect the Company's business, financial condition, and/or operating results.

#### **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

None.

#### **Item 3. Defaults upon Senior Securities**

None.

#### **Item 4. Mine Safety Disclosures**

Not Applicable.



**Item 5. Other Information**

None.

**Item 6. Exhibits**

31.1 Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

31.2 Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

32 Certificate of Chief Executive and Chief Financial Officers Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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

\*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.



**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: August 11, 2017

**ARK RESTAURANTS CORP.**

By: /s/ Michael Weinstein  
Michael Weinstein  
Chairman & Chief Executive Officer  
(Principal Executive Officer)

By: /s/ Robert J. Stewart  
Robert J. Stewart  
President and Chief Financial Officer  
(Authorized Signatory and Principal  
Financial and Accounting Officer)

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