

**Ark  
Restaurants  
Corp.**

**2017 ANNUAL REPORT**

## The Company

We are a New York corporation formed in 1983. As of the fiscal year ended September 30, 2017, 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 30, 2017, 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. Most of our properties which have been opened in recent years are of the latter description. As of the fiscal year ended September 30, 2017, 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.

We will provide, without charge, a copy of our Annual Report on Form 10-K for the fiscal year ended September 30, 2017, including financial statements, exhibits and schedules thereto, to each of our shareholders of record on February 13, 2018 and each beneficial holder on that date, upon receipt of a written request therefore mailed to our offices, 85 Fifth Avenue, New York, NY 10003 Attention: Treasurer.

February 15, 2018

Shareholders, Associates, and Friends of our Company,

This has been an active year of acquiring new assets, reimagining and renovating our 1,000 seat Sequoia, Washington D.C. restaurant, selling our Jupiter, Florida property, and reconfiguring work schedules to mitigate significant legislated increases in wages to tipped and non-tipped employees.

For fiscal 2017 the primary disruptor of EBITDA was the closure of Sequoia for a significant renovation. The renovation was a requirement by a new landlord as a condition to obtaining a new 15-year term. Our lease was due to expire in the later part of 2017. Sequoia operated successfully for the better part of 20 years but in truth for the last several of those we opined that a contemporary makeover and the expansion of private event space could spark new interest and increased revenues. The restaurant closed on January 1, 2017, and fully reopened in the early fall. The closure was responsible for a \$3.7 million negative impact on the Company's EBITDA. Basically, we took a restaurant with positive operating profits, closed it and incurred losses during the construction period while maintaining the employment of a significant number of salaried employees. Of Sequoia's 1,000 seats more than half are outdoors. Permitting issues with the construction delayed our targeted summer opening. We are hopeful that the "new Sequoia" will outperform the "old Sequoia" and although the revenue from fourth quarter fiscal 2017 and first quarter fiscal 2018 are positive, it is this coming summer and the marketing of our new event spaces that will determine whether we have favorably "transitioned" this asset. The capital allocation to accomplish this was considerable. Recent transactions where we have purchased operations and the underlying buildings and land have traded at 5 to 5.5 multiples to trailing EBITDA. In 2016 Sequoia had \$1.5 million cash flow. Certainly, extending that cash flow with a new 15-year lease term had value. Since Sequoia operates under a lease where we do not take ownership of the underlying real estate our assessment was that this cash flow should trade at a discount from transactions where we become owners. If we concluded retaining \$1.5 million cash flow as an ultimate goal, the capital allocated should have been \$6 to \$7 million. However, we had confidence that there was incremental cash flow in reconfiguring and upgrading the design and invested at a higher multiple.

During the first quarter of fiscal 2017, we acquired two properties in Alabama along with their buildings and land. The deal was predicated on their trailing \$2 million of operating profit. These properties were in our portfolio for ten months of fiscal 2017 and local management performed well with operating profit near our expectations. These restaurants join two of our Florida properties, Shuckers in Jensen Beach and Rustic Inn Ft. Lauderdale as restaurants where we are our own landlord. Shuckers and Rustic continue to outperform the base operating years in which they were acquired. The success of these properties encouraged us to purchase the Alabama restaurants. Among the positives of owning the real estate is the elimination of negotiations for extended leases, a potential disruptor to reliable EBITDA, which over the years has played havoc on our Company. The underlying land and buildings are assets that can be sold if we find ourselves with disappointing operating metrics. This is not the case with leased properties where market leases attached to unprofitable restaurants have little attraction. Proof of this came with our Rustic Inn expansion into Jupiter, Florida. A right of first refusal to buy the property was triggered when the owner of the property contracted to sell to a third party. We exercised our option and flipped the property for a \$3 million profit before expenses of the transaction. At the time this operation was losing money. If we had not had the opportunity with the real estate there would have been little residual value to our lease and improvements. The \$3 million gain on the sale was greater than operating losses from the restaurant's inception.

We continue to be battered with legislated minimum wage increases. We are doing the best we can to maneuver but a tight labor market complicates our efforts. I would think it is a condition problematic for most retailers and we are highly aware that service staff that prize customers are invaluable. Retention of these employees is a priority and restructuring their schedules is as much an art form as a negotiation. As mentioned in last year's letter we have found some revenue enhancements to offset wage increases, but increased pricing in menu items is not a preference even though signals from the economy indicate there should be strengthening demand. We feel comfortable with our "value to quality" proposition and although

tempted we are at our best when we recognize that any price increase to gain an edge could bring revenue risk. Presently the Governor of New York is flirting with additional changes to minimum wage that would further disadvantage ownership. On the other side of this issue is consideration by the federal labor department to allow a reallocation of tips now earmarked only to tipped employees to include those non-tipped hourly employees. Conceivably this could help back of house employees with a new income source other than wages and take some pressure off ownership. Certainly, we would welcome this legislation, but implementing the allocation of a percentage of tips away from tipped employees will present a significant challenge.

We have positive trends that should favor fiscal 2018. Our restaurants' revenue lines continue to do well with few exceptions. Our Florida and Las Vegas properties are benefitting from increased customer counts. The detour which challenged arriving customers at Rustic Inn, Ft. Lauderdale has been resolved with the opening of a new bridge. We recently purchased an adjacent property to Rustic to expand parking which has eased access for our customers. Later this year we intend to increase capacity adding a new raw bar to accommodate an ever-present wait time. Last year we had weather issues at all venues and hopefully will not see a repeat or worsening of that scenario. Milder weather, especially in the early spring, would be a benefit. Add to this mix a full year for the Alabama properties, and the elimination of Jupiter's operating loss. We can only speculate as to the impact Sequoia could have on EBITDA. Last fiscal year's loss for Sequoia will be eliminated, but it would be a disappointment and more important a misallocation of capital if we did not better the operating income this restaurant achieved in fiscal 2016.

Our balance sheet liquidity has been challenged. We allocated significant capital to our acquisitions and the renovation of Sequoia. We are a company that historically had little debt and strong ratios of liquidity. This changed this past year as we did not want to pass on opportunity. We now have in place reasonably favorable credit facilities to take us through this period. Our cash pump opens in the warmer months.

We retain our investment in an LLC which is the majority owner and operator of the Meadowlands Race Track in northern New Jersey. Our strategy when we made this investment was our strong belief in the desperate financial condition of the State of New Jersey. Presently all gaming is restricted to Atlantic City which is a shrinking footprint both in the number of casinos and the tax on casino revenue collected by the state. We believe that the expansion of gaming in Philadelphia and the potential for gaming in down state New York will exacerbate the situation for New Jersey. The state needs new sources of revenue and a logical contender would be to bring casino gaming to the northern part of the state. The failure of a 2016 referendum to allow for this does not dissuade our continued confidence in the eventuality. We have the most persuasive site. Importantly, in addition to holding an interest in the LLC, if the LLC is successful in obtaining a gaming license we retain an exclusive to all casino food and beverage operations with the exception for a Hard Rock Café (Hard Rock is a partner in the venture ).

We will pursue additional opportunities to acquire restaurants where the real estate comes along with the deal. This is our preference, although we will not ignore strong cash flows with favorable long-term underlying leases. We do have the capacity to make a further acquisition if the right property comes to our attention. In the past we have been successful at leasing spaces and developing restaurant concepts. High rents, elevated construction costs and our conservative nature have effectively limited these opportunities. Whether we acquire or build we are best suited to large spaces where we can do outsized volumes. We have proved adept at delivering good quality at fair prices in these settings.

Again, this would not be possible without the support of all who work with this company. Their efforts translate into customer satisfaction and our success.

Sincerely,

Michael Weinstein  
Chairman and Chief Executive Officer

# **ARK RESTAURANTS CORP.**

## **Corporate Office**

Michael Weinstein, Chairman and Chief Executive Officer  
Robert Stewart, President, Chief Financial Officer and Treasurer  
Vincent Pascal, Senior Vice President and Chief Operating Officer  
Paul Gordon, Senior Vice President-Director of Las Vegas Operations  
Walter Rauscher, Vice President-Corporate Sales & Catering  
Nancy Alvarez, Controller  
Nicole Calix Coy, Director of Human Resources – Las Vegas Operations  
Linda Clous, Director of Facilities Management  
Luis Gomes, Director of Purchasing – Las Vegas Operations  
Marilyn Guy, Director of Human Resources  
Jeff Isaacson, Vice President – Beverage Operations  
Donna McCarthy, Director of Operations – Atlantic City  
Teresita Mendoza, Controller – Las Vegas Operations  
Veronica Mijelshon, Director of Architecture and Design  
Andrea O'Brien, Director of Tour and Travel  
John Oldweiler, Director of Purchasing  
Evyette Ortiz, Director of Marketing  
Sonal Shah, General Counsel and Secretary  
Brisa Shoshani, Executive Assistant – Las Vegas Operations  
Craig Tribus, Director of Operations- Las Vegas Operations  
Welner Villatoro, Director of Maintenance – Las Vegas Operations

## **Executive Chefs**

Jerome Lingle, Las Vegas, NV  
Vico Ortega, New York, NY  
Sergio Soto, Atlantic City, NJ

## **Restaurant General Managers-New York**

Dianne Ashe-Giovannone, El Rio Grande  
Ashlee Dean, Southwest Porch  
Ana Harris, Robert  
Bridgeen Rice, Clyde Frazier's Wine and Dine  
Donna Simms, Bryant Park Grill

## **Restaurant General Managers-Washington D.C.**

Gregory Thompson, Thunder Grill  
Maurizio Reyes, Sequoia

## **Restaurant General Manager-Atlantic City, NJ**

Michelle Fratticcioli, Gallagher's Steakhouse and Gallagher's Burger Bar  
Jason Kowerski, Broadway Burger Bar

**Restaurant General Manager – Meadowlands, NJ**

Jennifer Jordan, Victory Sports Bar & Club

**Restaurant General Managers-Las Vegas**

Ivonne Escobedo, Village Streets  
Staci Green, Yolos Mexican Grill  
John Hausdorf, Las Vegas Room Service  
Geri Ohta, Director of Sales and Catering  
Mary Massa, Gonzalez y Gonzalez  
Mary Marques, Gallagher's Steakhouse  
Kelly Rosas, America  
Jeff Stein, Broadway Burger Bar & Grill

**Restaurant General Manager-Boston**

Patricia Reyes, Durgin-Park

**Restaurant General Managers-Florida**

Michael Diascro, Rustic Inn  
Edgar Gonzalez-Pratt, Hollywood Food Court  
Darvin Pratts, Tampa Food Court  
Robert Rae, Shuckers

**Restaurant General Manager-Foxwoods**

Matilda Santana, Lucky 7

**Restaurant General Managers- Alabama**

Jim Harrison, Original Oyster House- Spanish Fort  
Bud Morris, Original Oyster House- Gulf Shores

**Restaurant Chef- Boston**

Roberto Reyes- Durgin Park

**Restaurant Chefs-New York**

Gonzalo Colin, Robert  
Armando Cortes, Clyde Frazier's Wine and Dine  
Fermin Ramirez, El Rio Grande  
Gadi Weinreich, Bryant Park Grill

**Restaurant Chefs-Washington D.C.**

Fanor Baldarrama, Sequoia  
Michael Foo, Thunder Grill

**Restaurant Chefs-Las Vegas**

Bernard Camat, Gallagher's Steakhouse  
Brandon Greenwood, Broadway Burger Bar & Grill  
Richard Harris, America  
Richard Harris, Banquets  
Jerome Lingle, Employee Dining Room  
Rafael Medina, Yolos Mexican Grill  
Sergio Salazar, Gonzalez y Gonzalez

**Restaurant Chefs-Florida**

Francisco Chinicle and Jordanys Santana, Hollywood Food Court  
Ralph Formisano, Shuckers  
Jason Lemon, Rustic Inn – Dania Beach, FL  
Nolberto Vernal, Tampa Food Court

## Management's Discussion and Analysis of Financial Condition and Results of Operations

### Overview

As of September 30, 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 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. The Consolidated Statement of Income for the year ended October 1, 2016 includes revenues and operating income of approximately \$4,763,000 and \$523,000, respectively, related to *Shuckers* in Jensen Beach, FL, which was acquired on October 22, 2015.

### *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 30, 2017 and October 1, 2016 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 operating income of \$7,008,000 for the year ended September 30, 2017 decreased 10.4% compared to operating income of \$7,824,000 for the year ended October 1, 2016. This decrease resulted primarily from: (i) increased losses in the amount of \$3,915,000 related to *Sequoia* in Washington, DC which was closed for renovation from January 4, 2017 through June 23, 2017, (ii) the reversal in the prior year ended October 1, 2016 of commercial rent tax liabilities in the amount of \$945,000, (iii) the correction of an immaterial error in the prior year ended October 1, 2016 related to an overstatement of a rent liability in the amount of \$261,000, and (iv) professional fees incurred in connection with our acquisition of the Oyster House properties, partially offset by: (a) operating income of \$1,243,000 related to *The Oyster House* properties in Gulf Shores, Alabama (which were acquired on November 30, 2016), (b) 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, and (c) overall better performance at most of our other properties.



The following table summarizes the significant components of the Company's operating results for the years ended September 30, 2017 and October 1, 2016, respectively:

|                                     | Year Ended            |                    | Variance |        |
|-------------------------------------|-----------------------|--------------------|----------|--------|
|                                     | September 30,<br>2017 | October 1,<br>2016 | \$       | %      |
|                                     | (in thousands)        |                    |          |        |
| REVENUES:                           |                       |                    |          |        |
| Food and beverage sales             | \$ 151,196            | \$ 148,479         | \$ 2,717 | 1.8%   |
| Other revenue                       | 2,681                 | 2,103              | 578      | 27.5%  |
| Total revenues                      | 153,877               | 150,582            | 3,295    | 2.2%   |
| COSTS AND EXPENSES:                 |                       |                    |          |        |
| Food and beverage cost of sales     | 41,597                | 39,545             | 2,052    | 5.2%   |
| Payroll expenses                    | 53,074                | 50,718             | 2,356    | 4.6%   |
| Occupancy expenses                  | 17,100                | 16,515             | 585      | 3.5%   |
| Other operating costs and expenses  | 20,690                | 19,719             | 971      | 4.9%   |
| General and administrative expenses | 11,504                | 11,708             | (204)    | -1.7%  |
| Depreciation and amortization       | 4,541                 | 4,553              | (12)     | -0.3%  |
| Total costs and expenses            | 148,506               | 142,758            | 5,748    | 4.0%   |
| RESTAURANT OPERATING INCOME         | 5,371                 | 7,824              | (2,453)  | -31.4% |
| Gain on sale of Rustic Inn, Jupiter | 1,637                 | -                  | 1,637    | N/A    |
| OPERATING INCOME                    | \$ 7,008              | \$ 7,824           | \$ (816) | -10.4% |

## Revenues

During the Company's year ended September 30, 2017 ("fiscal 2017"), revenues increased 2.2% compared to the year ended October 1, 2016 ("fiscal 2016"). This increase 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* 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 food and beverage sales decreased 3.3% for the year ended September 30, 2017 as compared to the year ended October 1, 2016 as follows:

|                         | Year Ended            |                    | Variance   |              |
|-------------------------|-----------------------|--------------------|------------|--------------|
|                         | September 30,<br>2017 | October 1,<br>2016 | \$         | %            |
|                         | (in thousands)        |                    |            |              |
| Las Vegas               | \$ 45,852             | \$ 44,130          | \$ 1,722   | 3.9%         |
| New York                | 39,734                | 40,176             | (442)      | -1.1%        |
| Washington, DC          | 7,982                 | 13,066             | (5,084)    | -38.9%       |
| Atlantic City, NJ       | 7,536                 | 6,984              | 552        | 7.9%         |
| Boston                  | 3,235                 | 3,597              | (362)      | -10.1%       |
| Connecticut             | 2,156                 | 2,220              | (64)       | -2.9%        |
| Florida                 | 26,467                | 27,331             | (864)      | -3.2%        |
| Same store sales        | 132,962               | 137,504            | \$ (4,542) | <u>-3.3%</u> |
| Other                   | 18,234                | 10,975             |            |              |
| Food and beverage sales | \$ 151,196            | \$ 148,479         |            |              |

Same-store sales in Las Vegas increased 3.9% 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 1.1%, primarily as a result of poor weather conditions during the months in which our properties with outdoor seating areas are open. Same-store sales in Washington, DC, which excludes *Center Café* which closed in February 2016, decreased 38.9% as a result of the closure of *Sequoia* on January 4, 2017 for renovation. Same-store sales in Atlantic City increased 7.9% primarily due to increased traffic at the properties in which we operate our restaurants as other hotels closed. Same-store sales in Boston decreased 10.1% primarily as a result of decreased traffic at Faneuil Hall Marketplace where our property is located. Same-store sales in Connecticut decreased 2.9% due to declining traffic at the Foxwoods Resort and Casino where our properties are located. Same-store sales in Florida decreased 3.2% reflecting decreased traffic at *The Rustic Inn* in Dania Beach, FL in the first three quarters of fiscal 2017 which seemed to stabilize in the fourth quarter of fiscal 2017 due to a road construction project started in the second quarter of fiscal 2016 by the local municipality. 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), sales related to properties that were closed during the periods due to lease expiration and other closures and other catering sales.

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*

The increase in Other Revenue for fiscal 2017 as compared to fiscal 2016 is primarily due to an increase in purchase service fees. 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.

## Costs and Expenses

Costs and expenses for the years ended September 30, 2017 and October 1, 2016 were as follows (in thousands):

|                                     | Year Ended            |                           | Year Ended         |                           | Increase<br>(Decrease) |       |
|-------------------------------------|-----------------------|---------------------------|--------------------|---------------------------|------------------------|-------|
|                                     | September 30,<br>2017 | % to<br>Total<br>Revenues | October 1,<br>2016 | % to<br>Total<br>Revenues | \$                     | %     |
| Food and beverage cost of sales     | \$ 41,597             | 27.0%                     | \$ 39,545          | 26.3%                     | \$ 2,052               | 5.2%  |
| Payroll expenses                    | 53,074                | 34.5%                     | 50,718             | 33.7%                     | 2,356                  | 4.6%  |
| Occupancy expenses                  | 17,100                | 11.1%                     | 16,515             | 11.0%                     | 585                    | 3.5%  |
| Other operating costs and expenses  | 20,690                | 13.4%                     | 19,719             | 13.1%                     | 971                    | 4.9%  |
| General and administrative expenses | 11,504                | 7.5%                      | 11,708             | 7.8%                      | (204)                  | -1.7% |
| Depreciation and amortization       | 4,541                 | 3.0%                      | 4,553              | 3.0%                      | (12)                   | -0.3% |
|                                     | <u>\$ 148,506</u>     |                           | <u>\$ 142,758</u>  |                           | <u>\$ 5,748</u>        |       |

The increase in food and beverage costs as a percentage of total revenues for the year ended September 30, 2017 compared to the same period 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 year ended September 30, 2017 increased slightly as compared to the same period of last year primarily as a result of pre-opening and training costs related to the reopening of *Sequoia*.

Occupancy expenses as a percentage of total revenues, excluding the impact in the year ended October 1, 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, decreased as compared to the same period of last year as a result of 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) partially offset by rent increases at our other properties.

Other operating costs and expenses as a percentage of total revenues for fiscal 2017 increased slightly as compared to fiscal 2016 as a result of fixed costs at 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 fiscal 2017 decreased as compared to the same period of last year primarily 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.

## 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. Most of the restaurants we own or manage are owned or managed by a separate legal entity.

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.

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.

The Revenue Reconciliation Act of 1993 provides tax credits to us for FICA taxes paid on tip income of restaurant service personnel. The net benefit to us was \$831,000 and \$854,000 in fiscal 2017 and 2016, respectively.

On December 22, 2017, the Tax Cuts and Jobs Act was enacted into law. The new tax legislation contains several key tax provisions including the reduction of the corporate income tax rate to 21% effective January 1, 2018 as well as a variety of other changes including the limitation of the tax deductibility of interest expense, acceleration of expensing of certain business assets and reductions in the amount of executive pay that could qualify as a tax deduction. ASC 740 requires us to recognize the effect of the tax law changes in the period of enactment. However, the SEC staff issued SAB 118 which will allow us to record provisional amounts during a measurement period which is similar to the measurement period used when accounting for business combinations. We will continue to assess the impact of the recently enacted tax law on our business and our consolidated financial statements.

### **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 2017 increased to \$10,350,000 as compared to \$7,613,000 provided by operations in fiscal 2016. 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 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 investing activities for fiscal 2016 was \$3,045,000 and resulted primarily from purchases of fixed assets at existing restaurants, an additional \$200,000 loan made to Meadowlands Newmark, LLC and the cash portion of the purchase of *Shuckers* in the amount of \$717,000.

Net cash used in financing activities for fiscal 2017 of \$1,542,000, 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.

Net cash used in financing activities for fiscal 2016 of \$7,064,000 resulted primarily from the payment of dividends, principal payments on notes payable and distributions to non-controlling interests.

The Company had a working capital deficiency of \$16,072,000 at September 30, 2017 as compared to \$658,000 at October 1, 2016. Such increase is primarily the 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 from the filing date. In addition, the Company is in the process of increasing the amounts available under the existing credit facility and refinancing outstanding borrowings over longer repayment periods. Such refinancing is expected to be completed in the second fiscal quarter of 2018.

On January 3, 2017, April 3, 2017, July 5, 2017 and October 4, 2017, 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 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.

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. The voter referendum for casino gaming in Northern New Jersey was defeated in November 2016. State law prohibits the issue from being put on the ballot before voters for the following two years.

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 as discussed above.

### *Recent Restaurant Dispositions and Charges*

*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.

### **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 our most difficult and subjective judgments include allowances for potential bad debts on receivables, the useful lives and recoverability of our assets, such as property and intangibles, fair values of financial instruments and share-based compensation, the realizable value of our tax assets and other matters. 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, such as the defeat of the referendum for casino gaming in Northern New Jersey in November 2016.

As a result, we performed an assessment of the recoverability of our indirect Investment in NMR as of September 30, 2017 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 30, 2017, 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 30, 2017. 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 2017 and the expected dates of adoption and the anticipated impact on the Consolidated Financial Statements.

## Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

## 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 in the over-the-counter market on the Nasdaq Capital Market under the symbol "ARKR." The high and low sale prices for our Common Stock from October 3, 2015 through September 30, 2017 are as follows:

| <u>Calendar 2015</u> | <u>Low</u> | <u>High</u> |
|----------------------|------------|-------------|
| Fourth Quarter       | \$22.13    | \$24.45     |
| <u>Calendar 2016</u> |            |             |
| First Quarter        | 20.01      | 22.95       |
| Second Quarter       | 20.00      | 23.70       |
| Third Quarter        | 22.18      | 24.10       |
| Fourth Quarter       | 20.10      | 24.25       |
| <u>Calendar 2017</u> |            |             |
| First Quarter        | 22.65      | 26.35       |
| Second Quarter       | 24.02      | 25.99       |
| Third Quarter        | 22.00      | 24.75       |

As of December 18, 2017, there were 31 holders of record of our common stock and approximately an additional 1,650 beneficial owners.

### Dividend Policy

On December 7, 2015, March 1, 2016, June 2, 2016, September 7, 2016, December 7, 2016, March 1, 2017, June 5, 2017 and September 6, 2017 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.



## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders  
Ark Restaurants Corp.

We have audited the accompanying consolidated balance sheets of Ark Restaurants Corp. and Subsidiaries (the “Company”) as of September 30, 2017 and October 1, 2016, and the related consolidated statements of income, changes in equity and cash flows for each of the years in the two-year period ended September 30, 2017. Ark Restaurants Corp. and Subsidiaries’ management is responsible for these consolidated financial statements. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, 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. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Ark Restaurants Corp. and Subsidiaries as of September 30, 2017 and October 1, 2016, and the results of their operations and their cash flows for each of the years in the two-year period ended September 30, 2017 in conformity with accounting principles generally accepted in the United States of America.

/s/ CohnReznick LLP

Jericho, New York  
December 29, 2017

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

|   | September 30,<br>2017 | October 1,<br>2016 |
|---|-----------------------|--------------------|
| <b>ASSETS</b>   |                       |                    |
| <b>CURRENT ASSETS:</b>  |                       |                    |
| Cash and cash equivalents (includes \$363 at September 30, 2017 and \$889 at October 1, 2016 related to VIEs)   | \$ 1,406              | \$ 7,239           |
| Accounts receivable (includes \$716 at September 30, 2017 and \$429 at October 1, 2016 related to VIEs)   | 3,353                 | 3,750              |
| Employee receivables  | 399                   | 453                |
| Inventories (includes \$22 at September 30, 2017 and \$23 at October 1, 2016 related to VIEs)   | 1,992                 | 1,892              |
| Prepaid and refundable income taxes (includes \$226 at September 30, 2017 and \$178 at October 1, 2016 related to VIEs)   | 945                   | 178                |
| Prepaid expenses and other current assets (includes \$63 at September 30, 2017 and \$50 at October 1, 2016 related to VIEs)   | 1,988                 | 2,484              |
| Total current assets  | 10,083                | 15,996             |
| FIXED ASSETS - Net (includes \$6 at September 30, 2017 and \$22 at October 1, 2016 related to VIEs)   | 45,215                | 29,546             |
| INTANGIBLE ASSETS - Net   | 409                   | 526                |
| GOODWILL  | 9,880                 | 7,895              |
| TRADEMARKS  | 3,331                 | 1,611              |
| DEFERRED INCOME TAXES   | 1,491                 | 3,416              |
| INVESTMENT IN AND RECEIVABLE FROM NEW MEADOWLANDS RACETRACK   | 6,979                 | 6,701              |
| OTHER ASSETS (includes \$71 at September 30, 2017 and October 1, 2016 related to VIEs)  | 2,679                 | 2,564              |
| <b>TOTAL ASSETS</b>   | <b>\$ 80,067</b>      | <b>\$ 68,255</b>   |
| <b>LIABILITIES AND EQUITY</b>   |                       |                    |
| <b>CURRENT LIABILITIES:</b>   |                       |                    |
| Accounts payable - trade (includes \$116 at September 30, 2017 and \$114 at October 1, 2016 related to VIEs)  | \$ 4,750              | \$ 2,876           |
| Accrued expenses and other current liabilities (includes \$260 at September 30, 2017 and \$238 at October 1, 2016 related to VIEs)                                  | 10,176                | 10,555             |
| Accrued income taxes  | -                     | 606                |
| Dividend payable  | 857                   | -                  |
| Borrowings under credit facility  | 6,198                 | -                  |
| Current portion of notes payable  | 4,174                 | 2,617              |
| Total current liabilities   | 26,155                | 16,654             |
| OPERATING LEASE DEFERRED CREDIT (includes \$51 at September 30, 2017 and \$73 at October 1, 2016 related to VIEs)   | 3,648                 | 3,576              |
| NOTES PAYABLE, LESS CURRENT PORTION, net of deferred financing costs  | 7,824                 | 5,321              |
| <b>TOTAL LIABILITIES</b>  | <b>37,627</b>         | <b>25,551</b>      |
| <b>COMMITMENTS AND CONTINGENCIES</b>  |                       |                    |
| <b>EQUITY:</b>  |                       |                    |
| Common stock, par value \$.01 per share - authorized, 10,000 shares; issued and outstanding, 3,428 shares at September 30, 2017 and 3,423 shares at October 1, 2016 | 34                    | 34                 |
| Additional paid-in capital  | 12,639                | 12,942             |
| Retained earnings   | 27,771                | 27,158             |
| Total Ark Restaurants Corp. shareholders' equity  | 40,444                | 40,134             |
| NON-CONTROLLING INTERESTS   | 1,996                 | 2,570              |
| <b>TOTAL EQUITY</b>   | <b>42,440</b>         | <b>42,704</b>      |
| <b>TOTAL LIABILITIES AND EQUITY</b>   | <b>\$ 80,067</b>      | <b>\$ 68,255</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 30,<br>2017 | October 1,<br>2016 |
| <b>REVENUES:</b>   |                       |                    |
| Food and beverage sales                                      | \$ 151,196            | \$ 148,479         |
| Other revenue  | 2,681                 | 2,103              |
| Total revenues   | <u>153,877</u>        | <u>150,582</u>     |
| <b>COSTS AND EXPENSES:</b>                                   |                       |                    |
| Food and beverage cost of sales                              | 41,597                | 39,545             |
| Payroll expenses   | 53,074                | 50,718             |
| Occupancy expenses   | 17,100                | 16,515             |
| Other operating costs and expenses                           | 20,690                | 19,719             |
| General and administrative expenses                          | 11,504                | 11,708             |
| Depreciation and amortization                                | 4,541                 | 4,553              |
| Total costs and expenses                                     | <u>148,506</u>        | <u>142,758</u>     |
| <b>RESTAURANT OPERATING INCOME</b>                           | 5,371                 | 7,824              |
| Gain on sale of Ark Jupiter RI, LLC                          | 1,637                 | -                  |
| <b>OPERATING INCOME</b>                                      | <u>7,008</u>          | <u>7,824</u>       |
| <b>OTHER (INCOME) EXPENSE:</b>                               |                       |                    |
| Interest expense   | 753                   | 416                |
| Interest income  | (170)                 | (180)              |
| Total other (income) expense, net                            | <u>583</u>            | <u>236</u>         |
| <b>INCOME BEFORE PROVISION FOR INCOME TAXES</b>              | 6,425                 | 7,588              |
| Provision for income taxes                                   | 1,668                 | 2,098              |
| <b>CONSOLIDATED NET INCOME</b>                               | 4,757                 | 5,490              |
| Net income attributable to non-controlling interests         | (718)                 | (1,460)            |
| <b>NET INCOME ATTRIBUTABLE TO ARK RESTAURANTS CORP.</b>      | <u>\$ 4,039</u>       | <u>\$ 4,030</u>    |
| <b>NET INCOME PER ARK RESTAURANTS CORP. COMMON SHARE:</b>    |                       |                    |
| Basic  | <u>\$ 1.18</u>        | <u>\$ 1.18</u>     |
| Diluted  | <u>\$ 1.14</u>        | <u>\$ 1.15</u>     |
| <b>WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING:</b> |                       |                    |
| Basic  | <u>3,424</u>          | <u>3,418</u>       |
| Diluted  | <u>3,531</u>          | <u>3,507</u>       |

See notes to consolidated financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY  
FOR THE YEARS ENDED SEPTEMBER 30, 2017 AND OCTOBER 1, 2016  
(In Thousands, Except Per Share Amounts)

|   | Common Stock |        | Additional<br>Paid-In<br>Capital | Retained<br>Earnings | Treasury Stock | Total Ark<br>Restaurants<br>Corp.<br>Shareholders'<br>Equity | Non-<br>controlling<br>Interests | Total<br>Equity |
|---|--------------|--------|----------------------------------|----------------------|----------------|--|----------------------------------|-----------------|
|   | Shares       | Amount |                                  |                      |                |  |                                  |                 |
| BALANCE - October 3, 2015                                   | 4,774        | \$ 48  | \$ 25,682                        | \$ 26,548            | \$ (13,220)    | \$ 39,058  | \$ 2,173                         | \$ 41,231       |
| Net income  | -            | -      | -                                | 4,030                | -              | 4,030  | 1,460                            | 5,490           |
| Exercise of stock options                                   | 5            | -      | 83                               | -                    | -              | 83   | -                                | 83              |
| Tax benefit on exercise of stock options                    | -            | -      | 11                               | -                    | -              | 11   | -                                | 11              |
| Stock-based compensation                                    | -            | -      | 286                              | -                    | -              | 286  | -                                | 286             |
| Change in excess tax benefits from stock-based compensation | -            | -      | 86                               | -                    | -              | 86   | -                                | 86              |
| Retirement of treasury shares                               | (1,356)      | (14)   | (13,206)                         | -                    | 13,220         | -  | -                                | -               |
| Distributions to non-controlling interests                  | -            | -      | -                                | -                    | -              | -  | (1,063)                          | (1,063)         |
| Dividends paid - \$1.00 per share                           | -            | -      | -                                | (3,420)              | -              | (3,420)  | -                                | (3,420)         |
| 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 and accrued - \$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       |

See notes to consolidated financial statements.

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

|  | Year Ended            |                    |
|--|-----------------------|--------------------|
|  | September 30,<br>2017 | October 1,<br>2016 |
| <b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>   |                       |                    |
| Consolidated net income  | \$ 4,757              | \$ 5,490           |
| Adjustments to reconcile consolidated net income to net cash provided by operating activities: |                       |                    |
| Loss on closure of restaurants   | 120                   | 16                 |
| Gain on sale of Ark Jupiter RI, LLC  | (1,637)               | -                  |
| Loss on disposal of assets   | 283                   | -                  |
| Deferred income taxes  | 1,550                 | 1,134              |
| Stock-based compensation   | -                     | 286                |
| Accrued interest on note receivable from NMR   | (56)                  | -                  |
| Depreciation and amortization  | 4,132                 | 4,553              |
| Amortization of deferred financing costs   | 46                    | 43                 |
| Operating lease deferred credit  | 72                    | (220)              |
| Changes in operating assets and liabilities:   |                       |                    |
| Accounts receivable  | 397                   | (529)              |
| Inventories  | 193                   | 131                |
| Prepaid, refundable and accrued income taxes   | (1,373)               | (1,886)            |
| Prepaid expenses and other current assets  | 546                   | (191)              |
| Other assets   | (175)                 | (865)              |
| Accounts payable - trade   | 1,874                 | (331)              |
| Accrued expenses and other current liabilities   | (379)                 | (18)               |
| Net cash provided by operating activities  | <u>10,350</u>         | <u>7,613</u>       |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>   |                       |                    |
| Purchases of fixed assets  | (13,904)              | (2,160)            |
| Loans and advances made to employees   | (121)                 | (198)              |
| Payments received on employee receivables  | 175                   | 230                |
| 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)                 | -                  |
| Loan made to Meadowlands Newmark LLC   | -                     | (200)              |
| Purchase of Shuckers   | -                     | (717)              |
| Net cash used in investing activities  | <u>(14,641)</u>       | <u>(3,045)</u>     |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>   |                       |                    |
| Principal payments on notes payable  | (3,951)               | (2,533)            |
| Borrowings under credit facility   | 6,198                 | -                  |
| Payment of debt financing costs  | -                     | (131)              |
| Dividends paid   | (2,569)               | (3,420)            |
| Proceeds from issuance of stock upon exercise of stock options                                 | 72                    | 83                 |
| Distributions to non-controlling interests   | (1,292)               | (1,063)            |
| Net cash used in financing activities  | <u>(1,542)</u>        | <u>(7,064)</u>     |
| <b>NET DECREASE IN CASH AND CASH EQUIVALENTS</b>   | <b>(5,833)</b>        | <b>(2,496)</b>     |
| CASH AND CASH EQUIVALENTS, Beginning of year   | 7,239                 | 9,735              |
| CASH AND CASH EQUIVALENTS, End of year   | <u>\$ 1,406</u>       | <u>\$ 7,239</u>    |
| <b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:</b>                                      |                       |                    |
| Cash paid during the period for:   |                       |                    |
| Interest   | \$ 707                | \$ 416             |
| Income taxes   | \$ 1,490              | \$ 2,850           |
| 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)              | \$ 86              |
| Accrued dividend   | \$ 857                | \$ -               |
| Note payable in connection with the purchase of Shuckers                                       | \$ -                  | \$ 5,000           |
| Retirement of 1,356 treasury shares  | \$ -                  | \$ 13,220          |

See notes to consolidated financial statements.

**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 30, 2017, 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 \$16,072,000 at September 30, 2017 primarily 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 December 31, 2018. In addition, the Company is in the process of increasing the amounts available under its existing credit facility and refinancing outstanding borrowings over longer repayment periods. Such refinancing is expected to be completed in 2018.

***Accounting Period*** — The Company's fiscal year ends on the Saturday nearest September 30. The fiscal years ended September 30, 2017 and October 1, 2016 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 30, 2017 the Company had accounts receivable balances due from two hotel operators totaling 39% of total accounts receivable. As of October 1, 2016, the Company had accounts receivable balances due from two hotel operators totaling 51% of total accounts receivable.

For the year ended September 30, 2017 the Company made purchases from one vendor that accounted for 10% of total purchases. For the year ended October 1, 2016, the Company did not make purchases from any one vendor that accounted for 10% or greater of total purchases.

**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. See Notes 4 and 10 for information regarding impairment charges for the year ended September 30, 2017. No impairment charges were necessary for the year ended October 1, 2016.

**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 30, 2017 and October 1, 2016, the Company performed qualitative assessments 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 30, 2017 and October 1, 2016. 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.

**Reclassification** — Certain reclassifications have been made to the prior year’s financial statements to enhance comparability with the current year’s presentation of prepaid and refundable income taxes, as well as other income. As a result, comparative figures have been adjusted to conform to the current year’s presentation.

**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 30, 2017 and October 1, 2016, the total liability for gift cards in the amounts of \$158,106 and \$161,487, 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 30, 2017 and October 1, 2016, 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** — 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. Upon exercise of options, 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

Company did not grant any options during the fiscal years 2017 and 2016. The Company 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.

**Recently Adopted Accounting Standards** — In June 2014, the Financial Accounting Standards Board (the "FASB") issued guidance which clarifies the recognition of stock-based compensation over the required service period, if it is probable that the performance condition will be achieved. This guidance was effective for the Company's fiscal year ended September 30, 2017 and did not have an impact on the Company's consolidated financial condition or results of operations.

In January 2015, the FASB issued guidance simplifying the income statement presentation by eliminating the concept of extraordinary items. Extraordinary items are events and transactions that are distinguished by their unusual nature and by the infrequency of their occurrence. Eliminating the extraordinary classification simplifies income statement presentation by altogether removing the concept of extraordinary items from consideration. The amendments were effective for the Company's fiscal year ended September 30, 2017 and did not have an impact on the Company's consolidated financial condition or results of operations.

In February 2015, the FASB amended the consolidation standards for reporting entities that are required to evaluate whether they should consolidate certain legal entities. Under the new guidance, all legal entities are subject to reevaluation under the revised consolidation model. Specifically, the guidance (i) modifies the evaluation of whether limited partnerships and similar legal entities are variable interest entities (VIEs) or voting interest entities; (ii) eliminates the presumption that a general partner should consolidate a limited partnership; (iii) affects the consolidation analysis of reporting entities that are involved with VIEs, particularly those that have fee arrangements and related party relationships; and (iv) provides a scope exception from consolidation guidance for reporting entities with interests in legal entities that are required to comply with or operate in accordance with requirements that are similar to those in Rule 2a-7 of the Investment Company Act for registered money market funds. The amendments were effective for the Company's fiscal year ended September 30, 2017 and did not have an impact on the Company's consolidated financial condition or results of operations.

**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 impact 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.

In July 2015, the FASB issued ASU No. 2015-11, *Inventory (Topic 330): Simplifying the Measurement of Inventory*. The guidance requires an entity to measure inventory at the lower of cost or net realizable value, which is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation, rather than the lower of cost or market in the previous guidance. This amendment applies to inventory that is measured using first-in, first-out (FIFO). This amendment is effective for the Company in the first quarter of fiscal 2018. A reporting entity should apply the amendments prospectively with earlier application permitted as of the beginning of an interim or annual reporting period. The Company does not expect the adoption of this guidance to have a material impact on the Company's consolidated financial condition or results of operations.

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 March 2016, the FASB issued ASU No. 2016-09, *Compensation – Stock Compensation – Improvements to Employee Share-Based Payment Accounting*. This ASU is intended to simplify the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities and classification on the statement of cash flows. The amendments in this update are effective for financial statements issued for annual and interim periods beginning after December 15, 2016, which will require us to adopt these provisions in the first quarter of fiscal 2018. The Company does not expect the adoption of this guidance to have a material impact on its consolidated financial statements.

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 October 2016, the FASB issued ASU No. 2016-17, *Consolidation: Interests Held through Related Parties That Are Under Common Control*. The amendments in this guidance change how a reporting entity that is the single decision maker of a variable interest entity should treat indirect interests in the entity held through related parties that are under common control with the reporting entity when determining whether it is the primary beneficiary of that variable interest entity. The amendments in this update are effective for financial statements issued for annual and interim periods beginning after December 15, 2016, which will require us to adopt these provisions in the first quarter of fiscal 2018. The Company does not expect the adoption of this guidance to have a material impact on its 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. The Company is currently evaluating the potential impact adoption of this guidance on its 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.

## 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 30,<br>2017 | October 1,<br>2016 |
|---|-----------------------|--------------------|
|   | (in thousands)        |                    |
| Cash and cash equivalents                         | \$ 363                | \$ 889             |
| Accounts receivable                               | 716                   | 429                |
| Inventories                                       | 22                    | 23                 |
| Prepaid and refundable income taxes               | 226                   | 178                |
| Prepaid expenses and other current assets         | 63                    | 50                 |
| Due from Ark Restaurants Corp. and affiliates (1) | 185                   | -                  |
| Fixed assets - net                                | 6                     | 22                 |
| Other assets                                      | 71                    | 71                 |
| Total assets                                      | <u>\$ 1,652</u>       | <u>\$ 1,662</u>    |
| Accounts payable - trade                          | \$ 116                | \$ 114             |
| Accrued expenses and other current liabilities    | 260                   | 238                |
| Due to Ark Restaurants Corp. and affiliates (1)   | -                     | 173                |
| Operating lease deferred credit                   | 51                    | 73                 |
| Total liabilities                                 | <u>427</u>            | <u>598</u>         |
| Equity of variable interest entities              | 1,225                 | 1,064              |
| Total liabilities and equity                      | <u>\$ 1,652</u>       | <u>\$ 1,662</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 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. The fair values of the assets acquired were allocated as follows:

|                                   |    |                  |
|-----------------------------------|----|------------------|
| Inventory                         | \$ | 67,000           |
| Commercial condominium units      |    | 3,584,800        |
| Residential condominium units     |    | 263,000          |
| Furniture, fixtures and equipment |    | 240,000          |
| Trademarks                        |    | 390,000          |
| Customer list                     |    | 90,000           |
| Goodwill                          |    | 1,082,200        |
|                                   | \$ | <u>5,717,000</u> |

The Consolidated Statement of Income for the year ended October 1, 2016 includes revenues and operating income of approximately \$4,763,000 and \$523,000, respectively, related to *Shuckers*. Transaction costs incurred in the amount of approximately \$170,000 are included in general and administrative expenses in the Consolidated Statement of Income for the year ended October 1, 2016. The Company expects the Goodwill and indefinite life Trademarks to be deductible for tax purposes.

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 income of approximately \$5,322,000 and \$11,804,000 and \$684,000 and \$1,243,000, respectively, related to the *Shuckers* and *Oyster House* properties. The years ended September 30, 2017 and October 1, 2016 include revenues and income (loss) of approximately \$4,409,000 and (\$2,759,000) and \$10,078,000 and \$1,156,000, respectively, related to *Sequoia* which was closed from January 4, 2017 through June 23, 2017. The unaudited pro forma financial information set forth below is based upon the Company's historical Consolidated Statements of Income for the years ended September 30, 2017 and October 1, 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.

|                                | Year Ended                           |                                   |
|--------------------------------|--------------------------------------|-----------------------------------|
|                                | September 30,<br>2017<br>(unaudited) | October 1,<br>2016<br>(unaudited) |
| Total revenues                 | \$ 155,211                           | \$ 163,972                        |
| Net income                     | \$ 4,246                             | \$ 6,643                          |
| Net income per share - basic   | \$ 1.24                              | \$ 1.94                           |
| Net income per share - diluted | \$ 1.20                              | \$ 1.89                           |
|                                |                                      |                                   |
| Basic                          | 3,424                                | 3,418                             |
| Diluted                        | 3,531                                | 3,507                             |

#### 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 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 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 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. At October 1, 2016, 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 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 \$9,000 and \$164,000 at September 30, 2017 and October 1, 2016, 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 as discussed above. The principal and accrued interest related to this note in the amounts of \$1,871,144 and \$1,814,659, are included in Investment In and Receivable From New Meadowlands Racetrack in the Consolidated Balance Sheets at September 30, 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 September 30, 2017 and 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 September 30, 2017 and October 1, 2016.

## 6. FIXED ASSETS

Fixed assets consist of the following:

|   | <b>September 30,<br/>2017</b> | <b>October 1,<br/>2016</b> |
|---|-------------------------------|----------------------------|
|   | (In thousands)                |                            |
| Land and building                               | \$ 17,164                     | \$ 9,002                   |
| Leasehold improvements                          | 50,127                        | 43,402                     |
| Furniture, fixtures and equipment               | 35,978                        | 36,062                     |
| Construction in progress                        | 980                           | 482                        |
|   | <u>104,249</u>                | <u>88,948</u>              |
| Less: accumulated depreciation and amortization | <u>59,034</u>                 | <u>59,402</u>              |
|   | <u>\$ 45,215</u>              | <u>\$ 29,546</u>           |

Depreciation and amortization expense related to fixed assets for the years ended September 30, 2017 and October 1, 2016 was \$4,096,000 and \$4,490,000, 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:

|                                 | <b>September 30,<br/>2017</b> | <b>October 1,<br/>2016</b> |
|---------------------------------|-------------------------------|----------------------------|
|                                 | (In thousands)                |                            |
| Purchased leasehold rights (a)  | \$ 2,395                      | \$ 2,737                   |
| Noncompete agreements and other | 253                           | 303                        |
|                                 | <u>2,648</u>                  | <u>3,040</u>               |
| Less accumulated amortization   | <u>2,239</u>                  | <u>2,514</u>               |
| Total intangible assets         | <u>\$ 409</u>                 | <u>\$ 526</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 30, 2017 and October 1, 2016 was \$42,000 and \$63,000, 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 30, 2017 and October 1, 2016 are as follows:

|                                  | <u>Goodwill</u> | <u>Trademarks</u> |
|----------------------------------|-----------------|-------------------|
|                                  | (In thousands)  |                   |
| Balance as of October 3, 2015    | \$ 6,813        | \$ 1,221          |
| Acquired during the year         | 1,082           | 390               |
| Impairment losses                | -               | -                 |
| 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 | <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 30,<br/>2017</u> | <u>October 1,<br/>2016</u> |
|--|-------------------------------|----------------------------|
|  | (In thousands)                |                            |
| Sales tax payable                              | \$ 813                        | \$ 942                     |
| Accrued wages and payroll related costs        | 2,475                         | 2,495                      |
| Customer advance deposits                      | 4,186                         | 4,077                      |
| Accrued occupancy and other operating expenses | 2,702                         | 3,041                      |
|  | <u>\$ 10,176</u>              | <u>\$ 10,555</u>           |

Two subsidiaries of the Company (“the Ark Subsidiaries”), which operate food courts on Federally protected Indian land, had been involved in litigation with the state in which they operate, whereby the state attempted to collect commercial rent tax from the Ark Subsidiaries. The Company had continued to accrue such taxes as the litigation worked its way through the courts. During July 2016, the state agreed to the entry of consent judgments in favor of the Ark Subsidiaries holding that the state is constitutionally prohibited from taxing rentals of Indian land. In connection with this agreement, the Company reversed the accrual of these liabilities in the amount of \$945,000 during the three months ended July 2, 2016. In addition, the Company received a refund of previously paid amounts in the amount of \$157,000 in August 2016 related to the above matter. Such amounts are included

in the Consolidated Statement of Income for the year ended October 1, 2016 as a reduction of Occupancy Expenses.

## 9. NOTES PAYABLE – BANK

Long-term debt consists of the following:

|  | <u>September 30,</u><br><u>2017</u> | <u>October 1,</u><br><u>2016</u> |
|--|-------------------------------------|----------------------------------|
|  | (In thousands)                      |                                  |
| Promissory Note - Rustic Inn purchase      | \$ 2,290                            | \$ 3,907                         |
| Promissory Note - Shuckers purchase        | 3,083                               | 4,084                            |
| Promissory Note - Oyster House purchase    | <u>6,667</u>                        | <u>-</u>                         |
|  | 12,040                              | 7,991                            |
| Less: Current maturities                   | (4,174)                             | (2,617)                          |
| Less: Unamortized deferred financing costs | <u>(42)</u>                         | <u>(53)</u>                      |
| Long-term debt                             | <u>\$ 7,824</u>                     | <u>\$ 5,321</u>                  |

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 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, as amended, expires on October 21, 2019 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 year ended September 30, 2017, the Company borrowed \$6,198,000 under the Revolving Facility to finance a portion of the renovation of its *Sequoia* property. As of September 30, 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 \$46,000 and \$43,000 is included in interest expense for the years ended September 30, 2017 and October 1, 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 September 30, 2017 except for the fixed charge coverage ratio covenant. On December 21, 2017, we were issued a waiver for this covenant as of September 30, 2017.

As of September 30, 2017, the aggregate amounts of notes payable maturities are as follows:

|      |                  |
|------|------------------|
| 2018 | \$ 4,216         |
| 2019 | 3,273            |
| 2020 | 2,599            |
| 2021 | 1,682            |
| 2022 | <u>270</u>       |
|      | <u>\$ 12,040</u> |

## 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 30, 2017, future minimum lease payments under noncancelable leases are as follows:

| <b>Fiscal Year</b>     | <u><b>Amount</b></u><br>(In thousands) |
|------------------------|--|
| 2018                   | \$ 9,720                               |
| 2019                   | 9,004                                  |
| 2020                   | 8,118                                  |
| 2021                   | 7,149                                  |
| 2022                   | 6,649                                  |
| Thereafter             | <u>34,439</u>                          |
| Total minimum payments | <u>\$ 75,079</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 \$13,547,000 and \$13,791,000 for the fiscal years ended September 30, 2017 and October 1, 2016, respectively. Contingent rentals, included in rent expense, were approximately \$4,420,000 and \$4,382,000 for the fiscal years ended September 30, 2017 and October 1, 2016, 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 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 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.

**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 years ended September 30, 2017 and October 1, 2016.

## 11. 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 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 years ended September 30, 2017 and October 1, 2016. The following table summarizes stock option activity under all plans:

|   | 2017            |                                 |                                   | 2016                      |                |                                 |                           |
|---|-----------------|---------------------------------|-----------------------------------|---------------------------|----------------|---------------------------------|---------------------------|
|   | Shares          | Weighted Average Exercise Price | Weighted Average Contractual Term | Aggregate Intrinsic Value | Shares         | Weighted Average Exercise Price | Aggregate Intrinsic Value |
| Outstanding, beginning of year                | 518,608         | \$ 20.33                        | 5.1 Years                         |                           | 523,800        | \$ 20.29                        |                           |
| Options:                                      |                 |                                 |                                   |                           |                |                                 |                           |
| Granted                                       | -               |                                 |                                   |                           | -              |                                 |                           |
| Exercised                                     | (6,808)         | \$ 17.15                        |                                   |                           | (5,192)        | \$ 16.26                        |                           |
| Canceled or expired                           | <u>(90,000)</u> | \$ 32.15                        |                                   |                           | <u>-</u>       |                                 |                           |
| Outstanding and expected to vest, end of year | <u>421,800</u>  | \$ 17.86                        | 5.2 Years                         | <u>\$ 2,745,156</u>       | <u>518,608</u> | \$ 20.33                        | <u>\$ 1,979,232</u>       |
| Exercisable, end of year                      | <u>421,800</u>  | \$ 17.86                        | 5.2 Years                         | <u>\$ 2,745,156</u>       | <u>518,608</u> | \$ 20.33                        | <u>\$ 1,979,232</u>       |
| Weighted average remaining contractual life   |                 | 5.2 Years                       |                                   |                           | 5.1 Years      |                                 |                           |
| Shares available for future grant             | 500,000         |                                 |                                   |                           | 500,000        |                                 |                           |

Compensation cost charged to operations for the fiscal years ended September 30, 2017 and October 1, 2016 for share-based compensation programs was approximately \$0 and \$286,000, respectively. The compensation cost recognized is classified as a general and administrative expense in the Consolidated Statements of Income. As of September 30, 2017, there was no unrecognized compensation cost related to unvested stock options.

The following table summarizes information about stock options outstanding as of September 30, 2017:

| Range of Exercise Prices | Options Outstanding and Exercisable |                                 |  |
|--------------------------|-------------------------------------|---------------------------------|--|
|                          | Number of Shares                    | Weighted Average Exercise Price | Weighted Average Remaining contractual life (in years) |
| \$12.04                  | 66,000                              | \$ 12.04                        | 1.6  |
| \$14.40                  | 156,300                             | \$ 14.40                        | 4.7  |
| \$22.50                  | <u>199,500</u>                      | \$ 22.50                        | 6.7  |
|                          | <u>421,800</u>                      | \$ 20.33                        | 5.2  |

## 12. INCOME TAXES

The provision for income taxes consists of the following:

|                               | <b>Year Ended</b>             |                            |
|-------------------------------|-------------------------------|----------------------------|
|                               | <b>September 30,<br/>2017</b> | <b>October 1,<br/>2016</b> |
|                               | (In thousands)                |                            |
| Current provision (benefit):  |                               |                            |
| Federal                       | \$ (144)                      | \$ 778                     |
| State and local               | 287                           | 192                        |
|                               | <u>143</u>                    | <u>970</u>                 |
| Deferred provision (benefit): |                               |                            |
| Federal                       | 1,391                         | 915                        |
| State and local               | 134                           | 213                        |
|                               | <u>1,525</u>                  | <u>1,128</u>               |
|                               | <u>\$ 1,668</u>               | <u>\$ 2,098</u>            |

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

|   | <b>Year Ended</b>             |                            |
|---|-------------------------------|----------------------------|
|   | <b>September 30,<br/>2017</b> | <b>October 1,<br/>2016</b> |
|   | (In thousands)                |                            |
| Provision at Federal statutory rate<br>(34% in 2017 and 2016) | \$ 2,185                      | \$ 2,580                   |
| State and local income taxes, net of<br>tax benefits          | 255                           | 326                        |
| Tax credits   | (632)                         | (611)                      |
| Income attributable to non-controlling interest               | (244)                         | (501)                      |
| Changes in tax rates  | 8                             | 9                          |
| Other   | 96                            | 295                        |
|   | <u>\$ 1,668</u>               | <u>\$ 2,098</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:



|  | <b>September 30,<br/>2017</b> | <b>October 1,<br/>2016</b> |
|--|-------------------------------|----------------------------|
|  | (In thousands)                |                            |
| Long-term deferred tax assets (liabilities): |                               |                            |
| State net operating loss carryforwards       | \$ 3,210                      | \$ 3,179                   |
| Operating lease deferred credits             | 826                           | 772                        |
| Depreciation and amortization                | (2,160)                       | (256)                      |
| Deferred compensation                        | 580                           | 986                        |
| Partnership investments                      | (291)                         | (709)                      |
| Prepaid expenses                             | (419)                         | (444)                      |
| Other  | 99                            | 230                        |
| Total long-term deferred tax assets          | 1,845                         | 3,758                      |
| Valuation allowance                          | (354)                         | (342)                      |
| Total net deferred tax assets                | <u>\$ 1,491</u>               | <u>\$ 3,416</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 \$354,000 and \$342,000 as of September 30, 2017 and October 1, 2016, respectively, attributable to state and local net operating loss carryforwards which are not realizable on a more-likely-than-not basis. During fiscal 2017, the Company's valuation allowance increased by approximately \$12,000 as the Company determined that certain state net operating losses became unrealizable on a more-likely-than-not basis.

As of September 30, 2017, the Company has New York State net operating losses of approximately \$20,030,000 and New York City net operating loss carryforwards of approximately \$18,455,000 that expire through fiscal 2037.

During fiscal 2017, certain equity compensation awards expired unexercised. As such, the Company reversed the related deferred tax asset in the amount of approximately \$400,000 as a charge to Additional Paid-in Capital as there was a sufficient pool of windfall tax benefit available. During fiscal 2016, the Company recorded a credit to Additional Paid-in Capital of \$11,000 related to equity compensation.

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

|   | <b>September 30,<br/>2017</b> | <b>October 1,<br/>2016</b> |
|---|-------------------------------|----------------------------|
|   | (In thousands)                |                            |
| Balance at beginning of year                                      | \$ 366                        | \$ 307                     |
| Additions based on tax positions taken in current and prior years | 15                            | 105                        |
| Settlements   | (134)                         | (46)                       |
| Decreases based on tax positions taken in prior years             | (96)                          | -                          |
| Balance at end of year  | <u>\$ 151</u>                 | <u>\$ 366</u>              |

The entire amount of unrecognized tax benefits if recognized would reduce our annual effective tax rate. As of September 30, 2017, the Company accrued approximately \$127,000 of interest and penalties. The Company does not expect its unrecognized tax benefits to change significantly over the next 12 months. Inherent uncertainties

exist in estimates of tax contingencies due to changes in tax law, both legislated and concluded through the various jurisdictions' tax court systems.

The Company files tax returns in the U.S. and various state and local jurisdictions with varying statutes of limitations. The 2014 through 2017 fiscal years remain subject to examination by the Internal Revenue Service most state and local tax authorities.

### 13. INCOME PER SHARE OF COMMON STOCK

A reconciliation of the numerators and denominators of the basic and diluted per share computations for the fiscal years ended September 30, 2017 and October 1, 2016 follows:

|                                      | <b>Net Income<br/>Attributable to<br/>Ark Restaurants<br/>Corp.<br/>(Numerator)</b> | <b>Shares<br/>(Denominator)</b> | <b>Per Share<br/>Amount</b> |
|--------------------------------------|---|---------------------------------|-----------------------------|
|                                      | (In thousands, except per share amounts)  |                                 |                             |
| <b>Year ended September 30, 2017</b> |   |                                 |                             |
| Basic EPS                            | \$ 4,039  | 3,424                           | \$ 1.18                     |
| Stock options                        | -   | 107                             | (0.04)                      |
| Diluted EPS                          | <u>\$ 4,039</u>   | <u>\$ 3,531</u>                 | <u>\$ 1.14</u>              |
| <b>Year ended October 1, 2016</b>    |   |                                 |                             |
| Basic EPS                            | \$ 4,030  | 3,418                           | \$ 1.18                     |
| Stock options                        | -   | 89                              | (0.03)                      |
| Diluted EPS                          | <u>\$ 4,030</u>   | <u>3,507</u>                    | <u>\$ 1.15</u>              |

For the year ended September 30, 2017, options to purchase 66,000 shares of common stock at a price of \$12.04, options to purchase 156,300 shares of common stock at a price of \$14.40 and options to purchase 199,500 shares of common stock at a price of \$22.50 per were included in diluted earnings per share.

For the year ended October 1, 2016, options to purchase 66,000 shares of common stock at a price of \$12.04, options to purchase 160,800 shares of common stock at a price of \$14.40 and options to purchase 201,808 shares of common stock at a price of \$22.50 per were included in diluted earnings per share. Options to purchase 90,000 shares of common stock at a price of \$32.15 per share were not included in diluted earnings per share as their impact would be anti-dilutive.

#### **14. RELATED PARTY TRANSACTIONS**

Employee receivables totaled approximately \$399,000 and \$453,000 at September 30, 2017 and October 1, 2016, respectively. Such amounts consist of loans that are payable on demand and bear interest at the minimum statutory rate (1.29% at September 30, 2017 and 0.66% at October 1, 2016).

#### **15. SUBSEQUENT EVENTS**

On December 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 January 3, 2018 to shareholders of record at the close of business on December 19, 2017.

On December 12, 2017, the Company amended its Revolving Facility to increase the total availability to be the lesser of (i) \$12,000,000 and (ii) \$22,000,000 less the then aggregate amount of all indebtedness and obligations to BHBM.

On December 22, 2017, the Tax Cuts and Jobs Acts (the "Act") was enacted into law. The new legislation contains several key tax provisions including the reduction of the corporate income tax rate to 21% effective January 1, 2018, as well as a variety of other changes including limitation of the tax deductibility of interest expense, acceleration of expensing of certain business assets and reductions in the amount of executive pay that could qualify as a tax deduction. The Company is assessing the impact of the enacted tax law on its business and its consolidated financial statements and expects to record a discrete tax benefit related to the remeasurement of its deferred tax assets and liabilities for the reduced federal tax rates during the three-month period ending December 31, 2017.

## CORPORATE INFORMATION

### BOARD OF DIRECTORS

**Michael Weinstein**

Chairman and Chief Executive Officer

**Robert J. Stewart**

President, Chief Financial Officer and Treasurer

**Vincent Pascal**

Senior Vice President --- Senior Vice President and Chief Operating Officer

**Paul Gordon**

Senior Vice President --- Director of Las Vegas Operations

**Marcia Allen**

Chief Executive Officer, Allen & Associates

**Bruce R. Lewin**

Chairman and President, Continental Hosts, Ltd.

**Steve Shulman**

President, Managing Director, Hampton Group Inc.

**Arthur Stainman**

Senior Managing Director, First Manhattan Co.

**Stephen Novick**

Senior Advisor, Andrea and Charles Bronfman Philanthropies

### EXECUTIVE OFFICES

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### AUDITORS

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### TRANSFER AGENT

Continental Stock Transfer & Trust Company  
17 Battery Place  
New York, NY 10004