



**ARK
RESTAURANTS
CORP.**

2021 ANNUAL REPORT

The Company

We are a New York corporation formed in 1983. As of the fiscal year ended October 2, 2021, we owned and/or operated 17 restaurants and bars, 17 fast food concepts and catering operations through our subsidiaries. Four of our restaurant and bar facilities are located in New York City, one is located in Washington, D.C., five are located in Las Vegas, Nevada, one is located in Atlantic City, New Jersey, four are located on the east coast of Florida and two are located on the gulf coast of Alabama.

Our restaurants are typically larger, destination properties intended to benefit from high patron traffic attributable to the uniqueness of the location and catered events. All of our expansion in recent years has been through acquisitions as follows: The Rustic Inn in Dania Beach, Florida (2014); Shuckers in Jensen Beach, Florida (2016); two Original Oyster Houses, one in Gulf Shores, Alabama and one in Spanish Fort, Alabama (2017), JB's on the Beach in Deerfield Beach, Florida (2019), and Blue Moon Fish Company (2021) in Lauderdale-by-the-Sea, Florida.

The names and themes of each of our restaurants are different except for our 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 October 2, 2021, including financial statements, exhibits and schedules thereto, to each of our shareholders of record on January 18, 2022 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 4, 2022

Shareholders, Employees and Friends of our Company,

While in thought these last few weeks regarding my annual shareholder letter, I found myself less interested in writing about the impact of management's decisions regarding our business. Certainly, I will get to that in a moment. What has been most important these last two years and the headline for us and other hospitality companies is to understand and acknowledge the outsized commitment and sacrifice of our staffs. We are a company of several thousand and as we have grown in size and spread beyond our early New York City base, we have become less insulated from national issues and misfortunes in the general population. These last two years, although I believe we were generous with financial remuneration, it would not be possible to reward our staffs sufficiently for what they faced and accomplished. They came to work with the possibility of infection and often with the knowledge a fellow employee was hospitalized. They worked harder than in the past, working double shifts to implement safety protocols and to offset staffing problems caused by the pandemic. Our kitchens had to rethink menus as certain product was hard to access due to supply chain issues. A few of our restaurants, once opened, were shuttered a second time when we decided infection risk was unacceptable, or in the case of NYC, a government-imposed second close down. For most of the year our employees were in the business of managing not only their fears but a degree of chaos. To put this into perspective, I was terrified despite having a substantially safer environment by working from home. I know all of you who read this letter are aware of these issues. But, when you look at the 2021 fiscal year's strong balance sheet and impressive cash flow, the credit must accrue to our frontline employees working on the ground in our restaurants.

Company management spent the year implementing safety procedures, repairing chaos as best we could and improving efficiency. In response to significant upticks in the cost of raw materials we raised prices, at first with great hesitancy and then a bit more aggressively as there was a complete absence of consumer pushback. That implementation did improve the percentage cost of what we sell but did not bring the percentage down to pre-pandemic levels. What was surprising in our economic equation was payroll costs. While we faced increases in hourly wages and with overtime pay becoming almost standard, we also had fewer employees. This combined with strong sales (especially in Florida, Alabama and Las Vegas) resulted in an acceptable consolidated payroll expense for the company. In short, gross margins were squeezed but with robust sales and whole dollar payrolls mostly down the effect was improved operating income.

If there was a theme to our business this year it was the durable importance of our locations and the loyal demand we have established for them. We found this true after 9/11 and again after the economic meltdown of 2008/2009. As each of our operations reopened in the 2020 fiscal year, we had a quicker than expected return to revenue levels that allowed us positive cash flow. In this 2021 fiscal year revenues continued their improvement as restrictions in place were modified and then later removed. Recently, because of what I assume is lingering pent up demand and higher menu prices, we are experiencing significantly increased revenue accomplishment at many of our restaurants. We would benefit substantially if current menu prices continued to be accepted and supply chain issues resolved with lower wholesale costs. But so far, the cost of purchasing many of our key products remains stubbornly high.

We made one acquisition in the fiscal year, Blue Moon Fish Company in Lauderdale-by-the-Sea, Florida. This has turned out to be a strong return on acquisition cost and a good generator of cash flow. We closed two restaurants in Atlantic City when renewal lease terms became unattractive, Gallagher's and Luna Bar. We also closed Clyde Frazier's Wine and Dine in NYC in late summer as sales faltered. Clyde's had been struggling the last few years with losses and the pandemic presented a barrier to our efforts to restore profitability.

Our investment in The New Meadowland Racetrack continues to benefit from sports betting operations. In this coming 2022 fiscal year we will receive a modest first distribution which will reflect in our operating income.

By December of 2021, the combination of our cash position and a tax refund receivable exceeded our long-term bank debt. With a strong balance sheet, we are in position to add to our portfolio when attractive opportunities present themselves.

Sincerely,

Michael Weinstein

ARK RESTAURANTS CORP.

Corporate Office

Michael Weinstein, Chairman and Chief Executive Officer
Anthony J. Sirica, 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
Linda Clous, Director of Facilities Management
Michelle Dudenake, Director of Purchasing – Las Vegas Operations
Marilyn Guy, Director of Human Resources
Teresita Mendoza, Controller – Las Vegas Operations
Veronica Mijelshon, Director of Architecture and Design
John Oldweiler, Director of Purchasing
Evyette Ortiz, Director of Marketing
Christopher Love, Secretary
Brisa Shoshani, Executive Assistant – Las Vegas Operations
Blair Roy, Director of Maintenance – Las Vegas Operations
Belinda Kyle, Human Resource Director – Las Vegas Operations

Executive Chefs

Will Shapiro, Las Vegas, NV
Vico Ortega, New York, NY

Restaurant General Manager – New York

Ashlee Dean, Southwest Porch
Ana Harris, Robert
Bridgeen Rice, El Rio Grande
Donna Simms, Bryant Park Grill

Restaurant General Managers – Washington D.C.

Annie Chen, Sequoia

Restaurant General Manager – Atlantic City, NJ

Jason Kowerski, Broadway Burger Bar

Restaurant General Manager – Meadowlands, NJ

Jennifer Jordan, Victory Sports Bar & Club

Restaurant General Managers – Las Vegas

Deme Ayele, Director of Operations
Tony Shum, Yolos Mexican Grill
Wade Keeler, Director of Sales and Catering
Mary Massa, Gonzalez y Gonzalez

Andrea Reid, Gallagher's Steakhouse
Kelly Rosas, America
Johnny Flores, Broadway Burger Bar and the Village Streets

Restaurant General Managers – Florida

Michael Diascro, Rustic Inn
Edgar Gonzalez-Pratt, Hollywood Food Court
Darvin Pratts, Tampa Food Court
Robert Rae, Shuckers
CJ Nickoson, JB's on the Beach and Blue Moon Fish Co.

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 Chefs-New York

Armando Cortes, Robert
Fermin Ramirez, El Rio Grande
Gadi Weinreich, Bryant Park Grill

Restaurant Chefs – Washington D.C.

Fanor Baldarrama, Sequoia

Restaurant Chefs – Las Vegas

Shawn Wallace, Gallagher's Steakhouse
Emery Allen, Broadway Burger Bar
James Mendoza, America
Marvin Mendoza, Yolos Mexican Grill
Pedro Gonzalez, Gonzalez y Gonzalez

Restaurant Chefs – Florida

Tomas Monroy, Hollywood Food Court
Ralph Formisano, Shuckers
Jason Lemon, Rustic Inn – Dania Beach, FL
Nolberto Vernal, Tampa Food Court
Eric Luban, JB's on the Beach
Jason Ingassia, Blue Moon Fish Co.

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

Statement Regarding Forward-Looking Disclosures

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our Consolidated Financial Statements and related notes included under Item 8 of this annual report. This discussion contains forward-looking statements, which involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of certain factors, including but not limited to, those discussed elsewhere in this annual report. Please see the discussion of forward-looking statements at the beginning of this annual report under "Special Note Regarding Forward-Looking Statements".

COVID-19 Pandemic

On March 11, 2020, in light of the rapid spread of the novel Coronavirus ("COVID-19" or "Coronavirus"), the World Health Organization declared the COVID-19 outbreak to be a global pandemic and the United States declared a National Public Health Emergency. The COVID-19 pandemic has significantly disrupted consumer demand, as well as the Company's restaurant operations. Following the pandemic declaration in March 2020, federal, state and local governments began to respond to the public health crisis by requiring social distancing, "stay at home" directives, and mandatory closure of all of our locations.

We are subject to continued risks and uncertainties as a result of the outbreak of, and local, state and federal governmental responses to, the COVID-19 pandemic. We experienced significant disruptions to our business as suggested and mandated social distancing and shelter-in-place orders led to the temporary closure of all of our restaurants. In the third quarter of fiscal 2020, certain jurisdictions began allowing the reopening of restaurant dining rooms, and we began to reopen dining rooms. While restrictions on the type of permitted operating model and occupancy capacity may continue to change, as of October 2, 2021, all of our restaurants were operating with no indoor dining restrictions. We cannot predict how long the COVID-19 pandemic will last, whether vaccines will be effective at eliminating or slowing the spread of the virus or variants, whether it will reoccur or whether variants will spike, what additional restrictions may be enacted, to what extent we can maintain sales volumes during or following any resumption of mandated social distancing protocols or vaccination or mask mandates and what long-lasting effects the COVID-19 pandemic may have on the restaurant industry as a whole. The ongoing effects of the COVID-19 pandemic, including, but not limited to, labor-related impacts, supply chain disruption and consumer behavior, will determine the continued significance of the impact of the COVID-19 pandemic to our operating results and financial position.

Overview

As of October 2, 2021, the Company owned and operated 17 restaurants and bars, 17 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 statements of operations for the year ended October 2, 2021 includes revenues and income of approximately \$5,929,000 and \$981,000, respectively, related to Blue Moon Fish Company, which was acquired on December 1, 2020. As of September 1, 2021, the Company advised the landlord of Clyde Frazier's Wine and Dine that we would be closing the property permanently and terminating the lease. In connection with this notification, the Company recorded a gain of \$810,000 during the year ended October 2, 2021 consisting of: (i) rent and other costs incurred in accordance with the termination provisions of the lease in the amount of \$318,000, (ii) impairment of long-lived assets in the amount of \$69,000 and (iii) the write-off of our security deposit in the amount of \$121,000 offset by the write-off of ROU assets and related lease liabilities in the net amount of \$1,318,000.

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 October 2, 2021 and October 3, 2020 included 52 and 53 weeks, respectively.

Seasonality

The Company has substantial fixed costs that do not decline proportionally with sales. Although our business is highly seasonal, our broader geographical reach as a result of recent acquisitions mitigates some of the risk. For instance, the second quarter of our fiscal year, consisting of the non-holiday portion of the cold weather season in New York and Washington (January, February and March), is the poorest performing quarter; however, in recent years this has been partially offset by our locations in Florida as they experience increased results in the winter months. We generally achieve our best results during the warm weather, attributable to our extensive outdoor dining availability, particularly at Bryant Park in New York and Sequoia in Washington, D.C. (our largest restaurants) and our outdoor cafes. However, even during summer months these facilities can be adversely affected by unusually

cool or rainy weather conditions. Our facilities in Las Vegas are indoor and generally operate on a more consistent basis throughout the year.

Results of Operations

The Company's operating income for the year ended October 2, 2021 was \$6,207,000 as compared to an operating loss of \$(7,796,000) for the year ended October 3, 2020. This increase resulted primarily from the strong performance of our Florida, Alabama and Las Vegas operations in the current year combined with the government mandated closure of our restaurants in March 2020 in connection with the COVID-19 pandemic, with limited capacity when they reopened, as well as a \$364,000 loss on the termination of a lease. In addition to the decrease in restaurant revenue from the mandatory closures and operating at varying levels of limited capacity in the year ended October 3, 2020, the Company estimates that it incurred approximately \$3,150,000 of costs directly related to COVID-19 consisting primarily of payments to employees for paid-time off during restaurant closures, inventory waste, and rent and rent related costs for closed restaurants from the day that they closed.

The following table summarizes the significant components of the Company's operating results for the years ended October 2, 2021 and October 3, 2020, respectively:

	Year Ended		Variance	
	October 2, 2021	October 3, 2020	\$	%
REVENUES:				
Food and beverage sales	\$ 128,988	\$ 104,062	\$ 24,926	24.0 %
Other revenue	2,882	2,428	454	18.7 %
Total revenues	131,870	106,490	25,380	23.8 %
COSTS AND EXPENSES:				
Food and beverage cost of sales	38,950	28,583	10,367	36.3 %
Payroll expenses	42,579	40,975	1,604	3.9 %
Occupancy expenses	14,747	15,391	(644)	-4.2 %
Other operating costs and expenses	16,044	14,757	1,287	8.7 %
General and administrative expenses	10,523	10,160	363	3.6 %
(Gain) loss on lease termination	(810)	364	(1,174)	-322.5 %
Depreciation and amortization	3,630	4,056	(426)	-10.5 %
Total costs and expenses	125,663	114,286	11,377	10.0 %
OPERATING INCOME (LOSS)	\$ 6,207	\$ (7,796)	\$ 14,003	-179.6 %

Revenues

During the year ended October 2, 2021, revenues increased 23.8% as compared to revenues in the year ended October 3, 2020. This increase resulted primarily from our properties operating with fewer or no capacity restrictions in the current year in comparison to prior year as a result of government mandates in connection with the COVID-19 pandemic.

Food and Beverage Same-Store Sales

On a Company-wide basis, same-store food and beverage sales increased 25.4% for the year ended October 2, 2021 as compared to the year ended October 3, 2020 as follows:

	Year Ended		Variance	
	October 2, 2021	October 3, 2020	\$	%
	(in thousands)			
Las Vegas	\$ 37,767	\$ 30,445	\$ 7,322	24.0 %
New York	15,037	15,968	(931)	-5.8 %
Washington, D.C.	8,169	5,740	2,429	42.3 %
Atlantic City, NJ	2,055	1,187	868	73.1 %
Connecticut	384	859	(475)	-55.3 %
Alabama	14,506	10,813	3,693	34.2 %
Florida	44,889	32,935	11,954	36.3 %
Same-store sales	122,807	97,947	\$ 24,860	25.4 %
Other	6,181	6,115		
Food and beverage sales	\$ 128,988	\$ 104,062		

The increase in company-wide same-store sales was driven primarily by increased customer traffic as a result of the impact of the COVID-19 pandemic on the prior year combined with targeted increases in menu pricing in the current year. Same-store sales in New York decreased 5.8% due to lower traffic in midtown Manhattan where our properties are located as a result of companies allowing employees to continue to work from home. Same-store sales in Connecticut decreased 55.3% due to declining traffic at the Foxwoods Resort and Casino where our property is located.

Other food and beverage sales consist of sales related to new restaurants opened or acquired during the applicable period (Blue Moon Fish Company - \$5,929,000 in 2021), sales related to properties that were closed (Clyde Frazier's Wine and Dine - \$866,000 in 2021 and \$2,038,000 in 2020, Gallagher's Steakhouse and Gallagher's Burger Bar - \$430,000 in 2021 and \$2,205,000 in 2020 and Thunder Grill - \$1,034,000 in 2020) and other adjustments and fees.

Prior to the COVID-19 pandemic, our restaurants generally did 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 Revenues

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 merchandise sales, license fees, property management fees and other rentals. The increase in Other Revenues for the year ended October 2, 2021 as compared to the year ended October 3, 2020 is primarily due to the impact of the COVID-19 pandemic in the prior year.

Costs and Expenses

Costs and expenses for the years ended October 2, 2021 and October 3, 2020 were as follows (in thousands):

	Year Ended October 2, 2021	% to Total Revenues	Year Ended October 3, 2020	% to Total Revenues	Increase (Decrease)	
					\$	%
Food and beverage cost of sales	\$ 38,950	29.5 %	\$ 28,583	26.8 %	\$ 10,367	36.3 %
Payroll expenses	42,579	32.3 %	40,975	38.5 %	1,604	3.9 %
Occupancy expenses	14,747	11.2 %	15,391	14.5 %	(644)	-4.2 %
Other operating costs and expenses	16,044	12.2 %	14,757	13.9 %	1,287	8.7 %
General and administrative expenses	10,523	8.0 %	10,160	9.5 %	363	3.6 %
(Gain) loss on lease termination	(810)	-0.6 %	364	0.3 %	(1,174)	-322.5 %
Depreciation and amortization	3,630	2.8 %	4,056	3.8 %	(426)	-10.5 %
Total costs and expenses	<u>\$ 125,663</u>		<u>\$ 114,286</u>		<u>\$ 11,377</u>	

Food and beverage costs as a percentage of total revenues for the year ended October 2, 2021 increased as compared to last year primarily as a result of increases in crab, seafood, chicken and beef prices.

Payroll expenses as a percentage of total revenues for the year ended October 2, 2021 decreased as compared to last year primarily as a result of retaining key restaurant management personnel with lower corresponding revenues in the prior period as a result of the government mandated closures and/or capacity restrictions at all of our restaurants in connection with the COVID-19 pandemic partially offset by higher group medical costs, wage rates and overtime in fiscal 2021.

Occupancy expenses as a percentage of total revenues for the year ended October 2, 2021 decreased as compared to last year primarily as a result of the finalization of several abatements with landlords resulting in a reduction of rent expense in the amount of \$800,000 in the current year.

Other operating costs and expenses as a percentage of total revenues for the year ended October 2, 2021 decreased as compared to last year as a result of the fixed nature of some of these expenses and lower sales in the prior period as a result of the COVID-19 pandemic, decreased maintenance at properties where we are experiencing lower traffic and increased professional fees at the restaurant-level in the prior periods.

General and administrative expenses (which relate solely to the corporate office in New York City) as a percentage of total revenues for the year ended October 2, 2021 decreased as compared to last year primarily as a result of lower legal fees in the current period partially offset by headcount and salary reductions of corporate personnel in the prior period as a result of the impacts on our business from the COVID-19 pandemic.

Depreciation and amortization expense for the year ended October 2, 2021 decreased as compared to last year primarily as a result of lower charges in the current period as a result of asset impairments in the first quarter of 2020.

(Gain) Loss on Lease Termination

On September 1, 2021, the Company advised the landlord of Clyde Frazier's Wine and Dine that we would be closing the property permanently and terminating the lease. In connection with this notification, the Company recorded a gain of \$810,000 during the year ended October 2, 2021 consisting of: (i) rent and other costs incurred in accordance with the termination provisions of the lease in the amount of \$318,000, (ii) impairment of long-lived assets in the amount of \$69,000 and (iii) the write-off of our security deposit in the amount of \$121,000 offset by the write-off of ROU assets and related lease liabilities in the net amount of \$1,318,000.

On April 2, 2020, the Company advised the landlord of a catering space in New York, NY that we would be terminating the lease. In connection with this notification, the Company recorded a loss of \$364,000 during the 13 weeks ended March 28, 2020, consisting of (i) rent accrued in accordance with the termination provisions of the lease, (ii) the write-off of the unamortized balance of purchased leasehold rights, (iii) the write-off of our security deposit, (iv) the write-off of ROU assets and related lease liabilities, and (v) the write-off of net book value of fixed assets.

Impairment loss from write-down of long-lived assets

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 the year ended October 2, 2021 is an impairment charge of \$69,000 related to *Clyde Frazier's Wine and Dine*.

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 judgment and estimates are required in the determination of consolidated income tax expense. The provision for income taxes reflects federal income taxes calculated on a consolidated basis and state and local income taxes which are calculated on a separate entity basis.

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

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

On March 27, 2020, the CARES Act was enacted to provide economic relief to those impacted by the COVID-19 pandemic. In addition to the Paycheck Protection Program loans, the CARES Act made various tax law changes including among other things (i) modifications to the federal net operating loss rules including permitting federal net operating losses incurred in 2018, 2019, and 2020 tax years to be carried back to the five preceding taxable years in order to generate a refund of previously paid income taxes, (ii) enhanced recoverability of AMT tax credit carryforwards, (iii) increased the limitation under Internal Revenue Code ("IRC") Section 163(j) for 2019 and 2020 to permit additional expensing of interest, and (iv) enacted a technical correction so that qualified improvement property can be immediately expensed under IRC Section 168(k).

On December 27, 2020, the Consolidated Appropriations Act of 2021 ("CAA") was enacted and provided clarification on the tax deductibility of expenses funded with PPP loans as fully deductible for tax purposes. During the year ended October 2, 2021, the Company recorded income for financial reporting purposes related to the forgiveness of \$10,400,000 (including \$84,000 of accrued interest) of its PPP loans. The forgiveness of these amounts is not taxable.

As a result of the CARES Act and the CAA, the Company carried back taxable losses from fiscal year 2020 and is expected to carryback taxable losses from fiscal 2021 to generate a refund of previously paid income taxes. As a result of these carrybacks, the Company recorded income tax benefits as the taxable losses from fiscal 2020 and fiscal 2021 are being carried back to tax years in which the Company was subject to a higher federal corporate income tax rate. Included in Prepaid and Refundable Income Taxes at October 2, 2021 is \$3,766,000 related to these carryback claims.

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

Liquidity and Capital Resources

Our primary source of capital has been cash provided by operations and, in recent years, bank and other borrowings to finance specific transactions, acquisitions and large remodeling projects. We utilize cash generated from operations to fund the cost of developing and opening new restaurants and smaller remodeling projects of existing restaurants we own. Consistent with many other restaurant operators, we typically use operating lease arrangements for our restaurants. In recent years we have been able to acquire the underlying real estate at several locations along with the restaurant operation. We believe that our operating lease arrangements provide appropriate leverage of our capital structure in a financially efficient manner. As of October 2, 2021, we had a cash and cash equivalents balance of \$19,171,000.

We are subject to continued risks and uncertainties as a result of the outbreak of, and local, state and federal governmental responses to, the COVID-19 pandemic which was declared a National Public Health Emergency in March 2020. We experienced significant disruptions to our business as suggested and mandated social distancing and shelter-in-place orders led to the temporary closure of all of our restaurants. In the third quarter of fiscal 2020, certain jurisdictions began allowing the reopening of restaurant dining rooms, and we began to reopen dining rooms. While restrictions on the type of permitted operating model and occupancy capacity may continue to change, as of October 2, 2021, all of our restaurants were operating with no indoor dining restrictions. We cannot predict how long the COVID-19 pandemic will last, whether vaccines will be effective at eliminating or slowing the spread of the virus or variants, whether it will reoccur or whether variants will spike, what additional restrictions may be enacted, to what extent we can maintain sales volumes during or following any resumption of mandated social distancing protocols or vaccination or mask mandates and what long-lasting effects the COVID-19 pandemic may have on the restaurant industry as a whole. The ongoing effects of the COVID-19 pandemic, including, but not limited to, labor-related impacts, supply chain disruption and consumer behavior, will determine the continued significance of the impact of the COVID-19 pandemic to our operating results and financial position.

The Company had a working capital of \$2,572,000 at October 2, 2021 as compared with a deficiency of \$(3,234,000) at October 3, 2020. This increase resulted primarily from cash provided by operations offset by a change in our debt maturities in connection with conversion of our revolving credit borrowings to term loans. We believe that our existing cash balances and current banking facilities will be sufficient to meet our liquidity and capital spending requirements and finance our operating activities for at least the next 12 months.

Cash Flows for the Years Ended October 2, 2021 and October 3, 2020

Net cash provided by operating activities for the year ended October 2, 2021 increased to \$9,294,000 as compared to \$(4,528,000) used in operations for the year ended October 3, 2020. This increase was attributable to an increase in operating income as a result of the continued recovery from the COVID-19 pandemic and changes in net working capital primarily related to accounts receivable, inventory, prepaid, refundable and accrued income taxes and accounts payable and accrued expenses.

Net cash used in investing activities for the years ended October 2, 2021 and October 3, 2020 was \$(3,450,000) and \$(2,457,000), respectively, and resulted primarily from purchases of fixed assets at existing restaurants and, in the current period, the cash portion of the purchase price of the Blue Moon Fish Company acquisition.

Net cash used in financing activities for the year ended October 2, 2021 of \$(3,559,000) resulted primarily from principal payments on notes payable and the payment of distributions to non-controlling interests partially offset by proceeds from stock option exercises. Net cash provided by financing activities for the year ended October 3, 2020 of \$16,694,000 resulted primarily from borrowings under our credit facility and proceeds from PPP loans partially offset by principal payments on notes payable and the payment of dividends.

On November 26, 2019, the Board of Directors declared a quarterly dividend of \$0.25 per share on the Company's common stock which was paid on January 7, 2020, to shareholders of record at the close of business on December 16, 2019.

On March 13, 2020, the Company announced that, in light of the unprecedented circumstances and rapidly changing situation with respect to COVID-19, as part of an overall plan to preserve cash flow, the Board of Directors determined that it was appropriate for the Company to defer payment of the dividend that was declared on March 2, 2020. Payment of such dividend, which was scheduled for April 6, 2020 to shareholders of record on March 16, 2020, was canceled on July 1, 2020.

The Company's leases at the New York-New York Hotel and Casino in Las Vegas, Nevada are scheduled to expire in January 2023. The Company is currently negotiating extensions with the landlord. The failure to reach new agreements will have a material adverse effect on our results of operations and cash flows.

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 and other relevant factors. The Company does not expect to pay quarterly cash dividends for the foreseeable future as a result of the disruption to its operations from the COVID-19 pandemic.

Restaurant Expansion and Other Developments

Prior to the COVID-19 pandemic, the Company was in the process of developing three restaurants at a large outdoor mall in Easton, Ohio in partnership with the landlord. In connection therewith, the Company had capitalized costs of approximately \$400,000, of which \$200,000 was reimbursed by the landlord in October 2020. The Company does not expect this project to continue. Accordingly, the balance of the unreimbursed costs in the amount of \$200,000 were written off and are included in general and administrative expenses for the year ended October 3, 2020.

On December 1, 2020, the Company, through a newly formed, wholly-owned subsidiary, acquired the assets of Bear Ice, Inc. and File Gumbo Inc., which collectively operated a restaurant and bar named *Blue Moon Fish Company* located in Lauderdale-by-the-Sea, FL. The total purchase price of \$2,820,000 was paid with cash in the amount of \$1,820,000 and a four-year note held by the sellers in the amount of \$1,000,000 payable monthly with 5% interest. Concurrent with the acquisition, the Company assumed the related lease which expires in 2026 and has four five-year extension options. Rent payments under the lease are approximately \$360,000 per year and increase by approximately 15% as each option is exercised.

On January 26, 2021, the Company exercised its right-of-first-refusal to acquire the land, building and parking lot associated with *JB's on the Beach* and immediately contributed such rights and interest to an unrelated entity ("Newco") that purchased the properties on March 22, 2021. In exchange, the Company received a 5% interest in Newco, which plans future development of the sites. In addition, all rights and privileges under the current lease were assigned to Newco, as landlord and the lease terms remain unchanged.

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.

Recent Restaurant Dispositions

On April 2, 2020, the Company advised the landlord of a catering space in New York, NY that we would be terminating the lease. In connection with this notification, the Company recorded a loss of \$364,000 at March 28, 2020, consisting of rent accrued in accordance with the termination provisions of the lease, the write-off of the unamortized balance of purchased leasehold rights, our security deposit and the net book value of fixed assets.

On November 13, 2020, the Company was advised by the landlord that it would have to vacate *Gallagher's Steakhouse* and *Gallagher's Burger Bar* at the Resorts Casino Hotel located in Atlantic City, NJ which were on a month-to-month, no rent lease. The closure of these properties occurred on January 2, 2021 and did not result in a material charge to the Company's operations.

As of January 2, 2021, the Company determined that it would not reopen *Thunder Grill* in Washington, D.C. which had been closed since March 20, 2020. This closure did not result in a material charge to the Company's operations.

On September 1, 2021, the Company advised the landlord of *Clyde Frazier's Wine and Dine* that we would be closing the property permanently and terminating the lease. In connection with this notification, the Company recorded a gain of \$810,000 during the year ended October 2, 2021 consisting of: (i) rent and other costs incurred in accordance with the termination provisions of the lease in the amount of \$318,000, (ii) impairment of long-lived assets in the amount of \$69,000 and (iii) the write-off of our security deposit in the amount of \$121,000 offset by the write-off of ROU assets and related lease liabilities in the net amount of \$1,318,000.

Investment in and Receivable from New Meadowlands Racetrack

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

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

In conjunction with this investment, the Company, through a 97% owned subsidiary, Ark Meadowlands LLC (“AM VIE”), also entered into a long-term agreement with NMR for the exclusive right to operate food and beverage concessions serving the new raceway facilities (the “Racing F&B Concessions”) located in the new raceway grandstand constructed at the Meadowlands Racetrack in northern New Jersey. Under the agreement, NMR is responsible to pay for the costs and expenses incurred in the operation of the Racing F&B Concessions, and all revenues and profits thereof inure to the benefit of NMR. AM VIE receives an annual fee equal to 5% of the net profits received by NMR from the Racing F&B Concessions during each calendar year.

On April 25, 2014, the Company loaned \$1,500,000 to Meadowlands Newmark, LLC. The note bears interest at 3%, compounded monthly and added to the principal, and is due in its entirety on January 31, 2024. The note may be prepaid, in whole or in part, at any time without penalty or premium. On July 13, 2016, the Company made an additional loan to Meadowlands Newmark, LLC in the amount of \$200,000. Such amount is subject to the same terms and conditions as the original loan as discussed above. The principal and accrued interest related to this note, after a \$500,000 payment made in July 2021, in the amounts of \$1,317,000 and \$1,766,000, are included in Investment In and Receivable From New Meadowlands Racetrack in the consolidated balance sheets at October 2, 2021 and October 3, 2020, respectively.

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

Notes Payable – Bank

On June 1, 2018, the Company refinanced (the “Refinancing”) its then existing indebtedness with its current lender, Bank Hapoalim B.M. (“BHBM”), by entering into an amended and restated credit agreement (the “Revolving Facility”), which was to mature on May 19, 2022 (as extended). The Revolving Facility provided for total availability of the lesser of (i) \$10,000,000 and (ii) \$35,000,000 less the then aggregate amount of all indebtedness and obligations to BHBM. On July 26, 2021, all outstanding Revolver Borrowings, in the amount of \$9,666,000, were converted to a promissory note with quarterly principal payments of \$500,000 commencing on September 1, 2021, with a balloon payment of \$2,166,000 on June 1, 2025. Such note bears interest at LIBOR plus 3.5% per annum. We expect that the LIBOR rate will be discontinued at some point during 2022 and to work with BHBM to identify a suitable replacement rate and amend our debt agreements to reflect this new reference rate accordingly. We do not expect the discontinuation of LIBOR as a reference rate in our debt agreements to have a material adverse effect on our financial position or materially affect our interest expense.

Borrowings under the Revolving Facility, which include the promissory notes as discussed in Note 10 of the consolidated financial statements in the aggregate amount of \$27,047,000, 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, maintain a minimum fixed charge coverage ratio and meet minimum annual net income amounts. The loan agreements also contain customary representations, warranties and affirmative covenants as well as 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.

On June 12, 2020 and again on February 15, 2021, as a result of the impact of the COVID-19 pandemic on our business, BHBM agreed to modified financial covenants through fiscal Q2 2022. The Company was in compliance with all of its financial covenants under the Revolving Facility as of October 2, 2021.

Paycheck Protection Program Loans

During the year ended October 3, 2020, subsidiaries (the “Borrowers”) of the Company received loan proceeds from several banks (the “Lenders”) in the aggregate amount of \$14,995,000 (the “PPP Loans”) under the Paycheck Protection Program (the “PPP”) of the CARES Act, which was enacted March 27, 2020. In addition, during the 13 weeks ended April 3, 2021, one of our consolidated VIEs received a second draw PPP Loan in the amount of \$111,000. The PPP Loans are evidenced by individual promissory notes of each of the Borrowers (together, the “Notes”) in favor of the Lender, which Notes bear interest at the rate of 1.00% per annum. Funds from the PPP Loans may be used only for payroll and related costs, costs used to continue group health care benefits, mortgage payments, rent, utilities, and interest on other debt obligations that were incurred by a Borrower prior to February 15, 2020 (the “Qualifying Expenses”). Under the terms of the PPP Loans, some or all of the amounts thereunder, including accrued interest, may be forgiven if they are used for Qualifying Expenses as described in and in compliance with the CARES Act. Each Note may be prepaid by the respective Borrower at any time prior to maturity with no prepayment penalties. No payments of principal or interest are due under the Notes until the date on which the amount of loan forgiveness (if any) under the CARES Act for each respective Note is remitted to the Lender and a forgiveness decision is received by the Borrower. Forgiveness applications can be submitted up to 10 months after the end of the related notes covered period (which is defined as 24 weeks after the date of the loan) (the “Deferral Period”) and the ultimate forgiveness decisions can be made by the Lenders up to 60 days after submitting the applications and possibly longer if forgiveness is fully or partially denied and the Borrower appeals the decision. While the Company believes that it and each Borrower used the PPP Loan proceeds exclusively for Qualifying Expenses, it is unclear and

uncertain whether the conditions for forgiveness of the PPP Loans outstanding at October 2, 2021 will be met under the current guidelines of the CARES Act. Therefore, we cannot make any assurances that the Company, or any of the Borrowers, will be eligible for forgiveness of the remaining PPP Loans, in whole or in part. Accordingly, based on the above, we have classified \$2,032,000 of the PPP Loans as short-term in the consolidated balance sheet as of October 2, 2021.

During the year ended October 2, 2021, \$10,400,000 (including \$84,000 of accrued interest) of PPP Loans were forgiven. To the extent, if any, that any of the remaining PPP Loans are not forgiven, beginning one month following expiration of the Deferral Period, and continuing monthly for 10 months (the "Maturity Date"), each respective Borrower is obligated to make monthly payments of principal and interest to the Lender with respect to any unforgiven portion of the Notes, in such equal amounts required to fully amortize the principal amount outstanding on such Notes as of the last day of the applicable Deferral Period by the applicable Maturity Date.

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:

Revenue Recognition

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2014-09, Revenue from Contracts with Customers, and issued subsequent amendments to the initial guidance to provide additional clarification on specific topics ("ASC 606"). This ASU 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. We adopted ASC 606 using the modified retrospective method on September 30, 2018 and, based on our evaluation of our revenue streams, determined that there was not a material impact as of the date of adoption between the new revenue standard and how we previously recognized revenue, and therefore the adoption did not have a material impact on our consolidated financial statements.

We recognize revenues when it satisfies a performance obligation by transferring control over a product or service to a restaurant guest or other customer. Revenues from restaurant operations are presented net of discounts, coupons, employee meals and complimentary meals and recognized when food, beverage and retail products are sold. Sales tax collected from customers is excluded from sales and the obligation is included in sales tax payable until the taxes are remitted to the appropriate taxing authorities. Catering service revenue is generated through contracts with customers whereby the customer agrees to pay a contract rate for the service. Revenues from catered events are recognized in income upon satisfaction of the performance obligation (the date the event is held) and all customer payments, including nonrefundable upfront deposits, are deferred as a liability until such time.

Revenues from gift cards are deferred and recognized upon redemption. Deferrals are not reduced for potential non-use as we generally have a legal obligation to remit the value of unredeemed gift cards to the relevant jurisdictions in which they are sold.

Other revenues include 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.

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 consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. The accounting estimates that require management's most difficult and subjective judgments include allowances for potential bad debts on receivables, the useful lives and recoverability of its assets, such as property and intangibles, fair values of financial instruments and share-based compensation, the realizable value of its tax assets and determining when investment impairments are other-than-temporary. Because of the uncertainty in such estimates, actual results may differ from these estimates.

Long-Lived Assets

Long-lived assets, such as property, plant and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. In the evaluation of the fair value and future benefits of long-lived assets, 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. 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's judgment. Included in the year ended October 2, 2021 is an impairment charge of \$69,000 related to *Clyde Frazier's Wine and Dine*.

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

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

As a result, we performed an assessment of the recoverability of our indirect investment in NMR as of October 2, 2021 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 determine if an arrangement contains a lease at inception. An arrangement contains a lease if it implicitly or explicitly identifies an asset to be used and conveys the right to control the use of the identified asset in exchange for consideration. As a lessee, we include operating leases in Operating lease right-of-use assets and Operating lease liabilities in our consolidated balance sheet. Right-of-use assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Operating lease right-of-use assets and liabilities are recognized upon commencement of the lease based on the present value of the lease payments over the lease term. As most of our leases do not provide an implicit interest rate, we use our incremental borrowing rate based on the information available at commencement date to determine the present value of lease payments. Our lease terms may include options to extend or terminate the lease. Options are included when it is reasonably certain that we will exercise that option. Lease expense for lease payments is recognized on a straight-line basis over the lease term. Amendments or modifications to lease terms are accounted for as variable lease payments. Leases with a lease term of 12 months or less are accounted for using the practical expedient which allows for straight-line rent expense over the remaining term of the lease.

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 and trademarks are not amortized, but are subject to impairment analysis. We assess the potential impairment of goodwill and trademarks annually (at the end of our fourth quarter) and on an interim basis whenever events or changes in circumstances

indicate that the carrying value may not be recoverable. If we determine through the impairment review process that goodwill or trademarks are impaired, we record an impairment charge in our consolidated statements of operations.

Such impairment analyses for goodwill requires a comparison of the fair value of the Company's equity to the carrying amount of goodwill since the Company operates in one segment. At October 2, 2021 and October 3, 2020, we performed qualitative assessments of factors to determine whether further impairment testing of goodwill was required. Based on this assessment, no impairment losses were warranted at October 2, 2021 and October 3, 2020. Qualitative factors considered in this assessment included 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 operations.

Our impairment analysis for trademarks consists of a comparison of the fair value to the carrying value of the assets. This comparison is made based on a review of historical, current and forecasted sales and profit levels, as well as a review of any factors that may indicate potential impairment. For the years ended October 2, 2021 and October 3, 2020, our impairment analysis did not result in any other charges related to trademarks.

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 2021 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 on the Nasdaq Capital Market under the symbol "ARKR."

As of December 14, 2021, there were 29 holders of record of our common stock and approximately an additional 3,982 beneficial owners.

Dividend Policy

On March 2, 2020, the Board of Directors declared a quarterly dividend of \$0.25 per share on the Company's common stock which was to be paid on April 6, 2020, to shareholders of record at the close of business on March 16, 2020.

On March 13, 2020, the Company announced that, in light of the unprecedented circumstances and rapidly changing situation with respect to COVID-19, as part of an overall plan to preserve cash flow, the Board of Directors determined that it was appropriate for the Company to defer payment of the dividend that was declared on March 2, 2020.

On July 1, 2020, the dividend declared on March 2, 2020 was canceled.

The payment of future dividends is at the discretion of the Company's Board of Directors and is based on future earnings, cash flow, financial condition, capital requirements, changes in U.S. taxation and other relevant factors. The Company does not expect to pay quarterly cash dividends for the foreseeable future as a result of the disruption to its operations from the COVID-19 pandemic.

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders
Ark Restaurants Corp.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Ark Restaurants Corp. and subsidiaries (the “Company”) as of October 2, 2021 and October 3, 2020 and the related consolidated statements of operations, changes in equity, and cash flows for each of the years in the two-year period ended October 2, 2021, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of October 2, 2021 and October 3, 2020, and the results of its operations and its cash flows for each of the two years in the two-year period ended October 2, 2021, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

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

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

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

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that: (1) related to accounts or disclosures that are material to the consolidated financial statements and (2) involved especially challenging, subjective, or complex judgements. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing a separate opinion on the critical audit matters or on the accounts or disclosures to which they relate.

Long-lived Asset Valuation

As discussed in Note 6 to the consolidated financial statements, the Company utilizes projections of future cash flows to determine if there are indications of impairment of long-lived assets, specifically, land, buildings, equipment and right-of-use assets which totaled \$92,510,000 as of October 2, 2021.

The Company tests for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset group may not be recoverable. Such indicators may include, among others: a significant decline in future cash flows and changes in expected useful life which relates to the Company’s ability and intent to hold its asset groups for a period of time that recovers their carrying value.

We identified the valuation of certain long-lived assets to be a critical audit matter. The valuation is based upon undiscounted future cash flows related to certain long-lived assets, specifically, land, buildings, equipment and right-of-use assets. Auditor judgments were required to evaluate subjective assumptions in the Company’s analysis of undiscounted cash flows. These included estimated future revenue and operating expenses from restaurant locations. Adverse changes in the assumptions could have a significant

impact on whether an indicator of impairment has been identified and could have a material impact on the Company's consolidated financial statements.

The following are the primary procedures we performed to address this critical audit matter. We obtained an understanding for the Company's process for determining indicators of impairment of long-lived assets and the Company's evaluation of impairment when indicators arose. We reviewed the minutes of board of director meetings to determine any potential closures of locations that would affect future cash flows and corroborated management's plans with others in the organization who are responsible for, and have authority over, disposition and closure activities. We visited the site of any locations that were considered high risk for potential impairment. We evaluated the reasonableness of the Company's forecasted revenues, operating results and cash flows by performing an independent sensitivity analysis related to the key inputs to forecasted cash flows, including estimated revenue growth rates, margins and operating expenses, to evaluate whether the changes in the assumptions would result in a material change in fair value of related long-lived assets.

/s/ CohnReznick LLP

We have served as the Company's auditors since 2004.
Melville, New York
December 21, 2021

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

	October 2, 2021	October 3, 2020
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents (includes \$785 at October 2, 2021 and \$567 at October 3, 2020 related to VIEs)	\$ 19,171	\$ 16,886
Accounts receivable (includes \$358 at October 2, 2021 and \$162 at October 3, 2020 related to VIEs)	4,113	1,738
Employee receivables	380	385
Inventories (includes \$35 at October 2, 2021 and \$27 at October 3, 2020 related to VIEs)	3,510	2,553
Prepaid and refundable income taxes (includes \$278 at October 2, 2021 and \$274 at October 3, 2020 related to VIEs)	3,896	2,870
Prepaid expenses and other current assets (includes \$277 at October 2, 2021 and \$13 at October 3, 2020 related to VIEs)	3,205	2,469
Total current assets	34,275	26,901
FIXED ASSETS - Net (includes \$218 at October 2, 2021 and \$241 at October 3, 2020 related to VIEs)	36,174	37,682
OPERATING LEASE RIGHT-OF-USE ASSETS - Net (includes \$2,342 at October 2, 2021 and \$2,658 at October 3, 2020 related to VIEs)	56,336	54,191
INTANGIBLE ASSETS - Net	376	49
GOODWILL	17,440	15,570
TRADEMARKS	4,220	3,720
DEFERRED INCOME TAXES	3,700	5,897
INVESTMENT IN AND RECEIVABLE FROM NEW MEADOWLANDS RACETRACK	6,425	6,874
OTHER ASSETS (includes \$82 at October 2, 2021 and October 3, 2020 related to VIEs)	2,270	2,432
TOTAL ASSETS	\$ 161,216	\$ 153,316
LIABILITIES AND EQUITY		
CURRENT LIABILITIES:		
Accounts payable - trade (includes \$213 at October 2, 2021 and \$119 at October 3, 2020 related to VIEs)	\$ 4,886	\$ 2,329
Accrued expenses and other current liabilities (includes \$374 at October 2, 2021 and \$331 at October 3, 2020 related to VIEs)	13,679	12,688
Current portion of operating lease liabilities (includes \$249 at October 2, 2021 and \$226 at October 3, 2020 related to VIEs)	6,165	6,117
Current portion of notes payable (includes \$95 at October 2, 2021 related to VIEs)	6,973	9,001
Total current liabilities	31,703	30,135
OPERATING LEASE LIABILITIES, LESS CURRENT PORTION (includes \$2,193 at October 2, 2021 and \$2,442 at October 3, 2020 related to VIEs)	52,552	49,960
NOTES PAYABLE, LESS CURRENT PORTION, net of deferred financing costs (includes \$101 at October 2, 2021 and \$723 at October 3, 2020 related to VIEs)	25,509	36,068
TOTAL LIABILITIES	109,764	116,163
COMMITMENTS AND CONTINGENCIES		
EQUITY:		
Common stock, par value \$0.01 per share - authorized, 10,000 shares; issued and outstanding, 3,551 shares at October 2, 2021 and 3,502 shares at October 3, 2020	36	35
Additional paid-in capital	14,492	13,503
Retained earnings	35,884	22,989
Total Ark Restaurants Corp. shareholders' equity	50,412	36,527
NON-CONTROLLING INTERESTS	1,040	626
TOTAL EQUITY	51,452	37,153
TOTAL LIABILITIES AND EQUITY	\$ 161,216	\$ 153,316

See notes to consolidated financial statements.

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

	Year Ended	
	October 2, 2021	October 3, 2020
REVENUES:		
Food and beverage sales	\$ 128,988	\$ 104,062
Other revenue	2,882	2,428
Total revenues	<u>131,870</u>	<u>106,490</u>
COSTS AND EXPENSES:		
Food and beverage cost of sales	38,950	28,583
Payroll expenses	42,579	40,975
Occupancy expenses	14,747	15,391
Other operating costs and expenses	16,044	14,757
General and administrative expenses	10,523	10,160
(Gain) loss on lease termination	(810)	364
Depreciation and amortization	3,630	4,056
Total costs and expenses	<u>125,663</u>	<u>114,286</u>
OPERATING INCOME (LOSS)	<u>6,207</u>	<u>(7,796)</u>
OTHER (INCOME) EXPENSE:		
Interest expense	1,230	1,421
Interest income	(51)	(126)
Other income	—	(88)
Gain on forgiveness of PPP Loans	(10,400)	—
Total other (income) expense, net	<u>(9,221)</u>	<u>1,207</u>
INCOME (LOSS) BEFORE PROVISION (BENEFIT) FOR INCOME TAXES	15,428	(9,003)
Provision (benefit) for income taxes	1,181	(4,385)
CONSOLIDATED NET INCOME (LOSS)	14,247	(4,618)
Net income attributable to non-controlling interests	(1,352)	(70)
NET INCOME (LOSS) ATTRIBUTABLE TO ARK RESTAURANTS CORP.	<u>\$ 12,895</u>	<u>\$ (4,688)</u>
NET INCOME (LOSS) PER ARK RESTAURANTS CORP. COMMON SHARE:		
Basic	<u>\$ 3.67</u>	<u>\$ (1.34)</u>
Diluted	<u>\$ 3.58</u>	<u>\$ (1.34)</u>
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING:		
Basic	<u>3,516</u>	<u>3,500</u>
Diluted	<u>3,604</u>	<u>3,500</u>

See notes to consolidated financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
FOR THE YEARS ENDED OCTOBER 2, 2021 AND OCTOBER 3, 2020
(In Thousands, Except Per Share Amounts)

	Common Stock		Additional Paid-In Capital	Retained Earnings	Total Ark Restaurants Corp. Shareholders' Equity	Non- controlling Interests	Total Equity
	Shares	Amount					
BALANCE - September 28, 2019	3,499	\$ 35	\$ 13,277	\$ 28,552	\$ 41,864	\$ 843	\$ 42,707
Net income (loss)	—	—	—	(4,688)	(4,688)	70	(4,618)
Exercise of stock options	3	—	50	—	50	—	50
Stock-based compensation	—	—	176	—	176	—	176
Distributions to non-controlling interests	—	—	—	—	—	(287)	(287)
Dividends paid - \$0.25 per share	—	—	—	(875)	(875)	—	(875)
BALANCE - October 3, 2020	3,502	35	13,503	22,989	36,527	626	37,153
Net income	—	—	—	12,895	12,895	1,352	14,247
Exercise of stock options	49	1	709	—	710	—	710
Stock-based compensation	—	—	280	—	280	—	280
Distributions to non-controlling interests	—	—	—	—	—	(938)	(938)
BALANCE - October 2, 2021	3,551	\$ 36	\$ 14,492	\$ 35,884	\$ 50,412	\$ 1,040	\$ 51,452

See notes to consolidated financial statements.

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

	Year Ended	
	October 2, 2021	October 3, 2020
CASH FLOWS FROM OPERATING ACTIVITIES:		
Consolidated net income (loss)	\$ 14,247	\$ (4,618)
Adjustments to reconcile consolidated net income (loss) to net cash provided by (used in) operating activities:		
Stock-based compensation	280	176
(Gain) loss on lease termination	(810)	364
Gain on forgiveness of PPP Loans	(10,400)	—
Deferred income taxes	2,197	(1,791)
Accrued interest on note receivable from NMR	(51)	(53)
Depreciation and amortization	3,630	4,056
Amortization of operating lease assets	1,808	584
Amortization of deferred financing costs	60	51
Operating lease deferred credit	—	(197)
Changes in operating assets and liabilities:		
Accounts receivable	(2,375)	883
Inventories	(918)	(331)
Prepaid, refundable and accrued income taxes	(1,026)	(2,901)
Prepaid expenses and other current assets	(736)	(1,448)
Other assets	(69)	111
Accounts payable - trade	2,557	(1,220)
Accrued expenses and other current liabilities	900	1,806
Net cash provided by (used in) operating activities	<u>9,294</u>	<u>(4,528)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of fixed assets	(2,138)	(2,486)
Loans and advances made to employees	(92)	(97)
Payments received on employee receivables	97	126
Principal and interest payments received from NMR	500	—
Purchase of The Blue Moon Fish Company, net of cash acquired	(1,817)	—
Net cash used in investing activities	<u>(3,450)</u>	<u>(2,457)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Principal payments on notes payable	(3,442)	(2,701)
Borrowings under credit facility	—	6,300
Proceeds from PPP Loans	111	14,995
Payment of debt financing costs	—	(63)
Dividends paid	—	(1,750)
Proceeds from issuance of stock upon exercise of stock options	710	50
Distributions to non-controlling interests	(938)	(137)
Net cash provided by (used in) financing activities	<u>(3,559)</u>	<u>16,694</u>
NET INCREASE IN CASH AND CASH EQUIVALENTS	2,285	9,709
CASH AND CASH EQUIVALENTS, Beginning of year	16,886	7,177
CASH AND CASH EQUIVALENTS, End of year	<u>\$ 19,171</u>	<u>\$ 16,886</u>
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid during the year for:		
Interest	\$ 1,067	\$ 1,397
Income taxes	<u>\$ 8</u>	<u>\$ 219</u>
Non-cash financing activities:		
Note payable in connection with the purchase of The Blue Moon Fish Company	<u>\$ 1,000</u>	<u>\$ —</u>
Refinancing of credit facility borrowings to term notes	<u>\$ 9,666</u>	<u>\$ —</u>
Accrued distributions to non-controlling interests	<u>\$ —</u>	<u>\$ 150</u>

See notes to consolidated financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

As of October 2, 2021, Ark Restaurants Corp. and Subsidiaries (the “Company”) owned and operated 17 restaurants and bars, 17 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 four restaurants in New York City, one in Washington, D.C., five in Las Vegas, Nevada, one in Atlantic City, New Jersey, four 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 in the Tropicana Hotel and Casino. The operation at the Foxwoods Resort Casino consists of one fast food concept. The Florida operations include *The Rustic Inn* in Dania Beach, *Shuckers* in Jensen Beach, *JB's on the Beach* in Deerfield Beach, *The Blue Moon Fish Company* in Fort Lauderdale and the operation of four fast food facilities in Tampa and six fast food facilities in Hollywood, each at a Hard Rock Hotel and Casino. In Alabama, the Company operates two *Original Oyster Houses*, one in Gulf Shores and one in Spanish Fort.

COVID-19 Pandemic — We are subject to continued risks and uncertainties as a result of the outbreak of, and local, state and federal governmental responses to, the COVID-19 pandemic which was declared a National Public Health Emergency in March 2020. We experienced significant disruptions to our business as suggested and mandated social distancing and shelter-in-place orders led to the temporary closure of all of our restaurants. In the third quarter of fiscal 2020, certain jurisdictions began allowing the reopening of restaurant dining rooms, and we began to reopen dining rooms. While restrictions on the type of permitted operating model and occupancy capacity may continue to change, as of October 2, 2021, all of our restaurants were operating with no indoor dining restrictions. We cannot predict how long the COVID-19 pandemic will last, whether vaccines will be effective at eliminating or slowing the spread of the virus or variants, whether it will reoccur or whether variants will spike, what additional restrictions may be enacted, to what extent we can maintain sales volumes during or following any resumption of mandated social distancing protocols or vaccination or mask mandates and what long-lasting effects the COVID-19 pandemic may have on the restaurant industry as a whole. The ongoing effects of the COVID-19 pandemic, including, but not limited to, labor-related impacts, supply chain disruption and consumer behavior, will determine the continued significance of the impact of the COVID-19 pandemic to our operating results and financial position.

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.

Accounting Period — The Company’s fiscal year ends on the Saturday nearest September 30. The fiscal years ended October 2, 2021 and October 3, 2020 included 52 and 53 weeks, respectively.

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 projected cash flow, allowances for potential bad debts on receivables, assumptions regarding discount rates related to lease accounting, 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, distributions and 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. Although our business is highly seasonal, our broader geographical reach as a result of recent acquisitions mitigates some of the risk. For instance, the second quarter of our fiscal year, consisting of the non-holiday portion of the cold weather season in New York and

Washington (January, February and March), is the poorest performing quarter; however, in recent years this has been partially offset by our locations in Florida as they experience increased results in the winter months. We generally achieve our best results during the warm weather, attributable to our extensive outdoor dining availability, particularly at *Bryant Park* in New York and *Sequoia* in Washington, D.C. (our largest restaurants) and our outdoor cafes. However, even during summer months these facilities can be adversely affected by unusually cool or rainy weather conditions. Our facilities in Las Vegas are indoor and generally operate on a more consistent basis throughout the year.

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 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 collected in a short period of time and amounts due from the hotel operators where the Company has a location, and are recorded upon satisfaction of the performance obligation. The Company reviews the collectability of its receivables on an ongoing basis, and provides for an allowance when it considers the counterparty 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 October 2, 2021, the Company had accounts receivable balances due from one hotel operator totaling 37% of total accounts receivable. As of October 3, 2020, the Company had accounts receivable balances due from two hotel operators totaling 46% of total accounts receivable.

For the year ended October 2, 2021, the Company made purchases from two vendors that accounted for 21% of total purchases. For the year ended October 3, 2020, the Company made purchases from one vendor that accounted for 11% of total purchases.

As of October 2, 2021, all debt outstanding, other than Paycheck Protection Program loans and the note payable to the sellers of *The Blue Moon Fish Company*, is with one lender (see Note 10 – Notes Payable).

Inventories — Inventories are stated at the lower of cost (first-in, first-out) or net realizable value, 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 operations.

The Company includes in construction in progress, improvements to restaurants that are under construction or are undergoing substantial renovations. 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.

Long-Lived and Right-Of-Use Assets — Long-lived assets, such as property and plant and equipment subject to amortization, and right-of-use assets ("ROU assets") 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.

The Company considers a triggering event related to long-lived assets or ROU assets in a net asset position to have occurred related to a specific restaurant if the restaurant's cash flows for the last 12 months are less than a minimum threshold or if consistent levels of undiscounted cash flows for the remaining lease period are less than the carrying value of the restaurant's assets. Additionally, the Company considers a triggering event related to ROU assets to have occurred related to a specific lease if the location has been subleased and future estimated sublease income is less than current lease payments. If the Company concludes that the carrying value of certain long-lived and ROU assets will not be recovered based on expected undiscounted future cash flows, an impairment loss is recorded to reduce the long-lived or ROU assets to their estimated fair value. The fair value is measured on a nonrecurring basis using unobservable (Level 3) inputs. There is uncertainty in the projected undiscounted future cash flows used in the Company's impairment review analysis, which requires the use of estimates and assumptions. If actual performance does not achieve the projections, or if the assumptions used change in the future, the Company may be required to recognize impairment charges in future periods, and such charges could be material.

The Company recognized impairment charges related to long-lived and ROU assets during the years ended October 2, 2021 and October 1, 2020 as described in Note 4 – Recent Restaurant Dispositions. Given the inherent uncertainty in projecting results of restaurants under the current circumstances, particularly taking into account the projected impact of the COVID-19 pandemic, the Company is monitoring the recoverability of the carrying value of the assets of several restaurants on an ongoing basis. For these restaurants, if expected performance is not realized, an impairment charge may be recognized in future periods, and such charge could be material.

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.

Goodwill and Trademarks — Goodwill and trademarks are not amortized, but are subject to impairment analysis. We assess the potential impairment of goodwill and trademarks annually (at the end of our fourth quarter) and on an interim basis whenever events or changes in circumstances indicate that the carrying value may not be recoverable. If we determine through the impairment review process that goodwill or trademarks are impaired, we record an impairment charge in our consolidated statements of operations.

Due to the recent impact of the COVID-19 pandemic to the global economy, including but not limited to, the volatility of the Company's stock price, temporary closure of the Company's restaurants and the challenging environment for the restaurant industry in general, the Company determined that there were indicators of potential impairment of its goodwill and trademarks during the years ended October 2, 2021 and October 3, 2020. As such, the Company performed a qualitative and quantitative assessment for both goodwill and its trademarks and concluded that the fair value of these assets exceeded their carrying values. Accordingly, the Company did not record any impairment to its goodwill or trademarks during the years ended October 2, 2021 and October 3, 2020. The ultimate severity and longevity of the COVID-19 pandemic is unknown, and therefore, it is possible that impairments could be identified in future periods, and such amounts could be material.

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 — We determine if an arrangement contains a lease at inception. An arrangement contains a lease if it implicitly or explicitly identifies an asset to be used and conveys the right to control the use of the identified asset in exchange for consideration. As a lessee, we include operating leases in Operating lease right-of-use assets and Operating lease liabilities in our consolidated balance sheet. Right-of-use assets represent our right to use an underlying asset for the lease term and lease

liabilities represent our obligation to make lease payments arising from the lease. Operating lease right-of-use assets and liabilities are recognized upon commencement of the lease based on the present value of the lease payments over the lease term. As most of our leases do not provide an implicit interest rate, we use our incremental borrowing rate based on the information available at commencement date to determine the present value of lease payments. Our lease terms may include options to extend or terminate the lease. Options are included when it is reasonably certain that we will exercise that option. Lease expense for lease payments is recognized on a straight-line basis over the lease term. Amendments or modifications to lease terms are accounted for as variable lease payments. Leases with a lease term of 12 months or less are accounted for using the practical expedient which allows for straight-line rent expense over the remaining term of the lease.

Revenue Recognition — The Company recognizes revenue when it satisfies a performance obligation by transferring control over a product or service to a restaurant guest or other customer. Revenues from restaurant operations are presented net of discounts, coupons, employee meals and complimentary meals and recognized when food, beverage and retail products are sold. Sales tax collected from customers is excluded from sales and the obligation is included in sales tax payable until the taxes are remitted to the appropriate taxing authorities. Catering service revenue is generated through contracts with customers whereby the customer agrees to pay a contract rate for the service. Revenues from catered events are recognized in income upon satisfaction of the performance obligation (the date the event is held). All customer payments, including nonrefundable upfront deposits, are deferred as a liability until such time. The Company recognized \$3,240,000 and \$7,358,000 in catering services revenue for the years ended October 2, 2021 and October 3, 2020, respectively. Unearned revenue which is included in accrued expenses and other current liabilities on the consolidated balance sheets as of October 2, 2021 and October 3, 2020 was \$4,988,000 and \$3,661,000, respectively.

Revenues from gift cards are deferred and recognized upon redemption. Deferrals are not reduced for potential non-use as we generally have a legal obligation to remit the value of unredeemed gift cards to the relevant jurisdictions in which they are sold. As of October 2, 2021 and October 3, 2020, the total liability for gift cards in the amounts of approximately \$252,000 and \$227,000, respectively, are included in accrued expenses and other current liabilities in the consolidated balance sheets.

Other revenues include purchase service fees which represent commissions earned by a subsidiary of the Company for providing services to other restaurant groups, as well as license fees, property management fees and other rentals.

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 October 2, 2021 and October 3, 2020, the Company did not make any contributions to the Plan.

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

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

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

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

Stock-based Compensation — Stock-based compensation represents the cost related to stock-based awards granted to employees and non-employee directors. The Company measures stock-based compensation at the grant date based on the

estimated fair value of the award and recognize the cost (net of estimated forfeitures) as compensation expense on a straight-line basis over the requisite service period. Upon exercise of options, all excess tax benefits and tax deficiencies resulting from the difference between the deduction for tax purposes and the stock-based compensation cost recognized for financial reporting purposes are included as a component of income tax expense.

Recently Adopted Accounting Standards — In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standard Update ("ASU") No. 2016-02, Leases (Topic 842), which amends the existing accounting standards for lease accounting, including requiring lessees to recognize assets and liabilities for leases with lease terms of more than 12 months. The new guidance also requires additional disclosures about leases. The Company adopted the new standard on September 29, 2019 (the first day of fiscal year 2020) using the modified retrospective approach, without restating comparative periods for those lease contracts for which we had taken possession of the property as of September 28, 2019. Accordingly, prior period amounts were not revised and continue to be reported in accordance with ASC Topic 840 ("ASC 840"), the accounting standard then in effect. As part of our adoption we elected the "package of practical expedients", as well as the hindsight practical expedient, permitted under the new guidance, which, among other things, allowed the Company to continue utilizing historical classifications of leases as well as allowing us to combine lease and non-lease components of our real estate leases. We also elected to adopt the short-term lease exception for all leases with terms of 12 months or less and account for them using straight-line rent expense over the remaining life of the lease. As a result of the adoption of this guidance, we recorded ROU assets of \$62,330,000 and lease liabilities related to our real estate operating leases of \$63,943,000. The adoption of this standard did not materially impact retained earnings or our consolidated statement of operations and had no impact on cash flows.

In June 2018, the FASB issued ASU 2018-07, Compensation - Stock Compensation (Topic 718): Improvements to Non-employee Share-Based Payment Accounting, which simplifies the accounting for share-based payments granted to non-employees for goods and services. Under this ASU, the guidance on share-based payments to non-employees would be aligned with the requirements for share-based payments granted to employees, with certain exceptions. The Company adopted this guidance in the first quarter of fiscal 2020. Such adoption did not have a material impact on our consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-04, Intangibles—Goodwill and Other (Topic 350)—Simplifying the Test for Goodwill Impairment ("ASU 2017-04"). ASU 2017-04 simplifies the accounting for goodwill impairments by eliminating the requirement to compare the implied fair value of goodwill with its carrying amount as part of step two of the goodwill impairment test referenced in Accounting Standards Codification ("ASC") 350, Intangibles - Goodwill and Other ("ASC 350"). As a result, an entity should perform its annual, or interim, goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount. An impairment charge should be recognized for the amount by which the carrying amount exceeds the reporting unit's fair value. However, the impairment loss recognized should not exceed the total amount of goodwill allocated to that reporting unit. The Company adopted this guidance in the first quarter of fiscal 2021. Such adoption did not have a material impact on our consolidated financial statements.

New Accounting Standards Not Yet Adopted — In December 2019, the FASB issued ASU No. 2019-12, Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes, which modifies Topic 740 to simplify the accounting for income taxes. ASU 2019-12 is effective for financial statements issued for annual periods beginning after December 15, 2020, and for the interim periods therein. The Company is currently evaluating the effect of adopting ASU 2019-12 to determine the impact on the Company's consolidated financial position and results of operations.

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:

	October 2, 2021	October 3, 2020
	(in thousands)	
Cash and cash equivalents	\$ 785	\$ 567
Accounts receivable	358	162
Inventories	35	27
Prepaid and refundable income taxes	278	274
Prepaid expenses and other current assets	277	13
Due from Ark Restaurants Corp. and affiliates (1)	187	419
Fixed assets - net	218	241
Operating lease right-of-use assets - net	2,342	2,658
Other assets	82	82
Total assets	<u>\$ 4,562</u>	<u>\$ 4,443</u>
Accounts payable - trade	\$ 213	\$ 119
Accrued expenses and other current liabilities	374	331
Current portion of operating lease liabilities	249	226
Current portion of notes payable	95	—
Operating lease liabilities, less current portion	2,193	2,442
Notes payable, less current portion	101	723
Total liabilities	<u>3,225</u>	<u>3,841</u>
Equity of variable interest entities	<u>1,337</u>	<u>602</u>
Total liabilities and equity	<u>\$ 4,562</u>	<u>\$ 4,443</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 AND OTHER DEVELOPMENTS

On December 1, 2020, the Company, through a newly formed, wholly-owned subsidiary, acquired the assets of Bear Ice, Inc. and File Gumbo Inc., which collectively operated a restaurant and bar named *Blue Moon Fish Company* located in Lauderdale-by-the-Sea, FL. The total purchase price of \$2,820,000, as set out below, was paid with cash in the amount of \$1,820,000 and a four-year note held by the sellers in the amount of \$1,000,000 payable monthly with 5% interest. The acquisition was accounted for as a business combination. Concurrent with the acquisition, the Company assumed the related lease which expires in 2026 and has four five-year extension options. Rent payments under the lease are approximately \$360,000 per year and increase by 15% as each option is exercised.

The fair values of the assets acquired were allocated as follows (amounts in thousands):

Cash	\$ 3
Inventory	39
Security deposit	30
Trademarks	500
Non-compete agreement	380
Goodwill	1,870
Liabilities assumed	(2)
	<u>\$ 2,820</u>

Goodwill recognized in connection with this transaction represents the residual amount of the purchase price over separately identifiable intangible assets and is expected to be deductible for tax purposes.

The consolidated statement of operations for the year ended October 2, 2021 includes revenues and net income of approximately \$5,929,000 and \$981,000, respectively, related to *Blue Moon Fish Company*. The unaudited pro forma financial information set forth below is based upon the Company's historical consolidated statements of operations for the years ended October 2, 2021 and October 3, 2020 and includes the results of operations for *Blue Moon Fish Company* for the period prior to acquisition. The unaudited pro forma financial information (which is presented in thousands except per share and share data), which has been adjusted for interest expense on the above-mentioned note, is presented for informational purposes only and may not be indicative of what actual results of operations would have been had the acquisition of *Blue Moon Fish Company* occurred on the dates indicated, nor does it purport to represent the results of operations for future periods.

	Year Ended	
	October 2, 2021	October 3, 2020
	(unaudited)	
Total revenues	\$ 132,547	\$ 110,700
Net income (loss)	\$ 12,926	\$ (4,303)
Net income (loss) per share - basic	\$ 3.68	\$ (1.23)
Net income (loss) per share - diluted	\$ 3.59	\$ (1.23)
Shares - Basic	3,516	3,500
Shares - Diluted	3,604	3,500

On January 26, 2021, the Company exercised its right-of-first-refusal to acquire the land, building and parking lot associated with JB's on the Beach and immediately contributed such rights and interest to an unrelated entity ("Newco") that purchased the properties on March 22, 2021. In exchange, the Company received a 5% interest in Newco, which plans future development of the sites. In addition, all rights and privileges under the current lease were assigned to Newco, as landlord and the lease terms remain unchanged.

Prior to the COVID-19 pandemic, the Company was in the process of developing three restaurants at a large outdoor mall in Easton, Ohio in partnership with the landlord. In connection therewith, the Company had capitalized costs of approximately \$400,000, of which \$200,000 was reimbursed by the landlord in October 2020. The Company does not expect this project to continue. Accordingly, the balance of the unreimbursed costs in the amount of \$200,000 were written off and are included in general and administrative expenses for the year ended October 3, 2020.

4. RECENT RESTAURANT DISPOSITIONS

On April 2, 2020, the Company advised the landlord of a catering space in New York, NY that we would be terminating the lease. In connection with this notification, the Company recorded a loss of \$364,000 during the year ended October 3, 2020 consisting of (i) rent accrued in accordance with the termination provisions of the lease, (ii) the write-off of the unamortized balance of purchased leasehold rights, (iii) the write-off of our security deposit, (iv) the write-off of ROU assets and related lease liabilities, and (v) the write-off of the net book value of fixed assets.

On November 13, 2020, the Company was advised by the landlord that it would have to vacate *Gallagher's Steakhouse* and *Gallagher's Burger Bar* at the Resorts Casino Hotel located in Atlantic City, NJ which were on a month-to-month, no rent lease. The closure of these properties occurred on January 2, 2021 and did not result in a material charge to the Company's operations.

As of January 2, 2021, the Company determined that it would not reopen *Thunder Grill* in Washington, D.C. which had been closed since March 20, 2020. This closure did not result in a material charge to the Company's operations.

On September 1, 2021, the Company advised the landlord of *Clyde Frazier's Wine and Dine* that we would be closing the property permanently and terminating the lease. In connection with this notification, the Company recorded a gain of \$810,000 during the year ended October 2, 2021 consisting of: (i) rent and other costs incurred in accordance with the termination provisions of the lease in the amount of \$318,000, (ii) impairment of long-lived assets in the amount of \$69,000 and (iii) the write-off of our security deposit in the amount of \$121,000 offset by the write-off of ROU assets and related lease liabilities in the net amount of \$1,318,000.

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 then 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. The Company accounts for this investment at cost, less impairment, adjusted for subsequent observable price changes in accordance with ASU No. 2016-01. There are no observable prices for this investment.

Due to the impacts of the COVID-19 pandemic on the global economy, the Company evaluated its investment in NMR for impairment and concluded that its fair value exceeds the carrying value. Accordingly, the Company did not record any impairment for the years ended October 2, 2021 and October 3, 2020. The ultimate severity and longevity of the COVID-19 pandemic is unknown, and therefore, it is possible that impairments could be identified in future periods, and such amounts could be material. Any future changes in the carrying value of our Investment in NMR will be reflected in earnings.

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. AM VIE is a variable interest entity; however, based on qualitative consideration of the contracts with AM VIE, the operating structure of AM VIE, the Company’s role with AM VIE, and that the Company is not obligated to absorb expected losses of AM VIE, the Company has concluded that it is not the primary beneficiary and not required to consolidate the operations of AM VIE.

The Company’s maximum exposure to loss as a result of its involvement with AM VIE is limited to a receivable from AM VIE’s primary beneficiary (NMR, a related party). As of October 2, 2021 and October 3, 2020, no amounts were due AM VIE by NMR.

On April 25, 2014, the Company loaned \$1,500,000 to Meadowlands Newmark, LLC. The note bears interest at 3%, compounded monthly and added to the principal, and is due in its entirety on January 31, 2024. The note may be prepaid, in whole or in part, at any time without penalty or premium. On July 13, 2016, the Company made an additional loan to Meadowlands Newmark, LLC in the amount of \$200,000. Such amount is subject to the same terms and conditions as the original loan discussed above. The principal and accrued interest related to this note, after a \$500,000 payment made in July 2021, in the amounts of \$1,317,000 and \$1,766,000, are included in Investment In and Receivable From New Meadowlands Racetrack in the consolidated balance sheets at October 2, 2021 and October 3, 2020, respectively.

6. FIXED ASSETS

Fixed assets consist of the following:

	<u>October 2, 2021</u>	<u>October 3, 2020</u>
	(in thousands)	
Land and building	\$ 18,033	\$ 18,033
Leasehold improvements	42,200	40,777
Furniture, fixtures and equipment	36,143	39,085
Construction in progress	38	1,352
	<u>96,414</u>	<u>99,247</u>
Less: accumulated depreciation and amortization	60,240	61,565
Fixed Assets - Net	<u>\$ 36,174</u>	<u>\$ 37,682</u>

Depreciation and amortization expense related to fixed assets for the years ended October 2, 2021 and October 3, 2020 was \$3,577,000 and \$3,910,000, 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 the year ended October 2, 2021 is an impairment charge of \$69,000 related to *Clyde Frazier's Wine and Dine* (see Note 4).

7. INTANGIBLE ASSETS, GOODWILL AND TRADEMARKS

Intangible assets consist of the following:

	<u>October 2, 2021</u>	<u>October 3, 2020</u>
	(in thousands)	
Purchased leasehold rights (a)	\$ 1,995	\$ 1,995
Noncompete agreements and other	633	253
	<u>2,628</u>	<u>2,248</u>
Less accumulated amortization	2,252	2,199
Intangible Assets – Net	<u>\$ 376</u>	<u>\$ 49</u>

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

Amortization expense related to intangible assets for the years ended October 2, 2021 and October 3, 2020 was \$53,000 and \$146,000, respectively, which includes the write-off of the unamortized balance of leasehold rights related to a catering space in New York in the amount of \$137,000 for the year ended October 3, 2020. Amortization expense for each of the next five years is expected to be \$85,000.

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 October 2, 2021 and October 3, 2020 are as follows:

	<u>Goodwill</u>	<u>Trademarks</u>
	(in thousands)	
Balance as of September 28, 2019	\$ 15,570	\$ 3,720
Acquired during the year	—	—
Impairment losses	—	—
Balance as of October 3, 2020	15,570	3,720
Acquired during the year	1,870	500
Impairment losses	—	—
Balance as of October 2, 2021	<u>\$ 17,440</u>	<u>\$ 4,220</u>

8. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

	<u>October 2, 2021</u>	<u>October 3, 2020</u>
	(in thousands)	
Sales tax payable	\$ 910	\$ 477
Accrued wages and payroll related costs	4,758	3,302
Customer advance deposits	4,988	3,661
Accrued occupancy and other operating expenses	3,023	5,248
	<u>\$ 13,679</u>	<u>\$ 12,688</u>

9. LEASES

Other than locations where we own the underlying property, we lease our restaurant locations as well as our corporate office under various non-cancelable real-estate lease agreements that expire on various dates through 2046. We evaluate whether we control the use of the asset, which is determined by assessing whether we obtain substantially all economic benefits from the use of the asset, and whether we have the right to direct the use of the asset. If these criteria are met and we have identified a lease, we account for the contract under the requirements of ASC 842.

Upon taking possession of a leased asset, we determine its classification as an operating or finance lease. All of our real estate leases are classified as operating leases. We do not have any finance leases as of October 2, 2021 or October 3, 2020. Generally, our real estate leases have initial terms ranging from 10 to 25 years and typically include renewal options. Renewal options are recognized as part of the ROU assets and lease liabilities if it is reasonably certain at the date of adoption that we would exercise the options to extend the lease. Our real estate leases typically provide for fixed minimum rent payments and/or contingent rent payments based upon sales in excess of specified thresholds. When the achievement of such sales thresholds are deemed to be probable, variable lease expense is accrued in proportion to the sales recognized during the period. For operating leases that include rent holidays and rent escalation clauses, we recognize lease expense on a straight-line basis over the lease term from the date we take possession of the leased property. We record the straight-line lease expense and any contingent rent, if applicable, in occupancy expenses in the consolidated statements of operations.

Many of our real estate leases also require us to pay real estate taxes, common area maintenance costs and other occupancy costs (“non-lease components”) which are included in occupancy related expenses in the consolidated statements of operations. Our lease agreements do not contain any material residual value guarantees or material restrictive covenants.

As there were no explicit rates provided in our leases, we used our incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments.

During the third quarter of 2020, the Company suspended the vast majority of lease payments while its restaurants were closed by government mandated shutdowns as a result of the COVID-19 pandemic. The Company was able to negotiate rent concessions, abatements and deferrals with landlords on many of our operating leases. In July 2020, the FASB issued a clarification to accounting for lease concessions in response to the COVID-19 pandemic to reduce the operational challenges and complexity of lease accounting. The Company used the relief provisions provided by FASB and made an election to

account for the lease concessions as if they were part of the original lease agreement. As a result of the finalization of several concession agreements with landlords, the Company recognized a reduction of rent expense in the amount of \$800,000 in the current year. The recognition of rent concessions did not have a material impact on the prior year.

The components of lease expense in the consolidated statements of operations are as follows:

	October 2, 2021	October 3, 2020
	(in thousands)	
Operating lease expense - occupancy expenses (1)	\$ 7,557	\$ 9,449
Occupancy lease expense - general and administrative expenses	396	635
Variable lease expense	2,970	2,960
Total lease expense	<u>\$ 10,923</u>	<u>\$ 13,044</u>

(1) Includes short-term leases, which are immaterial.

Supplemental cash flow information related leases:

	October 2, 2021	October 3, 2020
	(in thousands)	
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows related to operating leases	\$ 10,485	\$ 9,500
Non-cash investing activities:		
ROU assets obtained in exchange for new operating lease liabilities	\$ 8,712	\$ 62,330

The weighted average remaining lease terms and discount rate as of October 3, 2021 are as follows:

	Weighted Average Remaining Lease Term	Weighted Average Discount Rate
Operating leases	13.5 years	5.2 %

The annual maturities of our lease liabilities as of October 3, 2021 are as follows:

Fiscal Year Ending	Operating Leases
	(in thousands)
October 1, 2022	\$ 9,026
September 30, 2023	7,543
September 28, 2024	7,143
September 27, 2025	6,116
October 3, 2026	5,385
Thereafter	<u>47,529</u>
Total future lease payments	82,742
Less imputed interest	<u>(24,025)</u>
Present value of lease liabilities	<u>\$ 58,717</u>

10. NOTES PAYABLE

Long-term debt consists of the following:

	October 2, 2021	October 3, 2020
	(in thousands)	
Promissory Note - Rustic Inn purchase	\$ 3,473	\$ 3,758
Promissory Note - Shuckers purchase	3,995	4,335
Promissory Note - Oyster House purchase	3,492	4,109
Promissory Note - JB's on the Beach purchase	4,750	5,750
Promissory Note - Sequoia renovation	2,171	2,629
Promissory Note - Revolving Facility	9,166	9,666
Promissory Note - Blue Moon Fish Company (see Note 3)	827	—
Paycheck Protection Program Loans	4,722	14,995
	<u>32,596</u>	<u>45,242</u>
Less: Current maturities	(6,973)	(9,001)
Less: Unamortized deferred financing costs	(114)	(173)
Long-term debt	<u>\$ 25,509</u>	<u>\$ 36,068</u>

Notes Payable - Bank

On June 1, 2018, the Company refinanced (the "Refinancing") its then existing indebtedness with its current lender, Bank Hapoalim B.M. ("BHBM"), by entering into an amended and restated credit agreement (the "Revolving Facility"), which was to mature on May 19, 2022 (as extended). The Revolving Facility provided for total availability of the lesser of (i) \$10,000,000 and (ii) \$35,000,000 less the then aggregate amount of all indebtedness and obligations to BHBM. On July 26, 2021, all outstanding Revolver Borrowings, in the amount of \$9,666,000, were converted to a promissory note with quarterly principal payments of \$500,000 commencing on September 1, 2021, with a balloon payment of \$2,166,000 on June 1, 2025. Such note bears interest at LIBOR plus 3.5% per annum. We expect that the LIBOR rate will be discontinued at some point during 2022 and to work with BHBM to identify a suitable replacement rate and amend our debt agreements to reflect this new reference rate accordingly. We do not expect the discontinuation of LIBOR as a reference rate in our debt agreements to have a material adverse effect on our financial position or materially affect our interest expense.

The Revolving Facility, which includes all of the promissory notes, also requires, among other things, that the Company meet minimum quarterly tangible net worth amounts, maintain a minimum fixed charge coverage ratio and meet minimum annual net income amounts. The Revolving Facility contains customary representations, warranties and affirmative covenants as well as 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.

Borrowings under the Revolving Facility 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.

On June 12, 2020 and again on February 15, 2021, as a result of the impact of the COVID-19 pandemic on our business, BHBM agreed to modified financial covenants through fiscal Q2 2022. The Company was in compliance with all of its financial covenants under the Revolving Facility as of October 2, 2021.

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

- *Promissory Note – Rustic Inn purchase* – On February 25, 2013, the Company issued a promissory note to BHBM for \$3,000,000. The note bore interest at LIBOR plus 3.5% per annum, and was payable in 36 equal monthly installments of \$83,333, commencing on March 25, 2013. On February 24, 2014, in connection with the acquisition of The Rustic Inn, the Company borrowed an additional \$6,000,000 from BHBM under the same terms and conditions as the original loan which was consolidated with the remaining principal balance from the original borrowing at that date. The new loan was payable in 60 equal monthly installments of \$134,722, which commenced on March 25, 2014. In connection

with the above refinancing, this note was amended and restated and increased by \$2,783,333 of credit facility borrowings. The new principal amount of \$4,400,000, which is secured by a mortgage on The Rustic Inn real estate, is payable in 27 equal quarterly installments of \$71,333, which commenced on September 1, 2018, with a balloon payment of \$2,474,000 on June 1, 2025 and bears interest at LIBOR plus 3.5% per annum.

- *Promissory Note – Shuckers purchase* – On October 22, 2015, in connection with the acquisition of *Shuckers*, the Company issued a promissory note to BHBM for \$5,000,000. The note bore interest at LIBOR plus 3.5% per annum, and was payable in 60 equal monthly installments of \$83,333, commencing on November 22, 2015. In connection with the above refinancing, this note was amended and restated and increased by \$2,433,324 of credit facility borrowings. The new principal amount of \$5,100,000, which is secured by a mortgage on the *Shuckers* real estate, is payable in 27 equal quarterly installments of \$85,000, which commenced on September 1, 2018, with a balloon payment of \$2,805,000 on June 1, 2025 and bears interest at LIBOR plus 3.5% per annum.
- *Promissory Note – Oyster House purchase* – On November 30, 2016, in connection with the acquisition of the *Oyster House* properties, the Company issued a promissory note under the Revolving Facility to BHBM for \$8,000,000. The note bore interest at LIBOR plus 3.5% per annum, and was payable in 60 equal monthly installments of \$133,273, commencing on January 1, 2017. In connection with the above refinancing, this note was amended and restated and separated into two notes. The first note, in the principal amount of \$3,300,000, is secured by a mortgage on the *Oyster House Gulf Shores* real estate, is payable in 19 equal quarterly installments of \$117,857, which commenced on September 1, 2018, with a balloon payment of \$1,060,716 on June 1, 2023 and bears interest at LIBOR plus 3.5% per annum. The second note, in the principal amount of \$2,200,000, is secured by a mortgage on the *Oyster House Spanish Fort* real estate, is payable in 27 equal quarterly installments of \$36,667, which commenced on September 1, 2018, with a balloon payment of \$1,210,000 on June 1, 2025 and bears interest at LIBOR plus 3.5% per annum.
- *Promissory Note - JB's on the Beach purchase* – On May 15, 2019, in connection with the previously discussed acquisition of *JB's on the Beach*, the Company issued a promissory note under the Revolving Facility to BHBM for \$7,000,000 which is payable in 23 equal quarterly installments of \$250,000, commencing on September 1, 2019, with a balloon payment of \$1,250,000 on June 1, 2025 and bears interest at LIBOR plus 3.5% per annum.
- *Promissory Note - Sequoia renovation* – Also on May 15, 2019, the Company converted \$3,200,000 of Revolving Facility borrowings incurred in connection with the *Sequoia* renovation to a promissory note which is payable in 23 equal quarterly installments of \$114,286, commencing on September 1, 2019, with a balloon payment of \$571,429 on June 1, 2025 and bears interest at LIBOR plus 3.5% per annum.

Paycheck Protection Program Loans

During the year ended October 3, 2020, subsidiaries (the “Borrowers”) of the Company received loan proceeds from several banks (the “Lenders”) in the aggregate amount of \$14,995,000 (the “PPP Loans”) under the Paycheck Protection Program (the “PPP”) of the CARES Act, which was enacted March 27, 2020. In addition, during the 13 weeks ended April 3, 2021, one of our consolidated VIEs received a second draw PPP Loan in the amount of \$111,000. The PPP Loans are evidenced by individual promissory notes of each of the Borrowers (together, the “Notes”) in favor of the Lender, which Notes bear interest at the rate of 1.00% per annum. Funds from the PPP Loans may be used only for payroll and related costs, costs used to continue group health care benefits, mortgage payments, rent, utilities, and interest on other debt obligations that were incurred by a Borrower prior to February 15, 2020 (the “Qualifying Expenses”). Under the terms of the PPP Loans, some or all of the amounts thereunder, including accrued interest, may be forgiven if they are used for Qualifying Expenses as described in and in compliance with the CARES Act. Each Note may be prepaid by the respective Borrower at any time prior to maturity with no prepayment penalties. No payments of principal or interest are due under the Notes until the date on which the amount of loan forgiveness (if any) under the CARES Act for each respective Note is remitted to the Lender and a forgiveness decision is received by the Borrower. Forgiveness applications can be submitted up to 10 months after the end of the related notes covered period (which is defined as 24 weeks after the date of the loan) (the “Deferral Period”) and the ultimate forgiveness decisions can be made by the Lenders up to 60 days after submitting the applications and possibly longer if forgiveness is fully or partially denied and the Borrower appeals the decision. While the Company believes that it and each Borrower used the PPP Loan proceeds exclusively for Qualifying Expenses, it is unclear and uncertain whether the conditions for forgiveness of the PPP Loans outstanding at October 2, 2021 will be met under the current guidelines of the CARES Act. Therefore, we cannot make any assurances that the Company, or any of the Borrowers, will be eligible for forgiveness of the remaining PPP Loans, in whole or in part. Accordingly, based on the above, we have classified \$2,032,000 of the PPP Loans as short-term in the consolidated balance sheet as of October 2, 2021.

During the year ended October 2, 2021, \$10,400,000 (including \$84,000 of accrued interest) of PPP Loans were forgiven. To the extent, if any, that any of the remaining PPP Loans are not forgiven, beginning one month following expiration of the Deferral Period, and continuing monthly for 10 months (the “Maturity Date”), each respective Borrower is obligated to make

monthly payments of principal and interest to the Lender with respect to any unforgiven portion of the Notes, in such equal amounts required to fully amortize the principal amount outstanding on such Notes as of the last day of the applicable Deferral Period by the applicable Maturity Date.

Deferred Financing Costs

Deferred financing costs incurred in the amount of \$271,000 are being amortized over the life of the agreements using the effective interest rate method and included in interest expense. Amortization expense of \$60,000 and \$51,000 is included in interest expense for the years ended October 2, 2021 and October 3, 2020, respectively.

Maturities

As of October 3, 2021, the aggregate amounts of notes payable maturities (excluding borrowings under the Revolving Facility) are as follows:

	<u>BHBM</u>	<u>PPP Loans</u>	<u>Blue Moon Note</u>	<u>Total</u>
2022	\$ 4,701	\$ 2,032	\$ 240	\$ 6,973
2023	5,526	1,917	253	7,696
2024	4,229	773	266	5,268
2025	12,591	—	68	12,659
	<u>\$ 27,047</u>	<u>\$ 4,722</u>	<u>\$ 827</u>	<u>\$ 32,596</u>

11. COMMITMENTS AND CONTINGENCIES

Leases — In connection with one of our leases, the Company obtained and delivered an irrevocable letter of credit in the amount of approximately \$238,000 as a security deposit under such lease.

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

On May 1, 2018, two former tipped service workers (the "Plaintiffs"), individually and on behalf of all other similarly situated personnel, filed a putative class action lawsuit (the "Complaint") against the Company and certain subsidiaries as well as certain officers of the Company (the "Defendants"). Plaintiffs alleged, on behalf of themselves and the putative class, that the Company violated certain of the New York State Labor Laws and related regulations. The Complaint sought unspecified money damages, together with interest, liquidated damages and attorney fees. In December 2020, the parties reached a settlement agreement resolving all issues alleged in the Complaint, which received preliminary approval by the New York State Supreme Court, for approximately the amount which was previously accrued. It is anticipated the parties will shortly submit a joint application to the New York State Supreme Court seeking final approval of the settlement.

12. STOCK OPTIONS

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

During the year ended October 2, 2021, options to purchase 110,500 shares of common stock at an exercise price of \$10.65 per share were granted to employees and directors of the Company (the "2021 Grant"). Such options are exercisable as to 50% of the shares commencing on the second anniversary of the date of grant and as to 50% on the fourth anniversary of the date of grant. The grant date fair value of these stock options was \$2.22 per share and totaled approximately \$246,000.

During the year ended October 3, 2020, options to purchase 266,500 shares of common stock at an exercise price of \$21.90 per share were granted to employees, directors of the Company and other service providers. Such options are exercisable as to 50% of the shares commencing on the second anniversary of the date of grant and as to the remaining 50% commencing on the fourth anniversary of the date of grant. The grant date fair value of these stock options was \$3.35 per share and totaled approximately \$894,000.

The Company generally issues new shares upon the exercise of employee stock options.

The fair value of each of the Company's stock options is estimated on the date of grant using a Black-Scholes option-pricing model that uses assumptions that relate to the expected volatility of the Company's common stock, the expected dividend yield of the Company's stock, the expected life of the options and the risk-free interest rate. The assumptions used for the 2021 Grant include a risk-free interest rate of 0.86%, volatility of 37.1%, a dividend yield of 3.0% and an expected life of 10 years. The assumptions used for the 2020 grants include a risk-free interest rate of 1.54%, volatility of 30.3%, a dividend yield of 5.2% and an expected life of 10 years.

The following table summarizes stock option activity under all plans:

	2021				2020		
	Shares	Weighted Average Exercise Price	Weighted Average Contractual Term	Aggregate Intrinsic Value	Shares	Weighted Average Exercise Price	Aggregate Intrinsic Value
Outstanding, beginning of period	626,500	\$ 20.41	6.1 years		363,500	\$ 19.25	
Options:							
Granted	110,750	\$ 10.65			266,500	\$ 21.90	
Exercised	(49,149)	\$ 14.40			(3,500)	\$ 14.40	
Canceled or expired	(91,625)	\$ 19.64			—		
Outstanding and expected to vest, end of period	<u>596,476</u>	\$ 19.21	6.3 years	\$583,000	<u>626,500</u>	\$ 20.41	\$ —
Exercisable, end of period	<u>246,976</u>	\$ 20.33	3.1 years	\$ 61,000	<u>351,750</u>	\$ 19.28	\$ —
Shares available for future grant	<u>63,750</u>				<u>174,500</u>		

Compensation cost charged to operations for the years ended October 2, 2021 and October 3, 2020 for share-based compensation programs was approximately \$280,000 and \$176,000, respectively. The compensation cost recognized is classified as a general and administrative expense in the consolidated statements of operations.

As of October 2, 2021, there was approximately \$737,000 of unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a period of three years.

The following table summarizes information about stock options outstanding as of October 2, 2021:

Range of Exercise Prices	Options Outstanding			Options Exercisable		
	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining contractual life (in years)	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining contractual life (in years)
\$10.65	107,500	\$ 10.65	9.1	—	\$ 10.65	9.1
\$14.40	55,851	\$ 14.40	0.7	55,851	\$ 14.40	0.7
\$21.90	236,500	\$ 21.90	8.4	—	\$ 21.90	8.4
\$22.50	142,625	\$ 22.50	2.7	142,625	\$ 22.50	2.7
\$19.61 - \$22.30	<u>54,000</u>	\$ 20.69	7.2	<u>48,500</u>	\$ 20.81	7.2
	<u>596,476</u>	\$ 19.21	6.3	<u>246,976</u>	\$ 20.33	3.1

The Company also maintains a Section 162(m) Cash Bonus Plan. Under the Section 162(m) Cash Bonus Plan, compensation paid in excess of \$1,000,000 to any employee who is the chief executive officer, or one of the three highest paid executive officers on the last day of that tax year (other than the chief executive officer or the chief financial officer) is not tax deductible.

13. INCOME TAXES

On March 27, 2020, the CARES Act was enacted to provide economic relief to those impacted by the COVID-19 pandemic. In addition to the PPP loans, the CARES Act made various tax law changes including among other things (i) modifications to the federal net operating loss rules including permitting federal net operating losses incurred in 2018, 2019, and 2020 tax years to be carried back to the five preceding taxable years in order to generate a refund of previously paid income taxes, (ii) enhanced recoverability of AMT tax credit carryforwards, (iii) increased the limitation under Internal Revenue Code ("IRC") Section 163(j) for 2019 and 2020 to permit additional expensing of interest, and (iv) enacted a technical correction so that qualified improvement property can be immediately expensed under IRC Section 168(k).

On December 27, 2020, the Consolidated Appropriations Act of 2021 ("CAA") was enacted and provided clarification on the tax deductibility of expenses funded with PPP loans as fully deductible for tax purposes. During the year ended October 2, 2021, the Company recorded income of \$10,400,000 (including \$84,000 of accrued interest) for financial reporting purposes related to the forgiveness of its PPP loans. The forgiveness of these amounts is not taxable.

As a result of the CARES Act and the CAA, the Company carried back taxable losses from fiscal year 2020 and is expected to carryback taxable losses from fiscal 2021 to generate a refund of previously paid income taxes. As a result of these carrybacks, the Company recorded income tax benefits as the taxable losses from fiscal 2020 and fiscal 2021 are being carried back to tax years in which the Company was subject to a higher federal corporate income tax rate. Included in Prepaid and Refundable Income Taxes at October 2, 2021 is \$3,766,000 related these carryback claims.

The provision for income taxes consists of the following:

	Year Ended	
	October 2, 2021	October 3, 2020
	(in thousands)	
Current provision (benefit):		
Federal	\$ (1,093)	\$ (2,652)
State and local	77	58
	<u>(1,016)</u>	<u>(2,594)</u>
Deferred provision (benefit):		
Federal	946	(780)
State and local	1,251	(1,011)
	<u>2,197</u>	<u>(1,791)</u>
	<u>\$ 1,181</u>	<u>\$ (4,385)</u>

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

	Year Ended	
	October 2, 2021	October 3, 2020
	(in thousands)	
Provision at Federal statutory rate (21%)	\$ 3,240	\$ (1,891)
State and local income taxes, net of tax benefits	433	(919)
Gain on forgiveness of PPP Loans	(1,974)	—
Tax credits	(741)	(542)
Income (loss) attributable to non-controlling interest	(287)	(15)
Changes in tax rates	33	(65)
Net operating loss carryback Federal rate benefit	(159)	(1,022)
Change in valuation allowance	845	21
Other	(209)	48
	<u>\$ 1,181</u>	<u>\$ (4,385)</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:

	October 2, 2021	October 3, 2020
	(in thousands)	
Deferred tax assets:		
State net operating loss carryforwards	\$ 5,595	\$ 5,427
Lease liabilities	12,116	10,729
Deferred compensation	310	358
Tax credits	2,777	1,862
Partnership investments	—	346
Other	492	550
Deferred tax assets, before valuation allowance	21,290	19,272
Valuation allowance	(1,258)	(413)
Deferred tax assets, net of valuation allowance	20,032	18,859
Deferred tax liabilities:		
Depreciation and amortization	(15,308)	(12,440)
Partnership investments	(566)	—
Prepaid expenses	(458)	(522)
Deferred tax liabilities	(16,332)	(12,962)
Net deferred tax assets	<u>\$ 3,700</u>	<u>\$ 5,897</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 forecasts of future earnings and the duration of statutory carryforward periods. The Company recorded a valuation allowance of \$1,258,000 and \$413,000 as of October 2, 2021 and October 3, 2020, respectively, attributable to state and local net operating loss carryforwards which are not realizable on a more-likely-than-not basis. During the years ended October 2, 2021 and October 3, 2020, the Company's valuation allowance increased by approximately \$845,000 and \$81,000, respectively, as the Company determined that certain state net operating losses became unrealizable on a more-likely-than-not basis due to certain restaurant closures in the related period.

As of October 2, 2021, the Company had General Business Credit carryforwards of approximately \$2,777,000 which expire through fiscal 2041. In addition, as of October 2, 2021, the Company has New York State net operating loss carryforwards of approximately \$28,039,000 and New York City net operating loss carryforwards of approximately \$26,364,000 that expire through fiscal 2041.

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

	October 2, 2021	October 3, 2020
	(in thousands)	
Balance at beginning of year	\$ 102	\$ 158
Additions based on tax positions taken in current and prior years	76	19
Settlements	—	—
Lapse in statute of limitations	—	—
Decreases based on tax positions taken in prior years	—	(75)
Balance at end of year	<u>\$ 178</u>	<u>\$ 102</u>

The entire amount of unrecognized tax benefits if recognized would reduce our annual effective tax rate. For the years ended October 2, 2021 and October 3, 2020, there are no amounts accrued for the payment of interest and penalties. The Company does not expect a significant change to its unrecognized tax benefits within the next 12 months.

The Company files tax returns in the U.S. and various state and local jurisdictions with varying statutes of limitations. The 2018 through 2021 fiscal years remain subject to examination by the Internal Revenue Service and most state and local tax authorities.

14. INCOME PER SHARE OF COMMON STOCK

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

A reconciliation of shares used in calculating earnings per basic and diluted share follows:

	Year Ended	
	October 2, 2021	October 3, 2020
	(in thousands)	
Basic	3,516	3,500
Effect of dilutive securities:		
Stock options	88	—
Diluted	3,604	3,500

For the year ended October 3, 2020, all options were excluded from diluted earnings per share as their impact would have been anti-dilutive.

For the year ended October 2, 2021, the dilutive effect of options to purchase 443,500 shares of common stock at exercise prices ranging from \$21.90 per share to \$22.50 per share were not included in diluted earnings per share as their impact would have been anti-dilutive.

15. DIVIDENDS

On November 26, 2019, the Board of Directors declared a quarterly dividend of \$0.25 per share on the Company's common stock which was paid on January 7, 2020, to shareholders of record at the close of business on December 16, 2019.

On March 13, 2020, the Company announced that, in light of the unprecedented circumstances and rapidly changing situation with respect to COVID-19, as part of an overall plan to preserve cash flow, the Board of Directors determined that it was appropriate for the Company to defer payment of the dividend that was declared on March 2, 2020. Payment of such dividend, which was scheduled for April 6, 2020 to shareholders of record on March 16, 2020, was canceled on July 1, 2020.

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 and other relevant factors. The Company does not expect to pay quarterly cash dividends for the foreseeable future as a result of the disruption to its operations from the COVID-19 pandemic.

16. RELATED PARTY TRANSACTIONS

Employee receivables totaled approximately \$380,000 and \$385,000 at October 2, 2021 and October 3, 2020, respectively. Such amounts consist of loans that are payable on demand, bear interest at the minimum statutory rate (0.17% at October 2, 2021 and 0.38% at October 3, 2020), and are net of reserves for collectability.

CORPORATE INFORMATION

BOARD OF DIRECTORS

Michael Weinstein

Chairman and Chief Executive Officer

Anthony J. Sirica

Chief Financial Officer and Treasurer

Vincent Pascal

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

Marcia Allen

Chief Executive Officer, Allen & Associates

Bruce R. Lewin

Former President of 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

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