ARK
RESTAURANTS
CORP.

2022 ANNUAL REPORT

The Company

Overview

We are a New York corporation formed in 1983. As of the fiscal year ended October 1, 2022, we owned and/or operated 17 restaurants and bars, 16 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 1, 2022, including financial statements, exhibits and schedules thereto, to each of our shareholders of record on January 17, 2023 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 3, 2023

Shareholders, Employees and Friends of our Company,

We had a decent result for the fiscal year ended September 2022. Earnings before interest charges, taxes, depreciation and amortization (EBITDA), which we believe is the best measure of productivity, benefited from recovering demand for our restaurants. Despite rising inflation in commodity prices and a difficult labor market we achieved an EBITDA of $17,002,000. In no small measure, strong revenue growth in Las Vegas, certain of our locations in Florida and Bryant Park in New York City contributed to this result. Importantly, our balance sheet is more secure with fiscal year end cash and cash equivalents of $23,439,000, a certificate of deposit in the amount of $5,021,000 maturing in January 2023, and total outstanding debt of $23,729,000. Companies compete through their Balance Sheets. We are in an enviable under leveraged position to execute our plan to add to our portfolio of restaurant properties.

As was the case in the prior fiscal year our gross margins were challenged by inflation in cost of goods and labor. We were cautious in raising menu prices, although we did modestly, being of the opinion that as this current fiscal year progresses commodity prices for our industry will stabilize benefitting our restaurants. However, the labor market is and will remain difficult. We are paying more to retain salaried staff and legislation to increase the minimum wage has accelerated this trend for both salaried and hourly workers. While a goal of the company should be to increase margins, it is obvious that our lower earning customers are suffering the impact of higher costs. Indeed some of our restaurants where we have put through price increases have started to experience a decline in comparative customer counts. Fortunately this is not widespread but to increase pricing further would risk additional erosion. We prefer maintaining our customer base as opposed to any attempt to widen margins. To do otherwise would be foolish.

Our formula of owning restaurants with special characteristics (whether on the water, in a public park, museum or casino) in combination with the quality of our product and compelling design aesthetics has provided the company with continued success. The goal now is to be aggressive in finding additional properties that align with this formula.

Our investment in The New Meadowlands racetrack remains productive. We receive cash distributions from the onsite sports betting operation and from our sports betting website. FanDuel is our partner in this.

We on balance remain optimistic that as New York State issues three contemplated licenses for downstate casinos, New York City and the boroughs of Queens and the Bronx being the candidate locations, that New Jersey will eventually recognize significant revenue disruption in its Atlantic City casinos and opt to compete with New York by allowing a license in the northern part of the state. The Meadowland is ideally located.

Thank you again for your support whether a shareholder, employee or friend.

Sincerely,

Michael Weinstein

ARK RESTAURANTS CORP.

Corporate Office

Michael Weinstein, Chairman and Chief Executive Officer
Anthony J. Sirica, President, Chief Financial Officer and Treasurer
Vincent Pascal, Senior Vice President and Chief Operating Officer
Teresita Mendoza, 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
Guisela Nunez, Director of Human Resources
Veronica Mijelshon, Director of Architecture and Design
John Oldweiler, Director of Purchasing
Evyette Ortiz, Director of Marketing
Christopher Love, Secretary
Blair Roy, Director of Maintenance – Las Vegas Operations

Executive Chefs

Mark Purdy, Las Vegas, NV
Brandon Greenwood, Assistant Executive Chef, Las Vegas, NV
Vico Ortega, New York, NY

Restaurant General Manager – New York

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

Roberto Aguiar, Yolos Mexican Grill
Wade Keeler, Director of Sales and Catering
Edwin Villatoro, Gonzalez y Gonzalez
Darrus Chaffee, 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 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

Ronnie Gallegos, Gallagher's Steakhouse
Dannero Abadie, Broadway Burger Bar
Omrai Capers, America
Justin Vega, 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 Disclosure

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

Recent global events, including the COVID-19 pandemic ("COVID-19"), have adversely affected global economies, disrupted global supply chains and labor force participation and created significant volatility and disruption of financial markets.

We experienced significant and variable disruptions to our business as federal, state and local restrictions were mandated, among other remedial measures, to mitigate the spread of the COVID-19 virus. During fiscal 2021, most of our restaurants operated with no restrictions on indoor dining, although there was a significant reduction in guest traffic at our restaurants due to changes in consumer behavior as public health officials encouraged social distancing. While restrictions on the type of permitted operating model and occupancy capacity may continue to change, during fiscal 2022 all of our restaurants operated with no restrictions.

During fiscal 2022, in addition to the associated impact of COVID-19, our operating results have been impacted by geopolitical and other macroeconomic factors, leading to increased commodity and wage inflation and other increased costs. The ongoing effects of COVID-19 and its variants, along with other geopolitical and macroeconomic events, could lead to further government mandates, including but not limited to capacity restrictions, shifts in consumer behavior, wage inflation, staffing challenges, product and services cost inflation and disruptions in our supply chain. If these factors significantly impact our cash flow in the future, we may again implement mitigation actions such as suspending dividends, increasing borrowings or modifying our operating strategies. Some of these measures may have an adverse impact on our business, including possible impairments of assets.

Overview

As of October 1, 2022, the Company owned and operated 17 restaurants and bars, 16 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.

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 1, 2022 and October 2, 2021 both included 52 weeks.

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 1, 2022 increased 58.9% from $9,864,000 as compared to $6,207,000 for the year ended October 2, 2021. This increase resulted primarily from a 39.3% increase in revenues, as all of our restaurants were operating with no dining restrictions in the current period in comparison to the prior period as a result of government mandates in connection with the COVID-19 pandemic, partially offset by increases in commodity prices and other high-volume items caused by inflation, increased labor costs in connection with ongoing COVID-related labor challenges and percentage rents paid on higher sales in the current year.

The following table summarizes the significant components of the Company's operating results for the years ended October 1, 2022 and October 2, 2021, respectively:

	Year Ended		Variance	
	October 1, 2022	October 2, 2021	$	%
REVENUES:	(in thousands)			
Food and beverage sales	$ 180,010	$ 128,988	$ 51,022	39.6%
Other revenue	3,664	2,882	782	27.1%
Total revenues	183,674	131,870	51,804	39.3%
COSTS AND EXPENSES:				
Food and beverage cost of sales	52,573	38,950	13,623	35.0%
Payroll expenses	60,000	42,579	17,421	40.9%
Occupancy expenses	22,181	14,747	7,434	50.4%
Other operating costs and expenses	21,823	16,044	5,779	36.0%
General and administrative expenses	12,936	10,523	2,413	22.9%
Gain on lease termination	—	(810)	810	N/A
Depreciation and amortization	4,297	3,630	667	18.4%
Total costs and expenses	173,810	125,663	48,147	38.3%
OPERATING INCOME	$ 9,864	$ 6,207	$ 3,657	58.9%

Revenues

During the year ended October 1, 2022, revenues increased 39.3% as compared to revenues for the year ended October 2, 2021. This increase resulted primarily from increased customer traffic at all of our properties as they are operating with no dining restrictions in the current period in comparison to the prior period where there were restrictions as a result of government mandates in connection with the COVID-19 pandemic combined with targeted menu price increases and in New York and Washington, D.C., strong revenues from our event business in the current period.

Food and Beverage Same-Store Sales

On a Company-wide basis, same-store food and beverage sales increased 38.1% for the year ended October 1, 2022 as compared to the year ended October 2, 2021 as follows:

	Year Ended		Variance	
	October 1, 2022	October 2, 2021	$	%
	(in thousands)			
Las Vegas	$ 55,364	$ 37,767	$ 17,597	46.6%
New York	33,408	15,037	18,371	122.2%
Washington, D.C.	10,611	8,169	2,442	29.9%
Atlantic City, NJ	3,555	2,055	1,500	73.0%
Alabama	16,749	14,506	2,243	15.5%
Florida	57,535	50,818	6,717	13.2%
Same-store sales	177,222	128,352	$ 48,870	38.1%
Other	2,788	636		
Food and beverage sales	$ 180,010	$ 128,988		

The increases in company-wide same-store sales for the year ended October 1, 2022 as compared to the prior year were driven primarily by increased customer traffic as a result of the impact of the COVID-19 pandemic on the prior period combined with targeted increases in menu pricing and a strong recovery in our event business in Washington, D.C. and New York City in the current period.

Other food and beverage sales consist of current year for pre-acquisition periods of restaurants opened or acquired during the applicable period (*Blue Moon Fish Company* - see Liquidity and Capital Resources - Recent Expansion and Other Developments), sales related to properties that were closed (*Clyde Frazier's Wine and Dine, Lucky 7* and *Gallagher's Steakhouse* and *Gallagher's Burger Bar* - see Liquidity and Capital Resources - Recent Restaurant Dispositions) 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 1, 2022 as compared to the year ended October 2, 2021 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 1, 2022 and October 2, 2021 were as follows (in thousands):

	Year Ended October 1, 2022	% to Total Revenues	Year Ended October 2, 2021	% to Total Revenues	Increase (Decrease) $	Increase (Decrease) %
Food and beverage cost of sales	$ 52,573	28.6%	$ 38,950	29.5%	$ 13,623	35.0%
Payroll expenses	60,000	32.7%	42,579	32.3%	17,421	40.9%
Occupancy expenses	22,181	12.1%	14,747	11.2%	7,434	50.4%
Other operating costs and expenses	21,823	11.9%	16,044	12.2%	5,779	36.0%
General and administrative expenses	12,936	7.0%	10,523	8.0%	2,413	22.9%
Gain on lease termination	—	—%	(810)	-0.6%	810	N/A
Depreciation and amortization	4,297	2.3%	3,630	2.8%	667	18.4%
Total costs and expenses	$ 173,810		$ 125,663		$ 48,147	

Food and beverage costs as a percentage of total revenues for the year ended October 1, 2022 decreased as compared to last year primarily as a result of targeted increases in menu pricing, changes in menu mix and a strong event business in Washington, D.C. and New York City in the current period, partially offset by increases in commodity prices and other high-volume items caused by inflation.

Payroll expenses as a percentage of total revenues for the year ended October 1, 2022 increased as compared to last year primarily as a result of increased labor costs in connection with ongoing COVID-related labor challenges partially offset by increased volumes, targeted increases in menu pricing and changes in menu mix and a strong event business in Washington, D.C. and New York City in the current period.

Occupancy expenses as a percentage of total revenues for the year ended October 1, 2022 increased as compared to last year primarily as a result of percentage rents paid on higher sales in the current period.

Other operating costs and expenses as a percentage of total revenues for the year ended October 1, 2022 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, partially offset by increased maintenance at properties which was deferred as we were experiencing lower traffic in prior periods combined with higher restaurant-level professional fees in the current period.

General and administrative expenses (which relate solely to the corporate office in New York City) for the year ended October 1, 2022 increased as compared to last year primarily as a result of increased bonus accruals combined with 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 1, 2022 increased as compared to last year primarily as a result of assets placed in service in the current period.

Gain 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.

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 depreciation and amortization for 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.

The Inflation Reduction Act of 2022 (the "Act") was signed into U.S. law on August 16, 2022. The Act includes various tax provisions, including an excise tax on stock repurchases, expanded tax credits for clean energy incentives, and a corporate alternative minimum tax that generally applies to U.S. corporations with average adjusted financial statement income over a three-year period in excess of $1 billion. The Company does not expect the Act to materially impact its financial statements.

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 years ended October 1, 2022 and October 2, 2021, the Company recorded income of $2,420,000 and $10,400,000, respectively (including $65,000 and $84,000 of accrued interest, respectively), 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 years 2020 and 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 1, 2022 and October 2, 2021 is $1,360,000 and $3,766,000, respectively, 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 1, 2022, we had a cash and cash equivalents balance of $23,439,000 and a certificate of deposit in the amount of $5,021,000 maturing in January 2023.

We experienced significant disruptions to our business as federal, state and local restrictions were mandated to mitigate the spread of the COVID-19 virus. While restrictions on the type of permitted operating model and occupancy capacity may continue to change, during fiscal 2022 all of our restaurants operated with no restrictions. During fiscal 2021, most of our restaurants operated with no restrictions on indoor dining, although there were impacts to our business from accelerating case counts. During fiscal 2022, along with the impacts of COVID-19, our operating results have been impacted by geopolitical and other macroeconomic factors, leading to increased commodity and wage inflation and other increased costs. The ongoing effects of COVID-19 and its variants, along with other geopolitical and macroeconomic events, could lead to further government mandates, including but not limited to capacity restrictions, shifts in consumer behavior, wage inflation, staffing challenges, product and services cost inflation and disruptions in the supply chain. If these factors significantly impact our cash flow in the future, we may again implement mitigation actions such as suspending dividends, increasing borrowings or modifying our operating strategies. Some of these measures may have an adverse impact on our business, including possible impairments of assets.

The Company had working capital of $4,210,000 at October 1, 2022 as compared to $2,572,000 at October 2, 2021. 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 and the resumption of the payment of dividends in June 2022. 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 1, 2022 and October 2, 2021

Net cash provided by operating activities for the year ended October 1, 2022 increased to $20,347,000 as compared to $9,294,000 for the year ended October 2, 2021. 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 1, 2022 and October 2, 2021 was $(7,761,000) and $(3,450,000), respectively, and resulted primarily from purchases of fixed assets at existing restaurants and, in the current period, the purchase of a certificate of deposit in the amount of $5,000,000.

Net cash used in financing activities for the years ended October 1, 2022 and October 2, 2021 was $(8,318,000) and $(3,559,000), respectively, and resulted primarily from principal payments on notes payable, the payment of distributions to non-controlling interest and, in the current period, the resumption of the payment of dividends, partially offset by proceeds from stock option exercises.

On May 11, 2022 and August 10, 2022, the Board of Directors (the "Board") of the Company declared quarterly cash dividends of $0.125 per share which were paid on June 13, 2022 and September 13, 2022 to the stockholders of record of each share of the

Company's common stock at the close of business on May 31, 2022 and August 31, 2022. The payment of future dividends, and the amount of any dividend, 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.

Restaurant Expansion and Other Developments

On April 8, 2022, the Company extended its lease for *Gallagher's Steakhouse* at the New York-New York Hotel and Casino in Las Vegas, NV through December 31, 2032. In connection with the extension, the Company has agreed to spend a minimum of $1,500,000 to materially refresh the premises by April 30, 2023 (as extended from September 30, 2022 due to supply chain issues), subject to additional extensions as set out in the agreement.

On June 24, 2022, the Company extended its lease for *America* at the New York-New York Hotel and Casino in Las Vegas, NV through December 31, 2033. In connection with the extension, the Company has agreed to spend a minimum of $4,000,000 to materially refresh the premises by December 31, 2024, subject to various extensions as set out in the agreement.

On July 21, 2022, the Company extended its lease for the *Village Eateries* at the New York-New York Hotel and Casino in Las Vegas, NV through December 31, 2034. As part of this extension, the *Broadway Burger Bar and Grill* and *Gonzalez y Gonzalez*, were carved out of the *Village Eateries* footprint and the extended date for each of those two locations is December 31, 2033. In connection with the extension, the Company has agreed to spend a minimum of $3,500,000 to materially refresh all three of these premises by June 30, 2023, subject to various extensions as set out in the agreement.

The above refresh obligations related to the New York-New York Hotel and Casino lease extensions are to be consistent with designs approved by the Landlord which shall not be unreasonably withheld. We will continue to pay all rent as required by the leases without abatement during construction. Note that our substantial completion of work set forth in plans approved by the Landlord shall constitute our compliance with the requirements of the completion deadlines, regardless of whether or not the amount actually expended in connection therewith is less than the minimum.

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 July 5, 2022, the Company terminated its lease for *Lucky 7* at the Foxwoods Resort Casino. The closure did not result in a material change to the Company's operations.

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 $1,357,000 and $1,317,000, are included in Investment In and Receivable From New Meadowlands Racetrack in the consolidated balance sheets at October 1, 2022 and October 2, 2021, 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 by June 30, 2023 and will continue 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 $22,345,000, 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.

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. 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. While the Company and each Borrower believe that PPP Loan proceeds were used exclusively for Qualifying Expenses, it is unclear and uncertain whether the conditions for forgiveness of the remaining PPP Loans outstanding at October 1, 2022 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 the amount of $797,000, in whole or in part.

During the years ended October 1, 2022 and October 2, 2021, $2,420,000 and $10,400,000, respectively (including $65,000 and $84,000 of accrued interest, respectively), 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

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 1, 2022 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 income.

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 1, 2022 and October 2, 2021, 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 1, 2022 and October 2, 2021. 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 income.

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 1, 2022 and October 2, 2021, 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 2022 and the expected dates of adoption and the anticipated impact on the consolidated financial statements.

Recent Developments

See Note 17 of the Notes to Consolidated Financial Statements for a description of recent developments that have occurred subsequent to October 1, 2022.

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, $0.01 par value, is traded on the NASDAQ Capital Market under the symbol "ARKR."

As of December 14, 2022 there were 29 holders of record of our common stock and approximately an additional 3,314 beneficial owners.

Dividend Policy

On May 11, 2022, August 10, 2022 and November 9, 2022, the Board of Directors (the "Board") of the Company declared quarterly cash dividends of $0.125 per share which were paid on June 13, 2022, September 13, 2022 and December 13, 2022 to the stockholders of record of each share of the Company's common stock at the close of business on May 31, 2022, August 31, 2022 and November 30, 2022. Future decisions to pay dividends, and the amount of any dividend, are at the discretion of the Board and will depend upon operating performance and other factors.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders
Ark Restaurants Corp.

Opinion on the Financial Statements

We have audited the accompanying balance sheets of Ark Restaurants Corp. and Subsidiaries (the "Company") as of October 1, 2022 and October 2, 2021, and the related consolidated statements of income, changes in shareholders' equity, and cash flows for each of the years in the two-year period ended October 1, 2022, 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 1, 2022 and October 2, 2021 and the results of its operations and its cash flows for each of the two years in the two-year period ended October 1, 2022 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 entity's management. Our responsibility is to express an opinion on these 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 Ark Restaurants Corp. 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 consolidated 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 consolidated 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) relate to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. 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 separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Long-lived Asset and Right-of-Use Asset Valuation (Note 1 to the Financial Statements)

Critical Audit Matter

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 projected 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.

Significant judgment is exercised by the Company in performing their long-lived asset and right-of-use asset impairment analysis specifically surrounding the development of undiscounted cash flow forecasts. The related audit effort in evaluating management's judgments in determining the cash flow forecasts to be utilized was complex, subjective, and challenging, and required a high degree of auditor judgment.

How our Audit Addressed the Critical Audit Matter

Our principal audit procedures related to this critical audit matter included the following:

- We gained an understanding of and evaluated the design and implementation of the Company's controls that address the risk of material misstatement related to potential impairment.
- We evaluated management's significant accounting policies related to the consideration of impairment for long-lived assets for reasonableness.
- We tested the reasonableness of the underlying data used to determine the forecasted future cash flows.
- We evaluated the reasonableness of future cash flows utilized in the impairment analysis for the restaurants by comparing forecasted cash flows to historical cash flows from each restaurant location, and evaluating management's future operating forecasts.
- We evaluated the reasonableness of management's estimate that no impairment charges were appropriate during the year.

/s/ CohnReznick LLP PCAOB ID: 596
We have served as the Company's auditors since 2004.
Melville, New York
December 20, 2022

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

	October 1, 2022	October 2, 2021
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents (includes $834 at October 1, 2022 and $785 at October 2, 2021 related to VIEs)	$ 23,439	$ 19,171
Certificate of deposit, plus accrued interest	5,021	—
Accounts receivable (includes $140 at October 1, 2022 and $358 at October 2, 2021 related to VIEs)	3,185	4,113
Employee receivables	440	380
Inventories (includes $38 at October 1, 2022 and $35 at October 2, 2021 related to VIEs)	3,707	3,510
Prepaid and refundable income taxes (includes $278 at October 1, 2022 and October 2, 2021 related to VIEs)	1,778	3,896
Prepaid expenses and other current assets (includes $17 at October 1, 2022 and $277 at October 2, 2021 related to VIEs)	1,523	3,205
Total current assets	39,093	34,275
FIXED ASSETS - Net (includes $212 at October 1, 2022 and $218 at October 2, 2021 related to VIEs)	34,682	36,174
OPERATING LEASE RIGHT-OF-USE ASSETS - Net (includes $2,076 at October 1, 2022 and $2,342 at October 2, 2021 related to VIEs)	101,720	56,336
INTANGIBLE ASSETS - Net	272	376
GOODWILL	17,440	17,440
TRADEMARKS	4,220	4,220
DEFERRED INCOME TAXES	3,118	3,700
INVESTMENT IN AND RECEIVABLE FROM NEW MEADOWLANDS RACETRACK	6,465	6,425
OTHER ASSETS (includes $11 at October 1, 2022 and $82 at October 2, 2021 related to VIEs)	2,524	2,270
TOTAL ASSETS	$ 209,534	$ 161,216
LIABILITIES AND EQUITY		
CURRENT LIABILITIES:		
Accounts payable - trade (includes $135 at October 1, 2022 and $213 at October 2, 2021 related to VIEs)	$ 4,466	$ 4,886
Accrued expenses and other current liabilities (includes $417 at October 1, 2022 and $374 at October 2, 2021 related to VIEs)	16,312	13,679
Current portion of operating lease liabilities (includes $272 at October 1, 2022 and $249 at October 2, 2021 related to VIEs)	7,530	6,165
Current portion of notes payable (includes $0 at October 1, 2022 and $95 at October 2, 2021 related to VIEs)	6,575	6,973
Total current liabilities	34,883	31,703
OPERATING LEASE LIABILITIES, LESS CURRENT PORTION (includes $1,921 at October 1, 2022 and $2,193 at October 2, 2021 related to VIEs)	97,444	52,552
NOTES PAYABLE, LESS CURRENT PORTION, net of deferred financing costs (includes $0 at October 1, 2022 and $101 at October 2, 2021 related to VIEs)	17,089	25,509
TOTAL LIABILITIES	149,416	109,764
COMMITMENTS AND CONTINGENCIES		
EQUITY:		
Common stock, par value $0.01 per share - authorized, 10,000 shares; issued and outstanding, 3,600 shares at October 1, 2022 and 3,551 shares at October 2, 2021	36	36
Additional paid-in capital	15,493	14,492
Retained earnings	44,271	35,884
Total Ark Restaurants Corp. shareholders’ equity	59,800	50,412
NON-CONTROLLING INTERESTS	318	1,040
TOTAL EQUITY	60,118	51,452
TOTAL LIABILITIES AND EQUITY	$ 209,534	$ 161,216

See notes to consolidated financial statements.

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

	Year Ended	
	October 1, 2022	**October 2, 2021**
REVENUES:		
Food and beverage sales	$ 180,010	$ 128,988
Other revenue	3,664	2,882
Total revenues	183,674	131,870
COSTS AND EXPENSES:		
Food and beverage cost of sales	52,573	38,950
Payroll expenses	60,000	42,579
Occupancy expenses	22,181	14,747
Other operating costs and expenses	21,823	16,044
General and administrative expenses	12,936	10,523
Gain on lease termination	—	(810)
Depreciation and amortization	4,297	3,630
Total costs and expenses	173,810	125,663
OPERATING INCOME	9,864	6,207
OTHER (INCOME) EXPENSE:		
Interest expense	1,192	1,230
Interest income	(109)	(51)
Other income	(421)	—
Gain on forgiveness of PPP Loans	(2,420)	(10,400)
Total other (income) expense, net	(1,758)	(9,221)
INCOME BEFORE PROVISION FOR INCOME TAXES	11,622	15,428
Provision for income taxes	1,448	1,181
CONSOLIDATED NET INCOME	10,174	14,247
Net income attributable to non-controlling interests	(893)	(1,352)
NET INCOME ATTRIBUTABLE TO ARK RESTAURANTS CORP.	$ 9,281	$ 12,895
NET INCOME PER ARK RESTAURANTS CORP. COMMON SHARE:		
Basic	$ 2.61	$ 3.67
Diluted	$ 2.58	$ 3.58
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING:		
Basic	3,556	3,516
Diluted	3,603	3,604

See notes to consolidated financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
FOR THE YEARS ENDED OCTOBER 1, 2022 AND OCTOBER 2, 2021
(In Thousands, Except Per Share Amounts)

	Common Stock		Additional Paid-In Capital	Retained Earnings	Total Ark Restaurants Corp. Shareholders' Equity	Non-controlling Interests	Total Equity
	Shares	Amount					
BALANCE - October 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
Net income	—	—	—	9,281	9,281	893	10,174
Exercise of stock options	49	—	703	—	703	—	703
Stock-based compensation	—	—	298	—	298	—	298
Distributions to non-controlling interests	—	—	—	—	—	(1,615)	(1,615)
Dividends paid - $0.25 per share	—	—	—	(894)	(894)	—	(894)
BALANCE - October 1, 2022	3,600	$ 36	$ 15,493	$ 44,271	$ 59,800	$ 318	$ 60,118

See notes to consolidated financial statements.

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

	Year Ended	
	October 1, 2022	October 2, 2021
CASH FLOWS FROM OPERATING ACTIVITIES:		
Consolidated net income	$ 10,174	$ 14,247
Adjustments to reconcile consolidated net income to net cash provided by operating activities:		
Stock-based compensation	298	280
Gain on lease termination	—	(810)
Gain on forgiveness of PPP Loans	(2,420)	(10,400)
Deferred income taxes	582	2,197
Accrued interest on Certificate of Deposit	(21)	—
Accrued interest on note receivable from NMR	(40)	(51)
Depreciation and amortization	4,297	3,630
Amortization of operating lease assets	873	1,808
Amortization of deferred financing costs	48	60
Changes in operating assets and liabilities:		
Accounts receivable	928	(2,375)
Inventories	(197)	(918)
Prepaid, refundable and accrued income taxes	2,118	(1,026)
Prepaid expenses and other current assets	1,682	(736)
Other assets	(254)	(69)
Accounts payable - trade	(420)	2,557
Accrued expenses and other current liabilities	2,699	900
Net cash provided by operating activities	20,347	9,294
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of fixed assets	(2,701)	(2,138)
Loans and advances made to employees	(229)	(92)
Payments received on employee receivables	169	97
Purchase of certificate of deposit	(5,000)	—
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	(7,761)	(3,450)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Principal payments on notes payable	(4,941)	(3,374)
Principal payments on PPP Loans	(1,571)	(68)
Proceeds from PPP Loans	—	111
Dividends paid	(894)	—
Proceeds from issuance of stock upon exercise of stock options	703	710
Distributions to non-controlling interests	(1,615)	(938)
Net cash used in financing activities	(8,318)	(3,559)
NET INCREASE IN CASH AND CASH EQUIVALENTS	4,268	2,285
CASH AND CASH EQUIVALENTS, Beginning of year	19,171	16,886
CASH AND CASH EQUIVALENTS, End of year	$ 23,439	$ 19,171
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid during the year for:		
Interest	$ 1,119	$ 1,067
Income taxes	$ 826	$ 8
Non-cash financing activities:		
Note payable in connection with the purchase of The Blue Moon Fish Company	$ —	$ 1,000
Refinancing of credit facility borrowings to term notes	$ —	$ 9,666

See notes to consolidated financial statements.

1. BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

As of October 1, 2022, Ark Restaurants Corp. and Subsidiaries (the “Company”) owned and operated 17 restaurants and bars, 16 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 and 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 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 AND INFLATION — Recent global events, including the COVID-19 pandemic ("COVID-19"), have adversely affected global economies, disrupted global supply chains and labor force participation and created significant volatility and disruption of financial markets.

We experienced significant and variable disruptions to our business as federal, state and local restrictions were mandated, among other remedial measures, to mitigate the spread of the COVID-19 virus. During fiscal 2021, most of our restaurants operated with no restrictions on indoor dining, although there was a significant reduction in guest traffic at our restaurants due to changes in consumer behavior as public health officials encouraged social distancing. While restrictions on the type of permitted operating model and occupancy capacity may continue to change, during fiscal 2022 all of our restaurants operated with no restrictions.

During fiscal 2022, in addition to the associated impact of COVID-19, our operating results have been impacted by geopolitical and other macroeconomic factors, leading to increased commodity and wage inflation and other increased costs. The ongoing effects of COVID-19 and its variants, along with other geopolitical and macroeconomic events, could lead to further government mandates, including but not limited to capacity restrictions, shifts in consumer behavior, wage inflation, staffing challenges, product and services cost inflation and disruptions in our supply chain. If these factors significantly impact our cash flow in the future, we may again implement mitigation actions such as suspending dividends, increasing borrowings or modifying our operating strategies. Some of these measures may have an adverse impact on our business, including possible impairments of assets.

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 1, 2022 and October 2, 2021 both included 52 weeks.

Use of Estimates — The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities, at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The accounting estimates that require management’s most difficult and subjective judgments include 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 this 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 — Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value is estimated by applying a fair value hierarchy, which requires maximizing the use of observable inputs when measuring fair value. The three levels of inputs are:

- Level 1: Quoted prices (unadjusted) for identical assets or liabilities in active markets that the entity has the ability to access as of the measurement date.

- Level 2: Significant other observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.

- Level 3: Significant unobservable inputs that reflect a reporting entity's own assumptions about the assumptions that market participants would use in pricing an asset or liability.

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. Certificates of deposit, which are considered Level 2 assets, are valued at original cost plus accrued interest, which approximates fair value.

Cash and Cash Equivalents — Cash and cash equivalents include cash on hand, deposits with banks, highly liquid investments and certificates of deposit 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 1, 2022, the Company had accounts receivable balances due from two hotel operators totaling 54% of total accounts receivable. As of October 2, 2021, the Company had accounts receivable balances due from one hotel operator totaling 37% of total accounts receivable.

For the years ended October 1, 2022 and October 2, 2021, the Company made purchases from two vendors that accounted for 20% and 21% of total purchases, respectively.

As of October 1, 2022, 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 income.

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.

No impairment charges related to long-lived and ROU assets were recognized during the year ended October 1, 2022. The Company recognized impairment charges related to long-lived and ROU assets during the year ended October 2, 2021 as described in Note 4 – Recent Restaurant Dispositions. Given the inherent uncertainty in projecting results of restaurants under the current circumstances, 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 income.

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 1, 2022 and October 2, 2021. 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 1, 2022 and October 2, 2021.

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 $11,812,000 and $3,240,000 in catering services revenue for the years ended October 1, 2022 and October 2, 2021, respectively. Unearned revenue which is included in accrued expenses and other current liabilities on the consolidated balance sheets as of October 1, 2022 and October 2, 2021 was $5,534,000 and $4,988,000, 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 1, 2022 and October 2, 2021, the total liability for gift cards in the amounts of approximately $309,000 and $252,000, 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 1, 2022 and October 2, 2021, 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 January 2017, the Financial Accounting Standards Board (the "FASB") issued Accounting Standards Update ("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.

In December 2019, the FASB issued ASU No. 2019-12, Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes ("ASU 2019-12"), 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 adopted this guidance in the first quarter of fiscal 2022. Such adoption did not have a material impact on our consolidated condensed financial statements.

New Accounting Standards Not Yet Adopted — In March 2020, the FASB issued ASU No. 2020-04, Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting, which provides optional expedients and exceptions for applying U.S. GAAP to contracts, hedging relationships and other transactions affected by the discontinuation of the London Interbank Offered Rate ("LIBOR") or by another reference rate expected to be discontinued because of reference rate reform. The guidance was effective beginning March 12, 2020 and can be applied prospectively through December 31, 2022. In January 2021, the FASB issued ASU 2021-01, Reference Rate Reform (Topic 848): Scope ("ASU 2021-01"). ASU 2021-01 provides temporary optional expedients and exceptions to certain guidance in U.S. GAAP to ease the financial reporting burdens related to the expected market transition from LIBOR and other interbank offered rates to alternative reference rates, such as the Secured Overnight Financing Rate ("SOFR"). The guidance is effective upon issuance, on January 7, 2021, and can be applied through December 31, 2022. We do not expect that the requirements of this guidance will have a material impact on our consolidated financial statements.

2. CONSOLIDATION OF VARIABLE INTEREST ENTITIES

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

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

	October 1, 2022	October 2, 2021
	(in thousands)	
Cash and cash equivalents	$ 834	$ 785
Accounts receivable	140	358
Inventories	38	35
Prepaid and refundable income taxes	278	278
Prepaid expenses and other current assets	17	277
Due from Ark Restaurants Corp. and affiliates (1)	400	187
Fixed assets - net	212	218
Operating lease right-of-use assets - net	2,076	2,342
Other assets	11	82
Total assets	$ 4,006	$ 4,562
Accounts payable - trade	$ 135	$ 213
Accrued expenses and other current liabilities	417	374
Current portion of operating lease liabilities	272	249
Current portion of notes payable	—	95
Operating lease liabilities, less current portion	1,921	2,193
Notes payable, less current portion	—	101
Total liabilities	2,745	3,225
Equity of variable interest entities	1,261	1,337
Total liabilities and equity	$ 4,006	$ 4,562

(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)
	$	2,820

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 income 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 year ended October 2, 2021 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
Total revenues	$	132,547
Net income (loss)	$	12,926
Net income (loss) per share - basic	$	3.68
Net income (loss) per share - diluted	$	3.59
Shares - Basic		3,516
Shares - Diluted		3,604

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 ("Sandcastle 1, LLC") that purchased the properties on March 22, 2021. In exchange, the Company received a 5% interest in Sandcastle 1, LLC, which plans future development of the sites. In addition, all rights and privileges under the current lease were assigned to Sandcastle 1, LLC, as landlord and the lease terms remain unchanged.

On April 8, 2022, the Company extended its lease for *Gallagher's Steakhouse* at the New York-New York Hotel and Casino in Las Vegas, NV through December 31, 2032. In connection with the extension, the Company has agreed to spend a minimum of $1,500,000 to materially refresh the premises by April 30, 2023 (as extended from September 30, 2022 due to supply chain issues), subject to additional extensions as set out in the agreement.

On June 24, 2022, the Company extended its lease for *America* at the New York-New York Hotel and Casino in Las Vegas, NV through December 31, 2033. In connection with the extension, the Company has agreed to spend a minimum of $4,000,000 to materially refresh the premises by December 31, 2024, subject to various extensions as set out in the agreement.

On July 21, 2022, the Company extended its lease for the *Village Eateries* at the New York-New York Hotel and Casino in Las Vegas, NV through December 31, 2034. As part of this extension, the *Broadway Burger Bar and Grill* and *Gonzalez y Gonzalez*, were carved out of the *Village Eateries* footprint and the extended date for those two locations is December 31, 2033. In connection with the extension, the Company has agreed to spend a minimum of $3,500,000 to materially refresh all three of these premises by June 30, 2023, subject to various extensions as set out in the agreement.

The above refresh obligations related to the New York-New York Hotel and Casino lease extensions are to be consistent with designs approved by the Landlord which shall not be unreasonably withheld. We will continue to pay all rent as required by the leases without abatement during construction. Note that our substantial completion of work set forth in plans approved by the Landlord shall constitute our compliance with the requirements of the completion deadlines, regardless of whether or not the amount actually expended in connection therewith is less than the minimum.

4. RECENT RESTAURANT DISPOSITIONS

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.

On July 5, 2022, the Company terminated its lease for *Lucky 7* at the Foxwoods Resort Casino. The closure did not result in a material change to the Company's operations.

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.

During the year ended October 1, 2022, the Company received distributions from NMR in the amount of $421,000 which are included in other income in the consolidated statement of income for the year then ended.

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 during the year ended October 1, 2022 and October 2, 2021. 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 1, 2022 and October 2, 2021, $22,000 and $0 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 $1,357,000 and $1,317,000, are included in Investment In and Receivable From New Meadowlands Racetrack in the consolidated balance sheets at October 1, 2022 and October 2, 2021, respectively.

6. FIXED ASSETS

Fixed assets consist of the following:

	October 1, 2022	October 2, 2021
	(in thousands)	
Land and building	$ 18,033	$ 18,033
Leasehold improvements	43,054	42,200
Furniture, fixtures and equipment	36,554	36,143
Construction in progress	355	38
	97,996	96,414
Less: accumulated depreciation and amortization	63,314	60,240
Fixed Assets - Net	$ 34,682	$ 36,174

Depreciation and amortization expense related to fixed assets for the years ended October 1, 2022 and October 2, 2021 was $4,193,000 and $3,577,000, 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:

	October 1, 2022	October 2, 2021
	(in thousands)	
Purchased leasehold rights (a) - fully amortized	$ 1,995	$ 1,995
Noncompete agreements and other - 5-10 years	633	633
	2,628	2,628
Less accumulated amortization	2,356	2,252
Intangible Assets - Net	$ 272	$ 376

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

Amortization expense related to intangible assets for the years ended October 1, 2022 and October 2, 2021 was $104,000 and $53,000, respectively. Amortization expense is expected to be $85,000 for fiscal 2023, 2024 and 2025 and $17,000 for fiscal 2026.

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 1, 2022 and October 2, 2021 are as follows:

	Goodwill	Trademarks
	(in thousands)	
Balance as of October 3, 2020	$ 15,570	$ 3,720
Acquired during the year	1,870	500
Balance as of October 2, 2021	17,440	4,220
Acquired during the year	—	—
Balance as of October 1, 2022	$ 17,440	$ 4,220

8. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

	October 1, 2022	October 2, 2021
	(in thousands)	
Sales tax payable	$ 916	$ 910
Accrued wages and payroll related costs	5,517	4,758
Customer advance deposits	5,534	4,988
Accrued occupancy and other operating expenses	4,345	3,023
	$ 16,312	$ 13,679

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 1, 2022 or October 2, 2021. 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 income.

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 income. 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 year ended October 2, 2021.

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

	October 1, 2022	October 2, 2021
	(in thousands)	
Operating lease expense - occupancy expenses (1)	$ 10,442	$ 7,557
Occupancy lease expense - general and administrative expenses	461	396
Variable lease expense	6,498	2,970
Total lease expense	$ 17,401	$ 10,923

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

Supplemental cash flow information related leases:

	October 1, 2022	October 2, 2021
	(in thousands)	
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows related to operating leases	$ 14,633	$ 10,485
Non-cash investing activities:		
ROU assets obtained in exchange for new operating lease liabilities	$ 53,530	$ 8,712

The weighted average remaining lease terms and discount rate as of October 1, 2022 are as follows:

	Weighted Average Remaining Lease Term	Weighted Average Discount Rate
Operating leases	12.5 years	6.1 %

The annual maturities of our lease liabilities as of October 1, 2022 are as follows:

Fiscal Year Ending	Operating Leases
	(in thousands)
September 30, 2023	$ 13,695
September 28, 2024	14,023
September 27, 2025	12,995
October 3, 2026	11,867
October 2, 2027	11,547
Thereafter	85,915
Total future lease payments	150,042
Less imputed interest	(45,068)
Present value of lease liabilities	$ 104,974

10. NOTES PAYABLE

Long-term debt consists of the following:

		October 1, 2022		October 2, 2021
		(in thousands)		
Promissory Note - Rustic Inn purchase	$	3,187	$	3,473
Promissory Note - Shuckers purchase		3,655		3,995
Promissory Note - Oyster House purchase		2,873		3,492
Promissory Note - JB's on the Beach purchase		3,750		4,750
Promissory Note - Sequoia renovation		1,714		2,171
Promissory Note - Revolving Facility		7,166		9,166
Promissory Note - Blue Moon Fish Company (see Note 3)		587		827
Paycheck Protection Program Loans		797		4,722
		23,729		32,596
Less: Current maturities		(6,575)		(6,973)
Less: Unamortized deferred financing costs		(65)		(114)
Long-term debt	$	17,089	$	25,509

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 by June 30, 2023 and will continue 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 1, 2022.

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. 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.

While the Company and each Borrower believe that PPP Loan proceeds were used exclusively for Qualifying Expenses, it is unclear and uncertain whether the conditions for forgiveness of the remaining PPP Loans outstanding at October 1, 2022 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 the amount of $797,000, in whole or in part.

During the years ended October 1, 2022 and October 2, 2021, $2,420,000 and $10,400,000, respectively (including $65,000 and $84,000 of accrued interest, respectively), 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.

Accordingly, based on the above, we have classified the PPP Loan amounts expected to be forgiven as long-term in accordance with SEC interpretative guidance and the remaining amounts expected to be repaid in the next 12 months of $797,000 and $2,032,000 as short-term in the consolidated condensed balance sheets as of October 1, 2022 and October 2, 2021, respectively. During the year ended October 1, 2022 and October 2, 2021, the Company made payments related to the unforgiven portion of PPP Loans in the aggregate amount of $1,571,000 and $68,000, respectively.

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 $48,000 and $60,000 is included in interest expense for the years ended October 1, 2022 and October 2, 2021, respectively.

Maturities

As of October 1, 2022, the aggregate amounts of notes payable maturities (excluding borrowings under the Revolving Facility) are as follows (in thousands):

	BHBM	PPP Loans	Blue Moon Note	Total
2023	$ 5,525	$ 797	$ 253	$ 6,575
2024	4,229	—	266	4,495
2025	12,591	—	68	12,659
	$ 22,345	$ 797	$ 587	$ 23,729

11. COMMITMENTS AND CONTINGENCIES

Leases — The Company leases several restaurants, bar facilities, and administrative headquarters through its subsidiaries under terms expiring at various dates through 2046. Most of the leases provide for the payment of base rents plus real estate taxes, insurance and other expenses and, in certain instances, for the payment of a percentage of the restaurant’s sales in excess of stipulated amounts at such facility and in one instance based on profits. In connection with one of our leases, the Company obtained and delivered an irrevocable letter of credit in the amount of approximately $542,000 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 Defendants violated certain of the New York State Labor Laws and related regulations. The Complaint sought unspecified monetary 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 final approval by the New York State Supreme Court in October 2022, for approximately the amount which was previously accrued. Under the terms of the court approved settlement agreement, settlement proceeds will be distributed to the Plaintiffs in the first quarter of fiscal year 2023.

12. STOCK OPTIONS

Prior to fiscal 2022, the Company had options outstanding under two stock option plans: the 2010 Stock Option Plan (the “2010 Plan”) and the 2016 Stock Option Plan (the “2016 Plan”). Options granted under both plans are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted and expire ten years after the date of grant.

On March 15, 2022, the shareholders of the Company approved the Ark Restaurants Corp. 2022 Stock Option Plan (the "2022 Plan"). Effective with this approval, the Company terminated the 2016 Plan along with the 63,750 authorized but unissued options under the 2016 Plan. Such termination did not affect any of the options previously issued and outstanding under the 2016 Plan, which remain outstanding in accordance with their terms. Under the 2022 Stock Option Plan, 500,000 options were authorized for future grant and are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted. The options expire ten years after the date of grant.

During the year ended October 1, 2022, options to purchase 22,500 shares of common stock at an exercise price of $17.80 per share were granted to employees and directors of the Company (the "2022 Grant"). Such options are exercisable as to 25% of the shares commencing on the first anniversary of the date of grant and 25% each year thereafter. The grant date fair value of these stock options was $4.53 per share and totaled approximately $102,000.

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.

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 2022 Grant include a risk-free interest rate of 3.2%, volatility of 49.7%, a dividend yield of 4.2% and an expected life of 10 years. The assumptions used for the 2021 grants 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 following table summarizes stock option activity under all plans:

	2022				2021		
	Shares	Weighted Average Exercise Price	Weighted Average Contractual Term	Aggregate Intrinsic Value	Shares	Weighted Average Exercise Price	Aggregate Intrinsic Value
Outstanding, beginning of period	596,476	$ 19.21	6.3 years		626,500	$ 20.41	
Options:							
Granted	22,500	$ 17.80			110,750	$ 10.65	
Exercised	(48,851)	$ 14.40			(49,149)	$ 14.40	
Canceled or expired	(26,000)	$ 18.27			(91,625)	$ 19.64	
Outstanding and expected to vest, end of period	544,125	$ 19.63	6.1 years	$ 840,000	596,476	$ 19.21	$ 583,000
Exercisable, end of period	302,125	$ 21.98	4.6 years	$ —	246,976	$ 20.33	$ 61,000
Shares available for future grant	477,500				63,750		

Compensation cost charged to operations for the years ended October 1, 2022 and October 2, 2021 for share-based compensation programs was approximately $298,000 and $280,000, respectively. The compensation cost recognized is classified as a general and administrative expense in the consolidated statements of income.

As of October 1, 2022, there was approximately $543,000 of unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a period of four years.

The following table summarizes information about stock options outstanding as of October 1, 2022:

	Options Outstanding			Options Exercisable		
Range of Exercise Prices	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	103,500	$ 10.65	8.2	—	$ —	0.0
$21.90	226,500	$ 21.90	8.2	113,250	$ 21.90	8.2
$22.50	137,625	$ 22.50	1.7	137,625	$ 22.50	1.7
$17.80	22,500	$ 17.80	10.0	—	$ —	0.0
$19.61 - $22.30	54,000	$ 20.69	6.3	51,250	$ 20.81	6.3
	544,125	$ 19.63	6.1	302,125	$ 21.98	4.6

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

13. INCOME TAXES

The Inflation Reduction Act of 2022 (the "Act") was signed into U.S. law on August 16, 2022. The Act includes various tax provisions, including an excise tax on stock repurchases, expanded tax credits for clean energy incentives, and a corporate alternative minimum tax that generally applies to U.S. corporations with average adjusted financial statement income over a three-year period in excess of $1 billion. The Company does not expect the Act to materially impact its financial statements.

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 years ended October 1, 2022 and October 2, 2021, the Company recorded income of $2,420,000 and $10,400,000, respectively (including $65,000 and $84,000 of accrued interest, respectively), 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 years 2020 and 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 1, 2022 and October 2, 2021 is $1,360,000 and $3,766,000, respectively, related to these carryback claims.

The provision for income taxes consists of the following:

	Year Ended	
	October 1, 2022	October 2, 2021
	(in thousands)	
Current provision (benefit):		
Federal	$ 817	$ (1,093)
State and local	49	77
	866	(1,016)
Deferred provision (benefit):		
Federal	173	946
State and local	409	1,251
	582	2,197
	$ 1,448	$ 1,181

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

	Year Ended October 1, 2022	Year Ended October 2, 2021
	(in thousands)	
Provision at Federal statutory rate (21%)	$ 2,440	$ 3,240
State and local income taxes, net of tax benefits	275	433
Gain on forgiveness of PPP Loans	(432)	(1,974)
Tax credits	(998)	(741)
Income (loss) attributable to non-controlling interest	(188)	(287)
Changes in tax rates	22	33
Net operating loss carryback Federal rate benefit	—	(159)
Change in valuation allowance	149	845
Other	180	(209)
	$ 1,448	$ 1,181

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 1, 2022	October 2, 2021
	(in thousands)	
Deferred tax assets:		
State net operating loss carryforwards	$ 5,293	$ 5,595
Lease liabilities	22,570	12,116
Deferred compensation	336	310
Tax credits	2,269	2,777
Other	604	492
Deferred tax assets, before valuation allowance	31,072	21,290
Valuation allowance	(1,407)	(1,258)
Deferred tax assets, net of valuation allowance	29,665	20,032
Deferred tax liabilities:		
Depreciation and amortization	(25,886)	(15,308)
Partnership investments	(271)	(566)
Prepaid expenses	(390)	(458)
Deferred tax liabilities	(26,547)	(16,332)
Net deferred tax assets	$ 3,118	$ 3,700

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 $1,407,000 and $1,258,000 as of October 1, 2022 and October 2, 2021, 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 1, 2022 and October 2, 2021, the Company's valuation allowance increased by approximately $149,000 and $845,000, 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 1, 2022, the Company had General Business Credit carryforwards of approximately $2,269,000 which expire through fiscal 2042. In addition, as of October 1, 2022, the Company has New York State net operating loss carryforwards of approximately $26,966,000 and New York City net operating loss carryforwards of approximately $25,291,000 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 1, 2022	October 2, 2021
	(in thousands)	
Balance at beginning of year	$ 120	$ 102
Additions based on tax positions taken in current and prior years	39	18
Decreases based on tax positions taken in prior years	—	—
Balance at end of year	$ 159	$ 120

The entire amount of unrecognized tax benefits if recognized would reduce our annual effective tax rate. For the years ended October 1, 2022 and October 2, 2021, 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 2019 through 2022 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 1, 2022	October 2, 2021
	(in thousands)	
Basic	3,556	3,516
Effect of dilutive securities:		
Stock options	47	88
Diluted	3,603	3,604

For the year ended October 1, 2022, the dilutive effect of options to purchase 329,125 shares of common stock at exercise prices ranging from $20.18 per share to $22.50 per share were not included in 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 May 11, 2022 and August 10, 2022, the Board of Directors (the "Board") of the Company declared quarterly cash dividends of $0.125 per share which were paid on June 13, 2022 and September 13, 2022 to the stockholders of record of each share of the Company's common stock at the close of business on May 31, 2022 and August 31, 2022. Future decisions to pay dividends, and the amount of any dividend, are at the discretion of the Board and will depend upon operating performance and other factors.

16. RELATED PARTY TRANSACTIONS

Employee receivables totaled approximately $440,000 and $380,000 at October 1, 2022 and October 2, 2021, respectively. Such amounts consist of loans that are payable on demand, bear interest at the minimum statutory rate (3.05% at October 1, 2022 and 0.17% at October 2, 2021), and are net of reserves for collectability.

17. SUBSEQUENT EVENTS

On November 9, 2022, the Board of Directors declared a quarterly cash dividend of $0.125 per share to be paid on December 13, 2022 to shareholders of record of each share of the Company's common stock at the close of business on November 30, 2022.

In November 2022, the Company entered into a separation agreement with the Senior Vice President of its Las Vegas operations which requires the Company to pay $500,000 on January 1, 2023, this individual's last day of employment. In addition, the Company entered into a consulting agreement with this same individual effective January 1, 2023 for $200,000 per year expiring on December 31, 2025.

CORPORATE INFORMATION

BOARD OF DIRECTORS

Michael Weinstein
Chairman and Chief Executive Officer

Anthony J. Sirica
President, Chief Financial Officer and Treasurer

Vincent Pascal
Senior Vice President and Chief Operating Officer

Marcia Allen
Chief Executive Officer, Allen & Associates

Jessica Kates
Co-Founder and Managing Partner of Rellevant Partners LLC

Bruce R. Lewin
Former President of Continental Hosts, Ltd.

Stephen Novick
Senior Advisor, Andrea and Charles Bronfman Philanthropies

Steve Shulman
President, Managing Director, Hampton Group Inc.

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TRANSFER AGENT

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