

ARK RESTAURANTS CORP  
Form 10-Q  
August 14, 2012

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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FORM 10-Q

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

For the quarterly period ended June 30, 2012

Commission file number 1-09453

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**ARK RESTAURANTS CORP.**

(Exact name of registrant as specified in its charter)

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New York

(State or other jurisdiction of  
incorporation or organization)

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13-3156768

(I.R.S. Employer  
Identification No.)

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85 Fifth Avenue, New York, New York

(Address of principal executive offices)

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10003

(Zip Code)

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act) during the preceding 12 months (or for shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files).

Yes  No

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

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Large accelerated filer

Accelerated filer

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

Smaller Reporting Company

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

Yes  No

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

Class	Outstanding shares at August 6, 2012
(Common stock, \$.01 par value)	3,244,845

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### SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

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

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

We have attempted to identify, in context, certain of the factors that we believe may cause actual future experience and results to differ materially from our current expectation regarding the relevant matter or subject area. In addition to the items specifically discussed above, our business, results of operations and financial position and your investment in our common stock are subject to the risks and uncertainties described in Item 1A Risk Factors in Part I of our Annual Report on Form 10-K for the fiscal year ended October 1, 2011 as updated by the information contained under the caption Item 1A. Risk Factors in Part II of this Quarterly Report on Form 10-Q.

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

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

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

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

(In Thousands, Except Per Share Amounts)

	June 30, 2012	October 1, 2011
	(unaudited)	(Note 1)
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents (includes \$700 at June 30, 2012 and \$852 at October 1, 2011 related to VIEs)	\$ 4,445	\$ 7,780
Short-term investments in available-for-sale securities	75	2,699
Accounts receivable (includes \$1,792 at June 30, 2012 and \$1,423 at October 1, 2011 related to VIEs)	4,296	3,678
Employee receivables	332	288
Inventories (includes \$25 at June 30, 2012 and \$23 at October 1, 2011 related to VIEs)	1,583	1,612
Prepaid and refundable income taxes (includes \$251 at June 30, 2012 and \$244 at October 1, 2011 related to VIEs)	1,149	244
Prepaid expenses and other current assets (includes \$9 at June 30, 2012 and October 1, 2011 related to VIEs)	468	412
Total current assets	12,348	16,713
FIXED ASSETS - Net (includes \$3,311 at June 30, 2012 and \$3,660 at October 1, 2011 related to VIEs)	27,538	23,239
INTANGIBLE ASSETS - Net	1,023	629
GOODWILL	4,813	4,813
TRADEMARKS	721	721
DEFERRED INCOME TAXES	5,559	7,253
OTHER ASSETS (includes \$73 at June 30, 2012 and \$71 at October 1, 2011 related to VIEs)	941	893
<b>TOTAL ASSETS</b>	<b>\$ 52,943</b>	<b>\$ 54,261</b>
<b>LIABILITIES AND EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable - trade (includes \$354 at June 30, 2012 and \$565 at October 1, 2011 related to VIEs)	\$ 2,682	\$ 2,522
Accrued expenses and other current liabilities (includes \$2,763 at June 30, 2012 and \$2,076 at October 1, 2011 related VIEs)	8,679	9,645
Accrued income taxes		388
Current portion of note payable	620	78
Total current liabilities	11,981	12,633
OPERATING LEASE DEFERRED CREDIT	4,216	3,442
NOTE PAYABLE, LESS CURRENT PORTION	1,505	
<b>TOTAL LIABILITIES</b>	<b>17,702</b>	<b>16,075</b>
<b>COMMITMENTS AND CONTINGENCIES</b>		

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EQUITY:

Common stock, par value \$.01 per share - authorized, 10,000 shares; issued, 5,672 shares at June 30, 2012 and October 1, 2011, respectively; outstanding, 3,245 shares and 3,495 shares at June 30, 2012 and October 1, 2011, respectively	57	57
Additional paid-in capital	23,320	23,291
Accumulated other comprehensive income		3
Retained earnings	21,341	20,128
	<u>44,718</u>	<u>43,479</u>
Less stock option receivable		(29)
Less treasury stock, at cost, of 2,427 shares and 2,177 shares at June 30, 2012 and October 1, 2011, respectively	(13,220)	(10,095)
	<u>31,498</u>	<u>33,355</u>
Total Ark Restaurants Corp. shareholders equity	31,498	33,355
NON-CONTROLLING INTERESTS	3,743	4,831
	<u>35,241</u>	<u>38,186</u>
TOTAL EQUITY	35,241	38,186
	<u>\$ 52,943</u>	<u>\$ 54,261</u>
TOTAL LIABILITIES AND EQUITY	\$ 52,943	\$ 54,261

See notes to consolidated condensed financial statements.

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

	13 Weeks Ended		39 Weeks Ended	
	June 30, 2012	July 2, 2011	June 30, 2012	July 2, 2011
		(Note 1)		(Note 1)
<b>REVENUES:</b>				
Food and beverage sales	\$ 38,688	\$ 38,583	\$ 100,764	\$ 99,397
Other revenue	305	166	831	518
Total revenues (includes \$5,873 and \$5,895 for the 13-weeks ended and \$17,087 and \$16,595 for the 39-weeks ended June 30, 2012 and July 2, 2011, respectively, related to VIEs)	38,993	38,749	101,595	99,915
<b>COSTS AND EXPENSES:</b>				
Food and beverage cost of sales	9,992	10,574	26,020	27,006
Payroll expenses	11,702	11,657	32,758	32,999
Occupancy expenses	4,494	4,917	13,485	13,825
Other operating costs and expenses	5,156	4,931	13,250	13,197
General and administrative expenses	2,240	2,309	7,271	7,117
Depreciation and amortization	1,097	923	2,976	2,939
Total costs and expenses (includes \$5,085 and \$4,665 for the 13-weeks ended and \$13,621 and \$13,188 for the 39-weeks ended June 30, 2012 and July 2, 2011, respectively, related to VIEs)	34,681	35,311	95,760	97,083
<b>OPERATING INCOME</b>	<b>4,312</b>	<b>3,438</b>	<b>5,835</b>	<b>2,832</b>
<b>OTHER (INCOME) EXPENSE:</b>				
Interest expense		3	23	12
Interest income			(4)	(31)
Other income, net	(229)	(122)	(804)	(400)
Total other income, net	(229)	(119)	(785)	(419)
<b>INCOME BEFORE PROVISION FOR INCOME TAXES</b>	<b>4,541</b>	<b>3,557</b>	<b>6,620</b>	<b>3,251</b>
Provision for income taxes	1,303	457	1,841	393
<b>INCOME FROM CONTINUING OPERATIONS</b>	<b>3,238</b>	<b>3,100</b>	<b>4,779</b>	<b>2,858</b>
Income (loss) from discontinued operations, net of income tax benefits	41	(274)	(395)	(1,037)
<b>CONSOLIDATED NET INCOME</b>	<b>3,279</b>	<b>2,826</b>	<b>4,384</b>	<b>1,821</b>
Net income attributable to non-controlling interests	(315)	(520)	(737)	(1,280)

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NET INCOME ATTRIBUTABLE TO ARK RESTAURANTS CORP.								
	\$	2,964	\$	2,306	\$	3,647	\$	541
AMOUNTS ATTRIBUTABLE TO ARK RESTAURANTS CORP.:								
Income from continuing operations	\$	2,923	\$	2,580	\$	4,042	\$	1,578
Income (loss) from discontinued operations, net of tax		41		(274)		(395)		(1,037)
Net income	\$	2,964	\$	2,306	\$	3,647	\$	541
NET INCOME (LOSS) PER ARK RESTAURANTS CORP. COMMON SHARE:								
From continuing operations:								
Basic	\$	0.90	\$	0.74	\$	1.22	\$	0.45
Diluted	\$	0.89	\$	0.73	\$	1.21	\$	0.45
From discontinued operations:								
Basic	\$	0.01	\$	(0.08)	\$	(0.12)	\$	(0.30)
Diluted	\$	0.01	\$	(0.08)	\$	(0.12)	\$	(0.30)
From net income:								
Basic	\$	0.91	\$	0.66	\$	1.10	\$	0.15
Diluted	\$	0.90	\$	0.65	\$	1.09	\$	0.15
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING:								
Basic		3,245		3,495		3,307		3,494
Diluted		3,278		3,537		3,335		3,526

See notes to consolidated condensed financial statements.

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**  
**CONSOLIDATED CONDENSED STATEMENTS OF CHANGES IN EQUITY (Unaudited)**  
**FOR THE 39 WEEKS ENDED JUNE 30, 2012 AND JULY 2, 2011**  
(In Thousands)

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Stock Option Receivable	Treasury Stock	Total Ark Restaurants Corp. Shareholders Equity	Non- controlling Interests	Total Equity
	Shares	Amount								
BALANCE - October 2, 2010	5,668	\$ 57	\$ 23,050	\$ 8	\$ 22,554	\$ (29)	\$ (10,095)	\$ 35,545	\$ 1,895	\$ 37,440
Cumulative effect adjustment related to consolidation of variable interest entities upon the adoption of the amendments to ASC Topic 810					(348)			(348)	3,765	3,417
BALANCE - October 3, 2010	5,668	57	23,050	8	22,206	(29)	(10,095)	35,197	5,660	40,857
Net income attributable to Ark Restaurants Corp.					541			541		541
Net income attributable to non-controlling interests									1,280	1,280
Unrealized loss on available-for-sale securities				(3)				(3)		(3)
Total comprehensive income								538	1,280	1,818
Exercise of stock options	4		48					48		48
Tax benefit on exercise of stock options			3					3		3
Stock-based compensation			190					190		190
Distributions to non-controlling interests									(1,246)	(1,246)
Payment of dividends - \$0.75 per share					(2,619)			(2,619)		(2,619)
BALANCE - July 2, 2011	5,672	\$ 57	\$ 23,291	\$ 5	\$ 20,128	\$ (29)	\$ (10,095)	\$ 33,357	\$ 5,694	\$ 39,051
BALANCE - October 1, 2011	5,672	\$ 57	\$ 23,291	\$ 3	\$ 20,128	\$ (29)	\$ (10,095)	\$ 33,355	\$ 4,831	\$ 38,186
Net income attributable to Ark Restaurants Corp.					3,647			3,647		3,647
Net income attributable to non-controlling interests									737	737



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Unrealized loss on available-for-sale securities				(3)		(3)	(3)
<hr/>							
Total comprehensive income						3,644	737 4,381
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Write-off of stock option receivable				29		29	29
Purchase of treasury stock					(3,125)	(3,125)	(3,125)
Stock-based compensation			29			29	29
Distributions to non-controlling interests							(1,825) (1,825)
Paid and accrued dividends - \$0.75 per share				(2,434)		(2,434)	(2,434)
<hr/>							
BALANCE - June 30, 2012	5,672 \$	57 \$	23,320 \$	\$ 21,341	\$ (13,220)	\$ 31,498	\$ 3,743 \$ 35,241
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See notes to consolidated condensed financial statements.

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

	39 Weeks Ended	
	June 30, 2012	July 2, 2011
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Consolidated net income	\$ 4,384	\$ 1,821
Adjustments to reconcile consolidated net income to net cash provided by operating activities:		
Write-off of notes receivable from former president	66	
Loss on closure of restaurants	365	
Loss on disposal of discontinued operations	270	71
Deferred income taxes	1,694	
Stock-based compensation	29	190
Excess tax benefits related to stock-based compensation		(3)
Depreciation and amortization	2,976	2,939
Operating lease deferred credit	975	55
Changes in operating assets and liabilities:		
Accounts receivable	(618)	(1,018)
Inventories	(248)	24
Prepaid, refundable and accrued income taxes	(1,293)	(986)
Prepaid expenses and other current assets	(56)	136
Other assets	(48)	(552)
Accounts payable - trade	160	(889)
Accrued expenses and other liabilities	(966)	1,813
Net cash provided by operating activities	7,690	3,601
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchases of fixed assets	(7,828)	(2,332)
Purchase of management rights	(400)	(400)
Proceeds from sale of discontinued operation		300
Consolidated cash balances of VIEs		757
Loans and advances made to employees	(155)	(75)
Payments received on employee receivables	74	77
Purchases of investment securities	(441)	(2,016)
Proceeds from sales of investment securities	3,062	6,757
Payments received on long-term receivables		102
Net cash provided by (used in) investing activities	(5,688)	3,170
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Principal payments on notes payable	(78)	(166)
Dividends paid	(2,434)	(2,619)
Proceeds from issuance of stock upon exercise of stock options		48
Excess tax benefits related to stock-based compensation		3
Purchase of treasury shares	(1,000)	
Distributions to non-controlling interests	(1,825)	(1,246)
Net cash used in financing activities	(5,337)	(3,980)
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>(3,335)</b>	<b>2,791</b>

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CASH AND CASH EQUIVALENTS, Beginning of period	7,780	2,011
	<u>          </u>	<u>          </u>
CASH AND CASH EQUIVALENTS, End of period	\$ 4,445	\$ 4,802
	<u>          </u>	<u>          </u>
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid during the year for:		
Interest	\$ 23	\$ 12
	<u>          </u>	<u>          </u>
Income taxes	\$ 1,219	\$ 1,201
	<u>          </u>	<u>          </u>
Non-cash investing activity:		
Note payable in connection with purchase of treasury shares	\$ 2,125	\$
	<u>          </u>	<u>          </u>
Non-cash financing activity:		
Note received in connection with sale of discontinued operation	\$	\$ 100
	<u>          </u>	<u>          </u>

See notes to consolidated condensed financial statements.

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

June 30, 2012

(Unaudited)

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**1. CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

The consolidated condensed balance sheet as of October 1, 2011, which has been derived from audited financial statements included in the Form 10-K, and the unaudited interim consolidated and condensed financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ( GAAP ) for interim financial information and pursuant to the rules and regulations of the Securities and Exchange Commission (the SEC ). All adjustments that, in the opinion of management, are necessary for a fair presentation for the periods presented have been reflected as required by Regulation S-X, Rule 10-01. Such adjustments are of a normal, recurring nature. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted. These consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company s annual report on Form 10-K for the year ended October 1, 2011. The results of operations for interim periods are not necessarily indicative of the operating results to be expected for the full year or any other interim period.

**PRINCIPLES OF CONSOLIDATION** The consolidated condensed interim financial statements include the accounts of Ark Restaurants Corp. and all of its wholly-owned subsidiaries, partnerships and other entities in which it has a controlling interest. Also included in the consolidated condensed interim financial statements are certain variable interest entities. All significant intercompany balances and transactions have been eliminated in consolidation.

**RECLASSIFICATIONS** Certain reclassifications of prior period balances have been made to conform to the current period presentation. In connection with the planned or actual sale or closure of various restaurants, the operations of these businesses have been presented as discontinued operations in the consolidated condensed financial statements. Accordingly, the Company has reclassified its statements of operations and cash flows for the prior periods presented. These dispositions are discussed below in Recent Restaurant Dispositions.

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

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

**AVAILABLE-FOR-SALE SECURITIES** Available-for-sale securities consist primarily of US Treasury Bills and Notes, all of which have a high degree of liquidity and are reported at fair value, with unrealized gains and losses recorded in Accumulated Other Comprehensive Income. The cost of investments in available-for-sale securities is determined on a specific identification basis. Realized gains or losses and declines in value judged to be other than temporary, if any, are reported in Other (Income) Expense, Net. The Company evaluates its investments periodically for possible impairment and reviews factors such as the length of time and extent to which fair value has been below cost basis and the Company s ability and intent to hold the investment for a period of time which may be sufficient for anticipated recovery in market value.

**SUPPLIER CONCENTRATION** For the 39-weeks ended June 30, 2012 and July 2, 2011, the Company made purchases from one vendor that accounted for approximately 12% and 13%, respectively, of total purchases. For the 13-weeks ended June 30, 2012 and July 2, 2011, no vendor accounted for more than 10% of total purchases.

**FAIR VALUE OF FINANCIAL INSTRUMENTS** The carrying amount of cash and cash equivalents, investments, receivables, accounts payable and accrued expenses approximate fair value due to the immediate or short-term maturity of these financial instruments. The fair value of notes payable is determined using current applicable rates for similar instruments as of the balance sheet date and approximates the carrying value of such debt.



**SEGMENT REPORTING** As of June 30, 2012, the Company owned and operated 21 restaurants and bars, 22 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.

**RECENTLY ADOPTED ACCOUNTING STANDARDS** In May 2011, the Financial Accounting Standards Board (the FASB) issued guidance that amends GAAP to conform it with fair value measurement and disclosure requirements in International Financial Reporting Standards (IFRS). The amendments changed the wording used to describe the requirements in U.S. GAAP for measuring fair value and for disclosing information about fair value measurements. The provisions of this guidance, which were adopted effective for the Company's quarter ended March 31, 2012, did not have a material impact on the Company's results of operations, financial condition or disclosures.

**NEW ACCOUNTING STANDARDS NOT YET ADOPTED** In June 2011, the FASB issued new accounting guidance on the presentation of other comprehensive income. The new guidance eliminates the current option to present the components of other comprehensive income as part of the statement of changes in equity. Instead, an entity has the option to present the total of comprehensive income, the components of net income and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. The new accounting guidance is effective for fiscal years, and interim periods within those years, beginning after December 15, 2011, with early adoption permitted. Full retrospective application is required. As the new accounting guidance will only amend the presentation requirements of other comprehensive income, the Company does not expect the adoption to have a significant impact on its financial condition or results of operations.

In September 2011, the FASB issued new accounting guidance intended to simplify how an entity tests goodwill for impairment. The guidance will allow an entity to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test. An entity no longer will be required to calculate the fair value of a reporting unit unless the entity determines, based on a qualitative assessment, that it is more likely than not that its fair value is less than its carrying amount. The new accounting guidance is effective for fiscal years, and interim periods within those years, beginning after December 15, 2011, with early adoption permitted. The Company does not expect the adoption of this guidance to have any impact on its financial condition or results of operations.

In December 2011, the FASB issued amended standards to increase the prominence of offsetting assets and liabilities reported in financial statements. These amendments require an entity to disclose information about offsetting and the related arrangements to enable users of its financial statements to understand the effect of those arrangements on its financial position. These amendments will enhance disclosures by requiring improved information about financial instruments and derivative instruments that are either offset or subject to an enforceable master netting arrangement or similar agreement. This information will enable users of an entity's financial statements to evaluate the effect or potential effect of netting arrangements on an entity's financial position, including the effect or potential effect of rights of setoff associated with certain financial instruments and derivative instruments. These revised standards are effective for annual reporting periods beginning on or after January 1, 2013, and interim periods within those annual periods. An entity should provide the disclosures required by those amendments retrospectively for all comparative periods presented. These amended standards may require additional footnote disclosures for these enhancements, however they will not affect our financial position or results of operations.

## **2. VARIABLE INTEREST ENTITIES**

Upon adoption of the new accounting guidance for VIEs on October 3, 2010, the Company determined that it is the primary beneficiary of two VIEs which had not been previously consolidated, *Ark Hollywood/Tampa Investment, LLC* and *Ark Connecticut Investment, LLC*, as the new guidance requires that a single party (including its related parties and de facto agents) be able to exercise their rights to remove the decision maker in order for the kick-out rights to be considered substantive. Previously, a simple majority of owners that could exercise kick-out rights was considered a substantive right. This change resulted in the need for consolidation.

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The assets and liabilities associated with the Company's consolidation of VIEs are as follows:

	<b>June 30, 2012</b>	<b>October 1, 2011</b>
(in thousands)		
Cash and cash equivalents	\$ 700	\$ 852
Accounts receivable	1,792	1,423
Inventories	25	23
Prepaid income taxes	251	244
Prepaid expenses and other current assets	9	9
Due from Ark Restaurants Corp. and affiliates (1)	269	410
Fixed assets, net	3,311	3,660
Other long-term assets	73	71
	\$ 6,430	\$ 6,692
Accounts payable	\$ 354	\$ 565
Accrued expenses and other current liabilities	2,763	2,076
	3,117	2,641
Total liabilities	3,117	2,641
Equity of variable interest entities	3,313	4,051
	\$ 6,430	\$ 6,692
Total liabilities and equity		

(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 our 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 our general assets.

For the 13-week and 39-week periods ended June 30, 2012, aggregate revenues relating to these VIEs were \$5,873,000 and \$17,087,000, respectively. For the 13-week and 39-week periods ended July 2, 2011, aggregate revenues relating to these VIEs were \$5,895,000 and \$16,595,000, respectively. For the 13-week and 39-week periods ended June 30, 2012, aggregate costs and expenses relating to these VIEs were \$5,085,000 and \$13,621,000, respectively. For the 13-week and 39-week periods ended July 2, 2011, aggregate costs and expenses relating to these VIEs were \$4,665,000 and \$13,188,000, respectively. All of the above are included in the accompanying Consolidated Condensed Statements of Operations.

### 3. RECENT RESTAURANT EXPANSION

In August 2010, the Company entered into an agreement to lease the former *ESPN Zone* space at the New York-New York Hotel & Casino Resort in Las Vegas and re-open the space under the name *The Sporting House*. Such lease is cancellable upon 90 days written notice and provides for rent based on profits only. This restaurant opened at the end of October 2010 and the Company did not invest significant funds to re-open the space.

In the quarter ended January 1, 2011, the Company combined three fast food outlets located in the *Village Eateries* in the New York-New York Hotel & Casino Resort in Las Vegas into a new restaurant, *The Broadway Burger Bar*, which opened at the end of December 2010.

On March 18, 2011, a subsidiary of the Company entered into a lease agreement to operate a restaurant and bar in New York City named *Clyde Frazier's Wine and Dine*. In connection with the agreement, the landlord has agreed to contribute up to \$1,800,000 towards the construction of the facility (of which \$1,000,000 was received as of June 30, 2012), which totaled approximately \$7,000,000. The initial term of the lease for this facility expires on March 31, 2027 and has one five-year renewal. This restaurant opened during the second quarter of fiscal 2012 and, as a result, the Consolidated Condensed Statement of Operations for the 39-weeks ended June 30, 2012 includes approximately \$970,000 of pre-opening and early operating losses related to this facility.

**4. RECENT RESTAURANT DISPOSITIONS**

**Lease Expirations** On July 8, 2011, the Company entered into an agreement with the landlord of *The Grill Room* property located in New York City, whereby in exchange for a payment of \$350,000 the Company vacated the property on October 31, 2011. Such payment and the related loss on closure of the property, in the amount of \$179,000, are included in Other Operating Costs and Expenses in the Consolidated Condensed Statement of Operations for the 39-weeks ended June 30, 2012. This lease was scheduled to expire on December 31, 2011.



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The Company was advised by the landlord that it would have to vacate the *America* property located in Washington, DC, which was on a month-to-month lease. The closure of this property occurred on November 7, 2011. The related loss on closure of this property, in the amount of \$186,000, is included in Other Operating Costs and Expenses in the Consolidated Condensed Statement of Operations for the 39-weeks ended June 30, 2012.

**Discontinued Operations** During the fourth fiscal quarter of 2010, the Company closed its *Pinch & S Mac* operation located in New York City, and re-concepted the location as *Polpette*, which featured meatballs and other Italian food. Sales at *Polpette* failed to reach the level sufficient to achieve the results the Company required. On February 6, 2011, the Company closed this restaurant and on April 28, 2011 it was sold for \$400,000. The Company realized a loss on the sale of \$71,000 which was recorded during the second quarter of fiscal 2011 as well as operating losses of \$148,000 for the 39-weeks ended July 2, 2011, all of which are included in discontinued operations in the accompanying Consolidated Statement of Operations.

Effective March 15, 2012, the Company vacated its food court operations at the MGM Grand Casino at the Foxwoods Resort Casino in Ledyard, CT. The Company determined that it would not be able to operate this facility profitably at this location at the current rent. As a result, the Company recorded a disposal loss in the amount of \$270,000, which was recorded during the second quarter of fiscal 2012, as well as operating losses of \$343,000 for the 39-weeks ended June 30, 2012, all of which are included in discontinued operations in the accompanying Consolidated Statement of Operations.

The results of discontinued operations were as follows:

	13 Weeks Ended		39 Weeks Ended	
	June 30, 2012	July 2, 2011	June 30, 2012	July 2, 2011
	(In thousands)		(In thousands)	
<b>Income (loss) before income taxes</b>	\$ 2	\$ (264)	\$ (613)	\$ (1,219)
<b>Income tax expense (benefit)</b>	(39)	10	(218)	(182)
<b>Net income (loss)</b>	\$ 41	\$ (274)	\$ (395)	\$ (1,037)

### 5. INVESTMENT SECURITIES

The fair values of the Company's investment securities are determined in accordance with GAAP, with fair value being defined as the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, the Company utilizes the three-tier value hierarchy, as prescribed by GAAP, which prioritizes the inputs used in measuring fair value as follows:

Level 1 - inputs to the valuation methodology are quoted prices (unadjusted) for an identical asset or liability in an active market.

Level 2 - inputs to the valuation methodology include quoted prices for a similar asset or liability in an active market or model-derived valuations in which all significant inputs are observable for substantially the full term of the asset or liability.

Level 3 - inputs to the valuation methodology are unobservable and significant to the fair value measurement of the asset or liability.

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The following available-for-sale securities (which all mature within one year) are re-measured to fair value on a recurring basis and are valued using Level 1 inputs:

	<b>Amortized Cost</b>	<b>Gross Unrealized Holding Gains</b>	<b>Gross Unrealized Holding Losses</b>	<b>Fair Value</b>
(In thousands)				
<b>At June 30, 2012</b>				
Available-for-sale short-term:				
Government debt securities	\$ 75	\$	\$	\$ 75
	75			75

	<b>Amortized Cost</b>	<b>Gross Unrealized Holding Gains</b>	<b>Gross Unrealized Holding Losses</b>	<b>Fair Value</b>
(In thousands)				
<b>At October 1, 2011</b>				
Available-for-sale short-term:				
Government debt securities	\$ 2,696	\$ 3	\$	\$ 2,699
	2,696	3		2,699

Proceeds from the sale and redemption of investment securities amounted to \$3,062,000 and \$6,757,000 for the 39-week periods ended June 30, 2012 and July 2, 2011, respectively. No realized gains or losses were included in Other income (expense), net for the 39-week periods ended June 30, 2012 and July 2, 2011.

### 6. RECEIVABLES FROM EMPLOYEES IN RESPECT OF STOCK OPTION EXERCISES

Receivables from employees in respect of stock option exercises due from the former President of the Company totaled \$29,000 at October 1, 2011. Such amounts were forgiven during the quarter ended December 31, 2011 in connection with his resignation.

### 7. NOTE PAYABLE FOR TREASURY STOCK REPURCHASE

On December 12, 2011, the Company, in a private transaction, purchased 250,000 shares of its common stock at a price of \$12.50 per share, or a total of \$3,125,000. Upon the closing of the purchase, the Company paid the seller \$1,000,000 in cash and issued an unsecured promissory note to the seller for \$2,125,000. The note bears interest at 0.19% per annum, and is payable in 24 equal monthly installments of \$88,541, commencing on December 1, 2012.

### 8. RELATED PARTY TRANSACTIONS

Receivables due from the former President, excluding stock option receivables, totaled \$37,000 at October 1, 2011. Such amount was forgiven during the quarter ended December 31, 2011 in connection with his resignation. Other employee loans totaled approximately \$332,000 and \$288,000 at June 30, 2012 and October 1, 2011, respectively. Such amounts are payable on demand and bear interest at the minimum statutory rate (0.19% at June 30, 2012 and 0.16% at October 1, 2011).

The Company's former President and Chief Operating Officer resigned effective January 1, 2012. In connection therewith, the Company forgave loans due totaling \$66,000 and has recorded additional compensation in the amount of \$475,400 in accordance with his separation agreement and release. Such amounts are included in General and Administrative Expenses in the Consolidated Condensed Statement of Operations for the 39-weeks ended June 30, 2012.

**9. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES**

Accrued expenses and other current liabilities consist of the following:

	<b>June 30, 2012</b>	<b>October 1, 2011</b>
	(In thousands)	
Sales tax payable	\$ 1,115	\$ 953
Accrued wages and payroll related costs	1,821	2,325
Customer advance deposits	2,155	2,180
Accrued occupancy and other operating expenses	3,588	4,187
	<b>\$ 8,679</b>	<b>\$ 9,645</b>

**10. COMMITMENTS AND CONTINGENCIES**

**Leases** The Company leases its restaurants, bar facilities, and administrative headquarters through its subsidiaries under terms expiring at various dates through 2032. Most of the leases provide for the payment of base rents plus real estate taxes, insurance and other expenses and, in certain instances, for the payment of a percentage of the restaurants sales in excess of stipulated amounts at such facility and in one instance based on profits.

In February 2010, the Company entered into an amendment to its lease for the food court space at the New York-New York Hotel and Casino in Las Vegas, Nevada. Pursuant to this amendment, the Company agreed to, among other things; commit no less than \$3,000,000 to remodel the food court during 2012. In exchange for this commitment, the landlord agreed to extend the food court lease for an additional four years. As of June 30, 2012, the Company has spent approximately \$2,000,000 related to this commitment.

**Legal Proceedings** In the ordinary course of its business, the Company is a party to various lawsuits arising from accidents at its restaurants and worker s compensation claims, which are generally handled by the Company s insurance carriers. The employment by the Company of management personnel, waiters, waitresses and kitchen staff at a number of different restaurants has resulted 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.

**Other** On June 7, 2011, the Company entered into a 10-year exclusive agreement to manage a yet to be constructed restaurant and catering service at *Basketball City* in New York City in exchange for a fee of \$1,000,000 (all of which has been paid as of June 30, 2012 and is included in Intangible Assets in the accompanying Consolidated Balance Sheet). Under the terms of the agreement, the owner of the property will construct the facility at its expense and the Company will pay the owner an annual fee based on sales, as defined in the agreement. The Company expects to begin operating this property within the next 12 months.

**11. STOCK OPTIONS**

The Company has options outstanding under two stock option plans, the 2004 Stock Option Plan (the 2004 Plan) and the 2010 Stock Option Plan (the 2010 Plan ), which was approved by shareholders in the second quarter of 2010. Effective with this approval the Company terminated the 2004 Plan. This action terminated the 400 authorized but unissued options under the 2004 Plan, however it did not affect any of the options previously issued under the 2004 Plan. Options granted under the 2004 Plan are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted. The options expire ten years after the date of grant.

The 2010 Stock Option Plan is the Company s only equity compensation plan currently in effect. Under the 2010 Stock Option Plan, 500,000 options were authorized for future grant. Options granted under the 2010 Plan are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted. The options expire ten years after the date of grant.

During 13-week period ended June 30, 2012, options to purchase 251,500 shares of common stock at an exercise price of \$14.40 per share were granted and are exercisable as to 50% of the shares commencing on the first anniversary of the date of grant and as to an additional 50% commencing on the second anniversary of the date of grant. The grant date fair value of these stock options was \$2.57 per share.



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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 assumptions used for the 2012 grant include a risk free interest rate of 1.67%, volatility of 36.2%, a dividend yield of 6.1% and an expected life of 6.25 years.

A summary of stock option activity is presented below:

	Shares	Weighted Average Exercise Price	Weighted Average Contractual Term	Aggregate Intrinsic Value
Outstanding, October 1, 2011	396,600	\$ 22.82	5.50 Years	\$ 202,642
Options:				
Granted	251,500	\$ 14.40	2.00 Years	
Exercised				
Canceled or expired				
Outstanding, June 30, 2012	648,100	\$ 19.56	6.75 Years	\$ 408,680
Exercisable at June 30, 2012	396,600	\$ 22.82	4.75 Years	\$ 398,640

Compensation cost charged to operations for the 39-week periods ended June 30, 2012 and July 2, 2011 was \$29,000 and \$190,000, respectively and for the 13-week periods ended June 30, 2012 and July 2, 2011 was \$29,000 and \$34,000, respectively. The compensation cost recognized is classified as a general and administrative expense in the Consolidated Condensed Statements of Operations.

As of June 30, 2012, there was approximately \$617,000 of unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a period of approximately two years.

### 12. INCOME TAXES

The Company's provision for income taxes consists of U.S. Federal, state and local taxes in amounts necessary to align the Company's year-to-date provision for income taxes with the effective tax rate that the Company expects to achieve for the full year. The income tax provision on income from continuing operations for the 39-week periods ended June 30, 2012 and July 2, 2011 reflect effective tax rates of approximately 28% and 12%, respectively. The provision for income tax consists of U.S. Federal, state and local taxes and includes discrete items related to certain tax return to provision adjustments in connection with the filing of the fiscal 2011 and 2010 tax returns respectively, and the accrual of interest for uncertain tax positions. The Company expects its effective tax rate for its current fiscal year to be significantly lower than the statutory rate as a result of the inclusion of tax credits and operating income attributable to the non-controlling interests of the VIEs that is not taxable to the Company. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from current estimates.

### 13. INCOME PER SHARE OF COMMON STOCK

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

For the 13 and 39-week periods ended June 30, 2012, options to purchase 176,600 shares of common stock at a price of \$12.04 and options to purchase 251,500 shares of common stock at a price of \$14.40 were included in diluted earnings per share. Options to purchase 145,500 shares of common stock at a price of \$29.60 and options to purchase 100,000 shares of common stock at a price of \$32.15 per share were not included in diluted earnings per share as their impact was antidilutive.

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For the 13 and 39-week periods ended July 2, 2011, options to purchase 166,100 shares of common stock at a price of \$12.04 were included in diluted earnings per share. Options to purchase 140,500 shares of common stock at a price of \$29.60 and

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options to purchase 90,000 shares of common stock at a price of \$32.15 per share were not included in diluted earnings per share as their impact was antidilutive.

**14. DIVIDENDS**

On December 30, 2011, April 4, 2012 and June 29, 2012 the Company paid a quarterly cash dividend in the amount of \$0.25 per share on the Company's common stock. The Company intends to continue to pay such quarterly cash dividends for the foreseeable future, however, the payment of future dividends is at the discretion of the Company's Board of Directors and is based on future earnings, cash flow, financial condition, capital requirements, changes in U.S. taxation and other relevant factors.

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

Certain reclassifications of prior period balances have been made to conform to the current period presentation. In connection with the planned or actual sale or closure of various restaurants, the operations of these businesses have been presented as discontinued operations in the consolidated financial statements. Accordingly, the Company has reclassified its statements of operations for the prior periods presented. These dispositions are discussed below in *Recent Restaurant Dispositions*.

**Overview**

As of June 30, 2012, the Company owns and operates 21 restaurants and bars, 22 fast food concepts and catering operations, exclusively in the United States, that have similar economic characteristics, nature of products and service, class of customer and distribution methods. The Company believes it meets the criteria for aggregating its operating segments into a single reporting segment in accordance with applicable accounting guidance.

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

**Results of Operations**

The Company had operating income of \$4,312,000 in the third fiscal quarter of 2012 compared to operating income of \$3,438,000 in the third fiscal quarter of 2011. This increase resulted primarily from improved conditions in the Washington, DC market (which was negatively impacted by a flood in the third fiscal quarter of 2011) and improved menu costing, partially offset by operating losses in the amount of approximately \$1,383,000 related to our new restaurant in New York City, *Clyde Frazier's Wine and Dine*, which opened in March 2012.

The following table summarizes the significant components of the Company's operating results for the 13 and 39-week periods ended June 30, 2012 and July 2, 2011, respectively:

	13 Weeks Ended		39 Weeks Ended	
	June 30, 2012	July 2, 2011	June 30, 2012	July 2, 2011
	(in thousands)		(in thousands)	
<b>REVENUES:</b>				
Food and beverage sales	\$ 38,688	\$ 38,583	\$ 100,764	\$ 99,397
Other revenue	305	166	831	518
<b>Total revenues</b>	<b>38,993</b>	<b>38,749</b>	<b>101,595</b>	<b>99,915</b>
<b>COSTS AND EXPENSES:</b>				
Food and beverage cost of sales	9,992	10,574	26,020	27,006
Payroll expenses	11,702	11,657	32,758	32,999
Occupancy expenses	4,494	4,917	13,485	13,825
Other operating costs and expenses	5,156	4,931	13,250	13,197
General and administrative expenses	2,240	2,309	7,271	7,117
Depreciation and amortization	1,097	923	2,976	2,939
<b>Total costs and expenses</b>	<b>34,681</b>	<b>35,311</b>	<b>95,760</b>	<b>97,083</b>
<b>OPERATING INCOME</b>	<b>\$ 4,312</b>	<b>\$ 3,438</b>	<b>\$ 5,835</b>	<b>\$ 2,832</b>

**Revenues**



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During the Company's 13 and 39-week periods ended June 30, 2012, revenues increased 0.6% and 1.7% compared to revenues in the 13 and 39-week periods ended July 2, 2011, respectively. These increases are primarily due to: (i) improved conditions in the Washington, DC market (which was negatively impacted by a flood in the third fiscal quarter of 2011), and (ii) revenues related to our new restaurant in New York City, *Clyde Frazier's Wine and Dine*, which opened in March 2012, partially offset by the closure of *The Grill Room* property located in New York, the *America* property located in Washington, DC in the first quarter

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of fiscal 2012 and the food court operations at the MGM Grand Casino at the Foxwoods Resort Casino in Ledyard, CT in the second quarter of fiscal 2012.

### *Food and Beverage Same-Store Sales*

On a Company-wide basis, same store sales increased 4.0% during the third fiscal quarter of 2012 compared to the same period last year as follows:

	13 Weeks Ended		Variance	
	June 30, 2012	July 2, 2011	\$	%
	(in thousands)			
Las Vegas	\$ 14,218	\$ 14,619	\$ (401)	-2.7%
New York	9,476	9,427	49	0.5%
Washington, DC	6,230	4,569	1,661	36.4%
Atlantic City	851	779	72	9.2%
Boston	1,116	1,254	(138)	-11.0%
Connecticut	374	377	(3)	-0.8%
Same store sales	32,265	31,025	\$ 1,240	4.0%
VIEs	5,607	5,738	\$ (131)	-2.3%
Other	816	1,820		
Food and beverage sales	\$ 38,688	\$ 38,583		

Same-store sales in Las Vegas decreased 2.7% in the third fiscal quarter of 2012 compared to the third fiscal quarter of 2011 primarily as a result of an overall decrease in traffic in Las Vegas during the quarter. Same-store sales in New York during the third quarter of fiscal 2012 compared to 2011 were relatively flat as expected. Same-store sales in Washington, DC increased 36.4% in the third fiscal quarter of 2012 compared to the third fiscal quarter of 2011 primarily as a result of improved market conditions (2011 was negatively impacted by a flood in the third fiscal quarter of 2011) and increased catering business at our *Sequoia DC* property. Same-store sales in Atlantic City increased 9.2% in the third quarter of fiscal 2012 compared to 2011 as result of new ownership at *Resorts Casino Hotel* and their significant marketing efforts for the property. Same-store sales in Boston decreased 11% during the third quarter of fiscal 2012 compared to 2011 as the location continued to suffer the negative impact of a fire that temporarily closed the property in the second fiscal quarter of 2012. Same-store sales at the consolidated VIEs decreased 2.3% in the third fiscal quarter of 2012 compared to the third fiscal quarter of 2011 primarily as a result of decreases in traffic at our properties in Florida. Other food and beverage sales consist of sales related to new restaurants opened during the applicable period and sales related to properties that were closed during the period due to lease expiration and therefore not included in discontinued operations.

### **Costs and Expenses**

Costs and expenses from continuing operations for the 13 and 39-weeks ended June 30, 2012 and July 2, 2011 were as follows (in thousands):

	13 Weeks Ended		13 Weeks Ended		Increase (Decrease)		39 Weeks Ended		39 Weeks Ended		Increase (Decrease)	
	June 30, 2012	% to Total Revenues	July 2, 2011	% to Total Revenues	\$	%	June 30, 2012	% to Total Revenues	July 2, 2011	% to Total Revenues	\$	%
Food and beverage												
cost of sales	\$ 9,992	25.6%	\$ 10,574	27.3%	\$ (582)	-5.5%	\$ 26,020	25.6%	\$ 27,006	27.0%	\$ (986)	-3.7%
Payroll expenses	11,702	30.0%	11,657	30.1%	45	0.4%	32,758	32.2%	32,999	33.0%	(241)	-0.7%
Occupancy expenses	4,494	11.5%	4,917	12.7%	(423)	-8.6%	13,485	13.3%	13,825	13.8%	(340)	-2.5%
Other operating costs and expenses	5,156	13.2%	4,931	12.7%	225	4.6%	13,250	13.0%	13,197	13.2%	53	0.4%

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General and administrative expenses	2,240	5.7%	2,309	6.0%	(69)	-3.0%	7,271	7.2%	7,117	7.1%	154	2.2%
Depreciation and amortization	1,097	2.8%	923	2.4%	174	18.9%	2,976	2.9%	2,939	2.9%	37	1.3%
	<u>34,681</u>		<u>35,311</u>		<u>(630)</u>		<u>95,760</u>		<u>97,083</u>		<u>(1,323)</u>	

Food and beverage costs as a percentage of total revenues for the 13 and 39-weeks ended June 30, 2012 decreased as compared to the same periods of fiscal 2011 as a result of improved menu costing partially offset by higher commodity prices.

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Payroll expenses for the 13-weeks ended June 30, 2012 increased slightly as compared to the same period of fiscal 2011 as a result of payroll incurred at our new restaurant in New York City, *Clyde Frazier's Wine and Dine*, which opened in March 2012, which was only partially offset by higher than expected payroll at *The Sporting House* in Las Vegas in the prior period combined with a reduction in payroll expenses related to properties that were closed due to lease expiration. Payroll expenses for the 39-weeks ended June 30, 2012 decreased as compared to the same periods of fiscal 2011 as a result of higher than expected payroll at *The Sporting House* in Las Vegas in the prior period, offset by a reduction in payroll expenses related to properties that were closed due to lease expiration and by payroll incurred at our new restaurant in New York City, *Clyde Frazier's Wine and Dine*, which opened in March 2012.

Occupancy expenses for the 13 and 39-weeks ended June 30, 2012 decreased as compared to the same periods of fiscal 2011 as a result of a reduction in costs related to properties that were closed due to lease expiration.

Other operating costs and expenses for the 13-weeks ended June 30, 2012 increased as compared to the same period of fiscal 2011 due to the opening of *Clyde Frazier's Wine & Dine* in March 2012. Other operating costs and expenses for the 39-weeks ended June 30, 2012 increased slightly as compared to the same period of fiscal 2011 due to the opening of *Clyde Frazier's Wine & Dine* in March 2012, partially offset by cost cutting measures implemented in the latter part of fiscal 2011 combined with a reduction in other operating costs and expenses related to properties that were closed due to lease expiration.

General and administrative expenses (which relate solely to the corporate office in New York City) for the 13-weeks ended June 30, 2012 decreased compared to the same period of fiscal 2011 as a result of the elimination of the former President's salary in connection with his resignation in December 2011. General and administrative expenses (which relate solely to the corporate office in New York City) for the 39-weeks ended June 30, 2012 increased compared to the same period of fiscal 2011 as a result amounts recorded in connection with the former President's separation agreement partially offset by cost cutting measures implemented in the latter part of fiscal 2011.

### Income Taxes

The Company's provision for income taxes consists of U.S. Federal, state and local taxes in amounts necessary to align the Company's year-to-date provision for income taxes with the effective tax rate that the Company expects to achieve for the full year. The income tax provision on income from continuing operations for the 39-week periods ended June 30, 2012 and July 2, 2011 reflect effective tax rates of approximately 28% and 12%, respectively. The provision for income tax consists of U.S. Federal, state and local taxes and includes discrete items related to certain tax return to provision adjustments in connection with the filing of the fiscal 2011 and 2010 tax returns respectively, and the accrual of interest for uncertain tax positions. The Company expects its effective tax rate for its current fiscal year to be significantly lower than the statutory rate as a result of the inclusion of tax credits and operating income attributable to the non-controlling interests of the VIEs that is not taxable to the Company. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from current estimates.

The Company's overall effective tax rate in the future will be affected by factors such as the level of losses incurred at the Company's New York facilities, which cannot be consolidated for state and local tax purposes, pre-tax income earned outside of New York City, the utilization of state and local net operating loss carryforwards and the utilization of FICA tax credits. Nevada has no state income tax and other states in which the Company operates have income tax rates substantially lower in comparison to New York. In order to utilize more effectively tax loss carryforwards at restaurants that were unprofitable, the Company has merged certain profitable subsidiaries with certain loss subsidiaries.

### Liquidity and Capital Resources

Our primary source of capital has been cash provided by operations. We utilize cash generated from operations to fund the cost of developing and opening new restaurants, acquiring existing restaurants owned by others and remodeling existing restaurants we own.

Net cash used in investing activities for the 39-week period ended June 30, 2012 was \$5,688,000 and resulted primarily from purchases of fixed assets at existing restaurants and the construction of *Clyde Frazier's Wine and Dine* located at the New York City partially offset by net proceeds from sales of investment securities.

Net cash provided by investing activities for the 39-week period ended July 2, 2011 was \$3,170,000 and resulted from net proceeds from the sales of investment securities partially offset by purchases of fixed assets at existing restaurants and the construction of *The Broadway Burger Bar* located at the New York-New York Hotel & Casino in Las Vegas, NV.

Net cash used in financing activities for the 39-week period ended June 30, 2012 of \$5,337,000 was principally used for the payment of dividends, purchase of treasury stock and distributions to non-controlling interests.

Net cash used in financing activities for the 39-week period ended July 2, 2011 of \$3,980,000 was principally used for the payment of dividends and distributions to non-controlling interests.



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The Company had a working capital surplus of \$367,000 at June 30, 2012, as compared to a working capital surplus of \$4,080,000 at October 1, 2011 resulting primarily from the construction of *Clyde Frazier's Wine and Dine* located in New York City. We believe that our existing cash balances, investments and cash provided by operations will be sufficient to meet our liquidity and capital spending requirements at least through the next 12 months.

On December 30, 2011, April 4, 2012 and June 29, 2012 the Company paid a quarterly cash dividend in the amount of \$0.25 per share on the Company's common stock. The Company intends to continue to pay such quarterly cash dividends for the foreseeable future, however, the payment of future dividends is at the discretion of the Company's Board of Directors and is based on future earnings, cash flow, financial condition, capital requirements, changes in U.S. taxation and other relevant factors.

In February 2010, the Company entered into an amendment to its lease for the food court space at the New York-New York Hotel and Casino in Las Vegas, Nevada. Pursuant to this amendment, the Company agreed to, among other things; commit no less than \$3,000,000 to remodel the food court during 2012. In exchange for this commitment, the landlord agreed to extend the food court lease for an additional four years. As of June 30, 2012, the Company has spent approximately \$2,000,000 related to this commitment.

On June 7, 2011, the Company entered into a 10-year exclusive agreement to manage a yet to be constructed restaurant and catering service at *Basketball City* in New York City in exchange for a fee of \$1,000,000 (all of which has been paid as of June 30, 2012 and is included in Intangible Assets in the accompanying Consolidated Balance Sheet). Under the terms of the agreement, the owner of the property will construct the facility at its expense and the Company will pay the owner an annual fee based on sales, as defined in the agreement. The Company expects to begin operating this property within the next 12 months.

### Recent Restaurant Expansion

In August 2010, the Company entered into an agreement to lease the former *ESPN Zone* space at the New York-New York Hotel & Casino Resort in Las Vegas and re-open the space under the name *The Sporting House*. Such lease is cancellable upon 90 days written notice and provides for rent based on profits only. This restaurant opened at the end of October 2010 and the Company did not invest significant funds to re-open the space.

In the quarter ended January 1, 2011, the Company combined three fast food outlets located in the *Village Eateries* in the New York-New York Hotel & Casino Resort in Las Vegas into a new restaurant, *The Broadway Burger Bar*, which opened at the end of December 2010.

On March 18, 2011, a subsidiary of the Company entered into a lease agreement to operate a restaurant and bar in New York City named *Clyde Frazier's Wine and Dine*. In connection with the agreement, the landlord has agreed to contribute up to \$1,800,000 towards the construction of the facility (of which \$1,000,000 was received as of June 30, 2012), which totaled approximately \$7,000,000. The initial term of the lease for this facility expires on March 31, 2027 and has one five-year renewal. This restaurant opened during the second quarter of fiscal 2012 and as a result the Consolidated Condensed Statement of Operations for the 39-weeks ended June 30, 2012 includes approximately \$970,000 of pre-opening and early operating losses related to this facility.

### Recent Restaurant Dispositions

**Lease Expirations** On July 8, 2011, the Company entered into an agreement with the landlord of *The Grill Room* property located in New York City, whereby in exchange for a payment of \$350,000 the Company vacated the property on October 31, 2011. Such payment and the related loss on closure of the property, in the amount of \$179,000, are included in Other Operating Costs and Expenses in the Consolidated Condensed Statement of Operations for the 39-weeks ended June 30, 2012. This lease was scheduled to expire on December 31, 2011.

The Company was advised by the landlord that it would have to vacate the *America* property located in Washington, DC, which was on a month-to-month lease. The closure of this property occurred on November 7, 2011. The related loss on closure of this property, in the amount of \$186,000, is included in Other Operating Costs and Expenses in the Consolidated Condensed Statement of Operations for the 39-weeks ended June 30, 2012.

**Discontinued Operations** During the fourth fiscal quarter of 2010, the Company closed its *Pinch & S Mac* operation located in New York City, and re-concepted the location as *Polpette*, which featured meatballs and other Italian food. Sales at *Polpette* failed to reach the level sufficient to achieve the results the Company required. As a result, the Company closed this restaurant on February 6, 2011 and it was sold on April 28, 2011 for \$400,000. The Company realized a loss on the sale of \$71,000 which was recorded during the second quarter of fiscal 2011 as well as operating losses of \$148,000 for the 39-weeks ended July 2, 2011, all of which are included in discontinued operations in the accompanying Consolidated Statement of Operations.

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Effective March 15, 2012, the Company vacated its food court operations at the MGM Grand Casino at the Foxwoods Resort Casino in Ledyard, CT. The Company determined that it would not be able to operate this facility profitably at this location at the current rent. As a result, the Company recorded a disposal loss in the amount of \$270,000, which was recorded during the second quarter of fiscal 2011, as well as operating losses of \$343,000 for the 39-weeks ended June 30, 2012, all of which are included in discontinued operations in the accompanying Consolidated Statement of Operations.

The results of discontinued operations were as follows:

	13 Weeks Ended		39 Weeks Ended	
	June 30, 2012	July 2, 2011	June 30, 2012	July 2, 2011
	(In thousands)		(In thousands)	
Income (loss) before income taxes	\$ 2	\$ (264)	\$ (613)	\$ (1,219)
Income tax expense (benefit)	(39)	10	(218)	(182)
	\$ 41	\$ (274)	\$ (395)	\$ (1,037)

### **Critical Accounting Policies**

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

The Company's critical accounting policies are described in the Company's Form 10-K for the year ended October 1, 2011. There have been no significant changes to such policies during fiscal 2012.

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

See Note 1 to the Consolidated Condensed Financial Statements for a description of recent accounting pronouncements, including those adopted in fiscal 2012 and the expected dates of adoption and the anticipated impact on the Consolidated Condensed Financial Statements.

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

The Company purchases commodities such as chicken, beef, lobster and shrimp for the Company's restaurants. The prices of these commodities may be volatile depending upon market conditions. The Company does not purchase forward commodity contracts because the changes in prices for these items have historically been short-term in nature and, in the Company's view, the cost of the contracts is in excess of the benefits.

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

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

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

Under the supervision and with the participation of management, including our principal executive officer and principal financial officer, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this quarterly report as such term is defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934, as amended

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(the Exchange Act ). Based on this evaluation, our management, including our principal executive officer and principal financial officer, concluded that our disclosure controls and procedures were effective as of June 30, 2012 to ensure that all material information required to be disclosed by us in reports that we file or submit under the Exchange Act is accumulated and communicated to them as appropriate to allow timely decisions regarding required disclosure

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and that all such information is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

### *Changes in Internal Control over Financial Reporting*

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that occurred during the third quarter of fiscal 2012 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

### *Limitations of the Effectiveness of Internal Control*

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

**PART II**  
**OTHER INFORMATION**

**Item 1. Legal Proceedings**

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

**Item 1A. Risk Factors**

The most significant risk factors applicable to the Company are described in Part I, Item 1A (Risk Factors) of the Company's Annual Report on Form 10-K for the fiscal year ended October 1, 2011 (the "2011 Form 10-K"). There have been no material changes to the risk factors previously disclosed in the 2011 Form 10-K. The risks described in the 2011 Form 10-K are not the only risks facing the Company. Additional risks and uncertainties not currently known to management may materially adversely affect the Company's business, financial condition, and/or operating results.

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

None.

**Item 3. Defaults upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not Applicable.

**Item 5. Other Information**

None.

**Item 6. Exhibits**

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

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

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

101.INS\* XBRL Instance Document

101.SCH\* XBRL Taxonomy Extension Schema Document

101.CAL\* XBRL Taxonomy Extension Calculation Linkbase Document

101.DEF\* XBRL Taxonomy Extension Definition Linkbase Document

101.LAB\* XBRL Taxonomy Extension Label Linkbase Document

101.PRE\* XBRL Taxonomy Extension Presentation Linkbase Document

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



**SIGNATURES**

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

Date: August 14, 2012

**ARK RESTAURANTS CORP.**

By: /s/ Michael Weinstein

Michael Weinstein  
Chairman & Chief Executive Officer  
(Principal Executive Officer)

By: /s/ Robert J. Stewart

Robert J. Stewart  
Chief Financial Officer  
(Authorized Signatory and Principal  
Financial and Accounting Officer)

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