

ARK RESTAURANTS CORP  
Form 10-Q  
August 16, 2011

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM 10-Q**

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

For the quarterly period ended July 2, 2011

Commission file number 1-09453

**ARK RESTAURANTS CORP.**

(Exact name of registrant as specified in its charter)

New York

13-3156768

(State or other jurisdiction of  
incorporation or organization)

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

85 Fifth Avenue, New York, New York

10003

(Address of principal executive offices)

(Zip Code)

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

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 during the preceding 12 months (or for shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

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

Yes  No

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

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

Accelerated filer   
Smaller Reporting Company

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

Indicate by check mark whether the Registrant is a shell company (as defined in Exchange Act Rule 12b-2).  
Yes o No x

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 11, 2011
(Common stock, \$.01 par value)	3,494,845

---

## Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

### 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 of 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 2, 2010 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 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)

	July 2, 2011	October 2, 2010
	(unaudited)	(Note 1)
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents (includes \$424 at July 2, 2011 related to VIEs)	\$ 4,802	\$ 2,011
Short-term investments in available-for-sale securities	2,694	7,438
Accounts receivable (includes \$1,738 at July 2, 2011 related to VIEs)	4,878	2,048
Related party receivables, net		1,044
Employee receivables	288	290
Current portion of long-term receivables	21	102
Inventories (includes \$22 at July 2, 2011 related to VIEs)	1,639	1,652
Prepaid income taxes (includes \$124 at July 2, 2011 related to VIEs)	699	
Prepaid expenses and other current assets (includes \$11 at July 2, 2011 related to VIEs)	662	797
	<u>15,683</u>	<u>15,382</u>
Total current assets	15,683	15,382
LONG-TERM RECEIVABLES, LESS CURRENT PORTION	79	
FIXED ASSETS - Net (includes \$3,749 at July 2, 2011 related to VIEs)	26,560	24,113
INTANGIBLE ASSETS - Net	431	37
GOODWILL	4,813	4,813
TRADEMARKS	721	721
DEFERRED INCOME TAXES	6,149	6,149
OTHER ASSETS (includes \$141 at July 2, 2011 related to VIEs)	1,039	416
	<u>\$ 55,475</u>	<u>\$ 51,631</u>
TOTAL	\$ 55,475	\$ 51,631
<b>LIABILITIES AND EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable - trade (includes \$198 at July 2, 2011 related to VIEs)	\$ 2,866	\$ 2,423
Accrued expenses and other current liabilities (includes \$2,141 at July 2, 2011 related to VIEs)	9,907	7,548
Accrued income taxes		290
Current portion of note payable	136	224
	<u>12,909</u>	<u>10,485</u>
Total current liabilities	12,909	10,485
OPERATING LEASE DEFERRED CREDIT	3,515	3,628
NOTE PAYABLE, LESS CURRENT PORTION		78
	<u>16,424</u>	<u>14,191</u>
TOTAL LIABILITIES	16,424	14,191
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>SHAREHOLDERS' EQUITY:</b>		
Common stock, par value \$.01 per share - authorized, 10,000 shares; issued, 5,672 shares and 5,668 shares at July 2, 2011 and October 2, 2010, respectively; outstanding, 3,495 shares and 3,491 shares at July 2, 2011 and October 2, 2010, respectively	57	57

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

Additional paid-in capital	23,291	23,050
Accumulated other comprehensive income	5	8
Retained earnings	20,128	22,554
	<u>43,481</u>	<u>45,669</u>
Less stock option receivable	(29)	(29)
Less treasury stock, at cost, of 2,177 shares at July 2, 2011 and October 2, 2010	(10,095)	(10,095)
	<u>33,357</u>	<u>35,545</u>
Total Ark Restaurants Corp. shareholders equity	33,357	35,545
NON-CONTROLLING INTERESTS	5,694	1,895
	<u>39,051</u>	<u>37,440</u>
TOTAL EQUITY	39,051	37,440
	<u>39,051</u>	<u>37,440</u>
TOTAL	\$ 55,475	\$ 51,631
	<u>\$ 55,475</u>	<u>\$ 51,631</u>

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	
	July 2, 2011	July 3, 2010	July 2, 2011	July 3, 2010
		(Note 1)		(Note 1)
<b>REVENUES:</b>				
Food and beverage sales	\$ 39,191	\$ 34,559	\$ 101,470	\$ 83,522
Other revenue	166	603	518	2,330
Total revenues (includes \$5,895 and \$16,595 for the 13-weeks and 39-weeks ended July 2, 2011, respectively, related to VIEs)	39,357	35,162	101,988	85,852
<b>COSTS AND EXPENSES:</b>				
Food and beverage cost of sales	10,761	8,988	27,636	21,991
Payroll expenses	11,948	10,015	34,034	27,792
Occupancy expenses	5,105	4,263	14,529	12,332
Other operating costs and expenses	5,062	4,396	13,563	11,691
General and administrative expenses	2,309	2,207	7,117	7,278
Depreciation and amortization	1,053	972	3,331	2,892
Total costs and expenses (includes \$4,665 and \$13,188 for the 13-weeks and 39-weeks ended July 2, 2011, respectively, related to VIEs)	36,238	30,841	100,210	83,976
<b>OPERATING INCOME</b>	<b>3,119</b>	<b>4,321</b>	<b>1,778</b>	<b>1,876</b>
<b>OTHER (INCOME) EXPENSE:</b>				
Interest expense	3	7	12	23
Interest income	(55)	(4)	(86)	(75)
Other (income) expense, net	(122)	51	(400)	45
Total other (income) expense, net	(174)	54	(474)	(7)
Income before provision for income taxes	3,293	4,267	2,252	1,883
Provision for income taxes	490	1,206	273	610
<b>INCOME FROM CONTINUING OPERATIONS</b>	<b>2,803</b>	<b>3,061</b>	<b>1,979</b>	<b>1,273</b>
<b>DISCONTINUED OPERATIONS:</b>				
Loss from operations of discontinued restaurant (includes a net loss on disposal of \$71 for the 39-weeks ended July 2, 2011)			(219)	
Benefit for income taxes	(23)		(61)	
<b>INCOME (LOSS) FROM DISCONTINUED OPERATIONS</b>	<b>23</b>		<b>(158)</b>	
<b>CONSOLIDATED NET INCOME</b>	<b>2,826</b>	<b>3,061</b>	<b>1,821</b>	<b>1,273</b>
Net (income) loss attributable to non-controlling interests	(520)	(145)	(1,280)	248

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

NET INCOME ATTRIBUTABLE TO ARK RESTAURANTS CORP.	\$ 2,306	\$ 2,916	\$ 541	\$ 1,521
AMOUNTS ATTRIBUTABLE TO ARK RESTAURANTS CORP.:				
Income from continuing operations	\$ 2,283	\$ 2,916	\$ 699	\$ 1,521
Income (loss) from discontinued operations, net of tax	23		(158)	
Net income	\$ 2,306	\$ 2,916	\$ 541	\$ 1,521
NET INCOME (LOSS) PER ARK RESTAURANTS CORP. COMMON SHARE:				
From continuing operations:				
Basic	\$ 0.65	\$ 0.84	\$ 0.20	\$ 0.44
Diluted	\$ 0.64	\$ 0.83	\$ 0.20	\$ 0.43
From discontinued operations:				
Basic	\$ 0.01	\$	\$ (0.05)	\$
Diluted	\$ 0.01	\$	\$ (0.05)	\$
From net income:				
Basic	\$ 0.66	\$ 0.84	\$ 0.15	\$ 0.44
Diluted	\$ 0.65	\$ 0.83	\$ 0.15	\$ 0.43
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING				
Basic	3,495	3,490	3,494	3,490
Diluted	3,537	3,513	3,526	3,515

See notes to consolidated condensed financial statements.

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**  
**CONSOLIDATED CONDENSED STATEMENTS OF CHANGES IN EQUITY (Unaudited)**  
**FOR THE THIRTY NINE WEEKS ENDED JULY 3, 2010 AND JULY 2, 2011**  
(In Thousands)

	Common Stock		Additional	Accumulated	Retained	Stock	Treasury	Total Ark	Non-	Total
	Shares	Amount	Paid-In	Other	Earnings	Option	Stock	Restaurants	controlling	Equity
			Capital	Comprehensive		Receiveable		Corp.	Interests	Equity
				Income (Loss)				Shareholders		
								Equity	Equity	Equity
BALANCE - October 3, 2009	5,667	\$ 57	\$ 22,501	(29)	\$ 23,440	\$ (76)	\$ (10,095)	\$ 35,798	\$ 2,304	\$ 38,102
Net income attributable to Ark Restaurants Corp.					1,521			1,521		1,521
Net loss attributable to non-controlling interests									(248)	(248)
Unrealized gain on available-for-sale securities				37				37		37
Total comprehensive income (loss)								1,558	(248)	1,310
Stock-based compensation			458					458		458
Distributions to non-controlling interests									(121)	(121)
Payment of dividends - \$0.75 per share					(2,618)			(2,618)		(2,618)
Repayments on stock option receivable						47		47		47
BALANCE - July 3, 2010	5,667	\$ 57	\$ 22,959	8	\$ 22,343	\$ (29)	\$ (10,095)	\$ 35,243	\$ 1,935	\$ 37,178
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



Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

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
------------------------	----------	-------	-----------	------	-----------	---------	-------------	-----------	----------	--------

---

See notes to consolidated condensed financial statements.

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

	39 Weeks Ended	
	July 2, 2011	July 3, 2010
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Consolidated net income	\$ 1,821	\$ 1,273
Adjustments to reconcile consolidated net income to net cash provided by operating activities:		
Loss on disposal of discontinued operation	71	
Stock-based compensation	190	458
Excess tax benefits related to stock-based compensation	(3)	
Depreciation and amortization	3,331	2,892
Equity in loss of affiliate		175
Operating lease deferred credit	55	(171)
Changes in operating assets and liabilities:		
Accounts receivable	(1,018)	32
Related party receivables		(921)
Inventories	24	(147)
Prepaid and accrued income taxes	(986)	(858)
Prepaid expenses and other current assets	136	(73)
Other assets	(552)	(54)
Accounts payable - trade	(889)	(447)
Accrued expenses and other liabilities	1,421	1,037
Net cash provided by operating activities	<u>3,601</u>	<u>3,196</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchases of fixed assets	(2,332)	(1,763)
Purchase of management rights	(400)	
Proceeds from sale of discontinued operation	300	
Consolidated cash balances of VIEs	757	
Loans and advances made to employees	(75)	(57)
Payments received on employee receivables	77	367
Purchases of investment securities	(2,016)	(6,972)
Proceeds from sales of investment securities	6,757	10,143
Payments received on long-term receivables	102	97
Net cash provided by investing activities	<u>3,170</u>	<u>1,815</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Principal payments on note payable	(166)	(156)
Dividends paid	(2,619)	(6,108)
Proceeds from issuance of stock upon exercise of stock options	48	
Excess tax benefits related to stock-based compensation	3	
Distributions to non-controlling interests	(1,246)	(121)
Payments received on stock option receivable		47
Net cash used in financing activities	<u>(3,980)</u>	<u>(6,338)</u>

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	2,791	(1,327)
CASH AND CASH EQUIVALENTS, Beginning of period	2,011	5,452
	<u>          </u>	<u>          </u>
CASH AND CASH EQUIVALENTS, End of period	\$ 4,802	\$ 4,125
	<u>          </u>	<u>          </u>
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid during the year for:		
Interest	\$ 12	\$ 27
	<u>          </u>	<u>          </u>
Income taxes	\$ 1,201	\$ 1,603
	<u>          </u>	<u>          </u>
Non-cash investing 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**

July 2, 2011

(Unaudited)

---

**1. CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

The consolidated condensed balance sheet as of October 2, 2010, 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 2, 2010. 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.

**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.

**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.

**NEW ACCOUNTING STANDARDS ADOPTED IN FISCAL 2011** Effective October 3, 2010, the Company adopted amendments to Accounting Standards Code ( ASC ) Topic 810 (formerly the Financial Accounting Standards Board ( FASB ) Statement of Accounting Standards ( SFAS ) No. 167 *Amendments to FASB Interpretation No. 46(R)* ( SFAS No 167 )). This requires an enterprise to perform an analysis to determine whether the enterprise s variable interest or interests give it a controlling financial interest in a variable interest entity ( VIE ). This analysis identifies the primary beneficiary of a VIE as the enterprise that has both of the following characteristics: (i) the power to direct the activities of a VIE that most significantly impacts the entity s economic performance; and (ii) the obligation to absorb losses of the entity that could potentially be significant to the VIE or the right to receive benefits from the entity that could potentially be significant to the VIE. Additionally, an enterprise is required to assess whether it has an implicit financial responsibility to ensure that a VIE operates as designed when determining whether it has the power to direct the activities of the VIE that most significantly impact the entity s economic performance. This statement requires the Company to focus on a more qualitative approach, rather than a quantitative approach previously required for determining the primary beneficiary of a VIE, it also amended certain guidance for determining whether an entity is a VIE, added an additional requirement to assess whether an entity is a VIE, on an ongoing basis, and required enhanced disclosures that provide users of financial statements with more

transparent information about an enterprise s

## Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

involvement in a VIE. The adoption of this guidance resulted in the consolidation of certain limited partnerships in the quarter ended January 1, 2011. The Company did not retroactively apply this guidance. See Note 2 for additional information regarding the impact of the adoption of this standard on the consolidated condensed financial statements.

**NEW ACCOUNTING STANDARDS NOT YET ADOPTED** In May 2011, the FASB issued guidance that amends U.S. 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 are effective for the first reporting period (including interim periods) beginning after December 15, 2011. We are currently evaluating the impact this accounting standard update will have on our consolidated results of operations, financial condition or disclosures.

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 stockholders' 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, we do not expect the adoption to have any impact on our consolidated financial condition or results of operations.

### 2. CONSOLIDATION OF 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.

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

	<b>July 2, 2011</b>
	<b>(in thousands)</b>
Cash and cash equivalents	\$ 424
Accounts receivable	1,738
Inventories	22
Prepaid income taxes	124
Due from Ark Restaurants Corp. and affiliates (1)	284
Other current assets	11
Fixed assets, net	3,749
Other long-term assets	141
	\$ 6,493
	\$ 6,493
Accounts payable	\$ 198
Accrued expenses and other current liabilities	2,141
	2,339
Total liabilities	2,339
Equity of variable interest entities	4,154
	\$ 6,493
Total liabilities and equity	\$ 6,493

(1) Amounts Due from Ark Restaurants Corp. and affiliates are eliminated upon consolidation.

## Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

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 July 2, 2011, aggregate revenue and operating expenses relating to these VIEs were \$5,895,000 and \$16,595,000, and \$4,665,000 and \$13,188,000, respectively, and 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 no earlier than May 31, 2011 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.

### 4. RECENT RESTAURANT DISPOSITIONS

The Company was advised by the landlord that it would have to vacate the *Gonzalez y Gonzalez* property located in New York, NY, which was on a month-to-month lease. The closure of this property occurred on January 31, 2011.

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, including a four-year note for \$100,000 bearing interest at 6%. 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 \$0 and \$148,000 for the 13-weeks and 39-weeks ended July 2, 2011, respectively, all of which are included in discontinued operations in the accompanying Consolidated Condensed Statement of Operations.

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

	<u>Amortized Cost</u>	<u>Gross Unrealized Holding Gains</u>	<u>Gross Unrealized Holding Losses</u>	<u>Fair Value</u>
(In thousands)				
<b>At July 2, 2011</b>				
Available-for-sale short-term:				
Government debt securities	\$ 2,689	\$ 5	\$	\$ 2,694
	<u>Amortized Cost</u>	<u>Gross Unrealized Holding Gains</u>	<u>Gross Unrealized Holding Losses</u>	<u>Fair Value</u>



Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

(In thousands)

At October 2, 2010

Available-for-sale short-term:

Government debt securities	\$	7,430	\$	8	\$	7,438
----------------------------	----	-------	----	---	----	-------

- 9 -

## Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

Proceeds from the sale and redemption of investment securities amounted to \$6,757,000 and \$10,143,000 for the 39-week periods ended July 2, 2011 and July 3, 2010, respectively. No realized gains or losses were included in Other income (expense), net for the 39-week period ended July 2, 2011. Included in Other income (expense), net are realized losses in the amount of \$53,000 for the 39-week period ended July 3, 2010 related to these sales and redemptions.

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

Receivables from employees in respect of stock option exercises includes amounts due from officers and directors totaling \$29,000 at July 2, 2011 and October 2, 2010. Such amounts, which are due from the exercise of stock options in accordance with the Company's Stock Option Plan, are payable on demand with interest at ½% above prime (3.25% at July 2, 2011).

### 7. RELATED PARTY TRANSACTIONS

Receivables due from officers and employees, excluding stock option receivables, totaled \$288,000 at July 2, 2011 and \$290,000 at October 2, 2010. Such amounts are payable on demand and bear interest at the minimum statutory rate (0.32% at July 2, 2011).

### 8. COMMITMENTS AND CONTINGENCIES

In the ordinary course of 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. During fiscal 2011, the Company settled a claim for an amount of approximately \$350,000 and maintains an accrual of \$150,000, which is included in Accrued Expenses and Other Current Liabilities, related to the settlement of additional claims against the Company.

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 by March 2012. In exchange for this commitment, the landlord agreed to extend the food court lease for an additional four years. Through August 2011, the Company has spent approximately \$1,300,000 related to this commitment in connection with *The Broadway Burger Bar* construction discussed above.

On March 18, 2011, a subsidiary of the Company entered into a lease agreement to operate a yet to be named restaurant and bar in New York City. In connection with the agreement, the landlord has agreed to contribute up to \$1,800,000 towards the construction of the facility, which the Company expects to be \$4,000,000 to \$5,000,000. The initial term of the lease for this facility will expire on March 31, 2027 and will have one five-year renewal. The Company anticipates the restaurant will open during the second quarter of fiscal 2012.

On April 17, 2011, the Company suffered a flood at its *Sequoia* property located in Washington, DC ( *Sequoia DC* ). The Company expects to recover substantially all of its losses from insurance proceeds and/or the landlord and does not expect unrecovered amounts to have a material impact on its consolidated financial position, results of operations or cash flows.

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 (\$400,000 of which has been paid as of July 2, 2011 and is included in Intangibles Assets in the accompanying Consolidated Condensed Balance Sheet). Under the terms of the agreement the owner of the property will construct the facility at their 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 in the first quarter of fiscal 2012.

### 9. STOCK OPTIONS

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

The 2010 Plan is the Company's only equity compensation plan currently in effect. Under the 2010 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 six years after the date of grant. No options have been granted under the 2010 Plan and no options were granted during the 39 weeks ended July 2, 2011.



## Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

A summary of stock option activity is presented below:

	<u>Shares</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Fair Value</u>	<u>Weighted Average Contractual Term</u>	<u>Aggregate Intrinsic Value</u>
Outstanding, October 2, 2010	421,064	\$ 22.88	\$ 6.87	6.5 years	
Granted					
Exercised	(3,964)	\$ 12.04	\$ 3.53		
Forfeited/Cancelled	(20,500)	\$ 26.13	\$ 7.58		
	<u>396,600</u>	<u>\$ 22.82</u>	<u>\$ 6.84</u>	<u>5.8 years</u>	<u>\$ 589,655</u>
Outstanding and expected to vest at July 2, 2011	396,600	\$ 22.82	\$ 6.84	5.8 years	\$ 589,655
Exercisable at July 2, 2011	<u>396,600</u>	<u>\$ 22.82</u>	<u>\$ 6.84</u>	<u>5.8 years</u>	<u>\$ 589,655</u>

Compensation cost is recognized on a straight-line basis over the vesting period during which employees perform related services. As of July 2, 2011, all compensation cost related to stock options has been recognized.

Compensation cost for stock options is included in general and administrative expenses in the Company's consolidated condensed statements of operations. Compensation cost for stock options was approximately \$190,000 and \$458,000 for the 39-week periods ended July 2, 2011 and July 3, 2010, respectively, and \$34,000 and \$145,000 for the 13-week periods ended July 2, 2011 and July 3, 2010, respectively.

### 10. INCOME TAXES

The income tax provision on income from continuing operations for the 39-week periods ended July 2, 2011 and July 3, 2010 reflect effective tax rates of approximately 12% and 32%, respectively. 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 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 our current estimates.

An audit of the Company's tax returns for the fiscal years 2008 and 2009 was recently completed by the Internal Revenue Service and did not result in a material adjustment to the Company's consolidated financial position or results of operations.

### 11. INCOME PER SHARE OF COMMON STOCK

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

For the 13 and 39-week periods ended July 2, 2011, options to purchase 166,100 shares of common stock at a price of \$12.04 were included in diluted income per share. Options to purchase 140,500 shares of common stock at a price of \$29.60 and options to purchase 90,000 shares of common stock at a price of \$32.15 per share were not included in diluted income per share as their impact was antidilutive.

For the 13 and 39-week periods ended July 3, 2010, options to purchase 176,600 shares of common stock at a price of \$12.04 were included in diluted income 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 income per share as their impact was antidilutive.

**12. DIVIDENDS**

On December 8, 2010, April 1, 2011 and June 29, 2011, the Company paid quarterly cash dividends in the amount of \$0.25 per share on the Company's common stock. The Company intends to continue to pay such quarterly cash dividend for the foreseeable future, however, the payment of future dividends is at the discretion of the Company's Board of Directors and is based on future earnings, cash flow, financial condition, capital requirements, changes in U.S. taxation and other relevant factors.

**13. SUBSEQUENT EVENT**

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 would vacate the property on or before October 3, 2011. This lease was scheduled to expire on December 31, 2011.

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

The Company had operating income of \$3,119,000 in the third fiscal quarter of 2011 compared to operating income of 4,321,000 in the third fiscal quarter of 2010. This decrease resulted primarily from an interruption of business at our *Sequoia* property located in Washington, DC due to a flood, increased food costs as a result of higher commodity prices, poor weather conditions as compared to last year, and the closure of our *Gonzalez y Gonzalez* property located in New York, NY, partially offset by operating income from variable interest entities ( VIEs ) that were consolidated as of October 3, 2010 due to the adoption of new accounting guidance (see below).

Effective October 3, 2010, the Company adopted amendments to ASC 810 (formerly FASB Statement of Accounting Standards ( SFAS ) No. 167 *Amendments to FASB Interpretation No. 46(R)* ( SFAS No. 167 )). This guidance requires an enterprise to perform an analysis to determine whether the enterprise's variable interest or interests give it a controlling financial interest in a VIE. This analysis identifies the primary beneficiary of a VIE as the enterprise that has both of the following characteristics: (i) the power to direct the activities of a VIE that most significantly impacts the entity's economic performance; and (ii) the obligation to absorb losses of the entity that could potentially be significant to the VIE or the right to receive benefits from the entity that could potentially be significant to the VIE. Additionally, an enterprise is required to assess whether it has an implicit financial responsibility to ensure that a VIE operates as designed when determining whether it has the power to direct the activities of the VIE that most significantly impact the entity's economic performance. This guidance also requires the Company to focus on a more qualitative approach, rather than a quantitative approach previously required for determining the primary beneficiary of a VIE, amended certain guidance for determining whether an entity is a VIE, added an additional requirement to assess whether an entity is a VIE on an ongoing basis, and required enhanced disclosures that provide users of financial statements with more transparent information about an enterprise's involvement in a VIE. The adoption of this guidance resulted in the consolidation of two VIEs which had not been previously consolidated, *Ark Hollywood/Tampa Investment, LLC* and *Ark Connecticut Investment, LLC*, as of October 3, 2010. The Company did not retroactively apply this 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.

The following discussion and analysis excludes the impacts of the VIEs consolidated as of October 3, 2010 and whose impacts were included in Other Revenues in prior periods.

**Revenues**

During the Company's third fiscal quarter of 2011, revenues of \$33,462,000 (excluding revenues from VIEs in the amount of \$5,895,000) decreased 4.8% compared to revenues of \$35,162,000 in the third fiscal quarter of 2010. This decrease is primarily due to: (i) the closure of *Gonzalez y Gonzalez*, in January 2011, (ii) a slight decrease in sales at our properties that have significant amounts of outdoor seating due to poor weather conditions, (iii) the impact of management fees related to the VIEs which were included in Other Revenue in the prior period and are now consolidated, as discussed above, and (iv) a decrease in sales at *Sequoia DC* as a result of the interruption of our business due to a flood, partially offset by sales at *The Sporting House* in Las Vegas, which opened in October 2010.

During the Company's 39-week period ended July 2, 2011, revenues of \$85,393,000 (excluding revenues from VIEs in the amount of \$16,595,000) decreased 0.5% compared to revenues of \$85,852,000 in the 39-week period ended July 3, 2010, primarily as a result of the above, further offset by sales related to our restaurants *Robert* in New York City which opened in December 2009.

*Food and Beverage Same-Store Sales*

On a Company-wide basis, same store sales decreased 0.3% during the third fiscal quarter of 2011 compared to the same period last year. Same-store sales in Las Vegas increased by \$593,000 or 4.7% in the third fiscal quarter of 2011 compared to the third fiscal quarter of 2010 primarily as a result of combining 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. Same-store sales in New York decreased \$165,000 or 1.6% during the third quarter of fiscal 2011 compared to 2010 primarily as a result of poor weather conditions as compared to the prior year. Same store sales in Washington D.C. decreased by \$732,000 or 11.8% during the third quarter of fiscal 2011 compared to 2010 primarily as a result of the interruption of our business at *Sequoia DC* due to a flood. Same-store sales in Atlantic City increased by \$179,000, or 29.8% in the third quarter of fiscal 2011 compared to 2010 as result of new ownership at *Resorts Casino Hotel* and their significant marketing efforts for the property. Same-store sales in Boston increased \$12,000 or 1.0% during the third quarter of fiscal 2011 compared to 2010.



*Other Revenue*

The decreases in the Other Revenue for the 13-week and 39-week periods ended July 2, 2011 compared with the comparable periods of the prior year are due to the impact of management fees included in Other Revenue in the prior periods related to VIEs which are now consolidated.

**Costs and Expenses**

Food and beverage costs for the third quarter of 2011 as a percentage of total revenues were 27.6% (excluding food and beverage costs associated with VIEs in the amount of \$1,512,000) as compared to 25.6% for the third quarter of 2010. Food and beverage costs for the 39-weeks ended July 2, 2011 as a percentage of total revenues were 27.1% (excluding food and beverage costs associated with VIEs in the amount of \$4,453,000) as compared to 25.6% for the 39-week period ended July 3, 2010. These increases are the result of higher commodity prices in the current fiscal year.

Payroll expenses as a percentage of total revenues were 31.2% for the third quarter of 2011 (excluding payroll expenses associated with VIEs in the amount of \$1,497,000) as compared to 28.5% in the third quarter of 2010. Payroll expenses for the 39-weeks ended July 2, 2011 as a percentage of total revenues were 34.8% (excluding payroll expenses associated with VIEs in the amount of \$4,297,000) as compared to 32.4% for the 39-week period ended July 3, 2010. These increases in payroll expenses as a percentage of revenue were primarily due to higher than expected payroll at *The Sporting House* in Las Vegas combined with the interruption of our business at *Sequoia DC* due to a flood.

Occupancy expenses as a percentage of total revenues were 13.3% during the third fiscal quarter of 2011 (excluding occupancy expenses associated with VIEs in the amount of \$659,000) compared to 12.1% in the third quarter of 2010. This increase in occupancy expenses as a percentage of revenue was primarily due to contingent rentals at *The Sporting House* in Las Vegas. Occupancy expenses for the 39-weeks ended July 2, 2011 as a percentage of total revenues were 14.6% (excluding occupancy expenses associated with VIEs in the amount of \$2,068,000) as compared to 14.4% for the 39-week period ended July 3, 2010. This increase in occupancy expenses as a percentage of revenue was due to increased sales at properties where rents are fixed partially offset by contingent rentals at *The Sporting House* in Las Vegas.

Other operating costs and expenses as a percentage of total revenues were 12.6% for the third fiscal quarter of 2011 (excluding other operating costs and expenses associated with VIEs in the amount of \$856,000) were compared to 12.5% in the third quarter of 2010. Other operating costs and expenses for the 39-weeks ended July 2, 2011 as a percentage of total revenues were 13.6% (excluding other operating costs and expenses associated with VIEs in the amount of \$1,941,000) and were comparable to 13.6% for the 39-week period ended July 3, 2010.

General and administrative expenses (which relate solely to the corporate office in New York City and therefore there is no impact from the VIEs) as a percentage of total revenues were 5.9% and 7% for the 13-week and 39-week periods ended July 2, 2011, respectively, compared to 6.3% and 8.5% for the 13-week and 39-week periods ended July 3, 2010, respectively, and were in line with management expectations.

**Income Taxes**

The income tax provision on income from continuing operations for the 39-week periods ended July 2, 2011 and July 3, 2010 reflect effective tax rates of approximately 12% and 32%, respectively. 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 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 our current estimates.

An audit of the Company's tax returns for the fiscal years 2008 and 2009 was recently completed by the Internal Revenue Service and did not result in a material adjustment to the Company's financial position or results of operations.

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 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 and the inclusion of cash balances from VIEs in the amount of \$757,000 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 provided by investing activities for the 39-week period ended July 3, 2010 was \$1,815,000 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 *Robert* in New York City.

Net cash used in financing activities for the 39-week periods ended July 2, 2011 and July 3, 2010 of \$3,980,000 and \$6,338,000, respectively was principally used for the payment of dividends and distributions to non-controlling interests in 2011.

The Company had a working capital surplus of \$2,794,000 at July 2, 2011 (excluding working capital from VIEs) as compared to a working capital surplus of \$4,897,000 at October 2, 2010.

On December 8, 2010, April 1, 2011 and June 29, 2011, the Company paid quarterly cash dividends in the amount of \$0.25 per share on the Company's common stock. The Company intends to continue to pay such quarterly cash dividend for the foreseeable future, however, the payment of future dividends is at the discretion of the Company's Board of Directors and is based on future earnings, cash flow, financial condition, capital requirements, changes in U.S. taxation and other relevant factors

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 by March 2012. In exchange for this commitment, the landlord agreed to extend the food court lease for an additional four years. Through August 2011, the Company has spent approximately \$1,300,000 related to this commitment in connection with *The Broadway Burger Bar* construction discussed below.

On March 18, 2011, a subsidiary of the Company entered into a lease agreement to operate a yet to be named restaurant and bar in New York City. In connection with the agreement, the landlord has agreed to contribute up to \$1,800,000 towards the construction of the facility, which the Company expects to be \$4,000,000 to \$5,000,000. The initial term of the lease for this facility will expire on March 31, 2027 and will have one five-year renewal. The Company anticipates the restaurant will open during the second quarter of the 2012 fiscal year.

On April 17, 2011, the Company suffered a flood at its *Sequoia* property located in Washington, DC. The Company expects to recover substantially all of its losses from insurance proceeds and/or the landlord and does not expect unrecovered amounts to have a material impact on its consolidated financial position, results of operations or cash flows.

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 (\$400,000 of which has been paid as of July 2, 2011 and is included in Intangibles Assets in the accompanying Consolidated Condensed Balance Sheet). Under the terms of the agreement the owner of the property will construct the facility at their 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 in the first quarter of the 2012 fiscal year.

## 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 no earlier than May 31, 2011 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.

### Recent Restaurant Dispositions

The Company was advised by the landlord that it would have to vacate the *Gonzalez y Gonzalez* property located in New York, NY, which was on a month-to-month lease. The closure of this property occurred on January 31, 2011.

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, including a four-year note for \$100,000 bearing interest at 6%. 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 \$0 and \$148,000 for the 13-weeks and 39-weeks ended July 2, 2011, respectively, all of which are included in discontinued operations in the accompanying Consolidated Condensed Statement of Operations.

### 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 2, 2010. There have been no significant changes to such policies during fiscal 2011, other than the implementation of amendments to ASC 810 (formerly FASB Statement of Accounting Standards (SFAS) No. 167 *Amendments to FASB Interpretation No. 46(R)* (SFAS No. 167)) which required the Company to consolidate certain variable interest entities effective October 3, 2010.

### 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 2011 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 (the Exchange Act). Based on this evaluation, our management, including our principal executive officer and principal financial officer, concluded that our disclosure controls and procedures were effective as of July 2, 2011 to ensure that all material information required to be disclosed by us in reports that we file or submit under the Exchange Act is accumulated and communicated to them as appropriate to allow timely decisions regarding required disclosure and that all such information is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

## Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

### *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 2011 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 any other pending legal proceedings, other than ordinary routine 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 2, 2010 (the "2010 Form 10-K"). There have been no material changes to the risk factors previously disclosed in the 2010 Form 10-K. The risks described in the 2010 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 5. Other Information**

None.

**Item 6. Exhibits**

- 31.1 Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32 Certificate of Chief Executive and Chief Financial Officers Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 101.INS\* XBRL Instance Document
- 101.SCH\* XBRL Taxonomy Extension Schema Document
- 101.CAL\* XBRL Taxonomy Extension Calculation Linkbase Document
- 101.DEF\* XBRL Taxonomy Extension Definition Linkbase Document
- 101.LAB\* XBRL Taxonomy Extension Label Linkbase Document
- 101.PRE\* XBRL Taxonomy Extension Presentation Linkbase Document

---

\*Pursuant to Rule 406T of Regulation S-T, the Interactive Data Files on Exhibit 101 hereto are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, are deemed not filed for purposes of Section 18 of the Securities and 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 16, 2011

**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)

- 19 -

---