

ARK RESTAURANTS CORP
Form 10-K
December 23, 2008

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTIONS 13 AND 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended September 27, 2008

or,

TRANSITION REPORT PURSUANT TO SECTIONS 13 AND 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File No. 1-09453

ARK RESTAURANTS CORP.
(Exact Name of Registrant as Specified in Its Charter)

New York
(State or Other Jurisdiction of
Incorporation or Organization)

13-3156768
(IRS Employer Identification No.)

85 Fifth Avenue, New York, NY
(Address of Principal Executive Offices)

10003
(Zip Code)

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

Securities registered pursuant to section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act:

Title of each class
Common Stock, par value \$.01 per share

Name of each exchange on which registered
The NASDAQ Stock Market LLC

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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 such 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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendments to this Form

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

10-K. [x]

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 _____ Accelerated filer _____
Non-accelerated filer _____ (Do not check if a smaller reporting company) Smaller Reporting Company X

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

As of March 28, 2008, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of voting and non-voting stock held by non-affiliates of the registrant was \$59,601,310.

At December 10, 2008, there were outstanding 3,489,845 shares of the Registrant's Common Stock, \$.01 par value.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

DOCUMENTS INCORPORATED BY REFERENCE

(1) In accordance with General Instruction G (3) of Form 10-K certain information required by Part III hereof will either be incorporated into this Form 10-K by reference to the registrant's definitive proxy statement for the registrant's 2008 Annual Meeting of Stockholders filed within 120 days of September 27, 2008 or will be included in an amendment to this Form 10-K filed within 120 days of September 27, 2008.

PART I

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

On one or more occasions, we may make statements in this Annual Report on Form 10-K 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 and Section 21E of the Securities Exchange Act of 1934.

Words or phrases such as "anticipates," "believes," "estimates," "expects," "intends," "plans," "predicts," "projects," "likely result," "hopes," "will 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" of this Annual Report on Form 10-K.

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, our 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 of the forward-looking statements in this Annual Report on Form 10-K, our reports on Forms 10-Q and 8-K, our Schedule 14A and any other public statements that are made by us 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 Annual Report on Form 10-K, 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 Annual Report on Form 10-K 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-Q and 8-K and Schedule 14A.

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

Item 1. Business

Overview

We are a New York corporation formed in 1983. As of the fiscal year ended September 27, 2008, we owned and/or operated 20 restaurants and bars, 30 fast food concepts, catering operations, and wholesale and retail bakeries through our subsidiaries. Initially our facilities were located only in New York City. As of the fiscal year ended September 27, 2008, seven of our restaurant and bar facilities are located in New York City, four are located in Washington, D.C., five are located in Las Vegas, Nevada, two are located in Atlantic City, New Jersey, one is located at the Foxwoods Resort Casino in Ledyard, Connecticut and one is located in the Faneuil Hall Marketplace in Boston, Massachusetts.

In 2006, we established operations at the Foxwoods Resort Casino in Ledyard, Connecticut by opening a fast-casual restaurant, *Lucky Seven*, in Foxwoods Bingo Hall. All pre-opening expenses were borne by outside investors who invested in a limited liability company established to develop, construct, operate and manage this facility. We are the managing member of this limited liability company and, through this limited liability company, we lease and manage the operations of this facility in exchange for a monthly management fee equal to five-percent of the gross receipts of this facility. Neither we nor any of our subsidiaries contributed any capital to this limited liability company. None of the obligations of this limited liability company are guaranteed by us and investors in this limited liability company have no recourse against us or any of our assets. We also further expanded our operations at Foxwoods later in 2006 by opening *The Grill at Two Trees* in the Two Trees Inn, a facility owned by the Mashantucket Pequot Tribal Nation and a part of the Foxwoods Resort Casino.

Also in 2006, we entered into an agreement to lease space for a Mexican restaurant, *Yolos*, at the Planet Hollywood Resort and Casino (formerly known as the Aladdin Resort and Casino) in Las Vegas, Nevada. *Yolos* opened during the first quarter of our 2008 fiscal year.

In 2007, we purchased the restaurant known as the *Durgin Park Restaurant and the Black Horse Tavern* in Boston, Massachusetts and entered into an agreement to design and lease a food court at the to-be-constructed MGM Grand Casino at Foxwoods.

We purchased the *Durgin Park* facility from the previous owner for \$2,000,000 in cash and a \$1,000,000 five year promissory note bearing interest at a rate of 7% per year.

In June 2007, the Company entered into an agreement to design and lease a food court at the MGM Grand Casino at the Foxwoods Resort Casino which commenced operations during the third fiscal quarter of 2008. A limited liability company has been established to develop, construct, operate and manage the food court. The Company, through a wholly-owned subsidiary, is the managing member of this limited liability company and has an aggregate ownership interest in the food court operations of 67%.

In addition to the shift from a Manhattan-based operation to a multi-city operation, the nature of the facilities operated by us has shifted from smaller, neighborhood restaurants to larger, destination restaurants intended to benefit from high patron traffic attributable to the uniqueness of the restaurant's location. Most of our restaurants which are in operation and which have been opened in recent years are of the latter description. As of the fiscal year ended September 27, 2008, these include the restaurant operations at the New York-New York Hotel & Casino in Las Vegas, Nevada (1997); *Red*, located at the South Street Seaport in New York (1998); *Thunder Grill* in Union Station, Washington, D.C. (1999); one bar and three food court facilities at the Venetian Casino Resort in Las Vegas, Nevada (2000); the 12 fast food facilities in Tampa, Florida and Hollywood, Florida, respectively (2004); the *Gallagher's*

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Steakhouse and *Gallagher's Burger Bar* in the Resorts Atlantic City Hotel and Casino in Atlantic City, New Jersey (2005); *Lucky Seven* and *The Grill at Two Trees* at the Foxwoods Resort Casino in Ledyard, Connecticut (2006); *Durgin Park Restaurant* and *the Black Horse Tavern* in the Faneuil Hall Marketplace in Boston, Massachusetts (2007); *Yolos*, at the Planet Hollywood Resort and Casino (formerly known as the Aladdin Resort and Casino) in Las Vegas, Nevada (2007); and five fast food facilities at MGM Grand Casino at the Foxwoods Resort Casino in Ledyard, Connecticut (2008).

Also in 2008, we entered into an agreement to lease space for a yet to be named restaurant at the Museum of Arts & Design at Columbus Circle in Manhattan.

The names and themes of each of our restaurants are different except for our two *America* restaurants, two *Sequoia* restaurants, two *Gonzalez y Gonzalez* restaurants and two *Gallagher's Steakhouse* restaurants. The menus in our restaurants are extensive, offering a wide variety of high quality foods at generally moderate prices. The atmosphere at many of the restaurants is lively and extremely casual. Most of the restaurants have separate bar areas. A majority of our net sales are derived from dinner as opposed to lunch service. Most of the restaurants are open seven days a week and most serve lunch as well as dinner.

While decor differs from restaurant to restaurant, interiors are marked by distinctive architectural and design elements which often incorporate dramatic interior open spaces and extensive glass exteriors. The wall treatments, lighting and decorations are typically vivid, unusual and, in some cases, highly theatrical.

The following table sets forth the facilities we lease and operate as of September 27, 2008:

<u>Name</u>	<u>Location</u>	<u>Year Opened(1)</u>	<u>Restaurant Size (Square Feet)</u>	<u>Seating Capacity(2) Indoor-(Outdoor)</u>	<u>Lease Expiration(3)</u>
Gonzalez y Gonzalez	Broadway (between Houston and Bleecker Streets) New York, New York	1989	6,000	250	2008
America	Union Station Washington, D.C.	1989	10,000	400(50)	2009
Center Café	Union Station Washington, D.C.	1989	4,000	200	2009
Sequoia	Washington Harbour Washington, D.C.	1990	26,000	600(400)	2017
Sequoia	South Street Seaport New York, New York	1991	12,000	300(100)	2010
Canyon Road	First Avenue (between 76th and 77th Streets) New York, New York	1984	2,500	130	2014

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

<u>Name</u>	<u>Location</u>	<u>Year Opened(1)</u>	<u>Restaurant Size (Square Feet)</u>	<u>Seating Capacity(2) Indoor-(Outdoor)</u>	<u>Lease Expiration(3)</u>
Bryant Park Grill & Café(4)	Bryant Park New York, New York	1995	25,000	180(820)	2025
America(5)	New York-New York Hotel and Casino Las Vegas, Nevada	1997	20,000	450	2017
Gallagher's Steakhouse(5)	New York-New York Hotel & Casino Las Vegas, Nevada	1997	5,500	260	2023
Gonzalez y Gonzalez(5)	New York-New York Hotel & Casino Las Vegas, Nevada	1997	2,000	120	2017
Village Eateries (5)(6)	New York-New York Hotel & Casino Las Vegas, Nevada	1997	6,300	400(*)	2017
The Grill Room	World Financial Center New York, New York	1997	10,000	250	2011
Red	South Street Seaport New York, New York	1998	7,000	150(150)	2013
Thunder Grill	Union Station Washington, D.C.	1999	10,000	500	2019
Venetian Food Court(7)	Venetian Casino Resort Las Vegas, Nevada	1999	3,980	300(*)	2014
V-Bar	Venetian Casino Resort Las Vegas, Nevada	2000	3,000	100	2015
Gallagher's Steakhouse	Resorts Atlantic City Hotel and Casino Atlantic City, New Jersey	2005	6,280	196	2020
Gallagher's Burger Bar	Resorts Atlantic City Hotel and Casino Atlantic City, New Jersey	2005	2,270	114	2020
The Grill at Two Trees	Two Trees Inn Ledyard, Connecticut	2006	3,359	101	2026

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

<u>Name</u>	<u>Location</u>	<u>Year Opened(1)</u>	<u>Restaurant Size (Square Feet)</u>	<u>Seating Capacity(2) Indoor-(Outdoor)</u>	<u>Lease Expiration(3)</u>
Durgin Park Restaurant and the Black Horse Tavern	Faneuil Hall Marketplace Boston, Massachusetts	2007	7,000	500	2032
Yolos	Planet Hollywood Resort and Casino Las Vegas, Nevada	2007	4,100	206	2027

(1) Restaurants are, from time to time, renovated, renamed and/or converted from or to managed or owned facilities. [Year Opened] refers to the year in which we, or an affiliated predecessor of us, first opened, acquired or began managing a restaurant at the applicable location, notwithstanding that the restaurant may have been renovated, renamed and/or converted from or to a managed or owned facility since that date.

(2) Seating capacity refers to the seating capacity of the indoor part of a restaurant available for dining in all seasons and weather conditions. Outdoor seating capacity, if applicable, is set forth in parentheses and refers to the seating capacity of terraces and sidewalk cafes which are available for dining only in the warm seasons and then only in clement weather.

(3) Assumes the exercise of all our available lease renewal options.

(4) The lease governing a substantial portion of the outside seating area of this restaurant expires on April 30, 2012.

(5) Includes two five-year renewal options exercisable by us if certain sales goals are achieved during the two year period prior to the exercise of the renewal option. Under the *America* lease, the sales goal is \$6.0 million. Under the *Gallagher's Steakhouse* lease the sales goal is \$3.0 million. Under the lease for *Gonzalez y Gonzalez* and the *Village Eateries*, the combined sales goal is \$10.0 million. Each of the restaurants is currently operating at a level in excess of the minimum sales level required to exercise the renewal option for each respective restaurant.

(6) We operate eight small food court restaurants in the *Villages Eateries* food court at the New York-New York Hotel & Casino. We also operate that hotel's room service, banquet facilities and employee cafeteria.

(7) We operate three small food court restaurants in a food court at the Venetian Casino Resort.

(*) Represents common area seating.

The following table sets forth the facilities managed by us as of September 27, 2008:

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

<u>Name</u>	<u>Location</u>	<u>Year Opened(1)</u>	<u>Restaurant Size (Square Feet)</u>	<u>Seating Capacity(2) Indoor-(Outdoor)</u>	<u>Lease Expiration(3)</u>
El Rio Grande (4)(5)	Third Avenue (between 38 th and 39 th Streets) New York, New York	1987	4,000	160	2019
Tampa Food Court(6)	Hard Rock Hotel and Casino Tampa, Florida	2004	4,000	250(*)	2029
Hollywood Food Court(6)	Hard Rock Hotel and Casino Hollywood, Florida	2004	5,000	250(*)	2029
Lucky Seven(6)	Foxwoods Resort Casino Ledyard, Connecticut	2006	4,825	4,000(**)	2026
MGM Grand Food Market(6)(7)	MGM Grand at Foxwoods Resort Casino Ledyard, Connecticut	2008	8,300	256(84)(*)	2028

- (1) Restaurants are, from time to time, renovated, renamed and/or converted from or to managed or owned facilities. [Year Opened] refers to the year in which we, or an affiliated predecessor of us, first opened, acquired or began managing a restaurant at the applicable location, notwithstanding that the restaurant may have been renovated, renamed and/or converted from or to a managed or owned facility since that date.
- (2) Seating capacity refers to the seating capacity of the indoor part of a restaurant available for dining in all seasons and weather conditions. Outdoor seating capacity, if applicable, is set forth in parentheses and refers to the seating capacity of terraces and sidewalk cafes which are available for dining only in the warm seasons and then only in clement weather.
- (3) Assumes the exercise of all our available lease renewal options.
- (4) Management fees earned are based on a percentage of cash flow of the restaurant.
- (5) We own a 19% interest in the partnership that owns *El Rio Grande*.
- (6) Management fees earned are based on a percentage of gross sales of the restaurant.
- (7) We own a 67% interest in the partnership that owns the *MGM Grand Food Market*.
- (*) Represents common area seating.
- (**) Represents number of seats in the Bingo Hall.

Revenues from facilities managed by us are not included in our consolidated sales, with the exception of *El Rio Grande* and the *MGM Grand Food Market*.

Restaurant Expansion

During the fiscal year ended September 27, 2008, we:

- expanded our operations at the Foxwoods Resort Casino by opening *The Food Market* in the MGM Grand Casino, a facility part of the Foxwoods Resort Casino, in Ledyard, Connecticut;
- began operating a Mexican restaurant and lounge, *Yolos*, at the rethemed Planet Hollywood Casino in Las Vegas, Nevada; and
- entered into an agreement to lease space for a yet to be named restaurant at the Museum of Arts & Design at Columbus Circle in Manhattan.

The obligation to pay rent for the restaurant at the Museum of Arts & Design is not effective until the earlier to occur of the date the restaurant opens for business or Mach 1, 2009. We anticipate that:

- investors will invest in the limited liability company that leases the space and such investors will reimburse this limited liability company for all pre-opening expenses;
- we will be the managing member of this limited liability company and, through this limited liability company, we will manage the operations of the restaurant in exchange for a monthly management fee equal to five-percent of the gross receipts of the restaurant;
- neither we nor any of our subsidiaries will contribute any capital to this limited liability company; and
- none of the obligations of this limited liability company will be guaranteed by us and investors in this limited liability company will have no recourse against us or any of our assets.

However, due to the current economic climate, we cannot be certain that such investors will be available. In such a situation, we anticipate we will contribute capital for pre-opening expenses and operate this restaurant through this limited liability company as a subsidiary.

The opening of a new restaurant is invariably accompanied by substantial pre-opening expenses and early operating losses associated with the training of personnel, excess kitchen costs, costs of supervision and other expenses during the pre-opening period and during a post-opening "shake out" period until operations can be considered to be functioning normally. The amount of such pre-opening expenses and early operating losses can generally be expected to depend upon the size and complexity of the facility being opened. We incurred \$210,000 in pre-opening expenses in fiscal 2008.

Our restaurants generally do not achieve substantial increases in revenue from year to year, which we consider to be typical of the restaurant industry. To achieve significant increases in revenue or to replace revenue of restaurants that lose customer favor or which close because of lease expirations or other reasons, we would have to open additional restaurant facilities or expand existing restaurants. There can be no assurance that a restaurant will be successful after it is opened, particularly since in many instances we do not operate our new restaurants under a trade name currently used by us, thereby requiring new restaurants to establish their own identity.

Leases

Apart from these agreements, we are not currently committed to any projects. We may take advantage of opportunities we consider to be favorable, when they occur, depending upon the availability of financing and other factors.

Recent Restaurant Dispositions and Charges

Our bar/nightclub facility Venus, located at the Venetian Casino Resort, experienced a steady decline in sales and we felt that a new concept was needed at this location. During the first quarter of 2005, this bar/nightclub facility was closed for re-concepting and re-opened as "Vivid" on February 4, 2005. Total conversion costs were approximately \$400,000. Sales at the new bar/nightclub facility subsequently failed to reach a level sufficient to achieve the results we required and we have identified a buyer for this facility. As of December 31, 2005, we classified the assets and liabilities of this bar/nightclub facility as "held for sale" in accordance with Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS No. 144") based on the fact that the facility has met the criteria under SFAS No. 144. Based on the offers made for this facility, we recorded an impairment charge of \$537,000 during the first fiscal quarter of 2007. An additional impairment charge of \$38,000 was recorded during the fourth fiscal quarter of 2007 as a result of the sale of the facility. We recorded operating losses of \$188,000 during the fiscal year ended September 29, 2007. The impairment charges and operating losses are included in discontinued operations.

During fiscal 2006, we were approached by the Venetian Casino Resort who indicated that, due to the expansion of the Grand Canal Shoppes, our Lutece and Tsunami locations, as well as a portion of our Vivid location, in the Grand Canal Shoppes were desired by other tenants. The Venetian Casino Resort offered to purchase these locations from us for an aggregate of \$14,000,000. After evaluating the offer, we determined that such offer made it advantageous for us to redeploy these assets. Effective December 1, 2006, our subsidiaries that leased each of our Lutece, Tsunami and Vivid locations at the Venetian Resort Hotel Casino in Las Vegas, Nevada, entered into an agreement to sell Lutece, Tsunami and a portion of the Vivid location used by Lutece as a prep kitchen to Venetian Casino Resort, LLC for an aggregate of \$14,000,000. Our Lutece location closed on December 3, 2006 and our Tsunami location closed on January 3, 2007. We realized a gain of \$7,814,000 (\$5,196,000 after taxes, or \$1.45 per share) on the sale of these facilities. We recorded operating income of \$34,000 for the fiscal year ended September 29, 2007. The gain on sale and income are included in discontinued operations.

During the first fiscal quarter of 2008, we discontinued the operation of our Columbus Bakery retail and wholesale bakery located in New York City. Columbus Bakery was originally intended to serve as the bakery that would provide all of our New York restaurants with baked goods as well as being a retail bakery operation. As a result of the sale and closure of several of our restaurants in New York City during the last several years, this bakery operation was no longer profitable. During the second fiscal quarter of 2008 we opened, along with certain third party investors, a new concept at this location called "Pinch & S'Mac" which features pizza and macaroni and cheese. We contributed Columbus Bakery's net fixed assets and cash into this venture and received an ownership interest of 37.5%. These operations are not consolidated in the Company's financial statements.

Effective June 30, 2008, the lease for our *Stage Deli* facility at the Forum Shops in Las Vegas, Nevada expired. The landlord for this facility offered to renew the lease at this location prior to its expiration at a significantly increased rent. The Company determined that it would not be able to operate this facility profitably at this location at the rent offered in the landlord's renewal proposal. As a result, the Company discontinued these operations during the third fiscal quarter of 2008 and took a charge for the impairment

of goodwill of \$294,000 and a loss on disposal of \$19,000. The impairment charge and disposal loss are included in discontinued operations.

As a result of the above mentioned sales or closures, we allocated \$294,000 and \$100,000 of goodwill to these restaurants and reduced goodwill by these amounts in fiscal 2008 and 2007, respectively.

Restaurant Management

Each restaurant is managed by its own manager and has its own chef. Food products and other supplies are purchased primarily from various unaffiliated suppliers, in most cases by our headquarters' personnel. Our Columbus Bakery in Las Vegas supplies bakery products to most of our Las Vegas restaurants in addition to operating a wholesale bakery. Each of our restaurants has two or more assistant managers and sous chefs (assistant chefs). Financial and management control is maintained at the corporate level through the use of automated systems that include centralized accounting and reporting.

Purchasing and Distribution

We strive to obtain quality menu ingredients, raw materials and other supplies and services for our operations from reliable sources at competitive prices. Substantially all menu items are prepared on each restaurant's premises daily from scratch, using fresh ingredients. Each restaurant's management determines the quantities of food and supplies required and orders the items from local, regional and national suppliers on terms negotiated by our centralized purchasing staff. Restaurant-level inventories are maintained at a minimum dollar-value level in relation to sales due to the relatively rapid turnover of the perishable produce, poultry, meat, fish and dairy commodities that are used in operations.

We attempt to negotiate short-term and long-term supply agreements depending on market conditions and expected demand. However, we do not contract for long periods of time for our fresh commodities such as produce, poultry, meat, fish and dairy items and, consequently, such commodities can be subject to unforeseen supply and cost fluctuations. Independent foodservice distributors deliver most food and supply items daily to restaurants. The financial impact of such supply agreements would not have a material adverse effect on our financial position.

Employees

At December 10, 2008, we employed 1,929 persons (including employees at managed facilities), 1,425 of whom were full-time employees, 514 of whom were part-time employees, 31 of whom were headquarters personnel, 216 of whom were restaurant management personnel, 559 of whom were kitchen personnel and 1,123 of whom were restaurant service personnel. A number of our restaurant service personnel are employed on a part-time basis. Changes in minimum wage levels may affect our labor costs and the restaurant industry generally because a large percentage of restaurant personnel are paid at or slightly above the minimum wage. Our employees are not covered by a collective bargaining agreement.

Government Regulation

We are subject to various federal, state and local laws affecting our business. Each restaurant is subject to licensing and regulation by a number of governmental authorities that may include alcoholic beverage control, health, sanitation, environmental, zoning and public safety agencies in the state or municipality in which the restaurant is located. Difficulties in obtaining or failures to obtain the required licenses or approvals could delay or prevent the development and openings of new restaurants, or could disrupt the operations of existing restaurants.

Alcoholic beverage control regulations require each of our restaurants to apply to a state authority and, in certain locations, county and municipal authorities for licenses and permits to sell alcoholic beverages on the premises. Typically, licenses must be renewed annually and may be subject to penalties, temporary suspension or revocation for cause at any time. Alcoholic beverage control regulations impact many aspects of the daily operations of our restaurants, including the minimum ages of patrons and employees consuming or serving such beverages; employee alcoholic beverages training and certification requirements; hours of operation; advertising; wholesale purchasing and inventory control of such beverages; seating of minors and the service of food within our bar areas; and the storage and dispensing of alcoholic beverages. State and local authorities in many jurisdictions routinely monitor compliance with alcoholic beverage laws. The failure to receive or retain, or a delay in obtaining, a liquor license for a particular restaurant could adversely affect our ability to obtain such licenses in jurisdictions where the failure to receive or retain, or a delay in obtaining, a liquor license occurred.

We are subject to "dram-shop" statutes in most of the states in which we have operations, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to such person. We carry liquor liability coverage as part of our existing comprehensive general liability insurance. A settlement or judgment against us under a "dram-shop" statute in excess of liability coverage could have a material adverse effect on our operations.

Various federal and state labor laws govern our operations and our relationship with employees, including such matters as minimum wages, breaks, overtime, fringe benefits, safety, working conditions and citizenship requirements. We are also subject to the regulations of the Immigration and Naturalization Service (INS). If our employees do not meet federal citizenship or residency requirements, this could lead to a disruption in our work force. Significant government-imposed increases in minimum wages, paid leaves of absence and mandated health benefits, or increased tax reporting, assessment or payment requirements related to employees who receive gratuities could be detrimental to our profitability.

Our facilities must comply with the applicable requirements of the Americans With Disabilities Act of 1990 ("ADA") and related state statutes. The ADA prohibits discrimination on the basis of disability with respect to public accommodations and employment. Under the ADA and related state laws, when constructing new restaurants or undertaking significant remodeling of existing restaurants, we must make them more readily accessible to disabled persons.

The New York State Liquor Authority must approve any transaction in which a shareholder of the licensee increases his holdings to 10% or more of the outstanding capital stock of the licensee and any transaction involving 10% or more of the outstanding capital stock of the licensee.

Seasonal Nature Of Business

Our business is highly seasonal. The second quarter of our fiscal year, consisting of the non-holiday portion of the cold weather season in New York and Washington (January, February and March), is the poorest performing quarter. We achieve our best results during the warm weather, attributable to our extensive outdoor dining availability, particularly at *Bryant Park* in New York and *Sequoia* in Washington, D.C. (our largest restaurants) and our outdoor cafes. However, even during summer months these facilities can be adversely affected by unusually cool or rainy weather conditions. Our facilities in Las Vegas generally operate on a more consistent basis through the year.

Terrorism and International Unrest

The terrorist attacks on the World Trade Center in New York and the Pentagon in Washington, D.C. on September 11, 2001 had a material adverse effect on our revenues. As a result of the attacks, one of our restaurants, *The Grill Room*, located at 2 World Financial Center, which is adjacent to the World Trade Center, experienced some damage. *The Grill Room* was closed from September 11, 2001 and reopened in early December 2002.

Our restaurants in New York, Las Vegas, Washington D.C. and Florida benefit from tourist traffic. Though the Las Vegas market has shown resiliency, the sluggish economy and the lingering effects of September 11, 2001 have had an adverse effect on our restaurants. Recovery depends upon a general improvement in economic conditions and the public's willingness and inclination to resume vacation and convention travel. Additional acts of terrorism in the United States or substantial international unrest may have a material adverse effect on our business and revenues.

Item 1A. Risk Factors.

The following are the most significant risk factors applicable to us:

RISKS RELATED TO OUR BUSINESS

The recent disruptions in the overall economy and the financial markets may adversely impact our business.

The restaurant industry has been affected by current economic factors, including the deterioration of national, regional and local economic conditions, declines in employment levels, and shifts in consumer spending patterns. The recent disruptions in the overall economy and volatility in the financial markets have reduced, and may continue to reduce, consumer confidence in the economy, negatively affecting consumer restaurant spending, which could be harmful to our financial position and results of operations. As a result, decreased cash flow generated from our business may adversely affect our financial position and our ability to fund our operations. In addition, macro economic disruptions, as well as the restructuring of various commercial and investment banking organizations, could adversely affect our ability to access the credit markets. The disruption in the credit markets may also adversely affect the availability of financing for our expansions and operations, and could impact our vendors' ability to meet supply requirements. There can be no assurance that government responses to the disruptions in the financial markets will restore consumer confidence, stabilize the markets, or increase liquidity and the availability of credit.

Failure of our restaurants to achieve expected results could have a negative impact on our revenues and performance results.

Performance results currently achieved by our restaurants may not be indicative of longer term performance or the potential market acceptance of restaurants in new locations. We cannot be assured that new restaurants that we open will have similar operating results as existing restaurants. New restaurants take several months to reach expected operating levels due to inefficiencies typically associated with new restaurants, including lack of market awareness, inability to hire sufficient staff and other factors. The failure of our existing or new restaurants to perform as predicted could negatively impact our revenues and results of operations.

Our unfamiliarity with new markets may present risks, which could have a material adverse effect on our future growth and profitability.

Due to higher operating costs caused by temporary inefficiencies typically associated with expanding into new regions and opening new restaurants, such as lack of market awareness and acceptance and limited availability of experienced staff, continued expansion may result in an increase in our operating costs. New markets may have different competitive conditions, consumer tastes and discretionary spending patterns than our existing markets, which may cause our restaurants in these new markets to be less successful than our restaurants in our existing markets. We cannot assure you that restaurants in new markets will be successful.

Our ability to open new restaurants efficiently is subject to a number of factors beyond our control, including:

- Selection and availability of suitable restaurant sites;
- Negotiation of acceptable lease or purchase terms for such sites;
- Negotiation of reasonable construction contracts and adequate supervision of construction;
- Our ability to secure required governmental permits and approvals for both construction and operation;
- Availability of adequate capital;
- General economic conditions; and
- Adverse weather conditions.

We may not be successful in addressing these factors, which could adversely affect our ability to open new restaurants on a timely basis, or at all. Delays in opening or failures to open new restaurants could cause our business, results of operations and financial condition to suffer.

Terrorism and war may have material adverse effect on our business.

Terrorist attacks, such as the attacks that occurred in New York and Washington, D.C. on September 11, 2001, and other acts of violence or war in the United States or abroad, such as the war in Iraq, may affect the markets in which we operate and our business, results of operations and financial conditions. The potential near-term and long-term effects these events may have on our business operations, our customers, the markets in which we operate and the economy is uncertain. Because the consequences of any terrorist attacks, or any armed conflicts, are unpredictable, we may not be able to foresee events that could have an adverse effect on our markets or our business.

Increases in the minimum wage may have a material adverse effect on our business and financial results.

Many of our employees are subject to various minimum wage requirements. Many of our restaurants are located in states where the minimum wage was recently increased. There likely will be additional increases implemented in jurisdictions in which we operate or seek to operate. These minimum wage increases may have a material adverse effect on our business, financial condition, results of operations or cash flows.

Future changes in financial accounting standards may cause adverse unexpected operating results and affect our reported results of operations.

Changes in accounting standards can have a significant effect on our reported results and may affect our reporting of transactions completed before the change is effective. As an example, the recent change requiring that we record compensation expense in the statement of operations for employee stock options had a negative effect on our reported results. New pronouncements and varying interpretations of pronouncements have occurred and may occur in the future.

Changes to existing rules or differing interpretations with respect to our current practices may adversely affect our reported financial results.

Rising insurance costs could negatively impact profitability.

The cost of insurance (workers compensation insurance, general liability insurance, property insurance, health insurance and directors and officers liability insurance) has risen significantly over the past few years and is expected to continue to increase. These increases, as well as potential state legislation requirements for employers to provide health insurance to employees, could have a negative impact on our profitability if we are not able to negate the effect of such increases with plan modifications and cost control measures or by continuing to improve our operating efficiencies.

Compliance with existing and new regulations of corporate governance and public disclosure may result in additional expenses.

Compliance with changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act of 2002, new SEC regulations and NASDAQ Stock Market rules, has required an increased amount of management attention and external resources. We are committed to maintaining high standards of corporate governance and public disclosure. This investment required to comply with these changing regulations may result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities.

Intense competition in the restaurant industry could prevent us from increasing or sustaining our revenues and profitability.

The restaurant industry is intensely competitive with respect to food quality, price-value relationships, ambiance, service and location, and many restaurants compete with us at each of our locations. There are a number of well-established competitors with substantially greater financial, marketing, personnel and other resources than ours, and many of our competitors are well established in the markets where we have restaurants, or in which we intend to locate restaurants. Additionally, other companies may develop restaurants that operate with similar concepts.

Any inability to successfully compete with the other restaurants in our markets will prevent us from increasing or sustaining our revenues and profitability and result in a material adverse effect on our business, financial condition, results of operations or cash flows. We may also need to modify or refine elements of our restaurant system to evolve our concepts in order to compete with popular new restaurant formats or concepts that may develop in the future. We cannot assure you that we will be successful in implementing these modifications or that these modifications will not reduce our profitability.

Our profitability is dependent in large measure on food, beverage and supply costs which are not within our control.

Our profitability is dependent in large measure on our ability to anticipate and react to changes in food, beverage and supply costs. Various factors beyond our control, including climatic changes and government regulations, may affect food and beverage costs. Specifically, our dependence on frequent, timely deliveries of fresh beef, poultry, seafood and produce subjects us to the risks of possible shortages or interruptions in supply caused by adverse weather or other conditions, which could adversely affect the availability and cost of any such items. We cannot assure you that we will be able to anticipate or react to increasing food and supply costs in the future. The failure to react to these increases could materially and adversely affect our business, results of operations and financial condition.

The restaurant industry is affected by changes in consumer preferences and discretionary spending patterns that could result in a reduction in our revenues.

Consumer preferences could be affected by health concerns or by specific events such as the outbreak of or scare caused by [mad cow disease], the popularity of the Atkins diet and the South Beach diet and changes in consumer preferences, such as [carb consciousness]. If we were to have to modify our restaurants' menus, we may lose customers who would be less satisfied with a modified menu, and we may not be able to attract a new customer base to generate the necessary revenues to maintain our income from restaurant operations. A change in our menus may also result in us having different competitors. We may not be able to successfully compete against established competitors in the general restaurant market. Our success also depends on various factors affecting discretionary consumer spending, including economic conditions, disposable consumer income, consumer confidence and the United States participation in military activities. Adverse changes in these factors could reduce our customer base and spending patterns, either of which could reduce our revenues and results of operations.

Our geographic concentrations could have a material adverse effect on our business, results of operations and financial condition.

We currently operate in seven regions, New York City, Washington, D.C., Las Vegas, Nevada, Tampa and Hollywood, Florida, Atlantic City, New Jersey, Ledyard, Connecticut, and Boston, Massachusetts and our Las Vegas, Florida, Atlantic City, and Connecticut operations are all located in casinos. As a result, we are particularly susceptible to adverse trends and economic conditions in these markets, including its labor market, and the casino market in general, which could have a negative impact on our profitability as a whole. In addition, given our geographic concentration, negative publicity regarding any of our restaurants could have a material adverse effect on our business, results of operations and financial condition, as could other regional occurrences such as acts of terrorism, local strikes, natural disasters or changes in laws or regulations.

Our operating results may fluctuate significantly due to seasonality and other factors beyond our control.

Our business is subject to seasonal fluctuations, which may vary greatly depending upon the region of the United States in which a particular restaurant is located. In addition to seasonality, our quarterly and annual operating results and comparable unit sales may fluctuate significantly as a result of a variety of factors, including:

- The amount of sales contributed by new and existing restaurants;
- The timing of new openings;
- Increases in the cost of key food or beverage products;
- Labor costs for our personnel;

- Our ability to achieve and sustain profitability on a quarterly or annual basis;
- Adverse weather;
- Consumer confidence and changes in consumer preferences;
- Health concerns, including adverse publicity concerning food-related illness;
- The level of competition from existing or new competitors;
- Economic conditions generally and in each of the market in which we are located; and
- Acceptance of a new or modified concept in each of the new markets in which we could be located.

These fluctuations make it difficult for us to predict and address in a timely manner factors that may have a negative impact on our business, results of operations and financial condition.

Any expansion may strain our infrastructure, which could slow restaurant development.

Any expansion may place a strain on our management systems, financial controls, and information systems. To manage growth effectively, we must maintain the high level of quality and service at our existing and future restaurants. We must also continue to enhance our operational, information, financial and management systems and locate, hire, train and retain qualified personnel, particularly restaurant managers. We cannot predict whether we will be able to respond on a timely basis to all of the changing demands that any expansion will impose on management and those systems and controls. If we are not able to effectively manage any one or more of these or other aspects of expansion, our business, results of operations and financial condition could be materially adversely affected.

Our inability to retain key personnel could negatively impact our business.

Our success will continue to be highly dependent on our key operating officers and employees. We must continue to attract, retain and motivate a sufficient number of qualified management and operating personnel, including general managers and chefs. The ability of these key personnel to maintain consistency in the quality and atmosphere of our restaurants is a critical factor in our success. Any failure to do so may harm our reputation and result in a loss of business.

We could face labor shortages, increased labor costs and other adverse effects of varying labor conditions.

The development and success of our restaurants depend, in large part, on the efforts, abilities, experience and reputations of the general managers and chefs at such restaurants. In addition, our success depends in part upon our ability to attract, motivate and retain a sufficient number of qualified employees, including restaurant managers, kitchen staff and wait staff. Qualified individuals needed to fill these positions are in short supply and the inability to recruit and retain such individuals may delay the planned openings of new restaurants or result in high employee turnover in existing restaurants. A significant delay in finding qualified employees or high turnover of existing employees could materially and adversely affect our business, results of operations and financial condition. Also, competition for qualified employees could require us to pay higher wages to attract sufficient qualified employees, which could result in higher, labor costs. In addition, increases in the minimum hourly wage, employment tax rates and levies, related benefits costs, including health insurance, and similar matters over which we have no control may increase our operating costs.

Unanticipated costs or delays in the development or construction of future restaurants could prevent our timely and cost-effective opening of new restaurants.

We depend on contractors and real estate developers to construct our restaurants. Many factors may adversely affect the cost and time associated with the development and construction of our restaurants, including:

- Labor disputes;
- Shortages of materials or skilled labor;
- Adverse weather conditions;
- Unforeseen engineering problems;
- Environmental problems;
- Construction or zoning problems;
- Local government regulations;
- Modifications in design; and
- Other unanticipated increases in costs.

Any of these factors could give rise to delays or cost overruns, which may prevent us from developing additional restaurants within our anticipated budgets or time periods or at all. Any such failure could cause our business, results of operations and financial condition to suffer.

We may not be able to obtain and maintain necessary federal, state and local permits which could delay or prevent the opening of future restaurants.

Our business is subject to extensive federal, state and local government regulations, including regulations relating to:

- Alcoholic beverage control;
- The purchase, preparation and sale of food;
- Public health and safety;
- Sanitation, building, zoning and fire codes; and
- Employment and related tax matters.

All of these regulations impact not only our current operations but also our ability to open future restaurants. We will be required to comply with applicable state and local regulations in new locations into which we expand. Any difficulties, delays or failures in obtaining licenses, permits or approvals in such new locations could delay or prevent the opening of a restaurant in a particular area or reduce operations at an existing location, either of which would materially and adversely affect our business, results of operations and financial condition.

The restaurant industry is affected by litigation and publicity concerning food quality, health and other issues, which can cause guests to avoid our restaurants and result in liabilities.

Health concerns, including adverse publicity concerning food-related illness, although not specifically related to our restaurants, could cause guests to avoid our restaurants, which would have a negative impact on our sales. We may also be the subject of complaints or litigation from guests alleging food-related illness, injuries suffered on the premises or other food quality, health or operational concerns. A lawsuit or claim could result in an adverse decision against us that could have a material adverse effect on our business and results of operations. We may also be subject to litigation which, regardless of the

outcome, could result in adverse publicity. Adverse publicity resulting from such allegations may materially adversely affect us and our restaurants, regardless of whether such allegations are true or whether we are ultimately held liable. Such litigation, adverse publicity or damages could have a material adverse effect on our competitive position, business, results of operations and financial condition and results of operations.

Many of our operations are located in casinos and much of our success will be dependent on the success of those casinos.

The success of the business of our restaurants located in Las Vegas, Nevada, Atlantic City, New Jersey, Tampa and Hollywood, Florida, and Ledyard, Connecticut will be substantially dependent on the success of the casinos in which the company operates in these locations to attract customers for themselves and for our restaurants. The successful operation of the casinos in these locations is subject to various risks and uncertainties including:

- The risk associated with governmental approvals of gaming;
- The risk of a change in laws regulating gaming operations;
- Operating in a limited market;
- Competitive risks relating to casino operations; and
- Risks of terrorism and war.

RISKS RELATED TO OUR COMMON STOCK

The fact that a relatively small number of investors hold our publicly traded common stock could cause our stock price to fluctuate.

The market price of our common stock could fluctuate as a result of sales by our existing stockholders of a large number of shares of our common stock in the market or the perception that such sales could occur. A large number of shares of our common stock is concentrated in the hands of a small number of individual and institutional investors and is thinly traded. An attempt to sell by a large holder could adversely affect the price of our stock.

Ownership of a substantial majority of our outstanding common stock by a limited number of stockholders will limit your ability to influence corporate matters.

A substantial majority of our capital stock is held by a limited number of stockholders. Accordingly, such stockholders will likely have a strong influence on major decisions of corporate policy, and the outcome of any major transaction or other matters submitted to our stockholders or board of directors, including potential mergers or acquisitions, and amendments to our Amended and Restated Certificate of Incorporation. Stockholders other than these principal stockholders are therefore likely to have little influence on decisions regarding such matters.

The price of our common stock may fluctuate significantly.

The price at which our common stock will trade may fluctuate significantly. The stock market has from time to time experienced significant price and volume fluctuations. The trading price of our common stock could be subject to wide fluctuations in response to a number of factors, including:

- Fluctuations in quarterly or annual results of operations;

-- Changes in published earnings estimates by analysts and whether our actual earnings meet or exceed such estimates;

-- Additions or departures of key personnel; and

-- Changes in overall stock market conditions, including the stock prices of other restaurant companies.

In the past, companies that have experienced extreme fluctuations in the market price of their stock have been the subject of securities class action litigation. If we were to be subject to such litigation, it could result in substantial costs and a diversion of our management's attention and resources, which may have a material adverse effect on our business, results of operations, and financial condition.

Item 1B. Unresolved Staff Comments.

Not applicable.

Item 2. Properties

Our restaurant facilities and our executive offices are occupied under leases. Most of our restaurant 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 our sales at such facility. As of September 27, 2008, these leases (including leases for managed restaurants) have terms (including any available renewal options) expiring as follows:

<u>Years Lease Terms Expire</u>	<u>Number of Facilities</u>
2008-2010	4
2011-2015	5
2016-2020	8
2021-2025	2
2026-2030	6
2031-2035	1

Our executive, administrative and clerical offices are located in approximately 8,500 square feet of office space at 85 Fifth Avenue, New York, New York. Our lease for this office space expires in 2015.

Our lease for office space related to our Washington, D.C. catering operations expires in 2012.

For information concerning our future minimum rental commitments under non-cancelable operating leases, see Note 10 of the Consolidated Financial Statements.

See also [Item 1. Business Overview] for a list of restaurant properties.

Item 3. Legal Proceedings

In the ordinary course of its business, we are a party to various lawsuits arising from accidents at our restaurants and workers' compensation claims, which are generally handled by our insurance carriers.

Our employment 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 us of

employment discrimination laws. We do not believe that any of such suits will have a materially adverse effect upon us, our financial condition or operations.

Item 4. Submission of Matters to a Vote of Security Holders

There were no matters submitted to a vote of security holders during the fourth quarter.

Executive Officers of the Registrant

The following table sets forth the names and ages of our executive officers and all offices held by each person:

<u>Name</u>	<u>Age</u>	<u>Positions and Offices</u>
Michael Weinstein	65	Chairman and Chief Executive Officer
Vincent Pascal	65	Senior Vice President
Robert Towers	61	President, Chief Operating Officer and Treasurer
Paul Gordon	57	Senior Vice President
Robert Stewart	52	Chief Financial Officer

Each of our executive officers serves at the pleasure of the Board of Directors and until his successor is duly elected and qualifies.

Michael Weinstein has been our Chief Executive Officer and a director since our inception in January 1983. During the past five years, Mr. Weinstein has been an officer, director and 25% shareholder of Easy Diners, Inc., RSWB Corp. and BSWR Corp. (since 1998). Mr. Weinstein is the owner of 24% of the membership interests in each of Dockeast, LLC and Dockwest, LLC. These companies operate four restaurants in New York City, and none of these companies is a parent, subsidiary or other affiliate of us. Mr. Weinstein spends substantially all of his business time on Company-related matters.

Vincent Pascal was elected our Vice President, Assistant Secretary and a director in October 1985. Mr. Pascal became a Senior Vice President in 2001.

Robert Towers has been employed by us since November 1983 and was elected Vice President, Treasurer and a director in March 1987. Mr. Towers became an Executive Vice President and Chief Operating Officer in 2001 and was elected President in 2007.

Paul Gordon has been employed by us since 1983 and was elected as a director in November 1996 and a Senior Vice President in 2001. Mr. Gordon is the manager of our Las Vegas operations. Prior to assuming that role in 1996, Mr. Gordon was the manager of our operations in Washington, D.C. since 1989.

Robert Stewart has been employed by us since June 2002 and was elected Chief Financial Officer effective as of June 24, 2002. For the three years prior to joining us, Mr. Stewart was a Chief Financial Officer and Executive Vice President at Fortis Capital Holdings. For eleven years prior to joining Fortis Capital Holdings, Mr. Stewart held senior financial and audit positions in Skandinaviska Enskilda Banken in their New York, London and Stockholm offices.

PART II

Item 5. Market For The Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market for Our Common Stock

Our Common Stock, \$.01 par value, is traded in the over-the-counter market on the Nasdaq National Market under the symbol "ARKR." The high and low sale prices for our Common Stock from October 2, 2005 through September 27, 2008 are as follows:

<u>Calendar 2006</u>	<u>High</u>	<u>Low</u>
Fourth Quarter	\$ 32.89	\$ 26.55
<u>Calendar 2007</u>		
First Quarter	35.37	30.60
Second Quarter	36.99	33.01
Third Quarter	37.63	35.71
Fourth Quarter	37.00	34.42
<u>Calendar 2008</u>		
First Quarter	37.32	29.10
Second Quarter	29.00	25.13
Third Quarter	26.25	18.03

Dividend Policy

A quarterly cash dividend in the amount of \$0.35 per share was declared on October 12, 2004. Subsequent to October 12, 2004, quarterly cash dividends in the amount of \$0.35 per share were declared October 10 and December 20, 2006 and on April 12, 2007. We declared an increase in our quarterly cash dividend to \$0.44 per share on May 23, 2007 and subsequent quarterly cash dividends reflecting this increased amount were declared on October 12, 2007 and January 11, April 11, July 11 and October 10, 2008. In addition, we declared a special cash dividend in the amount of \$3.00 per share on December 20, 2006. Prior to this, we had not paid any cash dividends since our inception. On December 18, 2008, our Board of Directors determined to suspend the dividend which would have customarily been declared in January 2009. For the foreseeable future, our dividend policy will be determined by our Board of Directors on a quarter by quarter basis.

Issuer Purchases of Equity Securities

The following table sets forth information regarding purchases of our common stock by us and any affiliated purchasers during the three months ended September 27, 2008. Stock repurchases may be made in the open market or in private transactions at times and in amounts that we deem appropriate. However, there is no guarantee as to the exact number of additional shares that may be repurchased, and we may terminate or limit the stock repurchase program at any time prior to its expiration. We will cancel the repurchased shares.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Period	(a) Total Number of Shares (or Units) Purchased	(b) Average Price Paid per Share (or Unit)	(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	(d) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs
Month #1 June 29, 2008 through July 29, 2008	0	Not Applicable	0	500,000
Month #2 July 30, 2008 through August 30, 2008	4,957	\$18.74	4,957	495,043
Month #3 August 31, 2008 through September 27, 2008	60,000	\$18.60	60,000	435,043
Total	64,957	\$18.61	64,957	435,043

(1) On March 25, 2008, our Board of Directors authorized a stock repurchase program under which up to 500,000 shares of our common stock may be acquired in the open market or in private transactions over the two years following such authorization at our discretion.

As of December 22, 2008, we have purchased an additional aggregate of 42,000 shares at an average purchase price of \$11.90 per share in private transactions pursuant to our stock repurchase program. As of December 9, 2008, there were 32 holders of record of our Common Stock, \$.01 par value. This does not include the number of persons whose stock is in nominee or "street name" accounts through brokers.

Securities Authorized for Issuance Under Equity Compensation Plans

The following is a summary of the securities issued and authorized for issuance under our 2004 Stock Option Plan at September 27, 2008:

Plan Category	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted - average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by shareholders ¹	271,500	\$30.59	151,000
Equity compensation plans not approved by shareholders ²	None	N/A	None
Total	271,500	\$30.59	151,000

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Of the 271,500 options outstanding on September 27, 2008, 177,500 were held by the Company's officers and directors.

- (1) The 2004 Stock Option Plan, which was approved by shareholders, is the Company's only equity compensation plan currently in effect.

(2) The Company has no equity compensation plan that was not approved by shareholders.

Stock Performance Graph

The graph set forth below compares the yearly percentage change in cumulative total shareholder return on the Company's Common Stock for the five-year period commencing September 27, 2003 and ending September 27, 2008 against the cumulative total return on the NASDAQ Market Index and a peer group comprised of those public companies whose business activities fall within the same standard industrial classification code as the Company. This graph assumes a \$100 investment in the Company's Common Stock and in each index on September 27, 2003 and that all dividends paid by companies included in each index were reinvested.

COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN*

Among Ark Restaurants Corp., The NASDAQ Composite Index
And SIC Code 5812 - Eating & Drinking Places

	Cumulative Total Return					
	9/27/03	10/2/04	10/1/05	9/30/06	9/29/07	9/27/08
Ark Restaurants Corp.	100.00	239.34	288.32	256.83	409.42	213.12
NASDAQ Composite	100.00	107.74	123.03	131.60	158.88	119.05
SIC Code 5812 - Eating & Drinking Places	100.00	129.52	149.03	178.78	206.11	199.63

Item 6. Selected Consolidated Financial Data

Not applicable.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Accounting period

Our fiscal year ends on the Saturday nearest September 30. We report fiscal years under a 52/53-week format. This reporting method is used by many companies in the hospitality industry and is meant to improve year-to-year comparisons of operating results. Under this method, certain years will contain 53 weeks. The fiscal years ended September 29, 2007 and September 27, 2008 each included 52 weeks.

Overview

We have reclassified our consolidated statements of operations data for the prior periods presented below, in accordance with SFAS 144, as a result of the:

-- sale of two of our restaurants and the closure of three of our restaurants during the fiscal year ended September 29, 2007; and

-- closure of two of our restaurants during the fiscal year ended September 27, 2008.

The operations of these restaurants have been presented as discontinued operations for the fiscal years ended September 29, 2007 and September 27, 2008. See [Item 1 -Recent Restaurant Dispositions and Charges], [Item 7 - Recent Restaurant Dispositions] and Note 3 of Consolidated Financial Statements.

Revenues

Total revenues increased by 6.4% from fiscal 2007 to fiscal 2008. Revenues for fiscal 2008 were reduced by \$3,100,000 and revenues for fiscal 2007 were reduced by \$2,686,000 as a result of the sale of two facilities and the closure of five of our facilities and their reclassification to discontinued operations.

Same store sales increased 0.9%, or \$1,052,000, on a Company-wide basis from fiscal 2007 to fiscal 2008. Same store sales in Las Vegas decreased by \$90,000, or 0.2%, in fiscal 2008 compared to fiscal 2007. Same store sales in New York increased \$1,371,000, or 4.3%, during fiscal 2008. Same store sales in Washington D.C. decreased by \$169,000, or 0.9%, during fiscal 2008. Same store sales in Atlantic City decreased by \$294,000 or 8.2% in fiscal 2008 compared to fiscal 2007. Same store sales in Boston increased \$121,000, or 3.5%, during fiscal 2008. Same store sales in Connecticut increased \$113,000, or 7.9%, during fiscal 2008.

Other operating income, which consists of the sale of merchandise at various restaurants, management fee income and door sales were \$2,456,000 in fiscal 2008 and \$2,145,000 in fiscal 2007.

Costs and Expenses

Food and beverage cost of sales as a percentage of total revenue was 26.2% in fiscal 2008 and 25.7% in fiscal 2007.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Total costs and expenses increased by \$8,494,000, or 7.9%, from fiscal 2007 to fiscal 2008 primarily due to increased sales.

Payroll expenses as a percentage of total revenues was 30.6% in fiscal 2008 compared to 30.2% in fiscal 2007. Payroll expense was \$38,325,000 and \$35,630,000 in fiscal 2008 and 2007, respectively. In fiscal 2008, increased sales resulted in an increase in payroll expenses. We continually evaluate our payroll expenses as they relate to sales.

We typically incur significant pre-opening expenses in connection with our new restaurants that are expensed as incurred. Furthermore, it is not uncommon that such restaurants experience operating losses during the early months of operation.

In fiscal 2008, we began operating a Mexican restaurant and lounge, *Yolos*, at the rethemed Planet Hollywood Casino in Las Vegas, Nevada, and entered into an agreement to lease space for a yet to be named restaurant at the Museum of Arts & Design at Columbus Circle in Manhattan. The obligation to pay rent for the restaurant at the Museum of Arts & Design is not effective until the earlier to occur of the date the restaurant opens for business or March 1, 2009. We anticipate that:

-- investors will invest in the limited liability company that leases the space and such investors will reimburse this limited liability company for all pre-opening expenses;

-- we will be the managing member of this limited liability company and, through this limited liability company, we will manage the operations of the restaurant in exchange for a monthly management fee equal to five-percent of the gross receipts of the restaurant;

-- neither we nor any of our subsidiaries will contribute any capital to this limited liability company; and

-- none of the obligations of this limited liability company will be guaranteed by us and investors in this limited liability company will have no recourse against us or any of our assets.

However, due to the current economic climate, we cannot be certain that such investors will be available. In such a situation, we anticipate we will contribute capital for pre-opening expenses and operate this restaurant through this limited liability company as a subsidiary.

In fiscal 2007, we:

-- converted our bar, *Luna Lounge*, at the Resorts Atlantic City Hotel and Casino in Atlantic City, New Jersey, into a restaurant, *Gallagher's Burger Bar*;

-- expanded our operations at the Foxwoods Resort Casino by opening *The Grill at Two Trees* in the Two Trees Inn, a facility owned by the Mashantucket Pequot Tribal Nation and a part of the Foxwoods Resort Casino, in Ledyard, Connecticut;

-- began construction of *Yolos*; and

-- began operating the *Durgin Park Restaurant and the Black Horse Tavern* in Boston, Massachusetts.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

We purchased the *Durgin Park* facility in 2007 from the previous owner for \$2,000,000 in cash and a \$1,000,000 five year promissory note bearing interest at a rate of 7% per year.

We experienced \$210,000 and \$129,000 in pre-opening and early operating losses at our facilities in fiscal 2008 and fiscal 2007, respectively.

General and administrative expenses, as a percentage of total revenue, were 7.3% in fiscal 2008 and 7.7% in fiscal 2007.

We manage:

- two consolidated facilities we do not own (*El Rio Grande* and *The Food Market at the MGM Grand*),
- the Tampa and Hollywood Florida food court operations, and
- *Lucky Seven* at Foxwoods.

Sales of *El Rio Grande* were \$4,312,000 and \$3,873,000 during fiscal 2008 and 2007, respectively. Sales of the *The Food Market at the MGM Grand* were \$1,457,000 during the portion of fiscal 2008 in which it was open. *The Food Market at the MGM Grand* was not open during fiscal 2007. Sales of the Tampa and Hollywood Florida food court operations were \$12,454,000 during fiscal 2008 and \$12,170,000 during fiscal 2007. Sales of *Lucky Seven* were \$2,608,000 and \$2,691,000 during fiscal 2008 and 2007, respectively.

Interest expense was \$57,000 in fiscal 2008 and \$65,000 in fiscal 2007. Interest income was \$490,000 in fiscal 2008 and \$417,000 in fiscal 2007. During fiscal 2007 we began an investment program utilizing our large cash balances. Investments are made in government securities and investment quality corporate instruments.

Other income, which generally consists of purchasing service fees, equity in losses of affiliates and other income at various restaurants, was \$716,000 and \$798,000 for fiscal 2008 and 2007, respectively.

Income Taxes

The provision for income taxes reflects Federal income taxes calculated on a consolidated basis and state and local income taxes calculated by each New York subsidiary on a non-consolidated basis. Most of the restaurants we own or manage are owned or managed by a separate subsidiary.

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

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

The Revenue Reconciliation Act of 1993 provides tax credits to us for FICA taxes paid on tip income of restaurant service personnel. The net benefit to us was \$832,000 in fiscal 2008 and \$799,000 in fiscal 2007.

Our tax return for the fiscal year ended September 30, 2006 is currently under audit by the Internal Revenue Service. We expect no material adjustments will result from this examination.

Liquidity and Capital Resources

Our primary source of capital has been cash provided by operations. We have, from time to time, also utilized equipment financing in connection with the construction of a restaurant and seller financing in connection with the acquisition of a restaurant. We utilize capital primarily to fund the cost of developing and opening new restaurants, acquiring existing restaurants owned by others and remodeling existing restaurants we own.

The net cash used in investing activities in fiscal 2008 was \$6,928,000. Cash was used for the replacement of fixed assets at existing restaurants and the construction of *Yolos*, a Mexican restaurant, at the Planet Hollywood Resort and Casino (formerly known as the Aladdin Resort and Casino) in Las Vegas, Nevada. Cash was also used to purchase investment securities. Cash provided by investing activities was generated from the sale of discontinued operations and the sale of investment securities.

The net cash used in investing activities in fiscal 2007 was \$117,000. Cash was used for the replacement of fixed assets at existing restaurants, converting our bar, *Luna Lounge*, at the Resorts Atlantic City Hotel and Casino in Atlantic City, New Jersey, into a restaurant, *Gallagher's Burger Bar*, opening *The Grill at Two Trees* in the Two Trees Inn, a facility owned by the Mashantucket Pequot Tribal Nation and a part of the Foxwoods Resort Casino, in Ledyard, Connecticut, purchasing the *Durgin Park Restaurant and the Black Horse Tavern* in Boston, Massachusetts from the previous owner for \$2,000,000 in cash and a \$1,000,000 five year promissory note bearing interest at a rate of 7% per year, and the construction of *Yolos* in Las Vegas, Nevada. Cash was also used to purchase investment securities. Cash provided by investing activities was generated from the sale of discontinued operations and the sale of investment securities.

The net cash used in financing activities in fiscal 2008 of \$5,461,000 and \$15,309,000 in fiscal 2007 was principally used for the payment of dividends.

We had a working capital surplus of \$9,144,000 at September 27, 2008 as compared to a working capital surplus of \$11,571,000 at September 29, 2007.

A quarterly cash dividend in the amount of \$0.35 per share was declared on October 12, 2004. Subsequent to October 12, 2004, quarterly cash dividends in the amount of \$0.35 per share were declared October 10 and December 20, 2006 and on April 12, 2007. We declared an increase in our quarterly cash dividend to \$0.44 per share on May 23, 2007 and subsequent quarterly cash dividends reflecting this increased amount were declared on October 12, 2007 and January 11, April 11, July 11 and October 10, 2008. In addition, we declared a special cash dividend in the amount of \$3.00 per share on December 20, 2006. Prior to this, we had not paid any cash dividends since our inception. We intend to continue to pay such quarterly cash dividend for the foreseeable future, however, the payment of future dividends is at the discretion of our Board of Directors and is based on future earnings, cash flow, financial condition, capital requirements, changes in U.S. taxation and other relevant factors.

Restaurant Expansion

During the fiscal year ended September 27, 2008, we:

- expanded our operations at the Foxwoods Resort Casino by opening *The Food Market* in the MGM Grand Casino, a facility part of the Foxwoods Resort Casino, in Ledyard, Connecticut;
- began operating a Mexican restaurant and lounge, *Yolos*, at the rethemed Planet Hollywood Casino in Las Vegas, Nevada; and
- entered into an agreement to lease space for a yet to be named restaurant at the Museum of Arts & Design at Columbus Circle in Manhattan.

The obligation to pay rent for the restaurant at the Museum of Arts & Design is not effective until the earlier to occur of the date the restaurant opens for business or Mach 1, 2009. We anticipate that:

- investors will invest in the limited liability company that leases the space and such I investors will reimburse this limited liability company for all pre-opening expenses;
- we will be the managing member of this limited liability company and, through this limited liability company, we will manage the operations of the restaurant in exchange for a monthly management fee equal to five-percent of the gross receipts of the restaurant;
- neither we nor any of our subsidiaries will contribute any capital to this limited liability company; and
- none of the obligations of this limited liability company will be guaranteed by us and investors in this limited liability company will have no recourse against us or any of our assets.

However, due to the current economic climate, we cannot be certain that such investors will be available. In such a situation, we anticipate we will contribute capital for pre-opening expenses and operate this restaurant through this limited liability company as a subsidiary.

The opening of a new restaurant is invariably accompanied by substantial pre-opening expenses and early operating losses associated with the training of personnel, excess kitchen costs, costs of supervision and other expenses during the pre-opening period and during a post-opening "shake out" period until operations can be considered to be functioning normally. The amount of such pre-opening expenses and early operating losses can generally be expected to depend upon the size and complexity of the facility being opened. We incurred \$210,000 in pre-opening expenses in fiscal 2008.

Our restaurants generally do not achieve substantial increases in revenue from year to year, which we consider to be typical of the restaurant industry. To achieve significant increases in revenue or to replace revenue of restaurants that lose customer favor or which close because of lease expirations or other reasons, we would have to open additional restaurant facilities or expand existing restaurants. There can be no assurance that a restaurant will be successful after it is opened, particularly since in many instances we do not operate our new restaurants under a trade name currently used by us, thereby requiring new restaurants to establish their own identity.

Apart from these agreements, we are not currently committed to any projects. We may take advantage of opportunities we consider to be favorable, when they occur, depending upon the availability of financing and other factors.

Recent Restaurant Dispositions and Charges

Our bar/nightclub facility Venus, located at the Venetian Casino Resort, experienced a steady decline in sales and we felt that a new concept was needed at this location. During the first quarter of 2005, this bar/nightclub facility was closed for re-concepting and re-opened as "Vivid" on February 4, 2005. Total conversion costs were approximately \$400,000. Sales at the new bar/nightclub facility subsequently failed to reach a level sufficient to achieve the results we required and we have identified a buyer for this facility. As of December 31, 2005, we classified the assets and liabilities of this bar/nightclub facility as "held for sale" in accordance with Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS No. 144") based on the fact that the facility has met the criteria under SFAS No. 144. Based on the offers made for this facility, we recorded an impairment charge of \$537,000 during the first fiscal quarter of 2007. An additional impairment charge of \$38,000 was recorded during the fourth fiscal quarter of 2007 as a result of the sale of the facility. We recorded operating losses of \$188,000 during the fiscal year ended September 29, 2007. The impairment charges and operating losses are included in discontinued operations.

Also during fiscal 2006, we were approached by the Venetian Casino Resort who indicated that, due to the expansion of the Grand Canal Shoppes, our Lutece and Tsunami locations, as well as a portion of our Vivid location, in the Grand Canal Shoppes were desired by other tenants. The Venetian Casino Resort offered to purchase these locations from us for an aggregate of \$14,000,000. After evaluating the offer, we determined that such offer made it advantageous for us to redeploy these assets. Effective December 1, 2006, our subsidiaries that leased each of our Lutece, Tsunami and Vivid locations at the Venetian Resort Hotel Casino in Las Vegas, Nevada, entered into an agreement to sell Lutece, Tsunami and a portion of the Vivid location used by Lutece as a prep kitchen to Venetian Casino Resort, LLC for an aggregate of \$14,000,000. Our Lutece location closed on December 3, 2006 and our Tsunami location closed on January 3, 2007. We realized a gain of \$7,814,000 (\$5,196,000 after taxes, or \$1.45 per share) on the sale of these facilities. We recorded operating income of \$34,000 for the fiscal year ended September 29, 2007. The gain on sale and income are included in discontinued operations.

During the first fiscal quarter of 2008, we discontinued the operation of our Columbus Bakery retail and wholesale bakery located in New York City. Columbus Bakery was originally intended to serve as the bakery that would provide all of our New York restaurants with baked goods as well as being a retail bakery operation. As a result of the sale and closure of several of our restaurants in New York City during the last several years, this bakery operation was no longer profitable. During the second fiscal quarter of 2008 we opened, along with certain third party investors, a new concept at this location called "Pinch & S'Mac" which features pizza and macaroni and cheese. We contributed Columbus Bakery's net fixed assets and cash into this venture and received an ownership interest of 37.5%. These operations are not consolidated in the Company's consolidated financial statements.

Effective June 30, 2008, the lease for our *Stage Deli* facility at the Forum Shops in Las Vegas, Nevada expired. The landlord for this facility offered to renew the lease at this location prior to its expiration at a significantly increased rent. The Company determined that it would not be able to operate this facility profitably at this location at the rent offered in the landlord's renewal proposal. As a result, the Company discontinued these operations during the third fiscal quarter of 2008 and took a charge for the impairment of goodwill of \$294,000 and a loss on disposal of \$19,000. The impairment charge and disposal loss are included in discontinued operations.

As a result of the above mentioned sales or closures, we allocated \$294,000 and \$100,000 of goodwill to these restaurants and reduced goodwill by these amounts in fiscal 2008 and 2007, respectively.

Critical Accounting Policies

Financial Reporting Release No. 60, published by the SEC, recommends that all companies include a discussion of critical accounting policies used in the preparation of their financial statements. Our significant accounting policies are more fully described in Note 1 to our consolidated financial statements. While all these significant accounting policies impact our financial condition and results of operations, we view certain of these policies as critical. Policies determined to be critical are those policies that have the most significant impact on our consolidated financial statements and require management to use a greater degree of judgment and estimates. Actual results may differ from those estimates.

We believe that given current facts and circumstances, it is unlikely that applying any other reasonable judgments or estimate methodologies would cause a material effect on our consolidated results of operations, financial position or cash flows for the periods presented in this report.

Below are listed certain policies that management believes are critical:

Use of Estimates

The preparation of financial statements requires the application of certain accounting policies, which may require us to make estimates and assumptions of future events. In the process of preparing its consolidated financial statements, we estimate the appropriate carrying value of certain assets and liabilities, which are not readily apparent from other sources. The primary estimates underlying our consolidated financial statements include allowances for potential bad debts on accounts and notes receivable, the useful lives and recoverability of its assets, such as property and intangibles, fair values of financial instruments and share-based compensation, the realizable value of its tax assets and 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.

Long-Lived Assets

We annually assess any impairment in value of long-lived assets to be held and used. We evaluate the possibility of impairment by comparing anticipated undiscounted cash flows to the carrying amount of the related long-lived assets. If such cash flows are less than carrying value we then reduce the asset to its fair value. Fair value is generally calculated using discounted cash flows. Various factors such as sales growth and operating margins and proceeds from a sale are part of this analysis. Future results could differ from our projections with a resulting adjustment to income in such period.

Leases

We are obligated under various lease agreements for certain restaurants. We recognize rent expense on a straight-line basis over the expected lease term, including option periods as described below. Within the provisions of certain leases there are escalations in payments over the base lease term, as well as renewal periods. The effects of the escalations have been reflected in rent expense on a straight-line basis over the expected lease term, which includes option periods when it is deemed to be reasonably assured that we would incur an economic penalty for not exercising the option. Percentage rent expense is generally based upon sales levels and is expensed as incurred. Certain leases include both base rent and percentage rent. We record rent expense on these leases based upon reasonably assured sales levels. The consolidated financial statements reflect the same lease terms for amortizing leasehold improvements as were used in calculating straight-line rent expense for each restaurant. Our judgments may produce materially different amounts of amortization and rent expense than would be reported if different lease terms were used.

Deferred Income Tax Valuation Allowance

We provide such allowance due to uncertainty that some of the deferred tax amounts may not be realized. Certain items, such as state and local tax loss carry forwards, are dependent on future earnings or the availability of tax strategies. Future results could require an increase or decrease in the valuation allowance and a resulting adjustment to income in such period.

Accounting for Goodwill and Other Intangible Assets

During 2001, the FASB issued SFAS 142, which requires that for us, effective September 28, 2002, goodwill, including the goodwill included in the carrying value of investments accounted for using the equity method of accounting, and certain other intangible assets deemed to have an indefinite useful life, cease amortizing. SFAS 142 requires that goodwill and certain intangible assets be assessed for impairment using fair value measurement techniques. Specifically, goodwill impairment is determined using a two-step process. The first step of the goodwill impairment test is used to identify potential impairment by comparing the fair value of the reporting unit (the Company is being treated as one reporting unit) with its net book value (or carrying amount), including goodwill. If the fair value of the reporting unit exceeds its carrying amount, goodwill of the reporting unit is considered not impaired and the second step of the impairment test is unnecessary. If the carrying amount of the reporting unit exceeds its fair value, the second step of the goodwill impairment test is performed to measure the amount of impairment loss, if any. The second step of the goodwill impairment test compares the implied fair value of the reporting unit's goodwill with the carrying amount of that goodwill. If the carrying amount of the reporting unit's goodwill exceeds the implied fair value of that goodwill, an impairment loss is recognized in an amount equal to that excess. The implied fair value of goodwill is determined in the same manner as the amount of goodwill recognized in a business combination. That is, the fair value of the reporting unit is allocated to all of the assets and liabilities of that unit (including any unrecognized intangible assets) as if the reporting unit had been acquired in a business combination and the fair value of the reporting unit was the purchase price paid to acquire the reporting unit. The impairment test for other intangible assets consists of a comparison of the fair value of the intangible asset with its carrying value. If the carrying value of the intangible asset exceeds its fair value, an impairment loss is recognized in an amount equal to that excess.

Determining the fair value of the reporting unit under the first step of the goodwill impairment test and determining the fair value of individual assets and liabilities of the reporting unit (including unrecognized intangible assets) under the second step of the goodwill impairment test is judgmental in nature and often involves the use of significant estimates and assumptions. Similarly, estimates and assumptions are used in determining the fair value of other intangible assets. These estimates and assumptions could have a significant impact on whether or not an impairment charge is recognized and also the magnitude of any such charge. To assist in the process of determining goodwill impairment, we obtain appraisals from independent valuation firms. In addition to the use of independent valuation firms, we perform internal valuation analyses and consider other market information that is publicly available. Estimates of fair value are primarily determined using discounted cash flows and market comparisons and recent transactions. These approaches use significant estimates and assumptions including projected future cash flows (including timing), discount rate reflecting the risk inherent in future cash flows, perpetual growth rate, determination of appropriate market comparables and the determination of whether a premium or discount should be applied to comparables. Based on the above policy no impairment charges were recorded during the fiscal years ended 2008 and 2007.

Share-Based Compensation

Effective October 2, 2005 the Company adopted Statement of Financial Accounting Standards No. 123R, *Share-Based Payment* (SFAS No. 123R), and related interpretations and began expensing the grant-date fair value of employee stock options. Prior to October 2, 2005, the Company applied Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations in accounting for its stock option plans. Accordingly, prior to October 2, 2005, no compensation expense has been recognized in net income for employee stock options, as options granted had an exercise price equal to the market value of the underlying common stock on the date of grant.

Upon adoption of SFAS 123R, the Company elected to value employee stock options using the Black-Scholes option valuation method 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 options granted on December 21, 2004, which were unvested at the time of the adoption of SFAS 123R, included a risk free interest rate of 3.37%, volatility of 37%, a dividend yield of 3% and an expected life of three years.

The Company adopted SFAS No. 123R using the modified prospective transition method and therefore has not restated prior periods. Under this transition method, compensation cost associated with employee stock options recognized during fiscal 2006 includes amortization related to the remaining unvested portion of stock awards granted prior to October 2, 2005.

Recently Issued Accounting Standards

The Financial Accounting Standards Board has recently issued the following accounting pronouncements:

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* (SFAS 157), which, among other requirements, defines fair value, establishes a framework for measuring fair value, and expands disclosures about the use of fair value to measure assets and liabilities. SFAS 157 prescribes a single definition of fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. For financial instruments and certain nonfinancial assets and liabilities that are recognized or disclosed at fair value on a recurring basis at least annually, SFAS 157 is effective beginning the first fiscal year that begins after November 15, 2007, which corresponds to the Company's fiscal year beginning September 28, 2008. For all other nonfinancial assets and liabilities the effective date of SFAS 157 has been delayed to the first fiscal year beginning after November 15, 2008, which corresponds to the Company's fiscal year beginning October 4, 2009. The Company is still determining the effect SFAS 157 will have on its consolidated financial statements, but it currently does not expect the effect to be material.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* (SFAS 159), which permits measurement of recognized financial assets and liabilities at fair value with certain exceptions such as investments in subsidiaries, obligations for pension or other postretirement benefits, and financial assets and financial liabilities recognized under leases. Changes in the fair value of items for which the fair value option is elected should be recognized in income or loss. The election to measure eligible items at fair value is irrevocable and can only be made at defined election dates or events, generally on an instrument by instrument basis. Items for which the fair value option is elected should be separately presented or parenthetically be disclosed in the statement of financial position. SFAS 159 also requires significant new disclosures that apply for interim and annual financial statements. SFAS 159 shall be effective for fiscal years beginning after November 15, 2007 with earlier adoption permitted, if certain conditions are met. The effect of the first remeasurement to fair value of eligible items existing would be reported as an adjustment to the opening balance of retained earnings as of the date of adoption, which corresponds to the Company's fiscal year beginning September 28, 2008. The Company is currently evaluating SFAS 159 and determining whether to elect the fair value option for certain financial assets and liabilities.

In December 2007, the FASB issued SFAS No. 141 (Revised), *Business Combinations* (SFAS 141R), which establishes principles and requirements for the reporting entity in a business combination, including recognition and measurement in the financial statements of the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree. This statement also establishes disclosure requirements to enable financial statement users to evaluate the nature and financial effects of the business combination. SFAS 141R applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. SFAS 141R will become effective for our fiscal year beginning October 4, 2009.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51*, (SFAS 160), which amends Accounting Research Bulletin No. 51, *Consolidated Financial Statements* (ARB No. 51), to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This standard defines a noncontrolling interest, previously referred to as minority interest, as the portion of equity in a subsidiary not attributable, directly or indirectly, to a parent. SFAS 160 requires, among other items, that a noncontrolling interest be included in the consolidated balance sheet within equity separate from the parent's equity; consolidated net income to be reported at amounts inclusive of both the parent's and noncontrolling interest's shares and, separately, the amounts of consolidated net income attributable to the parent and noncontrolling interest all on the consolidated statement of income; and if a subsidiary is deconsolidated, any retained noncontrolling equity investment in the former subsidiary be measured at fair value and a gain or loss be recognized in net income based on such fair value. SFAS 160 is effective for fiscal years beginning after December 15, 2008, which corresponds to the Company's fiscal year beginning October 4, 2009. The Company is currently evaluating the potential impact of adopting SFAS 160 on its consolidated financial statements.

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities—an amendment of FASB Statement No. 133* (SFAS 161), which requires enhanced disclosures about an entity's derivative and hedging activities and thereby improves the transparency of financial reporting. The objective of the guidance is to provide users of financial statements with an enhanced understanding of how and why an entity uses derivative instruments; how derivative instruments and related hedged items are accounted for; and how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. SFAS 161 is effective for interim and annual periods beginning after November 15, 2008, which corresponds to the Company's quarterly period beginning December 28, 2008. Management is currently evaluating the impact SFAS 161 will have on the Company's consolidated financial statements, but it currently does not expect the effect to be material.

In April 2008, the FASB issued FASB Staff Position 142-3, *Determination of the Useful Life of Intangible Assets* (FSP FAS 142-3), which amends the list of factors an entity should consider in developing renewal or extension assumptions in determining the useful life of recognized intangible assets under SFAS No. 142, *Goodwill and Other Intangible Assets*. The new guidance applies to (1) intangible assets that are acquired individually or with a group of other assets and (2) intangible assets acquired in both business combinations and asset acquisitions. Under FSP FAS 142-3, entities estimating the useful life of a recognized intangible asset must consider their historical experience in renewing or extending similar arrangements or, in the absence of historical experience, must consider assumptions that market participants would use about renewal or extension. FSP FAS 142-3 will require certain additional disclosures beginning October 1, 2009 and prospective application to useful life estimates prospectively for intangible assets acquired after September 20, 2009. The Company is in the process of evaluating the impact that the adoption of FSP FAS 142-3 may have on its consolidated financial statements and related disclosures.

In May 2008, the FASB issued SFAS No. 162, *The Hierarchy of Generally Accepted Accounting Principles*. SFAS No. 162 identifies the sources of accounting principles and provides entities with a framework for selecting the principles used in preparation of financial statements that are presented in conformity with GAAP. The current GAAP hierarchy has been criticized because it is directed to the auditor rather than the entity, it is complex, and it ranks FASB Statements of Financial Accounting Concepts, which are subject to the same level of due process as FASB Statements of Financial Accounting Standards, below industry practices that are widely recognized as generally accepted but that are not subject to due process. The Board believes the GAAP hierarchy should be directed to entities because it is the entity (not its auditors) that is responsible for selecting accounting principles for financial statements that are presented in conformity with GAAP. The adoption of SFAS No. 162 is not expected to have a material impact on our consolidated financial statements.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 8. Financial Statements and Supplementary Data

Our Consolidated Financial Statements are included in this report immediately following Part IV.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None.

Item 9A(T). Controls and Procedures

Evaluation of Disclosure Controls and Procedures.

Our management, with the participation of the our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Annual Report on Form 10-K. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective.

Management's Annual Report on Internal Control Over Financial Reporting.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rule 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended, as a process designed by, or under the supervision of, our principal executive and principal financial officers and effected by our board of directors, management and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with the authorization of our management and directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Management assessed the effectiveness of our internal control over financial reporting as of September 27, 2008. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control-Integrated Framework*.

Based on this assessment, management concluded that, as of September 27, 2008, our internal control over financial reporting was effective.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fourth quarter of fiscal 2008 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the Effectiveness of Controls

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

See Part I, Item 4, "Executive Officers of the Registrant." Other information relating to our directors and executive officers is incorporated by reference to the definitive proxy statement for our 2009 annual meeting of stockholders to be filed with the Securities and Exchange Commission (the "SEC") pursuant to Regulation 14A no later than 120 days after the end of the fiscal year covered by this form (the "Proxy Statement"). Information relating to compliance with Section 16(a) of the Exchange Act is incorporated by reference to the Proxy Statement.

Code of Ethics.

We have adopted a code of ethics that applies to our principal executive officer, principal financial officer, principal accounting officer or controller, and persons performing similar functions. We will provide any person without charge, upon request, a copy of such code of ethics by mailing the request to us at 85 Fifth Avenue, New York, NY 10003, Attention: Robert Towers.

Audit Committee Financial Expert

Our Board of Directors has determined that Marcia Allen, Director, is our Audit Committee Financial Expert, as defined under Section 407 of the Sarbanes-Oxley Act of 2002 and the rules promulgated by the SEC in furtherance of Section 407. Ms. Allen is independent of management. Other information regarding the Audit Committee is incorporated by reference from the Proxy Statement.

Item 11. Executive Compensation

The information required by this item is incorporated by reference to the Proxy Statement.

Item 12. Security Ownership of Certain Beneficial Owners and Management

The information required by this item is incorporated by reference to the Proxy Statement.

Item 13. Certain Relationships and Related Transactions

The information required by this item is incorporated by reference to the Proxy Statement.

Item 14. Principal Accountant Fees and Services

The information required by this item is incorporated by reference to the Proxy Statement.

PART IVItem 15. Exhibits, Financial Statement Schedules, and Reports on Form 8-K

(a)	(1)	Financial Statements:	<u>Page</u>
		Reports of Independent Registered Public Accounting Firm	F-1
		Consolidated Balance Sheets -- at September 27, 2008 and September 29, 2007	F-2
		Consolidated Statements of Operations --years ended September 27, 2008 and September 29, 2007	F-3
		Consolidated Statements of Cash Flows -- years ended September 27, 2008 and September 29, 2007	F-4
		Consolidated Statements of Shareholders' Equity -- years ended September 27, 2008 and September 29, 2007	F-5
		Notes to Consolidated Financial Statements	F-6
	(2)	Financial Statement Schedules	
		None	
	(3)	Exhibits:	
	3.1	Certificate of Incorporation of the Registrant, filed with the Secretary of State of the State of New York on January 4, 1983, incorporated by reference to Exhibit 3.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 28, 2002 (□2002 10-K□).	
	3.2	Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on October 11, 1985, incorporated by reference to Exhibit 3.2 to the 2002 10-K.	
	3.3	Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on July 21, 1988, incorporated by reference to Exhibit 3.3 to the 2002 10-K.	
	3.4	Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on May 13, 1997, incorporated by reference to Exhibit 3.4 to the 2002 10-K.	
	3.5	Certificate of Amendment of the Certificate of Incorporation of the Registrant filed on April 24, 2002 incorporated by reference to Exhibit 3.5 to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 30, 2002 (the □Second Quarter 2002 Form 10-Q□).	
	3.6	By-Laws of the Registrant, incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-18 filed with the Securities and Exchange Commission on October 17, 1985.	
	10.1	Amended and Restated Redemption Agreement dated June 29, 1993 between the Registrant and Michael Weinstein, incorporated by reference to Exhibit 10.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 2, 1994 (□1994 10-K□).	

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

- 10.2 Form of Indemnification Agreement entered into between the Registrant and each of Michael Weinstein, Ernest Bogen, Vincent Pascal, Robert Towers, Jay Galin, Robert Stewart, Bruce R. Lewin, Paul Gordon and Donald D. Shack, incorporated by reference to Exhibit 10.2 to the 1994 10-K.
- 10.3 Ark Restaurants Corp. Amended Stock Option Plan, incorporated by reference to Exhibit 10.3 to the 1994 10-K.
- 10.4 Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.4 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 2, 1999.
- 10.5 Ark Restaurants Corp. 1996 Stock Option Plan, as amended, incorporated by reference to the Registrant's Definitive Proxy Statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No. 1) filed on March 16, 2001.
- 10.6 Lease Agreement dated May 17, 1996 between New York-New York Hotel, LLC, and Las Vegas America Corp., incorporated by reference to Exhibit 10.6 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 3, 1998 (the "1998 10-K").
- 10.7 Lease Agreement dated May 17, 1996 between New York-New York Hotel, LLC, and Las Vegas Festival Food Corp., incorporated by reference to Exhibit 10.7 to the 1998 10-K.
- 10.8 Lease Agreement dated May 17, 1996 between New York-New York Hotel, LLC, and Las Vegas Steakhouse Corp., incorporated by reference to Exhibit 10.8 to the 1998 10-K.
- 10.9 Amendment dated August 21, 2000 to the Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.9 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2000 (the "2000 10-K").
- 10.10 Amendment dated November 21, 2000 to the Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.10 to the 2000 10-K.
- 10.11 Amendment dated November 1, 2001 to the Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.11 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 29, 2001 (the "2001 10-K").
- 10.12 Amendment dated December 20, 2001 to the Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.11 of the 2001 10-K.
- 10.13 Amendment dated as of April 23, 2002 to the Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.13 of the Second Quarter 2002 Form 10-Q.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

- 10.14 Amendment dated as of January 22, 2002 to the Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.14 of the First Quarter 2003 Form 10-Q.
 - 10.15 Ark Restaurants Corp. 2004 Stock Option Plan, as amended, incorporated by reference to the Registrant's Definitive Proxy Statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 filed on January 26, 2004.
 - 14 Code of Ethics, incorporated by reference to Exhibit 14.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 27, 2003.
 - 16 Letter from Deloitte & Touche LLP regarding change in certifying accountants, incorporated by reference from the exhibit included with our Current Report on Form 8-K filed with the SEC on January 15, 2004 and our Current Report on Form 8-K/A filed with the SEC on January 16, 2004.
 - *21 Subsidiaries of the Registrant.
 - *23 Consent of J.H. Cohn LLP.
 - *31.1 Certification of Chief Executive Officer.
 - *31.2 Certification of Chief Financial Officer.
 - *32 Section 1350 Certification
- (b) Reports on Form 8-K
- Report on Form 8-K dated December 19, 2007
 - Report on Form 8-K dated December 23, 2008
 - Report on Form 8-K dated January 11, 2008
 - Report on Form 8-K dated February 8, 2008
 - Report on Form 8-K dated March 27, 2008
 - Report on Form 8-K dated April 11, 2008
 - Report on Form 8-K dated May 12, 2008
 - Report on Form 8-K dated July 11, 2008
 - Report on Form 8-K dated July 22, 2008
 - Report on Form 8-K dated August 8, 2007
 - Report on Form 8-K dated October 10, 2008

* Filed herewith.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders
Ark Restaurants Corp.

We have audited the accompanying consolidated balance sheets of Ark Restaurants Corp. and Subsidiaries as of September 27, 2008 and September 29, 2007, and the related consolidated statements of operations, shareholders' equity and cash flows for each of the two years in the period ended September 27, 2008. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Ark Restaurants Corp. and Subsidiaries as of September 27, 2008 and September 29, 2007, and their consolidated results of operations and cash flows for each of the two years in the period ended September 27, 2008, in conformity with accounting principles generally accepted in the United States of America.

/s/ J.H. Cohn LLP

Jericho, New York
December 22, 2008

F-1

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

ARK RESTAURANTS CORP. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(In Thousands, Except Per Share Amounts)

	September 27, 2008	September 29, 2007
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 2,978	\$ 4,009
Short-term investments in available-for-sale securities	9,267	9,201
Accounts receivable	2,862	2,657
Related party receivables, net	881	1,318
Employee receivables	281	316
Current portion of long-term receivables	121	114
Inventories	1,556	1,410
Prepaid expenses and other current assets	362	649
Assets held-for-sale	-	1,120
Total current assets	18,308	20,794
LONG-TERM RECEIVABLES, LESS CURRENT PORTION	231	352
FIXED ASSETS - At cost:		
Leasehold improvements	31,533	27,094
Furniture, fixtures and equipment	28,372	25,692
Construction in progress	44	1,142
	59,949	53,928
Less accumulated depreciation and amortization	35,087	33,880
FIXED ASSETS - Net	24,862	20,048
INTANGIBLE ASSETS - Net	62	80
GOODWILL	4,813	5,107
TRADEMARKS	721	721
DEFERRED INCOME TAXES	4,312	4,763
OTHER ASSETS	701	316
TOTALS	\$ 54,010	\$ 52,181
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable - trade	\$ 2,834	\$ 2,404
Accrued expenses and other current liabilities	5,312	5,503
Accrued income taxes	823	1,135
Current portion of note payable	195	181
Total current liabilities	9,164	9,223
OPERATING LEASE DEFERRED CREDIT	3,695	3,771
NOTE PAYABLE, LESS CURRENT PORTION	510	704
OTHER LIABILITIES	157	229
TOTAL LIABILITIES	13,526	13,927
NON-CONTROLLING INTERESTS	2,681	164
COMMITMENTS AND CONTINGENCIES - See Note 11		
SHAREHOLDERS' EQUITY:		
Common stock, par value \$.01 per share - authorized, 10,000 shares; issued and outstanding of 5,667 and 3,532 shares at September 27, 2008 and 5,667 and 3,597 shares at September 29, 2007, respectively	57	57
Additional paid-in capital	22,068	21,756

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Accumulated other comprehensive income (loss)	(30)	49
Retained earnings	25,427	24,780
	47,522	46,642
Less stock option receivable	(124)	(166)
Less treasury stock, at cost, of 2,135 and 2,070 shares at September 27, 2008 and September 29, 2007, respectively	(9,595)	(8,386)
Total shareholders' equity	37,803	38,090
TOTALS	\$ 54,010	\$ 52,181

See notes to consolidated financial statements.

F-2

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS

(In Thousands, Except Per Share Amounts)

	Years Ended	
	September 27, 2008	September 2007
REVENUES		
Food and beverage sales	\$ 122,934	\$ 115,6
Other income	2,456	2,3
Total revenues	125,390	117,8
COST AND EXPENSES:		
Food and beverage cost of sales	32,807	30,2
Payroll expenses	38,325	35,6
Occupancy expenses	16,809	15,4
Other operating costs and expenses	15,414	14,0
General and administrative expenses	9,157	9,0
Depreciation and amortization	3,091	2,0
Total cost and expenses	115,603	107,7
OPERATING INCOME	9,787	10,7
OTHER (INCOME) EXPENSE:		
Interest expense	57	
Interest income	(490)	(4
Other income, net	(716)	(7
Total other income, net	(1,149)	(1,3
Income from continuing operations before provision for income taxes and non-controlling interests	10,936	11,8
Provision for income taxes	3,676	3,0
Income attributable to non-controlling interests	(299)	(2
INCOME FROM CONTINUING OPERATIONS	6,961	7,9
DISCONTINUED OPERATIONS:		
Income from operations of discontinued restaurants (includes a net loss on disposal of \$19 for the year ended September 27, 2008 and a net gain on disposal of \$7,814 for for the year ended September 29, 2007, respectively)	26	7,7
Provision for income taxes	9	2,0
INCOME FROM DISCONTINUED OPERATIONS	17	5,0
NET INCOME	\$ 6,978	\$ 13,0
PER SHARE INFORMATION - BASIC AND DILUTED:		
Income from continuing operations	\$ 1.94	\$ 2
Discontinued operations	0.00	1
BASIC	\$ 1.94	\$ 3
Income from continuing operations	\$ 1.93	\$ 2
Discontinued operations	0.00	1
DILUTED	\$ 1.93	\$ 3
WEIGHTED AVERAGE NUMBER OF SHARES - BASIC	3,594	3,5

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

WEIGHTED AVERAGE NUMBER OF SHARES - DILUTED

3,608

3,

See notes to consolidated financial statements.

F-3

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

	Year Ended	
	September 27, 2008	September 29, 2007
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 6,978	\$ 13,013
Adjustments to reconcile net income to net cash provided by operating activities:		
Deferred income taxes	451	1,542
Stock-based compensation	312	408
Depreciation and amortization	3,091	2,657
(Gain) loss on disposal of discontinued operation	19	(7,814)
Impairment loss on goodwill related to discontinued operations	294	537
Equity in loss of affiliate	127	-
Income attributable to non-controlling interests	299	235
Operating lease deferred credit	(76)	(339)
Changes in operating assets and liabilities:		
Accounts receivable	(205)	(70)
Related party receivables	437	128
Employee receivables	35	78
Inventories	(146)	30
Prepaid expenses and other current assets	270	51
Other assets	(512)	148
Accounts payable - trade	430	211
Accrued income taxes	(312)	(317)
Accrued expenses and other current liabilities	(191)	1,285
Net cash provided by continuing operating activities	11,301	11,783
Net cash provided by (used in) discontinued operating activities	56	(19)
Net cash provided by operating activities	11,357	11,764
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of fixed assets	(8,080)	(3,655)
Proceeds from sale of discontinued operations	1,030	14,000
Purchases of investment securities	(14,645)	(29,189)
Proceeds from sales of investment securities	14,500	20,037
Payment for purchase of Durgin Park	-	(2,000)
Payments received on long-term receivables	114	690
Net cash used in continuing investing activities	(7,081)	(117)
Net cash provided by discontinued investing activities	153	-
Net cash used in investing activities	(6,928)	(117)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Tax benefit on exercise of stock options	-	81
Principal payments on note payable	(180)	(115)
Dividends paid	(6,331)	(16,078)
Exercise of stock options	-	864
Purchase of treasury stock	(1,209)	-
Payments received on stock option receivable	42	-

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Capital contributions from non-controlling interests	2,500	-
Distributions to non-controlling interests	(282)	(61)
Net cash used in financing activities	(5,460)	(15,309)
NET DECREASE IN CASH AND CASH EQUIVALENTS	(1,031)	(3,662)
CASH AND CASH EQUIVALENTS, Beginning of year	4,009	7,671
CASH AND CASH EQUIVALENTS, End of year	\$ 2,978	\$ 4,009

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:

Cash paid during the period for:

Interest	\$ 57	\$ 64
Income taxes	\$ 3,557	\$ 5,969
Non-cash investing activity:		
Investment in unconsolidated affiliates	\$ 298	\$ -
Non-cash financing activity:		
Debt incurred in connection with acquisition	\$ -	\$ 1,000

See notes to consolidated financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
YEARS ENDED SEPTEMBER 27, 2008 AND SEPTEMBER 29, 2007
(In Thousands)

	Common Stock		Additional	Accumulated	Other	Retained	Stock
	Shares	Amount	Paid-In	Comprehensive	Income (Loss)	Earnings	Option
			Capital				Receivable
BALANCE - September 30, 2006	5,632	\$ 57	\$ 20,403	\$ -	\$ -	\$ 27,845	\$ -
Exercise of stock options	35	-	864	-	-	-	-
Tax benefit on exercise of stock options	-	-	81	-	-	-	-
Stock-based compensation	-	-	408	-	-	-	-
Payment of dividends - \$4.49 per share	-	-	-	-	-	(16,078)	-
Unrealized gain on available-for-sale securities	-	-	-	49	-	-	-
Net income	-	-	-	-	-	13,013	-
BALANCE - September 29, 2007	5,667	57	21,756	49	-	24,780	-
Stock-based compensation	-	-	312	-	-	-	-
Payment of dividends - \$1.76 per share	-	-	-	-	-	(6,331)	-
Unrealized loss on available-for-sale securities	-	-	-	(79)	-	-	-
Repayments on stock option receivable	-	-	-	-	-	-	-
Purchases of treasury stock	-	-	-	-	-	-	-
Net income	-	-	-	-	-	6,978	-
BALANCE - September 27, 2008	5,667	\$ 57	\$ 22,068	\$ (30)	\$ -	\$ 25,427	\$ -

See notes to consolidated financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Ark Restaurants owns and operates 20 restaurants and bars, 30 fast food concepts, catering operations and wholesale and retail bakeries. Seven restaurants are located in New York City, four are located in Washington, D.C., five are located in Las Vegas, Nevada, two are located in Atlantic City, New Jersey, one is located at the Foxwoods Resort Casino in Ledyard, Connecticut and one is located in Boston, Massachusetts. The Las Vegas operations include three restaurants within the New York-New York Hotel & Casino Resort and operation of the hotel's room service, banquet facilities, employee dining room and nine food court concepts; one bar within the Venetian Casino Resort as well as three food court concepts. In Las Vegas, the Company also owns and operates one restaurant within the Planet Hollywood Resort and Casino. The Florida operations under management include five fast food facilities in Tampa, Florida and seven fast food facilities in Hollywood, Florida, each at a Hard Rock Hotel and Casino. In Atlantic City, New Jersey, the Company operates a restaurant and a bar in the Resorts Atlantic City Hotel and Casino. The operations at the Foxwoods Resort Casino include one fast food concept and six fast food concepts at the MGM Grand Casino. In Boston, Massachusetts, the Company operates a restaurant in the Faneuil Hall Marketplace.

Accounting Period—The Company's fiscal year ends on the Saturday nearest September 30. The fiscal years ended September 27, 2008 and September 29, 2007 included 52 weeks.

Use of Estimates—The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The accounting estimates that require management's most difficult and subjective judgments include allowances for potential bad debts on receivables, inventories, the useful lives and recoverability of its assets, such as property and intangibles, fair values of financial instruments and share-based compensation, the realizable value of its tax assets and other matters. Because of the uncertainty in such estimates, actual results may differ from these estimates.

Principles of Consolidation—The consolidated financial statements include the accounts of the Company and all of its wholly owned subsidiaries, partnerships and other entities in which it has a controlling interest. Also included in the consolidated financial statements are certain variable interest entities, as discussed below. All significant intercompany balances and transactions have been eliminated in consolidation.

Consolidation of Variable Interest Entities — Effective October 1, 2006, the Company determined that one of its managed restaurants, El Rio Grande ("Rio"), should be presented on a consolidated basis in accordance with the Emerging Issues Task Force No. 04-5, "Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights" ("EITF 04-5"), and as a result included Rio in its consolidated financial statements. The impact of such consolidation was not material to the Company's consolidated financial position or results of operations for any period presented.

Non-Controlling Interests—Non-controlling interests represent capital contributions, income and loss attributable to the shareholders of less than 100% owned and consolidated partnerships.

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.

Reclassifications Certain reclassifications of prior year balances have been made to conform to the current year 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 and cash flow data for the prior periods presented, in accordance with Statement of Financial Accounting Standards (SFAS) No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets (SFAS 144). These dispositions are discussed below in Recent Restaurant Dispositions.

Cash and Cash Equivalents Cash and cash equivalents, which primarily consist of money market funds, are stated at cost, which approximates fair value. For financial statement presentation purposes, the Company considers all highly liquid investments having original maturities of three months or less to be cash equivalents. Outstanding checks in excess of account balances, typically vendor payments, payroll and other contractual obligations disbursed after the last day of a reporting period are reported as a current liability in the accompanying consolidated balance sheets.

Available-For-Sale Securities Available-for-sale securities consist of United States Treasury Bills, commercial paper, government bonds, corporate bonds and other fixed income securities, 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, 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.

Concentrations of Credit Risk Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents. The Company reduces credit risk by placing its cash and cash equivalents with major financial institutions with high credit ratings. At times, such amounts may exceed Federally insured limits. As of September 27, 2008, the Company had cash and cash equivalent balances, primarily consisting of cash deposit accounts, which exceeded the Federal Deposit Insurance Corporation limitation for coverage by approximately \$1,900,000.

Accounts Receivable Accounts receivable is primarily composed of normal business receivables such as credit card receivables that are paid off in a short period of time and amounts due from our managed outlets and hotel charges, and are recorded when the products or services have been delivered. We review the collectability of our receivables on an ongoing basis, and provide for an allowance when we consider the entity unable to meet its obligation.

Inventories Inventories are stated at the lower of cost (first-in, first-out) or market, and consist of food and beverages, merchandise for sale and other supplies.

Revenue Recognition The Company-owned restaurant sales are composed almost entirely of food and beverage sales. The Company records revenue at the time of the purchase of products by customers.

Management fees, which are included in Revenues Other Income, are related to the Company's unconsolidated managed restaurants that are not consolidated and are based on either gross restaurant sales or cash flow. The Company recognizes management fee income in the period sales are made or cash flow is generated.

The Company offers customers the opportunity to purchase gift certificates. At the time of purchase by the customer, the Company records a gift certificate liability for the face value of the certificate purchased. The Company recognizes the revenue and reduces the gift certificate liability when the certificate is redeemed. The Company does not reduce its recorded liability for potential non-use of purchased gift cards.

Additionally, the Company presents sales tax on a net basis in its consolidated financial statements.

Fixed Assets—Leasehold improvements and furniture, fixtures and equipment are stated at cost. Depreciation of furniture, fixtures and equipment is computed using the straight-line method over the estimated useful lives of the respective assets (three to seven years). Amortization of improvements to leased properties is computed using the straight-line method based upon the initial term of the applicable lease or the estimated useful life of the improvements, whichever is less, and ranges from 5 to 30 years. For leases with renewal periods at the Company's option, if failure to exercise a renewal option imposes an economic penalty to the Company, management may determine at the inception of the lease that renewal is reasonably assured and include the renewal option period in the determination of appropriate estimated useful lives.

The Company includes in construction in progress improvements in restaurants that are under construction. Once the projects have been completed, the Company will begin depreciating and amortizing the assets. Start-up costs incurred during the construction period of restaurants, including rental of premises, training and payroll, are expensed as incurred.

The Company follows Statement of Financial Accounting Standards (SFAS) No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, which requires impairment losses to be recorded on long-lived assets used in operations when indicators of impairment are present and the undiscounted cash flows estimated to be generated by those assets are less than the asset's carrying amount. In the evaluation of the fair value and future benefits of long-lived assets, the Company performs an analysis of the anticipated undiscounted future net cash flows of the related long-lived assets. If the carrying value of the related asset exceeds the undiscounted cash flows, the carrying value is reduced to its fair value. Various factors including future sales growth and profit margins are included in this analysis. Management believes at this time that carrying values and useful lives continue to be appropriate. For the years ended September 27, 2008 and September 29, 2007, no impairment charges were deemed necessary.

Intangible Assets, Goodwill and Trademarks—Intangible assets consist primarily of goodwill, trademarks, purchased leasehold rights and noncompete agreements. Trademarks acquired in connection with the Durgin Park acquisition (see Note 2) are considered to have an indefinite life and are not being amortized. As of September 29, 2002, the Company adopted the provisions of SFAS No. 142, *Accounting for Goodwill and Other Intangible Assets*. This statement requires that for goodwill, including the goodwill included in the carrying value of investments accounted for using the equity method of accounting, and certain other intangible assets deemed to have an indefinite useful life, the Company cease amortization. SFAS No. 142 requires that goodwill and certain intangible assets be assessed for impairment using fair value measurement techniques. Specifically, goodwill impairment is determined using a two-step process. The first step of the goodwill impairment test is to identify potential impairment by comparing the fair value of the reporting unit (the Company is being treated as one reporting unit) with its net book value (or carrying amount), including goodwill. If the fair value of the reporting unit exceeds its carrying amount, goodwill of the reporting unit is considered not impaired and the second step of the impairment test is unnecessary. If the carrying amount of the reporting unit exceeds its fair value, the second step of the goodwill impairment test is performed to measure the amount of impairment loss, if any. The second step of the goodwill impairment test compares the implied fair value of the reporting unit's goodwill with the carrying amount of that goodwill. If the carrying amount of the reporting unit's goodwill exceeds the implied fair value of that goodwill, an impairment loss is recognized in an amount equal to that excess. The implied fair value of goodwill is determined in the same manner as the amount of goodwill recognized in a business combination. That is, the fair value of the reporting unit is allocated to all of the assets and liabilities of that unit (including any unrecognized intangible assets) as if the reporting unit had been acquired in a business combination and the fair value of the reporting unit was the purchase price paid to acquire the reporting unit. The impairment test for other intangible assets consists of a comparison of the fair value of the intangible asset with its carrying value. If the carrying value of the intangible asset exceeds its fair value, an impairment loss is recognized in an amount equal to that excess.

Determining the fair value of the reporting unit under the first step of the goodwill impairment test and determining the fair value of individual assets and liabilities of the reporting unit (including unrecognized intangible assets) under the second step of the goodwill impairment test is judgmental in nature and often involves the use of significant estimates and assumptions. Similarly, estimates and assumptions are used in determining the fair value of other intangible assets. These estimates and assumptions could have a significant impact on whether or not an impairment charge is recognized and also the magnitude of any such charge. To assist in the process of determining goodwill impairment. In addition to the use of independent valuation firms, the Company performs internal valuation analyses and considers other market information that is publicly available. Estimates of fair value are primarily determined using discounted cash flows, market comparisons and recent transactions. These approaches use significant estimates and assumptions including projected future cash flows (including timing), a discount rate reflecting the risk inherent in future cash flows, perpetual growth rate, determination of appropriate market comparables and the determination of whether a premium or discount should be applied to comparables. Based on the above policy, approximately \$294,000 and \$100,000 of goodwill impairment expense was recorded during fiscal years 2008 and 2007, respectively, in connection with restaurant dispositions.

Costs associated with acquiring leases and subleases, principally purchased leasehold rights, have been capitalized and are being amortized on the straight-line method based upon the initial terms of the applicable lease agreements, which range from 9 to 20 years.

Covenants not to compete arising from restaurant acquisitions are amortized over the contractual period, typically five years.

Amortization expense for intangible assets not including goodwill was \$18,000 and \$20,000 for fiscal years ended 2008 and 2007, respectively.

Leases The Company is obligated under various lease agreements for certain restaurants. The Company recognizes rent expense on a straight-line basis over the expected lease term, including option periods as described below. Within the provisions of certain leases there are escalations in payments over the base lease term, as well as renewal periods. The effects of the escalations have been reflected in rent expense on a straight-line basis over the expected lease term, which includes option periods when it is deemed to be reasonably assured that the Company would incur an economic penalty for not exercising the option. Percentage rent expense is generally based upon sales levels and is expensed as incurred. Certain leases include both base rent and percentage rent. The Company records rent expense on these leases based upon reasonably assured sales levels. The consolidated financial statements reflect the same lease terms for amortizing leasehold improvements as were used in calculating straight-line rent expense for each restaurant. The judgments of the Company may produce materially different amounts of amortization and rent expense than would be reported if different lease terms were used.

Operating Lease Deferred Credit Several of the Company's operating leases contain predetermined increases in the rentals payable during the term of such leases. For these leases, the aggregate rental expense over the lease term is recognized on a straight-line basis over the lease term. The excess of the expense charged to operations in any year and amounts payable under the leases during that year are recorded as deferred credits that reverse over the lease term.

Occupancy Expenses Occupancy expenses include rent, rent taxes, real estate taxes, insurance and utility costs.

Defined Contribution Plans The Company offers a defined contribution savings plan (the "Plan") to all of its full-time employees. Eligible employees may contribute pre-tax amounts to the Plan subject to the Internal Revenue Code limitations. Company contributions to the Plan are at the discretion of the Board of Directors. During the years ended September 27, 2008, and September 29, 2007, the Company did not make any contributions to the Plan.

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

In June 2006, the FASB issued FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" an interpretation of FASB Statement No. 109 ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in financial statements in accordance with FASB Statement No. 109, "Accounting for Income Taxes." FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The Company adopted the provisions of FIN 48 during the first fiscal quarter of 2008. The adoption of FIN 48 had no impact on our consolidated financial position, results of operation or cash flows, nor did the Company have any related interest or penalties. As a result of the implementation, the Company recognized no material adjustment to the liability for unrecognized income tax benefits that existed as of September 29, 2007. It is the Company's policy to recognize interest and penalties related to uncertain tax positions as a component of income tax expense.

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

Income Per Share of Common Stock—Basic net income per share is computed in accordance with Statement of Financial Accounting Standard ("SFAS") No. 128, *Earnings Per Share*, and is calculated on the basis of the weighted average number of common shares outstanding during each period. Diluted net income per share reflects the additional dilutive effect of potentially dilutive shares (principally those arising from the assumed exercise of stock options).

Share-based Compensation—Effective October 2, 2005, the Company adopted Statement of Financial Accounting Standards No. 123R, *Share-Based Payment* ("SFAS 123R"), and related interpretations and began expensing the grant-date fair value of employee stock options. Prior to October 2, 2005, the Company applied Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations in accounting for its stock option plans. Accordingly, prior to October 2, 2005, no compensation expense has been recognized for employee stock options, as options granted had an exercise price equal to the market value of the underlying common stock on the date of grant. Upon adoption of SFAS 123R, the Company elected to value employee stock options using the Black-Scholes option valuation method 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.

On October 2, 2005, the Company adopted SFAS 123R using the modified prospective transition method and therefore has not restated prior periods. Under this transition method, compensation cost associated with employee stock options recognized during fiscal 2006 includes amortization related to the remaining unvested portion of stock awards granted prior to October 2, 2005. During fiscal year 2007, the Company granted options to purchase 105,000 shares of common stock at an exercise price of \$32.15. No options were granted during fiscal year 2008.

Prior to the adoption of SFAS 123R, the Company presented tax benefits resulting from share-based compensation as operating cash flows in the consolidated statements of cash flows. SFAS 123R requires that cash flows resulting from tax deductions in excess of compensation cost recognized in the financial statements be classified as an operating cash outflow and a financing cash inflow.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Compensation cost charged to operations for the fiscal years ended 2008 and 2007 for share-based compensation programs was approximately \$312,000 and \$408,000, before tax benefits of approximately \$108,000 and \$139,000, respectively. The compensation cost recognized is classified as a general and administrative expense in the consolidated statements of operations.

In November 2005, the FASB issued FASB Staff Position No. FAS 123R-3 [Transition Election Related to Accounting for the Tax Effects of Share-Based Payment Awards] ([FAS 123R-3]). The Company has elected to adopt the alternative transition method provided in this FASB Staff Position for calculating the tax effects of share-based compensation pursuant to FAS 123R-3. The alternative transition method includes a simplified method to establish the beginning balance of the additional paid-in capital pool (APIC pool) related to the effects of employee share-based compensation, which is available to absorb tax deficiencies recognized subsequent to the adoption of SFAS 123R.

A summary of stock option activity is presented below:

Options	Shares	Weighted Average Exercise Price	Weighted Average Fair Value	Weighted Average Contractual Term (Yrs.)	Aggregate Intrinsic Valuee
Outstanding as September 29, 2007	271,500	\$30.59	\$9.22	8.01	
Granted	-	-	-	-	
Exercised	-	-	-	-	
Outstanding at September 27, 2008	271,500	\$30.59	\$9.22	7.01	\$ -
Exercisable at September 27, 2008	219,000	\$30.21	\$8.80	6.71	\$ -

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

Recently Issued Accounting Pronouncements In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* (SFAS 157), which, among other requirements, defines fair value, establishes a framework for measuring fair value, and expands disclosures about the use of fair value to measure assets and liabilities. SFAS 157 prescribes a single definition of fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. For financial instruments and certain nonfinancial assets and liabilities that are recognized or disclosed at fair value on a recurring basis at least annually, SFAS 157 is effective beginning the first fiscal year that begins after November 15, 2007, which corresponds to the Company's fiscal year beginning September 28, 2008. For all other nonfinancial assets and liabilities the effective date of SFAS 157 has been delayed to the first fiscal year beginning after November 15, 2008, which corresponds to the Company's fiscal year beginning October 4, 2009. The Company is evaluating the effect SFAS 157 will have on its consolidated financial statements, but it currently does not expect the effect to be material.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* (SFAS 159), which permits measurement of recognized financial assets and liabilities at fair value with certain exceptions such as investments in subsidiaries, obligations for pension or other postretirement benefits, and financial assets and financial liabilities recognized under leases. Changes in the fair value of items for which the fair value option is elected should be recognized in income or loss. The election to measure eligible items at fair value is irrevocable and can only be made at defined election dates or events, generally on an instrument by instrument basis. Items for which the fair value option is elected should be separately presented or parenthetically be disclosed in the statement of financial position. SFAS 159 also requires significant new disclosures that apply for interim and annual financial statements. SFAS 159 shall be effective for fiscal years beginning after November 15, 2007 with earlier adoption permitted, if certain conditions are met. The effect of the first remeasurement to fair value of eligible items existing would be reported as an adjustment to the opening balance of retained earnings as of the date of adoption, which corresponds to the Company's fiscal year beginning September 28, 2008. The Company is currently evaluating SFAS 159 and determining whether to elect the fair value option for certain financial assets and liabilities.

In December 2007, the FASB issued SFAS No. 141 (Revised), *Business Combinations* (SFAS 141R), which establishes principles and requirements for the reporting entity in a business combination, including recognition and measurement in the financial statements of the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree. This statement also establishes disclosure requirements to enable financial statement users to evaluate the nature and financial effects of the business combination. SFAS 141R applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. SFAS 141R will become effective for our fiscal year beginning October 4, 2009.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51* (SFAS 160), which amends Accounting Research Bulletin No. 51, *Consolidated Financial Statements* (ARB No. 51), to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This standard defines a noncontrolling interest, previously referred to as minority interest, as the portion of equity in a subsidiary not attributable, directly or indirectly, to a parent. SFAS 160 requires, among other items, that a noncontrolling interest be included in the consolidated balance sheet within equity separate from the parent's equity; consolidated net income to be reported at amounts inclusive of both the parent's and noncontrolling interest's shares and, separately, the amounts of consolidated net income attributable to the parent and noncontrolling interest all on the consolidated statement of income; and if a subsidiary is deconsolidated, any retained noncontrolling equity investment in the former subsidiary be measured at fair value and a gain or loss be recognized in net income based on such fair value. SFAS 160 is effective for fiscal years beginning after December 15, 2008, which corresponds to the Company's fiscal year beginning October 4, 2009. The Company is currently evaluating the potential impact of adopting SFAS 160 on its consolidated financial statements.

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities*, an amendment of FASB Statement No. 133 (SFAS 161), which requires enhanced disclosures about an entity's derivative and hedging activities and thereby improves the transparency of financial reporting. The objective of the guidance is to provide users of financial statements with an enhanced understanding of how and why an entity uses derivative instruments; how derivative instruments and related hedged items are accounted for; and how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. SFAS 161 is effective for interim and annual periods beginning after November 15, 2008, which corresponds to the Company's quarterly period beginning December 28, 2008. Management is currently evaluating the impact SFAS 161 will have on the Company's consolidated financial statements, but it currently does not expect the effect to be material.

In April 2008, the FASB issued FASB Staff Position 142-3, *Determination of the Useful Life of Intangible Assets* (FSP FAS 142-3), which amends the list of factors an entity should consider in developing renewal or extension assumptions in determining the useful life of recognized intangible assets under FAS No. 142, Goodwill and Other Intangible Assets. The new guidance applies to (1) intangible assets that are acquired individually or with a group of other assets and (2) intangible assets acquired in both business combinations and asset acquisitions. Under FSP FAS 142-3, entities estimating the useful life of a recognized intangible asset must consider their historical experience in renewing or extending similar arrangements or, in the absence of historical experience, must consider assumptions that market participants would use about renewal or extension. FSP FAS 142-3 will require certain additional disclosures beginning October 1, 2009 and prospective application to useful life estimates prospectively for intangible assets acquired after September 20, 2009. The Company is in the process of evaluating the impact that the adoption of FSP FAS 142-3 may have on its consolidated financial statements and related disclosures.

In May 2008, the FASB issued SFAS No. 162, *The Hierarchy of Generally Accepted Accounting Principles*. SFAS No. 162 identifies the sources of accounting principles and provides entities with a framework for selecting the principles used in preparation of financial statements that are presented in conformity with GAAP. The current GAAP hierarchy has been criticized because it is directed to the auditor rather than the entity, it is complex, and it ranks FASB Statements of Financial Accounting Concepts, which are subject to the same level of due process as FASB Statements of Financial Accounting Standards, below industry practices that are widely recognized as generally accepted but that are not subject to due process. The Board believes the GAAP hierarchy should be directed to entities because it is the entity (not its auditors) that is responsible for selecting accounting principles for financial statements that are presented in conformity with GAAP. SFAS No. 162 is effective November 15, 2008. The adoption of SFAS No. 162 does not have a material impact on our consolidated financial statements.

2. ACQUISITION

On January 8, 2007, the Company acquired the operating assets and leasehold for the *Durgin Park Restaurant and the Black Horse Tavern* in Boston, Massachusetts for \$2,000,000 in cash and a \$1,000,000 five year promissory note bearing interest at a rate of 7% per year.

The following summarizes the estimated fair values of the assets acquired at the acquisition date (in thousands):

Fixed Assets	\$ 513
Trademarks	721
Goodwill	1,766
Total Purchase Price	\$ 3,000

The difference between the aggregate purchase price and fair value of the assets acquired has been recorded as goodwill and trademarks based on a valuation of the assets acquired.

Unaudited pro forma financial information has not been presented as it has been deemed immaterial to the financial position, results of operations and cash flows.

3. RECENT RESTAURANT EXPANSION

In 2006, the Company entered into an agreement to lease space for a Mexican restaurant, *Yolos*, at the Planet Hollywood Resort and Casino (formerly known as the Aladdin Resort and Casino) in Las Vegas, Nevada. The obligation to pay rent for *Yolos* commenced when the restaurant opened for business in January 2008.

In June 2007, the Company entered into an agreement to design and lease a food court at the MGM Grand Casino at the Foxwoods Resort Casino which commenced operations during the third fiscal quarter of 2008. A limited liability company has been established to develop, construct, operate and manage the food court. The Company, through a wholly-owned subsidiary, is the managing member of this limited liability company and has an aggregate ownership interest in the food court operations of 67%. Such operations have been consolidated as of and for the fiscal year ended September 27, 2008.

In June 2008, the Company signed two successive one-year agreements to use certain deck space adjacent to the *Sequoia* location in New York City as a Café.

In June 2008, the Company entered into an agreement to design and lease a restaurant at The Museum of Arts & Design at Columbus Circle in New York City. The initial term of the lease for this facility will expire on December 31 sixteen years after the date the Museum first opens for business to the public following its current refurbishment and will have two five-year renewals. The Company anticipates the restaurant will open during the third quarter of the 2009 fiscal year.

4. RECENT RESTAURANT DISPOSITIONS

During the first fiscal quarter of 2008, the Company discontinued the operation of our Columbus Bakery retail and wholesale bakery located in New York City. Columbus Bakery was originally intended to serve as the bakery that would provide all of our New York restaurants with baked goods as well as being a retail bakery operation. As a result of the sale and closure of several of our restaurants in New York City during the last several years, this bakery operation was no longer profitable.

During the second fiscal quarter of 2008, the Company opened, along with certain third party investors, a new concept at this location called "Pinch & S" Mac" which features pizza and macaroni and cheese. We contributed Columbus Bakery's net fixed assets and cash into this venture and received an ownership interest of 37.5%. These operations are not consolidated in the Company's consolidated financial statements.

Effective June 30, 2008, the lease for the Company's *Stage Deli* facility at the Forum Shops in Las Vegas, Nevada expired. The landlord for this facility offered to renew the lease at this location prior to its expiration at a significantly increased rent. The Company determined that it would not be able to operate this facility profitably at this location at the rent offered in the landlord's renewal proposal. As a result, the Company discontinued these operations during the third fiscal quarter of 2008 and took a charge for the impairment of goodwill of \$294,000 and recorded a loss on disposal of \$19,000. The impairment charge and disposal loss are included in discontinued operations. Operations for the fiscal years ending September 27, 2008 and September 29, 2007 have been reclassified as discontinued operations.

As discussed in Note 1 to the consolidated financial statements, the Company accounts for its closed restaurants in accordance with the provisions of SFAS No. 144. Therefore, when the Company makes a decision to close a restaurant, the restaurant's operations are eliminated from the ongoing operations. Accordingly, the operations of such restaurants, net of applicable income taxes, are presented as discontinued operations and prior period operations of such restaurants, net of applicable income taxes, are reclassified. Discontinued operations consist of the following:

Years Ended
September 27, 2008 September 29,
2007
(In thousands)

Revenues	\$3,100	\$7,729
Income before income taxes	\$ 26	\$7,721
Income from discontinued restaurants, net of taxes	\$ 17	\$5,056

5. INVESTMENT SECURITIES

The amortized cost, gross unrealized holding gains, gross unrealized holding losses, and fair value of available-for-sale securities by major type and class at September 27, 2008 and September 29, 2007 are as follows (in thousands):

	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses	Fair Va
At September 27, 2008				
Available-for-sale short-term:				
Government debt securities	\$ 8,897	\$ -	\$ (30)	\$ 8,
Corporate debt securities	400	-	-	,
	\$ 9,297	\$ -	\$ (30)	\$ 9,

	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses	Fair Va
At September 29, 2007				
Available-for-sale short-term:				
Government debt securities	\$ 3,130	\$ 14	\$ -	\$ 3,
Corporate debt securities	6,022	35	-	6,
	\$ 9,152	\$ 49	\$ -	\$ 9,

6. LONG-TERM RECEIVABLES

In March 2005, the Company sold a restaurant for \$1,300,000. Cash of \$600,000 was included on the sale. Of the \$600,000 cash, \$200,000 was paid to the Company as a fee to manage the restaurant for four months prior to closure and the balance was paid directly to the landlord. The remaining \$700,000 will be received in the form of a note receivable, at an interest rate of 6%, in installments through June 2011. As of September 27, 2008, the Company was due \$352,000, of this \$231,000 was long-term and \$121,000 was current. As of September 29, 2007, the Company was due \$466,000, of this \$352,000 was long-term and \$114,000 was current.

The carrying value of the Company's long-term receivables approximates their current aggregate fair value.

7. INTANGIBLE ASSETS

Intangible assets consist of the following:

	September 27, 2008	September 29, 2007
	(In thousands)	
Purchased leasehold rights (a)	\$ 2,343	\$ 2,377
Noncompete agreements and other	322	412
	2,665	2,789
Less accumulated amortization	2,603	2,709
Total intangible assets	\$ 62	\$ 80

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

8. GOODWILL AND TRADEMARKS

Goodwill is the excess of cost over fair market value of tangible and intangible net assets acquired. Goodwill is not presently amortized but tested for impairment annually or when the facts or circumstances indicate a possible impairment of goodwill as a result of a continual decline in performance or as a result of fundamental changes in a market in accordance with SFAS No. 142, *Goodwill and Other Intangible Assets*. Trademarks, which have indefinite lives, are not currently amortized and are tested for impairment annually or when facts or circumstances indicate a possible impairment as a result of a continual decline in performance or as a result of fundamental changes in a market. The changes in the carrying amount of goodwill and trademarks for the years ended September 27, 2008 and September 29, 2007 are as follows (in thousands):

	Goodwill	Trademarks	Total
Balance as of September 30, 2006	\$ 3,441	\$ -	\$ 3,441
Acquired during the year	1,766	721	2,487
Impairment losses	(100)	-	(100)
Balance as of September 29, 2007	5,107	721	5,828
Acquired during the year	-	-	-
Impairment losses	(294)	-	(294)
Balance as of September 27, 2008	\$ 4,813	\$ 721	\$ 5,534

9. OTHER ASSETS

Other assets consist of the following:

	September 27, 2008	September 29, 2007
	(In thousands)	
Deposits and other	\$ 403	\$ 316
Investments in unconsolidated affiliates (a)	298	-
	\$ 701	\$ 316

- (a) During the second fiscal quarter of 2008, we opened, along with certain third party investors, a new concept at our former Columbus Bakery location called "Pinch & S"Mac" which features pizza and macaroni and cheese. We contributed Columbus Bakery's net fixed assets and cash into this venture and received an ownership interest of 37.5%. These operations are not consolidated in the Company's consolidated financial statements. Included in Other income, net for fiscal 2008 is our losses of approximately \$127,000 related to this affiliate.

10. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

	September 27, 2008	September 29, 2007
	(In thousands)	
Sales tax payable	\$ 766	\$ 694
Accrued wages and payroll related costs	1,623	1,355
Customer advance deposits	1,586	1,666
Accrued and other liabilities	1,337	1,788
	\$ 5,312	\$ 5,503

11. 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.

As of September 27, 2008, future minimum lease payments under noncancelable leases are as follows:

Fiscal Year	Amount (In thousands)
2009	\$ 7,188
2010	7,035
2011	6,927
2012	6,178
2013	5,833
Thereafter	25,879
Total minimum payments	\$ 59,040

In connection with certain of the leases included in the table above, the Company obtained and delivered irrevocable letters of credit in the aggregate amount of \$1,042,000 as security deposits under such leases.

Rent expense was \$13,235,000 and \$11,876,000 during the fiscal years ended September 27, 2008 and September 29, 2007, respectively. Contingent rentals, included in rent expense, were \$4,931,000 and \$4,331,000 for the fiscal years ended September 27, 2008 and September 29, 2007, respectively.

In June 2008, the Company signed two successive one-year agreements to use certain deck space adjacent to the *Sequoia* location in New York City as a Café.

In June 2008, the Company entered into an agreement to design and lease a restaurant at The Museum of Arts & Design at Columbus Circle in New York City. The initial term of the lease for this facility will expire on December 31 sixteen years after the date the Museum first opens for business to the public following its current refurbishment and will have two five-year renewals. The Company anticipates the restaurant will open during the second quarter of the 2009 fiscal year.

The future minimum lease payments from the above noted leases are included in the above schedule.

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. The Company does not believe that any of such suits will have a materially adverse effect upon the Company's consolidated financial statements.

12. COMMON STOCK REPURCHASE PLAN

On March 25, 2008, the Board of Directors authorized a stock repurchase program under which up to 500,000 shares of the Company's common stock may be acquired in the open market over the two years following such authorization at the Company's discretion.

As of September 27, 2008, the Company has purchased an aggregate of 64,954 shares at an average purchase price of \$18.61 in the open market pursuant to the stock repurchase program.

13. STOCK OPTIONS

The Company has options outstanding under two stock option plans, the 1996 Stock Option Plan (the "1996 Plan") and the 2004 Stock Option Plan (the "2004 Plan"). In 2004 the Company terminated the 1996 Plan. This action terminated the 257,000 authorized but unissued options under the 1996 Plan but it did not affect any of the options previously issued under the 1996 Plan.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Options granted under the 1996 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 five years after the date of grant and are generally exercisable as to 25% of the shares commencing on the first anniversary of the date of grant and as to an additional 25% commencing on each of the second, third and fourth anniversaries of the grant date.

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. During fiscal 2005, options to purchase 194,000 shares of common stock 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. During fiscal 2007, options to purchase 105,000 shares of common stock were granted and are exercisable as to 25% of the shares commencing on the first anniversary of the date of grant and as to an additional 25% commencing on each of the second, third and fourth anniversaries of the grant date.

Additional information as of the end of each respective fiscal year is as follows:

	2008		2007	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Outstanding, beginning of year	271,500	\$ 30.59	202,000	\$ 28.68
Options:				
Granted	-	-	105,000	32.15
Exercised	-	-	(35,500)	24.35
Canceled or expired	-	-	-	-
Outstanding, end of year (a)	271,500	\$ 30.59	271,500	\$ 30.59
Exercise price, outstanding options	\$29.60 - 32.15		\$29.60 - 32.15	
Weighted average years	7.01 Years		8.01 Years	
Shares available for future grant (b)	151,000		151,000	
Options exercisable (a)	219,000	\$ 30.21	166,500	\$ 29.60

(a) Options become exercisable at various times expiring through 2016.

(b) The 2004 Stock Option Plan, which was approved by shareholders, is the Company's only equity compensation plan currently in effect. Under the 2004 Stock Option Plan, 450,000 options were authorized for future grant and 194,000 of these options were issued during fiscal 2005. During fiscal 2007, the Company issued an additional 105,000 of these options with a grant date weighted average fair value of \$10.94. The Company, with the approval of the shareholders, terminated the 1996 Stock option Plan. This action terminated the 257,000 authorized but unissued options under the 1996 Stock Option Plan but it did not affect any of the options previously issued under the 1996 Stock Option Plan.

As of September 27, 2008, there was approximately \$535,000 of unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a period of approximately two years.

14. MANAGEMENT FEE INCOME

As of September 27, 2008, the Company provides management services to two fast food courts and one fast food unit it does not wholly own. In accordance with the contractual arrangements, the Company earns management fees based on gross sales or cash flow as defined by the agreements. Management fee income relating to these services was approximately \$2,368,000 and \$1,929,000 for the years ended September 27, 2008 and September 29, 2007, respectively. Such amount for the year ended September 27, 2008 included approximately \$968,000 for management fees and \$1,400,000 for profit distributions. Such amount for the year ended September 29, 2007

included approximately \$629,000 for management fees and \$1,300,000 for profit distributions.
F-19

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Receivables from managed restaurants, classified as Related Party receivable in the accompanying consolidated balance sheets, were \$881,000 and \$1,318,000 at September 27, 2008 and September 29, 2007, respectively. Such amount at September 27, 2008 included \$881,000 for expense advances. Such amount at September 29, 2007 included \$206,000 for management fees and \$1,112,000 for expense advances.

Managed restaurants had sales of \$15,062,000 and \$14,861,000 during the management periods within the years ended September 27, 2008 and September 29, 2007, which are not included in consolidated net sales of the Company.

15. INCOME TAXES

The provision for income taxes attributable to continuing and discontinued operations consists of the following:

	Years Ended	
	September	September
	27,	29,
	2008	2007

(In thousands)

Current provision:

Federal	\$ 2,648	\$ 4,579
State and local	586	213
	3,234	4,792

Deferred provision:

Federal	301	1,166
State and local	150	376
	451	1,542

	\$ 3,685	\$ 6,334
--	----------	----------

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

	Years Ended	
	September	September
	27,	29,
	2008	2007

(In thousands)

Provision at Federal statutory rate (35% in 2008 and 2007)	\$ 3,837	\$ 6,794
State and local income taxes net of tax benefits	575	341
Tax credits	(541)	(819)
State and local net operating loss carryforward allowance adjustment	1	27
Income attributable to Variable Interest	(105)	-
Other	(82)	(9)
	\$ 3,685	\$ 6,334

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting and tax purposes. Significant components of the Company's deferred tax assets and liabilities are as follows:

	September 27, 2008	September 29, 2007
	(In thousands)	
Long-term deferred tax assets (liabilities):		
Operating loss carryforwards	\$ 2,088	\$ 2,330
Operating lease deferred credits	1,420	1,497
Carryforward tax credits	-	777
Depreciation and amortization	301	(44)
Deferred compensation	753	632
Pension withdrawal liability	61	89
Other	91	-
Total long-term deferred tax assets	4,714	5,281
Deferred gains	(60)	(266)
Partnership investments	(89)	-
Valuation allowance	(253)	(252)
Total long-term deferred tax liabilities	(402)	(518)
Total net deferred tax assets	\$ 4,312	\$ 4,763

In assessing the realizability of deferred tax assets, Management considers whether it is more likely than not that that the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income. The deferred tax valuation allowance of \$253,000 and \$252,000 as of September 27, 2008 and September 29, 2007, respectively, was attributable to state and local net operating loss carryforwards.

As of September 27, 2008, the Company has approximately of \$20,525,000 of state and local net operating loss carryforwards which expire in various years beginning in the years 2015 through 2028.

The Company adopted the provisions of FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes (FIN 48), on September 30, 2007. A reconciliation of the beginning and ending amount of unrecognized tax benefits, excluding interest and penalties, is as follows:

Balance at September 29, 2007	\$ 315,000
Increases in tax positions for prior years	-
Decreases in tax positions for prior years	-
Increases in tax positions for current year	-
Decreases in tax positions for current year:	
Settlements	(23,000)
Lapse in statute of limitations	-
Balance at September 27, 2008	\$ 292,000

The entire amount of unrecognized tax benefits if recognized would reduce our annual effective tax rate. As of September 30, 2007, the Company had approximately \$37,000 of accrued interest and penalties and \$60,000 as of September 27, 2008. The Company does not expect its unrecognized tax benefits to change significantly over the next 12 months. Inherent uncertainties exist in estimates of tax contingencies due to changes in tax law, both legislated and concluded through the various jurisdictions' tax court systems.

The Company's tax return for the fiscal year ended September 30, 2006 is currently under audit by the Internal Revenue Service. Management does not expect a material adjustment to the Company's financial position or results of operations upon completion of this examination.

The Company files in the U.S. and various state and local income tax returns in jurisdictions with varying statutes of limitations. The 2004 through 2007 tax years generally remain subject to examination by Federal and most state and local tax authorities.

16. OTHER INCOME

Other income consists of the following:

	Years Ended	
	September 27, 2008	September 29, 2007
	(In thousands)	
Purchase service fees	\$ 74	\$ 76
Equity in loss of an unconsolidated affiliate	(127)	-
Other	769	722
	\$ 716	\$ 798

17. INCOME PER SHARE OF COMMON STOCK

A reconciliation of the numerators and denominators of the basic and diluted per share computations for the fiscal years ended September 27, 2008 and September 29, 2007 follows:

	Net Income (Numerator)	Shares (Denominator)	Per-Share Amount
	(In thousands, except per share amounts)		
Years ended September 27, 2008			
Basic EPS	\$ 6,978	3,594	\$ 1.94
Stock options	-	14	(0.01)
Diluted EPS	\$ 6,978	3,608	\$ 1.93
Years ended September 29, 2007			
Basic EPS	\$ 13,013	3,582	3.63
Stock options	-	25	\$ (0.02)
Diluted EPS	\$ 13,013	3,607	\$ 3.61

For the fiscal years ended September 27, 2008 and September 29, 2007, all outstanding stock options were included in the computation of diluted EPS.

18. STOCK OPTION RECEIVABLES

Stock option receivables include amounts due from officers and directors totaling \$124,000 at September 27, 2008 and \$166,000 at September 29, 2007. 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 (5.0% at September 27, 2008 and 8.25% at September 29, 2007).

19. RELATED PARTY TRANSACTIONS

Receivables due from officers and directors, excluding stock option receivables, totaled \$37,000 at September 27, 2008 and September 29, 2007. Other employee loans totaled \$244,000 at September 27, 2008 and \$279,000 at September 29, 2007. Such loans bear interest at the minimum statutory rate (2.36% at September 27, 2008 and 4.88% at September 29, 2007).

20. SUBSEQUENT EVENTS

The Company has purchased an aggregate of 42,000 shares at an average purchase price of \$11.90 pursuant to the stock repurchase program.

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ARK RESTAURANTS CORP.

By: /s/Michael Weinstein
Michael Weinstein
President and Chief Executive Officer

Date: December 23, 2008

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been duly signed by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/Michael Weinstein (Michael Weinstein)	Chairman of the Board and Chief Executive Officer	December 23, 2008
/s/Vincent Pascal (Vincent Pascal)	Senior Vice President and Director	December 23, 2008
/s/Robert Towers (Robert Towers)	President, Treasurer, Chief Operating Officer and Director	December 23, 2008
/s/Robert Stewart (Robert Stewart)	Chief Financial Officer	December 23, 2008
/s/Marcia Allen (Marcia Allen)	Director	December 23, 2008
/s/Steven Shulman (Steven Shulman)	Director	December 23, 2008
/s/Paul Gordon (Paul Gordon)	Senior Vice President and Director	December 23, 2008
<u>/s/Bruce R. Lewin</u> (Bruce R. Lewin)	Director	December 23, 2008
/s/Arthur Stainman (Arthur Stainman)	Director	December 23, 2008
/s/ Stephen Novick (Stephen Novick)	Director	December 23, 2008

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

Exhibits Index

- 3.1 Certificate of Incorporation of the Registrant, filed with the Secretary of State of the State of New York on January 4, 1983.
 - 3.2 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on October 11, 1985.
 - 3.3 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on July 21, 1988.
 - 3.4 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed with the Secretary of State of the State of New York on May 13, 1997.
 - 3.5 Certificate of Amendment of the Certificate of Incorporation of the Registrant filed on April 24, 2002 incorporated by reference to Exhibit 3.5 to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 30, 2002 (the "Second Quarter 2002 Form 10-Q").
 - 3.6 By-Laws of the Registrant, incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-18 filed with the Securities and Exchange Commission on October 17, 1985.
 - 10.1 Amended and Restated Redemption Agreement dated June 29, 1993 between the Registrant and Michael Weinstein, incorporated by reference to Exhibit 10.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 2, 1999 ("1994 10-K").
 - 10.2 Form of Indemnification Agreement entered into between the Registrant and each of Michael Weinstein, Ernest Bogen, Vincent Pascal, Robert Towers, Jay Galin, Robert Stewart, Bruce R. Lewin, Paul Gordon and Donald D. Shack, incorporated by reference to Exhibit 10.2 to the 1994 10-K.
 - 10.3 Ark Restaurants Corp. Amended Stock Option Plan, incorporated by reference to Exhibit 10.3 to the 1994 10-K.
 - 10.4 Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.4 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 2, 1999.
 - 10.5 Ark Restaurants Corp. 1996 Stock Option Plan, as amended, incorporated by reference to the Registrant's Definitive Proxy Statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 (Amendment No. 1) filed on March 16, 2001.
 - 10.6 Lease Agreement dated May 17, 1996 between New York-New York Hotel, LLC, and Las Vegas America Corp., incorporated by reference to Exhibit 10.6 to the Registrant's Annual Report on Form 10-K for the fiscal year ended October 3, 1998 (the "1998 10-K").
 - 10.7 Lease Agreement dated May 17, 1996 between New York-New York Hotel, LLC, and Las Vegas Festival Food Corp., incorporated by reference to Exhibit 10.7 to the 1998 10-K.
 - 10.8 Lease Agreement dated May 17, 1996 between New York-New York Hotel, LLC, and Las Vegas Steakhouse Corp., incorporated by reference to Exhibit 10.8 to the 1998 10-K.
-

Edgar Filing: ARK RESTAURANTS CORP - Form 10-K

- 10.9 Amendment dated August 21, 2000 to the Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.9 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2000 (the "2000 10-K").
- 10.10 Amendment dated November 21, 2000 to the Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.10 to the 2000 10-K.
- 10.11 Amendment dated November 1, 2001 to the Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.11 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 29, 2001 (the "2001 10-K").
- 10.12 Amendment dated December 20, 2001 to the Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.11 of the 2001 10-K.
- 10.13 Amendment dated as of April 23, 2002 to the Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.13 of the Second Quarter 2002 Form 10-Q.
- 10.14 Amendment dated as of January 22, 2002 to the Fourth Amended and Restated Credit Agreement dated as of December 27, 1999 between we and Bank Leumi USA, incorporated by reference to Exhibit 10.14 of the First Quarter 2003 Form 10-Q.
- 10.15 Ark Restaurants Corp. 2004 Stock Option Plan, as amended, incorporated by reference to the Registrant's Definitive Proxy Statement pursuant to Section 14(a) of the Securities Exchange Act of 1934 filed on January 26, 2004.
- 14 Code of Ethics, incorporated by reference to Exhibit 14.1 to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 27, 2003.
- 16 Letter from Deloitte & Touche LLP regarding change in certifying accountants, incorporated by reference from the exhibit included with our Current Report on Form 8-K filed with the SEC on January 15, 2004 and our Current Report on Form 8-K/A filed with the SEC on January 16, 2004.
- *21 Subsidiaries of the Registrant.
- *23 Consent of J.H. Cohn LLP.
- *31.1 Certification of Chief Executive Officer.
- *31.2 Certification of Chief Financial Officer.
- *32 Section 1350 Certification.

* Filed herewith.
