ARK RESTAURANTS CORP
Form 10-Q
February 10, 2009

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended December 27, 2008

Commission file number 0-14030

ARK RESTAURANTS CORP.
(Exact name of registrant as specified in its charter)

New York	13-3156768
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
85 Fifth Avenue, New York, New York	10003
(Address of principal executive offices)	(Zip Code)

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
Yes X No ___

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

Large accelerated filer ______ 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

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

Class	Outstanding shares at February 6, 2009
(Common stock, $.01 par value)	3,489,845

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

We may make statements in this Quarterly Report on Form 10-Q regarding our assumptions, projections, expectations, targets, intentions or beliefs about future events. All statements, other than statements of historical facts, included or incorporated by reference herein relating to managements 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 will 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, managements examination of historical operating trends, data contained in records and other data available from third parties, we cannot assure you that our projections will be achieved. Factors that may cause such differences include: economic conditions generally and in each of the markets in which we are located, the amount of sales contributed by new and existing restaurants, labor costs for our personnel, fluctuations in the cost of food products, adverse weather conditions, changes in consumer preferences and the level of competition from existing or new competitors.

We have attempted to identify, in context, certain of the factors that we believe may cause actual future experience and results to differ materially from our current expectation regarding the relevant matter of subject area. In addition to the items specifically discussed above, our business, results of operations and financial position and your investment in our common stock are subject to the risks and uncertainties described in Item 1A Risk Factors in Part I of our Annual Report on Form 10-K for the fiscal year ended September 27, 2008 as updated by the information contained under the caption Item 1A. Risk Factors in Part II of this Quarterly Report on Form 10-Q.

From time to time, oral or written forward-looking statements are also included in our reports on Forms 10-K, 10-Q and 8-K, 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 Quarterly Report on Form 10-Q, our reports on Forms 10-K 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 Quarterly Report on Form 10-Q, certain of which are beyond our control, will be important in determining our future performance. Consequently, actual results may differ materially from those that might be anticipated from forward-looking statements. In light of these and other uncertainties, you should not regard the inclusion of a forward-looking statement in this Quarterly Report on Form 10-Q or other public communications that we might make as a representation by us that our plans and objectives will be achieved, and you should not place undue reliance on such forward-looking statements.

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

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

ARK RESTAURANTS CORP. AND SUBSIDIARIES

CONSOLIDATED CONDENSED BALANCE SHEETS

(In Thousands)

	December 27, 2008 (unaudited)	September 27, 2008 (Note 1)
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	$ 953	$ 2,978
Short-term investments in available-for-sale securities	7,547	9,267
Accounts receivable	2,726	2,862
Related party receivables, net	1,079	881
Employee receivables	341	281
Current portion of long-term receivables	123	121
Inventories	1,552	1,556
Prepaid expenses and other current assets	607	362
Total current assets	14,928	18,308
LONG-TERM RECEIVABLES, LESS CURRENT PORTION	199	231
FIXED ASSETS - At cost:		
Leasehold improvements	31,607	31,533
Furniture, fixtures and equipment	28,632	28,372
Construction in progress	395	44
	60,634	59,949
Less accumulated depreciation and amortization	35,989	35,087
FIXED ASSETS - Net	24,645	24,862
INTANGIBLE ASSETS - Net	58	62
GOODWILL	4,813	4,813
TRADEMARKS	721	721
DEFERRED INCOME TAXES	4,312	4,312
OTHER ASSETS	697	701
TOTAL	$ 50,373	$ 54,010
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable - trade	$ 1,492	$ 2,834
Accrued expenses and other current liabilities	4,724	5,312
Accrued income taxes	514	823
Current portion of note payable	198	195
Total current liabilities	6,928	9,164
OPERATING LEASE DEFERRED CREDIT	3,646	3,695
NOTE PAYABLE, LESS CURRENT PORTION	460	510
OTHER LIABILITIES	138	157
TOTAL LIABILITIES	11,172	13,526
NON-CONTROLLING INTERESTS	2,445	2,681
COMMITMENTS AND CONTINGENCIES		
SHAREHOLDERS' EQUITY:		
Common stock, par value $.01 per share - authorized, 10,000 shares; issued and outstanding of 5,667 and 3,490 shares at December 27, 2008, respectively and 5,667 and 3,532 shares at September 27, 2008, respectively	57	57

Additional paid-in capital		22,146		22,068
Accumulated other comprehensive income (loss)		6		(30)
Retained earnings		24,718		25,427
		46,927		47,522
Less stock option receivable		(76)		(124)
Less treasury stock, at cost, of 2,177 and 2,135 shares at December 27, 2008 and September 27, 2008, respectively		(10,095)		(9,595)
Total shareholders' equity		36,756		37,803
TOTAL	$	50,373	$	54,010

See notes to consolidated condensed financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES

CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS (Unaudited)

(In Thousands, Except Per Share Amounts)

	13 Weeks Ended	
	December 27, 2008	December 29, 2007
REVENUES		
Food and beverage sales	$ 26,219	$ 28,630
Other income	573	650
Total revenues	26,792	29,280
COST AND EXPENSES:		
Food and beverage cost of sales	6,711	7,456
Payroll expenses	8,924	9,239
Occupancy expenses	3,793	3,927
Other operating costs and expenses	3,986	3,922
General and administrative expenses	2,087	2,151
Depreciation and amortization	906	668
Total cost and expenses	26,407	27,363
OPERATING INCOME	385	1,917
OTHER (INCOME) EXPENSE:		
Interest expense	12	15
Interest income	(204)	(145)
Other income, net	(358)	(119)
Total other income, net	(550)	(249)
Income from continuing operations before provision for income taxes and non-controlling interests	935	2,166
Provision for income taxes	(324)	(782)
Loss attributable to non-controlling interests	236	-
INCOME FROM CONTINUING OPERATIONS	847	1,384
DISCONTINUED OPERATIONS:		
Income from operations of discontinued restaurants	-	157
Provision for income taxes	-	56
INCOME FROM DISCONTINUED OPERATIONS	-	101
NET INCOME	$ 847	$ 1,485
PER SHARE INFORMATION - BASIC AND DILUTED:		
Income from continuing operations	$ 0.24	$ 0.38
Discontinued operations	-	0.03
BASIC	$ 0.24	$ 0.41
Income from continuing operations	$ 0.24	$ 0.38
Discontinued operations	-	0.03
DILUTED	$ 0.24	$ 0.41
WEIGHTED AVERAGE NUMBER OF SHARES - BASIC	3,505	3,597
WEIGHTED AVERAGE NUMBER OF SHARES - DILUTED	3,505	3,641

See notes to consolidated condensed financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES

CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS (Unaudited)

(In Thousands)

	13 Weeks Ended December 27, 2008	December 29, 2007
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	$ 847	$ 1,485
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Deferred income taxes	-	(27)
Stock-based compensation	78	78
Depreciation and amortization	906	677
Equity in loss of affiliate	7	-
Loss attributable to non-controlling interests	(236)	-
Operating lease deferred credit	(49)	(112)
Changes in operating assets and liabilities:		
Accounts receivable	136	506
Related party receivables	(198)	(156)
Employee receivables	(60)	16
Inventories	4	(152)
Prepaid expenses and other current assets	(245)	(80)
Other assets	(3)	(119)
Accounts payable - trade	(1,342)	(62)
Accrued income taxes	(309)	14
Accrued expenses and other current liabilities	(588)	(1,210)
Net cash provided by (used in) continuing operating activities	(1,052)	858
Net cash provided by (used in) discontinued operating activities	(19)	72
Net cash provided by (used in) operating activities	(1,071)	930
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of fixed assets	(685)	(1,644)
Proceeds from sale of discontinued operations	-	1,030
Purchases of investment securities	(3,488)	(4,651)
Proceeds from sales of investment securities	5,244	4,391
Payments received on long-term receivables	30	28
Net cash provided by (used in) continuing investing activities	1,101	(846)
Net cash provided by discontinued investing activities	-	161
Net cash provided by (used in) investing activities	1,101	(685)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Principal payments on note payable	(47)	(44)
Dividends paid	(1,556)	(1,583)
Purchase of treasury stock	(500)	-
Payments received on stock option receivable	48	42
Net cash used in continuing financing activities	(2,055)	(1,585)
NET DECREASE IN CASH AND CASH EQUIVALENTS	(2,025)	(1,340)

CASH AND CASH EQUIVALENTS, Beginning of period		2,978		4,009
CASH AND CASH EQUIVALENTS, End of period	$	953	$	2,669
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:				
Cash paid during the period for:				
Interest	$	12	$	15
Income taxes	$	628	$	852

See notes to consolidated condensed financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
December 27, 2008

(Unaudited)

1. CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

The consolidated condensed balance sheet as of December 27, 2008, which has been derived from audited financial statements included in the Form 10-K, and the unaudited interim consolidated and condensed financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and with the instructions to form 10-Q and Article 10 of Regulation S-X. All adjustments that, in the opinion of management, are necessary for a fair presentation for the periods presented have been reflected as required by Regulation S-X, Rule 10-01. Such adjustments are of a normal, recurring nature. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted. These consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company’s annual report on Form 10-K for the year ended September 27, 2008. The results of operations for interim periods are not necessarily indicative of the operating results to be expected for the full year.

PRINCIPLES OF CONSOLIDATION — The consolidated interim 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 interim financial statements are certain variable interest entities, as discussed below. All significant intercompany balances and transactions have been eliminated in consolidation.

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.”

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 condensed consolidated financial position or results of operations for any period presented.

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 on or near 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 primarily of US Treasury Bills and Notes, all of which have a high degree of liquidity and are reported at fair value, with unrealized gains and losses recorded in accumulated other comprehensive income. The cost of investments in available-for-sale securities is determined on a specific identification basis. Realized gains or losses and declines in value judged to be other than temporary, if any, are reported in other income, net. The Company evaluates its investments periodically for possible impairment and reviews factors such as the length of time and extent to which fair value has been below cost basis and the Company's ability and intent to hold the investment for a period of time which may be sufficient for anticipated recovery in market value.

FAIR VALUE - In September 2006, the Financial Accounting Standards Board (“FASB”) issued SFAS No. 157, “*Fair Value Measurements*” (“SFAS 157”), which, among other requirements, eliminated the diversity in practice that exists due to the different definitions of fair value. SFAS No. 157 retains the exchange price notion in earlier definitions of fair value, but clarifies that the exchange price is the price in an orderly transaction between market participants to sell an asset or liability in the principal or most advantageous market for the asset or liability. SFAS No. 157 states that the transaction is hypothetical at the measurement date, considered from the perspective of the market participant who holds the asset or liability. As such, fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (an exit price), as opposed to the price that would be paid to acquire the asset or received to assume the liability at the measurement date (an entry price). SFAS No. 157 also establishes a three-level hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

In February 2008, the FASB issued FASB Staff Position No. 157-2, effective date of FASB Statement No. 157, which delays the effective date of SFAS No. 157 for all non-financial assets and non-financial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The Company adopted the provisions of SFAS No. 157 on December 27, 2008 and elected the deferral option for non-financial assets and liabilities. The effect of adopting this standard was not significant.

In October 2008, the FASB issued FASB Staff Position No. 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active* (FSP No. 157-3). FSP No. 157-3 applies to financial assets within the scope of accounting pronouncements that require or permit fair value measurements in accordance with SFAS No. 157. FSP No. 157-3 clarifies the application of SFAS No. 157 in a market that is not active and provides an example to illustrate key conditions in determining the fair value of a financial asset when the market for that financial asset is not active. FSP No. 157-3 became effective upon issuance including prior periods for which financial statements have not been issued. The Companys adopted the provisions of FSP No. 157-3 effective December 27, 2008. The effect of adopting this standard was not significant.

The valuation hierarchy is based upon the transparency of inputs to the valuation of an asset or liability on the measurement date. The three levels are defined as follows:

- Level 1 - inputs to the valuation methodology are quoted prices (unadjusted) for an identical asset or liability in an active market.
- Level 2 - inputs to the valuation methodology include quoted prices for a similar asset or liability in an active market or model-derived valuations in which all significant inputs are observable for substantially the full term of the asset or liability.
- Level 3 - inputs to the valuation methodology are unobservable and significant to the fair value measurement of the asset or liability.

The following table presents assets and liabilities measured at fair value on a recurring basis as of December 27, 2008 by SFAS No. 157 valuation hierarchy: (in thousands)

	Level 1	Level 2	Level 3	Carrying Value
Available-for-sale securities	$ 7,547	$ -	$ -	$ 7,547
Total assets at fair value	$ 7,547	$ -	$ -	$ 7,547

The Companys available-for-sales securities, which primarily consist of United States Treasury Bills and Notes, are actively traded and the valuation of such securities is based upon quoted market prices.

The carrying amounts of 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.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities Including an amendment of FASB Statement No. 115* (SFAS No. 159). Under SFAS No. 159, a company may elect to measure eligible financial assets and financial liabilities at fair value. Unrealized gains and losses on items for which the fair value option has been elected are reported in earnings at each subsequent reporting date. If elected, SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. The Company did not elect to begin reporting any financial assets or liabilities at fair value upon adoption of SFAS No. 159 on September 28, 2008 and we did not elect to report at fair value any new financial assets or liabilities entered during the quarter ended December 27, 2008.

RECENT ACCOUNTING DEVELOPMENTS 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 was effective November 15, 2008. The adoption of SFAS No. 162 did not have a material impact on our consolidated financial statements.

2. 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% and accordingly such operations have been consolidated.

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.

3. RECENT RESTAURANT DISPOSITIONS

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 & SMac which features pizza and macaroni and cheese. We contributed Columbus Bakerys net fixed assets and cash into this venture and received an ownership interest of 37.5% . These operations are not consolidated in the Companys 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 landlords 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. Operations for the 13 weeks ended December 29, 2007 have been reclassified as discontinued operations.

4. RECEIVABLES FROM EMPLOYEES IN RESPECT OF STOCK OPTION EXERCISES

Receivables from employees in respect of stock option exercises includes amounts due from officers and directors totaling $76,000 and $124,000 at December 27, 2008 and September 27, 2008, respectively. Such amounts, which are due from the exercise of stock options in accordance with the Companys Stock Option Plan, are payable on demand with interest at ½% above prime (4.0% at December 27, 2008).

5. INCOME PER SHARE OF COMMON STOCK

Net income per share is computed in accordance with Statement of Financial Accounting Standards No. 128, *Earnings Per Share*, and is calculated on the basis of the weighted average number of common shares outstanding during each period plus, for diluted earnings per share, the additional dilutive effect of potential common stock. Potential common stock using the treasury stock method consists of dilutive stock options and warrants.

For the 13-week period ended December 27, 2008, options to purchase 152,500 shares of common stock at a price of $29.60 and options to purchase 100,000 shares of common stock at a price of $32.15 were not included in diluted earnings per share as their impact was antidilutive.

Options to purchase 271,500 shares of common stock at a price range of $29.60 - $32.15 were included in diluted earnings per share for the 13-week period ended December 29, 2007.

During the 13-week period ended December 27, 2008, no options were exercised.

6. SHARE-BASED COMPENSATION

The Company has options outstanding under its 2004 Stock Option Plan (the 2004 Plan). Options granted under the 2004 Plan are exercisable at prices at least equal to the fair market value of such stock on the dates the options were granted. The options expire ten years after the date of grant. 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.

A summary of stock option activity is presented below:

	Shares	Weighted Average Exercise Price	Weighted Average Fair Value	Weighted Average Contractual Term	Aggregate Intrinsic Value
Outstanding as of September 27, 2008	271,500	$ 30.59	$ 9.22	7.01	
Granted	-	-	-	-	
Exercised	-	-			