

ARK RESTAURANTS CORP  
Form 10-Q  
August 17, 2010

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 July 3, 2010

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  No

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

Yes  No

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

Large accelerated filer

Accelerated filer

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

Smaller Reporting Company

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

Yes  No

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

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

Class	Outstanding shares at August 12, 2010
(Common stock, \$.01 par value)	3,489,845

---

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

### SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

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

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

We have attempted to identify, in context, certain of the factors that we believe may cause actual future experience and results to differ materially from our current expectation regarding the relevant matter or subject area. In addition to the items specifically discussed above, our business, results of operations and financial position and your investment in our common stock are subject to the risks and uncertainties described in Item 1A Risk Factors in Part I of our Annual Report on Form 10-K for the fiscal year ended October 3, 2009 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 specifically to Ark Restaurants Corp and its subsidiaries and predecessor entities.

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

(In Thousands)

	July 3, 2010	October 3, 2009
	(unaudited)	(Note 1)
<b><u>ASSETS</u></b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 4,125	\$ 5,452
Short-term investments in available-for-sale securities	5,005	8,139
Accounts receivable	1,999	2,031
Related party receivables, net	1,425	504
Employee receivables	274	584
Current portion of long-term receivables	134	129
Inventories	1,694	1,547
Prepaid income taxes	203	
Prepaid expenses and other current assets	501	428
	<u>15,360</u>	<u>18,814</u>
Total current assets	15,360	18,814
LONG-TERM RECEIVABLES, LESS CURRENT PORTION		102
FIXED ASSETS - Net	23,955	25,078
INTANGIBLE ASSETS - Net	760	766
GOODWILL	4,813	4,813
DEFERRED INCOME TAXES	5,216	5,216
OTHER ASSETS	426	547
	<u>50,530</u>	<u>55,336</u>
<b>TOTAL</b>	<b>\$ 50,530</b>	<b>\$ 55,336</b>

**LIABILITIES AND EQUITY****CURRENT LIABILITIES:**

Accounts payable - trade	\$ 2,094	\$ 2,541
Accrued expenses and other current liabilities	7,121	6,036
Accrued income taxes		655
Dividend payable		3,490
Current portion of note payable	212	209
	<u>9,427</u>	<u>12,931</u>
Total current liabilities	9,427	12,931
OPERATING LEASE DEFERRED CREDIT	3,746	3,917
NOTE PAYABLE, LESS CURRENT PORTION	143	302
OTHER LIABILITIES	36	84
	<u>13,352</u>	<u>17,234</u>
<b>TOTAL LIABILITIES</b>	<b>13,352</b>	<b>17,234</b>

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

COMMITMENTS AND CONTINGENCIES

SHAREHOLDERS EQUITY:

Common stock, par value \$.01 per share - authorized, 10,000 shares; issued, 5,667 shares; outstanding, 3,490 shares at July 3, 2010 and October 3, 2009	57	57
Additional paid-in capital	22,959	22,501
Accumulated other comprehensive income (loss)	8	(29)
Retained earnings	22,343	23,440
	<u>45,367</u>	<u>45,969</u>
Less stock option receivable	(29)	(76)
Less treasury stock, at cost, of 2,177 shares at July 3, 2010 and October 3, 2009	(10,095)	(10,095)
	<u>35,243</u>	<u>35,798</u>
Total Ark Restaurants Corp. shareholders equity	35,243	35,798
NON-CONTROLLING INTERESTS	1,935	2,304
	<u>37,178</u>	<u>38,102</u>
TOTAL EQUITY	37,178	38,102
	<u>\$ 50,530</u>	<u>\$ 55,336</u>
TOTAL	\$ 50,530	\$ 55,336

See notes to consolidated condensed financial statements.

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

	13 Weeks Ended		39 Weeks Ended	
	July 3, 2010	June 27, 2009	July 3, 2010	June 27, 2009
<b>REVENUES:</b>				
Food and beverage sales	\$ 34,559	\$ 30,773	\$ 83,522	\$ 80,151
Other income	603	350	2,330	1,521
Total revenues	35,162	31,123	85,852	81,672
<b>COSTS AND EXPENSES:</b>				
Food and beverage cost of sales	8,988	7,945	21,991	20,743
Payroll expenses	10,015	9,577	27,792	26,619
Occupancy expenses	4,263	4,134	12,332	12,367
Other operating costs and expenses	4,396	3,871	11,691	11,014
General and administrative expenses	2,207	2,195	7,278	6,833
Depreciation and amortization	972	917	2,892	2,687
Total costs and expenses	30,841	28,639	83,976	80,263
OPERATING INCOME	4,321	2,484	1,876	1,409
<b>OTHER (INCOME) EXPENSE:</b>				
Interest expense	7	11	23	34
Interest income	(4)	(56)	(75)	(284)
Other (income) expense, net	51	(117)	45	(503)
Total other (income) expense, net	54	(162)	(7)	(753)
Income before provision for income taxes	4,267	2,646	1,883	2,162
Provision for income taxes	1,206	961	610	702
NET INCOME	3,061	1,685	1,273	1,460
Net (income) loss attributable to non-controlling interests	(145)	(88)	248	273
NET INCOME ATTRIBUTABLE TO ARK RESTAURANTS CORP.	\$ 2,916	\$ 1,597	\$ 1,521	\$ 1,733
<b>NET INCOME PER ARK RESTAURANTS CORP. COMMON SHARE</b>				
Basic	\$ 0.84	\$ 0.46	\$ 0.44	\$ 0.50
Diluted	\$ 0.83	\$ 0.46	\$ 0.43	\$ 0.50

Edgar Filing: ARK RESTAURANTS CORP - Form 10-Q

WEIGHTED AVERAGE NUMBER OF COMMON SHARES  
OUTSTANDING

Basic	<u>3,490</u>	<u>3,490</u>	<u>3,490</u>	<u>3,495</u>
Diluted	<u>3,513</u>	<u>3,490</u>	<u>3,515</u>	<u>3,495</u>

See notes to consolidated condensed financial statements.

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**  
**CONSOLIDATED CONDENSED STATEMENTS OF EQUITY (Unaudited)**  
**FOR THE THIRTY-NINE WEEKS ENDED JUNE 27, 2009 AND JULY 3, 2010**  
(In Thousands)

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Stock Option Receivable	Treasury Stock	Non-controlling Interest	Total Equity
	Shares	Amount							
BALANCE - September 27, 2008	5,667	\$ 57	\$ 22,068	\$ (30)	\$ 25,427	\$ (124)	\$ (9,595)	\$ 2,681	\$ 40,484
Stock-based compensation			278						278
Payment of dividends - \$0.44 per share					(1,556)				(1,556)
Unrealized loss on available-for-sale securities				(12)					(12)
Repayments on stock option receivable						48			48
Purchases of treasury stock							(500)		(500)
Net losses attributable to non-controlling interests								(273)	(273)
Distributions to non-controlling interests								(81)	(81)
Net income attributable to Ark Restaurants Corp.					1,733				1,733
BALANCE - June 27, 2009	5,667	\$ 57	\$ 22,346	\$ (42)	\$ 25,604	\$ (76)	\$ (10,095)	\$ 2,327	\$ 40,121
BALANCE - October 3, 2009	5,667	\$ 57	\$ 22,501	\$ (29)	\$ 23,440	\$ (76)	\$ (10,095)	\$ 2,304	\$ 38,102
Stock-based compensation			458						458
Payment of dividends - \$0.75 per share					(2,618)				(2,618)
Unrealized gain on available-for-sale securities				37					37
Repayments on stock option receivable						47			47
Net losses attributable to non-controlling interests								(248)	(248)
Distributions to non-controlling interests								(121)	(121)
Net income attributable to Ark Restaurants Corp.					1,521				1,521
BALANCE - July 3, 2010	5,667	\$ 57	\$ 22,959	\$ 8	\$ 22,343	\$ (29)	\$ (10,095)	\$ 1,935	\$ 37,178

See notes to consolidated condensed financial statements.



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

	39 Weeks Ended	
	July 3, 2010	June 27, 2009
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income attributable to Ark Restaurants Corp.	\$ 1,521	\$ 1,733
Adjustments to reconcile net income to net cash provided by operating activities:		
Stock-based compensation	458	278
Depreciation and amortization	2,892	2,687
Equity in loss of affiliate	175	32
Loss attributable to non-controlling interests	(248)	(273)
Operating lease deferred credit	(171)	(68)
Changes in operating assets and liabilities:		
Accounts receivable	32	268
Related party receivables	(921)	(114)
Inventories	(147)	(1)
Prepaid expenses and other current assets	(73)	(282)
Prepaid and accrued income taxes	(858)	(1,622)
Other assets	(54)	(12)
Accounts payable - trade	(447)	(485)
Accrued expenses and other liabilities	1,037	157
Net cash provided by operating activities	<u>3,196</u>	<u>2,298</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchases of fixed assets	(1,763)	(1,815)
Loans and advances made to employees	(57)	(167)
Payments received on employee receivables	367	121
Purchases of investment securities	(6,972)	(7,665)
Proceeds from sales of investment securities	10,143	9,293
Payments received on long-term receivables	97	90
Net cash provided by (used in) investing activities	<u>1,815</u>	<u>(143)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Principal payments on note payable	(156)	(144)
Dividends paid	(6,108)	(1,556)
Distributions to non-controlling interests	(121)	(81)
Purchase of treasury stock		(500)
Payments received on stock option receivable	47	48
Net cash used in financing activities	<u>(6,338)</u>	<u>(2,233)</u>
NET DECREASE IN CASH AND CASH EQUIVALENTS	(1,327)	(78)
CASH AND CASH EQUIVALENTS, Beginning of period	<u>5,452</u>	<u>2,978</u>
CASH AND CASH EQUIVALENTS, End of period	\$ 4,125	\$ 2,900

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:

Cash paid during the period for:

Interest	\$ 27	\$ 34
Income taxes	\$ 1,603	\$ 2,295

See notes to consolidated condensed financial statements.

**ARK RESTAURANTS CORP. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

July 3, 2010

(Unaudited)

---

**1. CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

The consolidated condensed balance sheet as of October 3, 2009, which has been derived from audited financial statements included in the Form 10-K, and the unaudited interim consolidated and condensed financial statements, have been prepared in accordance with accounting principles generally accepted in the United States of America ( GAAP ) for interim financial information and pursuant to the rules and regulations of the Securities and Exchange Commission (the SEC ). All adjustments that, in the opinion of management, are necessary for a fair presentation for the periods presented have been reflected as required by Regulation S-X, Rule 10-01. Such adjustments are of a normal, recurring nature. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted. These consolidated condensed financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company s annual report on Form 10-K for the year ended October 3, 2009. The results of operations for interim periods are not necessarily indicative of the operating results to be expected for the full year or any other interim period.

**PRINCIPLES OF CONSOLIDATION** The consolidated condensed interim financial statements include the accounts of 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 condensed interim financial statements are certain variable interest entities. All significant intercompany balances and transactions have been eliminated in consolidation.

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

**CASH AND CASH EQUIVALENTS** Cash and cash equivalents, 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 condensed balance sheets.

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

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

**NEW ACCOUNTING STANDARDS ADOPTED IN FISCAL 2010** In December 2007, the Financial Accounting Standards Board ( FASB ) issued authoritative guidance 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 non-controlling interest in the acquiree. This guidance also establishes disclosure requirements to enable financial statement users to evaluate the nature and financial effects of the business combination. This guidance applies 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, which corresponds to the Company s fiscal year

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

beginning October 4, 2009 and has not had any impact as the Company has not completed any acquisitions since its effectiveness.

In December 2007, the FASB issued authoritative guidance to establish accounting and reporting standards for the non-controlling interest in a subsidiary and for the deconsolidation of a subsidiary. This guidance defines a non-controlling interest, previously referred to as minority interest, as the portion of equity in a subsidiary not attributable, directly or indirectly, to a parent. It also requires, among other items, that a non-controlling 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 non-controlling interest's shares and, separately, the amounts of consolidated net income attributable to the parent and non-controlling interest all on the consolidated statement of operations; and if a subsidiary is deconsolidated, any retained non-controlling equity investment in the former subsidiary be measured at fair value and a gain or loss be recognized in net income (loss) based on such fair value. This guidance is effective for fiscal years beginning after December 15, 2008 and, accordingly, was adopted as of October 4, 2009. As a result of the adoption, the Company has reported non-controlling interests as a component of equity in the consolidated condensed balance sheets and the net losses attributable to non-controlling interests have been separately identified in the consolidated condensed statements of operations. The prior periods presented have also been retrospectively restated to conform to the current classification requirements. Other than the change in presentation of non-controlling interests, the adoption of this guidance had no impact on the consolidated condensed financial statements.

**NEW ACCOUNTING STANDARDS NOT YET ADOPTED** In June 2009, the FASB issued a new accounting pronouncement, which is included in ASC Topic 810: Consolidation, which amends the consolidation guidance applicable to variable interest entities and is effective as of the beginning of the first annual reporting period that begins after November 15, 2009, which corresponds to the Company's fiscal year beginning October 3, 2010. The Company is currently evaluating the impact that the adoption of this guidance may have on its consolidated financial statements and required disclosures.

## **2. RECENT RESTAURANT EXPANSION**

In June 2008, the Company entered into an agreement to design and lease a restaurant, *Robert*, 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, 2024 and has two five-year renewals. This restaurant opened during the first quarter of fiscal 2010 and as a result the consolidated condensed statement of operations for the 39 weeks ended July 3, 2010 includes \$439,000 of pre-opening and early operating losses related to this facility which were incurred during the Company's first quarter of fiscal 2010 which ended January 2, 2010.

## **3. INVESTMENT SECURITIES**

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

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

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

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

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

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

	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses	Fair Value
<b>At July 3, 2010</b>				
Available for sale short-term:				
Government debt securities	\$ 4,997,000	\$ 8,000	\$	\$ 5,005,000
	\$ 4,997,000	\$ 8,000	\$	\$ 5,005,000
<b>At October 3, 2009</b>				
Available for sale short-term:				
Government debt securities	\$ 8,168,000	\$	\$ (29,000)	\$ 8,139,000
	\$ 8,168,000	\$	\$ (29,000)	\$ 8,139,000

Proceeds from the sale and redemption of investment securities amounted to \$10,143,000 and \$9,293,000 for the 39-week periods ended July 3, 2010 and June 27, 2009, respectively. Proceeds from the sale and redemption of investment securities amounted to \$216,000 and \$1,950,000 for the 13-week periods ended July 3, 2010 and June 27, 2009, respectively. Included in Other (Income) Expense, Net are realized losses in the amounts of \$53,000 and \$86,000 for the 39-week periods ended July 3, 2010 and June 27, 2009, respectively, related to these sales and redemptions. No realized gains or losses were included in Other (Income) Expense, Net for the 13-week period ended July 3, 2010 related to these sales and redemptions. Included in Other (Income) Expense, Net are realized losses in the amount of \$34,000 for the 13-week period ended June 27, 2009 related to these sales and redemptions.

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

Receivables from employees in respect of stock option exercises consists of amounts due from officers and directors totaling \$29,000 and \$76,000 at July 3, 2010 and October 3, 2009, respectively. Such amounts, which are due from the exercise of stock options in accordance with the Company's Stock Option Plan, are payable on demand with interest at ½% above prime (3.25 % at July 3, 2010).

#### 5. RELATED PARTY TRANSACTIONS

Receivables due from officers and employees, excluding stock option receivables, totaled \$274,000 at July 3, 2010 and \$584,000 at October 3, 2009. Such amounts are payable on demand and bear interest at the minimum statutory rate (0.61% at July 3, 2010).

#### 6. COMMITMENTS AND CONTINGENCIES

In the ordinary course of its business, the Company is a party to various lawsuits arising from accidents at its restaurants and 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. Included in Accrued Expenses and Other Current Liabilities is approximately \$500,000 related to the potential settlement of various claims against the Company.

In February 2010, the Company entered into an amendment to its lease for the food court space at the *New York New York Hotel and Casino* in Las Vegas, Nevada. Pursuant to this amendment, the Company agreed to, among other things, commit no less than \$3,000,000 to remodel the food court by March 2012. In exchange for this commitment the landlord agreed to extend the food court lease for an additional four years.

**7. 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.

The Company did not purchase any shares pursuant to our stock repurchase program during the quarter ended July 3, 2010. Such plan has not been renewed.

**8. 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.

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.

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. 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. During fiscal 2009, options to purchase 176,600 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. No options were granted during the 39-week period ended July 3, 2010.

The fair value of each of the Company's stock options is estimated on the date of grant using a Black-Scholes option-pricing model that uses assumptions that relate to the expected volatility of the Company's common stock, the expected dividend yield of our stock, the expected life of the options and the risk free interest rate.

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 Value
Outstanding as October 3, 2009	422,100	\$ 22.86	\$ 6.87	\$ 7.52	
Granted					
Exercised					
Forfeited/Cancelled					
Outstanding and expected to vest at July 3, 2010	422,100	\$ 22.86	\$ 6.87	\$ 6.78	\$
Exercisable at July 3, 2010	333,800	\$ 25.72	\$ 7.75	\$ 3.89	\$

Compensation cost is recognized on a straight-line basis over the vesting period during which employees perform related services. As of July 3, 2010, there was approximately \$268,000 of unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a period of approximately 1.5 years.





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

Compensation cost for stock options is included in general and administrative expenses in the Company's consolidated condensed statements of income. Compensation cost for stock options was approximately \$458,000 and \$278,000 for the 39-week periods ended July 3, 2010 and June 27, 2009, respectively. Compensation cost for stock options was approximately \$145,000 and \$122,000 for the 13-week periods ended July 3, 2010 and June 27, 2009, respectively.

### 9. INCOME TAXES

The income tax provisions for the 39-week periods ended July 3, 2010 and June 27, 2009 reflect effective tax rates of 32.4% and 32.5% (including the tax benefit disclosed below), respectively. The Company expects its effective tax rate for its current fiscal year to be approximately 32.0% to 36.0%. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from our current estimates.

During the 39-week period ended June 27, 2009, the Company recognized a tax benefit of \$118,000 principally as a result of reducing its long term income tax liability for unrecognized tax benefits due to the resolution of a tax audit.

The Company's tax returns for the fiscal years 2008 and 2009 are 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.

### 10. INCOME PER SHARE OF COMMON STOCK

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

For the 13 and 39-week periods ended July 3, 2010, options to purchase 176,600 shares of common stock at a price of \$12.04 were included in diluted earnings per share. Options to purchase 145,500 shares of common stock at a price of \$29.60 and options to purchase 100,000 shares of common stock at a price of \$32.15 per share were not included in diluted earnings per share as their impact was antidilutive.

For the 13 and 39-week periods ended June 27, 2009, options to purchase 152,500 shares of common stock at a price of \$29.60, options to purchase 100,000 shares of common stock at a price of \$32.15 and options to purchase 176,600 shares of common stock at a price of \$12.04 were not included in diluted earnings per share as their impact was antidilutive.

### 11. DIVIDENDS

On December 1, 2009, March 1, 2010 and May 26, 2010, our Board of Directors declared quarterly cash dividends in the amount of \$0.25 per share. We intend to continue to pay such quarterly cash dividends 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.

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

### **Overview**

The Company's operating income of \$4,321,000 in the third fiscal quarter of 2010 increased 74% compared to operating income of \$2,484,000 in the third fiscal quarter of 2009. This improvement resulted primarily from increased revenues as a result of an overall improvement in the US economy and much better weather conditions as compared to last year combined with expense management initiatives.

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

**Revenues**

During the Company's third fiscal quarter of 2010, total revenues of \$35,162,000 increased 13.0% compared to total revenues of \$31,123,000 in the third fiscal quarter of 2009. The increase in revenues was primarily attributable to improved weather conditions, sales from our new restaurant, *Robert*, in New York City and higher management fees.

*Food and Beverage Sales*

On a Company-wide basis, same store sales increased 9% during the third fiscal quarter of 2010 as compared to the same period last year. Same store sales in Las Vegas, which decreased \$353,000 or 2.7% in the third fiscal quarter of 2010 as compared to the third fiscal quarter of 2009, were negatively affected by the continued unwillingness of the public to engage in gaming activities and a decrease in tourism and convention business. Same store sales in New York, which increased \$1,552,000 or 29.9% during the third fiscal quarter as compared to the third fiscal quarter of 2009, were positively impacted by the improved weather conditions which allowed for significantly greater utilization of the Company's outdoor seating facilities. Same store sales in Washington D.C. increased \$521,000 or 9.2% during the third quarter of fiscal 2010 as compared to the same period last year. The increase in same store sales was primarily the result of improved weather conditions and greater utilization of the Company's outdoor seating in Washington D.C. Same store sales in Atlantic City decreased \$28,000 or 5.8% while same store sales in Connecticut decreased \$36,000 or 9.1%. Both locations were negatively affected by the continued unwillingness of the public to engage in gaming activities, as well as, increased competition from recently opened gaming facilities. Boston same store sales increased \$106,000 or 9.3% during the third fiscal quarter of 2010. During the Company's 39-week period ended July 3, 2010, total revenues of \$85,852,000 increased 5.1% compared to total revenues of \$81,672,000 in the 39-week period ended June 27, 2009, primarily as a result of the improved weather conditions experienced during the third fiscal quarter of 2010 as noted above, sales from our new restaurant, *Robert*, in New York City and higher management fees.

*Other Income*

Other income for the third fiscal quarter of 2010 was \$603,000 compared to \$350,000 in the third fiscal quarter of 2009; an increase of 72.3% due primarily to an increase in management fees from the Company's unconsolidated managed restaurants.

**Costs and Expenses**

Food and beverage costs for the third quarter of 2010 as a percentage of total revenues were 25.6% and have remained relatively consistent as compared to 25.5% in the third quarter of 2009. These costs for the 39-weeks ended July 3, 2010 as a percentage of total revenues were 25.6% compared to 25.4% in the 39-week period ended June 27, 2009.

Payroll expenses as a percentage of total revenues were 28.5% for the third quarter of 2010 as compared to 30.8% in the third quarter of 2009. Payroll expenses as a percentage of total revenues were 32.4% for the 39-week period ended July 3, 2010 as compared to 32.6% for the 39-week period ended June 27, 2009. The decrease in payroll expenses as a percentage of revenue for the 13 and 39-week periods ended July 3, 2010, was due to the impact of increased revenue experienced during the third fiscal quarter of 2010 as a result of improved weather conditions.

Occupancy expenses as a percentage of total revenues were 12.1% for the third quarter of 2010 as compared to 13.3% in the third quarter of 2009. Occupancy expenses as a percentage of total revenues were 14.4% for the 39-week period ended July 3, 2010 as compared to 15.1% for the 39-week period ended June 27, 2009. These decreases were due primarily to a one-time expense of \$220,000 in the second fiscal quarter of 2009 for a real estate tax adjustment related to a restaurant in Washington D.C.

Other operating costs and expenses remained relatively stable as a percentage of total revenues and were 12.5% for the third quarter of 2010 as compared to 12.4% in the third quarter of 2009 and 13.6% for the 39-week period ended July 3, 2010 as compared to 13.5% for the 39-week period ended June 27, 2009.

General and administrative expenses as a percentage of total revenues were 6.3% for the third quarter of 2010 as compared to 7.1% in the third quarter of 2009 as additional costs of \$78,000 associated with share-based compensation charges were offset by an increase in total revenues. General and administrative expenses as a percentage of total revenues were 8.5% for the 39-week period ended July 3, 2010 as compared to 8.4% for the 39-week period ended June 27, 2009. This slight increase in general and administrative expenses as a percentage of revenue was primarily due to increased professional fees of \$100,000 and additional share-based compensation of \$156,000 partially offset by an increase in total revenues.

## Income Taxes

The income tax provisions for the 39-week periods ended July 3, 2010 and June 27, 2009 reflect effective tax rates of 32.4% and 32.5% (including the tax benefit previously disclosed), respectively. The Company expects its effective tax rate for its current fiscal year to be approximately 32.0% to 36.0%. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from our current estimates.

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

The Company's tax returns for the fiscal years 2008 and 2009 are 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.

## 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 cash from operations primarily to fund the cost of developing and opening new restaurants, acquiring existing restaurants owned by others and remodeling existing restaurants we own.

Net cash provided by operating activities for the 39-week period ended July 3, 2010 was \$3,196,000, compared to \$2,298,000 for the comparable prior year period. This net change of \$890,000 was primarily attributable to favorable working capital changes.

Net cash provided by investing activities for the 39-week period ended July 3, 2010 was \$1,815,000 and resulted from net proceeds from the sales of investment securities partially offset by purchases of fixed assets at existing restaurants and the construction of *Robert* in New York City.

Net cash used in investing activities for the 39-week period ended June 27, 2009 was \$143,000 and resulted from net proceeds from the sales of investment securities offset by purchases of fixed assets at existing restaurants and the construction of *Yolos*, a Mexican restaurant located at the Planet Hollywood Resort and Casino located in Las Vegas, Nevada.

Net cash used in financing activities for the 39-week periods ended July 3, 2010 and June 27, 2009 of \$6,338,000 and \$2,233,000, respectively, was principally used for the payment of dividends and purchases of treasury stock.

The Company had a working capital surplus of \$5,933,000 at July 3, 2010 as compared to a working capital surplus of \$5,883,000 at October 3, 2009.

A quarterly cash dividend in the amount of \$0.44 per share was declared on October 12, 2007 and January 11, April 11, July 11 and October 10, 2008. On September 16, 2009, our Board of Directors declared a special cash dividend in the amount of \$1.00 per share. On December 1, 2009, March 1, 2010 and May 26, 2010, our Board of Directors declared a quarterly cash dividend in the amount of \$0.25 per share. 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.

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

## Recent Restaurant Expansion

In June 2008, the Company entered into an agreement to design and lease a restaurant, *Robert*, 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, 2024 and has two five-year renewals. This restaurant opened during the first quarter of fiscal 2010 and as a result the consolidated condensed statement of operations for the 39 weeks ended July 3, 2010 includes \$439,000 of pre-opening and early operating losses related to this facility.

**Critical Accounting Policies**

The preparation of financial statements requires the application of certain accounting policies, which may require the Company to make estimates and assumptions of future events. In the process of preparing its consolidated condensed financial

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

The Company's critical accounting policies are described in the Company's Form 10-K for the year ended October 3, 2009. There have been no significant changes to such policies during fiscal 2010, other than the implementation of new authoritative guidance to establish accounting and reporting standards for the non-controlling interest in a subsidiary and for the deconsolidation of a subsidiary.

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

See Note 1 to the Consolidated Condensed Financial Statements for a description of recent accounting pronouncements, including those adopted in fiscal 2010 and the expected dates of adoption and the anticipated impact on the Consolidated Financial Statements.

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

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

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

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

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

Under the supervision and with the participation of management, including our principal executive officer and principal financial officer, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this quarterly report as such term is defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934, as amended (the Exchange Act). Based on this evaluation, our management, including our principal executive officer and principal financial officer, concluded that our disclosure controls and procedures were effective as of July 3, 2010 to ensure that all material information required to be disclosed by us in reports that we file or submit under the Exchange Act is accumulated and communicated to them as appropriate to allow timely decisions regarding required disclosure and that all such information is recorded, processed, summarized and reported as specified in the SEC's rules and forms.

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

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that occurred during the third quarter of fiscal 2010 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

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

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

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

**Item 1. Legal Proceedings**

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

**Item 1A. Risk Factors**

The most significant risk factors applicable to the Company are described in Part I, Item 1A (Risk Factors) of the Company's Annual Report on Form 10-K for the fiscal year ended October 3, 2009 (the 2009 Form 10-K). There have been no material changes to the risk factors previously disclosed in the 2009 Form 10-K. The risks described in the 2009 Form 10-K are not the only risks facing the Company. Additional risks and uncertainties not currently known to management may materially adversely affect the Company's business, financial condition, and/or operating results.

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

None.

**Item 3. Defaults upon Senior Securities**

None.

**Item 5. Other Information**

None.

**Item 6. Exhibits**

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

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

32 Certificate Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

**SIGNATURES**

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

Date: August 17, 2010

**ARK RESTAURANTS CORP.**

By: /s/ Michael Weinstein

\_\_\_\_\_  
Michael Weinstein  
Chairman & Chief Executive Officer

By: /s/ Robert J. Stewart

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