ARK RESTAURANTS CORP
Form 10-Q
February 12, 2013

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

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

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

For the quarterly period ended December 29, 2012

Commission file number 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 (I.R.S. Employer Identification No.)
85 Fifth Avenue, New York, New York (Address of principal executive offices)	10003 (Zip Code)

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

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

Yes S 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 S 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 S

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

Yes £ No S

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, 2013
(Common stock, $.01 par value)	3,244,845

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

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

Words or phrases such as “anticipates,” “believes,” “estimates,” “expects,” “intends,” “plans,” “predicts,” “projects,” “targets,” 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 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 September 29, 2012 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 may prove to be incorrect. This may occur as a result of inaccurate assumptions or as a consequence of known or unknown risks and uncertainties. Many factors discussed in this Quarterly Report on Form 10-Q, certain of which are beyond our control, will be important in determining our future performance. Consequently, actual results may differ materially from those that might be anticipated from forward-looking statements. In light of these and other uncertainties, you should not regard the inclusion of a forward-looking statement in this Quarterly Report on Form 10-Q or other public communications that we might make as a representation by us that our plans and objectives will be achieved, and you should not place undue reliance on such forward-looking statements.

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

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

Part I. Financial Information

Item 1. Consolidated Condensed Financial Statements

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED CONDENSED BALANCE SHEETS

(In Thousands, Except Per Share Amounts)

	December 29, 2012 (Unaudited)	September 29, 2012 (Note 1)
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents (includes $418 at December 29, 2012 and $714 at September 29, 2012 related to VIEs)	$ 5,336	$ 8,705
Short-term investments in available-for-sale securities	75	75
Accounts receivable (includes $147 at December 29, 2012 and $1,776 at September 29, 2012 related to VIEs)	2,647	3,790
Employee receivables	339	339
Inventories (includes $16 at December 29, 2012 and $28 at September 29, 2012 related to VIEs)	1,538	1,567
Prepaid and refundable income taxes (includes $149 at December 29, 2012 and $235 at September 29, 2012 related to VIEs)	858	985
Prepaid expenses and other current assets (includes $9 at December 29, 2012 and $13 at September 29, 2012 related to VIEs)	902	1,087
Total current assets	11,695	16,548
FIXED ASSETS - Net (includes $186 at December 29, 2012 and $3,189 at September 29, 2012 related to VIEs)	25,264	26,194
INTANGIBLE ASSETS - Net	1,019	1,021
GOODWILL	4,813	4,813
TRADEMARKS	721	721
DEFERRED INCOME TAXES	5,980	4,960
OTHER ASSETS (includes $71 at December 29, 2012 and September 29, 2012 related to VIEs)	907	907
TOTAL ASSETS	$ 50,399	$ 55,164
LIABILITIES AND EQUITY		
CURRENT LIABILITIES:		
Accounts payable - trade (includes $60 at December 29, 2012 and $153 at September 29, 2012 related to VIEs)	$ 2,306	$ 2,729
Accrued expenses and other current liabilities (includes $629 at December 29, 2012 and $1,950 at September 29, 2012 related VIEs)	7,733	8,873
Current portion of note payable	1,063	885
Total current liabilities	11,102	12,487
OPERATING LEASE DEFERRED CREDIT	4,565	4,650

NOTE PAYABLE, LESS CURRENT PORTION	974	1,240
TOTAL LIABILITIES	16,641	18,377
COMMITMENTS AND CONTINGENCIES		
EQUITY:		
Common stock, par value $.01 per share - authorized, 10,000 shares; issued, 4,601 shares at December 29, 2012 and September 29, 2012, respectively; outstanding, 3,245 shares at December 29, 2012 and September 29, 2012, respectively	46	46
Additional paid-in capital	21,825	23,410
Retained earnings	21,569	22,372
	43,440	45,828
Less treasury stock, at cost, of 1,356 shares at December 29, 2012 and September 29, 2012, respectively	(13,220)	(13,220)
Total Ark Restaurants Corp. shareholders' equity	30,220	32,608
NON-CONTROLLING INTERESTS	3,538	4,179
TOTAL EQUITY	33,758	36,787
TOTAL LIABILITIES AND EQUITY	$ 50,399	$ 55,164

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	
	December 29, 2012	December 31, 2011 (Note 1)
REVENUES:		
Food and beverage sales	$31,029	$ 32,603
Other revenue	307	258
Total revenues	31,336	32,861
COSTS AND EXPENSES:		
Food and beverage cost of sales	7,749	8,358
Payroll expenses	10,845	10,707
Occupancy expenses	4,535	4,458
Other operating costs and expenses	4,339	4,032
General and administrative expenses	2,410	2,781
Depreciation and amortization	1,176	938
Total costs and expenses	31,054	31,274
OPERATING INCOME	282	1,587
OTHER (INCOME) EXPENSE:		
Interest expense	—	1
Interest income	—	(1)
Other income, net	(79)	(33)
Total other income, net	(79)	(33)
INCOME BEFORE PROVISION FOR INCOME TAXES	361	1,620
Provision for income taxes	114	378
INCOME FROM CONTINUING OPERATIONS	247	1,242
Loss from discontinued operations, net of income tax benefits	—	(127)
CONSOLIDATED NET INCOME	247	1,115
Net income attributable to non-controlling interests	(239)	(29)
NET INCOME ATTRIBUTABLE TO ARK RESTAURANTS CORP.	$8	$ 1,086
AMOUNTS ATTRIBUTABLE TO ARK RESTAURANTS CORP.:		
Income from continuing operations	$8	$ 1,148
Loss from discontinued operations, net of tax	—	(62)
Net income	$8	$ 1,086
NET INCOME (LOSS) PER ARK RESTAURANTS CORP. COMMON SHARE:		
From continuing operations:		
Basic	$0.00	$ 0.34
Diluted	$0.00	$ 0.33

From discontinued operations:		
Basic	$—	$ (0.02)
Diluted	$—	$ (0.02)
From net income:		
Basic	$0.00	$ 0.32
Diluted	$0.00	$ 0.31
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING:		
Basic	3,245	3,432
Diluted	3,322	3,449

See notes to consolidated condensed financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES

CONSOLIDATED CONDENSED STATEMENTS OF COMPREHENSIVE INCOME (Unaudited)

FOR THE 13 WEEKS ENDED DECEMBER 29, 2012 AND DECEMBER 31, 2011

(In Thousands)

	13 Weeks Ended	
	December 29, 2012	December 31, 2011
Consolidated net income	$ 247	$ 1,115
Other comprehensive income, net of taxes:		
Unrealized gain on available-for-sale securities	—	1
Total other comprehensive income, net of taxes	—	1
Comprehensive income	247	1,116
Comprehensive loss attributable to non-controlling interests	(239)	(29)
Comprehensive income attributable to Ark Restaurants Corp.	$ 8	$ 1,087

See notes to consolidated condensed financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES

CONSOLIDATED CONDENSED STATEMENTS OF CHANGES IN EQUITY (Unaudited)

FOR THE 13 WEEKS ENDED DECEMBER 29, 2012 AND DECEMBER 31, 2011

(In Thousands)

	Common Shares	Stock Amount	Additional Paid-In Capital	Accumulated Other Comprehensive Income	Retained Earnings	Stock Option Receivable	Treasury Stock	Total Ark Restaurants Corp. Shareholders' Equity	Non-controlling Interests	Total Equity
BALANCE - October 1, 2011	4,601	$46	$23,302	$ 3	$20,128	$(29)	$(10,095)	$33,355	$4,831	$38,186
Net income	—	—	—	—	1,086	—	—	1,086	29	1,115
Unrealized gain on available-for-sale securities	—	—	—	1	—	—	—	1	—	1
Write-off of stock option receivable	—	—	—	—	—	29	—	29	—	29
Purchase of treasury stock	—	—	—	—	—	—	(3,125)	(3,125)	—	(3,125)
Distributions to non-controlling interests	—	—	—	—	—	—	—	—	(555)	(555)
Payment of dividends - $0.25 per share	—	—	—	—	(811)	—	—	(811)	—	(811)
BALANCE - December 31, 2011	4,601	$46	$23,302	$ 4	$20,403	$—	$(13,220)	$30,535	$4,305	$34,840
BALANCE - September 29, 2012	4,601	$46	$23,410	$ —	$22,372	$—	$(13,220)	$32,608	$4,179	$36,787
Net income	—	—	—	—	8	—	—	8	239	247
Purchase of member interests in subsidiary	—	—	(2,685)	—	—	—	—	(2,685)	(280)	(2,965)
Tax benefit of purchase of	—	—	1,020	—	—	—	—	1,020	—	1,020

member interests in subsidiary										
Stock-based compensation	—	—	80	—	—	—	—	80	—	80
Distributions to non-controlling interests	—	—	—	—	—	—	—	—	(600)	(600)
Payment of dividends - $0.25 per share	—	—	—	—	(811)	—	—	(811)	—	(811)
BALANCE - December 29, 2012	4,601	$46	$21,825	$ —	$21,569	$—	$(13,220)	$30,220	$3,538	$33,758

See notes to consolidated condensed financial statements.

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ARK RESTAURANTS CORP. AND SUBSIDIARIES

CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS (Unaudited)

(In Thousands)

	13 Weeks Ended	
	December 29, 2012	December 31, 2011
CASH FLOWS FROM OPERATING ACTIVITIES:		
Consolidated net income	$247	$ 1,115
Adjustments to reconcile consolidated net income to net cash provided by operating activities:		
Write-off of notes receivable from former president	—	66
Loss on closure of restaurants	256	365
Stock-based compensation	80	—
Depreciation and amortization	1,176	957
Operating lease deferred charge (credit)	(85)	25
Changes in operating assets and liabilities:		
Accounts receivable	1,143	(368)
Inventories	(62)	(17)
Prepaid, refundable and accrued income taxes	127	(531)
Prepaid expenses and other current assets	185	(106)
Other assets	—	14
Accounts payable - trade	(423)	212
Accrued expenses and other liabilities	(1,140)	(1,034)
Net cash provided by operating activities	1,504	698
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of fixed assets	(409)	(2,389)
Purchase of management rights	—	(200)
Loans and advances made to employees	(35)	(45)
Payments received on employee receivables	35	25
Purchase of member interests in subsidiary	(2,965)	—
Purchases of investment securities	—	(301)
Proceeds from sales of investment securities	—	320
Net cash used in investing activities	(3,374)	(2,590)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Principal payments on notes payable	(88)	(58)
Dividends paid	(811)	(811)
Purchase of treasury shares	—	(1,000)
Distributions to non-controlling interests	(600)	(555)
Net cash used in financing activities	(1,499)	(2,424)
NET DECREASE IN CASH AND CASH EQUIVALENTS	(3,369)	(4,316)
CASH AND CASH EQUIVALENTS, Beginning of period	8,705	7,780

CASH AND CASH EQUIVALENTS, End of period	$5,336	$ 3,464
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid during the period for:		
Interest	$—	$ 1
Income taxes	$51	$ 874
Non-cash investing activity:		
Note payable in connection with purchase of treasury shares	$—	$ 2,125
Tax benefit of purchase of member interests in subsidiary	$1,020	$ —

See notes to consolidated condensed financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES

NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

December 29, 2012

(Unaudited)

1. CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

The consolidated condensed balance sheet as of September 29, 2012, 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 September 29, 2012. The results of operations for interim periods are not necessarily indicative of the operating results to be expected for the full year or any other interim period.

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

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

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

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.

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

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

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.

For the 13-weeks ended December 29, 2012, the Company made purchases from two vendors that accounted for approximately 22% of total purchases. For the 13-weeks ended December 31, 2011, the Company made purchases from one vendor that accounted for approximately 13% of total purchases.

SEGMENT REPORTING — As of December 29, 2012, the Company owned and operated 19 restaurants and bars, 22 fast food concepts and catering operations, exclusively in the United States, that have similar economic characteristics, nature of products and service, class of customers and distribution methods. The Company believes it meets the criteria for aggregating its operating segments into a single reporting segment in accordance with applicable accounting guidance.

RECENTLY ADOPTED ACCOUNTING STANDARDS — In June 2011, the Financial Accounting Standards Board (the "FASB") issued new accounting guidance on the presentation of other comprehensive income. The new guidance eliminates the current option to present the components of other comprehensive income as part of the statement of changes in equity. Instead, an entity has the option to present the total of comprehensive income, the components of net income and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. The new accounting guidance is effective for fiscal years, and interim periods within those years, beginning after December 15, 2011, with early adoption permitted. Full retrospective application is required. The adoption of this guidance in the current quarter did not have a material impact on the Company's financial statements, and the statements of comprehensive income were presented as a separate consecutive statement following the Consolidated Condensed Statements of Income.

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

2. VARIABLE INTEREST ENTITIES

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

During the 13-weeks ended December 29, 2012, the Company purchased an additional 14.39% of the membership interests of *Ark Hollywood/Tampa Investment, LLC*, directly from the individuals that held such interests, for an aggregate consideration of $2,964,512. In connection with this transaction, the Company recorded a reduction to additional paid-in capital of $2,684,896 representing the excess of the amount paid over the carrying value ($279,616) of the non-controlling interests acquired as the acquisition of an additional interest in a less than wholly-owned subsidiary where control is maintained is treated as an equity transaction. In addition, the Company also recorded an increase to additional paid-in capital in the amount of $1,020,261 representing the related deferred tax benefit of the transaction.

As a result of the above, *Ark Hollywood/Tampa Investment, LLC* is no longer considered a VIE as the Company now owns 64.39% of the voting membership interests. Accordingly, the following disclosures associated with the Company's VIEs do not include *Ark Hollywood/Tampa Investment, LLC* as of December 29, 2012:

	December 29, 2012	September 29, 2012
	(in thousands)	
Cash and cash equivalents	$418	$ 714
Accounts receivable	147	1,776
Inventories	16	28
Prepaid income taxes	149	235
Prepaid expenses and other current assets	9	13
Due from Ark Restaurants Corp. and affiliates (1)	427	288
Fixed assets, net	186	3,189
Other long-term assets	71	71
Total assets	$1,423	$ 6,314
Accounts payable	$60	$ 153
Accrued expenses and other liabilities	629	1,950
Total liabilities	689	2,103
Equity of variable interest entities	734	4,211
Total liabilities and equity	$1,423	$ 6,314

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

The liabilities recognized as a result of consolidating these VIEs do not represent additional claims on our general assets; rather, they represent claims against the specific assets of the consolidated VIEs. Conversely, assets recognized as a result of consolidating these VIEs do not represent additional assets that could be used to satisfy claims against our general assets.

3. RECENT RESTAURANT EXPANSION

On March 18, 2011, a subsidiary of the Company entered into a lease agreement to operate a restaurant and bar in New York City named *Clyde Frazier's Wine and Dine*. In connection with the agreement, the landlord has agreed to contribute up to $1,800,000 towards the construction of the facility (of which $1,500,000 was received as of December 29, 2012 and is being deferred over the lease term), which totaled approximately $7,000,000. The initial term of the lease for this facility expires on March 31, 2027 and has one five-year renewal. This restaurant opened during the second quarter of fiscal 2012.

4. RECENT RESTAURANT DISPOSITIONS

Lease Expirations – On July 8, 2011, the Company entered into an agreement with the landlord of *The Grill Room* property located in New York City, whereby in exchange for a payment of $350,000 the Company vacated the property on October 31, 2011. Such payment and the related loss on closure of the property, in the amount of $179,000, are included in Other Operating Costs and Expenses in the Consolidated Condensed Statement of Income for the 13-weeks ended December 31, 2011. This lease was scheduled to expire on December 31, 2011.

The Company was advised by the landlord that it would have to vacate the *America* property located in Washington, DC, which was on a month-to-month lease. The closure of this property occurred on November 7, 2011. The related loss on closure of this property, in the amount of $186,000, is included in Other Operating Costs and Expenses in the Consolidated Condensed Statement of Income for the 13-weeks ended December 31, 2011.

Discontinued Operations – Effective March 15, 2012, the Company vacated its food court operations at the *MGM Grand Casino at the Foxwoods Resort Casino* in Ledyard, CT. The Company determined that it would not be able to operate this facility profitably at this location at the current rent.

The results of discontinued operations were as follows:

	13 Weeks Ended December 29, 2012	13 Weeks Ended December 31, 2011
	(In thousands)	
Revenues	$ —	$ 507
Costs and expenses	—	673
Loss before income taxes	—	(166)
Income tax benefit	—	(39)
Net loss	$ —	$ (127)

Other – On October 29, 2012, the Company suffered a flood at its *Red* and *Sequoia* properties located in New York, NY as a result of a hurricane. The Company did not reopen these properties as the underlying leases were due to expire in the second quarter of fiscal 2013. Losses related to the closure of these properties, in the amount of $256,000, are included in Other Operating Costs and Expenses in the Consolidated Condensed Statement of Income for the 13-weeks ended December 29, 2012.

5. INVESTMENT SECURITIES

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

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

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

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

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

	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses	Fair Value
	(In thousands)			
At December 29, 2012				
Available-for-sale short-term:				
Government debt securities	$75	$ —	$ —	$ 75

	Amortized Cost	Gross Unrealized Holding Gains	Gross Unrealized Holding Losses	Fair Value
	(In thousands)			
At September 29, 2012				
Available-for-sale short-term:				
Government debt securities	$75	$ —	$ —	$ 75

At December 29, 2012, all of the Company’s government debt securities mature within fiscal year 2013.

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Proceeds from the sale and redemption of investment securities amounted to $0 and $320,000 for the 13-week periods ended December 29, 2012 and December 31, 2011, respectively. No realized gains or losses were included in Other Income (Expense), net for the 13-week periods ended December 29, 2012 and December 31, 2011.

6. NOTE PAYABLE FOR TREASURY STOCK REPURCHASE

On December 12, 2011, the Company, in a private transaction, purchased 250,000 shares of its common stock at a price of $12.50 per share, or a total of $3,125,000 ($2,037,000 outstanding at December 29, 2012). Upon the closing of the purchase, the Company paid the seller $1,000,000 in cash and issued an unsecured promissory note to the seller for $2,125,000. The note bears interest at 0.19% per annum, and is payable in 24 equal monthly installments of $88,541, commencing on December 1, 2012.

7. RELATED PARTY TRANSACTIONS

The Company's former President and Chief Operating Officer resigned effective January 1, 2012. In connection therewith, the Company forgave loans due totaling $66,000 ($29,000 for stock option exercises receivable and $37,000 for other loans) and has recorded additional compensation in the amount of $475,400 in accordance with his separation agreement and release. Such amounts are included in General and Administrative Expenses in the Consolidated Condensed Statement of Income for the 13-weeks ended December 31, 2011.

Employee loans totaled approximately $339,000 at both December 29, 2012 and September 29, 2012. Such amounts are payable on demand and bear interest at the minimum statutory rate (0.19% at December 29, 2012 and September 29, 2012).

8. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

	December 29, 2012	September 29, 2012