BIGLARI HOLDINGS INC.
Form 10-Q
November 04, 2016

UNITED STATES
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 September 30, 2016

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from ___ to ___

Commission file number 0-8445

BIGLARI HOLDINGS INC.

(Exact name of registrant as specified in its charter)

INDIANA	**37-0684070**
(State or other jurisdiction of incorporation)	(I.R.S. Employer Identification No.)

17802 IH 10 West, Suite 400

San Antonio, Texas	**78257**
(Address of principal executive offices)	(Zip Code)

(210) 344-3400

Registrant’s telephone number, including area code

Not Applicable

(Former name, former address and former fiscal year, if changed since last report)

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

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 (Section 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). Yesx Noo

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 the definitions of “large accelerated filer,” “accelerated filer,” and “smaller reporting company” in Rule 12b-2 of the Exchange Act (Check one).

Large accelerated filer o	Accelerated filer x	Non-accelerated filer o	Smaller reporting company o

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

Yes o No x

As of November 1, 2016, 2,066,965 shares of the registrant’s Common Stock, $.50 stated value, were outstanding.

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BIGLARI HOLDINGS INC.

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PART 1 – FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

BIGLARI HOLDINGS INC.

CONSOLIDATED BALANCE SHEETS

(dollars in thousands)

	September 30, 2016 (Unaudited)	December 31, 2015
Assets		
Current assets:		
Cash and cash equivalents	$75,405	$56,523
Investments	22,702	23,750
Receivables	8,363	17,716
Inventories	6,691	7,593
Deferred taxes	13,746	13,263
Other current assets	8,646	7,255
Total current assets	135,553	126,100
Property and equipment	319,492	332,324
Goodwill	40,041	40,022
Other intangible assets	21,363	21,673
Investment partnerships	462,894	471,689
Other assets	14,505	8,534
Total assets	$993,848	$1,000,342
Liabilities and shareholders' equity		
Liabilities		
Current liabilities:		
Accounts payable	$32,137	$34,649
Accrued expenses	76,858	74,429
Current portion of notes payable and other borrowings	7,160	7,789
Total current liabilities	116,155	116,867
Long-term notes payable and other borrowings	284,277	296,062
Deferred taxes	122,158	125,130
Other liabilities	10,379	10,911
Total liabilities	532,969	548,970

Shareholders’ equity		
Common stock - 2,066,965 and 2,066,691 shares outstanding	1,071	1,071
Additional paid-in capital	391,845	391,853
Retained earnings	444,533	415,982
Accumulated other comprehensive loss	(2,918)	(3,679)
Treasury stock, at cost	(373,652)	(353,855)
Biglari Holdings Inc. shareholders’ equity	460,879	451,372
Total liabilities and shareholders’ equity	$ 993,848	$ 1,000,342

See accompanying Notes to Consolidated Financial Statements.

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BIGLARI HOLDINGS INC.

CONSOLIDATED STATEMENTS OF EARNINGS

(dollars in thousands except per share amounts)

	Third Quarter		First Nine Months	
	2016	2015	2016	2015
	(Unaudited)		(Unaudited)	
Revenues				
Restaurant operations	$209,445	$208,348	$620,449	$616,715
Insurance premiums and other	5,841	4,391	17,071	11,762
Media advertising and other	1,446	5,704	6,567	17,750
	216,732	218,443	644,087	646,227
Cost and expenses				
Restaurant cost of sales	162,139	160,079	478,677	473,845
Insurance losses and underwriting expenses	4,650	3,097	12,427	8,620
Media cost of sales	3,225	8,476	13,292	27,077
Selling, general and administrative	31,246	31,735	94,394	100,391
Depreciation and amortization	5,875	6,106	17,271	18,876
	207,135	209,493	616,061	628,809
Other income (expenses)				
Interest and dividends	1	1	1	9
Interest expense	(2,831)	(2,966)	(8,626)	(8,969)
Interest on obligations under leases	(2,411)	(2,237)	(7,441)	(7,122)
Investment partnership gains (losses)	(108,614)	5,302	21,602	22,710
Total other income (loss)	(113,855)	100	5,536	6,628
Earnings (loss) before income taxes	(104,258)	9,050	33,562	24,046
Income tax expense (benefit)	(44,129)	(248)	5,011	4,739
Net earnings (loss)	$(60,129)	$9,298	$28,551	$19,307
Earnings (loss) per share				
Basic earnings per common share	$(49.48)	$7.36	$23.26	$11.66
Diluted earnings per common share	$(49.48)	$7.35	$23.23	$11.65
Weighted average shares and equivalents				
Basic	1,215,296	1,263,320	1,227,624	1,655,532
Diluted	1,215,296	1,265,328	1,228,935	1,657,786

See accompanying Notes to Consolidated Financial Statements.

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BIGLARI HOLDINGS INC.

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME

(dollars in thousands)

	Third Quarter		First Nine Months	
	2016	2015	2016	2015
	(Unaudited)		(Unaudited)	
Net earnings (loss)	$(60,129)	$9,298	$28,551	$19,307
Other comprehensive income:				
Net change in unrealized gains and losses on investments	57	(9)	644	(549)
Applicable income taxes	(20)	4	(239)	201
Reclassification of investment (appreciation) depreciation in net earnings	—	7	306	62
Applicable income taxes	—	(2)	(113)	(21)
Foreign currency translation	42	(1,888)	163	(1,760)
Other comprehensive income (loss), net	79	(1,888)	761	(2,067)
Total comprehensive income (loss)	$(60,050)	$7,410	$29,312	$17,240

See accompanying Notes to Consolidated Financial Statements.

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BIGLARI HOLDINGS INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(dollars in thousands)

	First Nine Months	
	2016	2015
	(Unaudited)	
Operating activities		
Net earnings	$28,551	$19,307
Adjustments to reconcile net earnings to operating cash flows:		
Depreciation and amortization	17,271	18,876
Provision for deferred income taxes	(3,808)	(1,073)
Asset impairments and other non-cash expenses	1,676	446
Loss on disposal of assets	615	1,086
Realized investment (gains) losses	—	62
Investment partnership gains	(21,602)	(22,710)
Distributions from investment partnerships	26,265	15,000
Changes in receivables and inventories	10,255	6,021
Changes in other assets	(2,841)	(502)
Changes in accounts payable and accrued expenses	(426)	(1,932)
Net cash provided by operating activities	55,956	34,581
Investing activities		
Additions of property and equipment	(6,795)	(8,416)
Proceeds from property and equipment disposals	1,084	137
Purchases of investments	(46,698)	(111,485)
Redemptions of fixed maturity securities	28,549	12,157
Changes in restricted assets	—	(4)
Net cash used in investing activities	(23,860)	(107,611)
Financing activities		
Payments on revolving credit facility	(354)	(149)
Principal payments on long-term debt	(8,727)	(1,650)
Principal payments on direct financing lease obligations	(4,166)	(4,642)
Proceeds from exercise of stock options	2	222
Net cash used in financing activities	(13,245)	(6,219)
Effect of exchange rate changes on cash	31	(3)
Increase (decrease) in cash and cash equivalents	18,882	(79,252)
Cash and cash equivalents at beginning of year	56,523	129,669
Cash and cash equivalents at end of third quarter	$75,405	$50,417

See accompanying Notes to Consolidated Financial Statements.

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BIGLARI HOLDINGS INC.

CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY

(Unaudited)

(dollars in thousands)

	Common Stock	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Treasury Stock	Total
Balance at December 31, 2015	$ 1,071	$ 391,853	$ 415,982	$ (3,679)	$ (353,855)	$ 451,372
Net earnings			28,551			28,551
Other comprehensive income, net				761		761
Adjustment to treasury stock for holdings in investment partnerships					(19,807)	(19,807)
Exercise of stock options		(8)			10	2
Balance at September 30, 2016	$ 1,071	$ 391,845	$ 444,533	$ (2,918)	$ (373,652)	$ 460,879
Balance at December 31, 2014	$ 1,071	$ 391,877	$ 431,825	$ (783)	$ (98,439)	$ 725,551
Net earnings			19,307			19,307
Other comprehensive loss, net				(2,067)		(2,067)
Adjustment to treasury stock for holdings in investment partnerships					(255,272)	(255,272)
Exercise of stock options		(24)			246	222
Balance at September 30, 2015	$ 1,071	$ 391,853	$ 451,132	$ (2,850)	$ (353,465)	$ 487,741

See accompanying Notes to Consolidated Financial Statements.

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BIGLARI HOLDINGS INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

September 30, 2016

(dollars in thousands, except share and per share data)

Note 1. Summary of Significant Accounting Policies

Description of Business

The accompanying unaudited consolidated financial statements of Biglari Holdings Inc. ("Biglari Holdings" or the "Company") have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") applicable to interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by GAAP for complete financial statements. In our opinion, all adjustments considered necessary to present fairly the results of the interim periods have been included and consist only of normal recurring adjustments. The results for the interim periods shown are not necessarily indicative of results for the entire fiscal year. The financial statements contained herein should be read in conjunction with the consolidated financial statements and notes thereto included in our annual report on Form 10-K for the year ended December 31, 2015.

Biglari Holdings is a holding company owning subsidiaries engaged in a number of diverse business activities, including media, property and casualty insurance, and restaurants. The Company's largest operating subsidiaries are involved in the franchising and operating of restaurants. Biglari Holdings is founded and led by Sardar Biglari, Chairman and Chief Executive Officer of Biglari Holdings and its major operating subsidiaries. The Company's long-term objective is to maximize per-share intrinsic value. All major operating, investment, and capital allocation decisions are made for the Company and its subsidiaries by Mr. Biglari.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries including Steak n Shake Inc. ("Steak n Shake"), Western Sizzlin Corporation ("Western"), Maxim Inc. ("Maxim") and First Guard Insurance Company and its agency, 1st Guard Corporation (collectively "First Guard"). Intercompany accounts and transactions have been eliminated in consolidation.

Note 2. New Accounting Standards

In October 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-17, *Interests Held through Related Parties That Are under Common Control.* ASU 2016-17 amends the consolidation guidance in ASU 2015-02 regarding the treatment of indirect interests held through related parties that are under common control. We are currently assessing the impact of ASU 2016-17, effective for annual reporting periods beginning after December 15, 2016 and interim periods within those years.

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments.* The objective of the update is to reduce diversity in how certain transactions are classified in the statement of cash flows. The amendments in this update are effective for financial statements issued for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years. The Company is currently evaluating the impact the adoption of ASU 2016-15 will have on its consolidated financial statements and related disclosures.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*. Topic 326 amends guidance on reporting credit losses for assets held at amortized cost basis and available for sale debt securities. For available for sale debt securities, credit losses should be measured in a manner similar to current GAAP; however Topic 326 will require that credit losses be presented as an allowance rather than as a write-down. The amendments in this update are effective for financial statements issued for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. The Company is currently evaluating the impact the adoption of ASU 2016-13 will have on its consolidated financial statements and related disclosures.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*, which amends the FASB Accounting Standards Codification. The objective of the update is to improve financial reporting by increasing transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. It is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. Early application of the amendments is permitted for all entities. The Company is currently evaluating the impact that this amended guidance will have on its consolidated financial statements and related disclosures.

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In November 2015, the FASB issued ASU 2015-17, *Balance Sheet Classification of Deferred Taxes*. The new guidance requires that all deferred tax assets and liabilities, along with any related valuation allowance, be classified as noncurrent deferred tax asset or liability. The amendments in this update are effective for financial statements issued for fiscal years beginning after December 15, 2016, and interim periods within those fiscal years. Early application is permitted. The Company does not believe the adoption of ASU 2015-17 will have a material effect on its consolidated financial statements.

In April 2015, the FASB issued ASU 2015-03, *Interest—Imputation of Interest (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs*. The update requires debt issuance costs related to a recognized debt liability to be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. The recognition and measurement guidance for debt issuance costs are not affected by the amendments in this update. The amendments are effective for financial statements issued for fiscal years beginning after December 15, 2015, and interim periods within those fiscal years. The Company adopted ASU 2015-03 on January 1, 2016. As of December 31, 2015, the Company reclassified $688 from other current assets to current portion of notes payable and other borrowings. The Company also reclassified $2,888 from other assets to other borrowings and long-term notes payable to conform to the current year classification.

In February 2015, the FASB issued ASU 2015-02, *Amendments to the Consolidations Analysis*. The amendments in this update provide guidance under GAAP about limited partnerships, which will be variable interest entities, unless the limited partners have either substantive kick-out rights or participation rights. It also changes the effect that fees paid to a decision maker or service provider have on the consolidation analysis and amends how variable interests held by related parties affect the consolidation conclusion. The amendments in this update are effective for the annual periods, and interim periods within those annual periods, beginning after December 15, 2015. The Company adopted the provisions of ASU 2015-02 on January 1, 2016. The adoption of this update has no material effect on the Company’s financial statements.

In August 2014, the FASB issued ASU 2014-15, *Presentation of Financial Statements-Going Concern*. The amendments in this update provide guidance in GAAP about management's responsibility to evaluate whether there is substantial doubt about an entity's ability to continue as a going concern and to provide related footnote disclosures. In doing so, the amendments should reduce diversity in the timing and content of footnote disclosures. The amendments in this update are effective for the annual periods ending after December 15, 2016, and for annual periods and interim periods thereafter. Early application is permitted. The Company is evaluating the effect, if any, on its consolidated financial statements.

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)*. This update provides a comprehensive new revenue recognition model that requires a company to recognize revenue to depict the transfer of goods or services to a customer at an amount that reflects the consideration it expects to receive in exchange for those goods or services. The guidance also requires additional disclosure about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts. In July 2015, the FASB voted to defer the effective date of this ASU by one year, which would make the guidance effective for our first quarter fiscal year 2018 financial statements using either of two acceptable adoption methods: (i) retrospective adoption to each prior reporting period presented with the option to elect certain practical expedients; or (ii) adoption with the cumulative effect of initially applying the guidance recognized at the date of initial application and providing certain additional disclosures. We currently expect to adopt ASU 2014-09 as of January 1, 2018 under the modified retrospective method where the cumulative effect is recognized at the date of initial application. Our evaluation of ASU 2014-09 is ongoing and not complete. The FASB has issued and may issue in the future, interpretative guidance, which may cause our evaluation to change. While we anticipate some changes to revenue recognition for certain transactions, we do not currently believe ASU 2014-09 will have a material effect on our consolidated financial statements.

Note 3. Earnings Per Share

Earnings per share of common stock is based on the weighted average number of shares outstanding during the year. The shares of Company stock attributable to our limited partner interest in The Lion Fund, L.P. and The Lion Fund II, L.P. — based on our proportional ownership during this period — are considered treasury stock on the consolidated balance sheet and thereby deemed not to be included in the calculation of weighted average common shares outstanding. However, these shares are legally outstanding.

From December 18, 2014 to September 30, 2016, The Lion Fund, L.P. and The Lion Fund II, L.P. (collectively, the “investment partnerships”) purchased an aggregate of 716,237 shares of the Company’s common stock pursuant to Rule 10b5-1 Trading Plans and a tender offer, of which 37,925 shares were purchased during the first nine months of 2016. All of the shares purchased by the investment partnerships remain legally outstanding. As of September 30, 2016, Mr. Biglari’s beneficial ownership of the Company’s outstanding common stock was approximately 51.3%.

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Note 3. Earnings Per Share *(continued)*

The following table presents a reconciliation of basic and diluted weighted average common shares.

	Third Quarter		First Nine Months	
	2016	2015	2016	2015
Basic earnings per share:				
Weighted average common shares	1,215,296	1,263,320	1,227,624	1,655,532
Diluted earnings per share:				
Weighted average common shares	1,215,296	1,263,320	1,227,624	1,655,532
Dilutive effect of stock awards	—	2,008	1,311	2,254
Weighted average common and incremental shares	1,215,296	1,265,328	1,228,935	1,657,786
Number of share-based awards excluded from the calculation of earning per share (shares were anti-dilutive due to the Company's net loss in the third quarter of 2016)	3,177	—	—	—

The Company’s common stock is $0.50 stated value. The following table presents shares authorized, issued and outstanding.

	September 30, 2016	December 31, 2015
Common stock authorized	2,500,000	2,500,000
Common stock issued	2,142,202	2,142,202
Treasury stock held by the Company	(75,237)	(75,511)
Outstanding shares	2,066,965	2,066,691
Proportional ownership of the Company's common stock in investment partnerships	(861,028)	(807,069)
Net outstanding shares for financial reporting purposes	1,205,937	1,259,622

Note 4. Investments

Investments consisted of the following.

	September 30, 2016	December 31, 2015
Cost	$ 22,831	$ 24,842
Gross unrealized gains	26	10
Gross unrealized losses	(155)	(1,102)
Fair value	$ 22,702	$ 23,750

Investment gains/losses are recognized when investments are sold (as determined on a specific identification basis) or as otherwise required by GAAP. The timing of realized gains and losses from sales can have a material effect on periodic earnings. However, such realized gains or losses usually have little, if any, impact on total shareholders' equity because the investments are carried at fair value with any unrealized gains/losses included as a component of accumulated other comprehensive income in shareholders' equity. We believe that realized investment gains/losses are often meaningless in terms of understanding reported results. Short-term investment gains/losses have caused and may continue to cause volatility in our results.

Investments in equity securities and a related put option of $4,464 are included in other assets and recorded at fair value.

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Note 5. Investment Partnerships

The Company reports on the limited partnership interests in investment partnerships under the equity method of accounting. We record our proportional share of equity in the investment partnerships but exclude Company common stock held by said partnerships. The Company's pro-rata share of its common stock held by the investment partnerships is recorded as treasury stock even though they are legally outstanding. The Company records gains/losses from investment partnerships (inclusive of the investment partnerships' unrealized gains and losses on their securities) in the consolidated statements of earnings based on our carrying value of these partnerships. The fair value is calculated net of the general partner's accrued incentive fees. Gains and losses on Company common stock included in the earnings of these partnerships are eliminated because they are recorded as treasury stock.

The fair value and adjustment for Company common stock held by the investment partnerships to determine carrying value of our partnership interest is presented below.

	Fair Value	Company Common Stock	Carrying Value
Partnership interest at December 31, 2015	$734,668	$262,979	$471,689
Investment partnership gains	114,088	92,180	21,908
Contributions (net of distributions) to investment partnerships	(10,896)		(10,896)
Increase in proportionate share of Company stock held		19,807	(19,807)
Partnership interest at September 30, 2016	$837,860	$374,966	$462,894

	Fair Value	Company Common Stock	Carrying Value
Partnership interest at December 31, 2014	$776,899	$78,917	$697,982
Investment partnership gains	(16,313)	(39,023)	22,710
Contributions (net of distributions) to investment partnerships	73,500		73,500
Increase in proportionate share of Company stock held		255,272	(255,272)
Partnership interest at September 30, 2015	$834,086	$295,166	$538,920

The fair value of the investment partnerships net of deferred taxes is presented below.

	September 30,	December 31,

	2016	2015
Fair value of investment partnerships	$837,860	$734,668
Deferred tax liability related to investment partnerships	(116,097)	(115,952)
Fair value of investment partnerships net of deferred taxes	$721,763	$618,716

The Company's proportionate share of Company stock held by investment partnerships at cost is $352,634 and $332,827 at September 30, 2016 and December 31, 2015, respectively, and is recorded as treasury stock.

The carrying value of the partnership interest approximates fair value adjusted by changes in the value of held Company stock. Fair value is according to our proportional ownership interest of the fair value of investments held by the investment partnerships. The fair value measurement is classified as level 3 within the fair value hierarchy.

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Note 5. Investment Partnerships *(continued)*

Gains from investment partnerships recorded in the Company’s consolidated statements of earnings are presented below.

	Third Quarter		First Nine Months	
	2016	2015	2016	2015
Investment partnership gains (losses)	$(108,614)	$5,302	$21,908	$22,710
Loss on contribution of securities to investment partnership	—	—	(306)	—
Investment partnership gains (losses)	(108,614)	5,302	21,602	22,710
Tax expense (benefit)	(44,383)	(1,688)	2,373	3,163
Contribution to net earnings (loss)	$(64,231)	$6,990	$19,229	$19,547

Non-cash investments were $1,219 (net of non-cash distributions) for the first nine months of 2016.

As the general partner of the investment partnerships, Biglari Capital Corp. (“Biglari Capital”) on December 31 of each year will earn an incentive reallocation fee for the Company’s investments equal to 25% of the net profits over an annual hurdle rate of 6% above the previous high-water mark. Our policy is to accrue an estimated incentive fee throughout the year; however, no fees are reallocated until the end of the calendar year. As of September 30, 2016 and 2015, the Company accrued incentive fees for Biglari Capital of $191 and $413, respectively. Our investments in these partnerships are committed on a rolling 5-year basis. Mr. Biglari is the sole owner of Biglari Capital.

Summarized financial information for The Lion Fund, L.P. and The Lion Fund II, L.P. is presented below.

	Equity in Investment Partnerships	
	Lion Fund	Lion Fund II
Total assets as of September 30, 2016	$ 203,507	$ 917,197
Total liabilities as of September 30, 2016	$ 710	$ 174,601
Revenue for the first nine months ending September 30, 2016	$ 23,926	$ 112,715
Earnings for the first nine months ending September 30, 2016	$ 23,792	$ 108,327
Biglari Holdings’ Ownership Interest	64.9%	95.2%
Total assets as of December 31, 2015	$ 165,996	$ 819,323
Total liabilities as of December 31, 2015	$ 409	$ 141,274

Revenue for the first nine months ending September 30, 2015	$ (14,112)	$ (6,634)
Earnings for the first nine months ending September 30, 2015	$ (14,199)	$ (8,389)
Biglari Holdings' Ownership Interest	60.9%	93.5%

Revenue in the above summarized financial information of the investment partnerships includes investment income and unrealized gains and losses on investments. The investments held by the investment partnerships are largely concentrated in the common stock of one investee, Cracker Barrel Old Country Store, Inc.

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Note 6. Property and Equipment

Property and equipment is composed of the following.

	September 30, 2016	December 31, 2015
Land	$161,578	$160,697
Buildings	156,748	156,909
Land and leasehold improvements	164,121	165,042
Equipment	199,790	199,934
Construction in progress	3,207	3,478
	685,444	686,060
Less accumulated depreciation and amortization	(365,952)	(353,736)
Property and equipment, net	$319,492	$332,324

Note 7. Goodwill and Other Intangibles

Goodwill

Goodwill consists of the excess of the purchase price over the fair value of the net assets acquired in connection with business acquisitions.

A reconciliation of the change in the carrying value of goodwill is as follows.

	Restaurants	Other	Total
Goodwill at December 31, 2015	$ 28,109	$11,913	$40,022
Change in foreign exchange rates during first nine months 2016	19	—	19
Goodwill at September 30, 2016	$ 28,128	$11,913	$40,041

We are required to assess goodwill and any indefinite-lived intangible assets for impairment annually, or more frequently if circumstances indicate impairment may have occurred. The analysis of potential impairment of goodwill requires a two-step approach. The first is the estimation of fair value of each reporting unit. If step one indicates that impairment potentially exists, the second step is performed to measure the amount of impairment, if any. Goodwill impairment occurs when the estimated fair value of goodwill is less than its carrying value.

The valuation methodology and underlying financial information included in our determination of fair value require significant management judgments. We use both market and income approaches to derive fair value. The judgments in these two approaches include, but are not limited to, comparable market multiples, long-term projections of future financial performance, and the selection of appropriate discount rates used to determine the present value of future cash flows. Changes in such estimates or the application of alternative assumptions could produce significantly different results. No impairment charges for goodwill were recorded in the first nine months of 2016 or 2015.

Other Intangibles

Other intangibles are composed of the following.

	September 30, 2016			December 31, 2015		
	Gross carrying amount	Accumulated amortization	Total	Gross carrying amount	Accumulated amortization	Total
Franchise agreement	$5,310	$(3,452)	$1,858	$5,310	$(3,054)	$2,256
Other	810	(697)	113	810	(667)	143
Total	6,120	(4,149)	1,971	6,120	(3,721)	2,399
Intangible assets with indefinite lives:						
Trade names	15,876	—	15,876	15,876	—	15,876
Other assets with indefinite lives	3,516	—	3,516	3,398	—	3,398
Total intangible assets	$25,512	$(4,149)	$21,363	$25,394	$(3,721)	$21,673

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Note 7. Goodwill and Other Intangibles *(continued)*

Intangible assets subject to amortization consist of franchise agreements connected with the purchase of Western as well as rights to favorable leases related to prior acquisitions. These intangible assets are being amortized over their estimated weighted average of useful lives ranging from eight to twelve years.

Amortization expense for the first nine months of 2016 and 2015 was $428 and $431, respectively. Total annual amortization expense for years 2017 through 2019 will approximate $559 per year. The Company’s intangible assets with definite lives will fully amortize in 2020.

Intangible assets with indefinite lives consist of trade names, franchise rights as well as lease rights.

Note 8. Restaurant Operations Revenues

Restaurant operations revenues were as follows.

	Third Quarter		First Nine Months	
	2016	2015	2016	2015
Net sales	$203,701	$203,503	$603,850	$601,951
Franchise royalties and fees	4,962	4,017	14,096	12,093
Other	782	828	2,503	2,671
	$209,445	$208,348	$620,449	$616,715

Note 9. Borrowings

Notes payable and other borrowings include the following.

Current portion of notes payable and other borrowings	September 30,	December 31,

	2016	2015
Notes payable	$2,200	$2,200
Unamortized original issue discount	(305)	(296)
Unamortized debt issuance costs	(705)	(688)
Obligations under leases	5,538	5,787
Western revolver	432	786
Total current portion of notes payable and other borrowings	$7,160	$7,789
Long-term notes payable and other borrowings		
Notes payable	$201,448	$210,175
Unamortized original issue discount	(1,172)	(1,403)
Unamortized debt issuance costs	(2,356)	(2,888)
Obligations under leases	86,357	90,178
Total long-term notes payable and other borrowings	$284,277	$296,062

ASU 2015-03 requires debt issuance costs to be presented in the balance sheet as a direct deduction from the carrying amount of the debt liability. As of December 31, 2015, the Company reclassified unamortized debt issuance costs from other assets to notes payable and other borrowings.

Steak n Shake Credit Facility

On March 19, 2014, Steak n Shake and its subsidiaries entered into a new credit agreement. This credit agreement provides for a senior secured term loan facility in an aggregate principal amount of $220,000 and a senior secured revolving credit facility in an aggregate principal amount of up to $30,000.

The term loan is scheduled to mature on March 19, 2021. It amortizes at an annual rate of 1.0% in equal quarterly installments, beginning June 30, 2014, at 0.25% of the original principal amount of the term loan, subject to mandatory prepayments from excess cash flow, asset sales and other events described in the credit agreement. The balance will be due at maturity. The revolver will be available on a revolving basis until March 19, 2019.

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Note 9. Borrowings *(continued)*

Steak n Shake has the right to request an incremental term loan facility from participating lenders and/or eligible assignees at any time, up to an aggregate total principal amount not to exceed $70,000 if certain customary conditions within the credit agreement are met.

Borrowings bear interest at a rate per annum equal to a base rate or a Eurodollar rate (minimum of 1%) plus an applicable margin. Interest on the term loan is based on a Eurodollar rate plus an applicable margin of 3.75% or on the prime rate plus an applicable margin of 2.75%. Interest on loans under the revolver is based on a Eurodollar rate plus an applicable margin ranging from 2.75% to 4.25% or on the prime rate plus an applicable margin ranging from 1.75% to 3.25%. The applicable margins on revolver loans are contingent on Steak n Shake's total leverage ratio. The revolver also carries a commitment fee ranging from 0.40% to 0.50% per annum, depending on Steak n Shake's total leverage ratio, on the unused portion of the revolver.

The interest rate on the term loan was 4.75% as of September 30, 2016.

The credit agreement includes customary affirmative and negative covenants and events of default, as well as a financial maintenance covenant, solely with respect to the revolver, relating to the maximum total leverage ratio. Steak n Shake's credit facility contains restrictions on its ability to pay dividends to Biglari Holdings.

Both the term loan and the revolver have been secured by first priority security interests in substantially all the assets of Steak n Shake. Biglari Holdings is not a guarantor under the credit facility. As of September 30, 2016, $203,648 was outstanding under the term loan, and no amount was outstanding under the revolver.

Steak n Shake had $10,188 in standby letters of credit outstanding as of September 30, 2016 and December 31, 2015.

Western Revolver

As of September 30, 2016, Western has $432 due December 13, 2016.

Fair Value of Debt

The carrying amounts for debt reported in the consolidated balance sheet did not differ materially from their fair values at September 30, 2016 and December 31, 2015. The fair value was determined to be a Level 3 fair value measurement.

Note 10. Accumulated Other Comprehensive Income

During the first nine months of 2016 and 2015, the changes in the balances of each component of accumulated other comprehensive income, net of tax, were as follows.

	Nine months ended September 30, 2016			Nine months ended September 30, 2015		
	Foreign Currency Translation Adjustments	Investment Gain (Loss)	Accumulated Other Comprehensive Income (Loss)	Foreign Currency Translation Adjustments	Investment Gain (Loss)	Accumulated Other Comprehensive Income (Loss)
Beginning Balance	$(2,992)	$(687)	$(3,679)	$(620)	$(163)	$(783)
Other comprehensive income (loss) before reclassifications	163	405	568	(1,760)	(348)	(2,108)
Reclassification to (earnings) loss	—	193	193	—	41	41
Ending Balance	$(2,829)	$(89)	$(2,918)	$(2,380)	$(470)	$(2,850)

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Note 10. Accumulated Other Comprehensive Income *(continued)*

Reclassifications made from accumulated other comprehensive income to the consolidated statement of earnings during the first nine months of 2016 and 2015 were as follows.

Reclassifications from Accumulated Other Comprehensive Income	2016	2015	Affected Line Item in the Consolidated Statement of Earnings
Investment gain	$—	$(62)	Insurance premiums and other
	(306)	—	Investment partnership gains (losses)
	(113)	(21)	Income tax expense (benefit)
	$(193)	$(41)	Net of tax

During the third quarters of 2016 and 2015, the changes in the balances of each component of accumulated other comprehensive income, net of tax, were as follows.

	Third Quarter 2016			Third Quarter 2015		
	Foreign Currency Translation Adjustments	Investment Gain (Loss)	Accumulated Other Comprehensive Income (Loss)	Foreign Currency Translation Adjustments	Investment Gain (Loss)	Accumulated Other Comprehensive Income (Loss)
Beginning Balance	$(2,871)	$(126)	$(2,997)	$(492)	$(470)	$(962)
Other comprehensive income (loss) before reclassifications	42	37	79	(1,888)	(5)	(1,893)
Reclassification to (earnings) loss	—	—	—	—	5	5
Ending Balance	$(2,829)	$(89)	$(2,918)	$(2,380)	$(470)	$(2,850)

Reclassifications made from accumulated other comprehensive income to the consolidated statement of earnings during the third quarters of 2016 and 2015 were as follows.

Reclassifications from Accumulated Other Comprehensive Income	Third Quarter 2016	Third Quarter 2015	Affected Line Item in the Consolidated Statement of Earnings
Investment gain	$ —	$ (7)	Insurance premiums and other
	—	—	Investment partnership gains (losses)
	—	(2)	Income tax expense (benefit)
	$ —	$ (5)	Net of tax

Note 11. Income Taxes

In determining the quarterly provision for income taxes, the Company uses an estimated annual effective tax rate based on expected annual income, statutory tax rates, and available tax planning opportunities in the various jurisdictions in which the Company operates. Unusual or infrequently occurring items are separately recognized during the quarter in which they occur.

Income tax for the third quarter of 2016 was a benefit of $44,129 compared to a benefit of $248 for the third quarter of 2015. Income tax expense for the first nine months of 2016 was $5,011 compared to $4,739 for the first nine months of 2015. The variance in income taxes between the third quarters of 2016 and 2015 is primarily attributable to taxes on income and losses from investment partnerships.

As of September 30, 2016 and December 31, 2015, we had approximately $366 and $413, respectively, of unrecognized tax benefits, which are included in other liabilities in the consolidated balance sheets.

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Note 12. Commitments and Contingencies

We are involved in various legal proceedings and have certain unresolved claims pending. We believe, based on examination of these matters and experiences to date, that the ultimate liability, if any, in excess of amounts already provided in our consolidated financial statements is not likely to have a material effect on our results of operations, financial position or cash flows.

In 2013 two shareholders of the Company filed derivative actions putatively on behalf of the Company against the members of our Board of Directors in the United States District Courts for the Southern District of Indiana and the Western District of Texas. The actions were consolidated in the Southern District of Indiana in 2014. On March 18, 2015, the United States District Court for the Southern District of Indiana granted a motion to dismiss the derivative actions in favor of the Company. In addition, the Court issued judgment on all counts in favor of the Company and its directors.

The two shareholders appealed the Southern District of Indiana Court's March 18, 2015 decision. On February 17, 2016, the United States Court of Appeals for the Seventh Circuit affirmed the decision of the District Court dismissing, in their entirety, all claims made against the Company and its Board of Directors.

Note 13. Fair Value of Financial Assets and Liabilities

The fair values of substantially all of our financial instruments were measured using market or income approaches. Considerable judgment may be required in interpreting market data used to develop the estimates of fair value. Accordingly, the fair values presented are not necessarily indicative of the amounts that could be realized in an actual current market exchange. The use of alternative market assumptions and/or estimation methodologies may have a material effect on the estimated fair value. The hierarchy for measuring fair value consists of Levels 1 through 3, which are described below.

- Level 1 – Inputs represent unadjusted quoted prices for identical assets or liabilities exchanged in active markets.

- Level 2 – Inputs include directly or indirectly observable inputs (other than Level 1 inputs) such as quoted prices for similar assets or liabilities exchanged in active or inactive markets; quoted prices for identical assets or liabilities exchanged in inactive markets; other inputs that may be considered in fair value determinations of the assets or liabilities, such as interest rates and yield curves, volatilities, prepayment speeds, loss severities, credit risks and default rates; and inputs that are derived principally from or corroborated by observable market data by correlation or other means. Pricing evaluations generally reflect discounted expected future cash flows, which incorporate yield curves for instruments with similar characteristics, such as credit ratings, estimated durations and yields for other instruments of the issuer or entities in the same industry sector.

- Level 3 – Inputs include unobservable inputs used in the measurement of assets and liabilities. Management is required to use its own assumptions regarding unobservable inputs because there is little, if any, market activity in the assets or liabilities and we may be unable to corroborate the related observable inputs. Unobservable inputs require management to make certain projections and assumptions about the information that would be used by market participants in pricing assets or liabilities.

The following methods and assumptions were used to determine the fair value of each class of the following assets and liabilities recorded at fair value in the consolidated balance sheet:

Cash equivalents: Cash equivalents primarily consist of money market funds which are classified within Level 1 of the fair value hierarchy.

Equity securities: The Company’s investments in equity securities are classified within Level 1 of the fair value hierarchy.

Bonds: The Company’s investments in bonds are classified within Level 2 of the fair value hierarchy.

Non-qualified deferred compensation plan investments: The assets of the non-qualified plan are set up in a rabbi trust. They represent mutual funds and are classified within Level 1 of the fair value hierarchy.

Derivative instruments: Options related to equity securities and interest rate swaps are marked to market each reporting period and are classified within Level 2 of the fair value hierarchy.

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Note 13. Fair Value of Financial Assets and Liabilities *(continued)*

As of September 30, 2016 and December 31, 2015, the fair values of financial assets and liabilities were as follows.

	September 30, 2016				December 31, 2015			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Assets								
Cash equivalents	$153	$—	$—	$153	$700	$—	$—	$700
Equity securities:								
Insurance	—	—	—	—	5,046	—	—	5,046
Consumer goods	2,337	—	—	2,337	—	—	—	—
Bonds	—	25,307	—	25,307	—	21,304	—	21,304
Options on equity securities	—	2,127	—	2,127	—	—	—	—
Non-qualified deferred compensation plan investments	2,599	—	—	2,599	2,203	—	—	2,203
Total assets at fair value	$5,089	$27,434	$—	$32,523	$7,949	$21,304	$—	$29,253
Liabilities								
Interest rate swaps	$—	$—	$—	$—	$—	$2	$—	$2
Total liabilities at fair value	$—	$—	$—	$—	$—	$2	$—	$2

There were no changes in our valuation techniques used to measure fair values on a recurring basis.

Note 14. Related Party Transactions

In 2013 Biglari Holdings entered into the following agreements with Mr. Biglari, its Chairman and Chief Executive Officer: (i) a Stock Purchase Agreement for the sale of Biglari Capital to Mr. Biglari (the “Biglari Capital Transaction”); (ii) a Shared Services Agreement with Biglari Capital, and (iii) a First Amendment to the Amended and Restated Incentive Agreement with Mr. Biglari (the “Incentive Agreement Amendment”). The transactions contemplated thereby were unanimously approved by the independent Governance, Compensation and Nominating Committee of the Board of Directors of the Company (the “Committee”), which retained separate counsel, tax/accounting advisors, an independent compensation consultant, and a financial advisor to assist the Committee in the structuring, evaluation, and negotiation of such transactions. Mr. Biglari is the sole owner of Biglari Capital.

Shared Services Agreement

Connected with the Biglari Capital Transaction, Biglari Holdings and Biglari Capital entered into the Shared Services Agreement pursuant to which Biglari Holdings provides certain services to Biglari Capital in exchange for a 6% hurdle rate for Biglari Holdings and its subsidiaries (as compared to a 5% hurdle rate for all other limited partners) in order to determine the incentive reallocation to Biglari Capital, as general partner of The Lion Fund, L.P. and The Lion Fund II, L.P., under their respective partnership agreements. The incentive reallocation to Biglari Capital is equal to 25% of the net profits allocated to the limited partners in excess of their applicable hurdle rate above the previous high-water mark. The Shared Services Agreement runs for an initial five-year term, and automatically renews for successive five-year periods, unless terminated by either party effective at the end of the initial or the renewed term, as applicable. The term of the Shared Services Agreement coincides with the lock-up period for the Company's investments in The Lion Fund, L.P. and The Lion Fund II, L.P. under their respective partnership agreements. The Company provided services for Biglari Capital under the Shared Services Agreement costing an aggregate of $494 for the third quarter of 2016 and $152 for the third quarter of 2015, and $1,145 for the first nine months of 2016 and $3,943 for the first nine months of 2015.

Investments in The Lion Fund, L.P. and The Lion Fund II, L.P.

As of September 30, 2016, the Company's investments in The Lion Fund, L.P. and The Lion Fund II, L.P. had a fair value of $837,860.

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Note 14. Related Party Transactions *(continued)*

As the general partner of the investment partnerships, Biglari Capital on December 31 of each year will earn an incentive reallocation fee for the Company's investments equal to 25% of the net profits over an annual hurdle rate of 6% above the previous high-water mark. Our policy is to accrue an estimated incentive fee throughout the year; however, no fees are reallocated until the end of the calendar year. The Company accrued $191 and $413 in incentive fees for Biglari Capital during the first nine months of 2016 and 2015, respectively.

Incentive Agreement Amendment

Also in connection with the Biglari Capital Transaction, Biglari Holdings and Mr. Biglari entered into the Incentive Agreement Amendment which amends the Amended and Restated Incentive Agreement with Mr. Biglari to reflect and give effect to the Biglari Capital Transaction, which excludes earnings by the investment partnerships from the calculation of Mr. Biglari's incentive bonus.

Under the Amended and Restated Incentive Agreement Mr. Biglari would receive a payment of approximately $17,000 if an event occurred entitling him to a severance payment.

License Agreement

In 2013 the Company entered into a Trademark License Agreement (the "License Agreement") with Mr. Biglari. The License Agreement was unanimously approved by the Committee. In addition, the license under the License Agreement is provided on a royalty-free basis in the absence of specified extraordinary events described below. Accordingly, the Company and its subsidiaries have paid no royalties to Mr. Biglari under the License Agreement since its inception.

Under the License Agreement, Mr. Biglari granted to the Company an exclusive license to use the Biglari and Biglari Holdings names (the "Licensed Marks") in association with various products and services (collectively the "Products and Services"). Upon (a) the expiration of twenty years from the date of the License Agreement (subject to extension as provided in the License Agreement), (b) Mr. Biglari's death, (c) the termination of Mr. Biglari's employment by the Company for Cause (as defined in the License Agreement), or (d) Mr. Biglari's resignation from his employment with the Company absent an Involuntary Termination Event (as defined in the License Agreement), the Licensed Marks for the Products and Services will transfer from Mr. Biglari to the Company, without any compensation, if the Company is continuing to use the Licensed Marks in the ordinary course of its business. Otherwise, the rights will revert to Mr. Biglari.

If (i) a Change of Control (as defined in the License Agreement) of the Company; (ii) the termination of Mr. Biglari's employment by the Company without Cause; or (iii) Mr. Biglari's resignation from his employment with the Company due to an Involuntary Termination Event (each, a "Triggering Event") were to occur, Mr. Biglari would be entitled to receive a 2.5% royalty on "Revenues" with respect to the "Royalty Period." The royalty payment to Mr. Biglari would not apply to all revenues received by Biglari Holdings and its subsidiaries nor would it apply retrospectively (*i.e.*, to revenues received with respect to the period prior to the Triggering Event). The royalty would apply to revenues recorded by the Company on an accrual basis under GAAP, solely with respect to the defined period of time after the Triggering Event equal to the Royalty Period, from a covered Product, Service or business that (1) has used the Biglari Holdings or Biglari name at any time during the term of the License Agreement, whether prior to or after a Triggering Event, or (2) the Company has specifically identified, prior to a Triggering Event, will use the name Biglari or Biglari Holdings.

"Revenues" means all revenues received, on an accrual basis under GAAP, by the Company, its subsidiaries and affiliates from the following: (1) all Products and Services covered by the License Agreement bearing or associated with the names Biglari and Biglari Holdings at any time (whether prior to or after a Triggering Event). This category would include, without limitation, the use of Biglari or Biglari Holdings in the public name of a business providing any covered Product or Service; and (2) all covered Products, Services and businesses that the Company has specifically identified, prior to a Triggering Event, will bear, use or be associated with the name Biglari or Biglari Holdings.

The Committee unanimously approved the association of the Biglari name and mark with all of Steak n Shake's restaurants (including Company operated and franchised locations), products and brands. On May 14, 2013, the Company, Steak n Shake, LLC and Steak n Shake Enterprises, Inc. entered into a Trademark Sublicense Agreement in connection therewith. Accordingly, revenues received by the Company, its subsidiaries and affiliates from Steak n Shake's restaurants, products and brands would come within the definition of Revenues for purposes of the License Agreement.

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Note 14. Related Party Transactions *(continued)*

The “Royalty Period” is a defined period of time, after the Triggering Event, calculated as follows: (i) if, following three months after a Triggering Event, the Company or any of its subsidiaries or affiliates continues to use the Biglari or Biglari Holdings name in connection with any covered product or service, or continues to use Biglari as part of its corporate or public company name, then the “Royalty Period” will equal (a) the period of time during which the Company or any of its subsidiaries or affiliates continues any such use, plus (b) a period of time after the Company, its subsidiaries and affiliates have ceased all uses of the names Biglari and Biglari Holdings equal to the length of the term of the License Agreement prior to the Triggering Event, plus three years. As an example, if a Triggering Event occurs five years after the date of the License Agreement, and the Company ceases all uses of the Biglari and Biglari Holdings names two years after the Triggering Event, the Royalty Period will equal a total of ten years (the sum of two years after the Triggering Event during which the Biglari and Biglari Holdings names are being used, plus a period of time equal to the five years prior to the Triggering Event, plus three years); or (ii) if the Company, its subsidiaries and affiliates cease all uses of the Biglari and Biglari Holdings names within three months after a Triggering Event, then the “Royalty Period” will equal the length of the term of the License Agreement prior to the Triggering Event, plus three years. As an example, if a Triggering Event occurs five years after the date of the License Agreement, and the Company ceases all uses of the Biglari and Biglari Holdings names two months after the Triggering Event, the Royalty Period will equal a total of eight years (the sum of the period of time equal to the five years prior to the Triggering Event, plus three years). Notwithstanding the above methods of determining the Royalty Period, the minimum Royalty Period is five years after a Triggering Event.

The Company and its subsidiaries have paid no royalties to Mr. Biglari under the License Agreement since its execution.

The actual amount of royalties paid to Mr. Biglari following the occurrence of a Triggering Event (as defined in the License Agreement) would depend on the Company’s revenues during the applicable period following the Triggering Event, and, therefore, depends on material assumptions and estimates regarding future operations and revenues. Assuming for purposes of illustration a Triggering Event occurred on December 31, 2015, using revenue from fiscal year 2015 as an estimate of future revenue and calculated according to terms of the License Agreement, Mr. Biglari would receive approximately $20,500 in royalty payments annually. At a minimum, the royalties would be earned on revenue generated from January 1, 2016 through December 19, 2021. Royalty payments beyond the minimum period would be subject to the licensee's continued use of the licensed marks.

Note 15. Business Segment Reporting

Our reportable business segments are organized in a manner that reflects how management views those business activities.

Our restaurant operations includes Steak n Shake and Western. As a result of the acquisitions of First Guard and Maxim, the Company reports segment information for these businesses. Prior to the fourth quarter of 2015, other business activities not specifically identified with reportable business segments were presented in corporate expenses. Such other business activities are now presented in “other” within total operating businesses. Prior periods have been reclassified to conform to the current presentation. We report our earnings from investment partnerships separate from our corporate expenses.

We assess and measure segment operating results based on segment earnings as disclosed below. Segment earnings from operations are neither necessarily indicative of cash available to fund cash requirements, nor synonymous with cash flow from operations.

The tabular information that follows shows data of our reportable segments reconciled to amounts reflected in the consolidated financial statements.

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Note 15. Business Segment Reporting *(continued)*

Revenue by segment for the third quarters and first nine months of 2016 and 2015 were as follows.

	Third Quarter		First Nine Months	
	2016	2015	2016	2015
Operating Businesses:				
Restaurant Operations:				
Steak n Shake	$206,248	$		