EMPIRE RESORTS INC
Form 10-Q
November 01, 2017

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

x QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended September 30, 2017

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 1-12522

EMPIRE RESORTS, INC.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	13-3714474 (I.R.S. Employer Identification No.)
c/o Monticello Casino and Raceway, 204 State Route 17B, P.O. Box 5013, Monticello, NY (Address of principal executive offices)	12701 (Zip code)

(845) 807-0001
(Registrant’s telephone number, including area code)

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 ¨

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 x No ¨

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

Large accelerated filer ¨ Accelerated filer x

Non-accelerated filer ¨ Smaller reporting company ¨

Emerging growth company o

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ¨

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act) Yes ¨ No x

As of October 31, 2017, there were 31,177,744 shares of the registrant’s common stock outstanding.

INDEX

PART I - FINANCIAL INFORMATION

Item 1. Financial Statements.

EMPIRE RESORTS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(Amounts in thousands, except per share data)

	September 30, 2017 (Unaudited)	December 31, 2016
Assets		
Current assets:		
Cash and cash equivalents	$ 6,213	$ 11,012
Restricted cash	920	1,078
Accounts receivable, net	1,058	921
Prepaid expenses and other current assets	3,738	4,335
Total current assets	11,929	17,346
Property and equipment, net	27,081	26,415
Capitalized Development Projects costs	437,202	202,438
Restricted cash and investments for Development Projects	235,057	26,384
Intangible asset	51,000	51,000
Cash collateral for deposit bond	35,000	15,000
Other assets	166	1,175
Total assets	$ 797,435	$ 339,758
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 2,073	$ 2,268
Accrued Development Projects costs	75,291	41,933
Accrued expenses and other current liabilities	7,013	7,347
Total current liabilities	84,377	51,548
Long-term loan, related party, net of debt issuance costs	34,825	—
Term B Loan, net of debt issuance costs	422,396	—
Other long-term liabilities	8,849	8,644
Total liabilities	550,447	60,192
Stockholders' equity:		
Preferred stock, 5,000 shares authorized; $0.01 par value		
Series B, $29 per share liquidation value, 44 shares issued and outstanding	—	—
Common stock, $0.01 par value, 150,000 shares authorized, 31,178 and 31,156 shares issued and outstanding at September 30, 2017 and December 31, 2016, respectively	312	312
Additional paid-in capital	536,059	533,813
Accumulated other comprehensive loss	(489)	—
Accumulated deficit	(288,894)	(254,559)
Total stockholders' equity	246,988	279,566
Total liabilities and stockholders' equity	$ 797,435	$ 339,758

The accompanying notes are an integral part of these consolidated financial statements.

EMPIRE RESORTS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in thousands, except per share data) (Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Revenues:				
Gaming	$17,833	$16,423	$46,956	$46,307
Food, beverage, racing and other	2,499	2,768	6,784	8,218
Gross revenues	20,332	19,191	53,740	54,525
Less: Promotional allowances	(1,619)	(661)	(3,072)	(2,384)
Net revenues	18,713	18,530	50,668	52,141
Operating costs and expenses:				
Gaming	12,739	11,814	34,423	33,908
Food, beverage, racing and other	2,502	2,572	7,121	7,674
Selling, general and administrative	3,989	5,244	11,945	15,343
Development Projects costs	5,196	3,159	13,881	9,382
Stock-based compensation	741	800	2,213	2,032
Depreciation	390	329	1,115	1,000
Total operating costs and expenses	25,557	23,918	70,698	69,339
Loss from operations	(6,844)	(5,388)	(20,030)	(17,198)
Amortization of debt issuance costs	(1,377)	—	(3,955)	(2)
Interest expense	(3,456)	(2)	(12,591)	(416)
Interest income	805	2	2,337	7
Net loss	(10,872)	(5,388)	(34,239)	(17,609)
Dividends on preferred stock	(32)	(32)	(96)	(96)
Net loss applicable to common stockholders	$(10,904)	$(5,420)	$(34,335)	$(17,705)
Weighted average common shares outstanding:				
Basic	30,973	30,928	30,975	27,317
Diluted	30,973	30,928	30,975	27,317
Loss per common share:				
Basic	$(0.35)	$(0.18)	$(1.11)	$(0.65)
Diluted	$(0.35)	$(0.18)	$(1.11)	$(0.65)

The accompanying notes are an integral part of these consolidated financial statements.

EMPIRE RESORTS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(Amounts in thousands, except per share data) (Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Net loss	$(10,872)	$(5,388)	$(34,239)	$(17,609)
Other comprehensive loss:				
Unrealized loss on Interest Rate Cap	(99)	—	(489)	—
Comprehensive loss	$(10,971)	$(5,388)	$(34,728)	$(17,609)

The accompanying notes are an integral part of these consolidated financial statements.

EMPIRE RESORTS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in thousands) (Unaudited)

	Nine Months Ended September 30, 2017	2016
Cash flows provided by (used in) operating activities:		
Net loss	$(34,239)	$(17,609)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	1,115	1,000
Amortization of debt issuance costs	3,955	2
Non-cash interest expense	2,794	231
Loss on disposal of property and equipment	42	—
Stock-based compensation	2,213	2,032
Changes in operating assets and liabilities:		
Restricted cash—NYSGC Lottery and Purse Accounts	128	207
Accounts receivable	(137)	334
Prepaid expenses and other current assets	597	(13)
Accounts payable	(195)	1,000
Accrued expenses and other current liabilities	169	(6,813)
Net cash used in operating activities	(23,558)	(19,629)
Cash flows provided by (used in) investing activities:		
Purchase of property and equipment	(1,823)	(802)
Capitalized Development Projects costs	(201,405)	(99,169)
Cash collateral for deposit bond	(20,000)	(15,000)
License fee payment for the casino project	—	(51,000)
Net change in restricted cash and investments for Development Projects	(208,673)	(66,767)
Restricted cash—racing capital improvement	30	3
Other	8	—
Net cash used in investing activities	(431,863)	(232,735)
Cash flows provided by (used in) financing activities:		
Proceeds from Term B Loan	450,000	—
Proceeds from long-term loan, related party	32,000	—
Payment of debt issuance costs and Interest Rate Cap fees	(31,007)	—
Proceeds from January 2016 Rights Offering, net of expenses	—	286,003
Series B Preferred Stock dividend payment	(96)	(231)
Series E Preferred Stock and dividend redemption	—	(30,711)
Other payments	(275)	(38)
Net cash provided by financing activities	450,622	255,023
Net (decrease) / increase in cash and cash equivalents	(4,799)	2,659
Cash and cash equivalents, beginning of period	11,012	6,412
Cash and cash equivalents, end of period	$6,213	$9,071
Supplemental disclosures of cash flow information:		
Cash paid for interest	$27,710	$231
Non-cash investing and financing activities:		
Accrued Development Projects costs	$75,291	$41,782

The accompanying notes are an integral part of these consolidated financial statements.

EMPIRE RESORTS, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

Note A. Organization and Nature of Business

Basis for Presentation

Empire Resorts, Inc. ("Empire," and, together with its subsidiaries, the "Company," "us," "our" or "we") was organized as a Delaware corporation on March 19, 1993, and since that time has served as a holding company for various subsidiaries engaged in the hospitality and gaming industries.

Our indirect, wholly-owned subsidiary, Montreign Operating Company, LLC ("Montreign Operating") holds a gaming license (a "Gaming Facility License") to develop and operate a resort casino (the "Casino Project") which will be located at the site of a four-season destination resort (the "Destination Resort") to be located in the Town of Thompson in Sullivan County, New York. In addition to the Casino Project, Empire Resorts Real Estate I, LLC ("ERREI") and Empire Resorts Real Estate II, LLC ("ERREII" and, together with Montreign Operating and ERREI, the "Project Parties"), each of which are indirect, wholly-owned subsidiaries of Empire, are developing an entertainment village (the "Entertainment Village Project") and a golf course (the "Golf Course Project" and, together with the Casino Project and the Entertainment Village Project, the "Development Projects"), respectively, at the site of the Destination Resort.

Through our wholly-owned subsidiary, Monticello Raceway Management, Inc. ("MRMI"), we currently own and operate Monticello Casino and Raceway, a video gaming machine ("VGM") and harness horseracing facility located in Monticello, New York. We also generate racing revenues through pari-mutuel wagering on the running of live harness horse races, the import simulcasting of harness and thoroughbred horse races from racetracks across the country and internationally, and the export simulcasting of our races to offsite pari-mutuel wagering facilities.

The condensed consolidated financial statements and notes as of September 30, 2017 and December 31, 2016 and for the three- and nine-month periods ended September 30, 2017 and September 30, 2016 include the accounts of Empire and its subsidiaries. All intercompany balances and transactions are eliminated in consolidation.

The accompanying unaudited condensed consolidated financial statements of the Company have been prepared under the rules and regulations of the Securities and Exchange Commission ("SEC") applicable for interim periods, and therefore do not include all information necessary for complete financial statements in conformity with accounting principles generally accepted in the United States (“U.S. GAAP”). Our financial statements require the use of estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, as well as the disclosure of contingent liabilities. Actual amounts could differ from those estimates. These condensed consolidated financial statements reflect all adjustments (consisting primarily of normal recurring accruals) which are, in the Company’s opinion, necessary for a fair presentation of financial position, results of operations and cash flows for the interim periods. These condensed consolidated financial statements and notes 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 December 31, 2016. The results of operations for our interim periods may not be necessarily indicative of the results of operations that may be achieved for the entire year.

Liquidity and Capital Resources

The accompanying condensed consolidated financial statements have been prepared on a basis that contemplates the realization of assets and the satisfaction of liabilities and commitments in the normal course of business. The Company anticipates that it will have sufficient resources to meet the working capital requirements of the Company and the expected costs of the Development Projects for at least the next 12 months. This assessment is based on the Company’s current cash and cash equivalents, including cash deposited as performance bonds to guarantee the completion of the Development Projects, cash generated from operations, as well as the net proceeds of the debt financings the Company has consummated in fiscal 2017 and the additional financings the Company anticipates consummating during the next three months.

As of September 30, 2017, the Company’s total assets included approximately $235.1 million of remaining net proceeds from the Term Loan Facility and the Kien Huat Montreign Loan (each as defined below), which have been deposited into a lender-controlled account and will be used to pay the Development Project costs. The Term Loan Agreement (as defined below) requires the Company to deposit by December 31, 2017 approximately $9.9 million in the same lender-controlled account, which amount will also be used to pay the Development Project costs. In February 2016 and June 2017, the Company deposited $15 million and $20 million, respectively, in performance bonds to guarantee the completion of the Development Projects. An additional required payment of $30.1 million will be made from available proceeds of the Term Loan Facility on January 15, 2018, unless prior to that date, the NYSGC is able to confirm that the Company has expended 85% of the Company's proposed Minimum Capital Investment (as defined below). Upon confirmation that the Minimum Capital Investment criteria has been reached these funds will be returned to the Company for use toward Development Projects expenses. Additionally, the Company has entered into, and may seek additional, furniture, fixtures and equipment ("FF&E") financing to furnish the Development Projects. Following the initial opening of the Casino Project to the public, which is required to occur by March 1, 2018, the Revolving Credit Facility (defined below) will be available, subject to our ability to meet the conditions contained therein, for use towards the working capital needs, capital expenditures and for other general corporate purposes of the Project Parties. Whether these resources are adequate to meet the Company’s liquidity needs beyond that 12-month period will depend on the Company’s growth and operating results, including revenue generated from the Casino Project, and the final designs and progress of the Development Projects. In addition, cost overruns, delays in the construction schedule or changes in design are among the factors that may increase the projected costs of the Development Projects, which may also require us to raise additional capital.

Pursuant to the Term Loan Facility, Montreign Operating is required to deposit approximately $9.9 million by December 31, 2017 into the lender-controlled account that holds the net proceeds from the Term Loan Facility and the Kien Huat Montreign Loan. The Company must fund this deposit in the form of a further equity contribution to Montreign Operating. Additionally, the Company is permitted to raise up to $40 million of FF&E financing to complete the Development Projects pursuant to the Term Loan Agreement, of which the Company has incurred $39.1 million of FF&E financing commitments as of September 30, 2017. Consequently, the Company may raise additional equity or debt capital or enter into arrangements to secure necessary financing to fund the completion of the Development Projects, to meet obligations under the Term Loan Facility or for the general corporate purposes of the Company. Such arrangements may take the form of loans, strategic agreements, joint ventures or other agreements. Alternatively, the Company may sell additional debt or equity in public or private transactions, including pursuant to the commitment of Kien Huat Realty III Limited ("Kien Huat"), Empire's largest stockholder, to backstop a rights offering of Empire in the amount of $35 million. The sale of additional equity could result in additional dilution to the Company’s existing stockholders, and financing arrangements may not be available to us, or may not be available in sufficient amounts or on acceptable terms.

As of September 30, 2017, we had total current assets of approximately $11.9 million and total current liabilities of approximately $84.4 million, which includes approximately $75.3 million in accrued Development Projects costs. At September 30, 2017, the remaining net proceeds from the Term Loan Facility and the Kien Huat Montreign Loan totaled approximately $235.1 million. These proceeds are being used to pay the costs of the Development Projects, including the accrued Development Projects costs, and are presented on the Condensed Consolidated Balance Sheet as restricted cash and investments for Development Projects.

We have had continuing net losses and negative cash flow from operating activities, including a loss from operations of $20.0 million for the nine months ended September 30, 2017. The net loss for the nine months ended September 30, 2017 was inclusive of Development Projects costs that could not be capitalized in the amount of $13.9 million. Amortization of debt issuance costs was $4.0 million and interest expense was $12.6 million for the nine-month period ended September 30, 2017. Additionally, costs incurred for the Development Projects that were capitalized totaled $234.8 million for the nine months ended September 30, 2017.

Note B. Summary of Significant Accounting Policies

Revenue recognition and Promotional allowances
Gaming revenue is the net difference between gaming wagers and payouts for prizes from VGMs, non-subsidized free play and accruals related to the anticipated payout of progressive jackpots. Progressive jackpots contain base jackpots

that increase at a progressive rate based on the credits played and are charged to revenue as the amount of the jackpots increase. The Company recognizes gaming revenues before deductions of related expenses such as the New York State Gaming Commission's ("NYSGC") share of VGM revenue and the Monticello Harness Horsemen’s Association (the “MHHA”) and the Agriculture and New York State Horse Breeding Development Fund’s contractually required shares of revenue.

Food, beverage, racing and other revenue includes food and beverage sales, racing revenue earned from pari-mutuel wagering on live harness racing and simulcast signals to and from other tracks and miscellaneous income. The Company recognizes racing revenues before deductions of such related expenses as purses, stakes and awards. Some elements of the racing revenues from Off-Track Betting Corporations (“OTBs”) are recognized as collected, due to uncertainty of receipt of and timing of payments.

Net revenues are recognized net of certain sales incentives in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Certification ("ASC") 605-50, "Revenue Recognition—Customer Payments and Incentives". The retail value of complimentary food, beverage and other items provided to the Company's guests is included in gross revenues and then deducted as promotional allowances. The estimated cost of providing such food, beverage and other items as promotional allowances is included in food, beverage, racing and other expense. In addition, promotional allowances include non-subsidized free play offered to the Company's guests based on their relative gaming worth and prizes included in certain promotional marketing programs.

The retail value amounts included in promotional allowances for the three- and nine-month periods ended September 30, 2017 and 2016 are as follows:

	Three Months Ended		Nine Months Ended	
	Sept. 30, 2017	Sept. 30, 2016	Sept. 30, 2017	Sept. 30, 2016
	(in thousands)			
Food and beverage	$328	$447	$668	$1,192
Non-subsidized free play	1,135	143	2,105	855
Players club awards	156	71	299	337
Total retail value of promotional allowances	$1,619	$661	$3,072	$2,384

The estimated cost of providing complimentary food, beverage and other items for the three- and nine-month periods ended September 30, 2017 and 2016 are as follows:

	Three Months Ended		Nine Months Ended	
	Sept. 30, 2017	Sept. 30, 2016	Sept. 30, 2017	Sept. 30, 2016
	(in thousands)			
Food and beverage	$490	$572	$1,159	$1,594
Non-subsidized free play	670	84	1,242	504
Players club awards	156	71	299	338
Total cost of promotional allowances	$1,316	$727	$2,700	$2,436

Accounts receivable

Accounts receivable, net of allowances, are stated at the amount the Company expects to collect. When required, an allowance for doubtful accounts is recorded based on information on the collectability of specific accounts. Accounts are considered past due or delinquent based on contractual terms, how recently payments have been received and the Company's judgment of collectability. In the normal course of business, the Company settles wagers for other racetracks and is exposed to credit risk. These wagers are included in accounts receivable. Account balances are charged against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. The Company recorded an allowance for doubtful accounts of approximately $171,000 as of September 30, 2017 and December 31, 2016.

Other long-term liabilities

The difference between our cash payments made and straight-line rent expense on our leases of $7.8 million and $8.0 million at September 30, 2017 and December 31, 2016, respectively, is included in other long-term liabilities.

Common stock - loss per share

The Company computes basic loss per share by dividing net loss applicable to holders of common stock by the weighted-average common stock outstanding for the period. Diluted loss per share reflects the potential dilution of earnings that could occur if securities or contracts to issue common stock were exercised or converted into common stock or resulted in the issuance of common stock that then shared in the loss of the entity. Since the effect of common stock equivalents is anti-dilutive with respect to losses, these common stock equivalents have been excluded from the Company’s computation of loss per common share. Therefore, basic and diluted loss per common share for the three- and nine-month periods ended September 30, 2017 and 2016 were the same.

The following table shows the approximate number of common stock equivalents outstanding at September 30, 2017 and 2016 that could potentially dilute earnings per share in the future, but were not included in the calculation of average common shares outstanding for the three- and nine-month periods ended September 30, 2017 and 2016, because their inclusion would have been anti-dilutive to the loss per common share:

	Outstanding at September 30, 2017	September 30, 2016
Options	15,000	40,000
Warrants	133,000	133,000
Option Matching Rights	3,000	21,000
Unvested Restricted Stock	149,000	208,000
Unvested Restricted Stock Units	55,000	—
Total	355,000	402,000

Interest Rate Cap Agreement

In February 2017, the Company entered into an interest rate cap agreement with Credit Suisse AG, International to limit its exposure to increases in interest rates on its Term B Loan (as defined below) from May 1, 2017 through February 28, 2018 and then for a portion of the balance of its Term B Loan through July 31, 2019 (the "Interest Rate Cap"). The Company paid $675,000 for the Interest Rate Cap. The cost of the Interest Rate Cap will be amortized over its term as interest expense. The fair value of the Interest Rate Cap was $166,000 at September 30, 2017 and is presented at fair value as "other assets" on the Condensed Consolidated Balance Sheet. The difference between the fair value and amortized cost is recorded as an adjustment to accumulated other comprehensive loss.

Accumulated Other Comprehensive Loss

As of September 30, 2017, accumulated other comprehensive loss of $489,000 consisted solely of the fair value adjustment relating to the Interest Rate Cap.

Fair value

The Company follows the provisions of ASC 820, “Fair Value Measurement,” issued by the FASB for financial assets and liabilities. This standard defines fair value, provides guidance for measuring fair value, requires certain disclosures and discusses valuation techniques, such as the market approach (comparable market prices), the income approach (present value of future income or cash flow) and the cost approach (cost to replace the service capacity of an asset or replacement cost). The Company chose not to elect the fair value option as prescribed by FASB, for its financial assets and liabilities that had not been previously carried at fair value. The Company’s financial instruments are comprised of current assets, restricted cash and investments, Interest Rate Cap, current liabilities and long-term loans. Current assets and current liabilities approximate fair value due to their short-term nature.

In determining fair value, the Company uses quoted prices and observable inputs. Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from sources independent of the Company.

The fair value hierarchy of observable inputs used by the Company is broken down into three levels based on the source of inputs as follows:

- Level 1 - Valuations based on unadjusted quoted prices in active markets for identical assets or liabilities.
- Level 2 - Valuations based on inputs that are unobservable inputs and quoted prices in active markets for similar assets and liabilities.
- Level 3 - Valuations based on inputs that are unobservable and models that are significant to the overall fair value measurement.

The Company used a third party to complete the valuation of its Interest Rate Cap, which is considered a Level 2 asset and is measured at fair value on a recurring basis using widely accepted valuation techniques, including discounted cash flow analysis on the expected cash flows for the Interest Rate Cap.

At September 30, 2017, the estimated fair value of the Company's outstanding Term B Loan was approximately $449.8 million and the carrying value was approximately $450.0 million. The fair value of the Kien Huat Montreign Loan has not been estimated due to its related party nature and lack of comparable market information.

Stock-based compensation

The cost of all stock-based awards to employees, officers and directors, including grants of employee stock options, restricted stock and restricted stock units is recognized in the financial statements based on the fair value of the awards at grant date. The fair value of stock option awards would be determined using the Black-Scholes valuation model on the date of grant. The fair value of restricted stock and restricted stock unit awards is equal to the market price of Empire’s common stock on the date of grant. The fair value of stock-based awards is recognized as stock-based compensation expense on a straight-line basis over the requisite service period from the date of grant. As of September 30, 2017, there was approximately $2.0 million of total unrecognized compensation cost related to non-vested stock-based compensation arrangements granted under the Company’s equity compensation plan. That cost is expected to be recognized over a period of three years. This expected cost does not include the impact of any future stock-based compensation awards.

Income taxes

The Company applies the asset and liability approach to financial accounting and reporting for income taxes. Deferred income tax assets and liabilities are computed for differences between the financial statement and tax bases of assets and liabilities that will result in future taxable or deductible amounts, based on enacted tax laws and rates for the periods in which the differences are expected to affect taxable income. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

Intangible Assets

In accordance with ASC 350, Intangibles - Goodwill and Other, the Company's policy is to amortize intangible assets over their estimated useful lives unless the Company determines their lives to be indefinite.

On December 21, 2015, the Company was granted a gaming license (the "Gaming Facility License"), for which it paid $51 million on March 30, 2016. The term of the Gaming Facility License is 10 years from the effective date, which was March 1, 2016. Amortization of the license fee will not commence until the initial opening to the general public of the Casino Project. Amortization will be recognized on a straight-line basis beginning at that time and continuing until the license is up for renewal in 2026. During the period that the Company is not amortizing the intangible asset, the Company will assess it for impairment annually or more frequently if events or changes in circumstances indicate that the asset might be impaired.

Recent Accounting Pronouncements

In May 2014, the FASB issued new revenue recognition guidance, which will supersede nearly all existing revenue recognition guidance. The core principle of the guidance is that an entity should recognize revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. To achieve the core principle, the new guidance implements a five-step process for customer contract revenue recognition. The guidance also requires enhanced disclosures regarding the nature, amount, timing and uncertainty of revenues and cash flows arising from contracts with customers. The new guidance is effective for annual reporting periods beginning after December 15, 2017, including interim periods within that reporting period. Entities can transition to the new guidance either retrospectively or as a cumulative-effect adjustment as of the date of adoption.

The Company is currently assessing the impact that the adoption of the recently issued ASUs related to revenue recognition will have on its consolidated financial statements and footnote disclosures, but anticipates adopting this accounting standard during the first quarter of 2018 with a cumulative-effect adjustment as of the date of adoption. However, the Company has identified a few significant impacts. Under the new guidance, the Company expects it will no longer be permitted to recognize revenues for goods and services provided to customers for free, as an inducement to gamble, as gross revenue with a corresponding offset to promotional allowances to arrive at net revenues. The Company expects the majority of such amounts will offset gaming revenues. In addition, accounting for complimentaries and loyalty points granted under the Company's customer loyalty program may also change. Under the new guidance, complimentaries and loyalty points earned by customers through past revenue transactions will be identified as separate performance obligations and recorded as a reduction in gaming revenues when earned at the retail value of such benefits owed to the customer (less estimated breakage). When customers redeem such benefits and the performance obligation is fulfilled by the Company, revenue will be recognized in the department that provides the goods or services (e.g., hotel, food and beverage, or entertainment). In addition, given that customer rewards is an aspirational loyalty program with multiple customer tiers, which provide certain benefits to tier members, the Company will need to assess if such benefits are deemed to be separate performance obligations under the new guidance.

In February 2016, FASB issued ASU 2016-02, Leases (Topic 842) ("ASU 2016-02"), which provides guidance for accounting for leases. Under ASU 2016-02, the Company will be required to recognize the assets and liabilities for the rights and obligations created by leased assets. ASU 2016-02 will take effect for public companies for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. The standard must be adopted using a modified retrospective approach and provides for certain practical expedients. Early adoption is permitted. The Company has not yet completed its assessment of the impact of the new standard on the Company's consolidated financial statements. The Company currently anticipates adopting this standard during the first quarter of 2019.

In August 2016, FASB issued ASU 2016-18, Statement of Cash Flows (Topic 230): Restricted Cash ("ASU 2016-18"), which provides guidance for accounting for restricted cash transactions. Under ASU 2016-18, several aspects of the accounting for restricted cash transactions are simplified, including the presentation and classification of cash receipts and cash payments in the statement of cash flows. ASU 2016-18 will take effect for public companies for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2017. Early adoption is permitted. The Company currently anticipates adopting this standard during the first quarter of 2018 and is currently evaluating the impact that this guidance will have on its financial statements.

Note C. Prepaid Expenses and Other Assets

MRMI has participated in the New York State Empire Zones real estate tax credit program for over 10 years. Under this program, the Company receives a refund for real estate taxes paid during the year. Beginning in 2014, the amount of the tax credit received is reduced by 20% each year until the tax credit ends for the Company at December 31, 2017. For the year ending December 31, 2017, the Company will receive a 20% refund for real estate taxes paid. The amounts of the expected real estate tax credits are included in prepaid expenses and other current assets on the accompanying Condensed Consolidated Balance Sheet at September 30, 2017 and December 31, 2016, and were approximately $814,000 and $1.3 million, respectively. Beginning in fiscal 2018, the Company will no longer receive a refund on any portion of real estate taxes paid by MRMI.

Prepaid expenses and other current assets, as presented on the Condensed Consolidated Balance Sheet, are comprised of the following at September 30, 2017 and December 31, 2016:

	September 30, 2017	December 31, 2016
	(in thousands)	
Empire Zones real estate tax credit	$814	$ 1,325
Prepaid real estate taxes	873	558
Prepaid insurance	465	919
Inventory	180	177
Prepaid gaming expenses	233	61
Development escrow and security refundable deposit	632	623
Prepaid other	541	672
Total prepaid expenses and other current assets	$3,738	$ 4,335

Note D. Property and Equipment

Property and Equipment

Property and equipment consists of the following:

	September 30, 2017	December 31, 2016
	(in thousands)	
Land	$770	$770
Land improvements	1,759	1,758
Buildings	4,727	4,727
Building improvements	29,861	28,088
Vehicles	305	307
Furniture, fixtures and equipment	5,087	4,278
Construction in Progress	65	919
	42,574	40,847
Less—Accumulated depreciation	(15,493)	(14,432)
	$27,081	$26,415

Depreciation expense was approximately $390,000 and $329,000 for the three-month periods ended September 30, 2017 and 2016, respectively, and approximately $1.1 million and $1.0 million for the nine-month periods ended September 30, 2017 and 2016, respectively.

The VGMs in the Monticello Casino and Raceway are owned by the NYSGC and, accordingly, the Company's consolidated financial statements include neither the cost nor the depreciation of those devices.

Note E. Development Projects Costs, Cash Collateral for Deposit Bond and Restricted Cash and Investments for Development Projects

Development Projects Costs

At September 30, 2017 and December 31, 2016, total capitalized Development Projects costs incurred were approximately $437.2 million and $202.4 million, respectively. Total capitalized Development Projects costs consist of construction costs, site development, contractor insurance, general conditions, construction manager fees, and professional fees such as architectural, legal and accounting, and are reflected on the Condensed Consolidated Balance Sheet as capitalized Development Projects costs. Interest expense totaling $18.2 million was capitalized during the nine-month period ended September 30, 2017.

During the nine-month period ended September 30, 2017, total Development Projects costs incurred were approximately $248.6 million, of which $234.8 million was capitalized and $13.9 million was expensed. Development Projects costs expensed consist of $8.0 million of land lease costs, $2.4 million of salary and related benefits, $1.5 million of bank charges, $482,000 of real estate taxes, $428,000 of insurance expenses, $247,000 of marketing expenses, $482,000 of consulting and professional service fees, and $361,000 of pre-opening expenses.

During the nine-month period ended September 30, 2016, total Development Projects costs incurred were approximately $150.3 million, of which $141.0 million was capitalized and $9.4 million was expensed. Development Projects costs expensed consist of $7.8 million of land lease costs, $305,000 of consulting and professional service fees, $412,000 of real estate taxes, $339,000 of insurance expenses, and $583,000 of pre-opening expenses.

Cash Collateral for Deposit Bond
In February 2016 and June 2017, the Company deposited $15 million and $20 million, respectively, in performance bonds to guarantee the completion of the Development Projects. An additional required payment of $30.1 million will be made from available proceeds of the Term Loan Facility on January 15, 2018, unless prior to that date, the NYSGC is able to confirm that the Company has expended 85% of the Company's proposed Minimum Capital Investment (as defined below). Upon confirmation that the Minimum Capital Investment criteria has been reached these funds will be returned to the Company for use toward Development Projects expenses.

Restricted Cash and Investments for Development Projects
At September 30, 2017, the $235.1 million of restricted cash and investments for Development Projects represented the remaining funds from the Term Loan Facility and the Kien Huat Montreign Loan to be utilized for the Development Projects. This consists of cash and cash equivalents totaling $112.7 million and short-term marketable securities totaling $122.4 million, which were comprised of commercial paper and U. S. Treasury Notes with maturities of less than one year. At December 31, 2016, the $26.4 million of restricted cash and investments for Development Projects on the Condensed Consolidated Balance Sheet represented the remaining funds from the January 2016 Rights Offering (defined below) to be utilized for the Development Projects.

Note F. Accrued Development Projects Costs, Accrued Expenses and Other Current Liabilities

Accrued Development Projects costs at September 30, 2017 and December 31, 2016 were $75.3 million and $41.9 million, respectively, and were primarily comprised of amounts due to the Casino Project's construction manager, as well as amounts due to the architect and other vendors for costs incurred for the Development Projects. The remaining net proceeds from the Term Loan Facility and the Kien Huat Montreign Loan will be used to pay the accrued Development Projects costs.

Accrued expenses and other current liabilities, as presented on the Condensed Consolidated Balance Sheet, are comprised of the following:

	September 30, 2017	December 31, 2016
	(in thousands)	
Liability for horse racing purses	$939	$ 1,139
Accrued payroll	1,483	1,897
Accrued redeemable points	284	167
Liability to NYSGC	1,270	360
Liability for local progressive jackpot	1,035	907
Accrued settlement liability	—	758
Accrued professional fees	901	308
Federal tax withholding payable	—	78
Accrued other	1,101	1,733
Total accrued expenses and other current liabilities	$7,013	$ 7,347

Note G. Term Loan Agreement and Revolving Credit Agreement

Term Loan Agreement
On January 24, 2017 (the "Original Loan Closing Date"), Montreign Operating entered into the Building Term Loan Agreement (the “Original Term Loan Agreement”) among Montreign Operating, the lenders from time to time party thereto, and Credit Suisse AG, Cayman Islands Branch (“Credit Suisse”), as administrative agent. On May 26, 2017 (the

"Term Loan Amendment Date"), the parties entered into the first amendment to the Term Loan Agreement and certain ancillary agreements (the "Amended Term Loan Agreement" and, together with the Original Term Loan Agreement, the "Term Loan Agreement"). The Amended Term Loan Agreement increased the aggregate principal amount of the Term B Loan issued under the Original Term Loan Agreement on substantially the same terms and conditions as the Original Term Loan Agreement, which terms are discussed below. In the aggregate, the Term Loan Agreement provides Montreign Operating Company with loans in a principal amount of $520 million (the "Term Loan Facility"). All of the borrowings under the Term Loan Agreement will be used to fund the costs of the Development Projects.

Pursuant to the Original Term Loan Agreement, the Term Loan Facility consisted of $70 million of Term A loans (the “Term A Loan”) and $415 million of Term B loans (the “Term B Loan”). The Term B Loan was priced at 98.12% of the principal amount and the proceeds were used to pay fees and expenses related to the financing and fund various lender-controlled accounts. The proceeds from the Term Loan Facility (including proceeds of the Term A Loan, which will be deposited into the lender-controlled accounts upon borrowing) will be made available to Montreign Operating, subject to Montreign Operating satisfying the disbursement conditions set forth in the Term Loan Agreement and related loan documents, to pay debt service and costs relating to the development and construction of the Development Projects.

The Term A Loan may be borrowed during the period from the Original Loan Closing Date to July 24, 2018, subject to meeting the conditions set forth in the Term Loan Agreement at the time of the borrowing. The Term A Loan will mature on January 24, 2022 and the Term B Loan will mature on January 24, 2023. Interest will accrue on outstanding borrowings under the Term A Loan at a rate equal to LIBOR plus 5.0% per annum, or an alternate base rate plus 4.0% per annum. Interest will accrue on outstanding borrowings under the Term B Loan at a rate equal to LIBOR (with a LIBOR floor of 1%) plus 8.25% per annum, or an alternate base rate plus 7.25% per annum. In addition, Montreign Operating will pay a commitment fee to each Term A Loan lender equal to the undrawn amount of such lender’s commitment multiplied by a rate equal to 2.5% per annum for the period commencing on the Original Loan Closing Date through March 24, 2018 and 5.0% per annum thereafter.

In the event that the Term B Loan is prepaid or repaid in whole or in part for any reason other than as a result of scheduled amortization and certain other exceptions, Montreign Operating is required to pay prepayment premiums based on a make-whole if the prepayment occurs from the Original Loan Closing Date to (but excluding) the 30th-month anniversary following the Original Loan Closing Date (the “30th Month”), and a 2% and 1% premium if the prepayment occurs from the 30th Month to (but excluding) the 42nd-month anniversary of the Original Loan Closing Date (the “42nd Month”) and from the 42nd Month to (but excluding) the 54th-month anniversary of the Original Loan Closing Date, respectively.

Pursuant to the Amended Term Loan Agreement, the aggregate principal amount of the Term B Loan increased by $35 million from $415 million to $450 million. This additional amount was borrowed in full on the Term Loan Amendment Date and the proceeds were used to pay fees and expenses related to the financing and fund various lender-controlled accounts. The additional $35 million principal amount of the Term B Loan was priced at 99.75% of the principal amount and was issued under substantially the same terms and conditions as the Original Term Loan Agreement except the requirement to contribute additional equity to Montreign Operating was reduced. Pursuant to the Original Term Loan Agreement, Montreign Operating was required to deposit $35 million into the lender-controlled account that holds the net proceeds from the Term Loan Facility and the Kien Huat Montreign Loan. The Company was required to fund the $35 million in the form of a further equity contribution to Montreign Operating, which would then be deposited into the lender-controlled account. Of the $35 million, $15 million was required to be deposited by June 30, 2017 and the remaining $20 million was required to be deposited by December 31, 2017. Pursuant to the Amended Term Loan Agreement, the requirement to contribute additional equity to Montreign Operating was reduced to approximately $9.9 million, which reduction takes into account approximately $600,000 of equity contributions made to the Project Parties, including Montreign Operating, since the Original Loan Closing Date. The additional equity of approximately $9.9 million must be contributed to Montreign Operating on or before December 31, 2017.

As of September 30, 2017, $450 million was outstanding under the Term B Loan and there were no borrowings outstanding under the Term A Loan. No principal repayments are due prior to the projected initial opening date of the Casino Project (which is required to be no later than March 1, 2018). Thereafter, principal payments are due at the end of each calendar quarter. If the initial opening of the Casino Project occurs on or before March 1, 2018, the first loan repayment is due June 30, 2018. The following table lists the annual principal repayments due under the Term B

Loan:

Year ending December 31,	(in thousands)
2017	$2,250
2018	4,500
2019	4,500
2020	4,500
2021	4,500
2022 to 2023	429,750

Revolving Credit Agreement
On the Original Loan Closing Date, Montreign Operating also entered into a Revolving Credit Agreement (the “Revolving Credit Agreement”) among Montreign Operating, the lenders from time to time party thereto, and Fifth Third Bank, as administrative agent. The Revolving Credit Agreement provides for loans or other extensions of credit to be made to Montreign Operating in an aggregate principal amount of up to $15 million (including a letter of credit sub-facility of $10 million) (the “Revolving Credit Facility”), the proceeds of which may be used for working capital needs, capital expenditures and other general corporate purposes following the initial opening of the Casino Project to the public. Concurrently with the Term Loan Amendment, Montreign Operating amended the Revolving Credit Agreement to, among other things, permit Montreign Operating to increase the aggregate principal amount of the Term B Loan under the Term Loan Amendment. The Revolving Credit Facility will mature on January 24, 2022. Interest will accrue on outstanding borrowings at a rate equal to LIBOR plus 5.0% per annum, or an alternate base rate plus 4.0% per annum.

Collateral and Other Provisions
The Term Loan Facility and the Revolving Credit Facility are each guaranteed by ERREI and ERREII (ERREII together with ERREI, the "Montreign Subsidiaries"), both indirect, wholly-owned subsidiaries of Montreign Operating, and are secured by security interests in substantially all the real and personal property of Montreign Operating and the Montreign Subsidiaries and by a pledge of all the membership interests of Montreign Operating held by Montreign Holding Company, LLC ("Montreign Holding"), a wholly-owned subsidiary of Empire. In addition, Empire delivered a completion guaranty in connection with the Term Loan Facility guaranteeing the completion of the construction of the Casino Project and the Entertainment Village Project. Empire’s liability under the completion guaranty (excluding lender’s enforcement costs) is capped at $30 million.

The Term Loan Agreement and the Revolving Credit Agreement contain representations and warranties, affirmative covenants, negative covenants and financial covenants that are usual and customary, including representations, warranties and covenants that, among other things, restrict the ability of Montreign Operating and the Montreign Subsidiaries to incur additional debt, incur or permit liens on assets, make investments and acquisitions, consolidate or merge with any other company, or make dividends or other distributions.

Obligations under the Term Loan Agreement and the Revolving Credit Agreement may be accelerated upon certain customary events of default (subject to grace periods, as appropriate), including, among others: nonpayment of principal, interest or fees; breach of the affirmative or negative covenants; revocation of a gaming license for seven consecutive business days; and a Change of Control (as such term is defined in the Term Loan Agreement) of Montreign Operating.

Note H. Long-Term Loans, Related Party

Conversion of Kien Huat Note
On November 17, 2010, Empire entered into a loan agreement (the "2010 Kien Huat Loan Agreement") with Kien Huat pursuant to which Empire issued a convertible promissory note (the "2010 Kien Huat Note") in the original principal amount of $35.0 million, of which $17.4 million was outstanding as of December 31, 2015. On February 17, 2016, upon consummation of the January 2016 Rights Offering, the 2010 Kien Huat Note was converted into 1,332,058 shares of common stock in accordance with the terms of the 2010 Kien Huat Loan Agreement.

Kien Huat Construction Loan Agreement
On October 13, 2016, Montreign Operating and Kien Huat entered into a loan agreement (the "KH Construction Loan Agreement") pursuant to which Kien Huat agreed to make available to Montreign Operating up to an aggregate of $50

million of loans to pay the expenses of the Casino Project while the debt financing for the Development Projects was being finalized. The term of the KH Construction Loan Agreement would expire on the earlier of (i) the consummation of financing in an amount no less than the remaining contract amount under the Casino Project construction contract and (ii) October 13, 2017. On January 24, 2017, in connection with the closing of the Term Loan Facility and the Kien Huat Montreign Loan, the KH Construction Loan Agreement expired pursuant to its terms without being utilized by Montreign Operating. Montreign Operating paid Kien Huat a commitment fee of $500,000 upon execution of the KH Construction Loan. The commitment fee was capitalized and was included in other assets at December 31, 2016. It was written off on January 24, 2017 upon the issuance of the Kien Huat Montreign Loan Agreement.

Kien Huat Montreign Loan Agreement

On the Original Loan Closing Date, Kien Huat and Montreign Holding entered into a loan agreement (the "Kien Huat Montreign Loan Agreement"), pursuant to which Montreign Holding obtained from Kien Huat a loan in the principal amount of $32.3 million (the "Kien Huat Montreign Loan"), the net proceeds of which were used as a capital contribution to Montreign Operating for use towards the expenses of the Development Projects. The Kien Huat Montreign Loan will mature on February 24, 2024 (the “Kien Huat Loan Maturity Date”), which date may be extended by Kien Huat in its sole discretion by up to an additional year.

The Kien Huat Montreign Loan bears interest at a rate of 12% per annum. Prior to the Kien Huat Loan Maturity Date, interest on the Kien Huat Montreign Loan shall accrue and be added to the outstanding principal of the Kien Huat Montreign Loan (the “Principal Indebtedness”) on the first business day of each calendar month beginning on February 1, 2017 (each an “Interest Payment Date”) and shall thereafter be deemed to be part of the Principal Indebtedness. The Principal Indebtedness, including all interest due through the applicable Interest Payment Date and other amounts due under the Kien Huat Montreign Loan, shall be payable in cash on the Kien Huat Loan Maturity Date. Notwithstanding the foregoing, Montreign Holding shall be required to pay in cash to Kien Huat, at the end of any “accrual period” (as defined in Section 1275(a)(5) of the Internal Revenue Code of 1986, as amended (the “Code”)) ending after the fifth anniversary of the Loan Closing Date, the aggregate amount by which (x) the sum of (i) the amount of accrued interest on the Kien Huat Montreign Loan that has been added to the Principal Indebtedness plus (ii) any other accrued but unpaid original issue discount (as determined under Section 163(i) of the Code) on the Kien Huat Montreign Loan from the closing date through the end of such accrual period, in each case that has not been paid in cash, exceeds (y) the product of (i) the “issue price” (as defined for purposes of the Code) and (ii) the “yield to maturity” (as defined for purposes of the Code). In addition to the interest payable on the Kien Huat Montreign Loan, Kien Huat was entitled to a commitment fee of 1%, which fee was added to the Principal Indebtedness of the Kien Huat Montreign Loan.

Until the Kien Huat Montreign Loan is repaid in full, Montreign Holding shall make no dividend or other distributions to Empire except for purposes of (i) paying bona fide corporate overhead expenses in an amount not to exceed $9 million (which amount is subject to further reduction pursuant to the Kien Huat Montreign Loan Agreement) and (ii) the payment of taxes by Empire, to the extent also permitted by the Term Loan Agreement with respect to distributions to Montreign Operating. The Kien Huat Montreign Loan may be prepaid in full or in part at any time without premium or penalty.

The obligations of Montreign Holding under the Kien Huat Montreign Loan Agreement are secured by a pledge of all the membership interests of Montreign Holding by Empire. The Kien Huat Montreign Loan Agreement contains representations and warranties and affirmative covenants that are usual and customary, including representations, warranties and covenants that, among other things, restrict Montreign Holding’s use of the proceeds of the Kien Huat Montreign Loan to expenses relating to the Development Projects. Obligations under the Kien Huat Montreign Loan Agreement may be accelerated upon certain customary events of default (subject to grace periods, as appropriate), including, among others, nonpayment of principal, interest or fees, breach of the affirmative covenants and a default with respect to the payment of principal or interest under the Term Loan Facility by Montreign Operating or acceleration of the Term Loan Facility for any reason.

Note I. Bryanston Settlement Agreement

Effective as of June 30, 2013, the Company and its affiliates consummated the closing of a Settlement Agreement and Release (as amended, the “Bryanston Settlement Agreement”) with Bryanston Group, Inc. and its affiliates (the “Bryanston Parties”). Pursuant to ASC 480, the Series E Preferred Stock held by the Bryanston Parties became contractually redeemable subject to the terms and conditions of the Bryanston Settlement Agreement and was recorded as a liability on the December 31, 2015 balance sheet.

On March 7, 2016, the Company redeemed the outstanding Series E Preferred Stock held by the Bryanston Parties for approximately $30.7 million pursuant to the terms of the Bryanston Settlement Agreement. Because the event that caused the entire liability to become due occurred during 2016, the liability was recorded pursuant to the payment terms in place at December 31, 2015, of which $1.5 million was recorded as a current liability and the remainder was recorded as a long-term liability on the December 31, 2015 balance sheet. Interest expense associated with the change in the redemption amount of the liability was $0 and $231,000 for the three- and nine-month periods ended September 30, 2016, respectively.

Note J. Stockholders' Equity

Authorized Capital
On November 1, 2016, Empire filed the Second Amended and Restated Certificate of Incorporation (the "Restated Charter") with the Secretary of State of the State of Delaware. Pursuant to the Restated Charter, Empire's authorized capital stock consists of 155 million shares, of which 150 million shares are common stock, par value $0.01 per share, and five million shares are preferred stock, par value $0.01 per share.

Common Stock
Our common stock is transferable only subject to the provisions of Section 303 of the Racing, Pari-Mutuel Wagering and Breeding Law, so long as we hold directly or indirectly, a racetrack license issued by the NYSGC, and may be subject to compliance with the requirements of other laws pertaining to licenses held directly or indirectly by us. The owners of common stock issued by us may be required by regulatory authorities to possess certain qualifications and may be required to dispose of their common stock if the owner does not possess such qualifications.
January 2015 Rights Offering

On January 5, 2015, the Company commenced a rights offering (the "January 2015 Rights Offering") of non-transferable subscription rights to holders of record of our common stock and Series B Preferred Stock as of January 2, 2015 to purchase up to 1,408,451 shares of our common stock. On January 2, 2015, in connection with the January 2015 Rights Offering, the Company and Kien Huat entered into a standby purchase agreement (the "January 2015 Standby Purchase Agreement"). Pursuant to the January 2015 Standby Purchase Agreement, Kien Huat agreed to exercise in full its basic subscription rights granted in the January 2015 Rights Offering within 10 days of its grant. In addition, Kien Huat agreed it would exercise all rights not otherwise exercised by the other holders in the January 2015 Rights Offering in an aggregate amount not to exceed $50 million.

The January 2015 Rights Offering closed on February 6, 2015. The Company issued a total of 1,408,451 shares of common stock for aggregate gross proceeds of approximately $50 million. This included 10,658 shares issued to holders upon exercise of their basic subscription rights and over-subscription rights and 864,360 shares issued to Kien Huat upon exercise of its basic subscription rights. Kien Huat also acquired the remaining 533,433 shares not sold in the January 2015 Rights Offering pursuant to the terms of the January 2015 Standby Purchase Agreement. The net proceeds of the January 2015 Rights Offering were approximately $49.5 million (following the deduction of expenses), which were used to pay the expenses of the Casino Project. Pursuant to the January 2015 Standby Purchase Agreement, we paid Kien Huat a commitment fee of $250,000, which is equal to 0.5% of the maximum amount of the January 2015 Rights Offering and reimbursed Kien Huat for expenses in the amount of $40,000.

January 2016 Rights Offering

On January 4, 2016, we commenced a rights offering (the "January 2016 Rights Offering") of transferable subscription rights to holders of record of our common stock and our Series B Preferred Stock (the "Series B Preferred Stock") as of January 4, 2016 to purchase up to 20,138,888 shares of our common stock. In connection with the January 2016 Rights Offering, on December 31, 2015, the Company and Kien Huat entered into a standby agreement (the "January 2016 Standby Purchase Agreement"), pursuant to which Kien Huat agreed to exercise (i) its basic subscription rights to acquire approximately $30 million of our common stock within 10 days of the commencement of the January 2016 Rights Offering with a closing proximate thereto and (ii) the remainder of its basic subscription rights prior to the expiration date of the January 2016 Rights Offering. In addition, Kien Huat agreed it would exercise all rights not otherwise exercised by the other holders in the January 2016 Rights Offering upon the same terms as other holders in an aggregate amount not to exceed $290 million.

The January 2016 Rights Offering closed on February 17, 2016. The Company issued a total of 20,138,888 shares of common stock for aggregate gross proceeds of approximately $290 million. This includes 176,086 shares issued to holders upon exercise of their basic subscription and over-subscription rights and 13,136,817 shares issued to Kien Huat upon exercise of its basic subscription rights. Kien Huat also acquired the remaining 6,825,985 shares not sold in the January 2016 Rights Offering pursuant to the January 2016 Standby Purchase Agreement. The net proceeds from the January 2016 Rights Offering were approximately $286.0 million following the deduction of expenses, which were used to (i) pay the expenses relating to the construction of the Casino Project, (ii) redeem the outstanding shares of the Series E Preferred Stock in accordance with the terms of the Bryanston Settlement Agreement on March 7, 2016 and (iii) satisfy the working capital needs of the Company. Pursuant to the January 2016 Standby Purchase Agreement, we paid Kien Huat a commitment fee of approximately $1.5

million, which is equal to 0.5% of the maximum amount of the January 2016 Rights Offering, and reimbursed Kien Huat for expenses in the amount of $50,000.

Preferred Stock and Dividends

The Company’s Series B Preferred Stock has voting rights of 0.054 votes per share and each share is convertible into 0.054 shares of its common stock. It has a liquidation value of $29 per share and is entitled to annual cumulative dividends of $2.90 per share payable quarterly in cash. The Company has the right to pay dividends on an annual basis by issuing shares of its common stock at the rate of $3.77 per share. The value of shares of common stock issued as payment is based upon the average closing price for the shares of common stock for the 20 trading days preceding January 30 of the year following that for which the dividends are due. At September 30, 2017 and December 31, 2016, there were 44,258 shares of Series B Preferred Stock outstanding.

The Board authorized the cash payment of the Series B Preferred Stock dividends on March 8, 2016. Quarterly dividend payments in the amount of $32,087 were made on April 1, 2016, July 1, 2016, October 3, 2016 and January 3, 2017. Quarterly dividend payments of $32,087 were made on April 3, 2017, July 3, 2017 and October 2, 2017.

On March 2, 2016, the Board authorized the cash payment of dividends due for the year ended December 31, 2015 on the Series B Preferred Stock in the amount of approximately $167,000. At December 31, 2015, the Company had undeclared cash dividends on the Series B Preferred Stock of approximately $167,000 and payment was made on March 2, 2016. The cash dividend was calculated as if it were a dividend issued in shares of common stock, which in accordance with the terms of the Series B Preferred Stock, means the amount of the cash payment is the annual cash dividend value (if it had been paid quarterly) multiplied by 1.3.

Note K. Concentration

As of September 30, 2017, the Company had no debtor which represented more than 10.0% of the total net outstanding racing-related accounts receivable. As of December 31, 2016, the Company had one debtor, Hawthorne OTB, which represented 16.9% of the total net outstanding racing-related accounts receivable.

Note L. Commitments and Contingencies

Legal Proceedings

The Company is a party from time to time to various legal actions that arise in the normal course of business. In the opinion of management, the resolution of these other matters will not have a material adverse effect on its consolidated financial position, results of operations or cash flows.

Contingent Liability Settlement

On January 4, 2017, the Company entered into an agreement (the “2017 Settlement Agreement”) to issue 33,333 registered shares (the "Settlement Shares") of its common stock to an individual as part of the settlement of a claim asserted in connection with such individual's alleged provision of certain services to the Company. Pursuant to the 2017 Settlement Agreement, the Company issued the Settlement Shares on January 9, 2017. The 2017 Settlement Agreement provided for a mutual full release of all potential claims upon the Company's delivery of such Settlement Shares to the individual. The amount of the liability of $758,000 was included in accrued expenses at December 31, 2016.

Operating Leases

The following table represents the minimum future lease payments under the Company's operating leases at September 30, 2017:

Payments due by Period

Year ending December 31,	Total Lease Payments (in thousands)
2017	$ 3,000
2018	10,538
2019	7,775
2020	7,800
2021	8,300
2022 to 2056	370,286
Total	$ 407,699

The details of lease commitments are described below.

Casino Lease

On December 28, 2015 , Montreign Operating entered into a lease (the "Casino Lease") with EPT Concord II, LLC ("EPT"), a wholly-owned subsidiary of EPR Properties, (an entity unrelated to the Company), for the lease of the parcel on which the Casino Project is being built (the "Casino Parcel"). The Casino Lease has a term that expires on the earlier of (i) March 31, 2086, and (ii) Montreign Operating giving EPT written notice of its election to terminate the Casino Lease (the “Termination Option”) at least 12 months prior to any one of five Option Dates (as defined below). The option dates (each an "Option Date") under the Casino Lease mean each of the 20th, 30th, 40th, 50th and 60th anniversaries of the commencement of the Casino Lease. Upon Montreign Operating's timely notice of exercise of its Termination Option, the Casino Lease will be automatically terminated effective as of the applicable Option Date.

The following table represents the future fixed rent payments under the Casino Lease at September 30, 2017:

Year ending December 31,	Fixed Rent Payments due by Period (in thousands)
2017 (1) (2)	$3,000
2018 (2) (3)	10,500
2019 (3)	7,500
2020 (3)	7,500
2021 (3)	8,000
2022 to 2056 (3)	354,624

(1) Until February 29, 2016, the Company continued to make payments of $500,000 per month it would have made under the Original Option Agreement (defined below). From March 1, 2016 until February 28, 2017, option

payments made by the Company under a certain option agreement, originally executed on December 21, 2011 and last amended on June 20, 2014, which totaled $8.5 million, were applied against fixed rent due by the Company under the Casino Lease for such period.

(2) From March 1, 2017 through August 31, 2018, fixed rent is $1.0 million per month.

(3) From September 1, 2018 through the remainder of the term of the Casino Lease, fixed rent will equal $7.5 million per year, subject to an eight percent escalation every five years ("Base Amount").

In addition to the annual fixed rent, beginning September 2018 and through the remainder of the term of the Casino Lease (the “Percentage Rent Period”), Montreign Operating is obligated to pay an annual percentage rent equal to five percent of the Eligible Gaming Revenue (as such term is defined in the Casino Lease) in excess of the Base Amount for the Percentage Rent Period. Additionally, the lease is a net lease, and Montreign Operating has an obligation to pay the rent payable under the Casino Lease and other costs related to Montreign Operating's use and operation of the Casino Parcel, including the special district tax assessments allocated to the Casino Parcel, not to exceed the capped dollar amount applicable to the Casino Parcel.

Golf Course Lease

On December 28, 2015, ERREI entered into a sublease (the “Golf Course Lease”) with the Adelaar Developer, LLC (the "Destination Resort Developer") for the lease of the parcel on which the golf course is located (the "Golf Course Parcel"). The terms of the Golf Course Lease are substantially similar to the Casino Lease, subject to the material differences described below. Under the Golf Course Lease, there is no percentage rent due. Fixed rent payments under the Golf Course Lease are represented in the table below:

Year ending December 31,	Fixed Rent Payments due by Period (in thousands)
2017 (1)(2)	$0
2018 (2)	0
2019 (2)	125
2020 (2)	150
2021 (2)	150
2022 to 2056 (2) (3)	7,825

(1) From the date the Golf Course Lease commenced (the “Golf Course Lease Commencement Date”) and until the date on which the Golf Course opens for business, which is expected to be in Spring 2019 (the “Golf Course Opening Date”), fixed rent payments will equal $0.

(2) From the Golf Course Opening Date and continuing for 10 years thereafter, fixed rent will equal $150,000 per year.

(3) From March 2029 through the remainder of the term of the Golf Course Lease, fixed rent will equal $250,000 per year.

The Golf Course Lease is a net lease and ERREI is obligated to pay the rent payable under the Golf Course Lease and other costs related to ERREI's use and operation of the Golf Course Parcel, including the special district tax assessments allocated to the Golf Course Parcel, not to exceed the capped dollar amount applicable to the Golf Course Parcel. This obligation will not be assessed against ERREI prior to 60 months following the Golf Course Lease Commencement Date.

Entertainment Village Lease

On December 28, 2015, ERREII entered into a sublease (the “Entertainment Village Lease”) with the Destination Resort Developer, for the lease of the parcel of land on which the Entertainment Village would be built (the "Entertainment Village Parcel" and, together with the Casino Parcel and Golf Course Parcel, the "Project Parcels"). The terms of the Entertainment Village Lease are substantially similar to the Casino Lease, subject to the material differences described below. Under the Entertainment Village Lease, there is no percentage rent due. Fixed rent payments under the Entertainment Village Lease are represented in the table below:

Year ending December 31,	Fixed Rent Payments due by Period (in thousands)
2017 (1)(2)	$0
2018 (2)	38
2019 (2)	150
2020 (2)	150
2021 (2)	150
2022 to 2056 (2) (3)	7,837

(1) From the date the Entertainment Village Lease commenced (the “Entertainment Village Lease Commencement Date”) and until the date on which the Entertainment Village opens for business, which is expected to open in the fourth quarter of 2018 (the “Entertainment Village Opening Date”), fixed rent payments will be $0.

(2) From the Entertainment Village Opening Date and continuing for 10 years thereafter, fixed rent will equal $150,000 per year.

(3) From September 2028 through the remainder of the term of the Entertainment Village Lease, fixed rent will equal $250,000 per year.

The Entertainment Village Lease is a net lease and ERREII is obligated to pay the rent payable under the Entertainment Village Lease and other costs related to ERREII's use and operation of the Entertainment Village Parcel, including the special district tax assessments allocated to the Entertainment Village Parcel, not to exceed the capped dollar amount applicable to the Entertainment Village Parcel. This obligation will not be assessed against ERREII prior to 60 months following the Entertainment Village Lease Commencement Date.

Purchase Option Agreement

On December 28, 2015, Montreign Operating and EPT, EPR Concord II, L.P., Destination Resort Developer and EPR Concord II, L.P. (“EPR LP” and together with EPT and Destination Resort Developer, "EPR") entered into a Purchase Option Agreement (the “Purchase Option Agreement”), pursuant to which EPR granted to Montreign Operating the option (the “Purchase Option”) to purchase all, but not fewer than all, of the Project Parcels for a purchase price of $175 million ($200 million after the sixth anniversary on March 1, 2022, less a credit of up to $25 million for certain previous payments made by the Project Parties). The Purchase Option commenced on December 28, 2015 and will expire on the earlier to occur of (i) the natural expiration of the term of the Casino Lease and (ii) 90 days following the earlier termination of the Casino Lease, if otherwise terminated in accordance with its terms (the “Purchase Option Period”).

Under the Purchase Option Agreement, EPR also granted to Montreign Operating the option (the “Resort Project Purchase Option”) to purchase not less than all of the balance of the contiguous acres owned by EPR (the "EPR Property"), excluding the Empire Project Parcels and the Waterpark (the “Resort Property”) for an additional fee. The Resort Project Purchase Option may be exercised only simultaneously with or after the exercise of the Purchase Option. The Resort Project Purchase Option commenced on December 28, 2015 and will expire on the earlier to occur of (a) the expiration of the Purchase Option Period or (b) March 1, 2026.

Under the Purchase Option Agreement, EPR also granted to Montreign a right of first offer (“ROFO”) with respect to the purchase of all or any portion of the Resort Property. Under the terms of the ROFO, if EPR makes an offer to or rejects an offer made by Montreign Operating, then EPR will be precluded for a period of six months from transferring the designated portion of the Resort Property at a price and on terms which are on the whole substantially equivalent to or worse than those proposed or accepted by Montreign Operating. The ROFO commenced on the Effective Date and will continue in full force and effect until EPR has sold, leased, licensed or otherwise transferred all of the Resort Property.

Note M. Related Party Transactions

Moelis Agreements

On December 9, 2013, the Company executed a letter agreement, as supplemented by a letter dated May 20, 2015, (together, the "Moelis Engagement Letter") pursuant to which it engaged Moelis & Company LLC ("Moelis") to act as its financial advisor in connection with the Casino Project. In the event a financing is consummated, the Moelis Engagement Letter contemplates additional transaction-based fees would be earned by Moelis. The Moelis Engagement Letter automatically terminated on June 9, 2016.

At the close of the January 2016 Rights Offering, Moelis was paid approximately $2.1 million for financial advisory services in connection with the Casino Project pursuant to the Moelis Engagement Letter.

On January 24, 2017, in connection with the closing of the Term Loan Facility and the Revolving Credit Facility, Moelis was paid approximately $2.5 million for financial advisory services pursuant to the Moelis Engagement Letter.

On March 7, 2017, Montreign Operating entered into an engagement agreement with Moelis (the "Moelis-Montreign Engagement Letter") pursuant to which Moelis will act as exclusive financial advisor to Montreign Operating. Pursuant to the Moelis-Montreign Engagement Letter, Moelis is entitled to an advisory fee of $100,000, which was paid upon execution, and reimbursement of expenses up to $75,000. The Moelis-Montreign Engagement Letter will automatically terminate on December 31, 2017, unless either party terminates earlier.

On May 26, 2017, in connection with the closing of the Amended Term Loan Agreement, Moelis was paid approximately $178,000 for financial advisory services pursuant to the Moelis-Montreign Engagement Letter.

On May 16, 2017, Moelis and the Company entered into a letter agreement reinstating and amending the Moelis Engagement Letter (the "Updated Moelis Engagement Letter"). Pursuant to the Updated Moelis Engagement Letter, Moelis will act as non-exclusive financial advisor to the Company in connection with certain debt and equity financing and corporate transactions the Company may undertake. The Updated Moelis Engagement Letter describes the fees that will be due to Moelis for each transaction in which the Company engages. If the Company engages in a covered transaction at any time within 12 months of the termination of the Updated Moelis Engagement Letter for any reason other than for cause by the Company, Moelis will be entitled to received a transaction fee according to the schedule provided therein. The Updated Moelis Engagement Letter terminates on December 31, 2017.

Gregg Polle, a director of the Company, is a Managing Director of Moelis. Mr. Polle recused himself from participating in the discussions of the Moelis Engagement Letter, the Updated Moelis Engagement Letter, the Moelis-Montreign Engagement Letter and the determination of whether to enter into such agreements.

RWS License Agreement

On March 31, 2017, Montreign Operating entered into a license agreement (the “RWS License Agreement”) with RW Services Pte Ltd (“RWS”). Pursuant to the RWS License Agreement, RWS granted Montreign Operating the non-exclusive, non-transferable, revocable and limited right to use certain “Genting” and “Resorts World” trademarks (the “RWS Licensed Marks”) in connection with the development, marketing, sales, management and operation (the “Permitted Uses”) of the Development Projects. The right to use the RWS Licensed Marks may be assigned or sublicensed only in certain limited circumstances. However, any use of the RWS Licensed Marks for a purpose other than the Permitted Uses will require the prior written consent of RWS. The name of the Casino Project is “Resorts World Catskills,” and, notwithstanding the foregoing, the use of such name is exclusive to Montreign Operating and may be used in connection with on-line gaming in addition to the Permitted Uses.

The initial term of the RWS License Agreement will expire on December 31, 2027, and shall be extended automatically for additional terms of 12 months each, up to a maximum of 39 additional terms, unless either of the parties provides notice to terminate the RWS License Agreement or upon the mutual written consent of both parties. Montreign Operating's rights and obligations under the RWS License Agreement are subject to and governed by the rules and regulations applicable to Montreign Operating's gaming operations at the Casino Project, and the fiduciary obligations of the boards of directors of Montreign Operating and Empire, as well as the fiduciary obligations of Kien Huat. Beginning on the date on which the Casino Project opens to the public, Montreign Operating will pay to RWS a fee equivalent to a percentage of Net Revenue (as such term is defined in the RWS License Agreement) generated in each calendar year from (i) all activity at the Casino Project, (ii) each specific use of the RWS Licensed Marks in the Entertainment Village or Golf Course and (iii) each specific use of the name Resorts World Catskills in connection with on-line gaming. The percentage of Net Revenue payable as the fee is a low single digit percentage that will increase incrementally between the third year and sixth year of the term of the RWS License Agreement and will remain a low single digit percentage during the entire term of the RWS License Agreement.

During the term of the RWS License Agreement, Montreign Operating may participate in the Genting Rewards Alliance loyalty program (the “Alliance”), which would provide central marketing and cross-promotion opportunities for the Development Projects with other members of the Alliance. Montreign Operating’s participation in the Alliance is subject to the provisions of a separate agreement, which is currently being negotiated by the parties. RWS is an affiliate of Tan Sri Lim Kok Thay, who is a beneficiary of and controls Kien Huat. Gerard Lim, one of the Company's directors, also serves as a director of the parent entity of RWS.

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

The Management’s Discussion and Analysis of the Financial Condition and Results of Operations should be read together with the Management’s Discussion and Analysis of Financial Condition and Results of Operations and the Condensed Consolidated Financial Statements and related notes thereto in Empire Resorts, Inc. (“Empire”) and subsidiaries’ (the “Company,” “us,” “our” or “we”) Annual Report on Form 10-K for the fiscal year ended December 31, 2016

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains statements which constitute 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. These forward-looking statements generally relate to our strategies, plans and objectives for future operations and are based upon management’s current plans and beliefs or estimates of future results or trends. Forward-looking statements also involve risks and uncertainties, including, but not restricted to, the risks and uncertainties described in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2016, which could cause actual results to differ materially from those contained in any forward-looking statement. Many of these factors are beyond our ability to control or predict.

You should not place undue reliance on any forward-looking statements, which are based on current expectations. Further, forward-looking statements speak only as of the date they are made, and we will not update these forward-looking statements, even if our situation changes in the future. We caution the reader that a number of important factors discussed herein, and in other reports filed with the Securities and Exchange Commission, could affect our actual results and cause actual results to differ materially from those discussed in forward-looking statements.

Overview

Empire Resorts, Inc. was organized as a Delaware corporation on March 19, 1993, and since that time has served as a holding company for various subsidiaries engaged in the hospitality and gaming industries.

The Destination Resort and Development Projects

On December 21, 2015, Montreign Operating was awarded a Gaming License by the NYSGC to operate the Casino Project to be located at the site of a four-season destination resort being developed in the Town of Thompson in Sullivan County, approximately 90 miles from New York City (the "Destination Resort"), which is described below. Montreign Operating is the sole holder of a Gaming Facility License in the Hudson Valley-Catskill region, which consists of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster counties in New York State. The Gaming Facility License became effective on March 1, 2016.

The Destination Resort is to be located on approximately 1,700 acres owned by EPT Concord II, LLC ("EPT") and EPR Concord II, L.P. ("EPR LP"), two wholly-owned subsidiaries of EPR Properties, which are unrelated to the Company. The resort casino project (the "Casino Project") is part of the initial development of the Destination Resort, which will also include an indoor waterpark lodge (the "Waterpark"), a Rees Jones-redesigned "Monster" golf course (the "Golf Course Project") and an entertainment village, which will include hotel, retail, restaurants and other amenities (the "Entertainment Village Project" and, together with the Casino Project and the Golf Course Project, the "Development Projects"). In addition to the Casino Project, subsidiaries of Montreign Operating are responsible for developing the Entertainment Village Project and the Golf Course Project. Subsidiaries of EPR Properties are responsible for developing the Waterpark.

Monticello Casino and Raceway

Through Monticello Raceway Management, Inc. ("MRMI"), we currently own and operate Monticello Casino and Raceway, a 45,000-square foot video gaming machine ("VGM") and harness horseracing facility located in Monticello, New York, approximately 90 miles northwest of New York City. Monticello Casino and Raceway operates 1,110 VGMs, which includes 1,070 video lottery terminals ("VLTs") and 40 electronic table game positions ("ETGs"). VGMs are similar to slot machines, but they are connected to a central system and report financial information to the central system. ETGs include the games of roulette, blackjack and 3-card poker. The Company also generates racing revenues through pari-mutuel wagering on the running of live harness horse races, the import simulcasting of harness and thoroughbred horse races from racetracks across the country and internationally, and the export simulcasting of our races to offsite pari-mutuel wagering facilities.

In a letter dated December 23, 2016, the NYSGC approved MRMI's racetrack and simulcast license renewal applications for calendar year 2017. Generally, the annual license renewal process requires the NYSGC to review the financial responsibility, experience, character and general fitness of MRMI and its management.

The Destination Resort and the Development Projects
The Destination Resort is located on approximately 1,700 acres (the "EPT Property") in the Town of Thompson in Sullivan County, New York. The Casino Project is part of the initial phase of the Destination Resort, which will also include the Waterpark, the Golf Course Project and the Entertainment Village Project (the Casino Project, the Waterpark, the Golf Course Project and the Entertainment Village Project, collectively the “Initial Projects”). The Company currently expects the construction of the Development Projects will cost approximately $920 million, which includes $744 million of anticipated costs for the Development Projects, $81 million for contingency and interest reserves, $51 million for the Gaming Facility License fee and $44 million of original issue discount and financing and legal fees.

The Casino Project
The Casino Project is designed to meet five-star and five-diamond standards and is expected to include:

- a 90,500-square foot main casino floor featuring 2,150 slot machines and 100 table games, which will include Asian-themed games;

- a 6,500-square foot poker room featuring 16 - 18 tables;

- a designated 3,800-square foot VIP/high-limit area located on the main gaming floor, which will offer slot machines, table games, and a player’s lounge offering food and beverages;

- an 18-story hotel tower containing 332 luxury rooms (including at least eight 1,000–1,200-square foot garden suites, seven 2,400-square foot two-story townhouse villas, and 12 penthouse-level suites), indoor pools and two fitness centers;

- a separate 4,000-square foot private gaming area containing six private VIP gaming salons, a private gaming cage, and butler service;

- 27,000 square feet of multi-purpose meeting and entertainment space with seating capacity for 2,500 people that includes access to outdoor terraces and approximately 7,000 square feet of meeting room space;

- a 7,500-square foot spa located on the VIP level; and

- eight restaurants and seven bars.

As of October 31, 2017, approximately 99% of the Guaranteed Maximum Price (defined below) under the construction manager agreement with LP Ciminelli for the Casino Project has been contracted. Additionally, approximately 79% of the construction of the Casino Project is complete.

Gaming Facility License
The Gaming Facility License became effective on March 1, 2016. The Gaming Facility License will have an initial duration of 10 years from March 1, 2016 and will be renewable thereafter for a period of at least an additional 10 years, as determined by the NYSGC. The Gaming Facility License is also subject to certain conditions established by the NYSGC, including the following:

- the payment of an aggregate license fee of $51 million, which was paid on March 30, 2016;

- causing the investment of not less than approximately $854 million (the “Minimum Capital Investment”) in the development of the Initial Projects and infrastructure for the Destination Resort in accordance with the submitted plans for the Casino Project and the Destination Resort;

- deposit of a bond representing 10% of the Minimum Capital Investment (the "Minimum Capital Investment Deposit"), which was completed on March 1, 2016;

- commencement of gaming operations on or before March 1, 2018;

24

- compliance with New York State minority-owned and woman-owned business enterprise ("MWBE") requirements with respect to the Casino Project; and

- the creation of a minimum of 1,425 full-time and 96 part-time jobs.

The Golf Course Project and the Entertainment Village Project
ERREI and ERREII are responsible for the development and construction of the Golf Course Project and the Entertainment Village Project, respectively. The development of the Entertainment Village Project is expected to be built-out in phases. The Company is currently preparing the design plans for the Entertainment Village Project, which will consist of a non-gaming hotel with 100-200 guest rooms as well as dining, entertainment and retail offerings. The targeted rating for this hotel and its related amenities is in the range of 3-Star and 3-Diamond standards to serve mid-market customers. On December 8, 2016, the Company submitted to the Town of Thompson Planning Board (the "Planning Board") an application for the approval for the site plan for the hotel to be located within the Entertainment Village Project. The Planning Board held a special public hearing to consider the application on March 1, 2017. On May 24, 2017, the Planning Board adopted a resolution granting final site plan approval with conditions for the hotel.

The Company has obtained final site approval from the Planning Board for, and has begun site preparation of, the redesign of the Golf Course Project. The Planning Board extended this site plan approval for six months to December 2017 to allow the Company to coordinate the commencement of construction and to obtain final approval of updates to the wetlands permits from the United States Army Corps of Engineers and the New York State Department of Environmental Conservation, if required.

Master Development Agreement and Completion Guaranties
On December 28, 2015 (the “MDA Effective Date”), the Project Parties, on the one hand, and EPR, on the other hand, entered into an Amended and Restated Master Development Agreement (as amended, the “MDA”), which amends and restates that certain master development agreement by and between EPT and MRMI originally executed on December 14, 2012. The MDA defines and governs the overall relationship between EPR and the Project Parties with respect to the development, construction, operation, management and disposition of the Initial Projects.

In accordance with the terms of the MDA, the Project Parties will each be responsible for the development and construction of their portion of the Development Projects. On December 28, 2015, Empire entered into a completion guaranty, guaranteeing completion of the development and construction obligations of the Project Parties described in this paragraph.

In accordance with the terms of the MDA, EPR is responsible for the development and construction of the Waterpark and the common infrastructure-related improvements (such as streets, sidewalks, sanitary and storm sewer lines, water, gas, electric, telephone and other utility lines, systems, conduits and other similar facilities) for the Destination Resort. EPR has agreed to be responsible for the development and construction of the Waterpark with a minimum capital investment of $120 million, and the infrastructure for the Destination Resort. EPR financed the costs of the infrastructure by the issuance of tax-exempt bonds by a local development corporation. The debt service for these infrastructure bonds will be funded through special district tax assessments, a portion of which will be allocated to each of the parcels on which the Initial Projects are being built. EPR and the Project Parties have agreed to a capped dollar amount on the special district tax assessment for each of the parcels on which the Development Projects are being built, above which the Project Parties will not be responsible. On December 28, 2015, EPR Properties, a real estate investment trust and the parent company of EPR, entered into a completion guaranty, guaranteeing completion of the development and construction obligations of EPR described in this paragraph.

Neither party has the right to terminate the MDA unless Montreign Operating fails to exercise the Purchase Option prior to its expiration in accordance with the terms and conditions of the Purchase Option Agreement.

On January 24, 2017, the MDA was amended to (a) reflect that EPR has secured bond financing in connection with its infrastructure development obligations and (b) account for increases in the common infrastructure budget (and corresponding increases in Empire’s common infrastructure cap amount) in connection with the development of additional roads and increase in the budgeted amounts for New York State Electric and Gas costs. The changes to Empire’s common infrastructure cap amount were also reflected in each of the amendments to the Casino Lease, Golf Course Lease and Entertainment Village Lease.

Development Project Parcel Leases and Purchase Option Agreement
On December 28, 2015, the Project Parties entered into the Casino Lease, the Golf Course Lease, the Entertainment Village Lease and the Purchase Option Agreement (see Note L. "Commitments and Contingencies" to the Condensed Consolidated Financial Statements for more information). Option payments made by the Company pursuant to that certain option agreement, originally executed on December 21, 2011 and last amended on June 20, 2014 (the "Original Option Agreement"), which total $8.5 million, were applied against rent amounts due to EPT as rent under the Casino Lease. The Original Option Agreement, which granted the Company the right to lease the Casino Parcel, was superseded by the Casino Lease, Golf Course Lease and the Entertainment Village Lease, which are described above in Note L. to the Condensed Consolidated Financial Statements.

Development Project Branding

RWS License Agreement
On March 31, 2017, Montreign Operating entered into the RWS License Agreement, pursuant to which RWS granted Montreign Operating the non-exclusive, non-transferable, revocable and limited right to use certain RWS Licensed Marks in connection with the development, marketing, sales, management and operation of the Development Projects. See Note M. "Related Party Transactions" to the Condensed Consolidated Financial Statements for more information.

JCJ Architecture
Montreign Operating has entered into a professional services agreement with JCJ Architecture PC, which is a standard architectural agreement with normal and customary terms, and addresses, among other things, architectural services, dates of completion of the Casino Project and MWBE participation in the Casino Project.

ERREII has also entered into a professional services agreement with JCJ Architecture PC, which is a standard architectural agreement with normal and customary terms, and addresses, among other things, architectural services, dates of completion of the Entertainment Village Project and any necessary MWBE participation in the Entertainment Village Project.

LP Ciminelli
Montreign Operating has entered into a construction manager agreement with LP Ciminelli, Inc., which is a standard construction manager agreement with normal and customary terms, and addresses, among other things, the Guaranteed Maximum Price of approximately $511 million for the Casino Project (the "Guaranteed Maximum Price"), completion commitments and MWBE participation in the Casino Project.

Monticello Casino and Raceway
Monticello Casino and Raceway began racing operations in 1958 and currently features the following:

• 1,070 VLTs and 40 ETGs (collectively 1,110 VGMs);

• year-round live harness horse racing;

• year-round simulcast pari-mutuel wagering on thoroughbred and harness horse racing from around the world;

• a 3,000-seat grandstand with retractable windows and a 100-seat clubhouse and bar, which are currently closed;

• parking spaces for 2,000 cars and 10 buses;

• an a la carte restaurant with seating capacity for approximately 80 patrons and a two-outlet food court with seating capacity for up to 100 patrons;

• a 1,386-square foot multi-functional space used for events;

• a 1,525-square foot simulcast room located directly adjacent to the gaming floor, with access to a small grandstand;

• a casino bar;

• a new 4,800-square foot sports bar opened on May 22, 2017, with an occupancy of approximately 290 patrons and seating for approximately 190 patrons; and

• an entertainment lounge with seating for approximately 75 patrons.

VGM Operations

We operate a 45,000-square foot VGM facility known as Monticello Casino and Raceway. The VGMs are owned by New York State and VGM activities in New York State are overseen by the NYSGC. Revenues derived from our VGM operations consist of VGM revenues and food and beverage revenues.

Gross VGM revenues consist of the total amount wagered at our VGMs, less prizes awarded. The statute provides a marketing allowance for racetracks operating video lottery programs of 10% on the first $100 million of net revenues generated
and 8% thereafter. Video lottery gaming is permitted for no more than 20 consecutive hours per day and on no day can such operation be conducted past 6:00 a.m.

Raceway Operations

Raceway operations, simulcasting and pari-mutuel wagering activities in New York State are overseen by the NYSGC. We derive our racing revenue principally from the following:

• wagering at Monticello Casino and Raceway on live races run at Monticello Casino and Raceway;

• fees from wagering at out-of-state locations and internationally on races run at Monticello Casino and Raceway using export simulcasting;

• revenue allocations, as prescribed by law, from betting activity at off-track betting facilities in New York State;

• wagering at Monticello Casino and Raceway on races broadcast from out-of-state racetracks using import simulcasting; and

• program and certain other ancillary activities.

Simulcasting

Import and, particularly, export simulcasting, are important parts of our business. Simulcasting is the process by which a live horse race held at one facility (the “host track”) is transmitted to another location that allows patrons of such other location to wager on that race. Amounts wagered at each off-track betting location are combined into the appropriate pools at the host track’s tote facility where the final odds and payouts are determined. With the exception of a few holidays, we offer year-round simulcast wagering from racetracks across the country. In addition, races of national interest, such as the Kentucky Derby, Preakness Stakes and Breeders’ Cup supplement our regular simulcast programming. We also export live broadcasts of our own races to race tracks, casinos and off-track betting facilities in the United States and internationally.

On November 3, 2014, MRMI and the MHHA entered into an agreement that governs the conduct of MRMI and MHHA relating to horseracing purse payments, the simulcasting of horse races and certain other payments (the “2014 MHHA Agreement”). The term of the 2014 MHHA Agreement expires seven years from the date the NYSGC approves the Casino Project to engage in legalized gaming. On that same date, MHHA will also receive, subject to adjustment for corporate events, 200,000 shares of common stock and a warrant to purchase 60,000 shares of common stock, the proceeds of any sales of which will provide additional monies for the harness horsemen’s purse account.

Pari-mutuel Wagering

Our racing revenue is derived from pari-mutuel wagering at our track and government mandated revenue allocations from certain New York State off-track betting locations. In pari-mutuel wagering, patrons bet against each other rather than against the operator of the facility or with pre-set odds. The amounts wagered form a pool of funds from which winnings are paid based on odds determined by the wagering activity. The racetrack acts as a stakeholder for the wagering patrons and deducts from the amounts wagered a “take-out” or gross commission from which the racetrack pays state and county taxes and racing purses. Our pari-mutuel commission rates are fixed as a percentage of the total handle or amounts wagered.

Critical Accounting Estimates

We make certain judgments and use certain estimates and assumptions when applying accounting principles in the preparation of our consolidated financial statements. The nature of the estimates and assumptions are material due to the levels of subjectivity and judgment necessary to account for highly uncertain factors or the susceptibility of such factors to change.

We believe the current assumptions and other considerations used to estimate amounts reflected in our consolidated financial statements are appropriate. However, if actual experience differs from the assumptions and other considerations used in estimating amounts reflected in our consolidated financial statements, the resulting changes could have a material adverse effect on our consolidated results of operations and, in certain situations, could have a material adverse effect on our consolidated financial condition.

For further information on our critical accounting estimates, see Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the notes to our audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2016. There have been no material changes to these estimates during the three- and nine-month periods ended September 30, 2017.

Results of Operations - Three Months ended September 30, 2017 Compared to Three Months ended September 30, 2016

The results of operations for the three months ended September 30, 2017 and 2016 (unaudited) are summarized below (dollars in thousands):

	September 30, 2017	September 30, 2016	Variance $	Variance %
Revenues:				
Gaming	$ 17,833	$ 16,423	$ 1,410	9 %
Food, beverage, racing and other	2,499	2,768	(269)	(10)%
Gross revenues	20,332	19,191	1,141	6 %
Less: Promotional allowances	(1,619)	(661)	(958)	145 %
Net revenues	18,713	18,530	183	1 %
Costs and expenses:				
Gaming	12,739	11,814	925	8 %
Food, beverage, racing and other	2,502	2,572	(70)	(3)%
Selling, general and administrative	3,989	5,244	(1,255)	(24)%
Development Projects costs	5,196	3,159	2,037	64 %
Stock-based compensation	741	800	(59)	(7)%
Depreciation	390	329	61	19 %
Total costs and expenses	25,557	23,918	1,639	7 %
Loss from operations	(6,844)	(5,388)	(1,456)	27 %
Amortization of debt issuance costs	(1,377)	—	(1,377)	— %
Interest expense	(3,456)	(2)	(3,454)	N.M.
Interest income	805	2	803	N.M.
Loss before income taxes	(10,872)	(5,388)	(5,484)	102 %
Income tax provision	—	—	—	— %
Net loss	$ (10,872)	$ (5,388)	$ (5,484)	102 %

N.M. - not meaningful

Gaming revenue

Gaming revenue increased by approximately $1.4 million, or 9%, for the three months ended September 30, 2017 as compared to the three months ended September 30, 2016, from $16.4 million to $17.8 million. Non-subsidized free play increased $993,000 during the 2017 three-month period as compared to the 2016 three-month period. Handle increased $7.9 million, or 3%, for the same period, primarily due to more customers as compared to last year. VGM hold percentage increased to 6.8% for the three months ended September 30, 2017 as compared to 6.4% for the same period in 2016, which in addition to the increase in handle during the 2017 period, resulted in the increase in gaming revenue. The average daily win per unit increased from $160.82 to $176.55 for the same period.

Food, beverage, racing and other revenue

Food, beverage, racing and other revenue decreased by approximately $269,000, or 10%, for the three months ended September 30, 2017 as compared to the three months ended September 30, 2016, from $2.8 million to $2.5 million. Food and beverage revenue decreased approximately $249,000 for the three months ended September 30, 2017 as compared to the three months ended September 30, 2016, due to the loss of buffet revenues of $425,000 and reduced banquet revenues of $46,000, which were partially offset by $218,000 of revenues generated by for the new Press Box sports bar and $8,000 of higher revenues generated by the Lava Lounge for the three months ended September 30, 2017.

Racing revenue increased by $30,000 for the three months ended September 30, 2017 as compared to the three months ended September 30, 2016. The increase in racing revenue is due to higher simulcasting commissions as compared to the same quarter last year. Other revenue decreased by approximately $50,000 for the three months ended September 30, 2017 as compared to the three months ended September 30, 2016, primarily due to lower ATM revenues received in the 2017 period.

Promotional allowances
Promotional allowances increased by approximately $958,000, or 145%, for the three months ended September 30, 2017 as compared to the three months ended September 30, 2016, from $661,000 to $1.6 million. The increase in promotional allowances was primarily due to an increase in non-subsidized free play, which increased $993,000, and Player club awards and complimentaries of approximately $73,000 in the three-month 2017 period as compared to the 2016 period, offset by a decrease in coupons and discounts of $108,000 from the same period last year, due to lower promotional activity in the 2017 period.

Gaming costs
Gaming costs increased by approximately $925,000, or 8%, for the three months ended September 30, 2017 as compared to the three months ended September 30, 2016, from $11.8 million to $12.7 million. NYSGC and other commissions increased approximately $881,000 as compared to the same period in the prior year due to higher gaming revenue. Gaming wages and related benefits increased by approximately $43,000 as compared to the same period in the prior year, due to higher salaries and wages which were partially offset by lower group insurance costs.

Food, beverage, racing and other costs
Food, beverage, racing and other costs decreased by approximately $70,000, or 3%, for the three months ended September 30, 2017 as compared to the three months ended September 30, 2016, from $2.6 million to $2.5 million, primarily due to lower food and beverage cost of goods sold of $125,000, due to lower sales volume. Payroll and related benefit costs decreased $14,000 in the 2017 period. Purse and racing-related expenses increased $71,000 due to higher horse drug testing fees and increased race starter costs.

Selling, general and administrative expenses
Selling, general and administrative expenses decreased by approximately $1.3 million, or 24%, for the three months ended September 30, 2017 as compared to the three months ended September 30, 2016, from $5.2 million to $4.0 million. The decrease was primarily due to lower professional fees, which decreased $1.3 million as compared to last year. Outside director fees decreased $73,000 in 2017 as compared to last year. Real estate taxes increased $66,000 due to the phase-out of the Empire Zones tax credit program. Bank charges increased $27,000, due to fees related to the Term Loan Facility. State franchise taxes increased by $17,000, due to taxes on increased paid-in capital. Insurance expense increased $39,000, due to higher premiums.

Development Projects costs
Development Projects costs increased approximately $2.0 million, or 64%, for the three months ended September 30, 2017 as compared to the three months ended September 30, 2016, from $3.2 million to $5.2 million. During the three months ending September 30, 2017, payroll and related benefit costs increased $821,000, primarily due to new hires to staff the casino management team. Bank fees increased $590,000, due to fees associated with the Term Loan Facility. Marketing expenses increased $86,000, due to efforts to increase branding. Professional fees increased $234,000, land lease fees and rents increased $77,000, utilities expenses increased $47,000, real estate taxes increased $22,000 and other pre-opening expenses increased $151,000 as compared the same period in 2016.

Amortization of debt issuance costs
Amortization of debt issuance costs increased approximately $1.4 million for the three months ended September 30, 2017 as compared to the three months ended September 30, 2016, from $0 to $1.4 million. The increase in amortization expense is due to the financing for the new Term Loan Facility and the Kien Huat Montreign Loan for the construction of the Development Projects.

Interest expense
Interest expense increased approximately $3.5 million for the three months ended September 30, 2017 as compared to the three months ended September 30, 2016, from $2,000 to $3.5 million. The increase in interest expense is primarily

due to borrowing under the Term B Loan Facility in 2017, as well as interest accrued for the Kien Huat Montreign Loan.

Interest income

Interest income increased approximately $803,000 for the three months ended September 30, 2017 as compared to the three months ended September 30, 2016. The increase in interest income is due to interest received on the investment of unused restricted cash and investments for Development Projects.

Results of Operations - Nine Months ended September 30, 2017 Compared to Nine Months ended September 30, 2016
The results of operations for the nine months ended September 30, 2017 and 2016 (unaudited) are summarized below (dollars in thousands):

	September 30, 2017	September 30, 2016	Variance $	Variance %
Revenues:				
Gaming	$ 46,956	$46,307	$649	1 %
Food, beverage, racing and other	6,784	8,218	(1,434)	(17)%
Gross revenues	53,740	54,525	(785)	(1)%
Less: Promotional allowances	(3,072)	(2,384)	(688)	29 %
Net revenues	50,668	52,141	(1,473)	(3)%
Costs and expenses:				
Gaming	34,423	33,908	(515)	(2)%
Food, beverage, racing and other	7,121	7,674	553	7 %
Selling, general and administrative	11,945	15,343	3,398	22 %
Development Projects costs	13,881	9,382	(4,499)	(48)%
Stock-based compensation	2,213	2,032	(181)	(9)%
Depreciation	1,115	1,000	(115)	(12)%
Total costs and expenses	70,698	69,339	(1,359)	(2)%
Loss from operations	(20,030)	(17,198)	(2,832)	16 %
Amortization of debt issuance costs	(3,955)	(2)	(3,953)	N.M.
Interest expense	(12,591)	(416)	(12,175)	N.M.
Interest income	2,337	7	2,330	N.M.
Loss before income taxes	(34,239)	(17,609)	(16,630)	94 %
Income tax provision	—	—	—	— %
Net loss	$ (34,239)	$(17,609)	$(16,630)	94 %

N.M. - not meaningful

Gaming revenue
Gaming revenue increased by approximately $649,000, or 1%, for the nine months ended September 30, 2017 as compared to the nine months ended September 30, 2016, from $46.3 million to $47.0 million. Non-subsidized free play increased $1.3 million during the 2017 nine-month period as compared to the 2016 nine-month period. Handle decreased $14.3 million, or 2%, for the same period, primarily due to poor weather conditions during the first quarter of 2017 as compared to 2016. VGM hold percentage increased slightly to 6.7% for the nine months ended September 30, 2017 as compared to 6.5% for the same period in 2016, which offset the decrease in handle. Additionally, the average daily win per unit increased from $152.26 to $154.95 for the same period.

Food, beverage, racing and other revenue
Food, beverage, racing and other revenue decreased by approximately $1.4 million, or 17%, for the nine months ended September 30, 2017 as compared to the nine months ended September 30, 2016, from $8.2 million to $6.8 million. Food and beverage revenue decreased approximately $1.0 million for the nine months ended September 30, 2017 as compared to the nine months ended September 30, 2016. Revenues decreased primarily due to closure of the buffet, which generated $1.2 million in revenues in the 2016 period, along with decreased revenues of $108,000 generated by the food court and $77,000 generated by banquets. These decreases were partially offset by revenues of $282,000 generated by the new Press Box sports bar and revenues of $105,000 generated by the new Upper Deck restaurant for the period ended September 30, 2017.

Racing revenue decreased by $318,000 for the nine months ended September 30, 2017 as compared to the nine months ended September 30, 2016. The decrease in racing revenue is due to lower pari-mutuel and simulcasting commissions and lower receipts of OTB's statutory payments this year as compared to the same period last year. The decreased revenue in pari-mutuel and simulcasting commissions is due in part to a reduced horse population, resulting in fewer races in 2017. Other

31

revenue decreased by approximately $157,000 for the nine months ended September 30, 2017 as compared to the nine months ended September 30, 2016, primarily due to lower ATM revenues and a loss on the disposal of fixed assets.

Promotional allowances

Promotional allowances increased by approximately $688,000, or 29%, for the nine months ended September 30, 2017 as compared to the nine months ended September 30, 2016, from $2.4 million to $3.1 million. Non-subsidized free play increased $1.3 million for the nine months ended September 30, 2017 period as compared to the 2016 period. Food, beverage and discretionary complimentaries also increased $19,000 in the nine-month period. Partially offsetting these increases, coupons and discounts decreased $494,000 from the same period last year, due to lower promotional activity in the 2017 period. In addition, Players club awards decreased approximately $87,000 as compared to last year.

Gaming costs

Gaming costs increased by approximately $515,000, or 2%, for the nine months ended September 30, 2017 as compared to the nine months ended September 30, 2016, from $33.9 million to $34.4 million. NYSGC and other commissions increased approximately $429,000 as compared to the same period in the prior year. Gaming wages and related benefits increased by approximately $82,000 as compared to the same period in the prior year, due to higher salaries and wages which were partially offset by lower group insurance costs. Other gaming expenses increased by approximately $4,000, due to net increases in repairs and maintenance and software costs.

Food, beverage, racing and other costs

Food, beverage, racing and other costs decreased by approximately $553,000, or 7%, for the nine months ended September 30, 2017 as compared to the nine months ended September 30, 2016, from $7.7 million to $7.1 million, primarily due to lower food and beverage cost of goods sold of $434,000, due to lower sales volume. Additionally, purse and racing-related expenses decreased $75,000, and payroll and related benefit costs decreased $14,000, due to lower sales and staffing. Other costs decreased by $30,000 in 2017 as compared to the 2016 period.

Selling, general and administrative expenses

Selling, general and administrative expenses decreased by approximately $3.4 million, or 22%, for the nine months ended September 30, 2017 as compared to the nine months ended September 30, 2016, from $15.3 million to $11.9 million. Professional fees decreased $4.0 million as compared to last year, which included the write-off of of $3.1 million of professional fees related to the deferment of financing. Outside director fees decreased $366,000 in 2017 as compared to last year. NASDAQ- and SEC-related expenses decreased $64,000 as compared to last year, due to higher expenses in 2016 resulting from the January 2016 Rights offering. Marketing expenses decreased $64,000 for the 2017 period as compared to the prior year. Payroll and related benefit costs increased by approximately $482,000, primarily due to higher staffing levels. Real estate taxes increased $322,000 due to the phase-out of the Empire Zones tax credit program. State franchise taxes increased by $125,000, due to taxes on increased paid-in capital. Insurance expense increased $132,000, due to higher premiums. Bank charges increased $53,000 for the 2017 period as compared to the prior year.

Development Projects costs

Development Projects costs increased approximately $4.5 million, or 48%, for the nine months ended September 30, 2017 as compared to the nine months ended September 30, 2016, from $9.4 million to $13.9 million. During the nine months ended September 30, 2017, payroll and related benefit costs increased $2.0 million, primarily due to new hires to staff the casino management team. Bank fees increased $1.5 million, due to fees associated with the Term Loan Facility. Marketing increased $231,000, due to efforts to increase branding. Land lease fees and rents increased $206,000 and real estate taxes increased $70,000 as compared the same period in 2016. In addition, professional fees increased $189,000, insurance expense increased $89,000 and pre-opening expenses increased $211,000 over the same period in the prior year.

Amortization of debt issuance costs

Amortization of debt issuance costs increased approximately $4.0 million for the nine months ended September 30, 2017 as compared to the nine months ended September 30, 2016, from $2,000 to $4.0 million. The increase in amortization expense is due to the financing for the Term Loan Facility and the Kien Huat Montreign Loan.

Interest expense
Interest expense increased approximately $12.2 million for the nine months ended September 30, 2017 as compared to the nine months ended September 30, 2016, from $416,000 to $12.6 million. The increase in interest expense is due to borrowing under the Term B Loan Facility and the Kien Huat Montreign Loan.

Interest income
Interest income increased approximately $2.3 million for the nine months ended September 30, 2017 as compared to the nine months ended September 30, 2016. The increase in interest income is due to interest received on the investment of unused restricted cash and investments for Development Projects.

Liquidity and Capital Resources

The accompanying condensed consolidated financial statements have been prepared on a basis that contemplates the realization of assets and the satisfaction of liabilities and commitments in the normal course of business. The Company anticipates that it will have sufficient resources to meet the working capital requirements of the Company and the expected costs of the Development Projects for at least the next 12 months. This assessment is based on the Company’s current cash and cash equivalents, including cash deposited as performance bonds to guarantee the completion of the Development Projects, cash generated from operations, as well as the net proceeds of the debt financings the Company has consummated in fiscal 2017 and the additional financings the Company anticipates consummating during the next three months.

As of September 30, 2017, the Company’s total assets included approximately $235.1 million of remaining net proceeds from the Term Loan Facility and the Kien Huat Montreign Loan (each as defined below), which have been deposited into a lender-controlled account and will be used to pay the Development Projects costs. The Term Loan Agreement (as defined below) requires the Company to deposit by December 31, 2017 approximately $9.9 million in the same lender-controlled account, which amount will also be used to pay the Development Projects costs. In February 2016 and June 2017, the Company deposited $15 million and $20 million, respectively, in performance bonds to guarantee the completion of the Development Projects. An additional required payment of $30.1 million will be made from available proceeds of the Term Loan Facility on January 15, 2018, unless prior to that date, the NYSGC is able to confirm that the Company has expended 85% of the Company's proposed Minimum Capital Investment (as defined below). Upon confirmation that the Minimum Capital Investment criteria has been reached these funds will be returned to the Company for use toward Development Projects expenses. Additionally, the Company has entered into, and may seek, additional furniture, fixtures and equipment ("FF&E") financing to furnish the Development Projects. Following the initial opening of the Casino Project to the public, which is required to occur by March 1, 2018, the Revolving Credit Facility (defined below) will be available, subject to our ability to meet the conditions contained therein, for use towards the working capital needs, capital expenditures and for other general corporate purposes of the Project Parties. Whether these resources are adequate to meet the Company’s liquidity needs beyond that 12-month period will depend on the Company’s growth and operating results, including revenue generated from the Casino Project, and the final designs and progress of the Development Projects. In addition, cost overruns, delays in the construction schedule or changes in design are among the factors that may increase the projected costs of the Development Projects, which may also require us to raise additional capital.

Pursuant to the Term Loan Facility, Montreign Operating is required to deposit approximately $9.9 million by December 31, 2017 into the lender-controlled account that holds the net proceeds from the Term Loan Facility and the Kien Huat Montreign Loan. The Company must fund this deposit in the form of a further equity contribution to Montreign Operating. Additionally, the Company is permitted to raise up to $40 million of FF&E financing to complete the Development Projects pursuant to the Term Loan Agreement, of which the Company has incurred $39.1 million of FF&E financing commitments as of September 30, 2017. Consequently, the Company may raise additional equity or debt capital or enter into arrangements to secure necessary financing to fund the completion of the

Development Projects, to meet obligations under the Term Loan Facility or for the general corporate purposes of the Company. Such arrangements may take the form of loans, strategic agreements, joint ventures or other agreements. Alternatively, the Company may sell additional debt or equity in public or private transactions, including pursuant to the commitment of Kien Huat Realty III Limited ("Kien Huat"), Empire's largest stockholder, to backstop a rights offering of Empire in the amount of $35 million. The sale of additional equity could result in additional dilution to the Company’s existing stockholders, and financing arrangements may not be available to us, or may not be available in sufficient amounts or on acceptable terms.

As of September 30, 2017, we had total current assets of approximately $11.9 million and total current liabilities of approximately $84.4 million, which includes approximately $75.3 million in accrued Development Projects costs. At

September 30, 2017, the remaining net proceeds from the Term Loan Facility and the Kien Huat Montreign Loan totaled approximately $235.1 million. These proceeds are being used to pay the costs of the Development Projects, including the accrued Development Project costs, are presented on the Condensed Consolidated Balance Sheet as restricted cash and investments for Development Projects.

We have had continuing net losses and negative cash flow from operating activities, including a loss from operations of $20.0 million for the nine months ended September 30, 2017. The net loss for the nine months ended September 30, 2017 was inclusive of Development Projects costs that could not be capitalized in the amount of $13.9 million. Amortization of debt issuance costs was $4.0 million and interest expense was $12.6 million for the nine-month period ended September 30, 2017. Additionally, costs incurred for the Development Projects that were capitalized totaled $234.8 million for the nine months ended September 30, 2017.

The Gaming Facility License became effective on the License Award Effective Date, which was March 1, 2016. The Gaming Facility License is subject to certain conditions established by the NYSGC, which conditions, in addition to the Minimum Capital Investment, require Montreign Operating, and any successors and assigns, among other things, to (i) pay an aggregate license fee of $51 million within 30 days of the License Award Effective Date, and (ii) deposit via cash or bond 10% of the Minimum Capital Investment on the License Award Effective Date. On March 1, 2016, the Minimum Capital Investment Deposit, upon which Empire's Gaming Facility License was granted, was made in the aggregate amount of $85.4 million. The Project Parties' portion of the Minimum Capital Investment Deposit was made in the form of a deposit bond representing approximately $65.1 million, which is 10% of the Company's Minimum Capital Investment in the Casino Project, Golf Course and Entertainment Village. EPR's portion of the Minimum Capital Investment Deposit was made in the form of a deposit bond representing approximately $20 million, which is 10% of its Minimum Capital Investment in the Infrastructure and the Waterpark. The NYSGC will release the Minimum Capital Investment Deposit upon confirmation that 85% of the Company's proposed Minimum Capital Investment has been expended. The collateral security for the bond will be paid to the surety in installments as follows: (i) $15 million was paid on February 26, 2016; (ii) $20 million was paid on June 30, 2017; and (iii) approximately $30.1 million will be paid on January 15, 2018, from available proceeds of the Term Loan Facility, unless prior to that date, the NYSGC is able to confirm that the Company has expended 85% of the Company's proposed Minimum Capital Investment. Upon confirmation that the Minimum Capital Investment criteria has been reached these funds will be returned to the Company for use towards Development Projects costs.

To support the Company's financing needs for the Casino Project and, subsequently, the Entertainment Village Project and the Golf Course Project, Kien Huat entered into a commitment letter with the Company, which was last amended on September 22, 2015 (as amended, the "Kien Huat Commitment Letter"). Pursuant to the Kien Huat Commitment Letter, Kien Huat committed to an equity investment in the Company in the aggregate amount of $375 million in support of the Development Projects, the redemption of the Series E Preferred Stock and for working capital purposes. Kien Huat has invested an aggregate of $340 million of such commitment pursuant to the January 2015 Standby Purchase Agreement and the January 2016 Standby Purchase Agreement, each of which are described in Note J in the Notes to the Condensed Consolidated Financial Statements. Kien Huat also agreed to participate in, and backstop, a follow-on rights offering on the same terms and conditions and at the same subscription price as the January 2016 Rights Offering, in an amount not to exceed $35 million (the "Follow-On Rights Offering").

On January 24, 2017 (the "Original Loan Closing Date"), to further fund the Development Projects, Montreign Operating entered into the Building Term Loan Agreement (the “Original Term Loan Agreement”) among Montreign Operating, the lenders from time to time party thereto, and Credit Suisse AG, Cayman Islands Branch, as administrative agent. On May 26, 2017 (the "Term Loan Amendment Date"), the parties entered into the first amendment to the Term Loan Agreement and certain ancillary agreements (the "Amended Term Loan Agreement" and, together with the Original Term Loan Agreement, the "Term Loan Agreement"). The Amended Term Loan Agreement increased the aggregate principal amount of the Term B Loan (as defined below) issued under the Original

Term Loan Agreement on substantially the same terms and conditions as the Original Term Loan Agreement, which terms are discussed below. In the aggregate, the Term Loan Agreement provides Montreign Operating Company with loans in the principal amount of $520 million (the "Term Loan Facility"). All of the borrowings under the Term Loan Agreement will be used to fund the costs of the Development Projects.

The Term Loan Agreement provides Montreign Operating with senior secured first lien term loans consisting of $70 million of Term A Loans and $450 million of Term B Loans. The obligations of Montreign Operating under the Term Loan Facility are guaranteed by the Montreign Subsidiaries and are secured by security interests in substantially all of the assets of the Project Parties, as well as by a pledge of the membership interests in Montreign Operating. In connection with the Term Loan Facility, Empire provided a completion guaranty capped at $30 million on the completion of construction of the Casino Project and the Entertainment Village Project.

On January 24, 2017, in addition to the Term Loan Agreement, Montreign Holding entered into a loan agreement with Kien Huat (the "Kien Huat Montreign Loan Agreement"), pursuant to which Montreign Holding obtained from Kien Huat a loan in the principal amount of $32.3 million (the "Kien Huat Montreign Loan"). The net proceeds of the Kien Huat Montreign Loan were used as a capital contribution to Montreign Operating for use towards the expenses of the Development Projects. The obligations of Montreign Holding under the Kien Huat Montreign Loan Agreement are secured by a pledge of all the membership interests in Montreign Holding.

As a condition to the Term Loan Agreement, the net proceeds from the Term B Loan, all of which was funded on the Loan Closing Date, and the Kien Huat Montreign Loan, were deposited into certain accounts controlled by the lenders under the Term Loan Facility. Any drawings on the Term A Loan, which may be made only after all of the proceeds of the Term B Loan have been deployed in the construction of the Development Projects or the operations of the Project Parties, will also be deposited into the same lender-controlled accounts. The Company had a further obligation to fund these lender-controlled accounts with $35 million in support of the Entertainment Village Project. Pursuant to the Term Loan Amendment, the requirement to contribute additional equity to the Project Parties was reduced from $35 million to approximately $9.9 million. This reduction takes into account approximately $600,000 of equity contributions previously made to the Project Parties since the Original Loan Closing Date.

In order to access the funds (including the net proceeds from the Term Loan Facility and the Kien Huat Montreign Loan) held in these lender-controlled accounts, Montreign Operating must satisfy the applicable disbursement conditions set forth in the Term Loan Agreement and ancillary agreements, such as providing evidence that the withdrawn funds are used for permitted purposes in connection with the Development Projects. Moreover, at the time of each borrowing under the Term Loan Facility, Montreign Operating must confirm that the representations and warranties made in the Term Loan Agreement have not been breached and that it is otherwise compliant with the terms of the Term Loan Agreement. In connection with the Term Loan Facility, the Company incurred $778,000 of financing fees as of December 31, 2016. These fees have been capitalized and were included in other assets at December 31, 2016 and will be amortized on a straight-line basis over the life of the Term Loan Facility.

On the Original Loan Closing Date, Montreign Operating also entered into a revolving credit agreement (the “Revolving Credit Agreement”) among Montreign Operating, the lenders from time to time party thereto, and Fifth Third Bank, as administrative agent. The Revolving Credit Agreement provides for loans or other extensions of credit to be made to Montreign Operating in an aggregate principal amount of up to $15 million (including a letter of credit sub-facility of $10 million) (the “Revolving Credit Facility”), the proceeds of which may be used for working capital needs, capital expenditures and other general corporate purposes following the initial opening of the Casino Project to the public. The Revolving Credit Facility will mature on January 24, 2022. Interest will accrue on outstanding borrowings at a rate equal to LIBOR plus 5.0% per annum, or an alternate base rate plus 4.0% per annum.

The Term Loan Agreement, the Kien Huat Montreign Loan Agreement and the Revolving Credit Agreement contain representations and warranties and affirmative covenants, negative covenants and financial covenants that are usual and customary. These include representations, warranties and covenants that, among other things, restrict the ability of Montreign Holding and the Project Parties to incur additional debt, incur or permit liens on assets, make investments and acquisitions, consolidate or merge with any other company, and make dividends or other distributions. In addition, in order to be able to draw on the $70 million Term A Loan, Montreign Operating must meet the conditions to borrowing under the Term A Loan at the time of such draw down. Pursuant to the loan agreements, the Project Parties may not incur additional indebtedness except for, among other things, obligations pursuant to hedging agreements required under the Term Loan Agreement, capital lease obligations and purchase money indebtedness (including FF&E financing) in an amount not exceeding $40 million, subordinated indebtedness so long as the proceeds are applied pursuant to the terms of the Term Loan Agreement and other indebtedness not exceeding $10 million. The Project Parties and Montreign Holding may not make any dividend or other distribution, redeem or otherwise acquire any equity securities or subordinated indebtedness or enter into advisory, management or consulting agreements with an affiliate of any Project Party other than payments pursuant to tax sharing agreements, distributions in an amount not exceeding 1% of the net revenues of the Project Parties in any fiscal year, repurchase of capital stock of the Company in an amount not exceeding $1 million and required by the NYSGC, and certain available amounts of cash based on the application of financial covenants. In the fiscal quarter following the full opening of the Casino Project, as such term is defined in the Term Loan Agreement, Montreign Operating will also be subject to financial covenants relating to interest coverage ratio, leverage ratio and consolidated capital expenditures. Under the Kien Huat Montreign Loan Agreement, until the Kien Huat Montreign Loan is repaid in full, Montreign Holding is also restricted from making distributions to Empire except for purposes of (i) paying bona fide corporate overhead expenses in an amount not to exceed $9 million (which amount is subject to further reduction pursuant to the Kien Huat Montreign Loan Agreement) and (ii) making payments pursuant to a tax sharing agreement. Montreign Operating will have mandatory prepayment obligations under the Term Loan Agreement based on Excess Cash Flow (as such term is defined in the Term Loan Agreement)after the full opening of the Casino Project.

In addition, following the discharge of the Term Loan Facility in full, Montreign Operating will have mandatory prepayment obligations under the Revolving Credit Facility based on excess cash flow, as defined in the Revolving Credit Agreement.

To comply with requirements under the Term B Loan, Montreign Operating entered into an interest rate cap agreement (the “Interest Rate Cap”) with Credit Suisse International on a notional amount of $415 million (subject to reduction in accordance with the terms of the Interest Rate Cap). In return for the premium paid on entering into the Interest Rate Cap, Montreign Operating will receive monthly payments from Credit Suisse International starting on May 31, 2017 if one-month US Dollar LIBOR is greater than the agreed cap rate.

We may also seek to enter into loans, strategic agreements, joint ventures or other agreements or we may sell additional debt or equity in public or private transactions in support of the Development Projects and our ongoing operations. On October 14, 2016, we filed a universal shelf registration statement on Form S-3 (the "Shelf Registration Statement") covering the offer and sale of $250 million of our securities. The Shelf Registration Statement, which also carried over $83.8 million of our securities registered on an expiring shelf registration statement that remained unsold, was declared effective on November 17, 2016. As of October 31, 2017, we had up to approximately $331.6 million available for future issuances under the Shelf Registration Statement. Unless otherwise indicated in a prospectus supplement, the Company expects the net proceeds from the sale of securities will be used to support the Development Projects, capital expenditures at Empire’s existing facility, working capital and for other general corporate purposes. The Company may also use a portion of the net proceeds to acquire or invest in businesses, products and technologies that are complementary to our business.

From time to time, we may pursue various strategic business opportunities. These opportunities may include proposed development and/or management of, investment in or ownership of additional gaming operations through direct investments, acquisitions, joint venture arrangements and other transactions. We are not currently exploring such opportunities. We can provide no assurance that we will successfully identify such opportunities or that, if we identify and pursue any of these opportunities, any of them will be consummated.

Net cash used in operating activities was approximately $23.6 million and $19.6 million during the nine months ended September 30, 2017 and 2016, respectively. We continue to generate net losses and negative cash flow from operating activities, due to the expenses we are incurring related to the Development Projects. We incurred $13.9 million and $9.4 million of Development Projects costs during the nine months ended September 30, 2017 and 2016, respectively, which amounts could not be capitalized. Operating activity for the nine months ending September 30, 2016 was significantly affected by accrued Casino Project development expenses as of December 31, 2015, which were incurred prior to receiving the Gaming Facility License. Our operating cash flows for the nine months ended September 30, 2017 were negatively impacted by severe weather during the first quarter that caused a reduction in revenues. The decrease in cash flow in the 2017 period was partially due to an increase of $27.7 million in interest payments.

Net cash used in investing activities was approximately $431.9 million and $232.7 million for the nine months ended September 30, 2017 and 2016, respectively. The increase over 2016 was due primarily to a greater amount of restricted cash and investments for the Development Projects and higher capitalized Development Project costs of $208.7 million and $201.4 million, respectively, for the 2017 period. In the 2017 period, we also made a $20.0 million payment for a cash collateral bond as required for the Casino Project. For the nine months ended September 30, 2016, we made payments of $15.0 million for the cash collateral bond and $51.0 million for a license fee related to the Casino Project. Additionally, we incurred Development Project costs of $99.2 million that were capitalized, and cash and investments that were restricted for the Development Projects were $66.8 million. At September 30, 2017, our total assets included approximately $235.1 million of remaining net proceeds available from the Term Loan Facility and Kien Huat Montreign Loan, which are presented on the Condensed Consolidated Balance Sheet as a non-current asset (restricted cash and investments for Development Projects). The proceeds of the Term Loan Facility may be used solely to pay for costs relating to the Development Projects.

Net cash provided by financing activities was approximately $450.6 million and $255.0 million for the nine months ended September 30, 2017 and 2016, respectively. Approximately $415.0 million was received from the proceeds of the Term Loan Facility in January 2017, and an additional $32.0 million was borrowed from Kien Huat. On May 26, 2017, the Company borrowed an additional $35 million under the Term Loan Facility. These amounts were reduced by $31.0 million of debt issuance costs and Interest Rate Cap fees. During the 2016 period, $286.0 million was received from the January 2016 Rights Offering, which was net of approximately $4.0 million of expenses, and $30.7 million was used to redeem the Series E Preferred Stock.

Our common stock is transferable subject to the provisions of Section 303 of the Racing, Pari-Mutuel Wagering and Breeding Law, so long as we hold directly or indirectly, a racetrack license issued by the NYSGC, and may be subject to compliance with the requirements of other laws pertaining to licenses held directly or indirectly by us. The owners of common stock issued by us may be required by regulatory authorities to possess certain qualifications and may be required to dispose of their common stock if the owner does not possess such qualifications.

The table below lists the payment commitments of the Company as of September 30, 2017. It has been updated from the disclosure in the Company's Form 10-K for the year ended December 31, 2016 to reflect the borrowings which occurred on January 24, 2017 and May 26, 2017 to finance the Development Projects and additional FF&E.

	Payments due by period (in thousands)						
Period ending September 30,	Casino Lease	Golf Course Lease	Entertainment Village Lease	FF&E Financing Payments	Kien Huat Montreign Loan (1)	Term B Loan (2)	Total Payments
2018	$11,625	$0	$0	$12,005	$0	$2,250	$25,880
2019	7,500	88	150	16,620	—	4,500	28,858
2020	7,500	150	150	8,457	—	4,500	20,757
2021	7,850	150	150	2,067	—	4,500	14,717
2022	8,100	150	150	—	—	4,500	12,900
2023 to 2056	348,549	7,712	7,725	—	76,250	429,750	869,986
Total	$391,124	$8,250	$8,325	$39,149	$76,250	$450,000	$973,098

(1) The Kien Huat Montreign Loan includes accrued cumulative compounded interest and matures on February 24, 2024.
(2) The Term B Loan is a variable rate instrument; accordingly the payments reflected above include principal amounts only.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Market risk is the risk of loss arising from adverse changes in market rates and prices, including interest rates, commodity prices and equity prices. We currently have invested a portion of the available proceeds from the Term B Loan in short-term commercial paper and U.S. Treasury Notes with maturities of less than one year. At September 30, 2017, our investments totaled approximately $235.1 million. The investment maturity dates approximate the dates upon which the proceeds will be used under the terms of the Term Loan Facility to fund the Development Projects. We believe the short-term nature of these investments limits our exposure to interest rate risk.

The interest rate on the Term B Loan entered into on January 24, 2017, contains a variable component based on one-month LIBOR. However, the Interest Rate Cap entered into in February 2017 provides a limit on our exposure to increases in one-month LIBOR on $415 million from May 1, 2017 through February 28, 2018 and, for a portion of our Term B Loan balance, through July 31, 2019. Accordingly, a one-point increase in LIBOR would increase interest expense (prior to interest capitalization) by approximately $2.9 million for the next 12-month period ending September 30, 2018. The Kien Huat Montreign Loan has a fixed interest rate; accordingly, it does not subject us to interest rate risk.

Item 4. Controls and Procedures.

Evaluation of Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports filed under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Management has determined, however, that a controls system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the controls system are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected. We carried out an evaluation as of September 30, 2017, under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as required by Rule 13a-15 of the Securities Exchange Act of 1934, as amended. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective.

Changes in Internal Control over Financial Reporting

There were no changes that occurred during the fiscal quarter covered by this Quarterly Report on Form 10-Q that have materially affected, or are reasonable likely to materially affect, our internal controls over financial reporting.

PART II - Other Information

Item 1. Legal Proceedings.

We are a party from time to time to various legal actions that arise in the normal course of business. In the opinion of management, the resolution of these other matters will not have a material and adverse effect on our consolidated financial position, results of operations or cash flows.

Item 1A. Risk Factors.

There have been no material changes in our risk factors from those set forth in our Form 10-K for the year ended December 31, 2016, which should be read in conjunction with this report.

These risks are not the only risks that we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or results of operations.

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

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None.

Item 6. Exhibits.

31.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of the Executive Vice President - Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of the Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of the Executive Vice President - Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101	Interactive Data File (XBRL).

SIGNATURES

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

	Empire Resorts, Inc.
Dated: November 1, 2017	/s/ Ryan Eller Ryan Eller President - Chief Executive Officer

SIGNATURES

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

	Empire Resorts, Inc.
Dated: November 1, 2017	/s/ Laurette J. Pitts Laurette J. Pitts Executive Vice President - Chief Financial Officer