

Section 1: 10-Q (10-Q)

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

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended July 31, 2016.

OR

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

Commission file number 001-35363

Peak Resorts, Inc.

(Exact name of registrant as specified in its charter)

Missouri
(State or other jurisdiction of
incorporation or organization)

43-1793922
(I.R.S. Employer
Identification No.)

17409 Hidden Valley Drive
Wildwood, Missouri
(Address of principal executive offices)

63025
(Zip Code)

(636) 938-7474
(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 No

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

Yes No

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

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

As of September 8, 2016, 13,982,400 shares of the registrant's common stock were outstanding.

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PART I: FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

Peak Resorts Inc. and Subsidiaries
Condensed Consolidated Balance Sheets
(In thousands, except share and per share data)

	(Unaudited)	
	July 31,	April 30,
	2016	2016
Assets		
Current assets		
Cash and cash equivalents	\$ 2,437	\$ 5,396
Restricted cash balances	55,946	61,099
Income tax receivable	5,176	-
Accounts receivable	1,896	4,772
Inventory	2,801	2,730
Deferred income taxes	1,092	1,092
Prepaid expenses and deposits	2,636	2,680
	<u>71,984</u>	<u>77,769</u>
Property and equipment, net	190,425	192,178
Land held for development	37,550	37,542
Intangible assets, net	832	846
Goodwill	5,009	5,009
Other assets	619	619
	<u>\$ 306,419</u>	<u>\$ 313,963</u>
Liabilities and Stockholders' Equity		
Current liabilities		
Acquisition line of credit	\$ 17,250	\$ 15,500
Accounts payable and accrued expenses	18,149	18,696
Accrued salaries, wages and related taxes and benefits	1,060	919
Unearned revenue	14,074	13,233
EB-5 investor funds in escrow	50,504	52,004
Current portion of deferred gain on sale/leaseback	333	333
Current portion of long-term debt and capitalized lease obligation	2,598	2,456
	<u>103,968</u>	<u>103,141</u>
Long-term debt	118,238	118,343
Capitalized lease obligation	4,102	4,419
Deferred gain on sale/leaseback	3,095	3,178
Deferred income taxes	12,672	12,672
Other liabilities	567	576
Commitments and contingencies		
Stockholders' Equity		
Common stock, \$.01 par value, 20,000,000 shares authorized, 13,982,400 shares issued	140	140
Additional paid-in capital	82,775	82,728
Accumulated Deficit	(19,138)	(11,234)
	<u>63,777</u>	<u>71,634</u>
	<u>\$ 306,419</u>	<u>\$ 313,963</u>

See Notes to Unaudited Condensed Consolidated Financial Statements.

Peak Resorts, Inc. and Subsidiaries
Condensed Consolidated Statements of Loss (Unaudited)
(In thousands, except share and per share data)

(Unaudited)

Three months ended
July 31,

	2016	2015
Revenues	\$ 7,126	\$ 5,432
Costs and Expenses		
Resort operating expenses	11,764	10,207
Depreciation and amortization	3,217	2,448
General and administrative expenses	1,372	936
Land and building rent	327	338
Real estate and other taxes	563	466
	17,243	14,395
Loss from Operations	(10,117)	(8,963)
Other Income (Expense)		
Interest, net of interest capitalized of \$384 and \$91 in 2016 and 2015, respectively	(3,048)	(2,721)
Gain on sale/leaseback	83	83
Investment income	2	2
	(2,963)	(2,636)
Loss before Income Tax Benefit	(13,080)	(11,599)
Income Tax Benefit	(5,176)	(4,520)
Net Loss	\$ (7,904)	\$ (7,079)
Basic and diluted loss per share	\$ (0.56)	\$ (0.51)
Cash dividends declared per common share	\$ -	\$ 0.1375

See Notes to Unaudited Condensed Consolidated Financial Statements.

Peak Resorts Inc. and Subsidiaries
Condensed Consolidated Statements of Stockholders' Equity (Unaudited)
(In thousands except share data)
Three Months ended July 31, 2016

	<u>Common Stock</u>		<u>Additional</u>	<u>Accumulated</u>	<u>Total</u>
	<u>Shares</u>	<u>Dollars</u>	<u>Paid-in</u>	<u>Deficit</u>	
			<u>Capital</u>		
Balances, April 30, 2016	13,982,400	\$ 140	\$ 82,728	\$ (11,234)	\$ 71,634
Net loss	-	-	-	(7,904)	(7,904)
Stock based compensation	-	-	47	-	47
Balances, July 31, 2016	<u>13,982,400</u>	<u>\$ 140</u>	<u>\$ 82,775</u>	<u>\$ (19,138)</u>	<u>\$ 63,777</u>

See Notes to Unaudited Condensed Consolidated Financial Statements.

Peak Resorts, Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows (Unaudited)
(In thousands)
Three Months ended July 31,

	Three months ended July 31,	
	2016	2015
Cash Flows from Operating Activities		
Net loss	\$ (7,904)	\$ (7,079)
Adjustments to reconcile loss to net cash used in operating activities:		
Depreciation and amortization of property and equipment and intangibles	3,217	2,448
Amortization of deferred financing costs	161	12
Amortization of other liabilities	(9)	(9)
Gain on sale/leaseback	(83)	(83)
Stock based compensation	47	-
Changes in operating assets and liabilities:		
Income tax receivable	(5,176)	(4,520)
Accounts receivable	2,876	976
Inventory	(71)	(132)
Prepaid expenses and deposits	44	(26)
Other assets	-	(9)
Accounts payable and accrued expenses	(1,247)	992
Accrued salaries, wages and related taxes and benefits	141	(187)
Unearned revenue	841	2,054
	<u>(7,163)</u>	<u>(5,563)</u>
Cash Flows from Investing Activities		
Additions to property and equipment	(750)	(4,689)
Additions to land held for development	(8)	-
Change in restricted cash	5,153	(5,813)
Net cash provided by (used in) investing activities	<u>4,395</u>	<u>(10,502)</u>
Cash Flows from Financing Activities		
Borrowings on long-term debt and capitalized lease obligation	33	3,950
Borrowings on line of credit	1,750	
(Refunds) additions to EB-5 investor funds held in escrow	(1,500)	8,551
Payment on long-term debt and capital lease obligations	(474)	(381)
Distributions to stockholders	-	(1,922)
Net cash (used in) provided by financing activities	<u>(191)</u>	<u>10,198</u>
Net Decrease in Cash and Cash Equivalents	(2,959)	(5,867)
Cash and Cash Equivalents, April 30	<u>5,396</u>	<u>16,849</u>
Cash and Cash Equivalents, July 31	<u>\$ 2,437</u>	<u>\$ 10,982</u>
Supplemental Schedule of Cash Flow Information		
Cash paid for interest, including \$384 and \$91 capitalized in 2016 and 2015, respectively	\$ 3,040	\$ 2,804
Supplemental Disclosure of Noncash Investing and Financing Activities		
Assets under construction included in accounts payable	\$ 700	\$ -

See Notes to Unaudited Condensed Consolidated Financial Statements.

PEAK RESORTS, INC. AND SUBSIDIARIES

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Three Months Ended July 31, 2016 and 2015

Note 1. Nature of Business

Description of business: Peak Resorts, Inc. (the “Company”) and its subsidiaries operate in a single business segment—ski resort operations. The Company’s ski resort operations consist of snow skiing, snowboarding and snow sports areas in Wildwood and Weston, Missouri; Bellefontaine and Cleveland, Ohio; Paoli, Indiana; Blakeslee and Lake Harmony, Pennsylvania; Bartlett, Bennington and Pinkham Notch, New Hampshire; West Dover, Vermont; and Hunter, New York; and an eighteen-hole golf course in West Dover, Vermont. The Company also manages hotels in Bartlett, New Hampshire; West Dover, Vermont; and Hunter, New York.

In the opinion of management, the accompanying financial statements have been prepared in accordance with United States generally accepted accounting principles for interim financial information and with Rule 10-01 of Regulation S-X and include all adjustments (consisting of normal recurring accruals) considered necessary for fair presentation of the interim periods presented.

Results for interim periods are not indicative of the results expected for a full fiscal year due to the seasonal nature of the Company’s business. Due to the seasonality of the ski industry, the Company typically incurs significant operating losses during its first and second fiscal quarters. The accompanying unaudited consolidated interim financial statements should be read in conjunction with the audited consolidated financial statements included in the Company’s Annual Report on Form 10-K for the fiscal year ended April 30, 2016.

Note 2. New Accounting Standards

In July 2015, the Financial Accounting Standards Board (“FASB”) issued guidance in Accounting Standards Update (“ASU”) 2015-11, Inventory (Topic 330): “Simplifying the Measurement of Inventory” (“ASU 2015-11”), which requires the Company to subsequently measure inventory at the lower of cost and net realizable value rather than the lower of cost or market. For public business entities, the guidance is effective on a prospective basis for interim and annual periods beginning after December 15, 2016, with early adoption permitted. Pursuant to the JOBS Act, the Company is permitted to adopt the standard for fiscal years beginning after December 15, 2016, and interim periods within fiscal years beginning after December 15, 2017. The amendments in this update should be applied prospectively with earlier application permitted for all entities as of the beginning of an interim or annual reporting period. The Company is currently evaluating the impact of the adoption of ASU 2015-11 on the consolidated financial statements.

In November 2015, the FASB issued guidance in ASU 2015-17, Income Taxes (Topic 740): “Balance Sheet Classification of Deferred Taxes” (“ASU 2015-17”), which requires deferred tax liabilities and assets be classified as noncurrent in a classified statement of financial position. For public business entities, the guidance is effective for financial statements issued for annual periods beginning after December 15, 2016, and interim periods within those annual periods. Pursuant to the JOBS Act, the Company is permitted to adopt the standard for annual reporting periods beginning after December 15, 2017 and interim periods within annual periods beginning after December 15, 2018. Early application is permitted for all entities as of the beginning of an interim or annual reporting period. The Company is currently evaluating the impact of the adoption of ASU 2015-17 on the consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, “Leases (Topic 842).” The pronouncement requires the recognition of a liability for lease obligations and a corresponding right-of-use asset on the balance sheet and disclosure of key information about leasing arrangements. This pronouncement is effective for reporting periods beginning after December 15, 2018 using a modified retrospective adoption method. While the Company is currently evaluating the provisions of ASU 2016-02 to determine how it will be affected, the primary effect of adopting the new standard will be to record assets and obligations for current operating leases.

In March 2016, the FASB issued ASU 2016-08, “Revenue from Contracts with Customers (Topic 606)”, an update of ASU 2014-09, requiring an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. ASU 2016-08 will replace most existing revenue recognition guidance under

U.S. generally accepted accounting principles when it becomes effective and permits the use of either a full retrospective or retrospective with cumulative effect transition method. Early adoption is not permitted. The updated standard becomes effective for annual reporting periods beginning after December 15, 2016, including interim periods within that reporting period. Pursuant to the JOBS Act, the Company is permitted to adopt the standard for annual reporting periods beginning after December 15, 2017 and interim periods within annual periods beginning after December 15, 2018. The Company has not yet selected a transition method and is currently evaluating the effect that the updated standard will have on the consolidated financial statements.

In March 2016, the FASB issued ASU 2016-09, "Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting." The new guidance requires entities to record all excess tax benefits and tax deficiencies as income tax expense or benefit in the income statement when the awards vest or are settled. The guidance also requires entities to present excess tax benefits as an operating activity and cash paid to a taxing authority to satisfy statutory withholding as a financing activity on the statement of cash flows. Additionally, the guidance allows entities to make a policy election to account for forfeitures either upon occurrence or by estimating forfeitures. The standard is effective for financial statements issued for fiscal years beginning after December 15, 2016 (the Company's first quarter of fiscal 2018), with early adoption permitted. The Company is currently evaluating the impacts the adoption of this accounting standard will have on the Company's financial position or results of operations and cash flows.

Note 3. Income Taxes

Deferred income tax assets and liabilities are measured at enacted tax rates in the respective jurisdictions where the Company operates. In assessing the ability to realize deferred tax assets, the Company considers whether it is more likely than not that some portion or all deferred tax assets will not be realized and a valuation allowance would be provided if necessary. The FASB Accounting Standards Codification ("ASC") Topic 740, "Income Taxes," also provides guidance with respect to the accounting for uncertainty in income taxes recognized in a Company's consolidated financial statements, and it prescribes a recognition threshold and measurement attribute criteria for the consolidated financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The Company does not have any material uncertain tax positions.

The income tax receivable is a result of the expected tax rate for the fiscal year ending April 30, 2017 applied to the loss before income tax for the quarter ended July 31, 2016. Due to the seasonality of the ski industry, the Company typically incurs significant operating losses during its first and second fiscal quarters.

Note 4. Long-term Debt / Line of Credit

Long-term debt at July 31, 2016 and April 30, 2016 consisted of borrowings pursuant to the loans and other credit facilities discussed below, as follows (dollars in thousands):

	(Unaudited) July 31, 2016	April 30, 2016
Attitash/Mount Snow Debt; payable in monthly interest only payments at an increasing interest rate (11.10% at July 31, 2016 and April 30, 2016); remaining principal and interest due on December 1, 2034	\$ 51,050	\$ 51,050
Credit Facility Debt; payable in monthly interest only payments at an increasing interest rate (10.13% at July 31, 2016 and April 30, 2016); remaining principal and interest due on December 1, 2034	37,562	37,562
Hunter Mountain Debt; payable in monthly interest only payments at an increasing interest rate (8.0% at July 31, 2016 and April 30, 2016); remaining principal and interest due on January 5, 2036	21,000	21,000
Sycamore Lake (Alpine Valley) Debt; payable in monthly interest only payments at an increasing interest rate (10.56% at July 31, 2016 and April 30, 2016); remaining principal and interest due on December 1, 2034	4,550	4,550

Wildcat Mountain Debt; payable in monthly installments of \$27, including interest at a rate of 4.00%; with remaining principal and interest due on December 22, 2020	3,565	3,612
Other debt	3,163	3,231
Less unamortized debt issuance costs	<u>(1,742)</u>	<u>(1,903)</u>
	119,148	119,102
Less: current maturities	<u>910</u>	<u>759</u>
	<u>\$ 118,238</u>	<u>\$ 118,343</u>

Debt Restructure

On November 10, 2014, in connection with the Company's initial public offering, the Company entered into a Restructure Agreement with certain affiliates of EPR Properties ("EPR"), the Company's primary lender, providing for the (i) prepayment of approximately \$75.8 million of formerly non-prepayable debt secured by the Crotched Mountain, Attitash, Paoli Peaks, Hidden Valley and Snow Creek resorts and (ii) retirement of one of the notes associated with the future development of Mount Snow (the "Debt Restructure"). On December 1, 2014, the Company entered into various agreements in order to effectuate the Debt Restructure, as more fully described in the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 5, 2014. Pursuant to the Debt Restructure, the Company paid a defeasance fee of \$5.0 million to EPR in addition to the consideration described below.

In exchange for the prepayment right, the Company granted EPR a purchase option on the Boston Mills, Brandywine, Jack Frost, Big Boulder and Alpine Valley properties, subject to certain conditions. If EPR exercises a purchase option, EPR will enter into an agreement with the Company for the lease of each such acquired property for an initial term of 20 years, plus options to extend the lease for two additional periods of ten years each. All previously existing option agreements between the Company and EPR were terminated.

Over the years, the Company has depreciated the book value of these properties pursuant to applicable accounting rules, and as such, it has a low basis in the properties. As a result, the Company will realize significant gains on the sale of the properties to EPR if the option is exercised. The Company will be required to pay capital gains tax on the difference between the purchase price of the properties and the tax basis in the properties, which is expected to be a substantial cost. To date, EPR has not exercised the option.

Additionally, the Company agreed to extend the maturity dates on all non-prepayable notes and mortgages secured by the Mount Snow, Boston Mills, Brandywine, Jack Frost, Big Boulder and Alpine Valley properties remaining after the Debt Restructure by seven years to December 1, 2034, and to extend the lease for the Mad River property, previously terminating in 2026, until December 31, 2034 (the "Lease Amendment").

The Company also granted EPR a right of first refusal to provide all or a portion of the financing associated with any purchase, ground lease, sale/leaseback, management or financing transaction contemplated by the Company with respect to any new or existing ski resort property for a period of seven years or until financing provided by EPR for such transactions equals or exceeds \$250 million in the aggregate. Proposed financings from certain types of institutional lenders providing a loan to value ratio of less than 60% (as relates to the applicable property being financed) are excluded from the right of first refusal. The Company granted EPR a separate right of first refusal in the event that the Company wishes to sell, transfer, convey or otherwise dispose of any or all of the Attitash ski resort for seven years. The Attitash right excludes the financing or mortgaging of Attitash.

In connection with the Debt Restructure, the Company entered into a Master Credit and Security Agreement with EPR (the "Master Credit Agreement") governing the restructured debt with EPR. Pursuant to the Master Credit Agreement, EPR agreed to maintain the following loans to the Company following the prepayment of certain outstanding debt with proceeds from the Company's initial public offering: (i) a term loan in the amount of approximately \$51.1 million to the Company and its subsidiary Mount Snow, Ltd., (included in the table above as the "Attitash/Mount Snow Debt"); (ii) a term loan in the amount of approximately \$23.3 million to the Company and its subsidiaries Brandywine Ski Resort, Inc. and Boston Mills Ski Resort, Inc. (the "Boston Mills/Brandywine Debt"); (iii) a term loan in the amount of approximately \$14.3 million to the Company and its subsidiary JFBB Ski Areas, Inc. (the "JFBB Debt" and together with the Boston Mills/Brandywine Debt, included in the table above as the "Credit Facility Debt"); and (iv) a term loan in the amount of

approximately \$4.6 million to the Company and its subsidiary Sycamore Lake, Inc. (included in the table above as the “Sycamore Lake (Alpine Valley) Debt”).

Interest will be charged at a rate of (i) 10.13% per annum as to each of the Boston Mills/Brandywine Debt and JFBB Debt; (ii) 10.40% per annum as to the Sycamore Lake (Alpine Valley) Debt; and (iii) 10.93% per annum pursuant to the Attitash/Mount Snow Debt. Each of the notes governing the restructured debt provides that interest will increase each year by the lesser of the following: (x) three times the percentage increase in the Consumer Price Index as defined in the notes (“CPI”) from the CPI in effect on the applicable adjustment date over the CPI in effect on the immediately preceding adjustment date or (y) 1.5% (the “Capped CPI Index”). Past due amounts will be charged a higher interest rate and be subject to late charges.

The Master Credit Agreement further provides that in addition to interest payments, the Company must pay the following with respect to all restructured debt other than the Attitash/Mount Snow Debt: an additional annual payment equal to 10% of the gross receipts attributable to the properties serving as collateral of the restructured debt (other than Mount Snow) for such year in excess of an amount equal to the quotient obtained by dividing (i) the annual interest payments payable pursuant to the notes governing the restructured debt (other than with respect to the Attitash/Mount Snow Debt) for the immediately preceding year by (ii) 10%. The Company must pay the following with respect to the Attitash/Mount Snow Debt: an additional annual payment equal to 12% of the gross receipts generated at Mount Snow for such year in excess of an amount equal to the quotient obtained by dividing (i) the annual interest payments payable under the note governing the Attitash/Mount Snow Debt for the immediately preceding year by (ii) 12%. No additional interest payments were due for the three months ended July 31, 2016.

The Master Credit Agreement includes restrictions on certain transactions, including mergers, acquisitions, leases, asset sales, loans to third parties, and the incurrence of certain additional debt and liens. Financial covenants set forth in the Master Credit Agreement consist of a maximum leverage ratio (as defined in the Master Credit Agreement) of 65%, above which the Company and certain of its subsidiaries are prohibited from incurring additional indebtedness, and a consolidated fixed charge coverage ratio (as defined in the Master Credit Agreement) covenant, which (i) requires the Company to increase the balance of its debt service reserve account if the Company’s consolidated fixed charge coverage ratio falls below 1.50:1.00 and (ii) prohibits the Company from paying dividends if the ratio is below 1.25:1.00. The payment of dividends is also prohibited during default situations. As of the most recent fiscal year end and for the quarter ended July 31, 2016, the fixed charge ratio fell below the 1:50:1:00 coverage ratio, but was above the 1.25:1.00 ratio. As a result, the Company is required to increase the balance of the debt service reserve account by \$3.3 million. EPR has agreed to delay the additional interest reserve payment until the 2016/2017 ski season, with 1/3 due in January 2017, 1/3 due in February 2017, and 1/3 due in March 2017.

Under the terms of the Master Credit Agreement, the occurrence of a change of control is an event of default. A change of control will be deemed to occur if (i) within two years after the effective date of the Master Credit Agreement, the Company’s named executive officers (Messrs. Timothy Boyd, Stephen Mueller and Richard Deutsch) cease to beneficially own and control less than 50% of the amount of the Company’s outstanding voting stock that they own as of the effective date of the Master Credit Agreement, or (ii) the Company ceases to beneficially own and control less than all of the outstanding shares of voting stock of those subsidiaries which are borrowers under the Master Credit Agreement. Other events of default include, but are not limited to, a default on other indebtedness of the Company or its subsidiaries.

None of the restructured debt may be prepaid without the consent of EPR. Upon an event of default, as defined in the Debt Restructure Agreements, EPR may, among other things, declare all unpaid principal and interest due and payable. Each of the notes governing the restructured debt matures on December 1, 2034.

As a condition to the Debt Restructure, the Company entered into the Master Cross Default Agreement with EPR (the “Master Cross Default Agreement”). The Master Cross Default Agreement provides that any event of default under existing or future loan or lien agreements between the Company or its affiliates and EPR, and any event of default under the Lease Amendment, shall automatically constitute an event of default under each of such loan and lien agreements and Lease Amendment, upon which EPR will be entitled to all of the remedies provided under such agreements and Lease Amendment in the case of an event of default.

Also in connection with the Debt Restructure, the Company and EPR entered into the Guaranty Agreement (the “2014 Guaranty Agreement”). The 2014 Guaranty Agreement obligates the Company and its subsidiaries as guarantors of all debt evidenced by the Debt Restructure Agreements. The table below illustrates the potential interest rates applicable to the Company’s fluctuating interest rate debt for each of the next five years, assuming an effective rate increase by the Capped CPI Index:

Rates as of July 31,	Attitash/Mount Snow Debt	Credit Facility Debt	Hunter Mountain Debt	Sycamore Lake/ (Alpine Valley) Debt
2016 ⁽¹⁾	11.10%	10.13%	8.00%	10.56%
2017	11.27%	10.28%	8.14%	10.72%
2018	11.44%	10.44%	8.28%	10.88%
2019	11.61%	10.59%	8.43%	11.04%
2020	11.78%	10.75%	8.57%	11.21%
2021	11.96%	10.91%	8.72%	11.38%

⁽¹⁾ For 2016, the dates of the rates presented are as follows: (i) April 1, 2016 for the Attitash/Mount Snow Debt; (ii) October 1, 2016 for the Credit Facility Debt; January 6, 2016 for the Hunter Mountain Debt and (iii) December 1, 2015 for the Sycamore Lake (Alpine Valley) Debt.

The Capped CPI Index is an embedded derivative, but the Company has concluded that the derivative does not require bifurcation and separate presentation at fair value because the Capped CPI Index was determined to be clearly and closely related to the debt instrument.

Wildcat Mountain Debt

The Wildcat Mountain Debt due December 22, 2020 represents amounts owed pursuant to a promissory note in the principal amount of \$4.5 million made by WC Acquisition Corp. in favor of Wildcat Mountain Ski Area, Inc., Meadow Green-Wildcat Skilift Corp. and Meadow Green-Wildcat Corp. (the "Wildcat Note"). The Wildcat Note, dated November 22, 2010, was made in connection with the acquisition of Wildcat Mountain, which was effective as of October 20, 2010. The interest rate as set forth in the Wildcat Note is fixed at 4.00%.

Hunter Mountain Debt

On January 6, 2016, the Company completed the acquisition of the Hunter Mountain ski resort located in Hunter, New York through the purchase of all of the outstanding stock of each of Hunter Mountain Ski Bowl, Inc., Hunter Mountain Festivals, Ltd., Hunter Mountain Rentals, Inc., Hunter Resort Vacations, Inc., Hunter Mountain Base Lodge, Inc., and Frosty Land, Inc. (collectively, "Hunter Mountain") pursuant to the terms of the Stock Purchase Agreement (the "Purchase Agreement") with Paul Slutzky, Charles B. Slutzky, David Slutzky, Gary Slutzky and Carol Slutzky-Tenerowicz entered into on November 30, 2015. The Company acquired Hunter Mountain for total cash consideration of \$35.0 million plus the assumption of two capital leases estimated at approximately \$1.7 million. A portion of the Hunter Mountain acquisition price was financed pursuant to the Master Credit and Security Agreement (the "Hunter Mountain Credit Agreement") entered into between the Company and EPR as of January 6, 2016.

The Hunter Mountain Debt due January 5, 2036 represents amounts owed pursuant to a promissory note (the "Hunter Mountain Note") in the principal amount of \$21.0 million made by the Company in favor of EPR pursuant to the Hunter Mountain Credit Agreement, which was effective as of January 6, 2016. The Company used \$20.0 million of the Hunter Mountain Debt to finance the Hunter Mountain acquisition and \$1.0 million to cover closing costs and to add to its interest reserve account.

The Hunter Mountain Credit Agreement and Hunter Mountain Note provide that interest will be charged at an initial rate of 8.00%, subject to an annual increase beginning on February 1, 2017 by the lesser of the following: (x) three times the percentage increase in the CPI (as defined in the Hunter Mountain Note) from the CPI in effect on the applicable adjustment date over the CPI in effect on the immediately preceding adjustment date or (y) 1.75%. Past due amounts will be charged a higher interest rate and be subject to late charges.

The Hunter Mountain Credit Agreement further provides that in addition to interest payments, the Company must pay an additional annual payment equal to 8.00% of the gross receipts in excess of \$35.0 million that are attributable to all collateral under the Hunter Mountain Note for such year.

The Hunter Mountain Credit Agreement includes restrictions or limitations on certain transactions, including mergers, acquisitions, leases, asset sales, loans to third parties, and the incurrence or guaranty of certain additional debt and liens. Financial covenants set forth in the Hunter Mountain Credit Agreement consist of a maximum leverage ratio (as defined in the Hunter Mountain Credit Agreement) of 65%, above which the Company is prohibited from incurring

additional indebtedness. The Company must also maintain a consolidated fixed charge coverage ratio (as defined in the Hunter Mountain Credit Agreement) which (i) requires the Company to increase the balance of its debt service reserve account if the Company's consolidated fixed charge coverage ratio falls below 1.50:1.00 and (ii) prohibits the Company from paying dividends if the ratio is below 1.25:1.00. The payment of dividends is also prohibited during potential default or default situations. As of the most recent fiscal year end and for the quarter ended July 31, 2016, the Company's fixed charge ratio fell below the 1:50:1:00 coverage ratio, but was above the 1.25:1.00 ratio. As a result, the Company is required to increase the balance of the debt service reserve account by \$3.3 million. EPR has agreed to delay the additional interest reserve payment until the 2016/2017 ski season, with 1/3 due in January 2017, 1/3 due in February 2017, and 1/3 due in March 2017.

Under the terms of the Hunter Mountain Credit Agreement, the occurrence of a change of control is an event of default. A change of control will be deemed to occur if (i) within two years after the effective date of the Hunter Mountain Credit Agreement, the Company's named executive officers (Messrs. Boyd, Mueller and Deutsch) cease to beneficially own and control less than 50% of the amount of the Company's outstanding voting stock that they own as of the effective date of the Hunter Mountain Credit Agreement, or (ii) the Company ceases to beneficially own and control less than all of the outstanding shares of voting stock of those subsidiaries which are borrowers under the Hunter Mountain Credit Agreement. Other events of default include, but are not limited to, a default on other indebtedness of the Company or its subsidiaries.

The Hunter Mountain Note may not be prepaid without the consent of EPR. Upon an event of default, as defined in the Hunter Mountain Note, EPR may, among other things, declare all unpaid principal and interest due and payable. The Hunter Mountain Note matures on January 5, 2036.

In connection with entry into the Hunter Mountain Credit Agreement on January 6, 2016, the Company entered into the Amended and Restated Master Cross-Default Agreement with EPR, which adds the Hunter Mountain Credit Agreement, Hunter Mountain Note and related transaction documents to the scope of loan agreements to which the cross-default provisions of the Master Cross Default Agreement apply.

Also on January 6, 2016, in connection with entry into the Hunter Mountain Credit Agreement, the Company entered into a Guaranty Agreement for the benefit of EPR, which adds the Company's new Hunter Mountain subsidiary borrowers under the Hunter Mountain Credit Agreement as guarantors pursuant to the same terms of the 2014 Guaranty Agreement and adds the debt evidenced by the Hunter Mountain Credit Agreement and Hunter Mountain Note to the debt guaranteed by the Company pursuant to the 2014 Guaranty Agreement.

Substantially all of the Company's assets serve as collateral for the Company's long term debt.

Future aggregate annual principal payments under all indebtedness (including the Company's line of credit, current debt and long-term debt) reflected by fiscal year are as follows (in thousands):

	(Unaudited)	
	July 31,	
2017 (Remaining)	\$	18,341
2018		1,836
2019		767
2020		215
2021		2,820
Thereafter		114,161
	\$	<u>138,140</u>

Deferred financing costs are net of accumulated amortization of \$643 and \$482 at July 31, 2016 and April 30, 2016, respectively. Amortization of deferred financing costs will be \$303 (remaining) for the year ending April 30, 2017, and \$90 for each of the four years ending April 30, 2018, 2019, 2020 and 2021.

Line of Credit

The remaining \$15.0 million of the Hunter Mountain acquisition price was financed with funds drawn on the Company's line of credit with Royal Banks of Missouri pursuant to the Credit Facility, Loan and Security Agreement (the "Line of Credit Agreement") between the Company and Royal Banks of Missouri, effective as of December 22, 2015. The Company drew an additional \$0.5 million to pay closing costs. On July 20, 2016 the Company borrowed an additional \$1.75 million under the Credit Agreement for working capital purposes.

The Line of Credit Agreement provides for a 12-month line of credit for up to \$20.0 million to be used for acquisition purposes and working capital of up to 5.0% of the acquisition purchase price, subject to the Company's ability to extend the line of credit for up to an additional 12-month period upon the satisfaction of certain conditions. In connection with entry into the Line of Credit Agreement, the Company executed a promissory note (the "Line of Credit Note") in favor of Royal Banks of Missouri, maturing on December 22, 2016. The line of credit debt is included as a current liability given the initial 12-month term.

Interest on the amounts borrowed are charged at the prime rate plus 1.0%, provided that past due amounts shall be subject to higher interest rates and late charges. The effective rate at July 31, 2016 was 4.5% on the line of credit borrowings. Amounts outstanding under the Line of Credit Agreement are secured by the assets of each of the subsidiary borrowers under the Line of Credit Agreement.

The Line of Credit Agreement includes restrictions or limitations on certain transactions, including mergers, acquisitions, leases, asset sales, loans to third parties, and the incurrence of certain additional debt and liens. Financial covenants set forth in the Line of Credit Agreement consist of a maximum leverage ratio (as defined in the Line of Credit Agreement) of 65%, above which the Company is prohibited from incurring additional indebtedness, and a debt service coverage ratio (as defined in the Line of Credit Agreement) of 1.25 to 1 on a fiscal year basis. The Company must also maintain a consolidated fixed charge coverage ratio (as defined in the Master Credit Agreement) which (i) requires the Company to increase the balance of its debt service reserve account if the Company's consolidated fixed charge coverage ratio falls below 1.50:1.00 and (ii) prohibits the Company from paying dividends if the ratio is below 1.25:1.00. The payment of dividends is also prohibited during potential default or default situations. As of the most recent fiscal year end and for the quarter ended July 31, 2016, the Company's fixed charge ratio fell below the 1.50:1.00 coverage ratio, but was above the 1.25:1.00 ratio. As a result, the Company is required to increase the balance of the debt service reserve account by \$3.3 million. EPR has agreed to delay the additional interest reserve payment until the 2016/2017 ski season, with 1/3 due in January 2017, 1/3 due in February 2017, and 1/3 due in March 2017.

If the outstanding line of credit debt is not paid in full by the maturity date, and the Company is otherwise in full compliance with the terms and conditions of the Line of Credit Agreement and Line of Credit Note, the Company may elect to convert the outstanding line of credit debt to a three-year term loan, subject to an additional extension, with principal payments amortized over a 20-year period bearing interest at the prime rate plus 1.0% per annum.

Except in the case of a default, the Company may prepay all or any portion of the outstanding line of credit debt and all accrued and unpaid interest due prior to the maturity date without prepayment penalty.

In the case of a default, the outstanding Line of Credit Debt shall, at the lender's option, bear interest at the rate of 5.0% percent per annum in excess of the interest rate otherwise payable thereon, which interest shall be payable on demand.

Under the terms of the Line of Credit Agreement, the occurrence of a change of control is an event of default. A change of control will be deemed to occur if (i) for so long as the line of credit debt is outstanding and such individuals are employed by the Company, the Company's key shareholders (Messrs. Timothy Boyd, Stephen Mueller and Richard Deutsch) cease to beneficially own and control less than 50% of the amount of the Company's outstanding voting stock that they own as of the effective date of the Line of Credit Agreement, or (ii) the Company ceases to beneficially own and control less than all of the outstanding shares of voting stock of the subsidiary borrowers. Other events of default include, but are not limited to, a default on other indebtedness of the Company or its subsidiaries.

Note 5. Acquisition

Effective January 6, 2016, the Company acquired all of the outstanding common stock of Hunter Mountain in Hunter, New York, for \$35.0 million paid to the sellers in cash and the Company's assumption of \$1.7 million in capitalized lease obligations. During the year ended April 30, 2016, the Company incurred approximately \$0.1 million in transaction costs. The Company also incurred \$1.3 million of financing costs which were capitalized as deferred financing costs associated with the debt obligations.

The Company financed \$20.0 million, of the acquisition price pursuant to the terms of the Hunter Mountain Credit Agreement and Hunter Mountain Note with EPR, which bears interest at a rate of 8.0%, subject to annual increases as discussed in Note 4, "Long-term Debt/Line of Credit." The Company borrowed an additional \$1.0 million under the Hunter Mountain Credit Agreement to fund closing and other costs. Debt under the Hunter Mountain Note requires monthly interest payments until its maturity on January 5, 2036. An additional \$15.0 million of the Hunter Mountain acquisition price was financed through a draw on the Company's line of credit with Royal Banks of Missouri, which bears interest at the prime rate plus 1.0% and matures on December 22, 2016, as discussed in Note 4 above under the title "Long-term Debt/Line of Credit".

Hunter Mountain's results of operations are included in the accompanying consolidated financial statements for the quarter ended July 31, 2016 from the date of acquisition. The preliminary allocation of the purchase price is as follows (in thousands):

Cash and cash equivalents	\$	1,640
Accounts receivable		395
Inventories		341
Prepays		246
Buildings and improvements		14,052
Land		6,200
Equipment		19,120
Other assets		4
Goodwill		4,382
Intangible assets		865
Total assets acquired		47,245
Accounts payable and accrued expenses		1,481
Accrued salaries, wages and related taxes & benefits		250
Unearned revenue and deposits		2,993
Capital Lease Obligations		1,724
Deferred tax liability		5,797
Net assets acquired	\$	35,000

The purchase price allocation is preliminary, mainly due to continued review of buildings and improvements, deferred tax liability and intangibles.

The Company paid \$35.0 million for the transaction and as part of the allocation received \$1.6 million in cash, resulting in a net cash change of \$33.4 million in cash. As part of the transaction, the Company has recognized goodwill associated with the expected synergies of combining operations as well as the overall enterprise value of the resort. No goodwill will arise for income tax purposes and accordingly, none of the book goodwill will be deductible for tax purposes. Hunter Mountain will be considered its own reporting unit with respect to goodwill impairment, which will be completed at least annually.

The following presents the unaudited pro forma consolidated financial information as if the acquisition of Hunter Mountain was completed on May 1, 2015, the beginning of the Company's 2016 fiscal year. The following pro forma financial information includes adjustments for depreciation and interest paid pursuant to the Hunter Mountain Note and property and equipment recorded at the date of acquisition. This pro forma financial information is presented for informational purposes only and does not purport to be indicative of the results of future operations or the results that would have occurred had the acquisition taken place on May 1, 2015. (In thousands except per share data)

(Unaudited)

Three months ended July 31, 2015

Net revenues	\$	7,821
Net loss	\$	(8,870)
Pro forma basic and diluted loss per share	\$	(0.63)

Note 6. Financial Instruments and Concentrations of Credit Risk

The following methods and assumptions were used to estimate the fair value of each class of financial instruments to which the Company is a party:

Cash and cash equivalents, restricted cash: Due to the highly liquid nature of the Company's short-term investments, the carrying values of cash and cash equivalents and restricted cash approximate their fair values.

Accounts receivable: The carrying value of accounts receivable approximate their fair value because of their short-term nature.

Accounts payable and accrued expenses: The carrying value of accounts payable and accrued liabilities approximates fair value due to the short- term maturities of these amounts.

Long-term debt: The fair value of the Company's long-term debt is estimated based on the quoted market prices for the same or similar issues or on the current rates offered to the Company for debt of the same remaining maturities. The interest rates on the Company's long-term debt instruments are consistent with those currently available to the Company for borrowings with similar maturities and terms and, accordingly, their fair values are consistent with their carrying values.

Concentrations of credit risk: The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of cash and cash equivalents and restricted cash. The Company's cash and cash equivalents and restricted cash are on deposit with financial institutions where such balances will, at times, be in excess of federally insured limits. Excess cash balances are collateralized by the backing of government securities. The Company has not experienced any loss as a result of those deposits.

Note 7. Commitments and Contingencies

Restricted cash: The provisions of certain of the Company's debt instruments generally require that the Company make and maintain a deposit, to be held in escrow for the benefit of the lender, in an amount equal to the estimated minimum interest payment for the upcoming fiscal year. In addition, the Company has funds it is holding in escrow in connection with its efforts to raise funds under the U.S. government's Immigrant Investor Program, commonly known as the EB-5 program (the "EB-5 Program"). The EB-5 Program was first enacted in 1992 to stimulate the U.S. economy through the creation of jobs and capital investments in U.S. companies by foreign investors. In turn, these foreign investors are, pending petition approval, granted visas for lawful residence in the U.S. under the EB-5 Program, a limited number of visas are reserved for such foreign investors each year. The Company intends to use the current and future funds for future development.

Loss contingencies: The Company is periodically involved in various claims and legal proceedings, many of which occur in the normal course of business. Management routinely assesses the likelihood of adverse judgments or outcomes, including consideration of its insurable coverage and discloses or records estimated losses in accordance with ASC 450, "Contingencies". After consultation with legal counsel, the Company does not anticipate that liabilities arising out of these claims would, if plaintiffs are successful, have a material adverse effect on its business, operating results or financial condition.

Leases: The Company leases certain land, land improvements, buildings and equipment under non-cancelable operating leases. Certain of the leases contain escalation provisions based generally on changes in the CPI with maximum annual percentage increases capped at 1.5% to 4.5%. Additionally, certain leases contain contingent rental provisions which are based on revenue. The amount of contingent rentals was insignificant in all periods presented. Total rent expense under such operating leases was \$407 and \$433 for the three months ended July 31, 2016 and 2015, respectively. The Company also leases certain equipment under capital leases.

Future minimum rentals under all non-cancelable leases with remaining lease terms of one year or more for years subsequent to July 31, 2016 are as follows (in thousands):

	Capital Leases	Operating Leases
2017 (Remaining)	\$ 1,738	\$ 1,249
2018	2,066	1,620
2019	1,922	1,576
2020	923	1,543
2021	23	1,518
Thereafter	-	8,822

	6,672	\$ 16,328
Less: amount representing interest	882	
	5,790	
Less: current portion	1,688	
Long-term portion	\$ 4,102	

Note 8. Loss Per share

The computation of basic and diluted loss per share for the three month periods ended July 31, 2016 and 2015 is as follows (in thousands except share and per share data):

	Three Months ended July 31,	
	2016	2015
Net Loss	\$ (7,904)	\$ (7,079)
Weighted number of shares:		
Common shares outstanding for basic and diluted loss per share	13,982,400	13,982,400
Vested restricted stock units	38,892	-
	14,021,292	13,982,400
Basic and diluted loss per share	\$ (0.56)	\$ (0.51)

The Company has 19,515 outstanding unvested restricted stock units that have not been included in the calculation of diluted earnings per share because the impact is anti-dilutive due to the net loss for the period ended July 31, 2016.

The vested restricted stock units above include 9,723 vested restricted stock units for the former director Mr. Staenberg. See details of the cash buyout of these restricted stock units in Note 9. "Subsequent Events" below.

Note 9. Subsequent Events

Line of Credit

As previously reported, on December 22, 2015, the Company, together with its subsidiaries Hidden Valley Golf and Ski, Inc., Paoli Peaks, Inc., Snow Creek, Inc., LBO Holding, Inc. and SNH Development, Inc., as borrowers (together, the "Subsidiaries" and collectively with the Company, the "Borrowers"), entered into a \$20.00 million Credit Facility, Loan and Security Agreement (the "Royal Bank Credit Agreement") with Royal Banks of Missouri, as lender (the "Lender").

On August 5, 2016, the Company borrowed the remaining \$2.75 million under the Royal Bank Credit Agreement for working capital purposes, pursuant to a Promissory Note issued under and subject to the terms of the Royal Bank Credit Agreement (the "Second Promissory Note"), bringing the total principal amount borrowed under the Royal Bank Credit Agreement to \$20 million.

The Second Promissory Note is subject to the terms of the Royal Bank Credit Agreement except for any provisions in the Royal Bank Credit Agreement related to renewal or conversion of the Second Promissory Note. The terms of the Second Promissory Note provide that interest on the outstanding principal amount of the Second Promissory Note shall be charged at 6.0% per annum, provided that past due amounts shall be subject to higher interest rates and late charges. The debt evidenced by the Second Promissory Note is secured by the assets of each of the Subsidiaries and matures on August 5, 2017. The Company is required to make interest only payments under the Second Promissory Note.

Except in the case of a default, the Borrowers may prepay all or any portion of the outstanding debt under the Second Promissory Note and all accrued and unpaid interest due prior to the maturity date without prepayment penalty. In the case of a default, the outstanding balance due on the Second Promissory Note bears interest at the rate of 5.0% percent per annum in excess of the interest rate otherwise payable thereon, which interest shall be payable on demand.

Series A Cumulative Convertible Preferred Stock

On August 22, 2016, the Company entered into a securities purchase agreement (the “Purchase Agreement”) with CAP 1 LLC (the “Investor”) in connection with the sale and issuance (the “Investor Private Placement”) of \$20 million in Series A Cumulative Convertible Preferred Stock, par value \$0.01 per share, (the “Series A Preferred”) and three warrants (the “Warrants”), exercisable for twelve years, to purchase (i) 1,538,462 shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”) at \$6.50 per share, (ii) 625,000 shares of Common Stock at \$8.00 per share and (iii) 555,556 shares of Common Stock at \$9.00 per share, in each case, subject to adjustments. The Series A Preferred and the Warrants are being offered to the Investor in a private placement pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended and Rule 506 of Regulation D promulgated thereunder.

The closing of the Investor Private Placement (the “Closing”) is conditioned upon (i) the reduction by the Company’s senior lenders, EPT Ski Properties, Inc. and EPT Mount Snow, Inc., in the additional interest reserve requirement related to the breakage of the Fixed Charge Coverage Ratio Covenant, (ii) the approval of the Investor Private Placement and certain amendments to the Company’s amended and restated articles of incorporation by the shareholders of the Company, and (iii) certain other customary closing conditions in the Purchase Agreement. The Company intends to seek such approval at its annual meeting of shareholders. The Series A Preferred and the Warrants will not be issued, and the Company will not receive any investment funds, until the Closing.

In addition, the Purchase Agreement grants to the Company the right to issue to the Investor an additional 20,000 shares of Series A Preferred, along with additional Warrants, all on the same terms and conditions as the Investor Private Placement, as long as (i) there is no material adverse effect, (ii) the average closing price of the Common Stock for the ten trading days prior to the execution of the documents for such additional shares is not less than the average closing price of the Common Stock for the ten trading days prior to the execution of the Purchase Agreement, (iii) the Investor is reasonably satisfied with the manner in which the Company intends to use the net cash proceeds of such issuance, and (iv) the Company has successfully implemented an EB-5 Immigrant Investor Program with respect to Mount Snow and one investor’s application has approved.

The Purchase Agreement may be terminated (i) by mutual agreement, (ii) by either party if the applicable conditions are incapable of fulfillment, or (iii) by either party if Closing has not occurred on or before November 15, 2016. If the Purchase Agreement is terminated because of the failure to obtain shareholder approval and the Board of Directors of the Company has failed to recommend or continue to recommend or has withdrawn or modified its recommendation to vote in favor of the Investor Private Placement, the Company shall not later than three business days after a request by the Investor, reimburse the Investor for its out of pocket expenses (including legal fees) incurred in connection with the Investor Private Placement up to a maximum aggregate amount of \$125,000.

The Company intends to use the net proceeds from the sale of the Series A Preferred and Warrants for working capital and general corporate purposes and for the execution of its strategy for future growth, including expansion through acquisition.

Bridge Loan Financing

On September 1, 2016, the Company and Mount Snow, Ltd., a subsidiary of the Company (“Mount Snow” and, together with the Company, the “Borrowers”), closed on a loan on the terms set forth in a credit agreement and related documents with EPT Mount Snow, Inc. (the “Lender”), an affiliate of its primary lender, EPR Properties. The Company received an initial advance of \$4.0 million at closing, which funded the Lender’s \$100,000 closing fee, fees and expenses of the Company’s legal counsel and the interest reserve.

Pursuant to the Master Credit and Security Agreement (the “Credit Agreement”) among the Borrowers and the Lender, dated as of September 1, 2016, the Lender agreed to loan to the Company up to \$10.0 million (the “Loan”), as evidenced by the Promissory Note (the “Note”) from the Borrowers, dated as of September 1, 2016.

The Credit Agreement provides that the Borrowers may borrow up to \$5.5 million until three business days prior to December 31, 2016. Any other advances under the Loan will be made at the discretion of the Lender but no amount may be borrowed under the Loan after December 31, 2016. The maximum amount available under the Loan will be reduced from \$10.0 to \$5.0 upon the Company receiving the proceeds of the EB-5 funding, and upon the receipt of any of such funds, the Borrowers shall prepay (a) the amount by which outstanding principal under the Loan exceeds \$5.0 million and (b) accrued interest on such excess amount. The Company may make additional voluntary prepayments, without penalty, in an amount of not less than the lesser of \$1.0 million or the outstanding principal balance of the Loan.

The Note provides that interest will be charged at a rate of 9.00%. Past due amounts will be charged a higher interest rate and be subject to late charges. The Credit Agreement requires the Company to maintain an interest and lease payment reserve, and any interest expected to accrue on any advance shall be withheld by the Lender. The debt evidenced by the Note is secured by the assets of each of the Borrowers.

The Credit Agreement provides that the proceeds shall be used to fund working capital and other general business purposes, provided that no more than \$750,000 shall be used to fund any payment or reimbursement related to the West Lake project. The West Lake project includes the construction of a new water storage reservoir for snowmaking with capacity of up to 120 million gallons, three new pump houses and the installation of snowmaking pipelines and ancillary equipment.

The Credit Agreement includes restrictions or limitations on certain transactions, including mergers, acquisitions, leases, asset sales, loans to third parties, and the incurrence or guaranty of certain additional debt and liens. The payment of dividends and redemption of stock are prohibited at any time that the Loan remains unpaid and, notwithstanding any repayment of the Loan, are also prohibited so long as any other credit facility with the Lender's affiliates remains outstanding unless (a) there are no potential default or default situations and (b) the EB-5 funds have been released or other identifiable and committed funds are held in escrow by an unrelated person or entity sufficient to complete the West Lake project. The Credit Agreement requires that all construction activities related to the West Lake project cease until the EB-5 funds have been released or other identifiable and committed funds are held in escrow by an unrelated person or entity sufficient to complete the West Lake project.

Regardless of whether the credit facility set forth in the Master Credit and Security Agreement (the "Hunter Mountain Credit Agreement") among the Company, Hunter Mountain Acquisition, Inc., Hunter Mountain Ski Bowl Inc., Hunter Mountain Festivals, Ltd., Hunter Mountain Rentals Ltd., Hunter Resort Vacations, Inc., Hunter Mountain Base Lodge, Inc. and Frosty Land, Inc. (together, the "Hunter Mountain Borrowers") and EPT Ski Properties, Inc., as lender remains outstanding, the Borrowers shall comply with the financial covenants set forth in the Hunter Mountain Credit Agreement. Those financial covenants consist of (a) a maximum leverage ratio (as defined in the Hunter Mountain Credit Agreement) of 65%, above which Borrowers are prohibited from incurring additional indebtedness and (b) a consolidated fixed charge coverage ratio (as defined in the Hunter Mountain Credit Agreement) that (i) requires the Company to increase the balance of its debt service reserve account if the Company's consolidated fixed charge coverage ratio falls below 1.50:1.00 and (ii) prohibits the Company from paying dividends if the ratio is below 1.25:1.00. As of the most recent fiscal year end and for the quarter ended July 31, 2016, the fixed charge ratio fell below the 1:50:1.00 coverage ratio, but was above the 1.25:1.00 ratio. As a result, the Company is required to increase the balance of the debt service reserve account by \$3.3 million. EPR has agreed to delay the additional interest reserve payment until the 2016/2017 ski season, with 1/3 due in January 2017, 1/3 due in February 2017, and 1/3 due in March 2017.

Under the terms of the Credit Agreement, the occurrence of a change of control is an event of default. A change of control will be deemed to occur if (i) within two years after the effective date of the Credit Agreement, the Company's named executive officers (Messrs. Timothy Boyd, Stephen Mueller and Richard Deutsch), as long as they are employed by any Borrower, cease to beneficially own and control less than 50% of the amount of the Company's outstanding voting stock that they own as of the effective date of the Credit Agreement, or (ii) the Company ceases to beneficially own and control less than all of the outstanding shares of voting stock of Mount Snow. Other events of default include, but are not limited to, a default on other indebtedness, and certain defaults under material contracts and material licenses, of the Company or its subsidiaries.

Upon an event of default, as defined in the Credit Agreement, the Lender may, among other things, declare all unpaid principal and interest due and payable. The Note matures on March 31, 2017, provided that (a) if the EB-5 funding is not received by March 31, 2017 and no event of default is then existing, the Borrowers may elect to extend the maturity of the loan to March 31, 2018 upon written notice to the Lender and payment of a \$125,000 fee and (b) if the EB-5 funding is not received by March 31, 2018 and no event of default is then existing, the Borrowers may elect to extend the maturity of the loan to March 31, 2019 upon written notice to the Lender and payment of a \$125,000 fee.

Boston Mills / Brandywine Flood

On August 10, 2016 the main lodge and maintenance buildings at the Boston Mills Ski Resort in northeastern Ohio were flooded. The Company is currently working with its insurance company to estimate damages. The Company does not believe this flooding will have any impact on the resort's ski season.

Staenberg Restricted Stock Units

In February 2016, Mr. Staenberg, a member of the Board of Directors, resigned from his position. Per the Restricted Stock Unit Agreement, Mr. Staenberg's 9,723 vested shares were payable to him in the form of stock or cash six months after

his resignation. The Board of Directors decided to pay his shares in the form of a cash payment of \$48 effective as of August 3, 2016. The payment was made in September 2016.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of our financial condition and results of operations should be read in conjunction with the condensed consolidated financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q and with the audited consolidated financial statements included in the Company's Annual Report on Form 10-K for the fiscal year ended April 30, 2016. In addition to historical condensed consolidated financial information, the following discussion contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. See "Forward-Looking Statements" included elsewhere in this Quarterly Report on Form 10-Q.

Unless the context suggests otherwise, references in this Quarterly Report on Form 10-Q to the "Company", "Peak", "our", "us", or "we" refer to Peak Resorts, Inc. and its consolidated subsidiaries.

Overview

We are a leading owner and operator of high-quality, individually branded ski resorts in the U.S. We currently operate 14 ski resorts primarily located in the Northeast and Midwest, 13 of which we own. The majority of our resorts are located within 100 miles of major metropolitan markets, including New York City, Boston, Philadelphia, Cleveland and St. Louis, enabling day and overnight drive accessibility. Our resorts are comprised of nearly 1,650 acres of skiable terrain that appeal to a wide range of ages and abilities. We offer a breadth of activities, services and amenities, including skiing, snowboarding, terrain parks, tubing, dining, lodging, equipment rentals and sales, ski and snowboard instruction and mountain biking and other summer activities. We believe that both the day and overnight drive segments of the ski industry are appealing given their stable revenue base, high margins and attractive risk-adjusted returns. We have successfully acquired and integrated eleven ski resorts since our incorporation in 1997 and we expect to continue executing this strategy.

We and our subsidiaries operate in a single business segment—resort operations. The consolidated unaudited financial data presented in this Quarterly Report on Form 10-Q is comprised of the data of our 14 ski resorts. Also included in the financial information presented are ancillary services, primarily consisting of food and beverage services, equipment rental, ski instruction, hotel/lodging and retail.

Seasonality and Quarterly Results

Our resort operations are seasonal in nature. In particular, revenue and profits for our operations are substantially lower and historically result in losses from late spring to late fall, which occur during our first and second fiscal quarters. Revenue and profits generated by our summer operations are not sufficient to fully offset our off-season expenses from our operations. Therefore, the operating results for any interim period are not necessarily indicative of the results that may be achieved for any subsequent quarter or for a full year.

Recent Events

Financing/Liquidity

The Company has experienced lower than normal liquidity levels as of the beginning of fiscal 2017. The weather during the preceding ski season was unfavorably warm which resulted in fewer ski days and lower profitability for the Company. In addition, the Company is still waiting on the first investor's approval with regards to our approved EB-5 program. In anticipation of the EB-5 approval, which would release all funds from escrow and allow those funds to be spent on project related activities, the Company has spent more than \$13 million of our working capital on starting the West Lake project, which is part of the overall Mt. Snow Development Project. The board made the decision in April 2016 that it would not be prudent to declare a dividend for the first quarter of 2017 due to lower cash levels primarily caused by the delay in the approval of our EB-5 program, as well as the unseasonably warm weather during the 2015/2016 ski season, which drove down revenue compared to the prior season.

In addition, the Master Credit Agreement includes financial covenants consisting of a maximum Leverage Ratio (as defined in the Master Credit Agreement) of 65%, above which the Company and certain of its subsidiaries are prohibited from incurring additional indebtedness, and a Consolidated Fixed Charge Coverage Ratio (as defined in the Master Credit Agreement) covenant, which (a) requires the Company to increase the balance of its debt service reserve account if the Company's Consolidated Fixed Charge Coverage Ratio falls below 1.50:1.00, and (b) prohibits the Company from paying

dividends if the ratio is below 1.25:1.00. As of our most recent fiscal year end, our fixed charge ratio fell below the 1:50:1:00 coverage ratio, but was above the 1.25:1.00 ratio. As a result, the Company must increase the balance of its debt service reserve by \$3.3 million. EPR has agreed to defer the payment of the reserve until the end of the 2016/2017 ski season, with 1/3 due in January 2017, 1/3 due in February 2017, and 1/3 due in March 2017. Please refer below in the MD&A section for more specific information on our liquidity, the EB-5 program, and the West Lake construction project.

Investor Private Placement and New Debt Financings

In light of the Company's current and near-term working capital and debt service requirements, and in an effort to satisfy our short-term working capital needs and enhance the Company's long-term liquidity position, our Board of Directors formed a Special Committee of independent directors, to evaluate various financing alternatives. While the reimbursement of approximately \$13.0 million from the released EB-5 program funds would improve our short-term cash position and the Company had received approval as of April 30, 2016 for a total of \$10 million in short-term financing options, the Board of Directors believed that it is in the best interests of the Company and stockholders to evaluate long-term financing structures to enhance our long-term liquidity position, support our cash position and ensure sufficient funds for continued growth.

To this end, after extensive analysis and consideration, the Special Committee and the Board of Directors approved a private placement of the Company's securities. On August 22, 2016, the Company entered into a securities purchase agreement (the "Purchase Agreement") with CAP 1 LLC (the "Investor") in connection with the sale and issuance (the "Investor Private Placement") of \$20 million in Series A Cumulative Convertible Preferred Stock, par value \$0.01 per share, (the "Series A Preferred") and three warrants (the "Warrants"), exercisable for twelve years, to purchase (i) 1,538,462 shares of the Company's common stock, par value \$0.01 per share (the "Common Stock") at \$6.50 per share, (ii) 625,000 shares of Common Stock at \$8.00 per share and (iii) 555,556 shares of Common Stock at \$9.00 per share, in each case, subject to adjustments. The Series A Preferred and the Warrants are being offered to the Investor in a private placement pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended and Rule 506 of Regulation D promulgated thereunder.

The Company intends to hold a meeting of its shareholders in order to, among other things, vote upon the approval of: (i) an increase in the Company's authorized Common Stock, (ii) the authorization of blank check preferred stock and certain conforming changes to the Company's amended and restated articles of incorporation, and (iii) the Investor Private Placement as required by the Nasdaq Listing Rules. Without shareholder approval of these actions, this proposed Investor Private Placement will not be completed.

To provide the Company with additional cash for operations in the meantime, the Company borrowed an additional \$4.5 million from Royal Banks of Missouri and an additional \$5.5 million from EPT Mount Snow, Inc. The Investor Private Placement and these loans are discussed in greater detail in Note 9. "Subsequent Events."

Resort Acquisition

On January 6, 2016, the Company completed the acquisition of the Hunter Mountain ski resort located in Hunter, New York, through the purchase of all of the outstanding stock of each of Hunter Mountain Ski Bowl, Inc., Hunter Mountain Festivals, Ltd., Hunter Mountain Rentals, Inc., Hunter Resort Vacations, Inc., Hunter Mountain Base Lodge, Inc., and Frosty Land, Inc. (collectively, "Hunter Mountain") pursuant to the terms of the Stock Purchase Agreement (the "Purchase Agreement") with Paul Slutzky, Charles B. Slutzky, David Slutzky, Gary Slutzky and Carol Slutzky-Tenerowicz entered into on November 30, 2015. The Company acquired Hunter Mountain for total cash consideration of \$35.0 million plus the assumption of two capital leases estimated at approximately \$1.7 million.

A portion of the Hunter Mountain acquisition price was financed pursuant to the Master Credit and Security Agreement (the "Hunter Mountain Credit Agreement") entered into between the Company and EPR, the Company's primary lender, on January 6, 2016. The remainder was financed with funds drawn on the Company's line of credit with Royal Banks of Missouri pursuant to the Credit Facility, Loan and Security Agreement (the "Line of Credit Agreement") between the Company and Royal Banks of Missouri, effective as of December 22, 2015. See "Liquidity and Capital Resources—Significant Sources of Cash" for additional information.

Initial Public Offering

On November 20, 2014, we completed our initial public offering of our common stock, selling 10,000,000 shares of our common stock at \$9.00 per share. After deducting \$6.3 million of underwriting discounts and commissions and \$1.4 million of offering expenses payable by us, we received net proceeds of \$82.3 million.

Debt Restructure

On November 10, 2014, in connection with our initial public offering, we entered into a Restructure Agreement (the “Restructure Agreement”) with certain affiliates of EPR Properties (“EPR”), our primary lender, providing for the (i) prepayment of approximately \$75.8 million of formerly non-prepayable debt secured by the Crotched Mountain, Attitash, Paoli Peaks, Hidden Valley and Snow Creek resorts and (ii) retirement of one of the notes associated with the future development of Mount Snow (the “Debt Restructure”). On December 1, 2014, we entered into various agreements in order to effectuate the Debt Restructure, as more fully described in the Company’s Current Report on Form 8-K filed with the SEC on December 5, 2014. Pursuant to the Debt Restructure, we paid a defeasance fee of \$5 million to EPR in addition to the consideration described below.

In exchange for the prepayment right, we granted EPR a purchase option on the Boston Mills, Brandywine, Jack Frost, Big Boulder and Alpine Valley properties, subject to certain conditions. If EPR exercises a purchase option, EPR will enter into an agreement with the Company for the lease of each such acquired property for an initial term of 20 years, plus options to extend the lease for two additional periods of ten years each. All previously existing option agreements between the Company and EPR were terminated.

Additionally, we agreed to extend the maturity dates on all non-prepayable notes and mortgages secured by the Mount Snow, Boston Mills, Brandywine, Jack Frost, Big Boulder and Alpine Valley properties remaining after the Debt Restructure by seven years to December 1, 2034, and to extend the lease for the Mad River property, previously terminating in 2026, until December 31, 2034 (the “Mad River Lease Amendment”).

We also granted EPR a right of first refusal to provide all or a portion of the financing associated with any purchase, ground lease, sale/leaseback, management or financing transaction contemplated by the Company with respect to any new or existing ski resort property for a period of seven years or until financing provided by EPR for such transactions equals or exceeds \$250 million in the aggregate. Proposed financings from certain types of institutional lenders providing a loan to value ratio of less than 60% (as relates to the applicable property being financed) are excluded from the right of first refusal. We granted EPR a separate right of first refusal in the event that the Company wishes to sell, transfer, convey or otherwise dispose of any or all of the Attitash ski resort for seven years. The Attitash right excludes the financing or mortgaging of Attitash.

In connection with the Debt Restructure, we entered into a Master Credit and Security Agreement with EPR (the “Master Credit Agreement”) containing additional terms and conditions governing our restructure debt with EPR, including restrictions on certain transactions and the payment of dividends and required financial covenants.

Capital Projects

The Company did not have any major capital projects in the quarter ended July 31, 2016. In fiscal 2016, the Company had one major capital project. We started the construction of the West Lake project which will be financed through the EB-5 program, once our first investor is approved. The West Lake project includes the construction of a new water storage reservoir for snowmaking with capacity of up to 120 million gallons.

Results of Operations

The following historical unaudited consolidated statements of operations during the three months ended July 31, 2016 and 2015 have been derived from the condensed unaudited consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q. Effective January 6, 2016, we acquired the Hunter Mountain ski resort. The results of operations of Hunter Mountain have been included in our financial statements since the date of the acquisition.

Comparison of Operating Results for the Three Months Ended July 31, 2016 and 2015

The following table presents our condensed unaudited consolidated statements of operations for the three months ended July 31, 2016 and 2015 (dollars in thousands):

Three months ended July 31,			
2016	2015	\$ change	% change

Revenues				
Food and beverage	\$ 2,487	\$ 1,322	1,165	88.1%
Hotel/lodging	1,808	1,460	348	23.8%
Retail	149	159	(10)	-6.3%
Summer activities	1,864	1,923	(59)	-3.1%
Other	818	568	250	44.0%
	<u>7,126</u>	<u>5,432</u>	<u>1,694</u>	<u>31.2%</u>
Costs and Expenses				
Resort operating expenses				
Labor and labor related expenses	7,707	6,231	1,476	23.7%
Retail and food and beverage cost of sales	761	516	245	47.5%
Power and utilities	588	583	5	0.9%
Other	2,708	2,877	(169)	-5.9%
	<u>11,764</u>	<u>10,207</u>	<u>1,557</u>	<u>15.3%</u>
Depreciation and amortization	3,217	2,448	769	31.4%
General and administrative expenses	1,372	936	436	46.6%
Land and building rent	327	338	(11)	-3.3%
Real estate and other taxes	563	466	97	20.8%
	<u>17,243</u>	<u>14,395</u>	<u>2,848</u>	<u>19.8%</u>
Loss from Operations	(10,117)	(8,963)	(1,154)	12.9%
Other Income (expense)				
Interest, net of interest capitalized of \$384 and \$91 in 2016 and 2015, respectively	(3,048)	(2,721)	(327)	12.0%
Gain on sale/leaseback	83	83	-	0.0%
Investment income	2	2	-	0.0%
	<u>(2,963)</u>	<u>(2,636)</u>	<u>(327)</u>	<u>12.4%</u>
Loss before income tax benefit	(13,080)	(11,599)	(1,480)	12.8%
Income tax benefit	(5,176)	(4,520)	656	-14.5%
Net Loss	\$ <u>(7,904)</u>	\$ <u>(7,079)</u>	\$ <u>(825)</u>	<u>11.7%</u>
Total Reported EBITDA	\$ <u>(6,900)</u>	\$ <u>(6,515)</u>	\$ <u>(385)</u>	<u>5.9%</u>

Revenue increased \$1.7 million, or 31.2%, for the three months ended July 31, 2016 compared to the three months ended July 31, 2015. The increase is primarily attributable to the impact of the Hunter Mountain acquisition, which was effective January 6, 2016. Hunter Mountain's impact is included in food and beverage, hotel/lodging, and other revenue categories, mainly driven by multiple summer festivals.

Resort operating expenses increased \$1.6 million, or 15.3%, for the three months ended July 31, 2016 compared to the same period in the prior year. This was primarily attributable to the impact of the Hunter Mountain acquisition, specifically driving up labor and labor related expenses and retail and food and beverage cost of sales.

Power and utility expense increased minimally by 0.9% for the three months ended July 31, 2016 compared to the three months ended July 31, 2015. The impact of the addition of Hunter Mountain was offset by lower power and fuel costs at all other resorts due to a continued focus on energy efficiency.

Depreciation and amortization increased \$0.8 million, or 31.4%, for the three months ended July 31, 2016 compared to the three months ended July 31, 2015 as a result of assets acquired from the Hunter Mountain acquisition.

General and administrative expenses increased \$0.4 million, or 46.6%, for the three months ended July 31, 2016 compared to the three months ended July 31, 2015 primarily due to an increase in professional fees related to incremental legal costs, public company expenses and travel as well as the addition of Hunter Mountain.

The increase in interest expense net, of \$0.3 million, resulted from the additional interest associated with the debt incurred for the acquisition of Hunter Mountain.

Income tax benefit increased \$0.7 million as a result of an increase in the loss before income tax benefit of \$1.5 million for the three months ended July 31, 2016 compared to the three months ended July 31, 2015.

Non-GAAP Financial Measures

Reported EBITDA is not a measure of financial performance under U.S. generally accepted accounting principles ("GAAP"). The following table includes a reconciliation of Reported EBITDA to net loss (in thousands):

	Three months ended	
	July 31	
	2016 ⁽¹⁾	2015
Net loss	\$ (7,904)	\$ (7,079)
Income tax benefit	(5,176)	(4,520)
Interest expense, net	3,048	2,721
Depreciation and amortization	3,217	2,448
Investment income	(2)	(2)
Gain on sale/leaseback	(83)	(83)
	<u>\$ (6,900)</u>	<u>\$ (6,515)</u>

- (1) Effective January 6, 2016, we acquired the Hunter Mountain ski resort. The results of operations of Hunter Mountain have been included in the reconciliation since the date of the acquisition.

We have chosen to specifically include Reported EBITDA (defined as net income before interest, income taxes, depreciation and amortization, gain on sale leaseback, investment income, other income or expense and other non-recurring items) as a measurement of our results of operations because we consider this measurement to be a significant indication of our financial performance and available capital resources. Because of large depreciation and other charges relating to our ski resorts, it is difficult for management to fully and accurately evaluate our financial results and available capital resources using net income. Management believes that by providing investors with Reported EBITDA, investors will have a clearer understanding of our financial performance and cash flow because Reported EBITDA: (i) is widely used in the ski industry to measure a company's operating performance without regard to items excluded from the calculation of such measure, which can vary by company primarily based upon the structure or existence of their financing; (ii) helps investors to more meaningfully evaluate and compare the results of our operations from period to period by removing the effect of our capital structure and asset base from our operating structure; and (iii) is used by our management for various purposes, including as a measure of performance of our operating entities and as a basis for planning.

Items excluded from Reported EBITDA are significant components in understanding and assessing financial performance or liquidity. Reported EBITDA should not be considered in isolation or as alternative to, or substitute for, net income, net change in cash and cash equivalents or other financial statement data presented in the consolidated financial statements as indicators of financial performance or liquidity. Because Reported EBITDA is not a measurement determined in accordance with GAAP and is susceptible to varying calculations, Reported EBITDA as presented may not be comparable to other similarly titled measures of other companies.

Liquidity and Capital Resources

Significant Sources of Cash

Our available cash is the highest in our fourth quarter primarily due to the seasonality of our resort business. However, the Company has experienced lower than normal liquidity levels at the beginning of fiscal 2017. The weather during the 2015/2016 ski season was unfavorably warm, which resulted in fewer ski days and lower profitability for the Company. We had \$2.4 million of cash and cash equivalents at July 31, 2016 compared to \$5.4 million at April 30, 2016. Cash of \$7.2 million was used by operating activities during the three months ended July 31, 2016 compared to \$5.6 million

of cash used in the three months ended July 31, 2015. We generate the majority of our cash from operations during the ski season, which occurs in our third and fourth quarters. We currently anticipate that cash flow from operations will continue to provide a significant source of our future cash flows. We expect that our liquidity needs for the near term and the next fiscal year will be met by continued operating cash flows (primarily those generated in our third and fourth fiscal quarters) and additional borrowings under our loan arrangements discussed below, as needed. In addition, the Company has borrowed \$4.5 million from Royal Banks of Missouri and \$5.5 million from EPT Mount Snow, Inc. and has signed the Purchase Agreement to issue the Series A Preferred and Warrants in an effort to strengthen the liquidity position of the Company. These items were executed subsequent to July 31, 2016 and are discussed in Note 9. "Subsequent Events."

Long-term debt at July 31, 2016 and April 30, 2016 consisted of borrowings pursuant to the loans and other credit facilities with EPR, our primary lender. As discussed in "Recent Events", in November 2014, we entered into a Restructure Agreement with EPR providing for the prepayment of a portion of our outstanding debt. Furthermore, as discussed in "Resort Acquisition", we entered into the Hunter Mountain Credit Agreement in connection with our acquisition of Hunter Mountain. We have presented in the table below the borrowings at July 31, 2016 and April 30, 2016 (dollars in thousands):

	(Unaudited) July 31, 2016	April 30, 2016
Attitash/Mount Snow Debt; payable in monthly interest only payments at an increasing interest rate (11.10% at July 31, 2016 and April 30, 2016); remaining principal and interest due on December 1, 2034	\$ 51,050	\$ 51,050
Credit Facility Debt; payable in monthly interest only payments at an increasing interest rate (10.13% at July 31, 2016 and April 30, 2016); remaining principal and interest due on December 1, 2034	37,562	37,562
Hunter Mountain Debt; payable in monthly interest only payments at an increasing interest rate (8.0% at July 31, 2016 and April 30, 2016); remaining principal and interest due on January 5, 2036	21,000	21,000
Sycamore Lake (Alpine Valley) Debt; payable in monthly interest only payments at an increasing interest rate (10.56% at July 31, 2016 and April 30, 2016); remaining principal and interest due on December 1, 2034	4,550	4,550
Wildcat Mountain Debt; payable in monthly installments of \$27, including interest at a rate of 4.00%; with remaining principal and interest due on December 22, 2020	3,565	3,612
Other debt	3,163	3,231
Less unamortized debt issuance costs	(1,742)	(1,903)
	119,148	119,102
Less: current maturities	910	759
	<u>\$ 118,238</u>	<u>\$ 118,343</u>

Debt Restructure

In connection with the Debt Restructure, the Company entered into the Master Credit Agreement with EPR governing the restructured debt with EPR. Pursuant to the Master Credit Agreement, EPR agreed to maintain the following loans to the Company following the prepayment of certain outstanding debt with proceeds from the Company's initial public offering: (i) a term loan in the amount of approximately \$51.1 million to the Company and its subsidiary Mount Snow, Ltd., (included in the table above as the "Attitash/Mount Snow Debt"); (ii) a term loan in the amount of approximately \$23.3 million to the Company and its subsidiaries Brandywine Ski Resort, Inc. and Boston Mills Ski Resort, Inc. (the "Boston Mills/Brandywine Debt"); (iii) a term loan in the amount of approximately \$14.3 million to the Company and its subsidiary JFBB Ski Areas, Inc. (the "JFBB Debt" and together with the Boston Mills/Brandywine Debt, included in the table above as

the “Credit Facility Debt”); and (iv) a term loan in the amount of approximately \$4.6 million to the Company and its subsidiary Sycamore Lake, Inc. (included in the table above as the “Sycamore Lake (Alpine Valley) Debt”).

Interest will be charged at a rate of (i) 10.13% per annum as to each of the Boston Mills/Brandywine Debt and JFBB Debt; (ii) 10.40% per annum as to the Sycamore Lake (Alpine Valley) Debt; and (iii) 10.93% per annum pursuant to the Attitash/Mount Snow Debt. Each of the notes governing the restructured debt provides that interest will increase each year by the lesser of the following: (x) three times the percentage increase in the Consumer Price Index as defined in the notes (“CPI”) from the CPI in effect on the applicable adjustment date over the CPI in effect on the immediately preceding adjustment date or (y) 1.5%. Past due amounts will be charged a higher interest rate and be subject to late charges.

The Master Credit Agreement further provides that in addition to interest payments, the Company must pay the following with respect to all restructured debt other than the Attitash/Mount Snow Debt: an additional annual payment equal to 10% of the gross receipts attributable to the properties serving as collateral of the restructured debt (other than Mount Snow) for such year in excess of an amount equal to the quotient obtained by dividing (i) the annual interest payments payable pursuant to the notes governing the restructured debt (other than with respect to the Attitash/Mount Snow Debt) for the immediately preceding year by (ii) 10%. The Company must pay the following with respect to the Attitash/Mount Snow Debt: an additional annual payment equal to 12% of the gross receipts generated at Mount Snow for such year in excess of an amount equal to the quotient obtained by dividing (i) the annual interest payments payable under the note governing the Attitash/Mount Snow Debt for the immediately preceding year by (ii) 12%. No additional interest payments were due for three months ended July 31, 2016.

The Master Credit Agreement includes restrictions on certain transactions, including mergers, acquisitions, leases, asset sales, loans to third parties, and the incurrence of certain additional debt and liens. Financial covenants set forth in the Master Credit Agreement consist of a maximum leverage ratio (as defined in the Master Credit Agreement) of 65%, above which the Company and certain of its subsidiaries are prohibited from incurring additional indebtedness, and a consolidated fixed charge coverage ratio (as defined in the Master Credit Agreement) covenant, which (i) requires the Company to increase the balance of its debt service reserve account if the Company’s consolidated fixed charge coverage ratio falls below 1.50:1.00 and (ii) prohibits the Company from paying dividends if the ratio is below 1.25:1.00. The payment of dividends is also prohibited during default situations. As of our most recent fiscal year end and for the quarter ended July 31, 2016, our fixed charge ratio fell below the 1:50:1:00 coverage ratio, but was above the 1.25:1.00 ratio. As a result, we are required to increase the balance of our debt service reserve account by \$3.3 million. EPR has agreed to delay the additional interest reserve payment until the 2016/2017 ski season, with 1/3 due in January 2017, 1/3 due in February 2017, and 1/3 due in March 2017.

Wildcat Mountain Debt

The Wildcat Mountain Debt due December 22, 2020 represents amounts owed pursuant to a promissory note in the principal amount of \$4.5 million made by WC Acquisition Corp. in favor of Wildcat Mountain Ski Area, Inc., Meadow Green-Wildcat Skilift Corp. and Meadow Green-Wildcat Corp. (the “Wildcat Note”). The Wildcat Note, dated November 22, 2010, was made in connection with the acquisition of Wildcat Mountain, which was effective as of October 20, 2010. The interest rate as set forth in the Wildcat Note is fixed at 4.00%.

Hunter Mountain Debt

The Hunter Mountain Debt due January 5, 2036 represents amounts owed pursuant to a promissory note (the “Hunter Mountain Note”) in the principal amount of \$21.0 million made by the Company in favor of EPR pursuant to the Hunter Mountain Credit Agreement in connection with the Company’s acquisition of Hunter Mountain, which was effective as of January 6, 2016. The Company used \$20.0 million of the Hunter Mountain Debt to finance the Hunter Mountain acquisition and \$1.0 million to cover closing costs and to add to its interest reserve account.

The Hunter Mountain Credit Agreement and Hunter Mountain Note provide that interest will be charged at an initial rate of 8.00%, subject to an annual increase beginning on February 1, 2017 by the lesser of the following: (x) three times the percentage increase in the CPI (as defined in the Hunter Mountain Note) from the CPI in effect on the applicable adjustment date over the CPI in effect on the immediately preceding adjustment date or (y) 1.75%. Past due amounts will be charged a higher interest rate and be subject to late charges.

The Hunter Mountain Credit Agreement further provides that in addition to interest payments, the Company must pay an additional annual payment equal to 8.00% of the gross receipts in excess of \$35.0 million that are attributable to all collateral under the Hunter Mountain Note for such year.

The Hunter Mountain Credit Agreement includes restrictions or limitations on certain transactions, including mergers, acquisitions, leases, asset sales, loans to third parties, and the incurrence or guaranty of certain additional debt and liens. Financial covenants set forth in the Hunter Mountain Credit Agreement consist of a maximum leverage ratio (as defined in the Hunter Mountain Credit Agreement) of 65%, above which the Company is prohibited from incurring additional indebtedness. The Company must also maintain a consolidated fixed charge coverage ratio (as defined in the Hunter Mountain Credit Agreement) which (i) requires the Company to increase the balance of its debt service reserve account if the Company's consolidated fixed charge coverage ratio falls below 1.50:1.00 and (ii) prohibits the Company from paying dividends if the ratio is below 1.25:1.00. The payment of dividends is also prohibited during potential default or default situations. As of our most recent fiscal year end and for the quarter ended July 31, 2016, the Company's fixed charge ratio fell below the 1:50:1:00 coverage ratio, but was above the 1.25:1.00 ratio. As a result, the Company is required to increase the balance of the debt service reserve account by \$3.3 million. EPR has agreed to delay the additional interest reserve payment until the 2016/2017 ski season, with 1/3 due in January 2017, 1/3 due in February 2017, and 1/3 due in March 2017.

Under the terms of the Hunter Mountain Credit Agreement, the occurrence of a change of control is an event of default. A change of control will be deemed to occur if (i) within two years after the effective date of the Hunter Mountain Credit Agreement, the Company's named executive officers (Messrs. Timothy Boyd, Stephen Mueller and Richard Deutsch) cease to beneficially own and control less than 50% of the amount of the Company's outstanding voting stock that they own as of the effective date of the Hunter Mountain Credit Agreement, or (ii) the Company ceases to beneficially own and control less than all of the outstanding shares of voting stock of those subsidiaries which are borrowers under the Hunter Mountain Credit Agreement. Other events of default include, but are not limited to, a default on other indebtedness of the Company or its subsidiaries.

The Hunter Mountain Note may not be prepaid without the consent of EPR. Upon an event of default, as defined in the Hunter Mountain Note, EPR may, among other things, declare all unpaid principal and interest due and payable. The Hunter Mountain Note matures on January 5, 2036.

As a condition to the Debt Restructure described above, the Company entered into the Master Cross Default Agreement with EPR (the "Master Cross Default Agreement"), which provides that any event of default under existing or future loan or lien agreements between the Company or its affiliates and EPR, and any event of default under the Mad River Lease Amendment, shall automatically constitute an event of default under each of such loan and lien agreements and Mad River Lease Amendment, upon which EPR will be entitled to all of the remedies provided under such agreements and Mad River Lease Amendment in the case of an event of default. In connection with entry into the Hunter Mountain Credit Agreement on January 6, 2016, the Company entered into the Amended and Restated Master Cross-Default Agreement with EPR, which adds the Hunter Mountain Credit Agreement, Hunter Mountain Note and related transaction documents to the scope of loan agreements to which the cross-default provisions of the Master Cross Default Agreement apply.

Also in connection with the Debt Restructure, the Company and EPR entered into the Guaranty Agreement (the "2014 Guaranty Agreement"). The 2014 Guaranty Agreement obligates the Company and its subsidiaries as guarantors of all debt evidenced by the evidenced by the Master Credit Agreement and other Debt Restructure agreements. On January 6, 2016, in connection with entry into the Hunter Mountain Credit Agreement, the Company entered into a Guaranty Agreement for the benefit of EPR, which adds the Company's new Hunter Mountain subsidiary borrowers under the Hunter Mountain Credit Agreement as guarantors pursuant to the same terms of the 2014 Guaranty Agreement and adds the debt evidenced by the Hunter Mountain Credit Agreement and Hunter Mountain Note to the debt guaranteed by the Company pursuant to the 2014 Guaranty Agreement.

Substantially all of the Company's assets serve as collateral for the Company's long term debt.

Line of Credit

Effective as of December 22, 2015, the Company entered into the Line of Credit Agreement with Royal Banks of Missouri. The Line of Credit Agreement provides for a 12-month line of credit for up to \$20.0 million to be used for acquisition purposes and working capital of up to 5.0% of the acquisition purchase price, subject to the Company's ability to ability to extend the line of credit for up to an additional 12-month period upon the satisfaction of certain conditions. In connection with entry into the Line of Credit Agreement, the Company executed a promissory note (the "Line of Credit Note") in favor of Royal Banks of Missouri, maturing on December 22, 2016. In connection with the Hunter Mountain acquisition, the Company borrowed \$15.5 million, of which \$0.5 million was used for closing and other costs, to fund a portion of the purchase price. On July 20, 2016 the Company borrowed an additional \$1.75 million under the Credit Agreement for working capital purposes. The line of credit debt is included as a current liability given the initial 12-month term.

Interest on amounts borrowed under the line of credit are charged at the prime rate plus 1.0%, provided that past due amounts shall be subject to higher interest rates and late charges. The effective rate at July 31, 2016 was 4.5% on the line

of credit borrowings. Amounts outstanding under the Line of Credit Agreement are secured by the assets of each of the subsidiary borrowers under the Line of Credit Agreement.

The Line of Credit Agreement includes restrictions or limitations on certain transactions, including mergers, acquisitions, leases, asset sales, loans to third parties, and the incurrence of certain additional debt and liens. Financial covenants set forth in the Line of Credit Agreement consist of a maximum leverage ratio (as defined in the Line of Credit Agreement) of 65%, above which the Company is prohibited from incurring additional indebtedness, and a debt service coverage ratio (as defined in the Line of Credit Agreement) of 1:25 to 1 on a fiscal year basis. The Company must also maintain a consolidated fixed charge coverage ratio (as defined in the Master Credit Agreement) which (i) requires the Company to increase the balance of its debt service reserve account if the Company's consolidated fixed charge coverage ratio falls below 1.50:1.00 and (ii) prohibits the Company from paying dividends if the ratio is below 1.25:1.00. The payment of dividends is also prohibited during potential default or default situations. As of our most recent fiscal year end and for the quarter ended July 31, 2016, the Company's fixed charge ratio fell below the 1:50:1:00 coverage ratio, but was above the 1.25:1.00 ratio. As a result, the Company is required to increase the balance of our debt service reserve account by \$3.3 million. EPR has agreed to delay the additional interest reserve payment until the 2016/2017 ski season, with 1/3 due in January 2017, 1/3 due in February 2017, and 1/3 due in March 2017.

If the outstanding line of credit debt is not paid in full by the maturity date, and the Company is otherwise in full compliance with the terms and conditions of the Line of Credit Agreement and Line of Credit Note, the Company may elect to convert the outstanding line of credit debt to a three-year term loan, subject to an additional extension, with principal payments amortized over a 20-year period bearing interest the prime rate plus 1.0% per annum.

Except in the case of a default, the Company may prepay all or any portion of the outstanding line of credit debt and all accrued and unpaid interest due prior to the maturity date without prepayment penalty.

In the case of a default, the outstanding line of credit debt shall, at the lender's option, bear interest at the rate of 5.0% percent per annum in excess of the interest rate otherwise payable thereon, which interest shall be payable on demand.

Under the terms of the Line of Credit Agreement, the occurrence of a change of control is an event of default. A change of control will be deemed to occur if (i) for so long as the line of credit debt is outstanding and such individuals are employed by the Company, the Company's key shareholders (Messrs. Boyd, Mueller and Deutsch) cease to beneficially own and control less than 50% of the amount of the Company's outstanding voting stock that they own as of the effective date of the Line of Credit Agreement, or (ii) the Company ceases to beneficially own and control less than all of the outstanding shares of voting stock of the subsidiary borrowers. Other events of default include, but are not limited to, a default on other indebtedness of the Company or its subsidiaries.

Three Months Ended July 31, 2016 Compared to the Three Months Ended July 31, 2015

Cash of \$7.2 million was used in operating activities in the first three months of fiscal 2017, an increase of \$1.6 million when compared to the \$5.6 million used in the first three months of fiscal 2016. The decrease in operating cash flows was primarily a result of an increase in the loss from operations, due to the addition of Hunter Mountain. Similar to our other resorts, Hunter Mountain generates the majority of its operating cash in the third and fourth quarters and traditionally operates at a loss during the first and second quarters of the year.

Cash of \$4.4 million was provided by investing activities in the first three months of fiscal 2017, an increase of \$14.9 million when compared to the \$10.5 million used in the first three months of fiscal 2016. The increase was a result of a decreased spending on property additions as well as a decrease in the restricted cash accounts. The decrease in restricted cash is a result of the timing of EB-5 funds being deposited in fiscal year 2016.

Cash of \$0.2 million was used in financing activities in the first three months of fiscal 2017, a decrease of \$10.4 million when compared to the \$10.2 million provided by in the first three months of fiscal 2016. The decrease primarily related to the EB-5 investor funds being funded in fiscal 2016 and borrowings of capital leases in fiscal 2016. This was offset by no dividends being declared or paid to investors in the three months ended July 31, 2016.

Significant Uses of Cash

Our cash uses currently include operating expenditures and capital expenditures for assets to be used in operations. We have historically invested significant cash in capital expenditures for our resort operations and expect to continue to invest in the future. Resort capital expenditures for fiscal 2016 were approximately \$15.9 million, of which \$11.8 million is related to the West Lake project. We currently anticipate we will spend approximately \$3.0 million to \$4.0 million on resort

capital expenditures in fiscal 2017. There are no major capital expenditure projects for fiscal 2017 anticipated. We currently plan to use cash on hand, borrowings and/or cash flow generated from future operations to provide the cash necessary to execute our capital plans and believe that these sources of cash will be adequate to meet our needs. The Company is also pursuing other sources of financing to meet long-term liquidity needs, including the \$4.5 million draw on the Royal Banks of Missouri line of credit, the \$5.5 million new credit facility with EPT Mount Snow, Inc., and the proposed issuance of Series A Preferred pursuant to the Investor Private Placement. Details of these transactions can be found in Note 9. "Subsequent Events."

As part of the acquisition of Hunter Mountain discussed in "Recent Events" above, we assumed \$1.7 million related to six capital leases. The leases were used to finance equipment throughout the resort. The leases expire between 2016 and 2020, with payments being required only during the peak ski season. Annual lease expenses are \$0.4 million in 2017, \$0.4 million in 2018, \$0.3 million in 2019, and \$0.3 million in 2020.

In October 2014, we entered into a capital lease to finance the construction of the Zip Rider at Attitash. The lease is payable in 60 monthly payments of \$38,800, commencing November 2014. The Company has a \$1.00 purchase option at the end of the lease term. Messrs. Boyd, Mueller and Deutsch have personally guaranteed the lease.

In addition, in June 2015, the Company entered into capital leases to finance the installation of Low-E snow guns at Mount Snow, Attitash and Wildcat, as well as to fund the purchase of groomers for Mount Snow and Attitash. The Low-E snow guns lease is payable in 48 monthly payments of \$61,770 and the groomers lease is payable in 60 monthly payments of \$23,489, both commencing July 2015. The Company has a \$1.00 purchase option at the end of each lease term. Messrs. Boyd, Mueller and Deutsch have personally guaranteed the leases. The Company originally funded these purchases during fiscal 2015 with operating cash.

We have \$2.0 million in third party commitments currently outstanding with our main contractor on the Mount Snow development. We may incur additional costs to support the ongoing Mount Snow development, subject to obtaining required permits and approvals. We plan to finance any future development activity through operating cash reserves, initial condominium deposits and bridge loans, which would be paid upon project completion mostly through the receipt of remaining committed condominium unit sales. We intend to fund our Mount Snow development by raising funds under the Immigrant Investor Program administered by the U.S. Citizenship and Immigration Services ("USCIS") pursuant to the Immigration and Nationality Act. This program was created to stimulate the U.S. economy through the creation of jobs and capital investments in U.S. companies by foreign investors. The program allocates 10,000 immigrant visas ("EB-5 Visas") per year to qualified individuals seeking lawful permanent resident status on the basis of their investment in a U.S. commercial enterprise. Under the regional center pilot immigration program first enacted in 1992, certain EB-5 Visas also are set aside for investors in regional centers designated by the USCIS based on proposals for promoting economic growth. Regional centers are organizations, either publicly owned by cities, states or regional development agencies or privately owned, which facilitate investment in job-creating economic development projects by pooling capital raised under the EB-5 Immigrant Investor Program. Areas within regional centers that are rural areas or areas experiencing unemployment numbers higher than the national unemployment average rates are designated as Targeted Employment Areas ("TEA"). The regional center pilot program was recently extended and is set to expire in September 2016. Both the Senate and House leadership have been working on reforms to the program and various bills have been proposed. We do not expect this process to have a negative effect on our current EB-5 offering. We refer to the Immigrant Investor Program and the regional center pilot program herein as the "EB-5 program."

We have established two wholly-owned affiliate limited partnerships (collectively, the "Partnership") of Mount Snow to operate within a TEA within the State of Vermont Regional Center. Through the Partnership, we sought to raise \$52.0 million by offering units in the Partnership to qualified accredited EB-5 investors for a subscription price of \$500,000 per unit, which is the minimum investment that an investor in a TEA project is required to make pursuant to EB-5 program rules. The proceeds of the offering will be used to fund loans that will be advanced to newly-created affiliates of Mount Snow to finance the development of two capital projects at Mount Snow—the West Lake Project and the Carinthia Ski Lodge Project (together, the "Projects"). The terms of these loans are expected to be 1.0% fixed for five years with up to a two year extension at 7.0% in year six and 10.0% in year seven. Upon funding of the loans, the Company will receive a development fee equal to 15.0% of the loans as well as costs incurred in developing the program. The Mount Snow EB-5 program must be approved by both the State of Vermont Regional Business Center and the USCIS. We have received approval from both the State of Vermont's Regional Business Center and the USCIS.

The West Lake Project includes the construction of a new water storage reservoir for snowmaking with capacity of up to 120 million gallons, three new pump houses and the installation of snowmaking pipelines, trail upgrades and expansion, new ski lift and ancillary equipment. The Carinthia Ski Lodge Project includes the construction of Carinthia Ski Lodge, a new three-story, approximately 36,000-square foot skier service building located at the base of the Carinthia slopes. Carinthia

Ski Lodge will include a restaurant, cafeteria and bars with seating for over 600 people, a retail store, convenience store and sales center for lift tickets and rentals. The anticipated overall cost of the Projects is \$66.0 million, of which \$52.0 million is intended to be funded with the proceeds from the EB-5 offering. The remaining \$14.0 million has been provided by Mount Snow with investments in land, snow gun installations, and improved snowmaking technology.

The Partnership has offered the units to investors primarily located in China, Taiwan, Vietnam and certain countries in the Middle East either directly or through relationships with agents qualified in their respective countries, in which case the Partnership typically pays a sales commission. Once an investor's subscription and funds are accepted by the Partnership, the investor must file a petition ("I-526 Petition") with the USCIS seeking, among other things, approval of the investment's suitability under the EB-5 program requirements and the investor's suitability and source of funds. All investments will be held in a non-interest bearing escrow account and will not be released until the USCIS approves the first I-526 Petition filed by an investor in the Partnership.

As of July 31, 2016, we had commitments for \$50.5 million in Partnership investments, all of which has been funded and is being held in escrow. We have had 3 investors withdraw for personal reasons during the first quarter of 2017, which is allowed under the program while the fund are still in escrow. It is the Company's intent to replace the withdrawn funds with funds from new investors. Two additional investors have submitted the appropriate documentation and funds subsequent to July 31, 2016. A third investor has submitted the documentation and is expected to wire funds. The first investor's I-526 Petition was filed in May 2014 and is pending approval by the USCIS. The Projects commenced in the second half of calendar year 2015, and due to the delay in the investor's I-526 petition approval, we now estimate that the Projects will be substantially completed in advance of the 2017-2018 ski season.

Due to the Company still waiting on the first investor's I-526 Petition to be approved by the USCIS, as well as the unseasonably warm weather during the 2015/2016 ski season which drove down revenue compared to the prior season, the Company's Board of Directors decided it was not prudent to declare a dividend in the first quarter of 2017. The Company's board of directors declared a cash dividends of \$0.1375 during the three-month period ended July 31, 2015. The dividend was payable on August 21, 2015 to shareholders of record on July 10, 2015. We cannot assure you that this initial dividend rate will be reinstated or that we will continue to pay dividends in the future. The declaration and payment of future dividends will be at the sole discretion of our board of directors and will depend on many factors, including our actual results of operations, financial condition, capital requirements, contractual restrictions, restrictions in our debt agreements, economic conditions and other factors that could differ materially from our current expectations.

The Master Credit Agreement includes financial covenants consisting of a maximum Leverage Ratio (as defined in the Master Credit Agreement) of 65%, above which the Company and certain of its subsidiaries are prohibited from incurring additional indebtedness, and a Consolidated Fixed Charge Coverage Ratio (as defined in the Master Credit Agreement) covenant, which (a) requires the Company to increase the balance of its debt service reserve account if the Company's Consolidated Fixed Charge Coverage Ratio falls below 1.50:1.00, and (b) prohibits the Company from paying dividends if the ratio is below 1.25:1.00. The payment of dividends is also prohibited during default situations under the terms of the Master Credit Agreement. Furthermore, our results of operations and financial condition could be materially and adversely affected by the factors described in the "Risk Factors" section of our Annual Report on Form 10-K and the "Risk Factors" section of this Quarterly Report on Form 10-Q, which could limit our ability to pay dividends in the future. As of our most recent fiscal year end and the quarter ended July 31, 2016, the Company's fixed charge ratio fell below the 1:50:1:00 coverage ratio, but was above the 1.25:1.00 ratio. As a result, the Company is required increase the balance of our debt service reserve account by \$3.3 million. EPR has agreed to delay the additional interest reserve payment until the 2016/2017 ski season, with 1/3 due in January 2017, 1/3 due in February 2017, and 1/3 due in March 2017.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

Forward-Looking Statements

Except for any historical information contained herein, the matters discussed in this Form 10-Q contain certain "forward-looking statements" within the meaning of the federal securities laws. This includes statements regarding our future financial position, economic performance, results of operations, business strategy, budgets, projected costs, plans and objectives of management for future operations, and the information referred to under "Management's Discussion and Analysis of Financial Condition and Results of Operations".

These forward-looking statements generally can be identified by the use of forward-looking terminology, such as “may,” “will,” “expect,” “intend,” “estimate,” “anticipate,” “believe,” “continue” or similar terminology, although not all forward-looking statements contain these words. These forward-looking statements are not historical facts, and are based on current expectations, estimates and projections about our industry, management’s beliefs and certain assumptions made by management, many of which, by their nature, are inherently uncertain and beyond our control. Accordingly, you are cautioned that any such forward-looking statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to predict. Although we believe that the expectations reflected in such forward-looking statements are reasonable as of the date made, expectations may prove to have been materially different from the results expressed or implied by such forward-looking statements. Unless otherwise required by law, we also disclaim any obligation to update our view of any such risks or uncertainties or to announce publicly the result of any revisions to the forward-looking statements made in this Form 10-Q. Important factors that could cause actual results to differ materially from our expectations include, among others:

- weather, including climate change;
- seasonality;
- competition with other indoor and outdoor winter leisure activities and ski resorts;
- the leases and permits for property underlying certain of our ski resorts;
- ability to integrate new acquisitions;
- environmental laws and regulations;
- our dependence on key personnel;
- funds for capital expenditures, including funds raised under the EB-5 program;
- the effect of declining revenues on margins;
- the future development and continued success of our Mount Snow ski resort;
- our reliance on information technology;
- our current dependence on a single lender and the lender's option to purchase certain of our ski resorts;
- our dependence on a seasonal workforce; and
- the securities markets,

In addition to other factors and matters contained or incorporated in this document, we believe the following factors related to the Investor Private Placement could cause actual results to differ materially from those discussed in the forward-looking statements:

- the occurrence of any event, change or other circumstances that could give rise to the termination of the Purchase Agreement;
- the failure or inability to complete the Investor Private Placement due to the failure to satisfy any conditions to closing of the Investor Private Placement or otherwise;
- business uncertainty and contractual restrictions during the pendency of the Investor Private Placement;
- the amount of the costs, fees, expenses and charges related to the Investor Private Placement, including any fees and expenses due upon the termination of the Purchase Agreement;
- diversion of management’s attention from ongoing business concerns;
- the effect of the announcement of the Investor Private Placement on our business and customer relationships, operating results and business generally, including our ability to retain key employees;
- risks that the proposed Investor Private Placement disrupts current plans and operations; and
- the possible adverse effect on our business and the price of our common stock if the Investor Private Placement is not completed in a timely fashion or at all.

You should also refer to Part I, Item 1A, “Risk Factors,” of our Annual Report on Form 10-K and Part II, Item 1A, “Risk Factors”, of this Form 10-Q for a discussion of factors that may cause our actual results to differ materially from those

expressed or implied by our forward-looking statements. As a result of these factors, we cannot assure you that the forward-looking statements in this Form 10-Q will prove to be accurate, Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may prove to be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time-frame, or at all.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Interest Rate Fluctuations

On December 1, 2014, the Company completed its Debt Restructure as discussed more fully in Item 2, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” providing for the prepayment of certain of its debt owed to EPR and the restructuring of all existing loan terms. Debt owed to EPR as of July 31, 2016 was \$93.2 million, exclusive of the debt to fund the Hunter Mountain acquisition described below. The interest rate on this debt is subject to fluctuation, but the interest rate can only be increased by a factor of 1.015 annually. At the factor of 1.015, the additional annual interest expense on this variable rate outstanding debt is approximately \$0.12 million.

In addition, effective as of January 6, 2016 we incurred \$21.0 million of debt to fund a portion of the purchase price for the acquisition of Hunter Mountain and other costs pursuant to the terms of the Hunter Mountain Credit Agreement and Hunter Mountain Note with EPR, as more fully discussed in Item 2, “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” The interest rate relating to this debt increases by a factor of 1.0175 annually. At the factor of 1.0175, the additional annual interest expense on this variable rate outstanding debt is approximately \$0.03 million.

In addition, the Company has \$17.25 million drawn on the line of credit with Royal Banks of Missouri. Interest on the amounts borrowed are charged at the prime rate plus 1.0%, provided that past due amounts shall be subject to higher interest rates and late charges.

If interest rates increased 1%, the additional interest cost to the Company would be approximately \$1.2 million for one year. We do not perform any interest rate hedging activities related to our outstanding debt.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

The Company’s management, with the participation of the Company’s Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the Company’s disclosure controls and procedures (as that term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, (the “Exchange Act”)), as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on that evaluation, management, with the participation of the Chief Executive Officer and Chief Financial Officer, concluded that the Company’s disclosure controls and procedures, as of the end of the period covered by this Quarterly Report on Form 10-Q, are functioning effectively to provide reasonable assurance that the information required to be disclosed by the Company in reports filed under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. 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.

Change in Internal Control over Financial Reporting

There have been no changes in the Company's internal control over financial reporting during the period covered by this Quarterly Report on Form 10-Q identified in connection with the evaluation required by Rules 13a-15 (d) and 15d-15(d) under the Exchange Act that have materially affected, or that are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II: OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS.

We are not aware of any pending or threatened legal proceedings against us that could have a material adverse effect on our business, operating results or financial conditions. The ski industry is characterized by periodic litigation and as a result, we may be involved in various additional legal proceedings from time to time.

Item 1A. RISK FACTORS.

The Company has included in Part I, Item 1A of its Annual Report on Form 10-K for the year ended April 30, 2016, a description of certain risks and uncertainties that could affect the Company's business, future performance or financial condition (the "Risk Factors"). Except as set forth below, there are no material changes to the Risk Factors as disclosed in the Company's Annual Report on Form 10-K for the year ended April 30, 2016.

Our failure to complete the Investor Private Placement could have an adverse effect on our working capital and our ability to pay our accounts payable.

On August 22, 2016, the Company entered into the Purchase Agreement with the Investor in connection with the sale and issuance of \$20 million in Series A Preferred and three Warrants, exercisable for twelve years, to purchase (i) 1,538,462 shares of the Company's Common Stock at \$6.50 per share, (ii) 625,000 shares of Common Stock at \$8.00 per share and (iii) 555,556 shares of Common Stock at \$9.00 per share, in each case, subject to adjustments.

Completion of the Investor Private Placement remains subject to the satisfaction of various conditions, including the approval of the Company's stockholders and customary closing conditions, many of which are outside of our control, including (i) the reduction by the Company's senior lenders, EPT Ski Properties, Inc. and EPT Mount Snow, Inc., in the additional interest reserve requirement related to the breakage of the Fixed Charge Coverage Ratio Covenant and (ii) the approval of the stockholder of the Company of certain corporate actions and the Investor Private Placement. There is no assurance that all of the various conditions will be satisfied, or that the Investor Private Placement will be completed on the proposed terms, within the expected time frame, or at all. In addition, as described below, in connection with a termination of the Purchase Agreement, we may be required to pay the Investor a termination fee of up to \$125,000.

If the Investor Private Placement is not consummated, the Company will be required to seek alternative sources of financing in order to enhance its liquidity position. There can be no guarantee that the Company will be able to effect another long-term financing option on terms as favorable as the Investor Private Placement. Failure to successfully implement a long-term financing option could have an adverse effect on our working capital and our ability to pay our accounts payable as well as the price of our common stock.

If the Purchase Agreement is terminated, we may, under certain circumstances, be obligated to pay a termination fee to the Investor and these costs could require us to use cash that may have been available for general corporate purposes.

If the Purchase Agreement is terminated because of the failure to obtain stockholder approval and the Board of Directors has failed to recommend or continue to recommend or has withdrawn or modified its recommendation to vote in favor of the Investor Private Placement, the Company shall not later than three business days after a request by the Investor, reimburse the Investor for its out of pocket expenses (including legal fees) incurred in connection with the Investor Private Placement up to a maximum aggregate amount of \$125,000. If the Purchase Agreement is terminated, the termination fee we may be required to pay may require us to use cash that may have been available for general corporate purposes. For these and other reasons, a failed Investor Private Placement could materially and adversely affect our business, results of operations or financial condition, which in turn would materially and adversely affect our business or financial condition, the price per share of our common stock or our perceived value.

While the Investor Private Placement is pending, we are subject to business uncertainties and contractual restrictions that could harm our operations and the future of our business or result in a loss of customers and employees.

The Company has agreed that, between signing and closing, it shall (a) maintain the existence and good standing of itself and its subsidiaries and maintain its permits, (b) comply with all laws, the violation of which would reasonably be expected to result in a material adverse effect, (c) pay all taxes and all claims for labor, materials and supplies the non-

payment of which would result in a lien, and (d) maintain its and its subsidiaries' property and insurance. In addition, it must operate its business in a manner that will not result in any material breach of the representations and warranties between signing and closing. We may find that these and other contractual arrangements in the Purchase Agreement may delay or prevent us from or limit our ability to respond effectively to competitive pressures, industry developments and future business opportunities that may arise during such period, even if our management and board of directors think they may be advisable.

The pendency of the Investor Private Placement may also divert management's attention and our resources from ongoing business and operations and may disrupt current plans and operations. Our employees, customers or potential customers, and vendors may have uncertainties about the effects of the Investor Private Placement. If any of these effects were to occur, it could materially and adversely impact our business results and financial condition, as well as the market price of our common stock and our perceived value, regardless of whether the Investor Private Placement is completed. In addition, whether or not the Investor Private Placement is completed, while it is pending we will continue to incur costs, fees, expenses and charges related to the proposed Investor Private Placement, which may materially and adversely affect our business results and financial condition.

The issuance of shares of our Series A Preferred would reduce the relative voting power of holders of our common stock, would dilute the ownership of such holders and may adversely affect the market price of our common stock.

As holders of our Series A Preferred are entitled to vote, on an as-converted basis, together with holders of our common stock on all matters submitted to a vote of the holders of our common stock, the issuance of the Series A Preferred effectively reduces the relative voting power of the holders of our common stock. Current stockholders (other than the Investor) will have no preemptive rights to purchase any shares of Series A Preferred and/or Warrants, which means that current stockholders do not have a prior right to purchase any issue of Series A Preferred and/or Warrants in order to maintain their proportionate interest in the Company. The Special Committee and the Board of Directors considered this potential dilution when approving the Investor Private Placement. However, stockholder approval is required in order to proceed with the Investor Private Placement.

In addition, the conversion of the Series A Preferred to common stock would dilute the ownership interest of existing holders of our common stock, and any sales in the public market, following registration pursuant to the registration rights granted to the Investor, of the common stock issuable upon conversion of the Series A Preferred and/or exercise of the Warrants could adversely affect prevailing market prices of our common stock. Sales by such holders of a substantial number of shares of our common stock in the public market, or the perception that such sales might occur, could have a material adverse effect on the price of our common stock.

The holders of shares of the Series A Preferred may exercise significant influence over us.

Investor and its affiliates currently own approximately 9.6% of our shares of common stock and, assuming the conversion of the Series A Preferred and exercise of the Warrants would own 36.4% of our shares of common stock after closing. Additional pre-emptive rights and rights of first offer in the documents governing the Investor Private Placement help the Investor to maintain its ownership position. Holders of our Series A Preferred are entitled to vote, on an as-converted basis, together with holders of our common stock on all matters submitted to a vote of the holders of our common stock. As a result, the holders of shares of the Series A Preferred have the ability to significantly influence the outcome of any matter submitted for the vote of the holders of our common stock.

In addition, under the terms of the Certificate of Designation governing the Series A Preferred, the Series A Preferred generally ranks, with respect to the liquidation, dividends and redemption, senior to other securities until the earlier of (i) such date as no Series A Preferred remains outstanding and (ii) January 1, 2027. The Stockholders Agreement to be executed by the Company, the Investor and the management stockholders at the closing of the Investor Private Placement also requires, that, so long as the Investor beneficially owns, on an as-converted basis, at least 11.4% of the outstanding equity securities of the Company, the Investor's approval is required in order for the Company or any subsidiary to (i) materially change the nature of its business from owning, operating and managing ski resorts or (ii) acquire or dispose of any resorts, assets or properties for aggregate consideration equal to or greater than 30% of the enterprise value of the Company and its subsidiaries, or (iii) agree to do any of the foregoing.

Last, the Stockholders Agreement grants to the Investor the right to nominate a director so long as it beneficially owns, on an as-converted basis, at least 20% of the outstanding equity securities of the Company, subject to satisfaction of reasonable qualification standards and Nominating and Corporate Governance Committee approval of the nominee.

Notwithstanding the fact that all directors will be subject to fiduciary duties to us and to applicable law, the interests of the directors designated by the Investor may differ from the interests of our security holders as a whole or of our other directors.

Our Series A Preferred has rights, preferences and privileges that are not held by, and are preferential to, the rights of our common stockholders, which could adversely affect our liquidity and financial condition, and may result in the interests of the holders of our Series A Preferred differing from those of our common stockholders.

The holders of Series A Preferred have the right to receive a liquidation preference entitling them to be paid out of our assets available for distribution to stockholders before any payment may be made to holders of any other class or series of capital stock as well as a preferential right to receive cumulative dividends at the rate of 8% *per annum* on the liquidation value of \$1,000 per share. The holders of our Series A Preferred also have certain redemption and conversion rights, and there are limitations on the Company's ability to redeem other securities.

These dividend obligations could impact our liquidity and reduce the amount of cash flows available for working capital, capital expenditures, growth opportunities, acquisitions, and other general corporate purposes. Our obligations to the holders of Series A Preferred could also limit our ability to obtain additional financing or increase our borrowing costs, which could have an adverse effect on our financial condition. The preferential rights could also result in divergent interests between the holders of shares of Series A Preferred and holders of our common stock.

Provisions in our amended and restated articles of incorporation and amended and restated bylaws and Missouri law might discourage, delay, or prevent a change in control of our company or changes in our management and, therefore, depress the trading price of our common stock.

Provisions of our amended and restated articles of incorporation, including the proposed amendments thereto in connection with the Investor Private Placement, and amended and restated by-laws and Missouri law might discourage, delay, or prevent a merger, acquisition, or other change in control that stockholders consider favorable, including transactions in which our stockholders might otherwise receive a premium for shares of our common stock. These provisions might also prevent or frustrate attempts by our stockholders to replace or remove our management. These provisions include:

- The proposed additional authorized shares of common stock and preferred stock could be used to dilute the stock ownership or voting rights of persons seeking to obtain control of us or could be issued to persons allied with the Board of Directors or management and thereby have the effect of making it more difficult to remove directors or members of management by diluting the stock ownership or voting rights of persons seeking to effect such a removal.
- The proposed blank check preferred stock could be used by the Board of Directors for adoption of a stockholder rights plan or "poison pill."
- Existing provisions of our governing documents, including the limitations on director removal, the threshold vote required for stockholders to call a special meeting of the stockholders or act by written consent, the advance notice required for stockholder proposals and director nominations, the limitations on the increase in the number of directors and the inability of stockholders to amend the by-laws, may have anti-takeover effects.
- Similarly, applicable provisions of Missouri law, such as the business combination and control share acquisition statutes, may have anti-takeover effects, making it more difficult for or preventing a third-party from acquiring control of us or changing our Board of Directors and management. These provisions may also have the effect of deterring hostile takeovers or delaying changes in control of us or in our management.

The proposals to be presented to the stockholders are not expected to be presented in response to any present threat or attempt to gain control of the Company, nor are they expected to be presented with the intent of utilizing any of the proposed additional shares as a type of anti-takeover device. But, the existence of the foregoing provisions and anti-takeover measures could limit the price that investors are willing to pay in the future for shares of our common stock. They could also deter potential acquirers of the Company, thereby reducing the likelihood that our stockholders could receive a premium for our common stock in an acquisition.

The Board of Directors does not believe that the issuance of the Series A Preferred, the Warrants and the common stock issuable upon conversion or exercise thereof will have a significant impact on any attempt to gain control of the Company. It is possible, however, that the existence of a single stockholder with a significant ownership percentage and director nomination rights could discourage third parties from attempting to gain control. It should be noted that any action

taken by the Company to discourage an attempt to acquire control of the Company might result in stockholders not being able to participate in any possible premiums which might be obtained in the absence of anti-takeover provisions. Any transaction which may be so discouraged or avoided could be a transaction that the Company's stockholders might consider to be in their best interests. However, the Board of Directors has a fiduciary duty to act in the best interests of the Company's stockholders at all times.

In addition, pursuant to each of the Executive Employment Agreements dated effective as of June 1, 2014 between the Company each of Messrs. Boyd, Mueller and Deutsch (each, an "Executive"), each Executive is entitled to change of control payments in the event of a termination of Executive's employment by the Company without cause or notice by the Company of non-renewal of the Agreement, all within 365 days of a consummation of a change in control of the Company. A "change in control" includes an event or series of events by which any person or group becomes the beneficial owner, directly or indirectly, of 35% or more of the equity securities of the Company entitled to vote for members of the Board of Directors or equivalent governing body of the Company on a fully-diluted basis. Upon closing, the Investor will be the beneficial owner, directly or indirectly, of 26.4% of the equity securities of the Company entitled to vote for members of the Board of Directors. Upon the exercise of Warrants to purchase additional shares of common stock, the Investor may become the beneficial owner, directly or indirectly, of 36.4% or more of the equity securities of the Company entitled to vote for members of the Board of Directors, thereby triggering the change in control provisions in the Executive Employment Agreements.

For additional information regarding the Investor Private Placement, please see our Current Report on Form 8-K filed on August 23, 2016, which is incorporated herein by reference.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.

The sale and issuance of the Series A Preferred and the Warrants to the Investor at the closing of the Investor Private Placement, and the issuance of shares of Common Stock upon exercise and conversion thereof, have been determined to be exempt from registration under the Securities Act in reliance on Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder as transactions by an issuer not involving a public offering. Disclosure of this sale of unregistered securities was previously made on our Current Report on Form 8-K filed on August 23, 2016, which is incorporated herein by reference.

Item 3. DEFAULTS UPON SENIOR SECURITIES.

None.

Item 4. MINE SAFETY DISCLOSURES.

None.

Item 5. OTHER INFORMATION.

(a) None.

(b) There have been no material changes to the procedures by which stockholders may recommend nominees to the Company's board of directors implemented in the quarter ended July 31, 2016.

Item 6. EXHIBITS.

The exhibits filed or furnished are set forth in the Exhibit Index at the end of this Quarterly Report on Form 10-Q.

SIGNATURES

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

PEAK RESORTS, INC.

By: _____ /s/ TIMOTHY D. BOYD

Date: September 8, 2016

Timothy D. Boyd
*Chief Executive Officer, President and
Chairman of the Board*

By: _____ /s/ STEPHEN J. MUELLER

Date: September 8, 2016

Stephen J. Mueller
*Chief Financial Officer, Vice President and
Director*

EXHIBIT INDEX

Exhibit Number	Description
3.1	Amended and Restated Articles of Incorporation (filed as Exhibit 3.1 to the Registrant's Registration Statement on Form S-1 filed on October 20, 2014 and incorporated herein by reference).
3.2	Amended and Restated By-laws, as amended.
3.3	Amended and Restated By-laws, as amended, marked to show amendments.
4.1	Form of Peak Resorts, Inc. Common Stock Certificate (filed as Exhibit 4.1 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1 filed on November 10, 2014 and incorporated herein by reference).
10.1	Third Amendment to Lease Agreement, made as of June 8, 2016, by and between EPT Mad River, Inc. and Mad River Mountain, Inc. (filed as Exhibit 10.64 to the Annual Report on Form 10-K/A filed on July 15, 2016 and incorporated herein by reference).
10.2	Securities Purchase Agreement dated August 22, 2016 between Peak Resorts, Inc. and CAP 1 LLC (filed as Exhibit 10.1 to the Current Report on Form 8-K filed on August 23, 2016 and incorporated herein by reference).
10.3	Voting Agreement dated August 22, 2016 among Peak Resorts, Inc., CAP 1 LLC, Timothy D. Boyd, Stephen J. Mueller and Richard K. Deutsch (filed as Exhibit 10.2 to the Current Report on Form 8-K filed on August 23, 2016 and incorporated herein by reference).
10.4	Master Credit and Security Agreement among Peak Resorts, Inc. and Mount Snow, Ltd., as borrowers, and EPT Mount Snow, Inc., as lender, dated as of September 1, 2016 (filed as Exhibit 10.1 to the Current Report on Form 8-K filed on September 7, 2016 and incorporated herein by reference).
10.5	Promissory Note from Peak Resorts, Inc. and Mount Snow, Ltd. in favor of EPT Mount Snow, Inc., dated as of September 1, 2016 (filed as Exhibit 10.2 to the Current Report on Form 8-K filed on September 7, 2016 and incorporated herein by reference).
10.6	First Addendum to Amended and Restated Master Cross Default Agreement by and among EPT Ski Properties, Inc., EPT Mount Snow, Inc. and EPT Mad River, Inc. and Peak Resorts, Inc., Mad River Mountain, Inc., Mount Snow, Ltd., Sycamore Lake, Inc., Deltrecs, Inc., Brandywine Ski Resort, Inc., Boston Mills Ski Resort, Inc., JFBB Ski Areas, Inc., Hunter Mountain Acquisition, Inc., Hunter Mountain Ski Bowl Inc., Hunter Mountain Festivals, Ltd., Hunter Mountain Rentals Ltd., Hunter Resort Vacations, Inc., Hunter Mountain Base Lodge, Inc. and Frosty Land, Inc., as borrowers, and SNH Development, Inc., L.B.O. Holding, Inc., Hidden Valley Golf and Ski, Inc., Snow Creek, Inc., Paoli Peaks, Inc. and Crotched Mountain Properties, LLC, as guarantors, dated as of September 1, 2016 (filed as Exhibit 10.3 to the Current Report on Form 8-K filed on September 7, 2016 and incorporated herein by reference).
10.7	Guaranty Agreement, by Peak Resorts, Inc., Hunter Mountain Acquisition, Inc., Hunter Mountain Ski Bowl Inc., Hunter Mountain Festivals, Ltd., Hunter Mountain Rentals Ltd., Hunter Resort Vacations, Inc., Hunter Mountain Base Lodge, Inc., Frosty Land, Inc., JFBB Ski Areas, Inc., Boston Mills Ski Resort, Inc., Brandywine Ski Resort, Inc., Sycamore Lake, Inc., Mount Snow, Ltd. and Deltrecs, Inc., as borrowers, Mad

River Mountain, Inc., SNH Development, Inc., L.B.O. Holding, Inc., Hidden Valley Golf and Ski, Inc., Snow Creek, Inc., Paoli Peaks, Inc., WC Acquisition Corp., Resort Holdings, L.L.C. and BLC Operators, Inc., as guarantors, for the benefit of EPT Ski Properties, Inc. and EPT Mount Snow, Inc., made as of September 1, 2016 (filed as Exhibit 10.4 to the Current Report on Form 8-K filed on September 7, 2016 and incorporated herein by reference).

31.1 Certification of Principal Executive Officer, pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes Oxley Act of 2002.

31.2 Certification of Principal Financial Officer, pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes Oxley Act of 2002.

32.1 Certification of Chief Executive Officer and Chief Financial Officer furnished pursuant to Section 906 of the Sarbanes Oxley Act of 2002 (18 USC. Section 1350).

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Section 2: EX-3.2 (EX-3.2)

Exhibit 3.2

AMENDED AND RESTATED BY-LAWS OF PEAK RESORTS, INC.

ARTICLE 1 REGISTERED OFFICE

Section 1.1 Registered Office. The registered office of Peak Resorts, Inc. (the “corporation”) shall be located in the County of St. Louis, State of Missouri.

ARTICLE 2 SHAREHOLDERS’ MEETINGS

Section 2.1 Annual Meetings. An annual meeting of shareholders shall be held on such date and at such time as determined by the board of directors and as indicated in the notice of such meeting. Every meeting of the shareholders shall be convened at the hour stated in the notice for said meeting and continue until declared adjourned by a vote of the shareholders present or declared adjourned by the presiding officer. At such meeting, a board of directors shall be elected and such other business shall be transacted as may properly be brought before the meeting.

Section 2.2 Notice of Annual Meeting. Written or printed notice of the annual meeting stating the place, day and hour of the meeting shall be delivered or given, either personally, by mail or as may otherwise be permitted by law, to each shareholder of record entitled to vote thereat at such address as appears on the books of the corporation, not less than ten (10) or more than seventy (70) days before the date of the meeting.

Section 2.3 Special Meetings. Special meetings of the shareholders or of the holders of any special class of stock of the corporation may be called by the chairman of the board or the president at any time unless otherwise provided by law, and shall be directed to do so by resolution of the board of directors or whenever shareholders owning not less than seventy-five percent (75%) of all the shares issued and outstanding and entitled to vote at the particular meeting shall request such a meeting in writing. Such request shall be delivered to the president of the corporation and shall state the purpose or purposes of the proposed meeting. Upon such direction or request, it shall be the duty of the president to call a special meeting of the shareholders to be held at anytime, not less than ten (10) nor more than seventy (70) days thereafter, as the president may fix. If the president shall neglect to issue such call, the person or persons making such direction or request may issue the call. The business transacted at any special meeting of shareholders shall be confined to the purposes stated in the notice.

Section 2.4 Notice of Special Meeting. Written or printed notice of a special meeting of shareholders, stating the place, day, hour and purpose or purposes thereof, shall be delivered or given, personally, by mail or as may otherwise be permitted by law, to each shareholder of record entitled to vote thereat at such address as appears on the books of the corporation, not less than ten

(10) or more than seventy (70) days before the date of the meeting.

Section 2.5 Place of Meetings. All meetings of the shareholders shall be held at the principal business office of the corporation or at such other place as the board of directors may specify in the notice of such meeting.

Section 2.6 Quorum; Adjournment. A majority of the shares issued and outstanding and entitled to vote thereat, represented in person or by proxy, shall constitute a quorum at all meetings of the shareholders for the transaction of business, except as otherwise provided by statute. If, however, such quorum shall not be present or represented at any meeting of the shareholders, the shareholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time for successive periods of not more than ninety (90) days, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally scheduled.

Section 2.7 Voting. When a quorum is present at any meeting, the vote of the holders of a majority of the shares having voting power represented in person or by proxy shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the statutes, the articles of incorporation, or these by-laws, a different vote is required, in which case such express provision shall govern and control the decision of such questions.

At any meeting of the shareholders, every shareholder having the right to vote shall be entitled to vote in person, or by proxy appointed by a proper instrument in writing subscribed by the shareholder or by his/her duly authorized attorney-in-fact. Except as otherwise provided in a Certificate of Designation with respect to any shares of preferred stock, each shareholder shall have one (1) vote for each share having voting power, registered in his/her name on the books of the corporation.

Section 2.8 Action by Consent. Any action which may be taken at any meeting of the shareholders may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

Section 2.9 Waiver of Notice. Whenever any notice is required to be given, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 2.10 Notice of Shareholder Business at Annual Meetings. At any annual meeting of shareholders, only such business shall be conducted as shall have been properly brought before the meeting. In addition to any other requirements imposed by or pursuant to law, the articles of incorporation or these by-laws, each item of business to be properly brought before an annual meeting must (a) be specified in the notice of meeting (or any supplement thereto) given by or at the direction of the board or the persons calling the meeting pursuant to the articles of incorporation; (b) be otherwise properly brought before the meeting by or at the direction of the board; or (c) be otherwise properly brought before the meeting by a shareholder. For business to be properly brought before an annual meeting by a shareholder, the shareholder must have given timely notice thereof in writing to the secretary of the corporation. To be timely, a shareholder's notice to the secretary must be delivered to or mailed and received at the principal executive offices of the corporation not less than sixty (60) days nor more than ninety (90) days prior to the anniversary date of the immediately preceding annual meeting of shareholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the shareholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs. Public disclosure of an adjournment or postponement of an annual meeting shall not commence a new time period (or extend any time period) for the giving of a shareholder's notice. For purposes of these by-laws "public disclosure" shall mean disclosure in a press release reported by the Dow Jones, Associated Press,

Reuters or comparable national news service, or in a document publicly filed by the corporation with the Securities and Exchange Commission. To be in proper written form, a shareholder's notice to the secretary must set forth as to each matter such shareholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of such shareholder, (iii) the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by such shareholder, (iv) a description of all arrangements or understandings between such shareholder and any other person or persons (including their names) in connection with the proposal of such business by such shareholder and any material interest of such shareholder in such business, and (v) a representation that such shareholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

ARTICLE 3 DIRECTORS

Section 3.1 General Powers. The business and affairs of the corporation shall be managed by or under the direction of its board of directors.

Section 3.2 Number, Nominations, Election and Term. The board shall consist of such number of directors as the board may from time to time determine, provided that in no event shall the number of directors be less than three (3), and provided further that no reduction in the number of directors shall have the effect of shortening the term of any incumbent director.

The directors shall be elected at the annual meeting of the shareholders, and each director shall serve until the next succeeding annual meeting of shareholders and until his/her successor shall have been elected and qualified.

Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the corporation, except as may be otherwise provided in the articles of incorporation. Nominations of persons for election to the board of directors may be made at any annual meeting of shareholders, or at any special meeting of shareholders called for the purpose of electing directors, (a) by or at the direction of the board of directors (or any duly authorized committee thereof) or (b) by any shareholder of the corporation (i) who is a shareholder of record on the date of the giving of the notice provided for in this Section 3.2 and on the record date for the determination of shareholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 3.2 or (c) by any shareholder pursuant to a written agreement with the corporation (which written agreement was approved by the board of directors), provided that such nominee meets the qualifications set forth in such written agreement.

In addition to any other applicable requirements, for a nomination to be made by a shareholder, such shareholder must have given timely notice thereof in proper written form to the secretary of the corporation. To be timely, a shareholder's notice to the secretary must be delivered to or mailed and received at the principal executive offices of the corporation (a) in the case of an annual meeting, not less than sixty (60) days nor more than ninety (90) days prior to the anniversary date of the immediately preceding annual meeting of shareholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the shareholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs; and (b) in the case of a special meeting of shareholders called for the purpose of electing directors, not later than the close of business on the tenth (10th) day following the day on which notice of the date of the special meeting was

mailed or public disclosure of the date of the special meeting was made, whichever first occurs. Public disclosure shall have the meaning set forth in Section 2.10 herein.

To be in proper written form, a shareholder's notice to the secretary must set forth (a) as to each person whom the shareholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by the person and (iv) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder; and (b) as to the shareholder giving the notice (i) the name and record address of such shareholder, (ii) the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by such shareholder, (iii) a description of all arrangements or understandings between such shareholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such shareholder, (iv) a representation that such shareholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (v) any other information relating to such shareholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this Section 3.2. If the chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

Section 3.3 Resignation; Vacancy. Any director of the corporation may resign at any time by giving written notice of such resignation to the board of directors, the chairman of the board, the president, any vice president or the secretary of the corporation. Any such resignation shall take effect at the time specified therein or, if no time be specified, upon receipt thereof by the board of directors or one of the above-named officers; and, unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.

If the office of a director becomes vacant for any reason, the remaining directors shall, by a majority vote, choose a successor or successors who shall hold office for the unexpired term in respect of which such vacancy occurred or until the next election of directors.

Section 3.4 Removal. Subject to any limitation imposed by law, directors may be removed from office with or without cause only (a) by the board of directors, as provided by law, in the event a director fails to meet the qualifications for election as a director as set forth under Section 3.2 herein, or in the event a director is in breach of any agreement between such director and the corporation relating to such director's services as a director or employee of the corporation, or (b) by a vote of the holders of sixty-six and two thirds percent (66-2/3%) of the shares then entitled to vote at an election of directors, voting as a single class. Any such vote by the shareholders shall be in addition to the separate vote of any particular class or series of capital stock of the corporation required by or pursuant to law, the articles of incorporation or otherwise.

Section 3.5 Regular Meetings. Regular meetings of the board of directors shall be held at such places, within or without the State of Missouri, and on such days and at such times as shall be fixed from time to time by the board of directors. Notice of such regular meetings need not be given.

Section 3.6 Special Meetings. Special meetings of the board may be held at any time and place, within or without the State of Missouri, upon the call of the chairman of the board, the president or secretary of the corporation by oral, written, telegraphic, facsimile transmission or any other mode of notice duly given, sent or mailed to each director, at such director's last known address, not less than twenty-four (24) hours before such meeting.

Section 3.7 Quorum; Adjournment. At all meetings of the board, a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by statute. If a quorum shall not be present at any meeting of directors, the directors present thereat may adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.8 Place of Meetings. The directors may hold their meetings at the principal business office of the corporation or at such other place as they may determine.

Section 3.9 Board Committees. The board may designate an executive committee and one or more other committees, each committee to consist of one or more directors of the corporation. Any such committee, to the extent provided in any such resolution, shall have and may exercise all the powers and authority of the board in the management of the business and affairs of the corporation. Any such committee shall keep written minutes of its meetings and report the same to the board at the next regular meeting of the board. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board to act at the meeting in the place of any such absent or disqualified member.

Section 3.10 Participation via Conference Telephone. Members of the board of directors or of any committee designated by the board of directors may participate in a meeting of the board or committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

Section 3.11 Waiver of Notice. Whenever any notice is required to be given, a waiver thereof in writing, by telegram or facsimile transmission from the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 3.12 Attendance Constitutes Waiver of Notice. Attendance of a director at any meeting shall constitute a waiver of notice of the meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 3.13 Action by Consent. Any action which is required to be or may be taken at a meeting of the directors may be taken without a meeting if consents in writing, setting forth the action so taken, are signed by all the directors.

Section 3.14 Compensation of Directors. The directors shall receive only such compensation for their services as directors as may be allowed by resolution of the board. The board may also provide that the

corporation shall reimburse each such director for any expense incurred by such director on account of such director's attendance at any meetings of the board or committees of the board. Neither the payment of such compensation nor the reimbursement of such expenses shall be construed to preclude any director from serving the corporation or its subsidiaries in any other capacity and receiving compensation therefor.

ARTICLE 4 OFFICERS

Section 4.1 Number, Election and Term. The officers of the corporation shall be a president and a secretary who shall be chosen by the board of directors at its first meeting after each annual meeting of shareholders. The board of directors may also choose a chairman of the board, one or more vice chairmen, one or more vice presidents, one or more of which may be designated as senior vice presidents or executive vice presidents, a treasurer, and one or more assistant secretaries and assistant treasurers.

The board may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board.

The officers of the corporation shall hold office until their successors are chosen.

Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the board of directors.

Section 4.2 Chairman of the Board. The chairman of the board, if any, shall preside at all meetings of the shareholders and directors at which he/she is present and shall perform such other duties as the board of directors or these by-laws may prescribe.

Section 4.3 Vice Chairmen. In the absence of the chairman of the board, the vice chairmen, if any, in order of their seniority, shall perform the duties and exercise the powers of the chairman of the board, preside at all meetings of the shareholders and directors at which any are present and perform such other duties as the board of directors may prescribe.

Section 4.4 President/Chief Executive Officer. In the absence of the chairman of the board and any vice chairmen, the president shall preside at all meetings of the shareholders and directors at which he/she is present. If no officer has been expressly designated as chief executive officer by the board of directors, the president shall be chief executive officer of the corporation, with the powers and duties which attach to such position. He/she shall perform such duties as the board of directors may prescribe and shall see that all orders and resolutions of the board are carried into effect.

The president shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation.

Section 4.5 Senior Vice Presidents and Executive Vice Presidents. Senior vice presidents and executive vice presidents shall perform such duties and exercise such powers as shall be delegated by the chief executive officer or as shall be designated by the board of directors.

Section 4.6 Vice Presidents. Vice presidents shall perform such duties and exercise such powers as shall be delegated by the chief executive officer or as shall be designated by the board of directors.

Section 4.7 Secretary and Assistant Secretaries. The secretary shall keep or cause to be kept a record of all meetings of the shareholders and the board of directors and record all votes and the minutes of all proceedings in a book to be kept for that purpose. He/she shall give, or cause to be given, notice of all meetings of the shareholders and special meetings of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or chief executive officer, under whose supervision he/she shall be. He/she shall keep in safe custody the seal of the corporation and shall affix the same to any instrument requiring it.

The assistant secretaries, if any, in order of their seniority shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary and shall perform such other duties as the board of directors may prescribe.

Section 4.8 Treasurer and Assistant Treasurers. The treasurer, if any, shall have the custody of the corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors and shall perform such other duties as the board of directors may prescribe.

The treasurer shall disburse the funds of the corporation as may be ordered by the board, taking proper vouchers for such disbursements, and shall render to the chairman of the board, chief executive officer, president and directors, at the regular meetings of the board, or whenever they may require it, an account of all his/her transactions as treasurer and of the financial condition of the corporation.

If required by the board of directors, the treasurer shall give the corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the board for the faithful performance of the duties of his/her office and for the restoration to the corporation, in case of his/her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his/her possession or under his/her control belonging to the corporation.

The assistant treasurers, if any, in the order of their seniority shall, in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer and shall perform such other duties as the board of directors may prescribe.

ARTICLE 5 CAPITAL STOCK

Section 5.1 Share Certificates. The shares of the corporation shall be represented by certificates in such form as the appropriate officers of the corporation may from time to time prescribe; provided that the board may provide by resolution or resolutions that some or all of any or all classes or series of stock of the corporation shall be uncertificated shares. Notwithstanding the foregoing, every holder of uncertificated shares of a class or series some but not all of which are represented by certificates, shall be entitled, upon request, to a certificate representing such shares. Every holder of uncertificated shares shall be entitled to receive a statement of holdings as evidence of share ownership. Shares represented by certificates shall be numbered and registered in a share register as they are issued. Share certificates shall exhibit the name of the registered holder, the number and class of shares and the series, if any, represented thereby, the par value of each share or a statement that such shares are without par value as the case may be, and any other information required by law, regulation or stock exchange rule. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificated shares of the same class and series shall be identical.

Section 5.2 Transfer of Stock. Upon surrender to the corporation, or a transfer agent of the corporation, of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, the corporation may issue to the person entitled thereto (a) a new certificate for such shares or (b) if requested by the holder and such shares are of a class or series of stock which may be uncertificated, (i) evidence of equivalent uncertificated shares or (ii) both a new certificate and evidence of uncertificated shares equaling in the aggregate the number of shares represented by the surrendered certificate, and in any case, the corporation shall cancel the old certificate and record the transaction upon its books. Upon receipt by the corporation, or a transfer agent of the corporation, of proper transfer instructions for uncertificated shares, accompanied by proper evidence of succession, assignment or authority to transfer, the corporation may issue to the person entitled thereto (a) evidence of equivalent uncertificated shares or (b) if requested by the holder, (i) a certificate for such shares or (ii) both a certificate and evidence of uncertificated shares equaling in the aggregate the number of shares covered by such transfer instructions, and in any case, the corporation shall cancel the old uncertificated shares and record the transaction upon its books.

Section 5.3 Transfer Agents and Registrars; Facsimile Signatures. The board may appoint one or more transfer agents and one or more registrars (any one of which may be appointed as both transfer agent and registrar) and may require all certificates for shares to bear the signature or signatures of any of them, any of which signature or signatures may be facsimile. In case any officer or officers of the corporation who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers, whether because of death, resignation or otherwise, before such certificate or certificates have been delivered by the corporation, such certificate or certificates may, nevertheless, be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the corporation.

Section 5.4 Registered Shareholders. The corporation shall be entitled to treat the holder of record of any share or shares as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

Section 5.5 Closing of Transfer Books and Fixing of Record Date. The board of directors shall have the power to close the transfer books of the corporation for a period not exceeding fifty (50) days preceding the date of any meeting of shareholders, or the date for payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect; provided, however, that in lieu of closing the transfer books as aforesaid, the board of directors may fix in advance a date, not exceeding fifty (50) days preceding the date of any meeting of shareholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect, as a record date for the determination of the shareholders entitled to notice of, and to vote at any such meeting and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or entitled to exercise the rights in respect of any such change, conversion or exchange of shares. In such case only the shareholders who are shareholders of record on the record date so fixed shall be entitled to such notice of and to vote at such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the date of closing of the transfer books or the record date fixed as aforesaid.

Section 5.6 Lost Certificate. The holder of any shares of stock of the corporation shall immediately notify the corporation and its transfer agents and registrars, if any, of any loss or destruction of the certificates

representing the same. The corporation may issue a new certificate in the place of any certificate theretofore issued by it which is alleged to have been lost or destroyed and the board of directors may require the owner of the lost or destroyed certificate or such owner's legal representative to give the corporation a bond in such sum and in such form as the board of directors may direct or approve, and with such surety or sureties as may be satisfactory to the board of directors, to indemnify the corporation and its transfer agents and registrars, if any, against any claim or liability that may be asserted against or incurred by it or any transfer agent or registrar on account of the alleged loss or destruction of any such certificate or the issuance of such new certificate. A new certificate may be issued without requiring any bond when, in the judgment of the board of directors, it is proper so to do. The board of directors may delegate to any officer or officers of the corporation any of the powers and authorities contained in this Section 5.6.

ARTICLE 6 DIVIDENDS

Dividends upon the issued shares of the corporation may be declared by the board of directors at any regular or special meeting pursuant to law.

Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interest of the corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE 7 FISCAL YEAR

The fiscal year of the corporation shall begin the 1st day of May in each year.

ARTICLE 8 SEAL

The corporate seal shall have inscribed thereon the name of the corporation, the state of incorporation, the words, Corporate Seal, and such other inscriptions as the board of directors may deem appropriate. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE 9 INDEMNIFICATION OF AND INSURANCE ON DIRECTORS, OFFICERS EMPLOYEES AND AENTS

Section 9.1 Actions Involving Directors and Officers. The corporation shall indemnify each person who at any time is serving or has served as a director or an officer of the corporation against any claim, liability or expense incurred as a result of such service, or as a result of any other service on behalf of the corporation, or service at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise, to the maximum extent permitted by law. Without limiting the generality of the foregoing, the corporation shall indemnify any such person who was or is a party (other than a party plaintiff suing on his own behalf or in the right of the corporation), or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, but not limited to, an action by or in the

right of the corporation) by reason of such services against expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding.

Section 9.2 Actions Involving Employees or Agents. The corporation may, if it deems appropriate and as may be permitted by this Section 9.2, indemnify any person who at any time is serving or has served as an employee or agent of the corporation against any claim, liability or expense incurred as a result of such service or as a result of any other service on behalf of the corporation, or service at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, to the maximum extent permitted by law or to such lesser extent as the corporation, in its discretion, may deem appropriate. Without limiting the generality of the foregoing, the corporation may indemnify any such person who was or is a party (other than a party plaintiff suing on his own behalf or in the right of the corporation), or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, but not limited to, an action by or in the right of the corporation) by reason of such services against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding. To the extent that an officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Section 9.2, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the action, suit or proceeding.

Section 9.3 Determination of Right to Indemnification in Certain Circumstances. Any indemnification required under Section 9.1 of this Article 9 or authorized by the corporation under Section 9.2 of this Article 9, unless ordered by a court shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in or established pursuant to this Article 9. Such determination shall be made (a) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (c) by the shareholders.

Section 9.4 Advance Payment of Expenses. Expenses incurred by a person who is or was a director or an officer of the corporation in defending a civil or criminal action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding, and expenses incurred by a person who is or was an officer, employee or agent of the corporation in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors, in either case upon receipt of an undertaking by or on behalf of the director or the officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in or pursuant to this Article 9.

Section 9.5 Not Exclusive. The indemnification provided by this Article 9 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the articles of incorporation of the corporation or any statute, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office.

Section 9.6 Indemnification Agreements Authorized. Without limiting the other provisions of this Article 9, the corporation is authorized from time to time, without further action by the shareholders of the corporation, to enter into agreements with any director, officer, employee or agent of the corporation

providing such rights of indemnification as the corporation may deem appropriate, up to the maximum extent permitted by law. Any such agreement entered into by the corporation with a director may be authorized by the other directors, and such authorization shall not be invalid on the basis that similar agreements may have been or may thereafter be entered into with such other directors.

Section 9.7 Standard of Conduct. Except as may otherwise be permitted by law, no person shall be indemnified pursuant to this Article 9 (including without limitation pursuant to any agreement entered into pursuant to Section 9.6 of this Article 9) from or on account of such person's conduct which is finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct. The corporation may (but need not) adopt a more restrictive standard of conduct with respect to the indemnification of any employee or agent of the corporation.

Section 9.8 Insurance. The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was otherwise serving on behalf or at the request of the corporation in any such capacity, or arising out of his status as such, whether or not the corporation is obliged to or would have the power to indemnify him against such liability under the provisions of this Article 9; provided, that the obtaining of any such insurance shall not give rise to any right to indemnification for any director, officer, employee or agent except as otherwise specified herein, in the articles of incorporation of the corporation, or by separate agreement with the corporation.

Section 9.9 Certain Definitions. For purposes of this Article 9:

- (i) Any director or officer of the corporation who shall serve as a director, officer or employee of any other corporation, partnership, joint venture, trust or other enterprise of which the corporation, directly or indirectly, is or was the owner of a majority of either the outstanding equity interests or the outstanding voting stock (or comparable interests) shall be deemed to be serving as such director, officer or employee at the request of the corporation, unless the board of directors of the corporation shall determine otherwise. In all other instances where any person shall serve as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise of which the corporation is or was a shareholder or creditor, or in which it is or was otherwise interested, if it is not otherwise established that such person is or was serving as such director, officer, employee or agent at the request of the corporation, the board of directors of the corporation may determine whether such service is or was at the request of the corporation, and it shall not be necessary to show any actual or prior request for such service.
 - (ii) References to a corporation include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director, officer, employee or agent of such a constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership; joint venture, trust or other enterprise shall stand in the same position under the provisions of this Article 9 with respect to the resulting or surviving corporation as he would if he had served the resulting or surviving corporation in the same capacity.
 - (iii) The term "other enterprise" shall include employee benefit plans; the term "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; the term "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to any employee
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benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have satisfied any standard of care required by or pursuant to this Article 9 in connection with such plan.

Section 9.10 Survival. Any indemnification rights provided pursuant to this Article 9 shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. Notwithstanding any other provision in these by-laws, indemnification rights arising under or granted pursuant to this Article 9 shall survive amendment or repeal of this Article 9 with respect to any acts or omissions occurring prior to the effective time of such amendment or repeal and persons to whom such indemnification rights are given shall be entitled to rely upon such indemnification rights with respect to such acts or omissions as a binding contract with the corporation.

ARTICLE 10
ALTERATION, AMENDMENT
OR REPEAL OF BY-LAWS

All by-laws of the corporation may be amended, altered or repealed, and new by-laws may be made, by the affirmative vote of a majority of the directors cast at any regular or special meeting at which a quorum is present provided that such authority has been delegated to the board of directors by the articles of incorporation.

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Section 3: EX-3.3 (EX-3.3)

Exhibit 3.3

**AMENDED AND RESTATED BY-LAWS
OF
PEAK RESORTS, INC.**

ARTICLE 1
REGISTERED OFFICE

Section 1.1 Registered Office. The registered office of Peak Resorts, Inc. (the “corporation”) shall be located in the County of St. Louis, State of Missouri.

ARTICLE 2
SHAREHOLDERS’ MEETINGS

Section 2.1 Annual Meetings. An annual meeting of shareholders shall be held on such date and at such time as determined by the board of directors and as indicated in the notice of such meeting. Every meeting of the shareholders shall be convened at the hour stated in the notice for said meeting and continue until declared adjourned by a vote of the shareholders present or declared adjourned by the presiding officer. At such meeting, a board of directors shall be elected and such other business shall be transacted as may properly be brought before the meeting.

Section 2.2 Notice of Annual Meeting. Written or printed notice of the annual meeting stating the place, day and hour of the meeting shall be delivered or given, either personally, by mail or as may otherwise be permitted by law, to each shareholder of record entitled to vote thereat at such address as appears on the books of the corporation, not less than ten (10) or more than seventy (70) days before the date of the meeting.

Section 2.3 Special Meetings. Special meetings of the shareholders or of the holders of any special class of stock of the corporation may be called by the chairman of the board or the president at any time unless otherwise provided by law, and shall be directed to do so by resolution of the board of directors or whenever shareholders owning not less than seventy-five percent (75%) of all the shares issued and outstanding and entitled to vote at the particular meeting shall request such a meeting in writing. Such request shall be delivered to the president of the corporation and shall state the purpose or purposes of the proposed meeting. Upon such direction or request, it shall be the duty

of the president to call a special meeting of the shareholders to be held at anytime, not less than ten (10) nor more than seventy (70) days thereafter, as the president may fix. If the president shall neglect to issue such call, the person or persons making such direction or request may issue the call. The business transacted at any special meeting of shareholders shall be confined to the purposes stated in the notice.

Section 2.4 Notice of Special Meeting. Written or printed notice of a special meeting of shareholders, stating the place, day, hour and purpose or purposes thereof, shall be delivered or given, personally, by mail or as my otherwise be permitted by law, to each shareholder of record entitled to vote thereat at such address as appears on the books of the corporation, not less than ten (10) or more than seventy (70) days before the date of the meeting.

Section 2.5 Place of Meetings. All meetings of the shareholders shall be held at the principal business office of the corporation or at such other place as the board of directors may specify in the notice of such meeting.

Section 2.6 Quorum; Adjournment. A majority of the shares issued and outstanding and entitled to vote thereat, represented in person or by proxy, shall constitute a quorum at all meetings of the shareholders for the transaction of business, except as otherwise provided by statute. If, however, such quorum shall not be present or represented at any meeting of the shareholders, the shareholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time for successive periods of not more than ninety (90) days, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally scheduled.

Section 2.7 Voting. When a quorum is present at any meeting, the vote of the holders of a majority of the shares having voting power represented in person or by proxy shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the statutes, the articles of incorporation, or these by-laws, a different vote is required, in which case such express provision shall govern and control the decision of such questions.

At any meeting of the shareholders, every shareholder having the right to vote shall be entitled to vote in person, or by proxy appointed by a proper instrument in writing subscribed by the shareholder or by his/her duly authorized attorney-in-fact. ~~Each shareholder shall have one (1) vote for each share having voting power, registered in his/her name on the books of the corporation.~~ Except as otherwise provided in a Certificate of Designation with respect to any shares of preferred stock, each shareholder shall have one (1) vote for each share having voting power, registered in his/her name on the books of the corporation.

Section 2.8 Action by Consent. Any action which may be taken at any meeting of the shareholders may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

Section 2.9 Waiver of Notice. Whenever any notice is required to be given, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 2.10 Notice of Shareholder Business at Annual Meetings. At any annual meeting of shareholders, only such business shall be conducted as shall have been properly brought before the meeting. In addition to any other requirements imposed by or pursuant to law, the articles of incorporation or these by-laws, each item of business to be properly brought before an annual meeting must (a) be specified in the notice of meeting (or any supplement thereto) given by or at the direction of the board or the persons calling the meeting pursuant to the articles of incorporation; (b) be otherwise properly brought before the meeting by or at the direction of the board; or (c) be otherwise properly brought before the meeting by a shareholder. For business to be properly brought before an annual meeting by a shareholder, the shareholder must have given timely notice thereof in writing to the secretary of the corporation. To be timely, a shareholder's notice to the secretary must be delivered to or mailed and received at the principal executive offices of the corporation not less than sixty (60) days nor more than ninety (90) days prior to the anniversary date of the immediately preceding annual meeting of shareholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the shareholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs. Public disclosure of an adjournment or postponement of an annual meeting shall not commence a new time period (or extend any time period) for the giving of a shareholder's notice. For purposes of these by-laws "public disclosure" shall mean disclosure in a press release reported by the Dow Jones, Associated Press,

Reuters or comparable national news service, or in a document publicly filed by the corporation with the Securities and Exchange Commission. To be in proper written form, a shareholder's notice to the secretary must set forth as to each matter such shareholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of such shareholder, (iii) the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by such shareholder, (iv) a description of all arrangements or understandings between such shareholder and any other person or persons (including their names) in connection with the proposal of such business by such shareholder and any material interest of such shareholder in such business, and (v) a representation that such shareholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

ARTICLE 3 DIRECTORS

Section 3.1 General Powers. The business and affairs of the corporation shall be managed by or under the direction of its board of directors.

Section 3.2 Number, Nominations, Election and Term. The board shall consist of such number of directors as the board may from time to time determine, provided that in no event shall the number of directors be less than three (3), and provided further that no reduction in the number of directors shall have the effect of shortening the term of any incumbent director.

The directors shall be elected at the annual meeting of the shareholders, and each director shall serve until the next succeeding annual meeting of shareholders and until his/her successor shall have been elected and qualified.

Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the corporation, except as may be otherwise provided in the articles of incorporation. Nominations of persons for election to the board of directors may be made at any annual meeting of shareholders, or at any special meeting of shareholders called for the purpose of electing directors, (a) by or at the direction of the board of directors (or any duly authorized committee thereof) or (b) by any shareholder of the corporation (i) who is a shareholder of record on the date of the giving of the notice provided for in this Section 3.2 and on the record date for the determination of shareholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 3.2 or (c) by any shareholder pursuant to a written agreement with the corporation (which written agreement was approved by the board of directors), provided that such nominee meets the qualifications set forth in such written agreement.

In addition to any other applicable requirements, for a nomination to be made by a shareholder, such shareholder must have given timely notice thereof in proper written form to the secretary of the corporation. To be timely, a shareholder's notice to the secretary must be delivered to or mailed and received at the principal executive offices of the corporation (a) in the case of an annual meeting, not less than sixty (60) days nor more than ninety (90) days prior to the anniversary date of the immediately preceding annual meeting of shareholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the shareholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs; and (b) in the case of a special meeting of shareholders called for the purpose of electing directors, not later than the close of

business on the tenth (10th) day following the day on which notice of the date of the special meeting was mailed or public disclosure of the date of the special meeting was made, whichever first occurs. Public disclosure shall have the meaning set forth in Section 2.10 herein.

To be in proper written form, a shareholder's notice to the secretary must set forth (a) as to each person whom the shareholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by the person and (iv) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder; and (b) as to the shareholder giving the notice (i) the name and record address of such shareholder, (ii) the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by such shareholder, (iii) a description of all arrangements or understandings between such shareholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such shareholder, (iv) a representation that such shareholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (v) any other information relating to such shareholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this Section 3.2. If the chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

Section 3.3 Resignation; Vacancy. Any director of the corporation may resign at any time by giving written notice of such resignation to the board of directors, the chairman of the board, the president, any vice president or the secretary of the corporation. Any such resignation shall take effect at the time specified therein or, if no time be specified, upon receipt thereof by the board of directors or one of the above-named officers; and, unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.

If the office of a director becomes vacant for any reason, the remaining directors shall, by a majority vote, choose a successor or successors who shall hold office for the unexpired term in respect of which such vacancy occurred or until the next election of directors.

Section 3.4 Removal. Subject to any limitation imposed by law, directors may be removed from office with or without cause only (a) by the board of directors, as provided by law, in the event a director fails to meet the qualifications for election as a director as set forth under Section 3.2 herein, or in the event a director is in breach of any agreement between such director and the corporation relating to such director's services as a director or employee of the corporation, or (b) by a vote of the holders of sixty-six and two thirds percent (66-2/3%) of the shares then entitled to vote at an election of directors, voting as a single class. Any such vote by the shareholders shall be in addition to the separate vote of any particular class or series of capital stock of the corporation required by or pursuant to law, the articles of incorporation or otherwise. By action of a majority of the whole board, any director may be removed from office with or without cause only (a) if such director shall at the time of such removal fail to meet the qualifications for election as a director as set forth under Section 3.2 herein, or in the event a director is in

~~breach of any agreement between such director and the corporation relating to such director's services as a director or employee of the corporation, or (b) by a vote of the holders of sixty-six and two-thirds percent (66 2/3%) of the shares then entitled to vote at an election of directors, voting as a single class. Any such vote by the shareholders shall be in addition to the separate vote of any particular class or series of capital stock of the corporation required by or pursuant to law, the articles of incorporation or otherwise.~~

Section 3.5 Regular Meetings. Regular meetings of the board of directors shall be held at such places, within or without the State of Missouri, and on such days and at such times as shall be fixed from time to time by the board of directors. Notice of such regular meetings need not be given.

Section 3.6 Special Meetings. Special meetings of the board may be held at any time and place, within or without the State of Missouri, upon the call of the chairman of the board, the president or secretary of the corporation by oral, written, telegraphic, facsimile transmission or any other mode of notice duly given, sent or mailed to each director, at such director's last known address, not less than twenty-four (24) hours before such meeting.

Section 3.7 Quorum; Adjournment. At all meetings of the board, a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by statute. If a quorum shall not be present at any meeting of directors, the directors present thereat may adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.8 Place of Meetings. The directors may hold their meetings at the principal business office of the corporation or at such other place as they may determine.

Section 3.9 Board Committees. The board may designate an executive committee and one or more other committees, each committee to consist of one or more directors of the corporation. Any such committee, to the extent provided in any such resolution, shall have and may exercise all the powers and authority of the board in the management of the business and affairs of the corporation. Any such committee shall keep written minutes of its meetings and report the same to the board at the next regular meeting of the board. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board to act at the meeting in the place of any such absent or disqualified member.

Section 3.10 Participation via Conference Telephone. Members of the board of directors or of any committee designated by the board of directors may participate in a meeting of the board or committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

Section 3.11 Waiver of Notice. Whenever any notice is required to be given, a waiver thereof in writing, by telegram or facsimile transmission from the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 3.12 Attendance Constitutes Waiver of Notice. Attendance of a director at any meeting shall constitute a waiver of notice of the meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 3.13 Action by Consent. Any action which is required to be or may be taken at a meeting of the directors may be taken without a meeting if consents in writing, setting forth the action so taken, are signed by all the directors.

Section 3.14 Compensation of Directors. The directors shall receive only such compensation for their services as directors as may be allowed by resolution of the board. The board may also provide that the corporation shall reimburse each such director for any expense incurred by such director on account of such director's attendance at any meetings of the board or committees of the board. Neither the payment of such compensation nor the reimbursement of such expenses shall be construed to preclude any director from serving the corporation or its subsidiaries in any other capacity and receiving compensation therefor.

ARTICLE 4 OFFICERS

Section 4.1 Number, Election and Term. The officers of the corporation shall be a president and a secretary who shall be chosen by the board of directors at its first meeting after each annual meeting of shareholders. The board of directors may also choose a chairman of the board, one or more vice chairmen, one or more vice presidents, one or more of which may be designated as senior vice presidents or executive vice presidents, a treasurer, and one or more assistant secretaries and assistant treasurers.

The board may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board.

The officers of the corporation shall hold office until their successors are chosen.

Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the board of directors.

Section 4.2 Chairman of the Board. The chairman of the board, if any, shall preside at all meetings of the shareholders and directors at which he/she is present and shall perform such other duties as the board of directors or these by-laws may prescribe.

Section 4.3 Vice Chairmen. In the absence of the chairman of the board, the vice chairmen, if any, in order of their seniority, shall perform the duties and exercise the powers of the chairman of the board, preside at all meetings of the shareholders and directors at which any are present and perform such other duties as the board of directors may prescribe.

Section 4.4 President/Chief Executive Officer. In the absence of the chairman of the board and any vice chairmen, the president shall preside at all meetings of the shareholders and directors at which he/she is present. If no officer has been expressly designated as chief executive officer by the board of directors, the president shall be chief executive officer of the corporation, with the powers and duties which attach to such position. He/she shall perform such duties as the board of directors may prescribe and shall see that all orders and resolutions of the board are carried into effect.

The president shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation.

Section 4.5 Senior Vice Presidents and Executive Vice Presidents. Senior vice presidents and executive vice presidents shall perform such duties and exercise such powers as shall be delegated by the chief executive officer or as shall be designated by the board of directors.

Section 4.6 Vice Presidents. Vice presidents shall perform such duties and exercise such powers as shall be delegated by the chief executive officer or as shall be designated by the board of directors.

Section 4.7 Secretary and Assistant Secretaries. The secretary shall keep or cause to be kept a record of all meetings of the shareholders and the board of directors and record all votes and the minutes of all proceedings in a book to be kept for that purpose. He/she shall give, or cause to be given, notice of all meetings of the shareholders and special meetings of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or chief executive officer, under whose supervision he/she shall be. He/she shall keep in safe custody the seal of the corporation and shall affix the same to any instrument requiring it.

The assistant secretaries, if any, in order of their seniority shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary and shall perform such other duties as the board of directors may prescribe.

Section 4.8 Treasurer and Assistant Treasurers. The treasurer, if any, shall have the custody of the corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors and shall perform such other duties as the board of directors may prescribe.

The treasurer shall disburse the funds of the corporation as may be ordered by the board, taking proper vouchers for such disbursements, and shall render to the chairman of the board, chief executive officer, president and directors, at the regular meetings of the board, or whenever they may require it, an account of all his/her transactions as treasurer and of the financial condition of the corporation.

If required by the board of directors, the treasurer shall give the corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the board for the faithful performance of the duties of his/her office and for the restoration to the corporation, in case of his/her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his/her possession or under his/her control belonging to the corporation.

The assistant treasurers, if any, in the order of their seniority shall, in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer and shall perform such other duties as the board of directors may prescribe.

ARTICLE 5 CAPITAL STOCK

Section 5.1 Share Certificates. The shares of the corporation shall be represented by certificates in such form as the appropriate officers of the corporation may from time to time prescribe; provided that the board may provide by resolution or resolutions that some or all of any or all classes or series of stock of the corporation shall be uncertificated shares. Notwithstanding the foregoing, every holder of uncertificated shares of a class or series some but not all of which are represented by certificates, shall be entitled, upon request, to a certificate representing such shares. Every holder of uncertificated shares shall be entitled to receive a statement of holdings as evidence of share ownership. Shares represented by

certificates shall be numbered and registered in a share register as they are issued. Share certificates shall exhibit the name of the registered holder, the number and class of shares and the series, if any, represented thereby, the par value of each share or a statement that such shares are without par value as the case may be, and any other information required by law, regulation or stock exchange rule. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificated shares of the same class and series shall be identical.

Section 5.2 Transfer of Stock. Upon surrender to the corporation, or a transfer agent of the corporation, of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, the corporation may issue to the person entitled thereto (a) a new certificate for such shares or (b) if requested by the holder and such shares are of a class or series of stock which may be uncertificated, (i) evidence of equivalent uncertificated shares or (ii) both a new certificate and evidence of uncertificated shares equaling in the aggregate the number of shares represented by the surrendered certificate, and in any case, the corporation shall cancel the old certificate and record the transaction upon its books. Upon receipt by the corporation, or a transfer agent of the corporation, of proper transfer instructions for uncertificated shares, accompanied by proper evidence of succession, assignment or authority to transfer, the corporation may issue to the person entitled thereto (a) evidence of equivalent uncertificated shares or (b) if requested by the holder, (i) a certificate for such shares or (ii) both a certificate and evidence of uncertificated shares equaling in the aggregate the number of shares covered by such transfer instructions, and in any case, the corporation shall cancel the old uncertificated shares and record the transaction upon its books.

Section 5.3 Transfer Agents and Registrars; Facsimile Signatures. The board may appoint one or more transfer agents and one or more registrars (any one of which may be appointed as both transfer agent and registrar) and may require all certificates for shares to bear the signature or signatures of any of them, any of which signature or signatures may be facsimile. In case any officer or officers of the corporation who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers, whether because of death, resignation or otherwise, before such certificate or certificates have been delivered by the corporation, such certificate or certificates may, nevertheless, be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the corporation.

Section 5.4 Registered Shareholders. The corporation shall be entitled to treat the holder of record of any share or shares as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

Section 5.5 Closing of Transfer Books and Fixing of Record Date. The board of directors shall have the power to close the transfer books of the corporation for a period not exceeding fifty (50) days preceding the date of any meeting of shareholders, or the date for payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect; provided, however, that in lieu of closing the transfer books as aforesaid, the board of directors may fix in advance a date, not exceeding fifty (50) days preceding the date of any meeting of shareholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect, as a record date for the determination of the shareholders entitled to notice of, and to vote at any such meeting and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or entitled to exercise the rights in respect of any such change, conversion or exchange of shares. In such case only the shareholders who are shareholders of record on the record date so fixed shall be entitled to such notice of

and to vote at such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the date of closing of the transfer books or the record date fixed as aforesaid.

Section 5.6 Lost Certificate. The holder of any shares of stock of the corporation shall immediately notify the corporation and its transfer agents and registrars, if any, of any loss or destruction of the certificates representing the same. The corporation may issue a new certificate in the place of any certificate theretofore issued by it which is alleged to have been lost or destroyed and the board of directors may require the owner of the lost or destroyed certificate or such owner's legal representative to give the corporation a bond in such sum and in such form as the board of directors may direct or approve, and with such surety or sureties as may be satisfactory to the board of directors, to indemnify the corporation and its transfer agents and registrars, if any, against any claim or liability that may be asserted against or incurred by it or any transfer agent or registrar on account of the alleged loss or destruction of any such certificate or the issuance of such new certificate. A new certificate may be issued without requiring any bond when, in the judgment of the board of directors, it is proper so to do. The board of directors may delegate to any officer or officers of the corporation any of the powers and authorities contained in this Section 5.6.

ARTICLE 6 DIVIDENDS

Dividends upon the issued shares of the corporation may be declared by the board of directors at any regular or special meeting pursuant to law.

Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interest of the corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE 7 FISCAL YEAR

The fiscal year of the corporation shall begin the 1st day of May in each year.

ARTICLE 8 SEAL

The corporate seal shall have inscribed thereon the name of the corporation, the state of incorporation, the words, Corporate Seal, and such other inscriptions as the board of directors may deem appropriate. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE 9 INDEMNIFICATION OF AND INSURANCE ON DIRECTORS, OFFICERS EMPLOYEES AND AENTS

Section 9.1 Actions Involving Directors and Officers. The corporation shall indemnify each person who at any time is serving or has served as a director or an officer of the corporation against any claim, liability

or expense incurred as a result of such service, or as a result of any other service on behalf of the corporation, or service at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise, to the maximum extent permitted by law. Without limiting the generality of the foregoing, the corporation shall indemnify any such person who was or is a party (other than a party plaintiff suing on his own behalf or in the right of the corporation), or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, but not limited to, an action by or in the right of the corporation) by reason of such services against expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding.

Section 9.2 Actions Involving Employees or Agents. The corporation may, if it deems appropriate and as may be permitted by this Section 9.2, indemnify any person who at any time is serving or has served as an employee or agent of the corporation against any claim, liability or expense incurred as a result of such service or as a result of any other service on behalf of the corporation, or service at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, to the maximum extent permitted by law or to such lesser extent as the corporation, in its discretion, may deem appropriate. Without limiting the generality of the foregoing, the corporation may indemnify any such person who was or is a party (other than a party plaintiff suing on his own behalf or in the right of the corporation), or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, but not limited to, an action by or in the right of the corporation) by reason of such services against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding. To the extent that an officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Section 9.2, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the action, suit or proceeding.

Section 9.3 Determination of Right to Indemnification in Certain Circumstances. Any indemnification required under Section 9.1 of this Article 9 or authorized by the corporation under Section 9.2 of this Article 9, unless ordered by a court shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in or established pursuant to this Article 9. Such determination shall be made (a) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (c) by the shareholders.

Section 9.4 Advance Payment of Expenses. Expenses incurred by a person who is or was a director or an officer of the corporation in defending a civil or criminal action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding, and expenses incurred by a person who is or was an officer, employee or agent of the corporation in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors, in either case upon receipt of an undertaking by or on behalf of the director or the officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in or pursuant to this Article 9.

Section 9.5 Not Exclusive. The indemnification provided by this Article 9 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the articles of

incorporation of the corporation or any statute, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office.

Section 9.6 Indemnification Agreements Authorized. Without limiting the other provisions of this Article 9, the corporation is authorized from time to time, without further action by the shareholders of the corporation, to enter into agreements with any director, officer, employee or agent of the corporation providing such rights of indemnification as the corporation may deem appropriate, up to the maximum extent permitted by law. Any such agreement entered into by the corporation with a director may be authorized by the other directors, and such authorization shall not be invalid on the basis that similar agreements may have been or may thereafter be entered into with such other directors.

Section 9.7 Standard of Conduct. Except as may otherwise be permitted by law, no person shall be indemnified pursuant to this Article 9 (including without limitation pursuant to any agreement entered into pursuant to Section 9.6 of this Article 9) from or on account of such person's conduct which is finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct. The corporation may (but need not) adopt a more restrictive standard of conduct with respect to the indemnification of any employee or agent of the corporation.

Section 9.8 Insurance. The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was otherwise serving on behalf or at the request of the corporation in any such capacity, or arising out of his status as such, whether or not the corporation is obliged to or would have the power to indemnify him against such liability under the provisions of this Article 9; provided, that the obtaining of any such insurance shall not give rise to any right to indemnification for any director, officer, employee or agent except as otherwise specified herein, in the articles of incorporation of the corporation, or by separate agreement with the corporation.

Section 9.9 Certain Definitions. For purposes of this Article 9:

- (i) Any director or officer of the corporation who shall serve as a director, officer or employee of any other corporation, partnership, joint venture, trust or other enterprise of which the corporation, directly or indirectly, is or was the owner of a majority of either the outstanding equity interests or the outstanding voting stock (or comparable interests) shall be deemed to be serving as such director, officer or employee at the request of the corporation, unless the board of directors of the corporation shall determine otherwise. In all other instances where any person shall serve as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise of which the corporation is or was a shareholder or creditor, or in which it is or was otherwise interested, if it is not otherwise established that such person is or was serving as such director, officer, employee or agent at the request of the corporation, the board of directors of the corporation may determine whether such service is or was at the request of the corporation, and it shall not be necessary to show any actual or prior request for such service.
 - (ii) References to a corporation include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director, officer, employee or agent of such a constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this
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Article 9 with respect to the resulting or surviving corporation as he would if he had served the resulting or surviving corporation in the same capacity.

- (iii) The term “other enterprise” shall include employee benefit plans; the term “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; the term “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to any employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have satisfied any standard of care required by or pursuant to this Article 9 in connection with such plan.

Section 9.10 Survival. Any indemnification rights provided pursuant to this Article 9 shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. Notwithstanding any other provision in these by-laws, indemnification rights arising under or granted pursuant to this Article 9 shall survive amendment or repeal of this Article 9 with respect to any acts or omissions occurring prior to the effective time of such amendment or repeal and persons to whom such indemnification rights are given shall be entitled to rely upon such indemnification rights with respect to such acts or omissions as a binding contract with the corporation.

**ARTICLE 10
ALTERATION, AMENDMENT
OR REPEAL OF BY-LAWS**

All by-laws of the corporation may be amended, altered or repealed, and new by-laws may be made, by the affirmative vote of a majority of the directors cast at any regular or special meeting at which a quorum is present provided that such authority has been delegated to the board of directors by the articles of incorporation.

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Section 4: EX-31.1 (EX-31.1)

**EXHIBIT
31.1**

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE
SARBANES-OXLEY ACT OF 2002**

I, Timothy D. Boyd, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Peak Resorts, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 8, 2016

/s/ Timothy D. Boyd
Timothy D. Boyd
Chief Executive Officer and Director
(Principal Executive Officer)

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Section 5: EX-31.2 (EX-31.2)

EXHIBIT
31.2

CERTIFICATION OF THE CHIEF FINANCIAL OFFICER PURUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Stephen J. Mueller, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Peak Resorts, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)), for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 8, 2016

/s/ Stephen J. Mueller

Stephen J. Mueller

Chief Financial Officer and Director

(Principal Financial Officer)

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Section 6: EX-32.1 (EX-32.1)

**EXHIBIT
32.1**

**CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND
CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Timothy D. Boyd, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Peak Resorts, Inc. (the "Company") for the fiscal quarter ended July 31, 2016 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: September 8, 2016

By: /s/ Timothy D. Boyd
Name: Timothy D. Boyd
Title: Chief Executive Officer

I, Stephen J. Mueller, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Peak Resorts, Inc. (the "Company") for the fiscal quarter ended July 31, 2016 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: September 8, 2016

By: /s/ Stephen J. Mueller
Name: Stephen J. Mueller
Title: Chief Financial Officer

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