

ORIGIN ID: CHA (423) 209-4123
KATHLEEN HARRISON
BAKER DONELSON BEARMAN CALDWELL
633 CHESTNUT STREET
SUITE 1900
CHATTANOOGA, TN 37450
UNITED STATES US

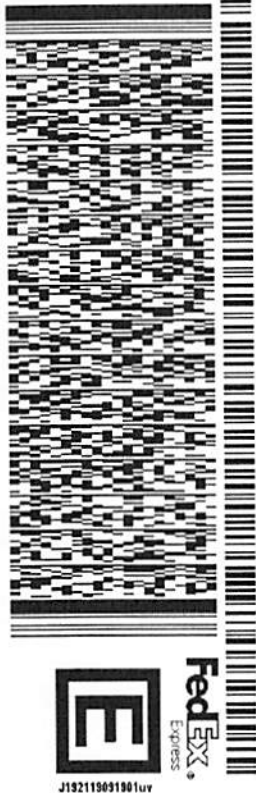
SHIP DATE: 25OCT19
ACTWGT: 2.00 LB
CAD: 111332957/MNET4160
BILL SENDER

TO USCIS

ATTN: I-290B
2501 S. STATE HWY 121 BUSINESS
SUITE 400

LEWISVILLE TX 75067

(423) 209-4201 REF: 2939047-000001
INV/ PO DEPT



TRK# 7768 1381 9201
0201

MON - 28 OCT 10:30A
PRIORITY OVERNIGHT

XH KIPA

TX-US 75067
DFW



After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.



e-Notification of Application/Petition Acceptance

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form G-1145

What Is the Purpose of This Form?

Use this form to request an electronic notification (e-Notification) when U.S. Citizenship and Immigration Services accepts your immigration application. This service is available for applications filed at a USCIS Lockbox facility.

General Information

Complete the information below and clip this form to the first page of your application package. You will receive one e-mail and/or text message for each form you are filing.

We will send the e-Notification within 24 hours after we accept your application. Domestic customers will receive an e-mail and/or text message; overseas customers will only receive an e-mail. Undeliverable e-Notifications cannot be resent.

The e-mail or text message will display your receipt number and tell you how to get updated case status information. It will not include any personal information. The e-Notification does not grant any type of status or benefit; rather it is provided as a convenience to customers.

USCIS will also mail you a receipt notice (I-797C), which you will receive within 10 days after your application has been accepted; use this notice as proof of your pending application or petition.

USCIS Privacy Act Statement

AUTHORITIES: The information requested on this form is collected pursuant to section 103(a) of the Immigration and Nationality Act, as amended INA section 101, et seq.

PURPOSE: The primary purpose for providing the information on this form is to request an electronic notification when USCIS accepts immigration form. The information you provide will be used to send you a text and/or email message.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information may prevent USCIS from providing you a text and/or email message receipting your immigration form.

ROUTINE USES: The information provide on this form will be used by and disclosed to DHS personnel and contractors in accordance with approved routine uses, as described in the associated published system of records notices [[DHS/USCIS-007 - Benefits Information System](#) and [DHS/USCIS-001 - Alien File \(A-File\) and Central Index System \(CIS\)](#)], which can be found at www.dhs.gov/privacy. The information may also be made available, as appropriate for law enforcement purposes or in the interest of national security.

Complete this form and clip it on top of the first page of your immigration form(s).

Applicant/Petitioner Full Last Name Goldstein	Applicant/Petitioner Full First Name Joan	Applicant/Petitioner Full Middle Name Marie
Email Address joan.goldstein@vermont.gov		Mobile Phone Number (Text Message)

Check Date: 10/23/2019

STATE OF VERMONT

Check No. 0000256815

HC	Department:	Invoice Number:	Invoice Date	Voucher ID	Paid Amount
CA	Economic Development	USCIS FILING FEE	10/22/2019	00018126	675.00

FOLD

FOLD

Check Number	Date	Name	Supplier Number:	Total Paid
0000256815	10/23/2019	U.S. Department of Homeland Security	0000069831	\$675.00

REMOVE DOCUMENT ALONG THIS PERFORATION

THIS CHECK IS VOID WITHOUT A GREEN & BLUE BORDER AND BACKGROUND PLUS A KNIGHT & FINGERPRINT WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW



STATE OF VERMONT
 Treasurer's Office
 109 State Street
 Montpelier, VT 05609-6200

People's United Bank, N.A.
 112 Main St.
 Montpelier, VT 05601
 51-7218/2211

Void After 120 Days

Date 10/23/2019

Paid Amount

*****\$675.00**

Pay **SIX HUNDRED SEVENTY-FIVE AND XX/100 DOLLARS**

To The Order Of **U.S. Department of Homeland Security**
 Vermont Service Center
 75 Lower Welden St
 St Albans, VT 05479-0001

[Signature]
 Authorized Signature

PLEASE REMOVE THIS STRIP BEFORE CASHING CHECK

Form# SOV-954EZ-R361



Notice of Entry of Appearance as Attorney or Accredited Representative

Department of Homeland Security

DHS
Form G-28
OMB No. 1615-0105
Expires 05/31/2021

Part 1. Information About Attorney or Accredited Representative

1. USCIS Online Account Number (if any)

▶

Name of Attorney or Accredited Representative

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

Address of Attorney or Accredited Representative

3.a. Street Number and Name

3.b. Apt. Ste. Flr.

3.c. City or Town

3.d. State 3.e. ZIP Code

3.f. Province

3.g. Postal Code

3.h. Country

Contact Information of Attorney or Accredited Representative

4. Daytime Telephone Number

5. Mobile Telephone Number (if any)

6. Email Address (if any)

7. Fax Number (if any)

Part 2. Eligibility Information for Attorney or Accredited Representative

Select all applicable items.

1.a. I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest courts of the following states, possessions, territories, commonwealths, or the District of Columbia. If you need extra space to complete this section, use the space provided in **Part 6. Additional Information**.

Licensing Authority

1.b. Bar Number (if applicable)

1.c. I (select **only one** box) am not am subject to any order suspending, enjoining, restraining, disbaring, or otherwise restricting me in the practice of law. If you are subject to any orders, use the space provided in **Part 6. Additional Information** to provide an explanation.

1.d. Name of Law Firm or Organization (if applicable)

2.a. I am an accredited representative of the following qualified nonprofit religious, charitable, social service, or similar organization established in the United States and recognized by the Department of Justice in accordance with 8 CFR part 1292.

2.b. Name of Recognized Organization

2.c. Date of Accreditation (mm/dd/yyyy)

3. I am associated with
the attorney or accredited representative of record who previously filed Form G-28 in this case, and my appearance as an attorney or accredited representative for a limited purpose is at his or her request.

4.a. I am a law student or law graduate working under the direct supervision of the attorney or accredited representative of record on this form in accordance with the requirements in 8 CFR 292.1(a)(2).

4.b. Name of Law Student or Law Graduate

Part 3. Notice of Appearance as Attorney or Accredited Representative

If you need extra space to complete this section, use the space provided in Part 6. Additional Information.

This appearance relates to immigration matters before (select **only one** box):

1.a. U.S. Citizenship and Immigration Services (USCIS)

1.b. List the form numbers or specific matter in which appearance is entered.

I-290B

2.a. U.S. Immigration and Customs Enforcement (ICE)

2.b. List the specific matter in which appearance is entered.

3.a. U.S. Customs and Border Protection (CBP)

3.b. List the specific matter in which appearance is entered.

4. Receipt Number (if any)

▶ A A O 1 8 9 0 0 0 0 6 3 0

5. I enter my appearance as an attorney or accredited representative at the request of the (select **only one** box):

Applicant Petitioner Requestor

Beneficiary/Derivative Respondent (ICE, CBP)

Information About Client (Applicant, Petitioner, Requestor, Beneficiary or Derivative, Respondent, or Authorized Signatory for an Entity)

6.a. Family Name (Last Name) Goldstein

6.b. Given Name (First Name) Joan

6.c. Middle Name

7.a. Name of Entity (if applicable)

Vermont Agency of Commerce and Community Development Regional Center

7.b. Title of Authorized Signatory for Entity (if applicable)

Commissioner

8. Client's USCIS Online Account Number (if any)

▶

9. Client's Alien Registration Number (A-Number) (if any)

▶ A-

Client's Contact Information

10. Daytime Telephone Number

802-272-2399

11. Mobile Telephone Number (if any)

12. Email Address (if any)

joan.goldstein@vermont.gov

Mailing Address of Client

NOTE: Provide the client's mailing address. Do not provide the business mailing address of the attorney or accredited representative unless it serves as the safe mailing address on the application or petition being filed with this Form G-28.

13.a. Street Number and Name 1 National Life Dr., David Building

13.b. Apt. Stc. Flr. 6

13.c. City or Town Montpelier

13.d. State VT 13.e. ZIP Code 05620-0501

13.f. Province

13.g. Postal Code

13.h. Country

USA

Part 4. Client's Consent to Representation and Signature

Consent to Representation and Release of Information

I have requested the representation of and consented to being represented by the attorney or accredited representative named in Part 1. of this form. According to the Privacy Act of 1974 and U.S. Department of Homeland Security (DHS) policy, I also consent to the disclosure to the named attorney or accredited representative of any records pertaining to me that appear in any system of records of USCIS, ICE, or CBP.

Part 4. Client's Consent to Representation and Signature (continued)

Options Regarding Receipt of USCIS Notices and Documents

USCIS will send notices to both a represented party (the client) and his, her, or its attorney or accredited representative either through mail or electronic delivery. USCIS will send all secure identity documents and Travel Documents to the client's U.S. mailing address.

If you want to have notices and/or secure identity documents sent to your attorney or accredited representative of record rather than to you, please select **all applicable** items below. You may change these elections through written notice to USCIS.

1.a. I request that USCIS send original notices on an application or petition to the U.S. business address of my attorney or accredited representative as listed in this form.

1.b. I request that USCIS send any secure identity document (Permanent Resident Card, Employment Authorization Document, or Travel Document) that I receive to the U.S. business address of my attorney or accredited representative (or to a designated military or diplomatic address in a foreign country (if permitted)).

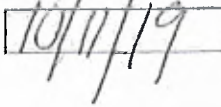
NOTE: If your notice contains Form I-94, Arrival-Departure Record, USCIS will send the notice to the U.S. business address of your attorney or accredited representative. If you would rather have your Form I-94 sent directly to you, select **Item Number 1.c.**

1.c. I request that USCIS send my notice containing Form I-94 to me at my U.S. mailing address.

Signature of Client or Authorized Signatory for an Entity

2.a. Signature of Client or Authorized Signatory for an Entity

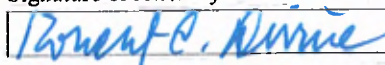
→ 


2.b. Date of Signature (mm/dd/yyyy) 

Part 5. Signature of Attorney or Accredited Representative

I have read and understand the regulations and conditions contained in 8 CFR 103.2 and 292 governing appearances and representation before DHS. I declare under penalty of perjury under the laws of the United States that the information I have provided on this form is true and correct.


1. a. Signature of Attorney or Accredited Representative



1.b. Date of Signature (mm/dd/yyyy) 

2.a. Signature of Law Student or Law Graduate



2.b. Date of Signature (mm/dd/yyyy) 

Part 6. Additional Information

If you need extra space to provide any additional information within this form, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this form or attach a separate sheet of paper. Type or print your name at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

2.a. Page Number 2.b. Part Number 2.c. Item Number

2.d.

4.a. Page Number 4.b. Part Number 4.c. Item Number

4.d.

5.a. Page Number 5.b. Part Number 5.c. Item Number

5.d.

3.a. Page Number 3.b. Part Number 3.c. Item Number

3.d.

6.a. Page Number 6.b. Part Number 6.c. Item Number

6.d.



Notice of Appeal or Motion
 Department of Homeland Security
 U.S. Citizenship and Immigration Services

USCIS
 Form I-290B
 OMB No. 1615-0095
 Expires 05/31/2020

For USCIS Use Only	Returned	Reloc Sent	Receipt	Remarks
	Date / /	Date / /		
	Date / /	Date / /		
	Resubmitted	Reloc Rec'd		
	Date / /	Date / /		
	Date / /	Date / /		

To be completed by an attorney or accredited representative (if any).	<input checked="" type="checkbox"/> Select this box if Form G-28 is attached.	Attorney State Bar Number (if applicable)	Attorney or Accredited Representative USCIS Online Account Number (if any)
		013211	

Please visit www.uscis.gov/i-290b/jurisdiction for information on the immigration benefit types that are eligible for an appeal or motion using this form.

▶ **START HERE** - Type or print in black ink.

Part 1. Information About the Applicant or Petitioner

If you are an individual filing this appeal or motion, complete Item Number 1. If you are a business or organization, complete Item Number 2.

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

2. Business or Organization (if applicable)

3. Alien Registration Number (A-Number, if any)
 ▶ A-

4. USCIS Online Account Number (if any)
 ▶

Mailing Address (or Military APO/FPO Address, if applicable)

5.a. In Care Of Name (if any)

5.b. Street Number and Name

5.c. Apt. Ste. Flr.

5.d. City or Town

5.e. State 5.f. ZIP Code

5.g. Province

5.h. Postal Code

5.i. Country

Part 2. Information About the Appeal or Motion

Please indicate whether you are filing an appeal to the Administrative Appeals Office (AAO) or a motion. You are not allowed to file both an appeal and a motion on a single form. If you select more than one box, your filing may be rejected.

NOTE: DO NOT use this form if you are filing an appeal relating to a Form I-130, Petition for Alien Relative, or a Form I-360, Self-Petition for a Widow(er) of a U.S. Citizen. You must file those appeals with the Board of Immigration Appeals using Form EOIR-29.

Part 2. Information About the Appeal or Motion
(continued)

- 1.a. I am filing an appeal to the AAO. My brief and/or additional evidence is attached.
- 1.b. I am filing an appeal to the AAO. I will submit my brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal.
- 1.c. I am filing an appeal to the AAO. I will not be submitting a brief and/or additional evidence.
- 1.d. I am filing a motion to reopen. My brief and/or additional evidence is attached.
- 1.e. I am filing a motion to reconsider. My brief is attached.
- 1.f. I am filing a motion to reopen and a motion to reconsider. My brief and/or additional evidence is attached.
- 2. USCIS Form for the Application or Petition That is the Subject of This Appeal or Motion (for example, Form I-140, I-360, I-129, I-485, I-601)
- 3. Receipt Number for the Application or Petition
- 4. Requested Nonimmigrant or Immigrant Classification (for example, H-1B, R-1, O-1, EB-1, EB-2, if applicable)
- 5. Date of the Adverse Decision (mm/dd/yyyy)
- 6. Office That Issued the Adverse Decision

Part 3. Basis for the Appeal or Motion

In Part 7, Additional Information, or on a separate sheet of paper, you must provide a statement regarding the basis for the appeal or motion. If you attach a separate sheet of paper, type or print your name and A-Number (if any) at the top of each sheet; indicate the Page Number, Part Number, and Item Number to which your answer refers; and sign and date each sheet.

Appeal: Provide a statement that specifically identifies an erroneous conclusion of law or fact in the decision being appealed. You must provide this information with your Form I-290B even if you intend to submit a brief later.

Motion to Reopen: A motion to reopen must state new facts and be supported by documentary evidence demonstrating eligibility for the requested immigration benefit at the time you filed the application or petition.

Motion to Reconsider: A motion to reconsider must demonstrate that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence in the case record at the time of the decision. The motion must be supported by citations to appropriate statutes, regulations, precedent decisions, or statements of USCIS policy.

Part 4. Applicant's or Petitioner's Statement, Contact Information, Certification, and Signature

NOTE: Read the Penalties section of the Form I-290B Instructions before completing this part.

Section A

If you are filing an appeal or motion based on an APPLICATION OR PETITION FILED BY AN INDIVIDUAL (NOT A BUSINESS OR ORGANIZATION), complete this section:

Applicant's or Petitioner's Statement

NOTE: Select the box for either Item Number 1.a. or 1.b. If applicable, select the box for Item Number 2.

- 1.a. I can read and understand English, and I have read and understand every question and instruction on this form and my answer to every question.
- 1.b. The interpreter named in Part 5. has read to me every question and instruction on this form, and my answer to every question, in a language in which I am fluent. I understood all of this information as interpreted.
- 2. At my request, the preparer named in Part 6. prepared this form for me based only upon information I provided or authorized.

Applicant's or Petitioner's Contact Information

- 3. Applicant's or Petitioner's Daytime Telephone Number
- 4. Applicant's or Petitioner's Mobile Telephone Number (if any)
- 5. Applicant's or Petitioner's Email Address (if any)

Part 4. Applicant's or Petitioner's Statement, Contact Information, Certification, and Signature (continued)

Applicant's or Petitioner's Certification

Copies of any documents I have submitted are exact photocopies of unaltered, original documents, and I understand that USCIS may require that I submit original documents to USCIS at a later date. Furthermore, I authorize the release of any information from any of my records that USCIS may need to determine my eligibility for the immigration benefit that I seek.

I further authorize release of information contained in this form, in supporting documents, and in my USCIS records, to other entities and persons where necessary for the administration and enforcement of U.S. immigration law.

I certify, under penalty of perjury, that all of the information in my form and any document submitted with it were provided or authorized by me, that I reviewed and understand all of the information contained in, and submitted with, my form, and that all of this information is complete, true, and correct.

Applicant's or Petitioner's Signature

6.a. Applicant's or Petitioner's Signature

6.b. Date of Signature (mm/dd/yyyy)

Section B

If you are filing an appeal or motion based on a **PETITION FILED BY A BUSINESS OR ORGANIZATION (NOT AN INDIVIDUAL)**, complete this section:

Petitioner's Statement

NOTE: Select the box for either **Item Number 1.a.** or **1.b.** If applicable, select the box for **Item Number 2.**

1.a. I can read and understand English, and I have read and understand every question and instruction on this form and my answer to every question.

1.b. The interpreter named in **Part 5.** has read to me every question and instruction on this form, and my answer to every question, in

a language in which I am fluent. I understood all of this information as interpreted.

2. At my request, the preparer named in **Part 6.** prepared this form for me based only upon information I provided or authorized.

Petitioner's Contact Information

Provide the following information about the petitioner's authorized signatory.

3.a. Family Name (Last Name)

3.b. Given Name (First Name)

3.c. Middle Name

4. Title

5. Daytime Telephone Number

6. Mobile Telephone Number (if any)

7. Email Address (if any)

Petitioner's Certification

Copies of any documents submitted are exact photocopies of unaltered, original documents, and I understand that, as the petitioner, I may be required to submit original documents to USCIS at a later date.

I authorize the release of any information from my records, or from the petitioning organization's records, to USCIS or other entities and persons where necessary to determine eligibility for the immigration benefit sought or where authorized by law. I recognize the authority of USCIS to conduct audits of this form using publicly available open source information. I also recognize that any supporting evidence submitted in support of this form may be verified by USCIS through any means determined appropriate by USCIS, including but not limited to, on-site compliance reviews.

If filing this form on behalf of an organization, I certify that I am authorized to do so by the organization.

I certify, under penalty of perjury, that I have reviewed this form, I understand all of the information contained in, and submitted with, my appeal or motion, and all of this information is complete, true, and correct.

Petitioner's Signature

8.a. Petitioner's Signature

8.b. Date of Signature (mm/dd/yyyy)

NOTE TO ALL APPLICANTS AND PETITIONERS: If you do not completely fill out this form or fail to submit required documents listed in the Instructions, USCIS may dismiss, deny, or reject your appeal or motion.

Part 5. Interpreter's Contact Information, Certification, and Signature

Provide the following information about the interpreter.

Interpreter's Full Name

- 1.a. Interpreter's Family Name (Last Name)
- 1.b. Interpreter's Given Name (First Name)
- 2. Interpreter's Business or Organization Name (if any)

Interpreter's Mailing Address

- 3.a. Street Number and Name
- 3.b. Apt. Ste. Flr.
- 3.c. City or Town
- 3.d. State 3.e. ZIP Code
- 3.f. Province
- 3.g. Postal Code
- 3.h. Country

Interpreter's Contact Information

- 4. Interpreter's Daytime Telephone Number
- 5. Interpreter's Mobile Telephone Number (if any)
- 6. Interpreter's Email Address (if any)

Interpreter's Certification

I certify, under penalty of perjury, that:

I am fluent in English and , which is the same language specified in Part 4., Item Number 1.b, in Section A or Section B, and I have read to this applicant or petitioner in the identified language every question and instruction on this form and his or her answer to every question. The applicant or petitioner informed me that he or she understands every instruction, question, and answer on the form, including the Applicant's or Petitioner's Certification, and has verified the accuracy of every answer.

Interpreter's Signature

- 7.a. Interpreter's Signature
- 7.b. Date of Signature (mm/dd/yyyy)

Part 6. Contact Information, Declaration, and Signature of the Person Preparing this Form, if Other Than the Applicant or Petitioner

Provide the following information about the preparer.

Preparer's Full Name

- 1.a. Preparer's Family Name (Last Name)
- 1.b. Preparer's Given Name (First Name)
- 2. Preparer's Business or Organization Name (if any)

Preparer's Mailing Address

- 3.a. Street Number and Name
- 3.b. Apt. Ste. Flr.
- 3.c. City or Town
- 3.d. State 3.e. ZIP Code
- 3.f. Province
- 3.g. Postal Code
- 3.h. Country

Preparer's Contact Information

- 4. Preparer's Daytime Telephone Number
- 5. Preparer's Mobile Telephone Number (if any)
- 6. Preparer's Email Address (if any)

Part 6. Contact Information, Declaration, and Signature of the Person Preparing this Form, if Other Than the Applicant or Petitioner (continued)

Preparer's Statement

- 7.a. I am not an attorney or accredited representative but have prepared this form on behalf of the applicant or petitioner and with the applicant's or petitioner's consent.
- 7.b. I am an attorney or accredited representative and have prepared this form on behalf of the applicant or petitioner and with the applicant's or petitioner's consent.

Preparer's Certification


By my signature, I certify, under penalty of perjury, that I prepared this form at the request of the applicant or petitioner. The applicant or petitioner then reviewed this completed form and informed me that he or she understands all of the information contained in, and submitted with, his or her form, including the Applicant's or Petitioner's Certification, and that all of this information is complete, true, and correct. I completed this form based only on information that the applicant or petitioner provided to me or authorized me to obtain or use.

Preparer's Signature

8.a. Preparer's Signature



8.b. Date of Signature (mm/dd/yyyy)



Part 7. Additional Information

If you need extra space to provide any additional information within this form, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this form or attach a separate sheet of paper. Type or print your name and A-Number at the top of each sheet; indicate the Page Number, Part Number, and Item Number to which your answer refers; and sign and date each sheet.

1.a. Family Name (Last Name)

1.b. Given Name (First Name)

1.c. Middle Name

2. A-Number (if any) ▶ A-

3.a. Page Number 3.b. Part Number 3.c. Item Number

3.d. Vermont Agency of Commerce and
Community Development Regional Center
(RC ID 1031910148)

4.a. Page Number 4.b. Part Number 4.c. Item Number

4.d. _____

5.a. Page Number 5.b. Part Number 5.c. Item Number

5.d. _____

6.a. Page Number 6.b. Part Number 6.c. Item Number

6.d. _____

7.a. Page Number 7.b. Part Number 7.c. Item Number

7.d. _____

NOTE: Make sure your appeal or motion is complete before filing.



U.S. Citizenship
and Immigration
Services

ATTN JOAN GOLDSTEIN
COMMISSIONER
AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT
1 NATIONAL LIFE DR 6TH FL
MONTPELIER VT 05620

DATE: SEPT. 25, 2019

APPLICATION RECEIPT #: RCW 10 319 10148
I-290B RECEIPT #: AAO 18 900 00630

IN RE: VERMONT AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT
REGIONAL CENTER

APPLICATION: FORM I-924, APPLICATION FOR REGIONAL CENTER UNDER THE IMMIGRANT
INVESTOR PILOT PROGRAM

ON BEHALF OF APPELLANT:

ROBERT DIVINE, ESQUIRE
BAKER DONELSON BEARMAN CALDWELL
& BERKOWITZ, P.C.
633 CHESTNUT ST STE 1900
CHATTANOOGA TN 37450

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision, reopen the proceeding, or both. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Form I-290B, Notice of Appeal or Motion, **within 33 days of the date of this decision**. This time period includes three days added for service by mail.

The Form I-290B website (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Sincerely,

A handwritten signature in cursive script that reads "Barbara Q. Velarde".

Barbara Q. Velarde
Chief, Administrative Appeals Office



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF V-A-O-C-A-C-D-R-C-

DATE: SEPT. 25, 2019

APPEAL OF IMMIGRANT INVESTOR PROGRAM OFFICE DECISION

APPLICATION: FORM I-924, APPLICATION FOR REGIONAL CENTER UNDER THE IMMIGRANT INVESTOR PILOT PROGRAM

In 1990, Congress established the EB-5 program¹ to promote economic growth in the United States through foreign investment. *See* Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5). Foreign national investors who comply with the program's requirements first receive conditional status, followed by the opportunity for the removal of conditions and permanent resident status.² Investors may fund their own projects, or invest through a U.S. Citizenship and Immigration Services (USCIS) designated regional center. *See* Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (the "Appropriations Act"), 1993, Pub. L. No. 102-395, 106 Stat. 1828, 1874 (Oct. 6, 1992), as amended.

The Appellant, Vermont Agency of Commerce and Community Development (VACCD),³ applied for designation as a regional center to participate in the EB-5 program. USCIS granted the application in 1997. The designated regional center is called Vermont Agency of Commerce and Community Development Regional Center (VRC). The Chief of the Immigrant Investor Program Office terminated the VRC's designation in July 2018, finding that it no longer served the purpose of promoting economic growth. *See* 8 C.F.R. § 204.6(m)(6)(i), (ii).

On appeal, the Appellant provides additional evidence and requests the preservation of the VRC's regional center designation. It urges USCIS to "allow the VRC to continue existence until all pending projects are concluded." It indicates that it will "cease to solicit new EB-5 investment" and "work together with USCIS to implement a gradual and orderly wind-down of VRC operations."

¹ The EB-5 program, as it is commonly called, issues employment-based fifth preference visas to qualified foreign national investors.

² A foreign national investor files a Form I-526, Immigrant Petition by Alien Entrepreneur, attesting that he or she meets the criteria for conditional resident status, which includes showing that his or her investment (at least \$500,000 or \$1,000,000, depending on the geographic area) creates at least 10 jobs for qualified United States workers. After two years, the investor may file a Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status, which, if granted, affords the investor full lawful permanent resident status in the United States. As part of the petition, the investor must show that his or her initial investment is still creating the requisite number of qualifying jobs.

³ The evidence shows that the VACCD is a Vermont State government agency that is responsible, in part, for marketing Vermont to businesses and individuals.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Congress enacted the EB-5 program that set aside visas for foreign national investors who invest in a new commercial enterprise associated with a USCIS designated regional center. To obtain USCIS designation to participate in the program, a regional center must provide a general proposal showing how it will concentrate pooled investments in defined economic zones, thereby promoting economic growth. *See* Section 610(a) of the Appropriations Act. The desired economic growth may be in the form of increased export sales, improved regional productivity, job creation, or increased domestic capital investment. *Id.*

Once designated, the regional center must “[p]rovide USCIS with updated information annually, and/or as otherwise requested by USCIS, to demonstrate that the regional center is continuing to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment in the approved geographic area.” 8 C.F.R. § 204.6(m)(6)(i)(B). If the regional center does not submit the required information or is no longer serving the purpose of promoting economic growth, USCIS will issue a notice of intent to terminate (NOIT) the designation. Subsequently, USCIS may issue a notice of termination (NOT), if the regional center does not sufficiently rebut the grounds for termination specified in the NOIT. *See* 8 C.F.R. § 204.6(m)(6)(ii)-(v).

II. BACKGROUND

USCIS granted the VRC regional center designation in 1997, specifying Vermont as the approved geographic area. In its initial filing, the Appellant stated that the VRC would sponsor projects that use EB-5 capital in the ski and related tourism industry, specifically, to expand the Jay Peak Resort in Jay, Vermont. After its initial designation, USCIS approved the Applicant’s requests to include additional industries, including manufacturing and professional services. A Memorandum of Understanding indicates that beginning in December 2014, the VACCD and the Vermont Department of Financial Regulation (VDFR)⁴ jointly administer the VRC.

In April 2016, the Securities and Exchange Commission (SEC) filed a civil complaint in federal court, alleging Ariel Quiros, William Stenger, and private entities⁵ associated with a group of projects known as “the Jay Peak EB-5 Projects” engaged in “an ongoing, massive eight-year fraudulent scheme” that “systematically looted more than \$50 million” EB-5 capital and “misused more than \$200 million” investor funds.⁶ Subsequently, Vermont filed a separate lawsuit in state court against Mr. Quiros and

⁴ The evidence shows that the VDFR is a Vermont State government agency that is responsible, in part, for supervising organizations that offer financial services and products.

⁵ The named corporate defendants in the SEC civil lawsuit include: Jay Peak, Inc.; Q Resorts, Inc.; Jay Peak Hotel Suites L.P.; Jay Peak Hotel Suites Phase II, L.P.; Jay Peak Management, Inc.; Jay Peak Penthouse Suites, L.P.; Jay Peak GP Services, Inc.; Jay Peak Golf and Mountain Suites L.P.; Jay Peak GP Services Golf, Inc.; Jay Peak Lodge and Townhouses L.P.; Jay Peak GP Services Lodge, Inc.; Jay Peak Hotel Suites Stateside L.P.; Jay Peak GP Services Stateside, Inc.; Jay Peak Biomedical Research Park L.P.; and AnC Bio Vermont GP Services, LLC.

⁶ *SEC v. Quiros*, No. 16-21301 cv-DPG, 2016 WL 1521288 (S.D. Fla. Apr. 12, 2016) (Compl. ¶¶ 1, 3).

Mr. Stenger, alleging that they had “orchestrated a large-scale investment scheme to defraud investors participating in the EB-5 Program.”⁷ The SEC action led to a U.S. district court judge appointing a receiver, Michael Goldberg, to administer and manage the affairs of the private entities involved in the fraudulent scheme.

In light of these legal proceedings, the Chief issued to the Appellant a request for information (RFI) in July 2016, and subsequently a NOIT in August 2017. *See* 8 C.F.R. § 204.6(m)(6)(ii)-(iv). Upon reviewing the Appellant’s responses, the Chief terminated the VRC’s designation as a regional center in July 2018. Specifically, the Chief considered both positive as well as negative factors, and concluded that the VRC did not demonstrate that it continued to serve the purpose of promoting economic growth. *See* 8 C.F.R. § 204.6(m)(6)(v).

The Appellant files the instant appeal to challenge the Chief’s termination of the VRC’s regional center designation. On appeal, it offers evidence that on May 22, 2019, a federal grand jury indicted Mr. Quiros, Mr. Stenger, and other individuals on criminal charges in connection with their management of one of the Jay Peak EB-5 Projects.⁸ The Appellant does not dispute that individuals and businesses associated with the projects misused and misappropriated a substantial sum of investor funds, diverting them from the specific projects that it had represented to USCIS would receive the funds and create jobs. Rather, the Appellant requests that USCIS allow the VRC to wind down its operations. It indicates that the VRC will “cease to solicit new EB-5 investment” and will not sponsor new projects, but it asks that “the VRC [be permitted] to continue in existence until all pending projects are concluded.”

III. ANALYSIS

A. Winding Down Operations

The Appellant has not demonstrated that the applicable statute and regulation permit us to preserve the VRC’s regional center designation for the sole purpose of winding down its operations. Rather, the regulation prescribes the steps that USCIS must follow to designate and then terminate, in

⁷ *See Vermont v. Quiros*, No. 217-4-16 Wncv, 2016 WL 10860920 (Super. Ct. Vt. Dec. 13, 2016) (citing the Plaintiff’s Amended Complaint); *see also Vermont v. Quiros*, 2018 WL 7051004 (Super. Ct. Vt. Jul. 12, 2018) (providing that “[t]he matter was resolved with a settlement for \$2.1 million in damages, including \$2 million from Ariel [Quiros] and \$100,000 from [William Stenger]” and that “[p]roceeds of the settlement will go to the state of Vermont, not to the investors allegedly defrauded by the defendants”).

⁸ *See* U.S. Department of Justice, U.S. Attorney’s Office, District of Vermont, *Four Men Indicted on Fraud Charges Related to the Jay Peak EB-5 AnC Vermont Project in Northeast Vermont*, <https://www.justice.gov/usao-vt/pr/four-men-indicted-fraud-charges-related-jay-peak-eb-5-anc-vermont-project-northeast>, accessed on September 10, 2019, a copy of the article has been incorporated into the record of proceedings. We take administrative notice that the defendants pleaded not guilty and that the criminal proceedings are ongoing. *See* Timothy McQuiston, *Stenger, Quiros Indicted on Multiple Fraud Counts*, Vermont Biz (May 22, 2019), <https://vermontbiz.com/news/2019/may/22/stenger-quiros-indicted-multiple-fraud-counts>, accessed on September 10, 2019, a copy of the article has been incorporated into the record of proceedings. The defendants are not parties to this termination proceeding. With respect to the current immigration matter, neither the Appellant’s reference to the criminal proceedings nor our consideration of the indictment should be viewed as an indication of criminal culpability. Instead, we review the indictment as evidence related to the Appellant’s burden to show the VRC’s ongoing capacity to promote economic growth. *See* 8 C.F.R. § 204.6(m)(6)(ii)-(v); *Cf. Matter of Thomas*, 21 I&N Dec. 20 (BIA 1995) (holding that evidence of criminal conduct that has not yet culminated in a final conviction may nonetheless be considered).

appropriate cases, an entity's regional center designation. Specifically, USCIS may designate an entity as a regional center in the EB-5 program if it meets certain requirements, including showing that it "will promote economic growth." 8 C.F.R. § 204.6(m)(3)(i). Once designated, the regional center must establish its continuous eligibility to participate in the program. As noted, if the designated regional center "no longer serves the purpose of promoting economic growth," then USCIS will issue a NOIT, and subsequently a NOT to terminate the designation, if the entity does not sufficiently rebut the grounds for termination specified in the NOIT. *See* 8 C.F.R. § 204.6(m)(6)(ii)-(v).

In this case, while the Appellant has communicated the VRC's intent to refrain from soliciting additional EB-5 investment or sponsoring new EB-5 projects, it has not cited to any legal authority that permits us to preserve the VRC's regional center designation for wind down or any other purpose if we find that it "no longer serves the purpose of promoting economic growth." 8 C.F.R. § 204.6(m)(6)(ii)(B); *see also* Section 610(a) of the Appropriations Act. For the reasons we will discuss below, we conclude, after a consideration of both positive and negative factors, that the VRC no longer serves the purpose of promoting economic growth. Accordingly, the Chief properly terminated its regional center designation.

B. Promoting Economic Growth

To determine whether a regional center serves the purpose of promoting economic growth, we take into account a variety of factors, both positive and negative, that encompass past, present, and likely future actions. Positive factors include the extent of any job creation, the amount of investment, and the overall economic impact. Negative factors include inaction, mismanagement, theft, or fraud by or otherwise affecting the regional center, any resulting damage, and the risk imposed on investors or the economy. An evaluation of any negative factors should take into consideration mitigating or corrective actions taken by the regional center.

1. Positive Factors

As relating to the positive factors, the record shows that the VRC has sponsored EB-5 projects that have resulted in job creation in Vermont. According to pages 4 through 6 of the August 2017 "Review of the EB-5 Program in Vermont and the Vermont Regional Center [VRC]" (2017 VRC Review), prepared by the VDFR, in consultation with the VACCD, after its designation in 1997, the VRC sponsored its first EB-5 project in December 2006 when it executed a Memorandum of Understanding with Jay Peak Hotel Suites L.P.⁹ concerning Jay Peak Phase I, also known as the Tram Haus Lodge Project. The 2017 VRC Review states that "the VRC-affiliated [EB-5] projects have resulted in the deployment of hundreds of millions of dollars in foreign capital in Vermont" and "the creation of at least 3,700 jobs as a result."¹⁰ Additionally, the report provides that the VRC has sponsored projects that are unrelated to the Jay Peak EB-5 Projects – which, as discussed, are involved in federal and state litigations – and that these projects have "completed construction, and are operating successfully."

⁹ Jay Peak Hotel Suites L.P. is one of the named corporate defendants in the 2016 SEC's civil lawsuit and its affairs are currently under receivership.

¹⁰ The 2017 VRC Review explains that it derived the job creation figure by counting the number of individuals with approved Forms I-829 and assuming that each one of them had created at least 10 jobs. *See supra* note 2.

On appeal, the Appellant names two projects that are unrelated to the Jay Peak EB-5 Projects. They are Mount Snow Ski Resort and Trapp Family Lodge, and they involve three new commercial enterprises: Carinthia Group 1 L.P.; Carinthia Group 2 L.P.; and Von Trapp Enterprises L.P. The Appellant claims that “[t]he success of [these projects] is strong evidence that significant economic growth and job creation was achieved and is continuing as a result of the EB-5 program.” Christine L. Ryan, an examiner in the VDFR’s securities division provides in an August 2018 affidavit that the Mount Snow Ski Resort is using EB-5 funds to complete two projects: the West Lake Project, the construction of which “is complete or substantially complete”; and the Carinthia Ski Lodge Project, which is “currently under construction.” USCIS records concerning Form I-526 approvals show that Carinthia Group 1 L.P. and Carinthia Group 2 L.P. raised approximately \$44,500,000 and \$4,500,000, respectively, in EB-5 capital.

In addition, on appeal, the Appellant indicates that the construction phase of the Trapp Family Lodge has been completed. The executive vice-president of Trapp Family Lodge provides in an August 2018 letter that the business’s use of EB-5 funds led to “the successful construction [and operation] of [an] expanded brewery and [a] new Austrian-style beer hall restaurant.” He states that the Trapp Family Lodge has preserved and created jobs, and has “had a substantial and positive impact on the economy of both [Vermont] and for the U.S. economy as a whole.” USCIS records concerning Form I-526 approval show that Von Trapp Enterprises L.P. raised approximately \$17,000,000 in EB-5 funds.

Another positive factor relates to the Appellant’s attempt to oversee the Jay Peak EB-5 Projects and its efforts in ensuring that the projects and their offering documents were in compliance with the applicable securities laws. Specifically, on appeal, the Appellant submits letters that the VACCD sent to Mr. Quiros and Mr. Stenger between July and December 2014, which raised concerns over the projects, primarily, whether their offering documents were in compliance with securities laws. The VACCD also appeared to have concerns over the financial status of the projects. For example, in two November 2014 letters, the VACCD’s general counsel requested Mr. Quiros and Mr. Stenger to complete “an independent audit of all Jay Peak EB-5 Projects” and provide “a certified statement” explaining whether there had been commingling of EB-5 and non-EB-5 funds. When Mr. Quiros and Mr. Stenger did not adequately address these concerns, the Appellant asked them to stop soliciting EB-5 capital for one of the projects – the AnC Bio Project, which is associated with the new commercial enterprise Jay Peak Biomedical Research Park L.P.¹¹ The 2017 VRC Review explains that, in part, because of the VACCD’s concerns, in December 2014, the VDFR “became formally involved in the VRC” and “immediately began to investigate the financial aspects of the Jay [Peak EB-5] Projects.”

The record includes evidence that the VRC has extended its oversight efforts to projects that are unrelated to the Jay Peak EB-5 Projects. On appeal, the Appellant submits an August 2018 affidavit from William R. Carrigan, the deputy commissioner in the VDFR’s securities division, stating that there is “a robust financial review process of the existing EB-5 [projects]” that “consist[s] of reviewing financial documents provided by the projects” and “conducting on-site visits of the projects.” In addition, the VRC requires projects to complete “a questionnaire” and submit it “along with the

¹¹ Jay Peak Biomedical Research Park L.P. is one of the named corporate defendants in the 2016 SEC’s civil lawsuit and its affairs are currently under receivership. According to page 9 of the 2017 VRC Review, the VRC allowed Jay Peak Biomedical Research Park L.P. to again solicit EB-5 funds in April 2015.

requisite financial information.” Ms. Ryan’s August 2018 affidavit details additional information on how the VDFR performs financial reviews of EB-5 projects.

On appeal, the Appellant submits evidence showing that the VRC has terminated its sponsorship of EB-5 projects that did not comply with the terms of the parties’ Memoranda of Understanding. For example, in 2013, the VRC terminated its sponsorship of EB-5 American Dream Fund I, LLC’s project, because the entity did not “perform its obligations . . . honestly, consistently and fairly in furtherance of its efforts to assist [the VACCD] with the oversight and management of the Regional Center.”

Finally, USCIS records show that the Appellant has complied with its annual filing requirements by timely submitting the Form I-924A, Annual Certification of Regional Center. In its appellate brief, the Appellant asserts that it “has consistently made comprehensive and accurate representations in its annual filings and in response to direct USCIS inquiries” and “has consistently represented the data it had accurately to USCIS in annual filings and in response to inquiries.”

2. Negative Factors

While the record contains positive indicia of the VRC’s efforts to serve the purpose of the EB-5 program, it also contains numerous and significant negative factors demonstrating the limitations on its ability to continue to promote economic growth. Upon a close review, we conclude that the negative factors outweigh the positive ones. Since 2006, the Appellant has sponsored the Jay Peak EB-5 Projects that the SEC alleges have allowed Mr. Quiros and Mr. Stenger to engage in “an ongoing, massive eight-year fraudulent scheme” that “systematically looted more than \$50 million” and “misused more than \$200 million” EB-5 funds.¹² In addition, the evidence the Appellant offers on appeal shows that in May 2019, the U.S. Attorney’s Office announced criminal charges, including fraud and conspiracy, against Mr. Quiros, Mr. Stenger, and other individuals based on the scheme described in the 2016 SEC action. The federal grand jury indictment, on pages 5 and 6, states that “[b]y 2011, the defendants knew that Jay Peak’s EB-5 projects faced financial problems resulting from the use of EB-5 funds raised for a particular project for purposes unrelated to that project, including . . . [paying Mr.] Quiros’s personal expenses.” The document alleges that the individuals raised approximately \$85,000,000 in EB-5 capital for the AnC Bio Project, the “[proposed] facility, however, was never constructed.”¹³ In May 2019, Mr. Goldberg filed a complaint in federal court, asserting on page 15 of the pleading that “[a]n accountant for the SEC testified that he documented repeated instances in which funds from each of the Jay Peak EB-5 projects were commingled with funds from other Jay Peak EB-5 projects” and that “[a]ll told, the SEC documented commingling of more than \$350 million of [project] funds.”

The Appellant has not challenged the allegations relating to Mr. Quiros, Mr. Stenger, and other individuals’ misuse and misappropriation of a substantial sum of EB-5 capital during an extended period. Indeed, Vermont also brought a lawsuit against Mr. Quiros and Mr. Stenger, alleging that they had “orchestrated a large-scale investment scheme to defraud investors participating in the EB-5

¹² See *supra* note 6.

¹³ We again note that these criminal proceedings are ongoing.

Program.”¹⁴ While Mr. Goldberg stated in a September 2017 letter that he had recouped some of the diverted funds, the record does not show that he and the affected new commercial enterprises have been able to recover the rest of the misused and misappropriated funds, funds that the Appellant claimed would be used to promote economic growth. Misuse and misappropriation of EB-5 capital, as well as fraud perpetrated by individuals managing the Jay Peak EB-5 Projects and associated businesses, diminish the VRC’s ability to promote economic growth, and constitute a weighty negative consideration.

In addition, although the Appellant has offered evidence on the VRC’s efforts to promote economic growth, the record shows that most of the purported capital raised and jobs created were linked to the Jay Peak EB-5 Projects, which, according to federal and state authorities, were part of a large-scale fraudulent scheme. The 2017 VRC Review confirms that the VRC’s non-Jay Peak EB-5 Projects – including Mount Snow Ski Resort and Trapp Family Lodge – account for approximately 20% or \$109,000,000 of the total EB-5 capital the VRC helped raised, while the Jay Peak EB-5 Projects account for the remaining approximately 80% or \$423,000,000.

Moreover, although the 2017 VRC Review states that “the VRC-affiliated [EB-5] projects have resulted in . . . the creation of at least 3,700 jobs,” the record includes evidence that casts doubt on this figure. For example, according to page 14 of the May 2019 indictment against Mr. Quiros, Mr. Stenger, and other individuals, the job creation figure of the AnC Bio Project came from an economist’s analysis that “was based directly on inflated hiring and financial projections formulated by the defendants to achieve the required number for EB-5 approval,” and that “[t]he defendants created deceptions about both construction jobs and operational jobs” that the project would create. The indictment further states on pages 14 and 15 that “[t]he defendants inflated projected jobs from the construction phase” and “inflated projected jobs and supplies expenses from the operations of the business.” The job creation projections of other Jay Peak EB-5 Projects similarly were calculated, in part, from EB-5 capital each project raised. In light of the allegations of misuse and misappropriation of EB-5 funds, which the Appellant does not dispute, the Appellant has not sufficiently demonstrated that the 3,700 jobs figure – most of the jobs are purportedly from Jay Peak EB-5 Projects – or the VRC’s alleged success in its promotion of economic growth inferred by that figure, is accurate.

As previously discussed, one positive factor is that the Appellant has taken steps to oversee and monitor EB-5 projects under its sponsorship. It maintains on appeal that USCIS should not terminate the VRC’s regional center designation because it has engaged in a sufficient level of oversight and monitoring, and that the regulation “does not . . . impose specific obligations on a regional center to administer, oversee, or manage any of its associated commercial enterprises” The multiple lawsuits involving Mr. Quiros, Mr. Stenger, and the Jay Peak EB-5 Projects, alleging misuse and misappropriation of a large sum of EB-5 funds over many years, however, do not support the Appellant’s contention that its oversight and monitoring efforts were sufficient. *See* 8 C.F.R. § 204.6(m)(6)(i), (ii); *see also* 6 *USCIS Policy Manual* G.3(A), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (requiring a regional center to explain how it “[w]ill oversee all investment activities affiliated with, through, or under the sponsorship of the proposed regional center”). In addition, although the Appellant did timely file the required annual Forms I-924A, its representations in these filings – as relating to specific amounts of

¹⁴ *See supra* note 7.

EB-5 funds being deployed in qualifying projects and used to create jobs – have turned out to be inaccurate according to both federal and state authorities.

Furthermore, the Appellant’s insufficient level of oversight of the Jay Peak EB-5 Projects has led to loss of investor confidence, which does not serve the purpose of the EB-5 program of promoting economic growth. *See* 8 C.F.R. § 204.6(m)(6)(i), (ii). The record includes an April 2018 letter from Russell D. Barr, an attorney representing a group of foreign national investors who sued Vermont and the VACCD.¹⁵ The investors claimed that the VRC had “for years . . . ignor[ed] investor complaints” when they raised concerns over the wrongdoing of Mr. Quiros and Mr. Stenger in their management of the Jay Peak EB-5 Projects. Mr. Barr provided printouts from the VACCD’s website that read: “[the] VRC monitors all Vermont EB-5 projects for compliance with USCIS EB-5 regulations and policy guidance.” Mr. Barr asserted that many investors invested in the Jay Peak EB-5 Projects because they had believed in the VACCD’s statements on oversight and monitoring. According to an October 2017 affidavit of Antony Sutton, one of the named plaintiffs in the investors’ civil lawsuit against Vermont and the VACCD, “[he] specifically chose the VRC due to its representations of strict State oversight over the EB-5 project at Jay Peak and the express representation of State officials representing such State oversight.” The Appellant’s oversight and monitoring efforts, however, had been insufficient to prevent, or timely recognize, misuse and misappropriation of EB-5 capital discussed in federal and state actions.

The record includes other evidence of loss of confidence in the VRC. According to a September 2017 letter from Mr. Barr, who is also affiliated with the Stowe Aviation Project, which was once sponsored by the VRC, he supports the termination of the VRC’s designation based, in part, on its insufficient oversight and monitoring of its sponsored EB-5 projects. In addition, in 2017 after federal and state authorities accused Mr. Quiros and Mr. Stenger of EB-5 investment fraud, Peak Resorts, Inc., which is involved with the Mount Snow Ski Resort, formed its own regional center in Vermont – Great North Regional Center – that will sponsor future EB-5 projects.¹⁶ The lack of confidence in the VRC’s oversight and monitoring capabilities on part of the investors and businesses diminishes the VRC’s ability to promote economic growth.

Additionally, the record shows the Appellant had learned that Mr. Quiros, Mr. Stenger, and other individuals may have engaged in wrongdoing concerning the Jay Peak EB-5 Projects, but did not share such information with USCIS until 2016, after SEC initiated its action. Page 8 of the 2017 VRC Review states that as early as in 2012, the VACCD learned that “the principal of a commercial entity that had been soliciting investors on behalf of the Jay [Peak EB-5] Projects stated publicly that he had lost confidence in the projects.” The report provides that around the same time, the VACCD “began having significant concerns about whether all material information about the Jay [Peak EB-5] Projects . . . had been disclosed to investors.” Documentation from Mr. Barr shows that Michael Gibson of USAdvisors sent email correspondence to the VACCD in November 2011, raising concerns over the VACCD’s level of oversight and monitoring of the Jay Peak EB-5 Projects, and in February 2012,

¹⁵ *Sutton v. VRC*, No. 2018-158, 2018 WL 5046826 (Vt. Aug. 6, 2018) (Appellants’ Br.); *see also Sutton v. VRC*, No. 2018-158, 2018 WL 5046827 (Vt. Sept. 17, 2018) (Appellees’ Br.).

¹⁶ Timothy McQuiston, *Mount Snow Owner Gets EB-5 Regional Center Approval*, Vermont Biz (Nov. 17, 2017), <https://www.vermontbiz.com/news/2017/november/17/mount-snow-owner-gets-eb-5-regional-center-approval>, accessed on July 23, 2019, a copy of the article has been incorporated into the record of proceedings.

sharing that Rapid USA Visas, Inc., terminated its relationship with the projects, because it had lost confidence in the accuracy of the projects' financial status and disclosures. Likewise, page 21 of Mr. Goldberg's May 2019 complaint alleges that the VACCD began having concerns over "the security of investor funds" in 2014. While the Appellant took actions attempting to address these concerns, it did not communicate the concerns with USCIS in its annual Form I-924A filings or supplemental filings for fiscal years 2012 through 2016. This inaction and the omission or inaccurate reporting of relevant and material facts resulted in USCIS approving Forms I-526 and Forms I-829 associated with the Jay Peak EB-5 Projects that, based on pleadings in the federal and state cases, should not have been approved because, in part, the job creation figures might have been inflated, and thus inaccurate.

Finally, the evidence confirms that if we were to preserve the VRC's regional center designation, it would unlikely promote economic growth. 8 C.F.R. § 204.6(m)(6)(ii)(B). The VRC has indicated that it does not intend to solicit additional EB-5 capital or sponsor new EB-5 projects. It concedes on page 16 of the 2017 VRC Review that "operating a regional center is not a function that is best performed by the State and the need for a State-run regional center has passed." The VRC's express intent to not seek out new EB-5 funds or projects does not support a finding that it "is continuing to promote economic growth." 8 C.F.R. § 204.6(m)(6)(i)(B).

As discussed above, there are both positive and negative considerations concerning whether the VRC "serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." 8 C.F.R. § 204.6(m)(6)(ii)(B). Upon a close examination of the totality of the circumstances and the factors, we determine that the negative indicia here outweigh the positive. Accordingly, we conclude that the VRC no longer continues to promote economic growth and does not warrant the preservation of its regional center designation.

C. Relating to Investors' Concerns

Some foreign national investors who have invested in the VRC sponsored EB-5 projects oppose the termination of its regional center designation. For example, according to a September 2017 letter from some Jay Peak EB-5 Projects investors, they are concerned about their immigration petitions upon the termination of the VRC's designation. The termination of a regional center designation and the adjudication of foreign national investors' petitions are separate proceedings that focus on different facts as applied to their applicable legal frameworks. While we sympathize with the investors' situation, in the instant termination proceeding, we must decide whether the VRC serves the purpose of promoting economic growth. *See* Section 610(a) of the Appropriations Act; 8 C.F.R. § 204.6(m)(6)(i), (ii). As we have explained above, upon a consideration of the totality of the circumstances as well as the positive and negative factors, we conclude that the Appellant has not sufficiently shown that the VRC serves the purpose of promoting economic growth.

IV. CONCLUSION

The Appellant has not submitted sufficient evidence demonstrating that the VRC continues to serve the purpose of promoting economic growth. Accordingly, we find the Chief properly terminated the VRC's regional center designation.

Matter of V-A-O-C-A-C-D-R-C-

ORDER: The appeal is dismissed.

Cite as *Matter of V-A-O-C-A-C-D-R-C-*, ID# 1982072 (AAO Sept. 25, 2019)

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October 25, 2019

USCIS
Attn: I-290B
2501 S. State Highway 121 Business
Suite 400
Lewisville, TX 75067

*Re: Motion to Reopen and Motion to Reconsider AAO Decision Affirming Regional
Center Termination
AAO1890000630
RCW1031910148 / RCID1031910148
Vermont Agency of Commerce and Community Development Regional Center*

Dear Officers:

To ensure that it can continue to promote economic growth, the Vermont Agency of Commerce and Community Development Regional Center (“VRC”) hereby moves for reopening and reconsideration of the AAO’s September 25, 2019 decision (the “AAO Decision”). In support of the motion, VRC submits this memorandum along with Exhibits 1 through 7. VRC also incorporates by reference its prior filings in the record.

Since its regional center designation on June 26, 1997, VRC has consistently operated with a clear mission to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital improvement. Simply put, it seeks to continue doing so and therefore asks for reconsideration of the AAO Decision.

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USCIS issued a Notice of Intent to Terminate, dated August 18, 2017 (“NOIT”), based on a determination that VRC no longer serves the purpose of promoting economic growth. VRC filed a response to the NOIT on September 14, 2017 (“NOIT Response”), where it proposed that the regional center cease to solicit new EB-5 investment and work with USCIS to implement a gradual and orderly wind-down of VRC operations. On July 3, 2018, USCIS issued a Notice of Termination (“Notice”) determining that VRC no longer serves the purpose of promoting economic growth. VRC timely filed Form I-290B challenging the termination, submitting an appeal memorandum and 22 exhibits demonstrating its continued promotion of economic growth. The AAO Decision dismissed the appeal and affirmed the termination. VRC now files a motion to reopen and motion to reconsider the AAO Decision, together with supporting evidence.

8 CFR § 204.6(m)(6)(ii)(B) gives USCIS the authority to terminate a regional center’s designation if the regional center fails to promote economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The AAO Decision, therefore, focuses on whether VRC continues to promote economic growth and concludes that it does not. In this motion to reopen and motion to reconsider, VRC first demonstrates that it is promoting economic growth. Second, VRC shows that USCIS’ reliance on VRC’s alleged failure — now several years in the past — to adequately monitor and oversee projects as a basis for the termination violates the Administrative Procedure Act and is contrary to a recent executive order.

I. VRC Continues to Promote Economic Growth

As VRC has argued previously, even without sponsoring new projects, VRC continues to promote economic growth.

A. Regional Centers Can Promote Economic Growth Even Without Sponsoring New Projects

USCIS must acknowledge — but has not yet in this proceeding — that a regional center can continue to promote economic growth by “seeing out” its existing sponsored projects. The contrary position, thus far adopted by USCIS and the AAO, runs directly counter to the growth-promoting goals of the EB-5 program.

This is doubly so in light of impending regulatory changes. On November 21, 2019, new EB-5 regulations will take effect, increasing the minimum investment amounts. It is expected that following the implementation of the new regulations, the market for EB-5 investors will be greatly diminished, and it will be much more difficult for developers to start new EB-5 projects.¹ Many regional centers and organizers of new commercial enterprises, therefore, rationally will cease to seek new investors and projects because of the dearth of interested investors facing the specter of such higher investment amounts and longer waits for immigration benefits. Nevertheless, regional centers sponsoring projects which are currently subscribing new investors chargeable to mainland China (the country with the highest volume of EB-5 investors with the longest wait for visa numbers) will need to continue to sponsor those investors and their projects for decades while their investors move through their immigration processes.²

¹ See Exhibit 1, IIUSA Member Analysis, “The Rush is On: New EB-5 Rule Nearly Doubles Minimum Investment in 120 Days,” by Robert C. Divine.

² See Exhibit 2, presentation of Charles Oppenheim, Chief, Immigrant Visa Control and Reporting Division, U.S. Department of State, concluding on final slide that as of May 6, 2019, the next filing EB-5 investors born in mainland China would wait approximately 16.5 years for a visa number. Such investors would have at least another two years plus the current I-829 processing time of 27.5 to 47.5 months (per USCIS at <https://egov.uscis.gov/processing-times/home>, printout at Exhibit 3) before completing their immigration processes about which a regional center is required to report annually to USCIS on Form I-924A.

If USCIS persists in its position in this case — that failure to sponsor new projects is inherently a failure to promote economic growth and a basis for regional-center termination — then any remaining prospective investors will rationally conclude that the risks of losing immigration benefits during the long wait for visa numbers is unacceptably high arising from the specter of USCIS terminating their regional center for failing to sponsor new projects for another 20 years without stopping.

The appropriations bill giving rise to regional centers³ established the regional center program to promote investment through the prospect of immigration benefits, not to crush investment through an immigration trap. Nothing in the statute supports USCIS' irrational interpretation, and a court would not either. Nor does the regulation cited by USCIS in this proceeding: 8 C.F.R. § 204.6(m)(6) allows USCIS to terminate a regional center for failing to promote economic growth, but neither the regulation itself nor the preliminary information surrounding its promulgation compels the interpretation that failing to keep sponsoring new projects into infinity is required to avoid termination.

VRC continues only to request that it be allowed to continue to exist to conclude its existing projects and then wind down. Relevant statutes and regulations do not preclude this approach.

B. VRC Is Continually Promoting Economic Growth and Creating Jobs Through Its Sponsored Projects

Meanwhile, VRC's existing sponsored projects continue to create jobs and promote economic growth in the businesses into which VRC-sponsored EB-5 investors' capital was

³ Section 610 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395, as amended.

deployed. We focus here on demonstrating how the Trapp Family Lodge, Mount Snow, and Jay Peak EB-5 projects (under the supervision and control of the receiver and the federal court) continue to create jobs and promote economic growth.

1. Trapp Family Lodge

The Trapp Family Lodge project has continued to successfully operate, create jobs, and promote economic growth. Attached as Exhibit 4 is a summary of past and on-going economic impacts of the Trapp Family Lodge EB-5 Project prepared by Economic & Policy Resources (“EPR”) and a letter from Walter Frame confirming the underlying facts in EPR’s report. It estimates that the project has created 653 jobs in total (Exhibit 4). This estimate is conservative. For example, it does not include any indirect job effects related to the 111 preserved jobs (saved through the EB-5 investment in a troubled business), all of which continue to be maintained (Exhibit 4). EPR estimates that there are 75 economically indirect jobs in 2017 attributable to those 111 preserved jobs alone (Exhibit 4). EPR’s report acknowledges that these operations are an important part of the overall master operations plan (Exhibit 4).

The promotion of economic growth has continued at the Trapp Family Lodge project even since the NOIT was issued in 2017. Direct hires at the project increased to an average of 14 beginning in 2017, with nine new economically indirect jobs in 2017 (Exhibit 4). \$322,603 and \$267,364 of non-EB-5 equity was invested in the project in 2017 and 2018, respectively, to maintain the 111 preserved jobs (Exhibit 4). Another \$250,000 is expected to be invested in 2019 (Exhibit 4). The brewery upgraded its production facilities in the fall of 2018, which involved a capital investment of about \$1.2 million (Exhibit 4). According to EPR’s report, there were significant impacts in the U.S. economy in 2018 alone, including 85 jobs, \$16.47 million in

increased output, \$6.51 million in disposable personal income, and \$5.78 million in household earnings (Exhibit 4 Table 3). Therefore, this project, and, in turn, the VRC is continuing to promote economic growth.

2. *Mount Snow*

Mount Snow also continues to operate and, according to reported financial results of Peak Resorts, Inc.'s fiscal 2019 fourth quarter and full year ended April 30, 2019, Mount Snow generates a significant portion of Peak Resorts, Inc's annual revenue (Exhibit 5). Visitation at Mount Snow increased 6% during fiscal year 2019 (see Peak Resorts, Inc. press release included with Exhibit 5). This increase was in part due to the new Carinthia Ski Lodge, discussed further below (Exhibit 5).

Final construction on the West Lake snowmaking project was completed in February 2019 using EB-5 capital (see 10-K included with Exhibit 5). According to information from the State of Vermont Department of Financial Regulation's ("DFR") quarterly compliance questionnaire, cumulatively, the West Lake project deployed [REDACTED] of EB-5 capital during Q3 2018, Q4 2018 and Q1 2019. In total, as previously stated in this record, the West Lake snowmaking project deployed \$30 million in EB-5 capital (Exhibit 5). It has prolonged Mount Snow's ski season, increased the quality of snowmaking, upgraded trails, and purchased new ski lifts and ancillary equipment.

The Carinthia Ski Lodge ("Carinthia") portion of Mount Snow's EB-5 raise has enabled construction of a new three-story, 36,000 square-foot skier service building including a restaurant, café, and bars with seating for over 600 people, retail and convenience stores, and ticket and rental facilities (see 10-K included with Exhibit 5). It opened to the public in December 2018, after the

VRC's prior filing in this matter (Exhibit 5). Further, according to information from DFR's quarterly compliance questionnaire, since the VRC's prior filing in this matter, collectively the Carinthia project deployed \$ [REDACTED] 3 of EB-5 capital during Q3 2018, Q4 2018 and Q1 2019. In total, Carinthia will use \$22 million in EB-5 capital (Exhibit 5).

A report from Barnhart Economic Services, LLC estimates the job-creation of Mount Snow's two projects at [REDACTED] jobs in total and [REDACTED] jobs in government fiscal year 2018 alone (see excerpts from the report included with Exhibit 5). The report demonstrates that job-creation is ongoing.

The continued investment in and success of Mount Snow demonstrates that this project, and, in turn, VRC, is continuing to promote economic growth.

3. Jay Peak EB-5 Projects

Certain Jay Peak EB-5 projects also continue to operate, create jobs, and promote economic growth. The court-appointed receiver for the Jay Peak EB-5 projects, Michael Goldberg, has overseen the completion of construction related to Jay Peak Hotel Suites Stateside, LP ("Stateside") (see letter from Mr. Goldberg, along with spreadsheet of expenditures, attached as Exhibit 6). Construction of Stateside was substantially completed during the Jay Peak fiscal year ended April 30, 2019 (Exhibit 6). Capital expenditures for Stateside construction in fiscal year 2019 included over \$1 million for the Stateside condominiums, over \$100,000 for the recreation center, and over \$2.5 million for the athletic fields (Exhibit 6). In addition, Mr. Goldberg, in his capacity as receiver, has approved additional capital purchase totaling \$1,830,942 in fiscal year 2019 and \$755,504 in the five fiscal months ended September 30, 2019 (Exhibit 6).

Likewise, Mr. Goldberg has overseen the continued operations of Jay Peak Resort and Burke Mountain Resort (Exhibit 6). From May 2018 to September 2019, Mr. Goldberg, in his capacity as receiver, approved \$1,846,662 of capital expenditures at Burke Mountain for a new ski lift, snowmaking system improvements, and snowmaking pump (Exhibit 6).

These capital expenditures in Stateside and Burke Mountain create real jobs and demonstrate that, even after and in spite of USCIS Notice of Termination of VRC, VRC continues to promote economic growth.

II. USCIS Cannot Terminate VRC Based on the Alleged Failure — Years Ago — of VRC to Adequately Oversee and Monitor Its Sponsored Projects

USCIS cannot terminate VRC based on the alleged failure of VRC to adequately oversee and monitor its sponsored projects. To do so would violate the Administrative Procedure Act (“APA”) and be contrary to a recent executive order.

A. Termination on This Basis Constitutes Legislative Rulemaking Without the Required Notice and Comment

By terminating VRC for its alleged failure many years ago to adequately monitor and oversee projects, USCIS is creating a new legislative rule without going through notice and comment rulemaking procedures, which constitutes an abuse of discretion and violation of the APA.

1. USCIS Is Impermissibly Applying a New Legislative Rule

8 CFR § 204.6(m)(6)(ii)(B) (the “Regulation”) gives USCIS the authority to terminate a regional center’s designation if the regional center fails to promote economic growth.⁴ Under the

⁴ There are other bases for termination listed in the Regulation, namely, failure to submit required information to

Regulation, a regional center fails to promote economic growth where it no longer demonstrates “increased export sales, improved regional productivity, job creation, and increased domestic capital investment.” 8 CFR 204.6(m)(6)(ii)(B). We have demonstrated above and in other filings in this record how VRC continues to promote increased export sales, improved regional productivity, job creation, and domestic capital investment. There is no evidence in the record that demonstrates that VRC does not do these things.

The AAO’s decision and IPO decision before it consider, instead of the record evidence on the actual regulatory standard, something else entirely: whether VRC sufficiently oversaw and monitored sponsored projects, which is not mentioned in the relevant statute or Regulation. When an agency, like USCIS, applies a specific standard of general applicability, the standard is considered a “legislative rule.” R.L. Inv. Ltd. Partners v. I.N.S., 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff’d* 273 F.3d 874 (9th Cir. 2001); *see also U.S. v. Articles of Drug, Consisting of 203 Paper Bags, More or Less*, 1986 WL 3104, at *12 (N. D. Ill. 1986). Legislative rules are those which are “either...contrary to the plain language of a statute or regulation or add a requirement not contained in the statute.” R.L. Inv. Ltd. Partners, 86 F. Supp. 2d at 1022 (emphasis added). Legislative rules may “effect a change in existing law or policy,” or “provide specific standards to regulate future conduct.” Id.⁵

Here, the USCIS considered whether VRC adequately monitored and oversaw its projects in determining whether VRC promotes economic growth. This retrospective consideration is not

USCIS or pay applicable fees, but they were not raised in the AAO decision and are not at issue here.

⁵ Legislative rules may be contrasted with “interpretive rules,” which “go more to what the administrative officer thinks the statute or regulation means, when applied in particular, narrowly defined, situations.” R.L. Inv. Ltd. Partners, 86 F. Supp. 2d at 1024.

contained in the Regulation or any statute, though USCIS generally purports to apply it to all regional centers. Thus, USCIS is adding a requirement and changing existing law, which allows USCIS to terminate a regional center only if the regional center is no longer increasing export sales, improving regional productivity, creating jobs, and increasing domestic capital investments or if a regional center fails to report required information to USCIS or pay applicable fees. By adding the monitoring and oversight requirement, USCIS is expanding its authority to terminate regional centers and impermissibly creating a new legislative rule.

2. USCIS Abuses Its Discretion and Violates the APA By Implementing a Legislative Rule Without Going Through Notice and Comment

An agency abuses its discretion and violates the APA when it implements a legislative rule before going through the full notice and comment process. R.L. Inv. Ltd. Partners, 86 F. Supp. 2d at 1022. Under Section 553 of the APA, agencies are required to submit all legislative rules to a notice and comment period. 5 U.S.C.A. § 553(b). Failure to do so requires that the legislative rule be vacated until notice and comment proceedings are conducted. See, e.g., Action on Smoking and Health v. C.A.B., 713 F.2d 795, 802 (D.C. Cir. 1983).

Here, USCIS' rule that it has authority to terminate a regional center's designation based on past insufficient oversight or monitoring efforts is void until it has been subjected to the notice

and comment rulemaking requirements of Section 553.^{6,7} Since USCIS based its decision on this new legislative rule and not on any duly enacted statute or regulation, its decision must be vacated.

B. The Requirement that Regional Centers Oversee and Monitor Sponsored Projects is At Least an Interpretation of General Applicability, Which Must be Published in the Federal Register

Even if USCIS is not implementing a legislative rule, the requirement that regional centers oversee and monitor projects to maintain their regional center designation is at least an interpretation of general applicability, which is invalid unless published in the Federal Register. Failure to do so is a violation of the APA. See 5 U.S.C.A. § 552(a)(1)(D) (“Each agency shall separately state and currently publish in the Federal Register for the guidance of the public...interpretations of general applicability formulated and adopted by the agency”).

⁶ Notice and comment rulemaking procedures would allow the EB-5 industry to provide feedback to USCIS about what standards are appropriate to evaluate whether a regional center is meeting, or in the past has met, monitoring and oversight requirements. Likewise, stakeholders could provide testimony concerning the appropriate consequences for violating such requirements or standards. Currently, there are no such standards, which is unfair for regional centers, as discussed further in Section II.C. below.

⁷ We further note that USCIS posted an Advance Notice of Proposed Rulemaking (“ANPR”) on the Federal Register on January 11, 2017, in which USCIS indicated that it was “considering ways to clarify the requirements for regional centers to maintain their designation.” See, 82 FR 3211. Posting an ANPR, which merely describes an agency’s goals, is not sufficient to comply with the APA’s notice and comment requirements. See, 5 U.S.C.A. § 553(b) (requiring that the actual proposed rule, or a description of its substance, be published in the Federal Register); see also, P&V Enterprises v. U.S. Army Corps of Engineers, 516 F.3d 1021, 1024-25 (D.C. Cir. 2008) (ruling that an ANPR was insufficient for purposes of notice and comment rulemaking where it merely “sought information so that the [agency] would be in a position to make substantive decisions about how to proceed after considering the [public’s] responses.”); https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf (describing the difference between an ANPR and a proposed rule for purposes of notice and comment rulemaking). This ANPR was not a proposed rule, and therefore it does not satisfy the notice and comment requirements of 5 U.S.C.A. § 553(b). The fact that USCIS posted the ANPR indicates some recognition by USCIS that formal rulemaking with notice and comment is required to implement a monitoring and oversight requirement and add inadequate monitoring and oversight as a basis for termination.

The AAO Decision states: “To determine whether a regional center serves the purpose of promoting economic growth, we take into account a variety of factors, both positive and negative, that encompass past, present, and likely future actions.” AAO Decision at p. 4. This indicates that, in reviewing a termination of regional center designation, USCIS considers oversight and monitoring as a matter of practice. Cf. Hooper v. Harris, 1983 WL 29933, *4-5 (D. Conn. 1983) (requiring that an agency “must publish eligibility requirements [in the Federal Register]. Because the Secretary has failed to do so, and because plaintiffs have been ‘adversely affected,’ this court must conclude that Bulletin 175 is invalid for lack of publication in the Federal Register as required by 5 U.S.C. § 552(a)(1)(D)”; Herron v. Heckler, 576 F. Supp. 218 (N. D. Ca. 1983) (holding that an agency’s failure to publish an interpretive rule of general applicability regarding eligibility requirements in the Federal Register rendered the rule void).

Since the oversight and monitoring requirement has not been published in the Federal Register, USCIS cannot terminate VRC on the basis that it has in the past not met that requirement. To do so would violate the APA. Where an agency fails to comply with the publication requirement, “a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published.” 5 U.S.C.A. § 552(a)(1)(D); see also Anderson v. Butz, 550 F.2d 459, 463 (9th Cir. 1977) (“Reading 552(a)(1)(D) and 552 (a)(2)(B) together these provisions can only mean that interpretations of general applicability are to be published in the Federal Register”).

C. Termination on This Basis Is Contrary to Recent Executive Order

Terminating VRC for its alleged failure to adequately monitor and oversee projects is contrary to a recent executive order, which states that regulated parties need notice of clear

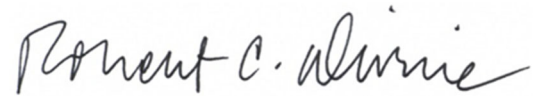
standards against which their conduct will be judged. An Executive Order issued on October 9, 2019 states, “[t]he rule of law requires transparency. Regulated parties must know in advance the rules by which the Federal Government will judge their actions.” Exhibit 7. Citing the APA’s goal of ensuring fairness, it goes on to say that a person should not be subjected to action without “prior public notice of . . . the legal standards applicable to that conduct.” Exhibit 7.

Here, there are no duly enacted legal standards applicable to a regional center’s oversight and monitoring, yet USCIS has terminated VRC based on the alleged failure of VRC to meet those standards. USCIS’ Policy Manual states that in applying for regional center designation, a regional center must include a plan including how it will oversee sponsored investment activities. See Policy Manual, Volume 6, Part G, Chapter C. Nothing in the Policy Manual or in any statute, regulation, or rule notifies regional centers like VRC of what is required to adequately oversee their sponsored investment activities. There is certainly nothing that requires regional centers to independently and, on pain of termination, flawlessly, audit its associated commercial enterprises. As we have demonstrated in the Appeal of Termination, Supplement to Appeal of Termination, Third Supplement to Appeal of Termination, and Fourth Supplement to Appeal of Termination, such comprehensive and independent auditing would have been necessary to detect the actively concealed fraud involved in the Jay Peak EB-5 projects.

III. Conclusion

Based on the forgoing, VRC urges USCIS to reverse the Notice of Termination and to allow VRC to continue in existence — accepting no new projects — until all pending projects are concluded.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert C. Divine". The signature is written in a cursive, slightly slanted style.

Robert C. Divine

Vermont Agency of Commerce and Community Development Regional Center

AAO1890000630 / ID 1031910148 / RCW 10319101148

Exhibits to Motion to Reopen and Motion to Reconsider

1	IIUSA Member Analysis, "The Rush is On: New EB-5 Rule Nearly Doubles Minimum Investment in 120 Days," by Robert C. Divine
2	Presentation of Charles Oppenheim, Chief, Immigrant Visa Control and Reporting Division, U.S. Department of State
3	USCIS' current published I-829 processing time (per USCIS at https://egov.uscis.gov/processing-times/home on October 25, 2019)
4	Summary of Past and On-Going Economic Impacts of the Trapp Family Lodge EB-5 Project prepared by Economic & Policy Resources ("EPR"); letter from Walter Frame, Executive Vice President of Trapp Family Lodge, Inc.
5	Peak Resorts, Inc. Form 10-K Annual Report for fiscal year ended April 30, 2019; press release; excerpt from Economic Impact Report dated December 10, 2018
6	Letter from Michael L. Goldberg, Jay Peak Receiver; spreadsheet of capital expenditures at Jay Peak Resort and Burke Mountain Resort
7	Executive Order on Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication issued on October 9, 2019

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IIUSA Member Analysis

The Rush is On: New EB-5 Rule Nearly Doubles Minimum Investment in 120 Days

by Robert C. Divine¹ of Baker Donelson

July 23, 2019

USCIS has sent its [final EB-5 regulation](#) to the Federal Register for publication tomorrow. Effective for I-526 filings arriving at USCIS on or after November 21, 2019, new EB-5 investments must be at least \$900,000 in a "targeted employment area" (TEAs) and otherwise \$1,800,000, and the areas that can qualify as TEAs for the lower investment amount are more limited. Absent legislation to provide additional visa numbers, the next four months may be the last great days for entering and subscribing investments under the EB-5 Program for the foreseeable future.

Before the Rule Takes Effect

The new regulation is as important for what it will cause pre-effective date as after.

The Surge: The rule allows investors to remain under the current investment amounts and TEA areas if they file the first step in the EB-5 process (I-526 petition) before the November 21, 2019 effective date. This means that during the next four months anyone who is contemplating making an EB-5 investment should consider investing and filing before November 21, 2019, securing the lower investment level of \$500,000. According to the regulation's preamble, EB-5 investments already made appear likely to use up at least seven years' worth of the 10,000 visa numbers available to investors and family members each year. In fact, the nationalities of the heaviest usage face even longer waits due to a 7% per-country limit, and those born in lower volume countries face much shorter or zero waits. The new rush of filings in the next four months will extend the existing waits for high volume countries by many years. (Oft-proposed but yet unpassed legislation could eliminate the per country cap and make all new investors wait the same regardless of nationality.) The combination of nearly doubled minimum investment amounts and expanded wait time for visa numbers will pose huge disincentives for investors

¹ Robert C. Divine leads the Global Immigration Group of Baker, Donelson, Bearman, Caldwell, & Berkowitz, P.C., a law firm of over 700 lawyers and public policy advisors with offices in 20 cities in the U.S. including Washington, D.C. Mr. Divine served from July 2004 until November 2006 as Chief Counsel and for a time Acting Director of U.S. Citizenship & Immigration Services (USCIS). He is the author of *Immigration Practice*, a 1,600 page practical treatise on all aspects of U.S. immigration law now in its Fifteenth Edition (see www.jurispub.com). He has practiced immigration law since 1986 and served seven years as Vice President of Invest in the USA (IIUSA), the EB-5 industry trade association. Under his leadership, Baker Donelson serves a wide range of legal needs for regional centers, developers, and investors, including immigration, securities, business, real estate, tax, international, government investigations, and litigation.

filing under the new rule. Thus, now begins the last great four-month EB-5 investment rush unless Congress allocates additional visa numbers to the program.

The Scramble: In the scramble to invest and file, some investors will ask to invest with less than the full \$500,000 amount, using the law's allowance for those "actively in the process of investing." Some sellers of investments may be tempted to accept such investors. If such investors can qualify under present law, their I-526 filing with less than the full amount might preserve their ability to invest only \$500,000 under current regulations. The new regulation itself only acknowledges placing the full funds in escrow. [USCIS case law](#) requires that if an investor invests part of the required capital plus "indebtedness" (owing the remainder not in escrow), the investor's debt to the investment enterprise must be adequately secured by his or her personal assets under arrangements that are legally perfected in their location. Full investment up front is strongly advised to avoid risk of denial.

Even apart from the capital actually invested, investors must show in their I-526 filing that their source of funds is legitimate. Investors will be tempted to slap together skeletal evidence of their sources of funds. But USCIS can deny petitions that turn out not to have been "approvable at the time of filing." While responses to USCIS requests for evidence normally can add evidence about facts that existed at the time of filing, USCIS can refuse evidence of newly identified or switched sources. USCIS might take more aggressive positions against investors who slopped in sketchy filings to lock in the \$500,000 investment amount. All of this argues against only partial capital contribution and in favor of making the best effort possible to document sources on the front end.

The Risks: Issuers of investments should consider amending their offerings now to include disclosure of risks posed by the new regulations' higher investment amounts, including the prospect that any EB-5 capital not raised for the project before November 21 might be much more difficult to raise, necessitating other sources for any funding gaps. Many projects that are in state-designated TEAs today may not qualify under the new rules, making post-November subscriptions of EB-5 capital practically impossible.

After the Rule Takes Effect

Here is how the rules will change for I-526 petitions filed on or after November 21, 2019:

Investment Amount: The normal minimum investment level will increase from \$1 million to \$1,800,000. The minimum investment in a Targeted Employment Area (TEA) will increase from \$500,000 to \$900,000. The rule also provides for a process of inflation-based adjustments to the minimum investment amounts beginning on October 1, 2025 and every five years thereafter, with the TEA level always 50% of the "normal" amount. The price adjustment of the normal amount will be based on the Department of Labor's "Consumer Price Index for All Urban Consumers for the U.S. City Average" as compared to \$1 million in 1990 when the EB-5 program was created, rounded down to the nearest \$100,000.

TEAs for lower investment: Whether a project's location can qualify for the lower \$900,000 level by being in a TEA will remain as crucial as before, given the 50% differential. The TEA

definition of a rural area remains unchanged: *both* outside a town of 20,000 *and* outside a Metropolitan Statistical Area (MSA). Some areas will be TEAs based on federally published data showing an unemployment rate of 150% of the national average: an MSA; a county within an MSA, or a city or town outside an MSA. Otherwise, a "specially designated" high unemployment area may be determined only by USCIS itself (not by the states as before) and must either include the single census tract or contiguous census tracts in which the job creating business will operate or also any or all census tracts directly adjacent to such tract(s). This change is meant to cut down on the "gerrymandering" of extended snake-like areas previously subject to state designation including project areas that many criticized as not worthy of the lower investment level.

Process for TEA "Special Designation": Sadly, USCIS will not establish a separate process for "specially designated" TEAs before a project is organized or offered, except when a regional center seeks optional "exemplar" approval of a project, which can take a few years to get. Instead, investors must include in their I-526 petitions the data on which the TEA can be determined by USCIS. The rule does not identify one definitive set of data for these determinations, because "no one dataset is perfect for every scenario." The regulation specifically mentions data from the U.S. Census Bureau in the American Community Survey or from the DOL's Bureau of Labor Statistics as "reliable and verifiable," which probably will result in those sets being relied on most, and the rule's preamble mentions the need to use consistent data both for the local and national unemployment rates. But the lack of absolute clarity in data and methodology puts huge pressure on the economists on whom the project developers and regional centers rely to make a correct assessment of TEA eligibility, and on investors to make sure that the data to be used in their filing is the latest available data as of the time of filing.

Date that Locks in TEA: Importantly, under the statute the date of investment is the date the investment area must qualify as a TEA. But when capital is placed first in escrow until I-526 filing (and possibly beyond), USCIS considers the time of investment to be the time of I-526 filing. Therefore, we can expect the popularity of even short escrows to decline in order to ensure that an investor can depend on the TEA data as of the time of actual investment and can avoid any disastrous change in TEA data that could occur between investment and filing.

Retention of I-526 Priority Dates: The onslaught of investment during this season will result in even longer waiting lists for visa numbers than already exist. The new regulation mercifully provides that if an investor gets an I-526 petition approved, and then for some reason that I-526 is abandoned or even revoked (because of some material change) other than for misrepresentation or for ineligibility as of the time of filing, then the investor can take the place in the queue marked by that first approved petition and apply it to a subsequently filed I-526 petition. Importantly, a priority date that is actually used to immigrate as a conditional resident cannot be carried forward to a new petition, which means that investors who experience project-related problems that result in denial of I-829 would need to start all over in the queue. Also, a "material change" to an investment project that results in denial of an I-526 petition in the first place will provide no priority date, while a material change after that I-526 approval--though resulting in revocation of the petition before immigration to conditional residence--marks a place in the queue that the investor can take to a new petition. One investor who after I-526 approval

decides not to immigrate cannot pass on a priority date to a family member. The regulation does not provide any new protection from a child "aging out" of eligibility by reaching an adjusted age of 21 (absolute age minus the time of I-526 adjudication) by the time a visa number becomes available to the investor. Thus, as in the I-140 context for the first three employment based preferences, only the time the ultimately used petition was pending will be subtracted from the child's absolute age under the Child Status Protection Act. Importantly, a place in the visa queue marked by an approved I-526 will not be useful in immigrating under an I-140, and vice versa. And a subsequent I-526 retaining a prior petition's priority date will not allow the investor to use the lower level of minimum investment that may have been in effect for the first petition.

Miscellaneous Clarifications: Several additional "changes" are basically clarifications of existing interpretations. For instance, the filing of an I-526 petition is what marks an investor's place in any queue for visa numbers. EB-5 investors may take credit for all of the new jobs created by a project even if dependent on other capital in addition to that of EB-5 investors. Family members of investors who do not file with the investor (including divorced spouse or child who has married) must file their own petition with their own fee. While essentially passive investments as limited partners in a limited partnership were recognized because of specific reference in the statute, now the regulation acknowledges that an investor is sufficiently engaged in policy making activities of the investment enterprise if the organization documents provide the investor with "certain rights, powers, and duties normally granted to equity holders of the ... type of entity in the jurisdiction" which include the commonly used LLC structure. It does not appear that USCIS is seeking to use the regulation to tighten its current approach that essentially allows EB-5 investors to have essentially a passive role, even if only a nominal right to make "policy input." Nevertheless, one could imagine a future nightmare if USCIS began to evaluate what kinds of rights LLC members are "normally granted."

I-829 Interview Locations: One seemingly small change could have meaningful effect for investors. USCIS may require the investor and family filing an I-829 to remove conditions on residence to appear at an interview at the USCIS office having jurisdiction over either the location of the investor's commercial enterprise, the investor's residence in the United States, or the location of the adjudication of the petition, at the agency's discretion. These locations could be far from the investor's residence, so interviews could cause meaningful inconvenience and expense.

I-829 Denial Process: The regulation clarifies numerous aspects of the process to remove conditions from an investor's permanent residence based on an I-829 petition, including that a denial of the petition shall result in a "Notice to Appear" that starts removal proceedings where the investor and family can appeal the denial in front of an immigration judge. The regulation says that upon USCIS I-829 denial the investor must surrender the green card and does not say that USCIS will issue temporary evidence pending appeal in removal proceedings, but under the law investors are entitled to such temporary evidence and should demand it.

Offering Tweaks: The rule allows necessary modification of securities offering documents without jeopardizing any previously filed petitions based on some notion of material change, but it is hard to imagine how any changes necessitated by this rule would trigger such notions as to existing investors anyway.

What Else Might Happen: Some parties might bring litigation against USCIS to stop the regulation, alleging some fault in the rulemaking process or analysis. Congress might be persuaded to pass a new EB-5 law that overrules the regulation on the investment amount and TEA approach and makes other changes, including integrity measures, and maybe even to increase the available visa numbers (a very politically challenging task). Neither will stop a current rush of investors expecting the rule to take effect as planned.

This information contained in this article should in no way be construed as legal advice. Please consult with your legal counsel

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Exhibits to Motion to Reopen and Motion to Reconsider

2	Presentation of Charles Oppenheim, Chief, Immigrant Visa Control and Reporting Division, U.S. Department of State
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EB-5 Visa Updates from the U.S. Department of State

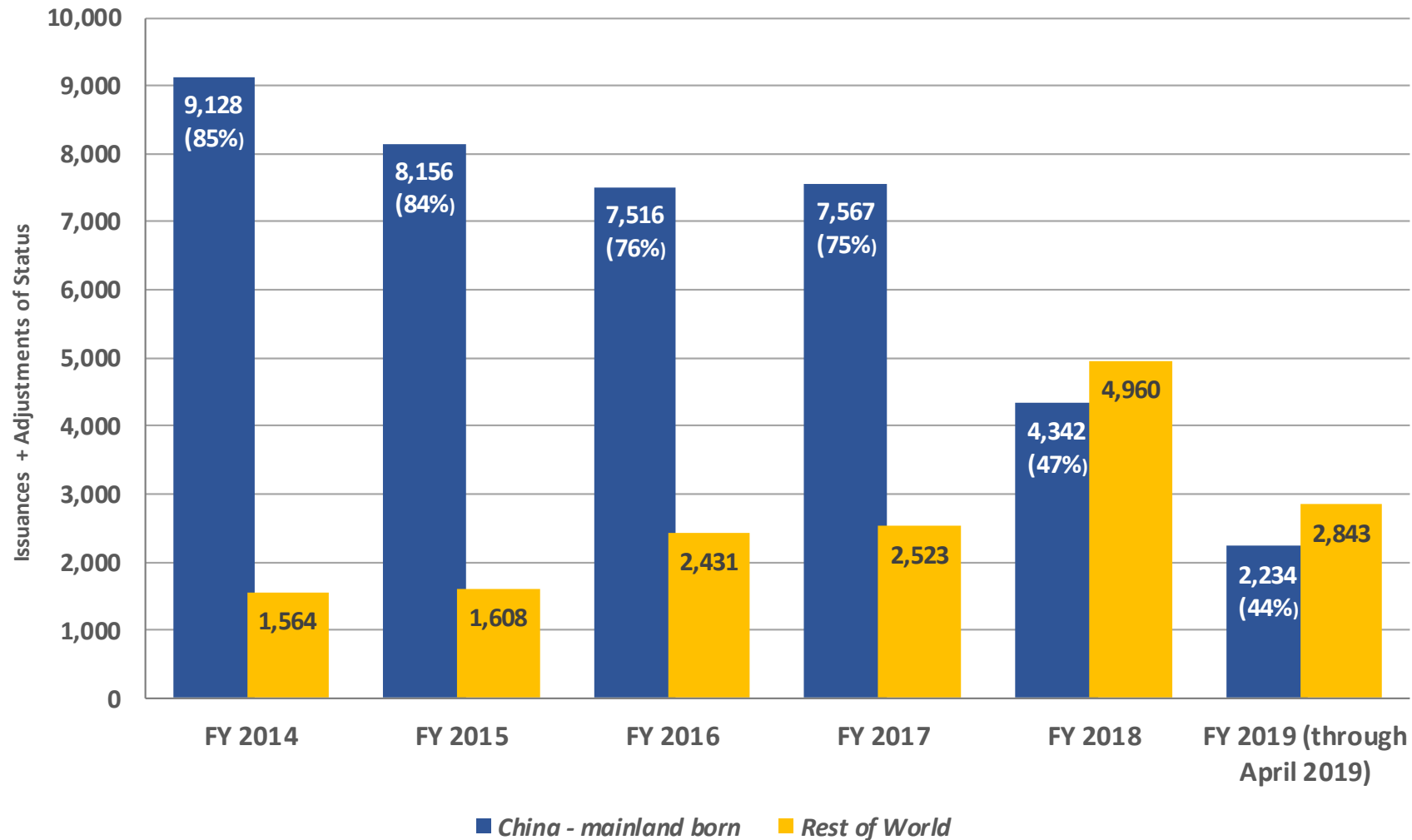
Guest of Honor Presenter:

Charles Oppenheim

Chief, Immigrant Visa Control and Reporting Division,

U.S. Department of State

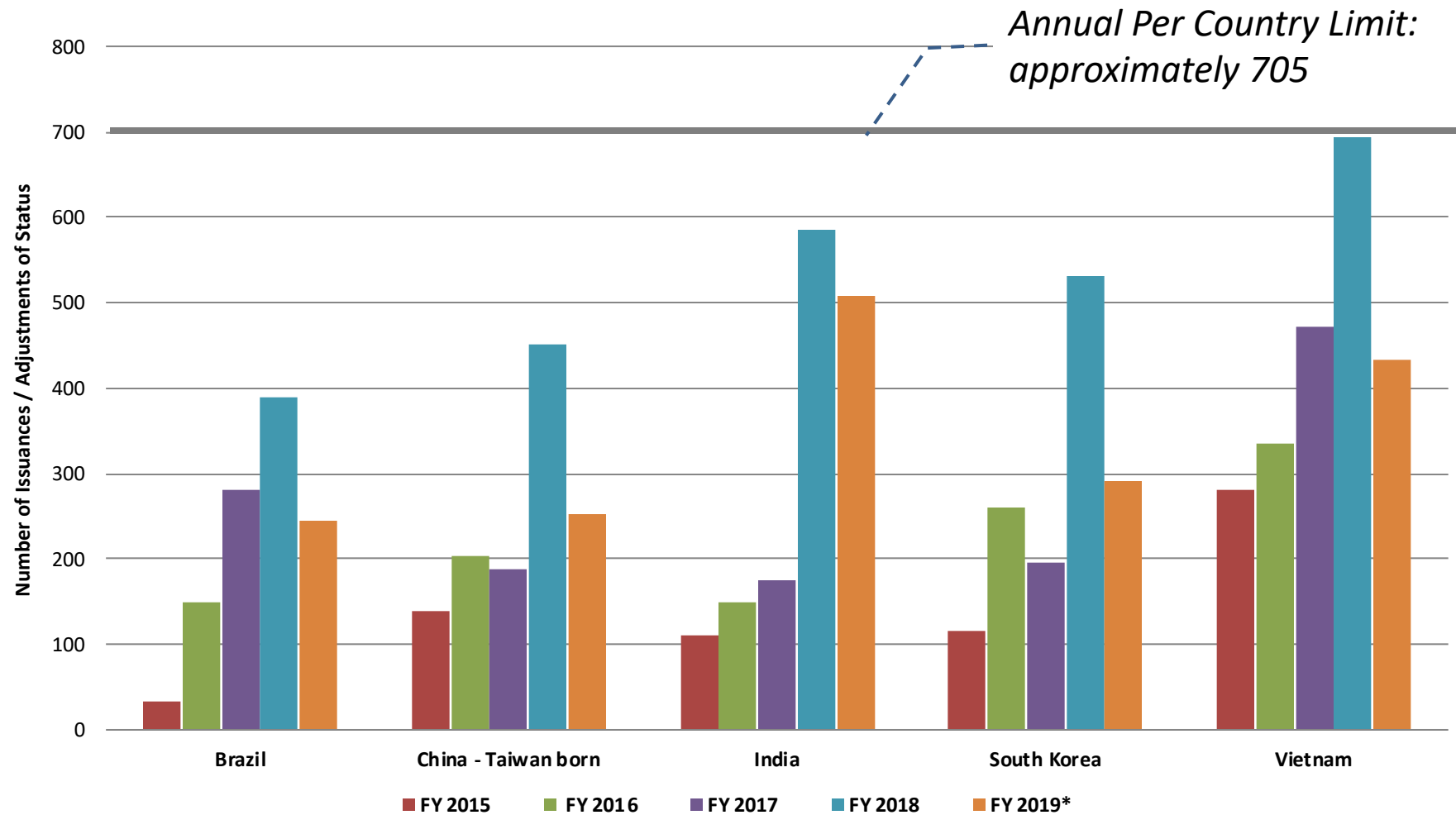
EB-5 Number Use: China-mainland Born vs. Rest Of World FY 2014 – FY 2019*



*FY 2019 - Through April 2019



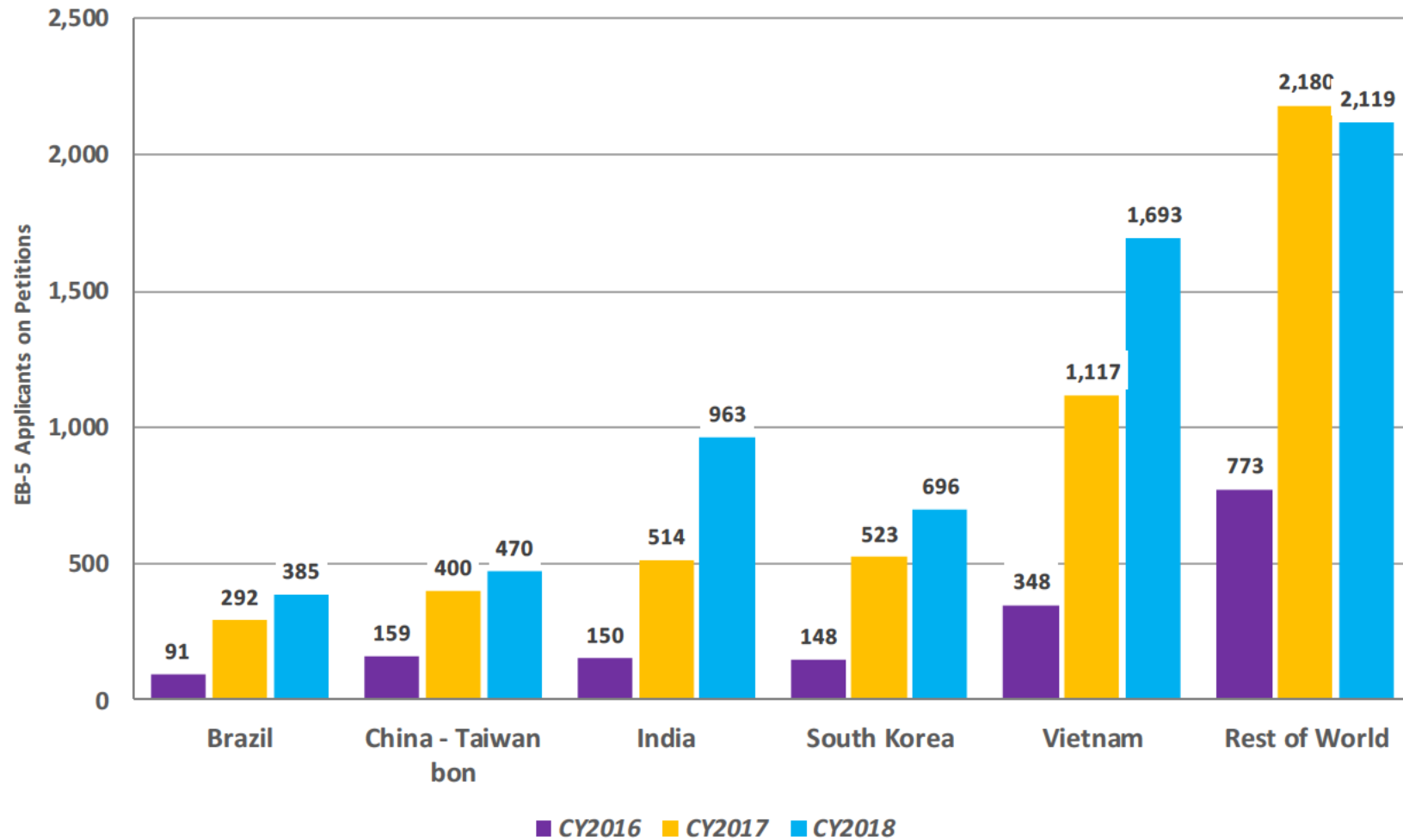
EB-5 Number Use By Top Countries Of Current Interest Other than China-mainland Born, FY 2015 – FY 2019*



*FY 2019 - Through April 2019



Number of EB-5 Applicants on Petitions Received at NVC Calendar Year 2016 – 2018



Note:

- Rest of World data excludes China-mainland born, and those countries listed above.
- Petitions for China-mainland born have dropped to under 10,000 applicants per-year.
- The numbers above include all EB-5 applicants on petitions (principle investors plus any qualified family derivatives)

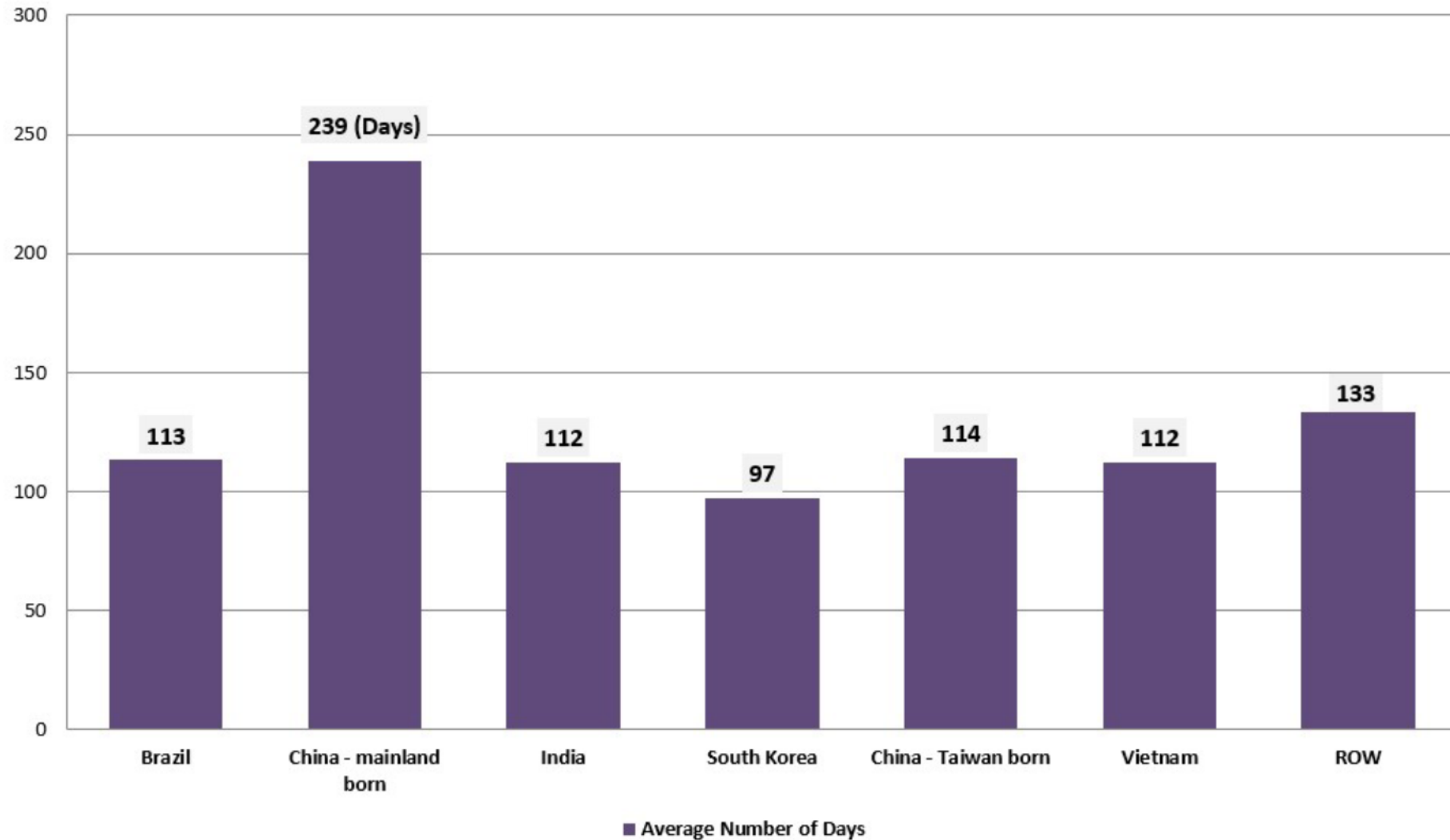


Average Percentage of EB-5 Principal Investors FY 2015 – 2018

	China - mainland born	Vietnam	India	S. Korea	Brazil	China - Taiwan born	Rest of World
FY 2018	36.8%	26.3%	41.2%	35.8%	32.7%	36.9%	33.6%
FY 2017	36.1%	27.2%	42.0%	35.9%	29.4%	39.4%	34.0%
FY 2016	35.8%	27.2%	42.3%	34.2%	29.3%	34.5%	32.4%
FY 2015	35.2%	27.1%	36.0%	35.3%	35.3%	35.3%	33.5%

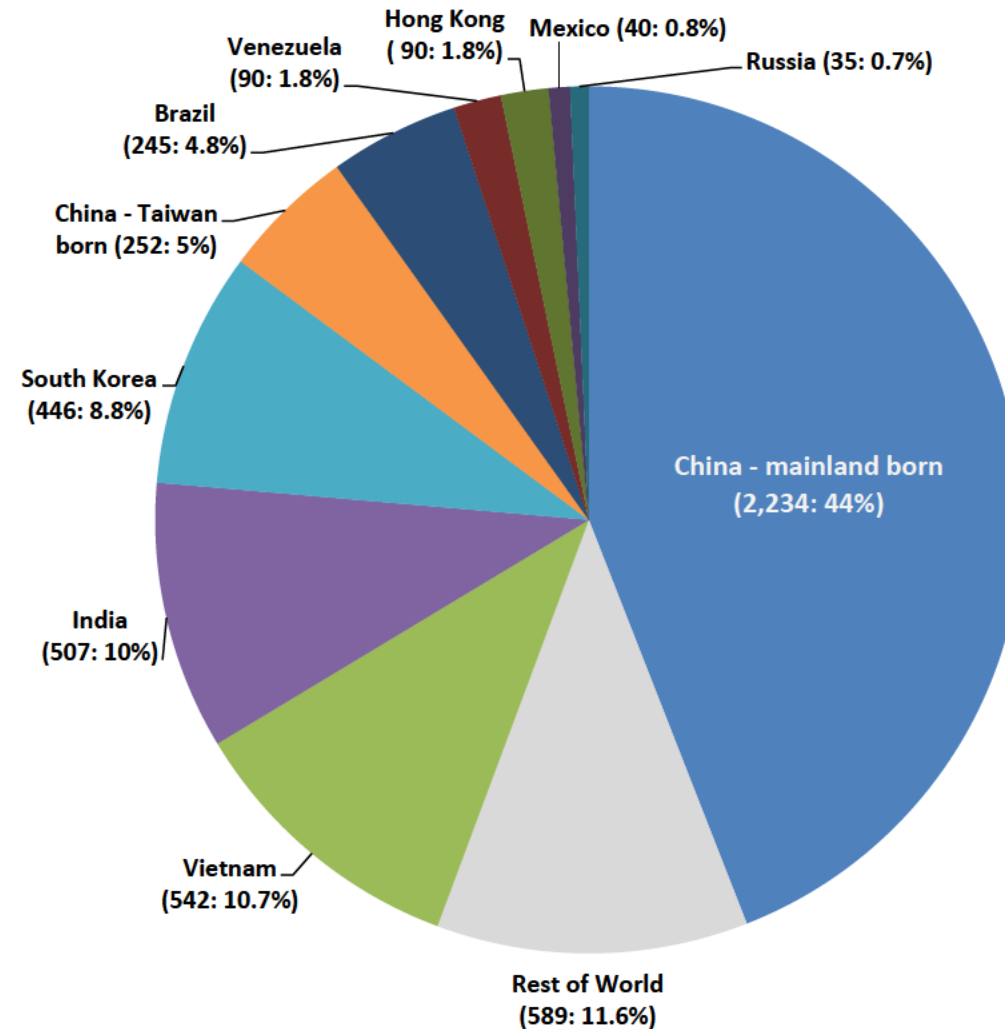


Average Time (Days) Applicants Take to Become Eligible for Potential Interview Scheduling Once Notified by NVC to Submit Documents



Top Countries of EB-5 Number Use FY 2019*

Country*	FY 2018	FY 2019*
China-Mainland	48.3%	44.0%
Vietnam	7.2%	10.7%
India	6.1%	10.0%
Korea, South	5.5%	8.8%
China-Taiwan born	4.7%	5.0%
Brazil	4.0%	4.8%
Venezuela	2.5%	1.8%
Hong Kong	2.1%	1.8%
Mexico	1.8%	0.8%
Russia	1.4%	0.7%
All Other Countries	16.4%	11.6%



*Sorted by FY 2019 (as of April 1st, 2019) ranking



Otherwise Unused EB-5 Numbers (FY 2019 Estimated)

Example of determination and distribution of such numbers:

Annual Limit: 10,075 (can vary slightly)

Per-Country Limit: 705



10,075 (Annual Limit)

- 5 China (reduction for Chinese Student Protection Act)
- 705 India (at limit)
- 705 Vietnam (at limit)
- 5,000 All Other Countries (Estimated)

3,660 “unused” numbers (estimated) available for use by countries that reached their per-country limit in priority date order



EB-5 Applicants with Petitions on File at NVC and Estimated USCIS Applicant Data (As of April 1st, 2019)

Foreign State of Chargeability	Year of Priority Date					Actual Number of Applicants at NVC*
	2014	2015	2016	2017	2018	
Brazil	0	0	40	88	8	136
China-mainland born	4,800	14,057	7,558	5,629	125	32,169
India	0	0	127	320	94	541
South Korea	0	0	0	75	12	87
China-Taiwan born	0	0	0	50	2	52
Vietnam	0	0	80	477	7	564
Rest of World	0	0	200	512	38	750

** Which will not be scheduled for an interview during FY 2019.*



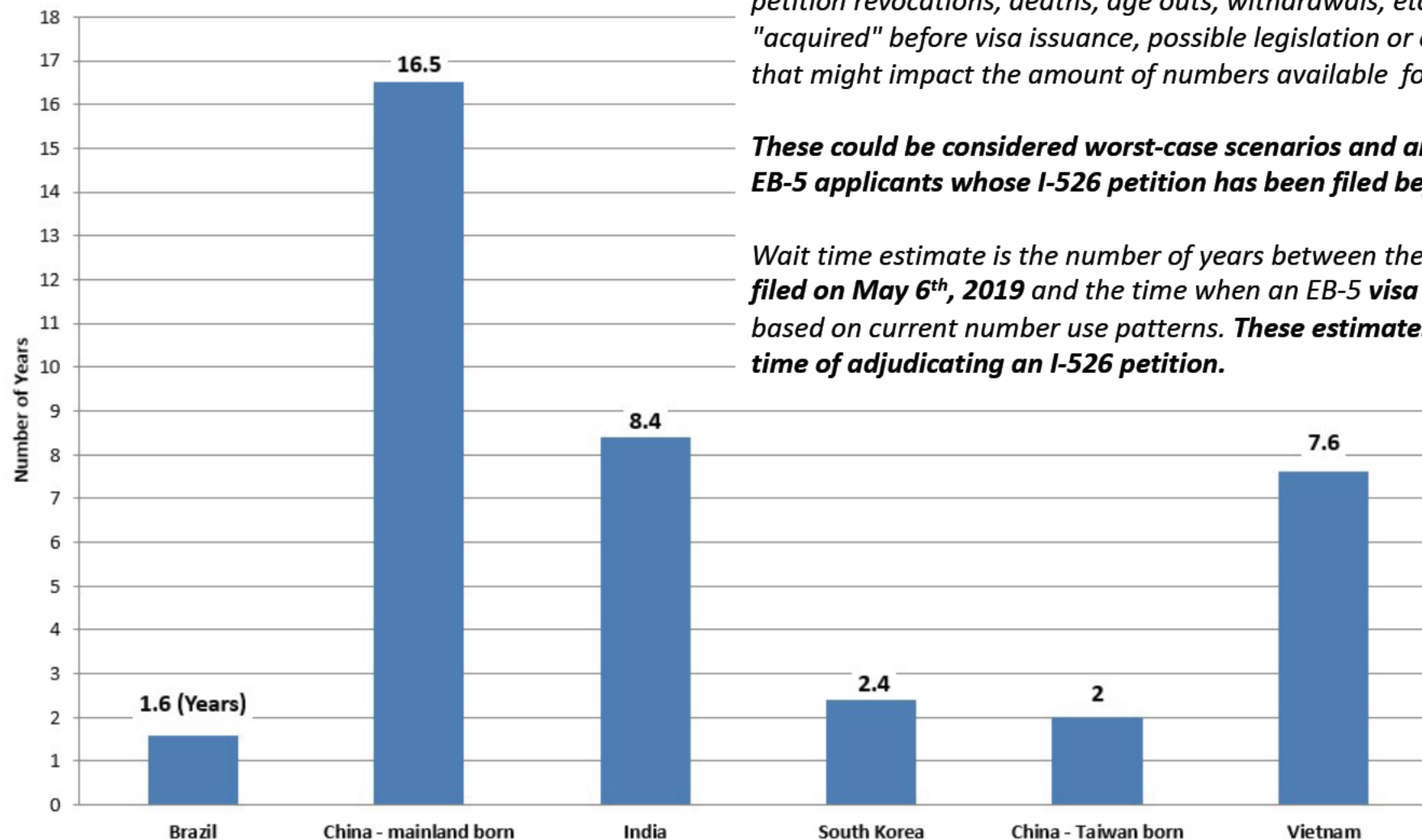
EB-5 Applicants with Petitions on File at NVC and Estimated USCIS Applicant Data (As of April 1st, 2019)

Foreign State of Chargeability	Actual Number of Applicants* at NVC	DoS <i>ESTIMATED</i> Number of Applicants with Petition on File at USCIS	<i>Estimated Grand Total</i>
Brazil	136	978	1,114
China-mainland born	32,169	17,368	49,537
India	541	5,310	5,851
South Korea	87	1,589	1,676
China-Taiwan born	52	1,334	1,386
Vietnam	564	4,705	5,269
Rest of World	750	7,574	8,324

** Which will not be scheduled for an interview during FY 2019.*



Potential Wait Time (Estimated)* Until Visa Number Availability If the I-526 Petition IS FILED TODAY (MAY 6, 2019)



**These estimates cannot encompass all variables, such as dissipation from petition revocations, deaths, age outs, withdrawals, etc.; or increases from family "acquired" before visa issuance, possible legislation or other governmental action that might impact the amount of numbers available for use each year.*

These could be considered worst-case scenarios and are not applicable to the EB-5 applicants whose I-526 petition has been filed before May 6th, 2019.

Wait time estimate is the number of years between the time an I-526 petition is filed on May 6th, 2019 and the time when an EB-5 visa is likely to be available based on current number use patterns. These estimates include the processing time of adjudicating an I-526 petition.



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3	USCIS' current published I-829 processing time (per USCIS at https://egov.uscis.gov/processing-times/home on October 25, 2019)
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Check Case Processing Times

Select your form number and the office that is processing your case
For more information about case processing times and reading your receipt notice, [click here](#) ([./more-info](#)).

Form

I-829 | Petition by Entrepreneur to Remove Conditions on Permanent Resident Status ▼

Field Office or Service Center

Immigrant Investor Program Office ▼

Get processing time

Processing time for Petition by Entrepreneur to Remove Conditions on Permanent Resident Status (I-829) at Immigrant Investor Program Office



[Check your case status \(https://egov.uscis.gov/casestatus/landing.do\)](https://egov.uscis.gov/casestatus/landing.do)

i How we process cases

This time range is how long it is taking USCIS to process your case from the date we received it. We generally process cases in the order we receive them, and we will update this page each month. The estimated time range displayed is based on data captured approximately two months prior to updating the page. Please note that times may change without prior notice.

We have posted a “Receipt date for a case inquiry” in the table below to show when you can inquire about your case. If your [receipt date \(/more-info\)](#) is before the “Receipt date for a case inquiry”, you can submit an “outside normal processing time” service request [online](#) (<https://egov.uscis.gov/e-request>).

Estimated time range	Form type	Receipt date for a case inquiry
27.5 Months to 47.5 Months	Removal of lawful permanent resident conditions (immigrant investors)	December 12, 2015



Other case processing times resources

[When to expect to receive your Green Card \(/expect-green-card\)](#)

[Processing information for the I-765 \(/i765\)](#)

[Affirmative Asylum Interview Scheduling \(http://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-scheduling-bulletin\)](#)

[Administrative Appeals Office \(https://www.uscis.gov/about-us/directorates-and-program-offices/administrative-appeals-office-aao/aao-processing-times\)](#)

[International Offices \(/international-operations-office\)](#)

[Historical Average Processing Times \(/historic-pt\)](#)



Case management tools

[Inquire about a case outside normal processing time \(https://egov.uscis.gov/e-request/displayONPTForm.do?entryPoint=init&sroPageType=onpt\)](#)

[Check your case status \(https://egov.uscis.gov/casestatus/landing.do\)](#)

[Update your mailing address \(https://egov.uscis.gov/coa/\)](#)

[Ask about missing mail \(https://egov.uscis.gov/e-Request/Intro.do\)](#)

[Correct a typographical error \(https://egov.uscis.gov/e-request/displayTypoForm.do?entryPoint=init&sroPageType=typoError\)](#)

[Request appointment accommodations \(https://egov.uscis.gov/e-request/displayAccomForm.do?entryPoint=init&sroPageType=accommodations\)](#)

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Exhibits to Motion to Reopen and Motion to Reconsider

4	Summary of Past and On-Going Economic Impacts of the Trapp Family Lodge EB-5 Project prepared by Economic & Policy Resources (“EPR”); letter from Walter Frame, Executive Vice President of Trapp Family Lodge, Inc.
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October 24, 2019

Jeffrey B. Carr
Economics & Policy Resources, Inc.
400 Cornerstone Drive, Suite 310
Williston, VT 05495-1660

Re: Trapp Family Lodge – EB-5 Project Summary

Dear Jeff,

Thank you for your review of this Project and for writing an excellent summary of its history and current status in the report you entitled, "Trapp Family Lodge – EB-5 Project Summary of Past & On-going Economic Impacts." I have read your report carefully and I believe the report states accurately the data that was provided by TFL and uses the data appropriately to portray our EB-5 Project and its collateral economic development.

I confirm that the Summary states correctly the chronology of the construction of our brewery, the schedule of its early and on-going business operations, increased brewing capacity, the purchase of equipment to facilitate our new canning process that now supplements our bottle processing, and the increase of the area of product distribution ten states.

Your reports cites accurately the chronology and numbers of our payroll hires and the number of jobs preserved continuously from the outset of our Project. You have described accurately the sources and uses of funding for this Project, including statements about gross income and net income (reflecting accurately the cost of sales and expenses). The tables in your summary are accurate as they repeat information TFL has provided.

The report also states accurately information about the construction and operation of our Bierhall Restaurant and our Retail Store. The data we provided to you has been accurately mentioned in support of the job-creation analysis you have performed.

TFL is confident that your Summary portrays an accurate picture. Thank you for your help.

Sincerely,



Walter Frame
Executive Vice President
Trapp Family Lodge, Inc.

Attachment.

Trapp Family Lodge EB-5 Project
Review of Activities – SUMMARY of Past and On-Going Economic Impacts
October 18, 2019

1. Introduction

This is the second activity review for the Trapp Family Lodge EB-5 Project (the “Project”). This review includes the latest up-to-date information, the latest, up-to-date sources and uses of funds, and the latest economic impact estimates based on actual Project activity through June of 2019 (with some forward-looking estimates for the rest of 2019) of the economy of the State of Vermont and for the U.S. as a whole. The Project has continued to successfully operate the commercial brewery since opening in 2016—making on-going contributions to the Vermont and U.S. economies. The construction of an associated Bierhall Restaurant and an associated retail store offering Trapp Brewery-linked products were also completed in association with the brewery expansion. Both of those components were also completed in 2016 and were an important part of the overall master operations plan tied to the concept of the commercial brewery expansion. All components continue to operate successfully as of the date of this summary, and are therefore continuing to contribute to the State of Vermont and U.S. economies. Finally, it should be noted that Trapp Family Lodge has continued to make additional investments in brewery operations after the completion of the original construction of the expended brewery, most recently increasing its brewing capacity and making other investments in infrastructure and productivity enhancing technology.

As has been the case since the beginning, the economic impact study results do not include any indirect job effects related to the preservation of the Trapp Family Lodge’s qualifying preserved positions in the “10 jobs per EB-5 Investor Math”, even though these preserved jobs continue to make positive contributions to the Vermont and U.S. economies. Nor do the job and other economic impacts described herein include any of the economic (job) impacts related to the Bierhall Restaurant or the associated retail operations—even though both have clearly been significantly positive. More specifically and based on this latest, up-to-date, actual activity data and information as described in detail in *Section 1.2* below, the Project has likely created a total of 653 EB-5 program eligible jobs¹—and up to an additional 346 economically direct and economically indirect jobs (including 78 additional jobs in the Vermont economy and 268 additional jobs outside of Vermont) not enumerated in the EB-5 impact report as qualifying to support immigrant investor job benefits requests per EB-5 program rules.

1.1 Up-to-Date Project Description and Development Timeline

The Trapp Family Lodge EB-5 Project remains comprised of its two primary components; (1) the construction of the Trapp Family Brewery and a new European-style beer hall restaurant to create a destination craft brewery to complement the Trapp Family Resort’s European experience, and (2) the operation of the destination craft-brewery (whose annual production capacity is expected to increase from 2,000 barrels to 50,000 barrels). The Project continues to maintain a total of 111 “preserved positions” on the Trapp Family Lodge payroll for its on-going lodge operations. Beer from its craft-brewery is now distributed in ten states (including the New England states of Vermont, New Hampshire, Maine,

¹ Including the estimated job impact of 542 EB-5 Program-eligible jobs from the Project’s economic activities and a total of 111 Preserved Jobs at the Trapp Family Lodge destination resort per the original petition filing.

Trapp Family Lodge EB-5 Project
Review of Activities – SUMMARY of Past and On-Going Economic Impacts
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Massachusetts, Connecticut, and Rhode Island; and the Middle Atlantic states of New Jersey, New York, Pennsylvania, and Virginia).

In 2018, the brewery upgraded its production facilities to maintain its competitive advantage in the increasingly competitive craft brewery marketplace by adding a new canning system (based on market demand feedback requesting more of the brewery's product offerings be packaged in cans versus bottles), four new fermenters, a new brite tank, and a brew house "Cip" (or "cleaning in place" system) which involved additional plant expansion expenditures for new equipment and installation of nearly \$1.2 million during that time. While this expansion activity is not considered to be a part of the EB-5 Project and the new jobs created by that expansion have not been included in any request for EB-5 Program job benefits, the estimated economic impacts associated with the EB-5 project's economic activities are in fact noteworthy because they demonstrate the on-going economic benefits to the State of Vermont economy (and the U.S. economy overall) and the Trapp Family Lodge management's continuing commitment to the brewery's on-going commercial success that is over and above its on-going, steadfast commitment to completing the full execution of the EB-5 Project as described.²

In terms of total economic benefits to the Vermont economy, the construction of the production brewery facility and the beer hall's fit-up began in June 2013 and was completed in May 2017. Operations at the Project commenced in March 2015 with direct hires averaging 5 staff at the brewery in 2015; increasing to 12 staff in 2016; and averaging 14 staff beginning in 2017 and carrying that through calendar year 2018 (and through the month of June of calendar year 2019). In addition to the above operations staff, the Project has consistently maintained a total of 111 "preserved positions" on the Trapp Family Lodge payroll as prescribed in the Project's original I-526 filings in its lodging operations. If the 111 Preserved Positions" at the Trapp Family Lodge are added to those economic activity jobs, the Trapp Family Lodge EB-5 Project has resulted in a total of 653 EB-5 Program-eligible jobs through 2018/projected through 2019. Economically indirect jobs attributable to the on-going preservation of those 111 Trapp Family Lodge jobs total 75 within the State of Vermont and 142 indirect jobs attributable to the job preservation effort within the U.S. economy as a whole. Since those preserved jobs are in fact on-going, the economic indirect jobs attributable to the resort's job preservation efforts clearly represent on-going economic benefits to the Vermont and U.S. economies.

The current, most up-to-date total sources and uses of funds of the Project are provided in *Table 1* below. The numbers for Year 6 do not include the additional roughly \$0.9 million in capital investments made during calendar year 2018 (as noted above), and therefore has been provided for informational purposes only. The numbers in the most up-to-date sources and uses of funds for calendar year 2018 include a total of \$916,612 dollars in non-EB-5 Project expenditures made to expand and improve the productivity of the

² It should be noted that the Fall of calendar year 2018 installation expenditures related to these investments in plant and equipment resulted in 1 economically direct and 2 economically indirect jobs and impacts of \$409,380 in total output, \$176,260 in total labor income, and \$156,320 in total household income (2019 dollars) during 2018 (excluding the foreign sourced equipment expenditures). While this activity was beyond the scope of the Project and is presented for informational purposes only, it is noteworthy in terms of the on-going investments in the brewery facilities being made by Project management in order to help assure the continued commercial success of the Project in a very competitive craft brewing marketplace that has emerged over the past five years in the region and nationally. This is another example of the on-going economic benefits the Project and subsequent investments are providing to the Vermont economy.

Trapp Family Lodge EB-5 Project
Review of Activities – SUMMARY of Past and On-Going Economic Impacts
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expended brewery’s operations. A total of \$267,364 was invested to continue to preserve the 111 full-time, year-round positions at the Trapp Family Lodge facility as envisioned in the petitioner’s original filing that has been steadfastly maintained over the entire course of this Project. The information provided relative to the additional \$916,612 invested to increase the capacity-productivity of the brewery’s operations has been provided for information purposes only and again demonstrates the on-going commitment of management to the commercial success of the Project above and beyond its commitment to the EB-5 Project.

Table 1: Total Project Sources and Uses of Funds by Calendar Year 2013-2018 [History] and for Calendar Year 2019 [History Through June 2019-Forecasted Through December 2019]

Table 1: Sources and Uses of Funds (Actuals through June 30, 2019)								Forecast	Totals
	Jan2013- Dec2013	Jan2014- Dec2014	Jan2015- Dec2015	Jan2016- Dec2016	Jan2017- Dec2017	Jan2018- Dec2018 [1]	Jan2019- Dec2019		
Description	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7		
Sources of Funds:									
Trapp Family Lodge Equity	492,461	138,507	698,189	3,077,202	776,160	267,364	250,000	5,699,883	
Funding from EB-5 Investors	6,000,000	1,500,000	9,500,000	3,000,000	-	-	-	20,000,000	
Total	6,492,461	1,638,507	10,198,189	6,077,202	776,160	267,364	250,000	25,699,883	
Uses of Funds:									
Brewery Land Purchase/Permits	-	70,000	1,500,000	430,000	-	-	-	2,000,000	
Construction of New Brewery/Restaurant	3,780,320	6,459,721	2,552,135	2,207,825	453,557	-	-	15,453,558	
Capital to TFL to Preserve Positions	492,461	138,507	698,189	6,077,202	322,603	267,364	250,000	8,246,326	
Total	4,272,781	6,668,228	4,750,324	8,715,027	776,160	267,364	250,000	25,699,884	
NOTES:									
[1] For 2018, only the \$267,364 in Trapp Family Lodge Equity used to preserve jobs are part of the on-going EB-5 Project. Additional investments of roughly \$0.9 million were made to expand/improve brewery operations in 2018 and are indicative of the on-going commitment of the Project’s management to maintain the long-term commercial success of the Project.									

In addition to the above information, the actual (through mid-calendar year 2019), and projected consolidated income statement for the three identified profit centers is shown in *Table 2* below. The actual historical and projected income statement includes three actual years of operations (corresponding to calendar years 2016 through 2018) and a forecasted total for calendar year 2019—which includes preliminary actual operating results through June 30, 2019). All components of the Project have commenced operations and sales/profit growth has either exceeded expectations (for Retail Sales and the operations of the Bierhall Restaurant) or are close to, or are at least currently projected to be, “near target” during the current year. The expended brewing operations and the associated Bierhall restaurant and retail operations—which would not likely exist without the expanded brewery operations and the EB-5 investor capital contribution enabled by the EB-5 Program—likewise represent significant and on-going economic contributions to the economy of the State of Vermont.

Trapp Family Lodge EB-5 Project
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Table 2: Up-to-Date Actual and Projected Consolidated Income Statement

Total Brewery and Bierhall Restaurant (Including Retail)				
	2016 Actual	2017 Actual	2018 Actual	2019 Projected
Revenue	1,863,464	5,555,273	6,299,440	7,009,976
Cost Of Sales	895,286	2,075,199	2,257,697	2,398,875
Gross Profit	968,178	3,480,074	4,041,743	4,611,101
Expenses	1,428,443	3,097,066	3,393,433	3,571,763
Net Income From Operations	(460,265)	383,007	648,310	1,039,338
Note:				
Years correspond to Trapp Family Lodge Fiscal Years (November 1 through October 31 of the year indicated).				

1.2 Summary of the Fall 2019 Economic Impact Analysis

The following section presents the results of the Fall 2019 economic and job impact assessment study for the Trapp Family Lodge EB-5 Project’s economic activities that have had, and continues to have, a significant and positive impact in the economy of the State of Vermont and in the U.S. economy overall—including the preservation of 111 current positions at the Trapp Family Lodge (as a “troubled business” under the EB-5 program). In the State economy and for the region outside of the State, these new economic activities are associated with actual construction of the expanded Trapp Family Brewery and the new Austrian-style beer hall. The operations of the expanded brewery and the preservation of 111 positions at the Trapp Family Lodge also add significantly to the number of new and preserved positions associated with the Project, even though the jobs counted for EB-5 program purposes only reflect the newly created jobs within the State of Vermont. The “preserved positions” at the Trapp Family Lodge represent only the “head-count” of those preserved Trapp Family Lodge positions, and do not include any of the estimated 75 economically indirect jobs that were indirectly created within the State’s geography attributable to those preserved positions.³

More specifically, during construction of the production brewery facility’s and the beer hall’s fit-up—which began in June 2013 and completed in May 2017—actual construction and construction-related activity expenditures amounted to a total of \$12.4 million (*Table 3*). These actual expenditures were estimated to have generated total net new job impacts of 127 jobs in Year 1 (corresponding to calendar year 2013), 193 jobs in Year 2 (corresponding to calendar year 2014), 69 jobs in Year 3 (corresponding to calendar year 2015), 146 jobs in Year 4 (corresponding to calendar year 2016), and 19 jobs in Year 5 (corresponding to

³ This estimate was derived by estimating the economically indirect jobs associated with the preservation of those 111 Trapp Family Lodge positions that may have otherwise been lost to the regional economy “but for” the preservation of those positions in the Accommodations sector (NAICS 72111). This total excludes the 142 economically indirect jobs created by the preservation of the 111 Trapp Family Lodge positions for the economy of the rest of the U.S. outside of the State of Vermont.

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calendar year 2017)—both inside and outside of the State of Vermont and enumerating both economically direct and economically indirect jobs.

Operations at the Project commenced in March 2015 with direct hires averaging 5 staff at the brewery in 2015; increasing to 12 staff in 2016; and averaging 14 staff in 2017 and 2018. These direct hires at the brewery generated a total of 12 new operating/operations-related economically direct and economically indirect jobs in Year 3 (corresponding to calendar year 2015); a total of 30 new operating/operations-related economically direct and economically indirect jobs in Year 4 (corresponding to calendar year 2016); and 34 new operating/operations-related economically direct and economically indirect jobs in Year 5 and Year 6 (corresponding to calendar year 2017 and calendar year 2018), all attributable to the Project within the regional economy of the State of Vermont—even though the geographic reach of the project’s operations goes beyond the geography of the State).⁴ In addition to the above, the project has steadfastly maintained a total of 111 “preserved positions” on the Trapp Family Lodge payroll as prescribed in the Project’s original I-526 filings.

Table 3 on the following page shows the estimate of job creation arising from actual Project construction-related expenditures and subsequent operations by direct hires for brewery operations. The job impact analysis shows that a total 437 economically indirect jobs were estimated to have been created by the project throughout the State of Vermont and in the remainder of the U.S. economy outside of the State resulting from: (1) actual construction and fit-up expenditures corresponding to construction-related activity in calendar years 2013 through 2017, and (2) from the economically indirect jobs within the State of Vermont resulting from the expanded operations of the brewery that comprise the Project. When these job economically indirect impact estimates are added to the economically direct jobs^{5,6} associated with the construction and fit-up expenditures related to the brewery expansion within Vermont and the economically direct operations jobs (which by definition include only the new hires within Lamoille County, Vermont) at the expanded brewery facility, the estimated EB-5 Program-eligible job impacts increases to 477. Further, adding in the 111 “preserved positions” to the operations component of the Project (but still excluding the beer hall and retail operations) into the “10 jobs per EB-5 investor math,” a grand total of 588 EB-5 program-qualifying economically direct and indirect jobs and preserved Trapp Family Lodge preserved positions may credibly be brought into the job impacts associated with the Project.

Table 3 also illustrates other economic benefits to the State of Vermont from construction and operation of project. These economic benefits include a six-year (i.e., 2013-2018) cumulative total of \$44.6 million (in

⁴ As a result, it is likely the project has created a significant number of jobs outside of the State of Vermont. Input-output runs using REDYN and the same input-output analysis techniques applied in other parts of this impact analysis) indicate the number of economically indirect jobs is as high as 47 additional jobs in Year 5 or calendar year 2017. Even though this estimate is provided for informational purposes only and is not included in the “10 jobs per EB-5 investor math,” it could be and still be in line with EB-5 Program job counting rules.

⁵ Since the overall construction activity for the Project was sustained for the required minimum of 24 continuous months, the Project was able to include economically indirect jobs from that development-construction activity.

⁶ As noted above, the expanded brewery operations resulted in 5 new economically direct jobs and 3 new economically indirect jobs in Year 3 (or in calendar year 2015); 12 economically direct and 8 new economically indirect jobs in Year 4 (or calendar year 2016); and 14 economically direct and 9 new economically indirect jobs in Year 5 and Year 6 (or calendar years 2017 and 2018).

Trapp Family Lodge EB-5 Project
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constant 2019 dollars) in increased output in the State economy, a six-year cumulative total of \$24.2 million (in 2019 constant dollars) in increased disposable income, and a six-year cumulative increase of \$21.3 million in increased household earnings (in 2019 constant dollars) associated with construction and operations activities.

The Trapp Family Lodge EB-5 Project has also had other economic impacts outside the State (i.e., the rest of the United States—minus the State of Vermont) including: (1) a six-year cumulative total of \$82.4 million (in constant 2019 dollars) in increased output, (2) a cumulative six-year total of \$27.9 million (in constant 2019 dollars) in disposable personal income, and (3) a six-year cumulative total of \$25.1 million (in constant 2019 dollars) in household earnings. The employment impact associated with the economic activities of the Project outside of the State is estimated as 54 jobs in 2013; 84 jobs in 2014; 46 jobs in 2015; 103 jobs in 2016; 55 jobs in 2017, and 49 jobs in 2018.

As such, the Project, based on actual economic activities that have actually transpired over the first 6 years of the project’s timeline, has had—and continues to have—a substantial and positive impact on the economy of both the State of Vermont and for the U.S. economy as a whole—consistent with the language of the EB-5 Program legislative intent of the EB-5 program as laid out in the Policy Manual Volume 6, Part G, Chapter 2, Section A issued by the USCIS states as follows:

"Congress created the immigrant investor category so the U.S. economy can benefit from an immigrant’s contribution of capital. This benefit is greatest when capital is at risk and invested in a new commercial enterprise that, because of the investment, creates at least 10 full-time jobs for U.S. workers."

Table 3: Summary of Total Project Impacts

	2013	2014	2015	2016	2017	2018
Regional Center Economy						
Total Jobs	73	109	52	113	45	36
Output (\$ Millions)	\$6.18	\$9.43	\$5.37	\$11.91	\$6.21	\$5.53
Labor Income (\$ Millions)	\$3.45	\$5.24	\$2.91	\$6.48	\$3.29	\$2.91
Household Earnings (\$ Millions)	\$3.02	\$4.59	\$2.55	\$5.67	\$2.89	\$2.55
Outside the Regional Center Economy						
Total Jobs	54	84	46	103	55	49
Output (\$ Millions)	\$10.81	\$16.82	\$9.68	\$22.05	\$12.07	\$10.93
Labor Income (\$ Millions)	\$3.74	\$5.81	\$3.28	\$7.48	\$4.00	\$3.60
Household Earnings (\$ Millions)	\$3.36	\$5.22	\$2.95	\$6.71	\$3.59	\$3.23
Total United States Economy						
Total Jobs	127	193	98	216	100	85
Output (\$ Millions)	\$16.99	\$26.25	\$15.05	\$33.96	\$18.27	\$16.47
Labor Income (\$ Millions)	\$7.19	\$11.05	\$6.19	\$13.96	\$7.29	\$6.51
Household Earnings (\$ Millions)	\$6.38	\$9.81	\$5.50	\$12.39	\$6.47	\$5.78
<i>Note: All dollar values are presented in millions of 2019 dollars. Includes only EB-5 Project activity.</i>						

Prepared by: Economic & Policy Resources, Inc.

Vermont Agency of Commerce and Community Development Regional Center

AAO1890000630 / ID 1031910148 / RCW 10319101148

Exhibits to Motion to Reopen and Motion to Reconsider

5	Peak Resorts, Inc. Form 10-K Annual Report for fiscal year ended April 30, 2019; press release; excerpt from Economic Impact Report dated December 10, 2018
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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended April 30, 2019.

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

43-1793922
(I.R.S. Employer
Identification No.)
63025
(Zip Code)

(636) 938-7474

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
<u>Common Stock, \$0.01 par value per share</u>	SKIS	<u>NASDAQ Global Market</u>

Securities registered pursuant to section 12(g) of the Act:

None

I d c a t e b y c e c k a k f t e e g s t a t s a w e - k o w s e a s o e d s s e , a s d e f e d R e 405 o f t e S e c t e s A c t Y e s N o

I d c a t e b y c e c k a k f t e e g s t a t s o t e q u e d t o f e e p o t s p a t t o S e c t o 13 o S e c t o 15(d) o f t e A c t Y e s N o

I d c a t e b y c e c k a k w e t e t e e g s t a t (1) a s f e d a e p o t s e q u e d t o e f e d b y S e c t o 13 o 15(d) o f t e S e c t e s E x c a g e A c t o f 1934 d g t e p e e d g
12 o t s (o f o s c s o t e p e o d t a t t e e g s t a t w a s e q u e d t o f e s c e p o t s), a d (2) a s e s s b j e c t t o s c f g e q e e t s f o t e p a s t 90 d a y s Y e s
N o

I d c a t e b y c e c k a k w e t e t e e g s t a t a s s b t t e d e c t o c a y e v e y I t e a c t i v e D a t a F e e q u e d t o e s b t t e d p s a t t o R e 405 o f R e g a t o S T (§
232 405 o f t s c a p t e) d g t e p e e d g 12 o t s (o f o s c s o t e p e o d t a t t e e g s t a t w a s e q u e d t o s b t s c f e s) Y e s N o

I d c a t e b y c e c k a k f d s c o s e o f d e q e t f e s p a t t o l t e 405 o f R e g a t o S K (§ 229 405 o f t s c a p t e) s o t c o t a e d e e , a d w o t e c o t a e d ,
t o t e e s t o f e g s t a t s k o w e d g e , d e f t v e p o x y o f o a t o s t a t e e t s c o p o t e d b y e f e e c e P a t I I I o f t s F o 10-K o a y a e d e t t o t s
F o 10-K

I d c a t e b y c e c k a k w e t e t e e g s t a t s a g e a c c e e a t e d f e , a a c c e e a t e d f e , a o - a c c e e a t e d f e , a s a e e p o t g c o p a y , o a e e g g o w t
c o p a y S e e t e d e f t o s o f " a g e a c c e e a t e d f e , " " a c c e e a t e d f e , " " s a e e p o t g c o p a y , " a d " e e g g o w t c o p a y " R e 12 - 2 o f t e E x c a g e
A c t

L a g e a c c e e a t e d f e

A c c e e a t e d f e

N o - a c c e e a t e d f e

S a e e p o t g c o p a y

E e g g o w t c o p a y

I f a e e g g o w t c o p a y , d c a t e b y c e c k a k f t e e g s t a t a s e e c t e d o t t o s e t e e x t e d e d t a s t o p e o d f o c o p y g w t a y e w o e v s e d f a c a
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A s o f O c t o e 31, 2018, t e a s t b s e s s d a y o f t e e g s t a t s o s t e c e t y c o p e t e d s e c o d f s c a q a t e , t e a g g e g a t e a k e t v a e o f v o t g a d o - v o t g c o o
e q t y e d b y o - a f f a t e s o f t e e g s t a t w a s \$ 51 0 o

A s o f J e 25, 2019, 15,165,832 s a e s o f t e e g s t a t s c o o s t o c k w e o t s t a d g

Documents incorporated by reference:

P o t s o f t e e g s t a t s D e f t v e P o x y S t a t e t f o t s 2019 A a M e e t g o f S t o c k o d e s a e c o p o t e d b y e f e e c e t o P a t I I I o f t s A a R e p o t o
F o 10-K, t o e f e d w t 120 d a y s o f t e e g s t a t s f s c a y e a d e d A p 30, 2019

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CAUTIONARY STATEMENTS CONCERNING FORWARD-LOOKING STATEMENTS

Statements made in this Annual Report on Form 10-K (the "Report") include the use of the terms "we," "us" and "our" which unless specified otherwise refer collectively to Peak Resorts, Inc. ("Peak Resorts") and its subsidiaries.

Except for any historical information contained herein, the matters discussed in this Form 10-K 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 Report. Important factors that could cause actual results to differ materially from our expectations include, among others:

- weather, including climate change;
- seasonality;
- availability of funds for capital expenditures and operations;
- 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 and transition acquired operations, systems and personnel;
- environmental laws and regulations;
- our dependence on key personnel;
- the effect of declining revenues on margins;
- the future development and continued success of our Mount Snow and Hunter Mountain ski resorts;
- our reliance on information technology;
- our current dependence on our primary lender and the lender's option to purchase certain of our ski resorts;
- our dependence on a seasonal workforce;
- our ability to avoid or recover from cyber and other security breaches and other disruptions; and
- the securities markets.

You should also refer to Part I, Item A, "Risk Factors", of this Report 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 Report 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 1. Business.

General

We are a leading owner and operator of high quality, individually branded ski resorts in the U.S. We currently operate 7 ski resorts primarily located in the Northeast, Mid Atlantic and Midwest United States, 6 of which we own. The majority of our resorts are located within 100 miles of major metropolitan markets, including New York City, Boston, Philadelphia, Washington D.C., Baltimore, Cleveland, Kansas City and St. Louis, enabling day and overnight drive accessibility. Our resorts are comprised of more than 2,300 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, zip tours, golf, 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 4 ski resorts since our incorporation in 1997, and we expect to continue executing this strategy.

We have built an award winning portfolio of individually branded entertainment properties, most of which are recognized as leading ski resorts in their respective markets. Our devotion to maintaining high quality standards across our portfolio through strategic investments and upgrades has created a loyal customer base that contributes to a significant number of repeat visits at each of our resorts. In particular, our investment over the last decade in the latest high efficiency snowmaking equipment has earned us the reputation as an industry leader in snowmaking efficiency, capacity and quality. Our strong branding reinforces customer loyalty and serves to attract new visitors through focused marketing campaigns and word of mouth.

Combined, our resorts generated approximately 2.4 million ski and tubing visits in the 2008/2009 ski season. With the addition of three resorts acquired in November 2008 and organic revenue growth at our existing resorts, we recorded record revenue of \$84.4 million for fiscal 2009, an increase of 40% over fiscal 2008. Our three new resorts contributed revenue of \$42.3 million; and revenue for fiscal 2009 from our existing resorts was up \$0.4 million as compared to the prior year due to growth in visits and season pass sales. As the U.S. economy continues to improve, our resorts are well positioned to benefit from increased consumer spending on leisure activities, and we expect to continue to increase our lift ticket prices and drive more skier visits to our resorts.

The U.S. ski industry is highly fragmented, with less than 5% of the 476 ski resorts being owned by companies with four or more ski resorts. We believe our proven ability to efficiently operate multiple resorts as well as our track record of successful acquisitions has created our reputation in the marketplace as a preferred buyer. We believe our extensive experience in acquiring ski resorts and investing in snowmaking, lifts and other skier services, as well as the synergies we create by operating multiple resorts, drives increased revenues and profitability. Our capabilities serve as a competitive advantage in sourcing and executing investment opportunities as sellers will often provide us a "first look" at opportunities outside of a broader marketing process, allowing us to expand both within our existing markets and into new markets.

We operate in a single business segment – resort operations. We are not dependent on any single customer, the loss of which would have a material impact on our financial statements, and we derive no revenue from foreign sources.

Our History

Peak Resorts, Inc. was incorporated in Missouri on September 24, 1997, as a holding company to own or lease and operate day and overnight drive ski resorts through its wholly owned subsidiaries. Throughout the history of the Company, including the development of the Hidden Valley and Snow Creek ski resorts before the incorporation of Peak Resorts, Inc., the Company has acquired or developed a total of 7 ski resorts.

On November 20, 2004, we completed our initial public offering ("IPO") of our common stock, selling 10 million shares at \$9.00 per share. After deducting \$6.3 million of underwriting discounts and commissions and \$4 million of offering expenses payable by us, we received net proceeds of \$82.3 million. Our common stock is traded on the NASDAQ Global Market under the symbol "SKIS".

On January 6, 2006, we 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") The Company acquired Hunter Mountain for total cash consideration of \$35.0 million plus the assumption of two capital leases estimated at approximately \$ 7 million

On November 2, 2016, we completed a private placement (the "Private Placement") of securities to CAP LLC ("Cap ") The securities issued in the Private Placement included \$20 million in Series A Cumulative Convertible Preferred Stock (the "Series A Preferred Stock") and warrants to purchase up to 2,790,800 shares of our common stock at prices ranging from \$6.50 per share to \$9.00 per share (the "2016 Warrants") In connection with the Private Placement, we entered into a Stockholders Agreement granting Cap the right to nominate a director to sit on the Company's board of directors, preemptive rights with respect to certain future issuances of securities, and consent rights regarding certain acquisitions and dispositions, in each case subject to stock ownership requirements and exceptions

On November 2, 2018, we completed the acquisition of all of the issued and outstanding shares of common stock of Snow Time Inc ("Snow Time"), the owner of the Liberty Mountain, Roundtop Mountain and Whitetail resorts located in Pennsylvania serving the Baltimore and Washington D.C. metropolitan areas Consideration paid to acquire Snow Time totaled \$7.6 million, which consisted of cash of \$6.6 million, net of cash acquired of \$ 0 million, and 83,432 shares of common stock with a value of \$6.0 million Snow Time's acquired resorts also include two 8-hole golf courses, a 5-room hotel and conference center and more than 20 food and beverage locations across the three resorts, among other amenities

We financed part of the cash consideration paid in the Snow Time acquisition with a \$50.0 million senior secured term loan (the "Term Loan") from Cap and the remaining cash consideration from proceeds received upon issuance of an additional \$20 million in Series A Preferred Stock and warrants to purchase up to 2,790,800 shares of common stock to Cap on terms identical to those issued to Cap in connection with the Private Placement (the "2018 Option Warrants") As consideration for the Term Loan and in lieu of fees, we also issued Cap a warrant to purchase 750,000 shares of common stock at \$ 0.00 per share (the "Financing Warrant" and, together with the 2016 Warrants and 2018 Option Warrants, the "Warrants") At this time, the Stockholders Agreement entered into with Cap in 2016 was amended to account for the issuance of the new shares of Series A Preferred Stock and warrants, but otherwise remained unchanged (referred to herein as the "Stockholders Agreement") See Notes 5 and 6 to the accompanying consolidated financial statements

Our Resorts

Our 7 ski resorts consist of 6 overnight drive ski resorts and 1 day ski resort located across seven states, ranging from Missouri to New Hampshire, and appeal to a wide range of visitors All of our ski resorts employ high capacity snowmaking capabilities on over 90% of their terrain as well as food and beverage, equipment rental and retail outlets All of our properties offer alternative snow activities, such as terrain parks and tubing, in addition to skiing and snowboarding The diversity of our services and amenities allows us to capture a larger proportion of customer spending as well as ensure product and service quality at our resorts

During the 2016/2017 ski season, the Company introduced the Peak Pass, a season pass which currently features a total of 6 pass options valid at 4 different mountain locations across 5 states in the Northeast, Mid Atlantic and Midwest US Participating resorts include Mount Snow in Vermont; Attitash, Wildcat and Crotched Mountains in New Hampshire; Hunter Mountain in New York; Liberty Mountain, Whitetail Mountain, Roundtop Mountain, Jack Frost and Big Boulder in Pennsylvania; and Alpine Valley, Boston Mills, Brandywine and Mad River Mountain in Ohio The Company believes the variety of each resort's on mountain experience, as well as the proximity of these resorts, makes the Peak Pass a unique and affordable product for the vast majority of skiers and riders in the Northeastern, Mid Atlantic and Midwest US In the 2018/2019 ski season we introduced the Ohio Peak Pass add-on, which allowed season pass holders from our individual Ohio resorts to enjoy skiing at our existing Peak Pass resorts

The following table summarizes key statistics relating to each of our resorts as of April 30, 2019:

Property	State	Developed/ Acquired	Nearest Metro MSA	Population Base (millions)	Skiable Acres	Total Lifts	Vertical Drop (ft.)
Apple Valley Attas Mountain Resort	OH	2012	Cleveland, Ohio, Canton	7.1	54	7	260
Bergwood	NH	2007	Boston	13.9	307	11	1,750
Boston Mountain	PA	2005	Pennsylvania, New York County	27.3	65	11	475
Baldwin Cotchedon Mountain Hidden Valley	OH	2002	Cleveland, Ohio, Canton	7.1	40	8	264
Hidden Valley	OH	2002	Cleveland, Ohio, Canton	7.1	48	10	264
Jack Frost Resort	NH	2003	Boston	13.9	105	5	1,000
Mad River Mountain	MO	1982	St. Louis	3.9	60	9	310
Jack Frost Resort	NY	2016	New York City, Boston, Albany	27.4	285	12	1,600
Lehigh Valley Resort	PA	2005	Pennsylvania, New York County	27.3	80	12	600
Mad River Mountain	PA	2018	Baltimore, Washington DC	9.7	98	9	620
Mount Snow Paw Peeks	OH	2001	Columbus, Dayton New York City, Boston, Albany	2.8	144	12	300
Mount Snow Paw Peeks	VT	2007	New York City, Boston, Albany	27.4	490	20	1,700
Roundtop Mountain Resort	IN	1997	Louisville, Nashville	3.0	65	8	300
Roundtop Mountain Resort	PA	2018	Baltimore, Washington DC	9.7	106	9	600
Snow Creek	MO	1985	Kansas City	2.9	40	6	300
Watauga Mountain	PA	2018	Baltimore, Washington DC	9.7	125	9	935
Watauga Mountain	MO	2010	Boston	13.9	225	5	2,112

We operate portions or all of certain of our resorts pursuant to lease agreements with third parties or pursuant to Forest Service special use permits with the federal government. We own the remaining land underlying our resorts. For a description of our ownership and use of the land underlying our resorts, see Item 2, "Properties" of this Report.

Capital Projects

As part of our mission to build value by investing in our current properties through expansions, new products and amenities that will elevate our customers' skiing and off-season experiences, during fiscal 2019 we completed two major projects and continued to move forward with capital improvement projects at our other resorts:

- At Hunter Mountain, we completed the Hunter North expansion project that increased the resort's skiable acreage by approximately 25% and added automated snowmaking, a six-passenger detachable high-speed chair lift and parking area.
- At Mount Snow, we completed the Carinthia Ski Lodge project. The Carinthia Ski Lodge project included the construction of a new ski lodge at the resort's Carinthia base, comprised of a three-story, 36,000 square foot skier service building which includes i) a restaurant, cafeteria and bars with seating for over 600 people, ii) retail facilities, and iii) a sales center for lift tickets and equipment rentals.
- At Hidden Valley, we completed the permitting process and began to source materials and make site improvements for the construction of a zip line tour which we anticipate will generate additional sales and diversify that resort's revenue base. The zip tour opened in May 2019.

Ski Industry

The National Ski Areas Association ("NSAA") Kottke National End of Season Survey Preliminary Report (the "Kottke Report") estimated the U.S. ski industry had approximately 59 million skier visits in the 2018/2019 ski season, up 5.8 million, or 0.9%, from the 2017/2018 ski season. The Kottke Report also reported that there were 476 ski areas operating during the 2018/2019 ski season in the U.S., up 4 areas from the 2017/2018 ski season. Given the consistency and strength of annual skier visits over the last 30 years, as well as the state of the economy, we believe that skier participation will remain strong in the coming years.

The ski industry divides ski resorts into three distinct categories: overnight fly, overnight drive and day ski resorts. Overnight fly ski resorts are defined as ski resorts which primarily serve skiers who fly or drive considerable distances and stay for multiple nights. These resorts depend, in large part, on long distance travel by their visitors and on the development of adjacent real estate for housing, hospitality and retail uses. Overnight drive ski resorts are ski resorts which primarily serve skiers from the regional drive market who stay overnight. Day ski resorts are typically located within 50 miles of a major metropolitan statistical area ("MSA") and do not generally offer dedicated lodging.

Day and overnight drive ski resorts tend to be smaller in size and are usually located near metropolitan areas. As an owner and operator of primarily day and overnight drive ski resorts, we focus on selling lift tickets, renting ski equipment, selling ski lessons, offering food and beverage services and catering to the targeted local market. We target skiers of all levels from beginners who are skiing for the first time to intermediate and advanced skiers who are honing their skills.

The ski industry statistics stated in the foregoing sections have been derived from data published by the Kottke National End of Season Survey 2017/2018 and other industry publications, including those of the NSAA.

Revenue Components

The following table shows our net revenue by the principal revenue category from which it was derived (dollars in thousands). Snow Time data is included from the date of acquisition.

	Year ended April 30,		
	2019	2018	2017
Revenues			
Lift and tubing tickets	\$ 93,68	\$ 6,683	\$ 58,00
Food and beverage	32,20	24,749	23,078
Equipment rental	5,065	9,99	8,582
Ski instruction	5,256	9,28	8,562
Hotel/lodging	8,909	9,874	9,73
Retail	9,277	6,748	6,395
Summer activities	4,727	4,459	4,549
Other	5,84	5,030	4,252
	<u>\$ 84,426</u>	<u>\$ 3,662</u>	<u>\$ 23,249</u>

- Lift and Tubing Tickets** – Lift tickets are our most important source of operating revenues. We place heavy emphasis on sales of season passes and advance group ticket sales to schools, religious organizations and other social groups at a discount. We market our season passes and advance group ticket sales to our ski visitors and the communities we serve. The cost of lift tickets at each of our resorts varies according to geographic region, session time and day of the week.
- Food and Beverage** – Our day drive resorts generally offer cafeteria style and self service options to provide a limited menu of simple foods, liquor, beer and wine. In addition to self service options, our overnight drive resorts feature casual dining options with table service geared to their base of customers. We try to maximize revenues and simplify operations by focusing on a limited menu that requires minimal special preparation and related personnel costs.
- Equipment Rental** – Day ski resorts generally attain a higher percentage of rental revenue than overnight fly destination ski resorts and overnight drive ski resorts because a large majority of day ski resort skiers are novices, who typically do not own ski equipment. Equipment rental rates generally range between \$30 and \$54 per person per session. We have focused on improving our equipment rental facilities to provide quick access to new and high quality equipment, self service options with expert advice and fitting available, and immediate access to the lifts and ski instruction areas from the rental facility. By eliminating equipment rental bottlenecks, we believe we have significantly enhanced the skiers' resort experience, which corresponds to increased rental revenues and return visits by first time skiers.
- Ski Instruction** – Ski instruction is considered important to operations because of the large numbers of novice or early intermediate skiers who typically visit day ski resorts. We offer low group lesson prices to encourage participation, which range from \$5 to \$54 per person per lesson. Individual instructions and private lessons may range from \$45 to \$35 or more per lesson.
- Hotel Lodging** – Because we primarily operate day ski resorts, not all of our resorts offer hotel or other lodging services. At our resorts where we own hotels, we derive revenue from room rentals, and the operation of retail, restaurant, banquet, conference, spa and health club facilities. At our resorts with condominium properties we

operate as hotels under rental management agreements, we also derive revenue from housekeeping and other services provided to individual unit owners

During fiscal 2019, we operated hotels at our Hunter Mountain and Mount Snow ski resorts, where third parties own 100% of all available quarter share interests, and we retain ownership of common areas and commercial space of the hotel. At Mount Snow, we manage other condominium properties from which we derive rental and property management fees. At our Mount Snow and Liberty Mountain resorts, we own and operate traditional hotel properties. During fiscal 2018 we sold our interest in the commercial space of a condominium property at our Attitash resort which had operated as a hotel under a rental management agreement with third party quarter share interests.

- *Retail* Like ski instruction services, retail also represents a relatively small percentage of our total revenues. Some of our resorts offer a selection of more substantial ski related equipment, such as boots, skis and snowsuits, while others maintain only a minimal selection of smaller items, such as gloves and goggles. Merchandise selection and pricing decisions are made in light of consumer trends and local demographic conditions. To an extent, we have centralized our retail purchasing function, however individual ski resort management personnel oversee their merchandise selection as they see fit for their markets. At certain resorts we lease merchandise operations to third party merchants.
- *Summer Activities* Although the majority of our resorts do not have material operations during the summer months, we do operate several resorts during the summer. Activities include golf, zip tours, water parks, mountain coasters, weddings and conferences, camps, paintball and festivals.

Seasonality

Our revenues are highly seasonal in nature. The vast majority of revenue is generated during the ski season, which occurs during the winter months in our third and fourth fiscal quarters. Some of our properties offer off season attractions, such as golf, zip tours, water parks, mountain coasters, weddings and conferences, camps, and festivals; however, these activities do not comprise a substantial portion of our annual revenues. As a result, our resorts typically experience operating losses and negative operating cash flows during the first and second quarters of each fiscal year.

The seasonality of our revenues amplifies the effect of events outside our control, especially weather. While our geographically diverse operating locations help mitigate the effect of weather conditions, adverse weather could lower attendance due to suboptimal skiing conditions or limited access to our resorts, render snowmaking wholly or partially ineffective in maintaining ski conditions, and increase operating costs related to snowmaking efforts and inefficient labor utilization.

The opening and closing dates of our ski resorts are dependent upon weather conditions, but our peak ski season generally runs from early December to mid April. The following table illustrates the opening and closing dates of our resorts over the last five ski seasons:

Resort	2018/2019	2017/2018	2016/2017	2015/2016	2014/2015
	Open Dates	Open Dates	Open Dates	Open Dates	Open Dates
Ap eVa ey	Dec 19 - Ma 10	Dec 9 - Feb 18	Dec 11 - Ma 17	Ja 3 - Ma 6	Dec 30 - Ma 22
Att tas Mo ta Reso t	Dec 8 - Ap 7	Dec 15 - Ap 8	Dec 26 - Ap 20	Dec 26 - Ma 27	Dec 6 - Ap 5
B gBo de	Nov 16 - Ap 7	Nov 11 - Ap 8	Nov 25 - Ap 9	Ja 2 - Ma 27	Nov 20 - Ap 19
Bosto M s	Dec 19 - Ma 23	Dec 9 - Ma 26	Dec 16 - Ma 19	Ja 4 - Ma 8	Ja 1 - Ma 22
B a dyw e	Dec 19 - Ma 23	Dec 9 - Ma 26	Dec 16 - Ma 5	Ja 5 - Ma 11	Ja 2 - Ap 1
C otc edMo ta	Dec 8 - Ma 30	Dec 15 - Ap 1	Dec 10 - Ap 9	Dec 29 - Ma 20	Nov 28 - Ap 5
H dde Va ey	Dec 21 - Ma 17	Dec 15 - Ma 4	Dec 10 - Feb 20	Ja 10 - Ma 6	Ja 2 - Ma 8
H te Mo ta (1)	Nov 17 - Ap 7	Nov 21 - Ap 14	Nov 25 - Ap 9	Dec 13 - Ma 27	
Jack F ost Sk Reso t	Nov 16 - Ma 29	Nov 11 - Ap 1	Dec 10 - Ma 19	Dec 26 - Ma 13	Dec 12 - Ma 29
L e ty Mo ta Reso t (1)	Dec 23 - Ma 24				
Mad R ve Mo ta	Dec 19 - Ma 24	Dec 9 - Ma 25	Dec 16 - Ma 19	Ja 2 - Ma 8	Dec 20 - Ma 22
Mo t S ow	Oct 27 - Ap 14	Nov 11 - Ap 22	Nov 23 - Ap 16	Nov 26 - Ap 3	Nov 21 - Ap 19
Pao Peaks	Ja 12 - Ma 10	Dec 15 - Feb 19	Dec 16 - Feb 20	Ja 4 - Ma 6	Dec 31 - Ma 8
Ro dtop Mo ta Reso t (1)	Dec 23 - Ma 24				
S owC eek	Dec 22 - Ma 17	Dec 26 - Ma 11	Dec 16 - Ma 5	Dec 31 - Ma 6	Dec 31 - Ma 8
W teta Mo ta (1)	Dec 23 - Ma 17				
W deat Mo ta	Oct 27 - Ap 28	Nov 11 - Ap 22	Nov 24 - Ap 29	Nov 26 - Ap 24	Nov 9 - Ap 30

() We acquired the Hunter Mountain ski reso t in Janua y 20 6 and the Liberty Mountain, Roundtop Mountain and Whitetail ski reso ts in November 20 8

Marketing

We promote our resorts through both on site marketing and external marketing We encourage visitors to return to our resorts by offering complimenta y skier orientations at our resorts We also have marketing programs in place directed at attracting groups, such as religious organizations, social clubs, corporate entities, schools and civic organizations, and we offer discounts to active military personnel We believe that group discounts encourage new pa ticipants to t y snow sports Student passes are also sold through schools, and season passes are promoted through targeted direct mail marketing, the internet and local spo ting goods stores

Our reso ts attempt to maximize community awareness through social media, radio advertisements, special events and promotions and “free media” advertising, when possible We host competitions and charity events, and issue media passes and encourage live radio and television broadcasts for news segments such as weather or spo ts Events we have hosted include the Dew Tour, X Games, Tough Mudder, SAM Cutters Camp, Transworld Trans am Snowboard Event, Mountain Dew Ve tical Challenge, NCAA National Downhill Championships, Special Olympics Games, Milita y Salutes, Taste of Country Music Festival, and U S National Mountain Biking Championships

Competition

We believe there are high barriers to entry for new ski reso ts due to i) the limited private lands on which ski resorts can be developed, ii) the difficulty in getting necessary government approvals and permits to build on public land and iii) the substantial capital resources needed to const uct necessa y ski infrast ucture As such, we believe the risk that our market will become saturated with new industry participants is relatively low We believe our reso ts do not directly compete with overnight fly destination ski reso ts, such as the larger ski reso ts in Colorado, California, Nevada, Utah and other destination ski resorts worldwide Rather, we believe we compete primarily with other existing day and overnight drive ski reso ts and non ski related day vacations

Our competition varies by geographical area While we believe our Midwestern market ski reso ts face only limited competition within their relative metropolitan markets, there are many other day and overnight drive ski reso ts which compete with our No theastem and Mid Atlantic market ski reso ts We compete with approximately 45 reso ts in the Northeastern market and 47 resorts in the Mid Atlantic market, which includes Pennsylvania

Competitive Strengths

We believe our strengths are as follows:

We own a high-quality branded portfolio. We own 6 and operate 7 high quality ski resorts, each of which is individually branded and recognized to be a leading ski reso t in its respective regional market Our devotion to

maintaining high quality standards through strategic investments and upgrades has created a loyal customer base at each of our resorts. Our strong branding reinforces customer loyalty and serves to attract new guests through focused marketing campaigns and word of mouth.

We have a history of investing in targeted capital projects to increase profitability. We are continuously evaluating our property level performance and are committed to increasing our profitability. Many ski resort operators are unwilling to invest in improvements due to capital constraints and the perceived risk of such investments. Over our history, we have made significant investments throughout our portfolio of resorts in an effort to improve the profitability of our ski resorts through energy efficient snowmaking machinery, high speed/high capacity lifts, new and renovated lodges and lodging facilities and additional features such as terrain parks, zip tours, and various other infrastructure investments. We believe the costs of these improvements are significantly outweighed by the benefits realized, which include higher quality and less costly snow, shorter lift lines, terrain expansion, off season revenue generation and customer satisfaction. We have found that our ability to transport customers up the mountain on high speed chairlifts and otherwise reduce lift lines attracts skiers, promotes a better skiing experience, and leads to higher restaurant and retail sales and increased customer satisfaction. Our most recent expansive capital projects that were completed in fiscal 2009 include the construction of snow making infrastructure and the new Carinthia ski lodge at our Mount Snow ski resort in Vermont and expansion of the terrain and installation of a new lift at our Hunter Mountain ski resort in New York.

We are an experienced and successful acquirer and integrator. We have grown our Company significantly since inception by acquiring strategically located ski resorts with the potential for increased revenue growth and margin expansion. We have successfully acquired and integrated 4 ski resorts since 1997. We adhere to a disciplined acquisition strategy by pursuing opportunities at attractive acquisition prices that can create additional value through operational improvements and efficiencies. After acquiring a ski resort, we implement a strategic repositioning program designed during the underwriting process and integrate the resort into our portfolio. We believe our track record for acquiring and integrating ski resorts makes us an industry leader and gives us a competitive advantage over other buyers.

Our experienced senior management team is dedicated to providing a reliable and enjoyable ski experience. Our senior executive team has over 60 years of combined experience owning, operating and acquiring ski resorts in the United States. Since 1982, it has been our vision to offer a reliable and enjoyable skiing experience to our customers. As a result of this vision, our management team constantly strives to enhance and improve our snowmaking capabilities to ensure our ski resorts maintain high quality snow throughout the season. In addition, our management team strives to provide our ski resorts with a full range of amenities to augment our customers' overall skiing experience.

Overnight drive and day ski resorts experience lower sensitivity to the economy. We believe our portfolio of resorts provides a more attractive risk adjusted return than overnight fly resorts due to the stability in our visits. Furthermore, we believe customers are more likely to visit overnight drive and day ski resorts during an economic downturn as compared to other higher cost overnight fly ski resorts, resulting in less sensitivity to downturns in the economy.

The ski industry possesses high barriers to entry. A limited number of ski resorts have been developed in the past 30 years. Skiable land is scarce and demanding to develop due to the difficulty in aggregating suitable terrain, obtaining government permitting, resolving accessibility issues and addressing heightened environmental concerns. Operating a ski resort requires a high level of expertise and strict regulatory and environmental compliance. Additionally, many resorts have built significant customer loyalty and brand awareness over multiple generations, which can be difficult for a new entrant to overcome. These factors have contributed to the number of ski resorts decreasing 35.2%, from 735 in 1984 to 476 in 2009 as smaller, poorly capitalized resorts have been unable to compete effectively. With our large existing portfolio, proven capital investment strategy and strong customer loyalty, we believe our portfolio of resorts is competitively well positioned.

Our ski resort portfolio is diverse. Our portfolio of 7 ski resorts consists of 6 overnight drive ski resorts and 1 day ski resort located across seven states ranging from Missouri to New Hampshire. We believe our portfolio mix enables us to reach a large customer base seeking high quality ski resorts within driving distance.

of major metropolitan areas. Each of our ski resorts is located within reasonable drive times from major metropolitan areas such as New York City, Boston, Philadelphia, Baltimore, Washington D.C., Cleveland, Kansas City and St. Louis, which we believe provides us with a consistent repeat customer base and increases our new customer outreach potential. We believe that the size and geographic diversity of our portfolio helps insulate our financial performance against adverse economic and weather conditions.

We are a proven operator of ski resorts. We have operated numerous ski resorts since our incorporation in 1997. Due to our extensive operating expertise, we believe we have a profitable and efficient platform that positions us to take advantage of growth initiatives and cost controls.

Management's and our common stockholders' interests are aligned. Our management team owns approximately 5% of our current outstanding shares of common stock. We believe this ownership by management aligns our interests with those of our common stockholders.

Intellectual Property

We understand the importance to the sales and marketing of our resorts that a strong brand can maintain. *Wildcat Mountain Ski Area*SM, *Mount Snow*[®], *Boston Mills Ski Resort*SM, *Hidden Valley*SM, *Crotched Mountain Ski Area*SM, *Alpine Valley*, *Hunter Mountain*SM, *Liberty Mountain Resort*SM, *Whitetail Resort*SM, *Roundtop Mountain Resort*SM, *Mountain Passport*SM, and *NIGHT Club Card*SM are trademarks, service marks and trade names owned by certain subsidiaries of Peak Resorts, Inc.

Regulation and Legislation

The 1986 Ski Area Permit Act and Master Development Plans

The 1986 Ski Area Permit Act (the "1986 Act") allows the National Forest Service to grant special use permits for the operation of ski resorts and construction of related facilities on National Forest lands. In addition, the permits granted to our ski resorts under the 1986 Act require a master development plan for each ski resort that is granted a special use permit. Of our 7 resorts, only Wildcat Mountain and portions of Attitash and Mount Snow operate under special use permits under the 1986 Act. The skiable terrain at our other resorts is located on land that we own or lease from third parties, including state governments.

Each area of National Forest land maintains a land and resource management plan, which establishes standards and guidelines for the Forest Service to follow and consider in reviewing and approving proposed uses. Under the 1986 Act, the Forest Service has the right to review and approve the locations, design and construction of improvements in the permit area and many other operational matters.

Our special use permits expire as follows: Attitash ski resort - April 4, 2047; Mount Snow ski resort - April 4, 2047; and Wildcat Mountain ski resort - November 8, 2050. We intend to request new special use permits for each of these resorts as provided by the Forest Service regulations and terms of the existing special use permits. To our knowledge, the Forest Service has never refused to issue a new special use permit to replace an expiring special use permit for an operating ski resort.

Special use permits contain requirements and impose obligations on our part, including that we indemnify the Forest Service from third party claims arising out of our operations under the special use permits and that we comply with all applicable laws. We are required to pay an annual fee to the Forest Service for special use permits which could range from 5% to 4.0% of revenue from sales and services provided on Forest Service land. Historically we have paid fees ranging from 5% to 2.5% of such revenue and do not expect that this will change in the near future. The calculation of the fee is based on sales from lift tickets, season passes, ski instruction, food, beverages and merchandise, as well as equipment rental fees, and other ancillary services.

Special use permits may be amended by mutual agreement between us and the Forest Service to change the applicable ski resort or permitted uses. The Forest Service may also modify special use permits to accommodate changes in plans or

operations. Permit amendments must be consistent with the land and resource management plan and are subject to the provisions of the National Environmental Policy Act ("NEPA")

The Forest Service may terminate a special use permit if it determines that termination is required for specific compelling reasons. However, to our knowledge, no special use permit for a ski resort has ever been terminated by the Forest Service without the consent of the operator.

We must propose a master development plan for all improvements we intend to make on National Forest lands and submit such plans to the Forest Service for review and acceptance. Once the Forest Service accepts a master development plan, individual projects contemplated by the plan are approved by the Forest Service through separate applications.

National Environmental Policy Act

Under NEPA, our major proposed actions on all National Forest land, such as the expansion of a ski resort or installation of new snowmaking equipment, must be assessed to determine the environmental impacts of such actions. Upon our application to the Forest Service to undertake major projects, the Forest Service must conduct an environmental study, which can impact the time it takes to complete a project. During these studies, the Forest Service is required to consider alternatives to proposed actions and impacts that may be unavoidable. We may not get the Forest Service's approval to undertake a project or may be required to take alternative action, depending on the results of the environmental studies.

Underground Storage Tank Regulations

We have underground storage tanks ("USTs") on our ski resort properties in Ohio, New Hampshire, New York, Pennsylvania and Vermont for the purpose of storing gasoline, fuel oil and propane that we use in the operation of our resorts, lodges and skier service buildings. The federal Solid Waste Disposal Act gives the Environmental Protection Agency ("EPA") the authority to regulate USTs. State UST programs which are at least as strict as the federal regulations and which have been approved by the EPA, govern the USTs in lieu of the federal regulations. The objectives of the state UST programs are to ensure that:

- USTs are properly constructed and designed in accordance with recognized industry standards;
- Installations, repairs and removals are conducted and inspected by qualified and trained individuals;
- Active USTs are properly operated and monitored for the release of substances; and
- Upon closure, USTs are properly decommissioned and sites are assessed for contamination.

We believe that the USTs at our facilities meet all state and federal construction and operation standards. Compliance with these UST regulations has not had a material impact on our capital expenditures, earnings or competitive position, and we do not expect it to have a material impact in the future.

Employees

As of April 30, 2018, our Company employed 659 year-round full-time employees and 304 year-round part-time employees. In addition, during the height of our 2018/2019 ski season, we employed approximately 9,000 seasonal employees.

Availability of Information

Our principal executive offices are located at 7409 Hidden Valley Drive, Wildwood, Missouri 63025, telephone (636) 938-7474. We maintain a website at www.peakresorts.com. We make available on our website, free of charge, the Company's annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and proxy and information statements as soon as practicable after we file these reports with the Securities and Exchange Commission (the "SEC"). The SEC also maintains a website that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC (<http://www.sec.gov>).

Item 1A. Risk Factors.

You should carefully read and consider the risks described below, together with all of the other information set forth in this Report. Our business, results of operations, financial condition, cash flows and the trading price of our common stock could be materially and adversely harmed by any of the following risks. Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business operations.

Risks Related to Our Business and Industry

Our industry is sensitive to weakness in the economy, and we are subject to risks associated with the overall leisure industry.

An economic downturn or weak economic conditions in the U S could have an adverse effect on our industry and could reduce consumer spending on recreational activities such as those offered by our resorts, resulting in decreased skier visits and reduced consumer spending at our ski resorts. In addition, while we have been successful in raising prices under a variety of economic conditions, we may be unable to maintain or increase the price of our lift tickets, season passes or other offerings during an economic downturn. Such events could have a material adverse effect on our business, financial condition, results of operations or cash flows.

Our business is vulnerable to the risk of unseasonably warm weather conditions and skier perceptions of weather conditions.

Our ability to operate and attract visitors to our resorts is influenced by weather conditions. Unseasonably warm weather can adversely affect our resorts' opening and closing dates, the number of days we operate during a ski season, our ability to manufacture snow and maintain good ski conditions, and the number of skier visits to our resorts. Such events could have a material adverse effect on our business, financial condition, results of operations or cash flows. For example, warm weather may result in inadequate natural snowfall and render snowmaking wholly or partially ineffective in maintaining quality skiing conditions. Early season snow conditions and skier perceptions of such snow conditions may influence the momentum and success of the overall season. There is no way for us to predict future weather patterns or the impact weather patterns may have on our business, financial condition, results of operations or cash flows.

Climate change and greenhouse effects may adversely impact our results of operations.

There is a growing political and scientific consensus that emissions of greenhouse gases continue to alter the composition of the global atmosphere in ways that are affecting and are expected to continue affecting the global climate. The effects of climate change, including any impact of global warming, could have a material adverse effect on our results of operations. Warmer weather may result in inadequate natural snowfall and render snowmaking wholly or partially ineffective in maintaining quality skiing conditions. In addition, a steady increase in global temperatures could shorten the ski season in the future. Climate change may also cause an increase in changes to precipitation and extreme weather events in ways we cannot currently predict. Such changes to the amount of natural snowfall and extreme differences in weather patterns may increase our snowmaking expense, inhibit our snowmaking capabilities and negatively impact skier visits.

Our business is highly seasonal and the occurrence of certain events during our peak times could have a negative effect on our revenues.

Our resort operations are highly seasonal. Air temperatures and the timing and amount of snowfall controls our resorts' opening and closing dates and can influence the number and type of skier visits. The majority of our skier visits are from mid December to early April. Accordingly, during the past three fiscal years, we generated, on average, 89.3% of our revenues during the third and fourth fiscal quarters. In addition, throughout our peak quarters, we generate the highest revenues on weekends and during three major holiday periods: Christmas, Dr. Martin Luther King, Jr. Day and Presidents Day. During the 2018/2019 ski season, we generated 48.6% of our revenues on weekends and 26.7% of our revenues during these three major holiday periods.

Our resorts typically experience operating losses and negative cash flows during the first and second quarters of each fiscal year while our resorts' winter sports activities are not in operation. Operating results for any fiscal quarter are not indicative of the results that may be achieved for any subsequent quarter or for a full fiscal year. A high degree of seasonality in our revenues and our dependence on weekends and major holidays increases the impact of weather and other events on our operating results. Adverse weather conditions, equipment failures, and other developments of even moderate or limited duration occurring during these peak business periods could have a material adverse effect on our business, financial condition, results of operations or cash flows.

We may not be able to fully utilize our net operating loss or interest carryforwards.

The Tax Cuts and Jobs Act legislation (the "2017 Tax Act") included a provision under which net operating losses ("NOLs"), incurred in calendar year 2018 and thereafter may be carried forward for an indefinite period. However, the 2017 Tax Act limited the amount of income that such NOL carryforwards can be used to offset in a subsequent tax year. The 2017 Tax Act also placed limitations on our ability to deduct interest expense in a given tax year. However, the 2017 Tax Act provides that interest expense not deducted in the year incurred by virtue of those limitations, may be carried forward indefinitely. The interest limitations of the 2017 Tax Act may increase the likelihood that our NOL carryovers arising prior to calendar year 2018 will be utilized prior to their expiration. However, because any interest carryover amounts retain their character as interest, in future years we may not be able to realize the benefit of any accumulated interest carryforwards.

Uncertainty exists with respect to the future realization of the NOL carryforwards and the amount of any NOL carryforwards we will be able to utilize in a given future period. To the extent available, we intend to use these NOL carryforwards to offset future taxable income. There can be no assurance, however, that we will generate sufficient taxable income in the carryforward period to utilize any NOL carryforwards before they expire. In addition, Section 382 and related provisions of the Internal Revenue Code of 1986, as amended (the "Code"), contains rules that limit for U.S. federal income tax purposes the ability of a company that undergoes an "ownership change" to utilize its NOLs and certain other tax attributes existing as of the date of such ownership change. In connection with our IPO in November 2014, a change in ownership occurred pursuant to the provisions of the Code. Our acquisition of the Hunter Mountain ski resort resulted in a change in ownership of that entity under the Code. As a result, usage of NOL carryforwards which existed prior to our IPO and usage of NOL carryforwards acquired in the Hunter Mountain ski resort acquisition will be limited each year and may expire before we have the ability to utilize them.

Variations in the timing of peak periods, holidays and weekends may affect the comparability of our results of operations.

Depending on how peak periods, holidays and weekends fall on the calendar, in any given year we may have more or fewer peak periods, holidays and weekends in our third fiscal quarter compared to prior years, with a corresponding difference in our fourth fiscal quarter. These differences can result in material differences in our quarterly results of operations and affect the comparability of our results of operations.

We compete with other leisure activities and ski resorts, which makes maintaining our customer base difficult.

The ski industry is highly competitive and capital intensive. Our ski resorts located in the Northeast and Mid Atlantic states, compete against other ski resorts in their markets for both day and overnight drive skiers. Our competitive position depends on several factors, such as the quality and coverage of snowmaking operations, resort size, the attractiveness of terrain, lift ticket prices, prevailing weather conditions, the appeal of related services and resort reputation. Some of our competitors have stronger competitive positions in respect of one or more of these factors, which may have a material adverse effect on our business, financial condition, results of operations or cash flows.

We believe that while our Midwestern ski resorts face only limited competition from other ski resorts in the region, our competitors in the Midwest primarily include other recreation resorts, including warm weather resorts and various alternative leisure activities. Our resorts in the Northeastern and Mid Atlantic states face similar competition from non-ski competitors. Our ability to maintain or improve skier visits at our resorts depends on, among other things, weather conditions, costs of lift tickets and related skier services relative to the costs of other leisure activities and our ability to attract people interested in recreational sports. Our failure to compete on these or other factors could have a material adverse effect on our business, financial condition, results of operations or cash flows.

Changes in consumer behavior and preferences may affect skier visits at our ski resorts.

Our success depends on our ability to attract visitors to our ski resorts. Changes in consumer behavior and preferences, particularly those affecting the popularity of skiing, snowboarding and tubing, and other social and demographic trends, could adversely affect the number of skier visits during a ski season. A reduction in average household income in areas near our resorts, compared to historic levels, combined with the increasing cost of skiing, snowboarding and tubing, may make these activities unaffordable for a large percentage of that population. A significant decline in skier visits compared to historical levels could have a material adverse effect on our business, financial condition, results of operations or cash flows.

We may engage in acquisitions that could harm our business, operating results or financial condition.

A key component of our business strategy is to identify and acquire properties that are complementary to our core business. We frequently evaluate potential acquisitions and intend to actively pursue acquisition opportunities, some of which could be significant. We cannot make assurances that we will be able to successfully integrate and manage acquired properties and businesses and increase our profits from these operations.

The integration of acquired businesses may result in disruption to other parts of our business and may require that we incur significant restructuring charges. To integrate acquired businesses, we must implement our management information systems, operating systems and internal controls, and assimilate and manage the personnel of the acquired operations. The difficulties of the integrations may be further complicated by such factors as geographic distances, lack of experience operating in the geographic market or industry sector of the acquired business, delays and challenges associated with integrating the business with our existing businesses, diversion of management's attention from daily operations of the business, potential loss of key employees and customers of the acquired business, the potential for deficiencies in internal controls at the acquired business, performance problems with the acquired business' technology, exposure to unanticipated liabilities of the acquired business, insufficient revenues to offset increased expenses associated with the acquisition, and our ability to achieve the growth prospects and synergies expected from any such acquisition. Even when an acquired business has already developed and marketed products and services, there can be no assurance that product or service enhancements will be made in a timely fashion or that all pre-acquisition due diligence will have identified all possible issues that might arise with respect to such acquired assets.

Future acquisitions may also cause us to i) assume liabilities, ii) record goodwill and intangible assets which are subject to impairment, iii) incur amortization expense related to intangible assets and iv) increase our expenses and working capital requirements, all of which may reduce our return on invested capital. Failure to manage and successfully integrate the acquisitions we make could have a material adverse effect on our business, financial condition, results of operations or cash flows.

We may be unsuccessful in identifying suitable acquisition candidates which may negatively impact our growth strategy.

There can be no assurance we will be able to identify additional suitable acquisition candidates or consummate future acquisitions or strategic transactions on acceptable terms. Failure to successfully consummate future acquisitions or strategic transactions on acceptable terms could disrupt our business strategy and have a material adverse effect on our business, financial condition, results of operations or cash flows.

We rely on information technology to operate our businesses and maintain our competitiveness, and a failure to adapt to technological developments or industry trends could harm our business.

We depend on the use of information technology systems, including systems used for lift access, central reservations, point of sale, procurement and administration. We must continuously improve and upgrade our systems and infrastructure to offer enhanced products, services, features and functionality, while maintaining the reliability and integrity of our systems and infrastructure. Our future success also depends on our ability to adapt our infrastructure to meet rapidly evolving consumer trends and demands and to respond to competitive services and product offerings.

We may not be able to maintain our existing systems or replace or introduce new technologies and systems as quickly as we would like or in a cost effective manner. Delays or difficulties in implementing new or enhanced systems may keep us from achieving the desired results in a timely manner, to the extent anticipated, or at all. Any interruptions, outages or delays in our systems, or deterioration in their performance, could impair our ability to process transactions and could decrease our quality of service that we offer to our guests. Also, we may be unable to devote financial resources to new technologies and systems in the future. The occurrence of any of these events could have a material adverse effect on our business, financial condition, results of operations or cash flows.

If we experience any service interruptions, data corruption or cyber or other security breaches, our operations could be disrupted.

We rely on information technology systems which are susceptible to damage, disruption or shutdowns as a result of various circumstances including, for example, failures during the process of upgrading or replacing technology, power outages, hardware failures, computer viruses, computer hackers, telecommunication failures, user errors, or catastrophic events. If our information technology systems suffer severe damage, disruption or shutdown and our business continuity plans do not effectively resolve the issues in a timely manner, our business may be disrupted, resulting in an inability to operate our business.

We possess sensitive customer and employee information which is stored on our own systems, on hosted third party servers, and which may be shared with third party service providers such as those we use for payroll and management of employee benefits. While we believe we have taken reasonable and appropriate security measures to protect this information, hackers and data thieves may operate sophisticated attacks that could breach our information systems and compromise this information. Consequently, a security breach could result in unauthorized disclosure of confidential information. In addition, we are required to comply with increasingly complex regulations designed to protect our business and personal data.

A breach of our network security, a third party's network security or our failure to comply with applicable regulations may result in i) the loss of valuable business data and/or our customers' or employees' personal information, ii) increased costs to implement additional protections and processes, iii) a disruption of our business and a loss of revenue, iv) damage to our relationships and reputation, v) fines or lawsuits, vi) costs related to cyber or other security threats or breaches which may not be fully insured or indemnified, or vii) other circumstances which could have a material adverse effect on our business, financial condition, results of operations or cash flows.

Failure to maintain the integrity of guest data could result in damage to our reputation and/or subject us to costs, fines or lawsuits.

We collect personally identifiable information relating to our guests for various business purposes, including marketing and promotional purposes. The integrity and privacy of our guests' information is important to us, and our guests have a high expectation that we will adequately protect their personal information. The regulatory environment governing privacy laws is increasingly demanding, and privacy laws continue to evolve and, on occasion, may be inconsistent from one jurisdiction to another. Maintaining compliance with applicable privacy regulations may increase our operating costs and/or adversely impact our ability to market our products, properties and services to our guests. Furthermore, i) non-compliance with applicable privacy regulations by us or by third parties engaged by us, ii) a breach of security on systems storing our guest data, iii) a loss of guest data, or iv) fraudulent use of guest data could adversely impact our reputation or result in fines or other damages and litigation.

We are subject to extensive environmental laws and regulations in the ordinary course of business.

Our operations are subject to a variety of federal, state and local environmental laws and regulations, including those relating to emissions to the air; discharges to water; storage, treatment and disposal of wastes; land use; remediation of contaminated sites; and protection of natural resources such as wetlands. For example, future expansions of certain of our ski facilities may be required to comply with applicable forest management plans approved under the National Forest Management Act or local zoning requirements. In addition, most projects to improve, upgrade or expand our ski resorts are subject to environmental review under the NEPA. For our resorts that operate on National Forest land, both acts require the U.S. Forest Service to study any proposal for potential environmental impacts and include in its analysis various alternatives. Our ski resort improvement proposals may not be approved or may be approved with modifications.

that substantially increase the cost or decrease the desirability of implementing the project and which could have a material adverse effect on our business, financial condition, results of operations or cash flows

Our facilities are subject to risks associated with mold and other indoor building contaminants. From time to time our operations are subject to inspections by environmental regulators or other regulatory agencies. We are also subject to worker health and safety requirements.

We are subject to regulation and liability for i) the presence or release of regulated materials at, on or emanating from properties we now or formerly own or lease and operate and ii) newly discovered environmental conditions or contamination associated at or from any of our properties. In the future, we may also be subject to greater liability a result of changes in environmental laws and regulations or their enforcement. We believe our operations are in substantial compliance with applicable environmental, health and safety requirements; however, our compliance efforts do not eliminate the risk that we may be held liable for remediation costs, incur fines or be subject to claims for damages. The amount of any such liability for remediation costs, fines, or damages or remediation costs may be material which could have a material adverse effect on our business, financial condition, results of operations or cash flows.

If we lose key management, operations, or sales and marketing personnel, or if we experience high employee turnover, we could experience reduced revenues, an inefficient operating environment and diversion of management resources.

Our success depends largely on the continued contributions of our key management, administration, operations, and sales and marketing personnel, many of whom would be difficult to replace. With the exception of certain of our executive officers, we generally do not have employment or non compete agreements with our key employees. If one or more members of our senior management or key professionals were to resign, the loss of personnel could result in loss of sales, an inefficient operating environment and diversion of management resources, which would have a negative effect on our business. We do not maintain “key man” insurance policies on any of our personnel.

We rely on the collective experience of our employees, particularly in resort operations, to ensure we continuously evaluate and adapt to new ski industry trends in order remain competitive. Although we are not generally dependent on any one employee involved in our operations, we may experience significantly high employee turnover. If we are not able to replace departing employees with new employees who have comparable skills and capabilities, our operations could suffer, and we may be unable to meet our customers' expectations or adapt to new trends in our industry and may not be able to compete effectively.

We are subject to risks related to certain payment methods.

We accept payments using a variety of methods, including credit cards, debit cards and gift cards. As we offer new payment options to consumers, we may be subject to additional regulations, compliance requirements and fraud. For certain payment methods, including credit and debit cards, we pay interchange and other fees, which may increase over time and raise our operating costs and lower profitability. We are also subject to payment card association operating rules and certification requirements, including the Payment Card Industry Data Security Standard and rules governing electronic funds transfers, which could change or be reinterpreted to make it difficult for us to comply. As our business changes, we may also be subject to different rules under existing standards, which may require new assessments that involve costs above what we currently pay for compliance. If we are not in compliance with all applicable rules and certification requirements or if the volume of fraud in our transactions rises to certain levels, we may be subject to fines, higher transaction fees or loss of or restrictions on our ability to accept credit and debit card payments from customers. If any of these events were to occur it could have a material adverse effect on our business, financial condition, results of operations or cash flows.

Our business requires significant capital expenditures to maintain and improve our ski resorts, and our strategy to expand our business through acquisitions requires the availability of additional sources of capital. The lack of available funds for capital expenditures or acquisitions could have a material adverse effect on our operating strategy and business.

Sustaining our successful financial performance depends, in part, on our ability to maintain and improve the quality of our facilities, products, and management resources, which requires significant capital expenditures. Although we believe capital expenditures above maintenance levels can be deferred to address cash flow or other constraints, these expenditures cannot be deferred for extended periods without adversely affecting our competitive position and financial

performance. Historically, a key element of our strategy has been attracting additional skiers through investment in on mountain capital improvements, and these improvements are generally capital intensive. We may finance resort capital expenditures through internally generated funds, available lines of credit or proceeds from the issuance of debt or equity. There can be no assurance that sufficient funds will be available to fund these capital expenditures or that these capital expenditures will sustain our customer base, attract additional skiers or generate additional revenues. To the extent we are unable to obtain the necessary funds, it could have a material adverse effect on our business, financial condition, results of operations or cash flows.

Future acquisitions may require the use of internally generated funds, available lines of credit and the proceeds from the offering of additional debt or equity financing. The use of debt to finance acquisitions would increase our leverage position and the use of equity to finance acquisitions would be dilutive to our existing stockholders. Any decline in our perceived credit worthiness associated with an acquisition could adversely affect our ability to borrow and result in more restrictive borrowing terms. As a result, we may not be able to complete acquisitions or strategic transactions in the future to the same extent as in the past, or at all. These and other factors could harm our ability to achieve anticipated levels of profitability at acquired operations or realize other anticipated benefits of an acquisition and could have a material adverse effect on our business, financial condition, results of operations or cash flows.

We are dependent on significant infrastructure and equipment.

Our infrastructure and equipment, including snowmaking equipment and ski lifts, are costly to maintain, repair and replace and are susceptible to unscheduled maintenance. Much of our infrastructure and equipment will eventually need to be replaced or significantly repaired or modernized, which could result in interruptions to our business, particularly during our peak periods. In certain cases, the cost of infrastructure or equipment repair or replacement may not be justified by the revenues at the applicable resort which could have a material adverse effect on our business, financial condition, results of operations or cash flows.

The high fixed cost structure of ski resort operations can result in significantly lower operating income if revenues decline.

The cost structure of ski resort operations has a significant fixed component with variable expenses including, but not limited to, resort related fees, credit card fees, retail/rental cost of sales and labor, ski school labor and dining operations. Any material declines in the economy, elevated geopolitical uncertainties and/or significant changes in historical snowfall patterns, as well as other factors, could adversely affect revenue and operating costs. As such, our operating income, profits and cash flows may be materially reduced due to declines in revenue given our relatively high fixed cost structure. In addition, increases in wages and other labor costs, energy, healthcare, insurance, transportation, fuel, and other expenses included in our fixed cost structure may also reduce our margins, profits and cash flows.

We generate a significant portion of our annual revenues from Mount Snow and Hunter Mountain. Conditions or events that could negatively impact Mount Snow or Hunter Mountain could have a material adverse effect on our financial condition and results of operations.

Revenue generated from Mount Snow and Hunter Mountain in fiscal 2019 represented approximately 42.4% of our total fiscal 2019 revenues. Mount Snow and Hunter Mountain, like our other resorts, are subject to various risks such as those described in this Report, including natural disasters, changes in consumer behavior, competition from other area ski resorts, and regional weather. The occurrence of such events or conditions that negatively impact Mount Snow and Hunter Mountain would have a material adverse effect on our business, financial condition, results of operations or cash flows.

We lease all or some of the land underlying certain of our resorts from third parties.

We lease some or all of our property at Paoli Peaks and Mad River Mountain from third parties. Our lease at Paoli Peaks terminates in 2078 and our lease at Mad River Mountain terminates in 2034. Combined, these resorts contributed 4.5% of our total revenues for the year ended April 30, 2019. The termination of either of these leases or our inability to renew these leases on commercial terms could have a material adverse effect on our business, financial condition, results of operations or cash flows.

A substantial portion of the skiable terrain at certain of our resorts is used under the terms of Forest Service permits.

A substantial portion of the skiable terrain at our Attitash and Mount Snow resorts and all of the land underlying the Wildcat Mountain resort is federal land that is used under the terms of permits with the U.S. Forest Service. The permits give the U.S. Forest Service the right to review and comment on the location, design, and construction of improvements in the permit area and on certain other operational matters. The permits can also be terminated or modified by the U.S. Forest Service for specific compelling reasons or in the event we fail to perform any of our obligations under the permits. Otherwise, the permits may be renewed. A termination or modification of any of our permits could have a material adverse effect on our results of operations. Currently, our permits expire as follows:

Ski Resort	Special Use Permit Expiration Date
Attitash	April 4, 2047
Mount Snow	April 4, 2047
Wildcat Mountain	November 8, 2050

We depend on a seasonal workforce and have experienced a shrinking labor pool in some of the areas we operate our business.

Our resort operations are highly dependent on a large seasonal workforce, and in recent years we have experienced a shrinking labor pool in some of the areas where we operate resorts. We recruit year-round to fill thousands of seasonal staffing needs each season and work to manage seasonal wages and the timing of the hiring process to ensure the appropriate workforce is in place. We cannot guarantee that we will be able to recruit and hire adequate personnel as the business requires, and material increases in the cost of securing our workforce may be possible in the future. Increased seasonal wages or an inadequate workforce could have a material adverse effect on our business, financial condition, results of operations or cash flows.

We are subject to risks associated with our workforce.

In addition, we are subject to various federal and state laws governing matters such as minimum wage requirements, overtime compensation and other working conditions, healthcare benefits, discrimination and family and medical leave. Immigration law reform could also impact our workforce because we recruit and hire foreign nationals as part of our seasonal workforce. If our labor-related expenses continue to increase, our operating expenses will increase which could have a material adverse effect on our business, financial condition, results of operations or cash flows.

A natural disaster could damage our property and reduce the number of guests who visit our resorts.

A severe natural disaster, such as a forest fire, flood, tornado or landslide, may interrupt our operations, damage our properties and reduce the number of guests who visit our resorts in affected areas. Damage to our properties could take a long time to repair and there is no guarantee that we would have adequate insurance to cover the costs of repair or the expense of the interruption to our business. Furthermore, such a disaster may interrupt or impede access to our affected properties or require evacuations and may cause visits to our affected properties to decrease for an indefinite period. The ability to attract visitors to our resorts is also influenced by the aesthetics and natural beauty of the outdoor environment where our resorts are located. A severe forest fire or other severe impacts from naturally occurring events could negatively impact the natural beauty of our resorts and have a long-term negative impact on our overall guest visitation as it would take several years for the environment to recover.

We are subject to litigation in the ordinary course of business because of the nature of our business.

The safety of guests and employees is a major concern and focus for all managers and employees of our company. By the nature of our activities, we are exposed to the risk that guests or employees may be involved in accidents during the use, operation or maintenance of ski lifts, rides and other resort facilities. As a result, we are, from time to time, subject to various asserted or unasserted legal proceedings and claims. Any such claims, regardless of merit, could be time-consuming and expensive to defend and could divert management's attention and resources. While we believe we have

adequate insurance coverage, the outcome of all current or future litigation may nonetheless have a material adverse effect on our business, financial condition, results of operations or cash flows

If we fail to manage future growth effectively, our business could be harmed.

We have experienced, and expect to continue to experience, periods of rapid growth. This growth has placed significant demands on our management, operational and financial infrastructure. To manage growth effectively, we must continue to improve and enhance our managerial, operational and financial controls, train and manage our employees, and expand our employee base. We must also manage new and existing relationships with vendors, business partners and other third parties. These activities require significant expenditures and allocation of valuable management resources. If we fail to maintain the efficiency of our organization as we grow, our profit margins may decrease, and we may be unable to achieve our business objectives.

A disruption in our water supply would impact our snowmaking capabilities and impact our operations.

Our operations are heavily dependent upon our access to adequate supplies of water with which to make snow and otherwise conduct our operations. Our resorts in Pennsylvania, New Hampshire, New York and Vermont are subject to state laws and regulations regarding our use of water. There can be no assurance that applicable laws and regulations will not change in a manner that could have an adverse effect on our operations, or that important permits, licenses, or agreements will be renewed on terms as favorable as the current terms, or at all. Any failure to have access to adequate water supplies to support our current operations and future operations could have a material adverse effect on our business, financial condition, results of operations or cash flows.

Risks Related to Our Capital Structure and Ownership of Our Common Stock

We may not be able to pay dividends on our common stock.

We declared our first quarterly cash dividend on our common stock in January 2015 and briefly suspended dividend payments as a result of operating performance, debt agreement covenant compliance, and liquidity considerations. We resumed quarterly dividend payments in February 2017. We cannot assure you that the current dividend rate will be sustained or that we will pay dividends in the future. The declaration and payment of future dividends to holders of our common stock will be at the sole discretion of our board of directors and will depend on many factors, including our results of operations, financial condition, capital requirements, restrictions on dividends set by the terms of debt agreements and Series A Preferred Stock, economic conditions and other factors. The board may suspend the payment of dividends on common stock at any time and for any reason if it deems such action to be in the best interests of the Company and its stockholders. If we do not pay dividends, the price of our common stock must appreciate for investors to realize a gain on their investment. This appreciation may not occur and our stock may decline in value.

We are a holding company with no operations of our own and depend on our subsidiaries for cash.

We are a holding company with no operations of our own. Accordingly, our working capital needs and our ability to service debt and pay dividends on our common and preferred stock is dependent on the distribution of cash from our subsidiaries. Each of our subsidiaries is a distinct legal entity, and, under certain circumstances, legal, contractual and debt covenant restrictions contained in existing financing agreements may limit or prevent any of them from making distributions to us. In addition, future financing or other arrangements entered into by our subsidiaries could limit their ability to make distributions to us. In the event that we do not receive adequate distributions from our subsidiaries, we may not be able to meet our working capital needs and may be unable to service our debt or make dividend payments on our common or preferred stock.

Cancellation of or modifications to the Immigrant Investor Program, or our failure to successfully raise capital under the program's guidelines, could adversely affect our ability to execute our growth strategy and improve our resorts.

We have funded certain capital projects, and may fund other future capital projects, by raising funds under the Immigrant Investor Program (the "EB-5 Program"), administered by the United States Citizenship and Immigration

Services (the "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.

Under the EB-5 Program, an annual allocation of immigrant visas ("EB-5 Visas") is made available for qualified individuals seeking lawful permanent resident status on the basis of their investment in a new commercial enterprise that generates jobs. Currently and since 2015, the demand for the annual allocation of EB-5 Visas has exceeded the supply, and potential investors may be subject to lengthy waiting periods for such visas. These waiting periods could exceed fifteen years. Furthermore, raising funds pursuant to the EB-5 Program has become significantly more difficult, and USCIS subjects EB-5 investor applicants to lengthy adjudications that can exceed two or three years.

The EB-5 Program is not a permanent program and has been extended on a year-to-year basis. The continuity of the EB-5 Program is dependent on future action by Congress and is subject to political uncertainty, and Congress may materially modify aspects of the EB-5 Program in ways that would make it unfeasible for us to rely on EB-5 financing for future financing. The Department of Homeland Security may also issue more restrictive regulations governing the minimum investment amounts or other aspects of the EB-5 Program.

We cannot guarantee we will be able to rely on the EB-5 Program as a potential source of funding to implement future plans to improve our resorts. In this case, conventional financing options, such as loans, may prove too costly or may not be available, which could result in cancellation of our development and improvement plans and could have a material adverse effect on our business, financial condition, results of operations or cash flows.

We rely on one primary lender and its affiliates as the source for the majority of our financing and credit.

We have historically relied on one lender and its affiliates, EPR Properties ("EPR"), for substantially all of our financing and credit needs, including financing relating to our resort acquisitions. As of April 30, 2019, amounts due to EPR totaled \$4.2 million. EPR is an entertainment, entertainment related, recreation and specialty real estate company with its common stock listed on the New York Stock Exchange under the symbol "EPR". In the event EPR is not available to extend us credit, we may not be able to obtain financing on terms as favorable to us as those under our arrangements with EPR. As a result, we may be subject to more stringent financial covenants and higher interest rates.

EPR has an option to purchase, or assume our leases relating to, certain of our ski resorts. If EPR exercises this option, we would incur significant tax obligations.

Pursuant to the terms of our borrowing agreements with EPR, we have entered into an option agreement (the "Option Agreement") that provides EPR with a purchase option on our Boston Mills, Brandywine, Jack Frost, Big Boulder and Alpine Valley ski resorts. The purchase option is exercisable as to any one or more of such properties on the maturity date of the applicable underlying promissory note at a purchase price to be calculated in accordance with the terms of the Option Agreement. Upon the closing of any sale under the Option Agreement, EPR will enter into an agreement with the Company or one of its subsidiaries 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 10 years each.

We have a low adjusted tax basis in these properties as we have taken tax depreciation since the time they were acquired. As a result, we would realize significant taxable gains on the sale of the properties if EPR exercises a purchase option, and we may be required to pay substantial income taxes on taxable gains from any such sale.

Under certain circumstances, our insurance coverage may not cover all possible losses, and we may not be able to renew our insurance policies on favorable terms, or at all.

Although we maintain various property and casualty insurance policies, our insurance policies do not cover all types of losses and liabilities, and our levels of coverage may not be sufficient to cover the ultimate cost of claims. If we are held liable for amounts exceeding the limits of our insurance coverage or for claims outside the scope of our coverage, it could have a material adverse effect on our business, financial condition, results of operations or cash flows.

In addition, we may not be able to renew our current insurance policies on favorable terms, or at all. Our ability to obtain future insurance coverage at commercially reasonable rates could be adversely affected if we or other companies within or outside our industry sustain significant losses or make significant insurance claims.

We qualify as an emerging growth company, smaller reporting company and a non-accelerated filer under Rule 12b-2 of the Securities Exchange Act of 1934. As a result, we are not required by Section 404 of the Sarbanes-Oxley Act to have our independent registered public accounting firm attest to the effectiveness of our internal controls over financial reporting and are able to use extended transition periods for complying with new or revised accounting standards.

Our management is required by Section 404 of the Sarbanes Oxley Act to make a formal assessment of the effectiveness of our internal controls over financial reporting. Our independent registered public accounting firm, however, is not required to attest to the effectiveness of our internal controls over financial reporting until such time as we are no longer either an emerging growth company or a non accelerated filer as defined by Rule 12b-2 of the Securities Exchange Act of 1934. This lack of attestation by our independent registered accounting firm may increase the risk that we fail to detect and remedy any weakness of deficiencies in our internal control over financial reporting. Additionally, at such time as we are subject to the auditor attestation requirements, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our controls are documented, designed or operating. If we are unable to establish and maintain effective internal controls it could have a material adverse effect on our business, financial condition, results of operations or cash flows.

Until such time as we no longer qualify as an emerging growth company, we may take advantage of extended transition periods for complying with new or revised accounting standards and reduced disclosure options. As a result, our financial statements and disclosures may not be comparable to other companies who do not qualify as an emerging growth company.

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

Cap , as holder of our Series A Preferred Stock, is entitled to vote, on an as conveyed basis, together with holders of our common stock on all matters submitted to a vote of the holders of our common stock. As such, the issuance of the Series A Preferred Stock reduces the relative voting power of the holders of our common stock. Current stockholders have no preemptive rights to purchase any securities in order to maintain their proportionate interest in the Company.

In addition, conversion of the Series A Preferred Stock to common stock and exercise of the Warrants by Cap would dilute the ownership interest of existing holders of our common stock, and any sales of the underlying shares of common stock in the public market could adversely affect prevailing market prices of our common stock. Sales by 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.

Cap 1 may exercise significant influence over us.

Because Cap is entitled to vote its Series A Preferred Stock on an as conveyed basis, Cap and its affiliates currently own approximately 37.9% of the Company's outstanding voting power. Assuming the conversion of the Series A Preferred Stock and exercise of the Warrants also owned by Cap, Cap and its affiliates would own approximately 53.4% of the outstanding shares of our common stock and voting power. Additional preemptive rights and rights of first offer in the documents governing our Series A Preferred Stock may allow Cap to maintain its ownership position. Cap has agreed to vote shares of common stock issued upon exercise of the Warrants in favor of the board of directors' recommendations as to the election of directors and matters submitted to a vote of the stockholders (except in the case of non routine matters such as tender offers, mergers, acquisitions and similar transactions) for up to three years after the issuance date or until a change of control. However, Cap has the ability to significantly influence, and may in the future be able to control, the outcome of any matter submitted for the vote of the holders of our common stock.

Under the terms of the Series A Preferred Stock, the Series A Preferred Stock generally ranks, with respect to the liquidation, dividends and redemption, senior to other securities. The Stockholders' Agreement provides that, so long as Cap beneficially owns, on an as conveyed basis, at least 4% of the outstanding equity securities of the Company, Cap'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.

The Stockholders Agreement grants Cap the right to nominate a director so long as it beneficially owns, on an as conveyed 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 Cap may differ from the interests of our security holders as a whole or of our other directors.

Our Series A Preferred Stock 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 holder of our Series A Preferred Stock differing from those of our common stockholders.

The holder of our Series A Preferred Stock has the right to receive a liquidation preference entitling it 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 \$,000 per share. The holder of our Series A Preferred Stock also has 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 holder of our Series A Preferred Stock could also limit our ability to obtain additional financing or increase our borrowing costs, which could have a material adverse effect on our business, financial condition, results of operations or cash flows. The preferential rights could also result in divergent interests between the holder of shares of Series A Preferred Stock and holders of our common stock.

Provisions in our amended and restated articles of incorporation, our 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, our amended and restated bylaws 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 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 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 bylaws, 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 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.

We do not believe the issuance of the Series A Preferred Stock, 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 common 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.

Pursuant to executive employment agreements between the Company and certain of its executive officers (the "Executives"), 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 or non renewal of the agreement, within one year 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.

The market price of our common stock has been and will likely continue to be volatile, and you could lose all or part of your investment.

The market price of our common stock has been and may continue to be subject to wide fluctuations in response to various factors, some of which are beyond our control. In addition to the factors discussed above and elsewhere in this Report, factors that could cause fluctuations in the market price of our common stock include the following:

- quarterly variations in our results of operations;
- results of operations that vary from those of our competitors;
- changes in expectations as to our future financial performance, including financial estimates by securities analysts and investors;
- failure to realize benefits and synergies anticipated in connection with the Snow Time acquisition;
- sales, or perception of sales, in the market by our principal stockholders;
- announcements by us, our competitors or our vendors of significant contracts, acquisitions, joint marketing relationships, joint ventures or capital commitments;
- announcements by third parties of significant claims or proceedings against us;
- fluctuations in trading volume;
- future sales of our common stock; and
- changes in investor sentiment toward the stock of ski resort and recreational services companies in general.

Furthermore, the stock market has experienced extreme volatility that in some cases has been unrelated or disproportionate to the operating performance of particular companies. These broad market and industry fluctuations may adversely affect the market price of our common stock, regardless of our actual operating performance. In the past, following periods of market volatility, stockholders have instituted securities class action litigation. If we were involved in securities litigation, it could be a substantial cost and divert resources and the attention of executive management from our business regardless of the outcome of such litigation.

Our principal stockholders may exert substantial influence over us and may exercise their control in a manner adverse to your interests.

As a group, Timothy Boyd, Richard Deutsch and Stephen Mueller (the "Management Stockholders") together with Cap currently own 48.3% of the Company's total voting power. As a result, these holders are able to exercise a significant level of control over all matters requiring stockholder approval, including the election of directors, amendment to our amended and restated articles of incorporation and approval of significant corporate transactions. This ability could have the effect of delaying or preventing a change of control of the Company or changes in management.

and will make the approval of certain transactions difficult or impossible without the support of these stockholders. It is possible that these persons will exercise control over us in a manner adverse to your interests.

Future sales of our common stock may cause our stock price to decline.

If our existing stockholders sell, or indicate an intention to sell, substantial amounts of our common stock in the public market, the market price of our common stock could decline. These sales might also make it more difficult for us to sell additional equity securities at a time and price that we deem appropriate. All of the outstanding shares of our common stock are freely tradable in the public market, except for any shares held by our affiliates as defined in Rule 44 of the Securities Act.

We also registered all 559,296 shares of common stock that we may issue under the Peak Resorts, Inc. 2014 Equity Incentive Plan that has been adopted by the board of directors and stockholders. These shares can be freely sold in the public market upon issuance, subject to vesting conditions. As of April 30, 2019, 357,000 shares remained available for issuance.

We may not be able to refinance, extend or repay our debt when it comes due, which would have a material adverse effect on our financial condition.

The \$2.4 million Royal Banks line of credit debt outstanding at April 30, 2019 matures in full on December 27, 2019, unless extended or renewed by agreement of the parties. The \$50.0 million Capex Term Loan debt outstanding at April 30, 2019 matures in full on November 30, 2020, subject to a one year extension at our option. The \$52.0 million EB-5 Development Notes debt outstanding at April 30, 2019 matures in full on December 27, 2022, subject to extension of up to an additional two years at the option of the borrowers with lender consent.

We may need to renew or extend the Royal Banks line of credit debt prior to its maturity. In addition, we anticipate that we will need to refinance the Term Loan debt and EB-5 Development Notes debt in order to repay the outstanding amounts when they mature, which may include entering into new credit facilities or the issuance of debt or equity capital. If we are unable to repay this debt at maturity, and we are otherwise unable to extend the maturity dates or refinance these obligations, we would be in default. We cannot provide any assurances that we have or will be able to raise the necessary amount of capital to repay this debt as it matures, or that we will be able to extend the maturity dates or otherwise refinance these obligations. A default on the Term Loan would result in a default under certain other existing credit agreements, and our lenders would have the right to exercise their rights and remedies to collect, which would include foreclosing on our assets and may require us to seek bankruptcy protection.

Receipt of the Term Loan funds and issuance of additional Series A Preferred Stock significantly increases our leverage and further reduces the cash available, which may impair our flexibility to operate our business.

Receipt of the Term Loan significantly increased our already substantial debt. As a result, we face increased risk of default on our debt obligations and an increase in debt service requirements. We may also incur additional indebtedness in the future.

The amount of our outstanding debt and debt service obligations, as well as our increased Series A Preferred Stock dividend obligations, may have significant, and potentially adverse, consequences to us and our stockholders, including:

- impairing our ability to meet one or more of the financial covenants contained in our existing debt agreements or to generate cash sufficient to pay interest or principal due under those agreements, which could result in an acceleration of some or all of our outstanding debt;
- limiting our ability to borrow money, dispose of assets, or fund our working capital, capital expenditures, dividend payments, debt service, strategic initiatives or other obligations;
- limiting our flexibility in planning for, or reacting to, changes in the economy, the markets, regulatory requirements, our operations or our business;
- making us more highly leveraged than some of our competitors, which may place us at a competitive disadvantage;
- making us more vulnerable to downturns in the economy or our business;

- requiring a substantial portion of our cash flow from operations to make debt service payments;
- preventing us from taking advantage of business opportunities, including other resort acquisitions, as they arise; and
- inhibiting our ability to pay cash dividends on our common stock, repurchase common stock or redeem Series A Preferred Stock

To the extent that we incur additional indebtedness, the risks described above could increase. In addition, our actual cash requirements in the future may be greater than expected. Our cash flow from operations may not be sufficient to service our outstanding debt or to repay the outstanding debt as it becomes due, and we may not be able to borrow money, sell assets, or otherwise raise funds on acceptable terms, or at all, to service or refinance our debt.

Risks Relating to the Snow Time Acquisition

The Snow Time acquisition could harm our business, operating results, or financial condition.

We may incur substantial expenses in connection with the integration of the business, policies, procedures, operations, technologies, and systems of Snow Time. There are a large number of systems and functions that must continue to be integrated, including, but not limited to, management information, accounting and finance, payroll, and benefits and regulatory compliance. Acquisitions are particularly challenging because the prior practices of target companies may not meet the requirements of the Sarbanes Oxley Act of 2002 or U.S. GAAP standards applicable to publicly traded companies. While we have assumed that a certain level of expenses would be incurred, there are a number of factors beyond our control that could affect the total amount or the timing of all of the expected integration expenses. Moreover, many of the expenses that will be incurred, by their nature, are difficult to estimate accurately at the present time.

We may be unable to successfully integrate our business with the business of Snow Time and realize the anticipated benefits of the Snow Time acquisition.

The Snow Time acquisition involves the combination of the businesses of two companies that have operated as independent companies. Our management has been and will continue to be required to devote significant attention and resources to integrating our business practices and operations with those of Snow Time. Potential difficulties we may encounter as part of the integration process include, but are not limited to, the following:

- inability to successfully combine our business with the business of Snow Time in a manner that permits us to achieve the full synergies anticipated from the acquisition;
- complexities associated with managing our business and the business of Snow Time, including the challenge of integrating complex systems, technology, networks, and other assets of each of the companies in a seamless manner that minimizes any adverse impact on customers, suppliers, employees, and other constituencies;
- integrating the workforces of the two companies while maintaining focus on providing consistent, high quality customer service; and
- potential unknown liabilities and unforeseen increased expenses or delays associated with the acquisition, including costs to integrate the two companies that may exceed anticipated costs.

Any of the difficulties listed above could adversely affect our ability to maintain relationships with resort visitors, suppliers, employees, lenders, and other constituencies or our ability to achieve the anticipated benefits of the Snow Time acquisition.

Our actual financial and operating results after the Snow Time acquisition could differ materially from any expectations or guidance provided by us concerning future results, including (without limitation) expectations or guidance with respect to the financial impact of any cost savings and other potential synergies.

We currently expect to realize an increase in gross revenue and other synergies as a result of the Snow Time Acquisition. These expectations are subject to numerous assumptions, however, including assumptions derived from our diligence efforts concerning the status of and prospects for Snow Time's business, and assumptions relating to the near term prospects for our industry generally and the markets for Snow Time's resorts in particular.

Additional assumptions that we have made include, without limitation, the following:

- projections of future revenues;
- anticipated cost savings and other synergies associated with the Snow Time acquisition;
- amount of goodwill and intangibles that will result from the Snow Time acquisition;
- the fair value of the assets acquired and liabilities assumed from Snow Time;
- other financial and strategic risks of the Snow Time acquisition

We cannot provide any assurances with respect to the accuracy of our assumptions, including our assumptions with respect to future revenues or revenue growth rates, if any, of Snow Time, and we cannot provide assurances with respect to our ability to realize any cost savings that we currently anticipate. Risks and uncertainties that could cause our actual results to differ materially from currently anticipated results include, but are not limited to, those discussed in this “Risk Factors” section and those relating to our business and industry as discussed in our filings with the SEC. Any failure to integrate Snow Time successfully and to realize the financial benefits we currently anticipate from the Snow Time acquisition would have a material adverse impact on our future operating results and financial condition and could materially and adversely affect the trading price or trading volume of our common stock.

The obligations and liabilities of Snow Time, some of which may be unanticipated or unknown, may be greater than we have anticipated, which may diminish the value of Snow Time to us.

Snow Time’s obligations and liabilities, some of which may not have been disclosed to us or may not be reflected or reserved for in Snow Time’s historical financial statements, may be greater than we have anticipated. The obligations and liabilities of Snow Time could have a material adverse effect on Snow Time’s value to our business, financial condition or results of operations. In the event we are responsible for liabilities substantially in excess of any amounts recovered through rights to indemnification or alternative remedies that might be available to us, or any applicable insurance, we could suffer consequences that would substantially reduce our earnings and cash flows or otherwise materially and adversely affect our business, financial condition, or results of operations.

Item 1B. Unresolved Staff Comments.

None

Item 2. Properties.

Ski Resort/Location	Total Acres	Skiable Acres	Ownership	Usage
Ap eV a ey, C este a d, OH	135	54	Ow ed	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes a d food/ eve age fac tes
Att tas Mo ta Reso t, Ba t ett, NH	1,134	307	Pa t a y ow ed/pa t a y sed pe te s of a spec a se pe t (1) (2)	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes, food/ eve age fac tes, ote/ odg g fac tes a d co fee ce/ eet g oo s
B gBo de , Bakes ee, PA	107	65	Ow ed	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes a d food/ eve age fac tes
Bosto M s, Saga o e H s, OH	100	40	Ow ed	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, e ta/ eta fac tes a d food/ eve age fac tes
B a dyw e, Saga o e H s, OH	102	48	Ow ed	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes a d food/ eve age fac tes
C otc ed Mo ta , Be gto , NH	251	105	Ow ed	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, e ta/ eta fac tes a d food/ eve age fac tes
H dde V a ey, W dwood, MO	250	60	Ow ed	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes a d food/ eve age fac tes; eadq a tes off ces
H te Mo ta , H te , NY	1,537	285	Ow ed	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes, food/ eve age fac tes, ote/ odg g fac tes a d co fee ce/ eet g oo s
Jack F ost Sk Reso t, Bakes ee, PA	201	80	Ow ed	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes a d food/ eve age fac tes
L e ty Mo ta Reso t, Ca o V a ey, PA	454	98	Ow ed	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes, food/ eve age fac tes, ote/ odg g fac tes, go f co sea dco fee ce/ eet g oo s
Mad R ve Mo ta , Za esf e d, OH	324	144	Leased (3)	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes a d food/ eve age fac tes
Mo t S ow, West Dove , VT	588	490	Pa t a y ow ed/pa t a y sed pe te s of a spec a se pe t (1)	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes, food/ eve age fac tes, ote/ odg g fac tes, co fee ce/ eet g oo s, go f co sea d deve opabe a d
Pao Peaks, Pao , IN	65	65	Pa t a y eased/pa t a y ow ed (4)	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes a d food/ eve age fac tes
Ro dtop Mo ta Reso t, Lewsb y, PA	1,112	106	Ow ed	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes a d food/ eve age fac tes
S owC eek, Westo , MO	460	40	Ow ed	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes a d food/ eve age fac tes
W teta Mo ta , Me ce sb g PA	1,261	125	Ow ed	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, t b g e ta/ eta fac tes, food/ eve age fac tes, go f co sea d deve opabe a d
W dcat Mo ta , Jackso , NH	225	225	Used pe te s of a spec a se pe t (5)	Sk eso tope at o s, c d gsk fts, sk t a s, te a pa k, e ta/ eta fac tes a d food/ eve age fac tes

- () A substantial portion of the skiable terrain at Attitash and Mount Snow is federal land that we use pursuant to the terms of renewable permits with the U S Forest Service. The Attitash and Mount Snow special use permits expire on April 4, 2047.
- (2) During fiscal 20 9, we sold our interest in the commercial space of a condominium property at our Attitash resort which had operated as a hotel under a rental management agreement with third pa ty qua ter share intervals.

- (3) The Mad River Mountain lease terminates in 2034. The Company has the right of first offer to purchase the Mad River Mountain property should the lessor desire to transfer the property to another third party ski resort operator, subject to certain exceptions.
- (4) The Paoli Peaks lease terminates in 2078.
- (5) All of the land underlying Wildcat Mountain is federal land that we use pursuant to the terms of a renewable permit with the U.S. Forest Service. The Wildcat Mountain special use permit expires on November 8, 2050.

Item 3. 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 4. Mine Safety Disclosures

None.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Our common stock has been listed on the NASDAQ Global Market under the symbol "SKIS" since November 2, 2014, following the completion of our IPO. Prior to that time, there was no public market for our common stock. As of June 25, 2019, 5,658,832 shares of our common stock were outstanding, held by approximately 28 holders of record.

Dividends

In fiscal 2015, the Company's board of directors approved the commencement of a regular quarterly cash dividend on our common stock at a quarterly rate of \$0.375 per share. In April 2016, the board suspended common stock dividends in consideration of our then current operating performance, debt agreement covenant compliance and liquidity position. The board approved the reinstatement of the common stock dividend in February 2017 at the quarterly rate of \$0.07 per share. During fiscal 2019 and 2018, we paid quarterly cash dividends of \$0.07 per share of common stock.

The declaration and payment of future dividends to holders of our common stock will be at the sole discretion of our board of directors, subject to applicable state law, and will depend on many factors, including our actual results of operations, financial condition, capital requirements, any future contractual restrictions, restrictions in our debt agreements and terms of outstanding Series A Preferred Stock, economic conditions and other factors that could differ materially from our current expectations. As a holding company, our ability to declare and pay dividends is also dependent on our subsidiaries' ability to make cash available to us by dividend, distribution or otherwise. Each of our subsidiaries is a distinct legal entity, and, under certain circumstances, legal and contractual restrictions may limit our ability to obtain cash from them.

In addition, from and after the date that is nine months from the date of issuance, cumulative dividends accrue on the outstanding shares of Series A Preferred Stock on a daily basis in arrears at the rate of 8% per annum on the liquidation value of \$1,000 per share.

See Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources" for further information regarding restrictions on and terms governing our common stock and Series A Preferred Stock dividend payments.

Item 6. Selected Financial Data.

The table below summarizes our selected consolidated financial information as of and for the periods indicated. You should read the following selected consolidated financial data together with our consolidated financial statements and related notes filed as part of this annual report. Our historical results for any prior period are not necessarily indicative of

results to be expected in any future period. The data presented in the table and footnotes below are in thousands, except per share and per visit amounts.

	Year ended April 30,				
	2019	2018	2017	2016	2015
Income Statement Information					
Revenues	\$ 84,426	\$ 3,662	\$ 23,249	\$ 95,729	\$ 04,858
Operating expense ()	34,309	06,8	95,072	78,660	78,586
Depreciation and amortization	9,68	3,23	2,73	0,709	9,450
Land and building rent	,393	,40	,395	,386	,440
Settlement of lawsuits					2,00
Gain on involuntary conversion				95	
Interest expense, net	5,788	3,322	2,473	0,84	5,458
Defeasance fee paid with debt restructure					5,000
Gain on sale/leaseback	333	333	333	333	333
Other income	59	60	6	8	
Income (loss) before income tax	3,620	(2,60)	,990	(5,304)	(2,632)
Net income (loss)	\$ 8,96	\$,352	\$,24	\$ (3,226)	\$ (,854)
Basic earnings (loss) per share	\$ 0.45	\$ (0.02)	\$ 0.03	\$ (0.23)	\$ (0.22)
Diluted earnings (loss) per share	\$ 0.45	\$ (0.02)	\$ 0.03	\$ (0.23)	\$ (0.22)
Other Financial Information (unaudited)					
Reported EBITDA (2)	\$ 49,769	\$ 25,585	\$ 26,782	\$ 6,240	\$ 25,400
Capital expenditures	\$ 30,55	\$ 3,09	\$,454	\$ 2,407	\$ 2,6
Other Data (unaudited)					
Operations:					
Skier visits (3)	2,2	,652	,538	,66	,554
Revenue per skier visit (4)	\$ 87.32	\$ 79.70	\$ 80.4	\$ 82	\$ 67.45
Revenue per visit (5)	\$ 76	\$ 7.75	\$ 7.95	\$ 73.32	\$ 6.34
Tube visits	3	83	75	40	55
Total visits	2,423	,835	,73	,306	,709
Other Balance Sheet Data					
Cash and cash equivalents	\$ 30,94	\$ 23,09	\$ 33,665	\$ 5,396	\$ 6,849
Restricted cash (6)	\$ 5,240	\$ 3,338	\$ 44,83	\$ 6,099	\$ 37,59
Total assets (7)	\$ 4,0648	\$ 308,330	\$ 3,9946	\$ 3,287	\$ 240,570
Long term debt (including current portions and revolving lines of credit) (7)	\$ 229,797	\$ 80,866	\$ 85,585	\$ 40,78	\$ 00,062
Net debt (8)	\$ 99,603	\$ 57,775	\$ 5,920	\$ 35,322	\$ 83,23
Dividends declared	\$ 5,682	\$ 5,56	\$,958	\$ 5,768	\$ 3,449
Total stockholders' equity	\$ 82,225	\$ 69,820	\$ 73,76	\$ 7,634	\$ 80,438

- () Operating expenses before depreciation and amortization and land and building rent, and restructuring and impairment
- (2) See Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations - Reported EBITDA" for a definition of Reported EBITDA and reconciliation to net income (loss)
- (3) A skier visit represents a person utilizing a ticket or pass to access a mountain resort for any part of one day and includes both paid and complimentary access and excludes tube visits
- (4) Revenue per skier visit is calculated by dividing total revenue by total skier visits during the respective periods
- (5) Revenue per visit is calculated by dividing total revenue by total visits (ski and tube) during the respective periods
- (6) Includes cash balances restricted i) per debt agreements for payment of interest, ii) per debt agreements for certain construction projects, and iii) per limited partnership agreements, and held in escrow pending the completion of fundraising for the respective limited partnership
- (7) Reflects reclassification of prior periods to reflect the adoption of the Financial Accounting Standards Board's ("FASB") i) Accounting Standards Update ("ASU") 2015-03, "Interest Imputation of Interest"

(Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs,” which requires debt issuance costs related to a recognized debt liability to be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, and ii) ASU 2015-07, “Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes,” which requires the presentation of deferred tax assets and liabilities on a net basis by jurisdiction. The Company adopted ASU 2015-03 in fiscal 2015 and ASU 2015-07 in fiscal 2018.

- (8) Net debt is defined as long-term debt and capital lease obligations plus long-term debt and capital lease obligations due within one year, less cash and cash equivalents.

Item 7. 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 consolidated financial statements and the notes thereto included elsewhere in this Report

Overview

We own or lease and operate 7 ski resorts throughout the Northeast, Mid Atlantic and Midwest, United States. Our ski resorts, which include both day ski resorts and overnight drive ski resorts, offer snow skiing, snowboarding and other snow sports. During the last two ski seasons, we had an average of 9 million skier visits each year.

We operate in a single reportable business segment – resort operations. The consolidated financial data presented in this Report is comprised of the data of our 7 ski resorts, including data of Liberty Mountain, Roundtop Mountain and Whitetail resorts since the date of the Snow Time acquisition.

The opening and closing dates of our ski resorts are dependent upon weather conditions, but our peak ski season generally runs from early December through mid April. See Item 1, “Business – Seasonality” for information about the historical opening and closing dates for our resorts.

Like other day ski resort and overnight drive ski resort operators, we earn our revenues in six principal categories. In order of their contribution, they are: lift and tubing tickets, food and beverage sales, equipment rentals, hotel/lodging, ski instruction, and retail.

Our largest source of revenue is the sale of lift tickets (including season passes) which represented approximately 50.5%, 46.8% and 47.7% of net revenue for the years ending April 30, 2009, 2008 and 2007, respectively. Lift ticket revenue is driven by the volume of lift tickets and season passes sold and the pricing of these items. Most of our season pass products are sold before the start of the ski season. For the 2008/2009, 2007/2008 and 2006/2007 ski seasons, approximately 34.2%, 36.3% and 34.5%, respectively, of total lift revenue recognized was comprised of season pass revenue. Season pass revenue, although collected prior to the ski season, is recognized ratably over the ski season based upon the number of days our resorts are open.

The cost structure of our operations has significant fixed and variable components. Our significant variable expenses include retail and food and beverage cost of sales, labor costs and power and utilities. As such, operating margins can fluctuate based on the level of revenues.

Recent Developments – The Snow Time Acquisition and Related Financing

The Snow Time Acquisition

On November 2, 2008, we completed our acquisition of all of the issued and outstanding shares of common stock of Snow Time for total consideration of \$76 million, which consisted of \$66.6 million in cash, net of cash acquired of \$0 million, and 83,432 shares of common stock with a value of \$6.0 million based on the Company's closing stock price on the day the transaction closed. The sellers had the right to receive \$6.0 million of common stock as determined using the average closing price of the common stock for the 20 trading days immediately preceding the closing, which was \$5.07. We acquired Snow Time in order to expand our portfolio of resorts.

Snow Time's resort properties include Liberty Mountain Resort, Roundtop Mountain Resort and Whitetail Resort, which are day and overnight drive ski resorts located in southern Pennsylvania serving the Baltimore and Washington, DC metropolitan areas. The acquired resorts also include two 8-hole golf courses, a 5-room hotel and conference center and more than 20 food and beverage locations across the three resorts, among other amenities.

Term Loan Financing and Issuance of Preferred Stock and Warrants

We financed \$50.0 million of the Snow Time consideration with the \$50.0 million Term Loan from Cap pursuant to the terms of the Credit Agreement entered into with Cap on November 2, 2008 (the "Credit Agreement")

As consideration for the Term Loan and in lieu of fees, we issued Cap the Financing Warrant to purchase 750,000 shares of common stock at \$ 0.00 per share.

As a condition to the funding of the Term Loan, and for aggregate consideration of \$20.0 million, we exercised our existing option (the "Cap Option") to issue to Cap an additional 20,000 shares of Series A Preferred Stock, along with the 2008 Option Warrants to purchase shares of common stock that expire 2 years from the date of issuance, as follows: i) 538,462 shares of 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. The Cap Option was provided for in the terms of the Securities Purchase Agreement between the Company and Cap, dated as of August 22, 2006, entered into in connection with the 2006 Private Placement. The Company used the Cap Option proceeds to fund the remainder of the cash portion of the Snow Time Acquisition purchase price. See "Liquidity and Capital Resources" and Notes 5 and 6 to the accompanying consolidated financial statements.

The exercise prices of the 2008 Option Warrants must be paid in cash. At our option, the exercise price of the Financing Warrant may be paid in whole or in part in cash or settled through a cashless exercise.

Stockholders' Agreement

On November 2, 2008, in connection with the closing of the Term Loan and the Snow Time acquisition, the Company, Cap and the Management Stockholders entered into the Amended and Restated Stockholders Agreement which added the new shares of Series A Preferred Stock, 2008 Option Warrants, Financing Warrant and Extension Warrant, and the shares of common stock underlying such securities, to the scope of Stockholders Agreement entered into by the parties in 2006. The Stockholders Agreement otherwise remains unchanged and i) provides Cap a right to nominate a director to sit on the Company's board of directors so long as Cap beneficially owns, on a fully diluted, as converted basis, at least 20% of the outstanding equity securities of the Company, ii) restricts transfers of the Company's securities by Cap and the Management Stockholders, iii) provides Cap with a right of first offer to purchase shares of the Company's common stock from the Management Stockholders, iv) grants Cap preemptive rights with respect to future issuances of securities, and v) requires Cap's approval, so long as it meets certain ownership requirements (as defined), in order for the Company to a) materially change the nature of its business or b) acquire or dispose of any resorts, assets or properties for aggregate consideration equal to or greater than 30% of the enterprise value (as defined) of the Company and its subsidiaries.

Seasonality

Our revenues are highly seasonal in nature. The vast majority of revenue is generated during the ski season, which occurs during the winter months in our third and fourth fiscal quarters. Some of our properties offer off season attractions, such as golf, roller coasters, swimming, summer concerts and zip rides; however, these activities do not comprise a substantial portion of our annual revenues. As a result, our resorts typically experience operating losses and negative operating cash flows during the first and second quarters of each fiscal year.

The seasonality of our revenues amplifies the effect of events outside our control, especially weather. While our geographically diverse operating locations help mitigate the effect of weather conditions, adverse weather could lower attendance due to suboptimal skiing conditions or limited access to our resorts, render snowmaking wholly or partially ineffective in maintaining ski conditions, and increase operating costs related to snowmaking efforts and inefficient labor utilization. During years ended April 30, 2009, 2008 and 2007, the percentage of revenue we recognized in our third and fourth fiscal quarters, combined, was 9.9%, 87.6% and 87.3%, respectively. As a result, the operating results for any quarterly period are not necessarily indicative of the results that may be achieved for any subsequent quarter or for a full year.

Weather Impact

The timing and duration of favorable weather conditions significantly influences the timing and volume of skier visits and the associated revenue. While natural snowfall early in the ski season influences skier visits, all of our ski resorts have snowmaking capabilities in the event that the natural snowfall is insufficient. Cold weather, however, is essential to a successful ski season and there is no way to predict future weather conditions. We sell season passes prior to the start of the ski season to help mitigate any negative effects unfavorable weather may have on our revenues.

During the 2018/2019 ski season we experienced favorable weather conditions in the Northeast that allowed two of our resorts to open in October, which was a first for these resorts while under our ownership. We did, however, experience some weather challenges which delayed the opening of some of our Midwest and Mid Atlantic resorts until after the Christmas holiday. During the 2017/2018 ski season we encountered significant weather driven challenges, including bitterly cold weather which depressed skier visits at times and rainy weather during a holiday weekend which depressed skier visits during one of our historically busiest weekends. Favorable weather conditions in the Northeast towards the end of the ski season helped to mitigate the impact of unfavorable weather conditions in the middle of the season. Similarly, we faced significant weather challenges during the 2016/2017 ski season due to unseasonably warm weather in the Midwest midway through the ski season.

In addition to our continued investment in snow making technologies and infrastructure, we rely on our season pass products to help mitigate the impact on our revenues from adverse weather.

Season Pass Products

For the 2016/2017 ski season we introduced the Peak Pass which currently allows skiers to utilize any of our resorts in the Northeast and Mid Atlantic United States, in addition to certain of our resorts in the Midwest United States. The introduction of the Peak Pass contributed to the increased revenue we experienced in our 2019 and 2018 fiscal years as compared to our 2017 fiscal year, despite significant weather challenges during those fiscal years. Our pre season season pass sales for the upcoming 2019/2020 increased 98% in dollars and 208% in units as compared to the 2018/2019 season, inclusive of sales from the resorts acquired in the Snow Time acquisition in both periods. Our 2018/2019 season pre season pass sales had increased 86% in both dollars and units as compared to the same period for the 2017/2018 ski season.

Skier Visits

Our ski resorts operate in the Northeast, Mid Atlantic and Midwest United States. Our skier visits of 2.1 million in fiscal 2019, which includes visit to the resorts acquired from Snow Time, were up 27.8% from fiscal 2018. Our skier visits increased 7% at legacy Peak Resorts properties. This compares to a 4.3% increase in total skier visits across the entire industry to Northeast, Mid Atlantic and Midwest resorts as reported by the Kottke Report. Our total resort visits, which include tubing visits, were up 32.0% from fiscal 2018. Total visits to our Northeast and Mid Atlantic resorts, in particular, increased to 1.8 million in fiscal 2019 from 1.25 million in fiscal 2018. Total visits to our Midwest resorts increased to 0.6 million in fiscal 2019 from 0.59 million in fiscal 2018.

Capital Projects

As part of our mission to build value by investing in our current properties through expansions, new products and amenities that will elevate our customers' skiing and off season experiences, during fiscal 2019 we completed two major projects and continued to move forward with capital improvement projects at our other resorts.

- At Hunter Mountain, we completed the Hunter North expansion project which increased the resort's skiable acreage by approximately 25% and added automated snowmaking, a six passenger detachable high speed chair lift and parking area.
- At Mount Snow, we completed the Carinthia Ski Lodge project. The Carinthia Ski Lodge project included the construction of a new ski lodge at the resort's Carinthia base, comprised of a three story, 36,000 square foot skier service building which includes i) a restaurant, cafeteria and bars with seating for over 600 people, ii) retail facilities, and iii) a sales center for lift tickets and equipment rentals.

- At Hidden Valley, we completed the permitting process and substantially completed the construction of a zip line tour which we anticipate will generate additional sales and diversify that resort's revenue base. The zip line tour opened in May 2019.

Results of Operations

The following table presents our consolidated statements of operations for the years ended April 30, 2019, 2018 and 2017 (dollars in thousands):

	Year ended April 30,			Percent	Percent
	2019	2018	2017	increase (decrease)	increase (decrease)
				2019/2018	2018/2017
Revenues:					
Lift and tubing tickets	\$ 93,688	\$ 66,883	\$ 58,000	5.0%	6.2%
Food and beverage	32,200	24,749	23,078	30%	7.2%
Equipment rental	5,065	9,999	8,582	50.8%	6.4%
Ski instruction	5,256	9,288	8,562	67%	6.6%
Hotel/lodging	8,909	9,874	9,731	(9.8)%	5%
Retail	9,277	6,748	6,395	37.5%	5.5%
Summer activities	4,727	4,459	4,549	6.0%	(2.0)%
Other	5,844	5,030	4,252	5.6%	8.3%
	<u>84,426</u>	<u>3,662</u>	<u>23,249</u>	<u>40%</u>	<u>6.8%</u>
Costs and Expenses:					
Resort operating costs:					
Labor and labor related expenses	6,440	53,026	48,253	5.9%	9.9%
Retail and food and beverage cost of sales	4,903	,855	0,820	25.7%	9.6%
Power and utilities	,47	8,33	7,843	37.0%	6.2%
Other	3,977	23,38	20,403	36.8%	4.6%
	<u>9,737</u>	<u>96,593</u>	<u>87,399</u>	<u>24.0%</u>	<u>0.6%</u>
Depreciation and amortization	9,688	3,23	2,73	48.3%	4%
General and administrative expenses	,22	5,797	5,43	93.6%	6.7%
Real estate and other non-income taxes	3,35	2,286	2,322	46.6%	(.6)%
Land and building rent	,393	,40	,395	(0.6)%	0.4%
Restructuring and impairment charges	90	2,35		(9.1)%	0.0%
	<u>55,500</u>	<u>2,443</u>	<u>09,80</u>	<u>2.8%</u>	<u>2%</u>
Income from operations	<u>28,966</u>	<u>0,29</u>	<u>4,069</u>	<u>83.0%</u>	<u>(27.4)%</u>
Other (expense) income:					
Interest, net of amounts capitalized of \$783, \$,256, \$,545, respectively	(5,788)	(3,322)	(2,473)	8.5%	6.8%
Gain on sale/leaseback	333	333	333	%	%
Other income	59	60	6	(0.6)%	62.3%
	<u>(5,296)</u>	<u>(2,829)</u>	<u>(2,079)</u>	<u>9.2%</u>	<u>6.2%</u>
Income (loss) before income taxes	3,620	(2,60)	,990	(62.8)%	(23.2)%
Income tax (benefit) expense	4,704	(3,962)	749	(2.87)%	(629.0)%
Net income	<u>\$ 8,966</u>	<u>\$,352</u>	<u>\$,24</u>	<u>559.5%</u>	<u>8.9%</u>
Reported EBITDA	<u>\$ 49,769</u>	<u>\$ 25,585</u>	<u>\$ 26,782</u>	<u>94.5%</u>	<u>(4.5)%</u>

Year Ended April 30, 2019, Compared with the Year Ended April 30, 2018

Net Revenue. Net revenue increased by \$52.8 million, or 40%, for the year ended April 30, 2019, compared with the year ended April 30, 2018. The increase is primarily attributable to i) \$42.3 million of revenue associated with the resort properties acquired in the Snow Time acquisition and ii) a \$0.5 million increase in revenues at legacy Peak Resorts properties. The increased revenues at legacy Peak Resorts properties are primarily attributable to an earlier opening of our 2018/2019 ski season at the majority of our resorts and favorable weather conditions which increased skier visits.

partially offset by reduced lodging and food and beverage sales at our Attitash resort as a result of our decision to cease operations of a hotel/restaurant facility as of the beginning of fiscal year 2009 (the "Attitash Hotel Closure")

Resort Operating Costs. Resort operating costs increased \$23 million, or 240%, for the year ended April 30, 2009, compared with the prior year. The increase is primarily attributable to i) \$29 million of resort operating costs associated with the resort properties acquired in the Snow Time acquisition and ii) a \$2 million increase in resort operating costs at legacy Peak Resorts properties. The increased operating costs at legacy Peak Resorts properties are primarily attributable to i) increased power and utility costs as a result of a greater number of operating days as well as increased electric transmission charges associated with two of our Pennsylvania resorts and ii) increased costs of goods sold associated with higher retail and food and beverage sales, partially offset by a decrease in labor costs associated with i) the Attitash Hotel Closure and ii) our ongoing efforts to manage staffing levels at our resorts.

Depreciation and Amortization. Depreciation and amortization expense increased by approximately \$6.4 million, or 48.3%, to \$9.6 million for the year ended April 30, 2009, primarily as a result of i) additional depreciable assets added during the third quarter of fiscal 2009, including property and equipment acquired in the Snow Time Acquisition, the Hunter Mountain expansion project and the Carinthia Ski Lodge project and ii) additional amortizing intangible assets added during the third quarter of fiscal 2009 as a result of the Snow Time acquisition.

General and Administrative Costs. General and administrative expenses of approximately \$2 million for the year ended April 30, 2009, increased by approximately \$5.4 million, or 93.6%, primarily as a result of i) a \$3.8 million increase in performance based incentive compensation, ii) \$0 million of professional fees and other transaction costs associated with the Snow Time acquisition and iii) increased professional fees and other costs associated with the integration of Snow Times operations.

Restructuring and Impairment. During the year ended April 30, 2009, we incurred restructuring charges of \$0.2 million which related to the Attitash Hotel Closure. In December 2007, we determined we would not be able to renew a management services agreement related to residential condominium units in a hotel property adjacent to our Attitash resort where we owned the commercial corridor. As a result, we decided to cease our operation of the hotel property as of April 30, 2008 (the "Attitash Hotel Closure") and sold our interest in the hotel property. Total charges related to the Attitash Hotel Closure include \$6 million of asset impairment charges and \$0.3 million of severance and other costs. As of April 30, 2009, no amounts were accrued for costs associated with the Attitash Hotel Closure, and the Company expects it will not incur future additional charges related to the Attitash Hotel Closure.

Real Estate and Other Non-Income Taxes. Real estate and other non-income taxes of \$3.4 million for the year ended April 30, 2009, increased by approximately \$1 million, or 46.6%, as compared to the \$2.3 million of real estate and other non-income taxes for the prior year. The increase is a result of i) approximately \$0.4 million real estate taxes associated with the resort properties acquired in the Snow Time acquisition, ii) rate increases and higher assessed values at certain legacy Peak Resorts properties and iii) property tax refunds received in fiscal 2008 which did not recur in fiscal 2009.

Interest, Net. Net interest expense of \$5.8 million for the year ended April 30, 2009, increased by \$2.5 million, or 8.5%, as compared to the \$3.3 million of net interest expense for the prior year. The increase in net interest expense relates primarily to i) approximately \$5 million of interest on the new Term Loan which began accruing during the third quarter of fiscal 2009, ii) a \$0.5 million decrease in the amount of capitalized interest during fiscal 2009, as compared with fiscal 2008, and iii) an increase in interest rates on variable rate debt.

Income Taxes. Income tax expense of \$4.7 million for the year ended April 30, 2009 compares with an income tax benefit of \$4.0 million for the year ended April 30, 2008, as a result of an increase in our effective tax rate applied to an increased earnings before income taxes. Our effective income tax rates were 34.5% and 5.8% for the year ended April 30, 2009 and 2008, respectively. The November 2008 acquisition of the Snow Time resort properties resulted in the inclusion of their operating results only for the ski season, the profitable period of their annual operations. The 2008 tax rate reflects the enactment of the 2007 Tax Act, which permanently reduced the U.S. corporate statutory rate from 35.0% to 21.0% as of January 1, 2008.

Reported EBITDA. Reported EBITDA is not a measure of financial performance under U.S. GAAP. We have chosen to include "Reported EBITDA" (which we define as net income before interest, income taxes, depreciation, amortization, gain on sale/leaseback, other income and 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 operations, it is difficult for management to fully and accurately evaluate our financial results and available capital resources using net income alone. In addition, the use of this non U.S. GAAP measure provides an indication of our ability to service debt, and we consider it an appropriate measure to use because of our highly leveraged position.

We believe that by providing investors with Reported EBITDA, they will have a clearer understanding of our financial performance and cash flows 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; 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 results; and iii) is used by our board of directors, management and our lenders for various purposes, including as a measure of our operating performance and as a basis for planning.

The items we exclude from net income to arrive at Reported EBITDA are significant components for understanding and assessing our financial performance and liquidity. Reported EBITDA should not be considered in isolation or as an alternative to, or substitute for, net income, net change in cash and cash equivalents or other financial statement data presented in our consolidated financial statements as indicators of financial performance or liquidity. Because Reported EBITDA is not a measurement determined in accordance with U.S. GAAP and is susceptible to varying calculations, Reported EBITDA, as presented, may not be comparable to other similarly titled measures of other companies, limiting its usefulness as a comparative measure.

Reconciliations of net income to Reported EBITDA for the years ended April 30, 2019 and 2018 were as follows (dollars in thousands):

	<u>Year ended April 30,</u>	
	<u>2019</u>	<u>2018</u>
Net income	\$ 8,966	\$ 3,352
Income tax expense (benefit)	4,704	(3,962)
Interest expense, net	5,788	3,322
Depreciation and amortization	9,688	3,232
Acquisition related costs	,045	
Restructuring and impairment charges	90	2,335
Other income	(59)	(60)
Gain on sale/leaseback	(333)	(333)
Reported EBITDA	<u>\$ 49,769</u>	<u>\$ 25,585</u>

Reported EBITDA increased by \$24.2 million, or 94.5%, for the year ended April 30, 2019, as compared with the year ended April 30, 2018, primarily as a result of i) approximately \$20.0 million of Reported EBITDA associated with the resort properties acquired in the Snow Time acquisition, and ii) increased revenue offset by lower relative operating expenses at legacy Peak Resorts properties.

Year Ended April 30, 2018, Compared with the Year Ended April 30, 2017

Net Revenue. Net revenue increased \$8.4 million, or 6.8%, for the year ended April 30, 2018, compared with the year ended April 30, 2017. The increase is primarily attributable to increased resort attendance driven, in part, by earlier ski season opening dates which led to higher ticket, rentals, retail and food and beverage sales.

Resort Operating Costs. Resort operating costs increased \$9.3 million, or 10.6%, for the year ended April 30, 2018, compared with the previous year. Labor costs increased by \$4.8 million, or 9.9%, due to i) lower pre season staffing levels in fiscal 2017 as compared to fiscal 2018, ii) increased staffing needs due to earlier ski season opening dates and higher attendance in fiscal 2018, and iii) increases in the minimum wage which impacted certain of our resorts. Other resort operating expenses increased by \$3.0 million, or 4.6%, primarily as a result of increased maintenance and supplies costs. During fiscal 2017, we experienced low liquidity levels and, as a result, implemented employee furloughs and strict spending controls on discretionary costs. By the end of fiscal 2017, our liquidity levels had normalized. As a result, our staffing levels returned to a more normal level, and our resorts incurred increased costs as they prepared for the 2017/2018 ski season. Cost of goods sold related to food and beverage and retail sales increased \$1.0 million, or 9.6%, due to increased food and beverage and retail sales stemming from higher resort attendance.

Depreciation and Amortization. Depreciation and amortization increased by \$0.5 million, or 4%, on a higher depreciable base which included, among other new assets, the West Lake Water project which was placed in service during the year.

General and Administrative Costs. General and administrative expenses increased \$0.4 million, or 6.7%, for the year ended April 30, 2018 compared with the year ended April 30, 2017, primarily due to higher incentive compensation expense and lower professional fee expense.

Restructuring and Impairment. During the year ended April 30, 2018 we incurred restructuring and impairment charges totaling \$2 million which included i) \$1.7 million related to the Attitash Hotel Closure, and ii) \$0.4 million related to the impairment of goodwill associated with our Alpine Valley ski resort. Charges related to the Attitash Hotel Closure included \$1.6 million of asset impairment charges and \$0.4 million of severance and other costs.

Interest. Excluding amounts capitalized, interest expense increased by \$0.8 million, or 6.8%, primarily as a result of increases in the interest rates on adjustable rate debt, partially offset by the effect of a \$1.7 million net repayment of interest bearing debt over the course of the year.

Income Taxes. The income tax benefit for the year ended April 30, 2018, was \$4.0 million, which compares with income tax expense of \$0.7 million for the year ended April 30, 2017. The benefit for fiscal 2018 is primarily as result of positive impacts from the enactment of the 2017 Tax Act which, among other effects, i) reduced our deferred tax liabilities and ii) reduced our effective income tax rate for the four months ending April 30, 2018.

Reported EBITDA. Reconciliations of net income to Reported EBITDA for the years ended April 30, 2018 and 2017 were as follows (dollars in thousands):

	<u>Year ended April 30,</u>	
	<u>2018</u>	<u>2017</u>
Net income	\$ 352	\$ 24
Income tax (benefit) expense	(3,962)	749
Interest expense, net	3,322	2,473
Depreciation and amortization	3,23	2,73
Restructuring and impairment charges	2,35	
Other income	(60)	(6)
Gain on sale/leaseback	(333)	(333)
Reported EBITDA	<u>\$ 25,585</u>	<u>\$ 26,782</u>

Reported EBITDA decreased by \$2 million, or 4.5%, for the year ended April 30, 2018, as compared with the year ended April 30, 2017, primarily as a result of higher resort operating costs relative to revenue which was driven by increased labor costs and deferred maintenance expenditures.

Liquidity and Capital Resources

Cash Flow

Net cash provided by operating activities was \$34.5 million for the year ended April 30, 2019, as compared with net cash used by operating activities of \$0.2 million and net cash provided by operating activities of \$2.7 million for the years ended April 30, 2018 and 2017, respectively. The increase in net cash provided by operating activities in fiscal 2019 as compared with fiscal 2018, is primarily due to i) higher net income and ii) positive changes in working capital related to prepaid rentals and interest. Under the terms of the various borrowing agreements we have with EPR, we are required to, at EPR's discretion, either prepay a certain amount of interest and rental payments to EPR or deposit the equivalent amount of cash in a restricted account to fund interest payments to EPR. As of April 30, 2019 and 2018, we had prepaid interest and rentals to EPR of \$8.2 million and \$8.9 million, respectively, which are included in the caption prepaid expenses and other current liabilities in our consolidated balance sheets. As of April 30, 2017, there was no amount of interest or rent prepaid to EPR, however we had funded \$8.8 million into a restricted cash account to fund interest payments to EPR, which was included in the caption restricted cash in our consolidated balance sheet as of April 30, 2017.

Net cash of \$96.2 million was used by investing activities during the year ended April 30, 2019, an increase of \$65 million when compared with the \$3 million during the year ended April 30, 2018. Investing cash flows in fiscal 2019 related primarily to i) \$65.7 million of net cash paid to acquire Snow Time, and ii) \$30.5 million in additions to property and equipment, primarily associated with the construction of the Carinthia Ski Lodge, Hunter North expansion and Hidden Valley Zip Tour projects. Additions to property and equipment during fiscal 2018 related primarily to the construction of the West Lake Water and Carinthia Ski Lodge projects.

Net cash of \$60.7 million was provided by financing activities in year ended April 30, 2019, an increase of \$7.5 million when compared with the \$0.8 million used in the year ended April 30, 2018. Financing cash flows in fiscal 2019 included i) approximately \$70 million of proceeds from the Term Loan and the issuance of Series A Preferred Stock along with the 2018 Option Warrants and Financing Warrants to finance the Snow Time acquisition, ii) approximately \$0 million of other borrowings and capital leases, partially offset by, iii) \$2.9 million of debt repayments, iv) \$0.9 million of financing fees related to the Term Loan, and v) \$5.6 million of distributions to stockholders. Financing cash flows in fiscal 2018 included i) the net repayment of approximately \$5.9 million of credit facility and long term debt, ii) \$4.7 million of distributions to stockholders and iii) \$0 of financing fees.

Liquidity and Significant Uses of Cash

Our available cash is consistently highest in our fourth quarter primarily due to the seasonality of our resort business. We had \$30.2 million of cash and cash equivalents as of April 30, 2019, compared with \$23 million at April 30, 2018. In addition, we had \$5.2 million of restricted cash balances on hand as of April 30, 2019, for interest payments on the Term Loan and our revolving credit facilities. We generate the majority of our cash from operations during the ski season, which occurs during our third and fourth fiscal quarters. We currently anticipate cash flow from operations will continue to provide a significant source of our future cash flows, and believe that cash flow from operations, availability on credit facilities and available cash on hand will be sufficient to fund our recurring capital expenditure requirements and other currently anticipated cash needs for the next 12 months.

Our principal liquidity requirements over the next 12 months will be for i) debt service requirements in connection with our credit facilities and other debt, ii) capital expenditures to complete planned major projects, iii) capital expenditure needs for our continuing operations, and iv) working capital needs including the payment of operating leases. We have historically invested significant cash in capital expenditures for our resort operations and expect to continue to invest in the future.

We currently anticipate we will spend between approximately \$2.0 million to \$4.5 million on capital expenditures during fiscal 2020, which includes approximately \$3.0 million to \$3.5 million to complete snow making infrastructure improvements at the newly acquired Snow Time resorts; approximately \$0.5 million to \$1.0 million to finish construction of the zip tour at Hidden Valley; and approximately \$8.5 million to \$10.0 million on resort maintenance capital expenditures, which is consistent with our historical maintenance capital expenditures that are needed to maintain and improve the level of service and overall experiences we strive to provide our visitors. We currently plan to use cash on hand and/or cash flow generated from future operations to provide the cash necessary to execute our other capital projects and believe that these sources of cash will be adequate to meet our needs.

We continually evaluate opportunities to acquire new ski resorts. We expect that we would finance the acquisition of any new ski resorts through a combination of cash on hand, existing credit facilities, new financing arrangements or the issuance of debt or equity.

The outstanding shares of the Company's Series A Preferred Stock accrue cumulative dividends on a daily basis in arrears at the rate of 8% per annum on the liquidation value of \$1,000 per share. All accrued and accumulated dividends on the Series A Preferred Stock are required to be paid prior and in preference to any cash dividend on our common stock. In addition, until the earlier of i) such date as no Series A Preferred Stock remains outstanding and ii) January 1, 2027, we are prohibited from paying any dividend on capital stock when there are accrued or unpaid dividends with respect to the Series A Preferred Stock. In accordance with the terms of the issuance of 20,000 shares of Series A Preferred Stock in November 2018, quarterly dividends on that share issuance begin to accrue in August 2019. We intend to pay Series A Preferred Stock dividends of approximately \$0.4 million during each of the first and second quarters of fiscal 2020, and, thereafter, pay Series A Preferred Stock dividends of approximately \$0.8 million per quarter (\$3.2 million per year) once dividends on the shares issued in November 2018 begin to accrue.

Financing Arrangements

Long term debt at April 30, 2019 and 2018, consisted primarily of borrowings pursuant to the loans and other credit facilities with EPR Properties, our primary lender, Capital, and EB-5 limited partnerships.

We have presented in the table below the composition of our long term debt as of April 30, 2019 and April 30, 2018 (dollars in thousands):

	2019	2018
EPR Secured Notes due 2034	\$ 93,62	\$ 93,62
EPR Secured Notes due 2036	2,000	2,000
EB-5 Development Notes due 202	52,000	52,000
Term Loan due 2020	50,058	
Wildcat Mountain Note due 2020	3,030	3,23
Capital Leases	,746	2,426
Other borrowings	54	,84
Less: Unamortized debt issuance costs	(4,28)	(4,552)
	2,7382	68,45
Less: Current maturities	(,53)	(2,64)
	\$ 2,5869	\$ 65,837

EPR Secured Notes

The Company has various secured borrowings (the "EPR Secured Notes") under a master credit and security agreement and other related agreements, as amended, (together, the "EPR Agreements") with EPR Properties and its affiliates ("EPR"). Each of the EPR Secured Notes is secured by one or more of the Company's resort properties and is guaranteed by the Company. The EPR Secured Notes bear interest at specified interest rates which are subject to increase each year by the lesser of i) three times the percentage increase in the Consumer Price Index (as defined) or ii) a capped index (the "Capped CPI Index") which is 75% for the Hunter Mountain Secured Note and 50% for all other notes.

Financial covenants set forth in the EPR Agreements consist of i) a maximum leverage ratio (as defined) of 65%, above which the Company and certain of its subsidiaries are prohibited from incurring additional indebtedness, ii) a consolidated fixed charge coverage ratio (as defined) of 1.50:1.00 on a rolling four quarter basis, and iii) a prohibition of the Company paying dividends if the Company is in default (as defined) or if the fixed charge coverage ratio (as defined) is below 1.25:1.00.

Non-financial covenants set forth in the EPR Agreements include i) restrictions on certain transactions, including mergers, acquisitions, leases, asset sales, loans to third parties, and the incurrence of certain additional debt and liens and ii) a requirement that the Company obtain the consent of EPR prior to redeeming any preferred or common stock.

The EPR Agreements also provide that none of the EPR Secured Notes may be prepaid without the consent of EPR and that any default under any of the EPR Secured Notes, lease agreements between the Company and EPR, or credit facilities with other lenders would constitute a default under all EPR Secured Notes and lease agreements. A change of control (as defined) would also constitute an event of default.

An additional contingent interest payment would be due to EPR if, on a calendar year basis, the gross receipts (as defined) from the properties securing the EPR Secured Notes (the "Gross Receipts") are more than the result (the "Interest Quotient") of dividing the total interest charges for the EPR Secured Notes by a certain percentage rate (the "Additional Interest Rate"). In such a case, the additional interest payment would equal the difference between the Gross Receipts and the Interest Quotient multiplied by the Additional Interest Rate. This calculation is made on an aggregated basis for the notes secured by the Company's Jack Frost, Big Boulder, Boston Mills, Brandywine, Alpine Valley and Hunter Mountain ski resorts, where the Additional Interest Rate is 0%, and is made on a standalone basis for the note secured by the Company's Mount Snow ski resort, where the Additional Interest Rate is 2%. The Company has not made any additional interest payments on the EPR Secured Notes based on these provisions.

The EPR Agreements grant EPR certain other rights including i) an option to purchase the Company's Boston Mills, Brandywine, Jack Frost, Big Boulder and Alpine Valley resorts that is exercisable no sooner than two years and no later than one year prior to the maturity dates of the applicable promissory notes for such properties, with any closings to be held on the applicable maturity dates, ii) a right of first refusal through 2022, subject to certain conditions, 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 properties, and iii) a right of first refusal through 2022 to purchase the Company's Attitash ski resort in the event the Company were to desire to sell the Attitash ski resort. In the event EPR were to exercise one or more of its purchase options, the Company would be subject to capital gain taxes to the extent the purchase price exceeded the Company's tax basis in the properties. As the Company has deducted tax depreciation for these properties on its federal income tax returns, the amount of capital gains and related taxes might be significant. To date, EPR has not exercised any purchase options. If EPR exercises a purchase option, EPR will enter into an agreement with us for the lease of each acquired property for an initial term of 20 years, plus options to extend the lease for two additional periods of ten years each.

The EPR Secured Notes include the following:

The Alpine Valley Secured Note. The \$4.6 million Alpine Valley Secured Note provides for interest only payments through its maturity on December 31, 2034. As of April 30, 2019, interest on this note accrued at a rate of 4.04%. This note is secured by a mortgage and other interests in the Company's Alpine Valley ski resort.

The Boston Mills Brandywine Secured Note. The \$23.3 million Boston Mills/Brandywine Secured Note provides for interest only payments through its maturity on December 31, 2034. As of April 30, 2019, interest on this note accrued at a rate of 0.59%. This note is secured by a mortgage and other interests in the Company's Boston Mills and Brandywine ski resorts.

The Jack Frost Big Boulder Secured Note. The \$4.3 million Jack Frost/Big Boulder Secured Note provides for interest only payments through its maturity on December 31, 2034. As of April 30, 2019, interest on this note accrued at a rate of 0.59%. This note is secured by a mortgage and other interests in the Company's Jack Frost and Big Boulder ski resorts.

The Mount Snow Secured Note. The \$5 million Mount Snow Secured Note provides for interest only payments through its maturity on December 31, 2034. As of April 30, 2019, interest on this note accrued at a rate of 6.16%. This note is secured by a mortgage and other interests in the Company's Mount Snow ski resort.

The Hunter Mountain Secured Note. The \$2.0 million Hunter Mountain Secured Note provides for interest only payments through its maturity on January 5, 2036. As of April 30, 2019, interest on this note accrued at a rate of 8.43%. This note is secured by a mortgage and other interests in the Company's Hunter Mountain ski resort.

EB-5 Development Notes

The Company serves as the general partner for two limited partnerships, Carinthia Group, LP and Carinthia Group 2, LP (together, the "Limited Partnerships"), which were formed to raise \$52.0 million through the Immigrant Investor Program administered by the U.S. Citizenship and Immigration Services ("USCIS") pursuant to the Immigration and

Nationality Act (the "EB 5 Program") The EB 5 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 immigrant visas to qualified individuals ("EB 5 Investors") seeking lawful permanent resident status based on their investment in a U S commercial enterprise

On December 27, 20 6, the Company borrowed \$52 0 million from the Limited Pa tnerships to fund two capital projects at its Mount Snow ski reso t The development projects include i) the West Lake Water Project, which was completed during fiscal 20 8 and included the const uction of a new water storage reservoir for snowmaking, and ii) the Carinthia Ski Lodge Project, which was completed during fiscal 20 9 and included the const uction of a new skier service building The amounts were borrowed through two loan agreements, which provided \$30 0 million for the West Lake Water Project and \$22 0 million for the Carinthia Ski Lodge project (together, the "EB 5 Development Notes")

Amounts outstanding under the EB 5 Development Notes accrue simple interest at a fixed rate of 0% per annum until the maturity date, which is December 27, 202 , subject to extension of up to an additional two years at the option of the borrowers with lender consent If the maturity date is extended, amounts outstanding under the EB 5 Development Notes will acc ue simple interest at a fixed rate of 7 0% per annum during the first year of extension and a fixed rate of 0 0% per annum during the second year of extension

Upon an event of default (as defined), amounts outstanding under the EB 5 Development Notes shall bear interest at the rate of 5 0% per annum, subject to the extension increases For so long as amounts under the EB 5 Development Notes are outstanding, the Company is restricted from taking ce tain actions without the consent of the lenders, including, but not limited to transferring or disposing of the prope ties or assets financed with the loan proceeds In addition, the Company is prohibited from prepaying outstanding amounts owed if such prepayment would jeopardize any of the EB 5 Investors from being admitted to the U S via the EB 5 Program

The Company has evaluated the facts and circumstances surrounding the Limited Partnerships and determined the Limited Partnerships do not require consolidation in the Company s financial statements as the Company does not have a variable interest in the Limited Partnerships under either the variable interest model or the voting interest model, as substantive pa ticipation rights give the limited pa tners the ability to effectively participate in significant decisions that would be expected to be made in the ordina y course of the Limited Pa tnerships business and thereby preclude the Company as general partner from exercising unilateral control over the partnerships

Term Loan due 2020

The Company financed part of the cash consideration paid in the Snow Time acquisition with the \$50 0 million Term Loan from Cap pursuant to the terms of the Credit Agreement entered into with Cap on November 2 , 20 8

The Term Loan has an initial term of two years and bears interest at 6 95%, payable quarterly, subject to a 2 0% increase upon an event of default The Term Loan is secured by all real prope ty on which the Snow Time reso ts are located and improvements thereon Amounts due under the Term Loan may be prepaid without penalty

The Term Loan matures on November 30, 2020 and may be extended for an additional one year period at the Company s option, so long as no event of default has occurred If extended, the Company has agreed to issue Cap the Extension Warrant to purchase 666,667 shares of common stock, exercisable immediately from the issuance date and for up to ten years from the date of issuance, at \$7 50 per share The Extension Warrant was not issued upon closing the Term Loan and will only be issued if the Company exercises the one year Term Loan extension right

As consideration for the Term Loan and in lieu of fees, the Company also issued Cap the Financing Warrant to purchase ,750,000 shares of common stock at \$ 0 00 per share, which is exercisable immediately and expires ten years from the date of issuance

As a condition to the funding of the Term Loan, and for aggregate consideration of \$20 0 million, we exercised the Cap Option to issue to Cap an additional 20,000 shares of Series A Preferred Stock along with the 20 8 Option Warrants to purchase up to 2,7 9,0 8 shares of common stock at prices ranging from \$6 50 per share to \$9 00 per share The Company used the Cap Option proceeds to fund the remainder of the cash portion of the Snow Time acquisition purchase price

Wildcat Mountain Note

The Wildcat Mountain Note due December 22, 2020 bears interest at a fixed rate of 4.00% and is secured by a security interest in the improvements at the Company's Wildcat Mountain ski resort. The loan is payable in monthly principal and interest payments with a balloon payment of \$2.7 million due upon maturity.

Royal Banks of Missouri Credit Facilities

In December 2018, the Company renewed its existing credit facility with Royal Banks of Missouri (the "Royal Banks Credit Facility"). The Royal Banks Credit Facility provides for a \$100 million working capital line of credit to be used for general business purposes and a \$50 million acquisition line of credit to be used for the acquisition of additional ski resort properties. As of April 30, 2019, \$2.4 million was outstanding under the 2017 Royal Banks Credit Facility and \$2.6 million was unused and available.

The Royal Banks Credit Facility was renewed for one year, with loans payable in monthly interest only installments charged at the bank's prime rate plus 100% per annum, with any outstanding principal amounts due in December 2019. The Company is required to fund a debt service account by depositing in three equal monthly installments an amount equal to the estimated annual interest due in connection with outstanding loans under the Royal Banks Credit Facility. As of April 30, 2019, \$0.5 million was included in restricted cash on our consolidated balance sheet for these payments. The Company is required to maintain a minimum debt service coverage ratio (as defined in the credit agreement) of 25:00. In addition, were the Company's fixed charge coverage ratio (as defined in the credit agreement) to fall below 50:00, the Company would be required to prefund certain other debt service payments, and should the ratio fall below 25:00, the Company would be prohibited from paying dividends. The Royal Banks Credit Facility is secured by the assets of the Company's subsidiaries which operate its Hidden Valley, Paoli Peaks, Snow Creek, Crotched Mountain and Attitash resorts.

As of April 30, 2019, the Company was in compliance with all debt covenants under its various credit facility and debt agreements.

Series A Preferred Stock

As more fully described in Notes 5 and 6 to our consolidated financial statements filed with this Report, on November 2, 2018, we issued an additional \$20 million of Series A Preferred Stock and the 2018 Option Warrants to Capital, the proceeds of which were used to finance the remaining cash consideration for the Snow Time acquisition. As of April 30, 2019, a total of 40,000 shares of Series A Preferred Stock were outstanding.

The rights and preferences of the Series A Preferred Stock include, among other things, the following:

Seniority. The Series A Preferred Stock generally rank, with respect to liquidation, dividends and redemption, i) senior to common stock and to any other junior capital stock; ii) on parity with any parity capital stock; iii) junior to any senior capital stock; and iv) junior to all of our existing and future indebtedness (as defined). Until the earlier of the date that no Series A Stock remains outstanding and January 1, 2027, we are prohibited from paying cash dividends on common stock if there are accrued and unpaid dividends with respect to the Series A Preferred Stock.

Dividend Rights. From and after the date that is nine months from the date of issuance, or August 2, 2019 for the shares issued on November 2, 2018, cumulative dividends accrue on the Series A Preferred Stock on a daily basis in arrears at the rate of 8% per annum on the liquidation value of \$1,000 per share. All accrued and accumulated dividends on the Series A Preferred Stock shall be paid prior and in preference to any dividend or distribution on or redemption of any junior securities, provided that the Company may, prior to the payment of all accrued and accumulated dividends on the Series A Preferred Stock, i) declare or pay any dividend or distribution payable on the common stock in shares of common stock; or ii) repurchase common stock held by our employees or consultants upon termination of their employment or services pursuant to agreements providing for such repurchase. We may also redeem or repurchase junior securities at any time when there are no accrued or accumulated unpaid dividends on the Series A Preferred Stock.

Liquidation In the event of any liquidation (as defined), dissolution or winding up of our company, the holders of Series A Preferred Stock shall be entitled to be paid out of the assets of our company available for distribution to its stockholders, before any payment shall be made to the holders of junior securities, and subject to the rights of any parity or senior securities, an amount in cash equal to \$.000 per share plus all unpaid accrued and accumulated dividends

Redemption The Series A Preferred Stock is subject to redemption i) at our option at a price of \$.250 per share, plus all unpaid accrued and accumulated dividends, at any time on or after the third anniversary of the issuance of the Series A Preferred Stock that the average closing price of our common stock on the 30 trading days preceding notice of the exercise of the redemption right is greater than \$8 .8; or ii) at the holder's option upon a change in control

Conversion Upon the earlier of a change of control or the nine month anniversary of the date of issuance, the holders of the Series A Preferred Stock have the right to convert the Series A Preferred Stock into shares of common stock equal to the number of shares to be converted, times the liquidation value, divided by the conversion price and receive in cash all accrued and unpaid dividends The initial conversion price per share is \$6.29, subject to adjustment pursuant to the terms of the Certificate of Designation Holders of the Series A Preferred Stock also have basic anti dilution rights

Voting Rights Each holder of Series A Preferred Stock shall be entitled to vote, on an as converted basis, with holders of outstanding shares of common stock, voting together as a single class, with respect to any and all matters presented to the stockholders of our company

We entered into a Registration Rights Agreement with Cap , dated November 2 , 20 8, granting certain registration rights with respect to the shares of common stock underlying the Series A Preferred Stock, 20 8 Option Warrants and Financing Warrant The terms and registration rights applicable to the Extension Warrant, if issued, are expected to be substantially the same as those applicable to the Financing Warrant

Off Balance Sheet Arrangements

We do not have any off balance sheet arrangements as defined under SEC rules

Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with US GAAP requires that management make certain estimates and assumptions that affect amounts reported in the financial statements and accompanying notes Actual results may differ from those estimates and assumptions and the differences may be material Significant accounting policies, estimates and judgments that management believes are the most critical to aid in fully understanding and evaluating the reported financial results are discussed below

We qualify as an "emerging growth company" under the Jumpstart Our Business Startups Act of 20 2, which provides that an emerging growth company may take advantage of an extended transition period for complying with new or revised accounting standards As an emerging growth company, we may delay the adoption of certain accounting standards until those standards would otherwise apply to private companies As a result, our financial statements may not be comparable to those of other public companies

Goodwill

At April 30, 20 9, our goodwill balance relates to our Hunter Mountain ski resort and resorts we acquired in the Snow Time Acquisition We conduct an assessment of the carrying value of goodwill annually, as of the last day of March, or more frequently if circumstance arise which would indicate the fair value of a reporting unit is below its carrying amount A quantitative test of goodwill requires us to make certain assumptions and estimates in determining fair value of our reporting units When performing such a test, we use multiple methods to estimate the fair value of our reporting units, including discounted cash flow analyses and an EBITDA multiple approach, which derives an implied fair value of a business unit based on the market value of comparable companies expressed as a multiple of those companies' earnings before interest, taxes, depreciation and amortization ("EBITDA") Discounted cash flow analyses require us to make significant assumptions about discount rates, sales growth, profitability and other factors The EBITDA multiple approach requires us to judgmentally select comparable companies based on factors such as their nature, scope and size Significant judgment is required in making assumptions and estimates to perform a quantitative impairment test, and

should our assumptions change in the future, our fair value models could result in lower fair values, which could materially affect the value of goodwill and our operating results

In any given year we may elect to perform a qualitative impairment test for impairment. A qualitative assessment requires us to consider a number of relevant factors and conclude whether it is more likely than not that the fair value of a reporting unit is more than its carrying amount. In performing a qualitative assessment to screen for potential impairment of goodwill, we considered a number of factors, including i) macroeconomic conditions, ii) factors impacting our industry, iii) factors impacting our costs to operate our business, iv) the financial performance of reporting units compared with projections and prior periods, v) reporting unit specific events which could impact future operating results, vi) the market value of our debt and equity securities, and vii) other relevant events and circumstances identified at the time of the assessment.

We did not record any impairment of goodwill for the years ended April 30, 2009 or 2007. As a result of the annual assessment as of March 31, 2008, we recorded an impairment loss of \$0.4 million of goodwill associated with our Alpine Valley ski resort.

Income Taxes

We are subject to income taxes in the United States and numerous state jurisdictions. Significant judgments and estimates are required in determining our consolidated income tax expense or benefit. Our income tax provision and deferred tax balances reflect our best assessment of estimated current and future taxes to be paid.

Deferred income taxes arise from temporary differences between the tax basis of assets and liabilities and their reported amounts in the financial statements. These temporary differences will result in taxable or deductible amounts in the future. In evaluating our ability to recover our deferred tax assets, we consider all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax planning strategies, and results of recent operations. In projecting future taxable income, we begin with historical results and incorporate assumptions about the amount of our future pretax operating income and take into account the similar information with respect to business combinations occurring during the period, if any. While our assumptions about future taxable income are consistent with the plans and estimates we use to manage our business, they require significant judgment and are subject to factors beyond our control, such as impact of weather on our operations.

Changes in tax laws and rates may affect recorded deferred tax assets and liabilities and our effective tax rate. Changes in tax laws are accounted for in the period of enactment. On December 22, 2007, the U.S. government enacted the 2007 Tax Act which made broad and complex changes to the U.S. tax code that had an impact on our results and financial position as of and for our fiscal years ended April 30, 2009 and 2008. These impacts included, but were not limited to, i) a new bonus depreciation rule that allows for full expensing of qualified property, ii) a reduction of the U.S. federal corporate tax rate, iii) elimination of the corporate alternative minimum tax, iv) a new limitation on deductible interest expense, and v) limitations on NOLs generated after December 31, 2008, which caps their benefit at 80 percent of taxable income. We recorded income tax expense of \$4.7 million for the year ended April 30, 2009. We recorded an income tax benefit of \$4.0 million for the year ended April 30, 2008, which included a \$0.1 million discrete benefit at the 2007 Tax Act enactment date and an additional benefit of \$3.5 million which was directly attributable to the impact of the 2007 Tax Act's reduced corporate tax rate that became effective January 1, 2008. The additional benefit arose because we are a calendar year taxpayer and the seasonality of our business resulted in significant losses during the first eight months of fiscal 2008, which produced a tax benefit at the prior corporate tax rate of 34%, and significant income during the period January to April 2008, which was subject to the lower 21% corporate tax rate implemented by the 2007 Tax Act.

As of April 30, 2009, we have federal income tax NOL carryforwards of \$4.9 million, substantially all of which will expire in 2035. We believe it is more likely than not that the full benefit from a certain state's NOL carryforwards will not be realized. In recognition of this risk, during the year ended April 30, 2008 we provided a valuation allowance of \$0.4 million against the deferred tax assets relating to that state's NOL carryforwards. We reevaluated the adequacy of that allowance as of April 30, 2009, and believe it remains adequate. If our assumptions change and we determine we will be able to realize these NOLs, the tax benefits relating to any reversal of the valuation allowance would be recognized as a reduction of income tax expense. We expect the limitation on deductible interest contained in the 2007 Tax Act will make it more likely we will be able to utilize our existing federal NOL carryovers; however, this provision will give rise to interest carryforwards for the foreseeable future and, accordingly, will likely require the recognition of

valuation allowances As of April 30, 2009, a valuation allowance of \$0.4 million was established to reduce to zero the deferred tax asset related to interest carryforwards

We must make certain estimates and judgments in determining income tax expense for financial statement purposes. These estimates and judgments occur in the calculation of tax credits and deductions and in the calculation of certain tax assets and liabilities, which arise from differences in the timing of recognition of revenue and expense for tax and financial statement purposes, as well as the interest and penalties relating to uncertain tax positions. The calculation of our tax liabilities involves dealing with uncertainties in the application of complex tax regulations. We recognize liabilities for uncertain tax positions based on a two-step process. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step requires us to estimate and measure the tax benefit as the largest amount that is more than 50% likely of being realized upon ultimate settlement. It is inherently difficult and subjective to estimate such amounts, as this requires us to determine the probability of various possible outcomes. This evaluation is based on factors including, but not limited to, changes in facts or circumstances, changes in tax law, effectively settled issues under audit and new audit activity.

A significant amount of time may pass before a particular matter, for which we may have established a reserve, is audited and fully resolved. The estimates of our tax contingencies, if any, contain uncertainty because management must use judgment to estimate the potential exposure associated with our various filing positions. Although we believe the estimates and judgments discussed herein are reasonable and we have adequate reserves for our tax contingencies, actual results could differ, and we may be exposed to increases or decreases in those reserves and tax provisions that could be material.

An unfavorable tax settlement could require the use of cash and could possibly result in an increased tax expense and effective tax rate in the year of resolution. A favorable tax settlement could possibly result in a reduction in our tax expense, effective tax rate, income taxes payable, other long-term liabilities and/or adjustments to our deferred tax assets, deferred tax liabilities or intangible assets in the year of settlement or in future years.

Management has made the assumption that the deferred tax assets will generally be recovered through the reversal of the deferred tax liabilities. Changes in the timing of the reversal pattern of these deferred tax liabilities, such as due to changes in asset lives, could necessitate a further evaluation of whether a valuation allowance is required. While management does not expect a need will arise to evaluate the valuation allowance, this would require management to estimate future taxable income, which would be subjective.

Long-Lived Assets, Excluding Goodwill

Impairment

We review the carrying amounts of property and equipment, definite-lived intangible assets and other long-lived assets for potential impairment if an event occurs or circumstances change that indicates the carrying amount may not be recoverable. In evaluating the recoverability of a long-lived asset, we compare the carrying values of the assets with corresponding estimated undiscounted future operating cash flows. For impairment testing purposes, long-lived assets are grouped at the lowest level for which there are identifiable cash flows; however, where identifiable cash flows are not independent of the cash flows of other assets, those long-lived assets are evaluated for impairment on a higher level. In the event the carrying values of long-lived assets are not recoverable by future undiscounted operating cash flows, impairments may exist. In the event of impairment, an impairment charge would be measured as the amount by which the carrying value of the relevant long-lived assets exceeds their fair value. There was no impairment recognized during fiscal 2009. During fiscal 2008 we recognized an impairment loss to property and equipment of \$6 million as a result of the Attitash Hotel Closure.

Depreciable Lives of Assets

Mountain and lodging operational assets, furniture and fixtures, computer equipment, software, vehicles and leasehold improvements are primarily depreciated using the straight-line method over the estimated useful life of the asset. Assets may become obsolete or require replacement before the end of their useful life in which case the remaining book value would be written off or we could incur costs to remove or dispose of such assets no longer in use. The estimate of our useful lives of the assets contain uncertainty because management must use judgment to estimate the useful life of the

asset. Although we believe the estimates and judgments discussed herein are reasonable, actual results could differ, and we may be exposed to increased expense related to depreciable assets disposed of, removed or taken out of service prior to its originally estimated useful life, which may be material.

Accounting for Acquisitions

The acquisition method of accounting requires an acquirer to recognize the assets acquired and the liabilities assumed at the acquisition date measured at their estimated fair value as of that date. Extensive use of estimates and judgments are required to allocate the consideration paid in a business combination to the assets acquired and liabilities assumed. If necessary, these estimates can be revised during an allocation period when information becomes available to further define and quantify the value of assets acquired and liabilities assumed. The allocation period does not exceed a period of one year from the date of acquisition. To the extent additional information to refine the original allocation becomes available during the allocation period, the purchase price allocation would be adjusted accordingly. Should information become available after the allocation period, the effects would be reflected in operating results.

Recently Adopted Accounting Standards

In March 2016, the FASB issued ASU 2016-09, "Compensation Stock Compensation (Topic 718): Improvements to Employee Share Based Payment Accounting," which provides new guidance related to accounting for share based payments. This ASU requires entities to record the income tax effect of share based payments when the awards vest or are settled, and clarifies the cash flow statement presentation of excess tax benefits and withholding tax payments. In addition, the ASU allows for a policy election to account for forfeitures either upon occurrence or by estimating forfeitures. The Company adopted this ASU as of April 30, 2019, and there was no impact on the Company's consolidated financial statements upon adoption. The Company has elected to maintain its policy of accounting for the forfeiture of restricted stock units by estimating forfeitures.

Recently Issued Accounting Standards

We qualify as an "emerging growth company" under the Jumpstart Our Business Startups Act of 2012, which provides that an emerging growth company may take advantage of an extended transition period for complying with new or revised accounting standards. As an emerging growth company, we may delay the adoption of certain accounting standards until those standards would otherwise apply to private companies.

In February 2016, the FASB issued ASU 2016-02, "Leases (Topic 842)," which requires lessees to recognize most leases on the balance sheet. This ASU requires modified retrospective adoption and will be applicable for the Company as of April 30, 2020, with early adoption permitted. We are currently evaluating the impact the adoption of this ASU will have on our consolidated financial statements, including the effect the standard will have on our deferred gain on sale/leaseback (see Note 10 to the accompanying consolidated financial statements). While we expect the pattern of expense for leases we currently classify as operating will be similar between the old and new guidance, we expect adoption of the new standard will result in a significant increase in assets and liabilities for right of use assets and lease obligations, respectively, for leases we currently classify as operating. As of April 30, 2019, our future minimum lease payments under operating leases was approximately \$ 4.7 million.

In May 2014, the FASB issued ASU 2014-09, "Revenue from Contracts with Customers (Topic 606)," which was subsequently modified by other ASUs from 2015 through 2017. This ASU, as amended, provides new guidance for the recognition of revenue and provides for a five step analysis of transactions to determine when and how revenue is recognized. This ASU establishes a core principle that revenue is recognized to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. It also requires additional disclosures regarding the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. This ASU may be adopted using either a full or modified retrospective approach and will be applicable for the Company as of April 30, 2020, with early adoption permitted. We expect to adopt this ASU using the full retrospective approach and do not expect the adoption of this ASU will have a material impact on our consolidated financial statements.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Not applicable

Item 8. Financial Statement and Supplementary Data.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

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Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Peak Resorts, Inc

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Peak Resorts, Inc and its subsidiaries (the Company) as of April 30, 2019 and 2018, the related consolidated statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended April 30, 2019, and the related notes to the consolidated financial statements (collectively, the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of April 30, 2019 and 2018, and the results of its operations and its cash flows for the three years in the period ended April 30, 2019, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ RSM US LLP

We have served as the Company's auditor since 20

St. Louis, Missouri
June 28, 2019

Peak Resorts, Inc. and Subsidiaries
Consolidated Statements of Operations
(dollars in thousands, except per share amounts)

	Year ended April 30,		
	2019	2018	2017
Net revenue	\$ 84,426	\$ 3,662	\$ 23,249
Operating expenses:			
Resort operating costs	9,737	96,593	87,399
Depreciation and amortization	9,688	3,233	2,733
General and administrative	,22	5,797	5,43
Land and building rent	,393	,40	,395
Real estate and other taxes	3,35	2,286	2,322
Restructuring and impairment charges	90	2,35	
Income from operations	<u>28,966</u>	<u>0,299</u>	<u>4,069</u>
Other (expense) income:			
Interest, net of amounts capitalized of \$783, \$,256 and \$,545, respectively	(5,788)	(3,322)	(2,473)
Gain on sale/leaseback	333	333	333
Other income	59	60	6
	<u>(5,296)</u>	<u>(2,829)</u>	<u>(2,079)</u>
Income (loss) before income taxes	3,620	(2,600)	,990
Income tax expense (benefit)	4,704	(3,962)	749
Net income (loss)	<u>\$ 8,966</u>	<u>\$,352</u>	<u>\$,24</u>
Less declaration and accretion of Series A preferred stock dividends	(2,320)	(,600)	(800)
Net income (loss) attributable to common shareholders	<u>\$ 6,596</u>	<u>\$ (248)</u>	<u>\$ 44</u>
Basic earnings (loss) per common share	<u>\$ 0.45</u>	<u>\$ (0.02)</u>	<u>\$ 0.03</u>
Diluted earnings (loss) per common share	<u>\$ 0.45</u>	<u>\$ (0.02)</u>	<u>\$ 0.03</u>
Cash dividends declared per common share	<u>\$ 0.28</u>	<u>\$ 0.28</u>	<u>\$ 0.4</u>
Cash dividends declared per preferred share	<u>\$ 80.00</u>	<u>\$ 60.00</u>	<u>\$</u>

See accompanying notes to consolidated financial statements

Peak Resorts Inc. and Subsidiaries
Consolidated Balance Sheets
(dollars in thousands, except per share amounts)

	April 30, 2019	April 30, 2018
Assets		
Current assets:		
Cash and cash equivalents	\$ 30,94	\$ 23,09
Restricted cash	5,240	,63
Accounts receivable	9,54	8,560
Inventory	2,544	,97
Prepaid expenses and other current assets	4,984	2,73
Total current assets	62,476	47,56
Property and equipment, net	287,2	204,095
Land held for development	38,657	37,634
Restricted cash, construction		2,75
Goodwill	8,73	4,382
Intangible assets, net	3,06	73
Other assets	,5	,797
Total assets	\$ 4,0648	\$ 308,330
Liabilities and Stockholders' Equity		
Current liabilities:		
Revolving lines of credit	\$ 2,45	\$ 2,45
Current maturities of long term debt	,53	2,64
Accounts payable and accrued expenses	4,207	2,079
Accrued salaries, wages and related taxes and benefits	6,28	922
Unearned revenue	22,53	6,084
Current portion of deferred gain on sale/leaseback	333	333
Total current liabilities	56,902	44,447
Long term debt, including related party debt of \$50,058 and \$0, less current maturities, respectively	2,5869	65,837
Deferred gain on sale/leaseback	2,80	2,52
Deferred income taxes	8,384	7,809
Other liabilities	770	504
Total liabilities	294,05	22,09
Series A preferred stock, \$0.0 par value per share, \$,000 liquidation preference per share, 40,000 shares authorized, 40,000 and 20,000 shares issued and outstanding, respectively	34,38	7,40
Commitments and contingencies		
Stockholders' equity:		
Common stock, \$0.0 par value per share, 40,000,000 shares authorized, 5,65,832 and 3,982,400 shares issued and outstanding, respectively	52	40
Additional paid in capital	96,557	86,63
Accumulated deficit	(4,484)	(6,95)
Total stockholders' equity	82,225	69,820
Total liabilities and stockholders' equity	\$ 4,0648	\$ 308,330

See accompanying notes to consolidated financial statements

Peak Resorts Inc. and Subsidiaries
Consolidated Statements of Stockholders' Equity
(dollars in thousands)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Dollars			
Balances, April 30, 20 6	3,982,400	\$ 40	\$ 82,728	\$ (,234)	\$ 7 ,634
Issuance of common stock warrants			3,446		3,446
Net income				,24	,24
Dividends declared common stock				(,958)	(,958)
Accretive dividend preferred stock				(800)	(800)
Stock based compensation			98		98
Balances, April 30, 20 7	3,982,400	\$ 40	\$ 86,372	\$ (2,75)	\$ 73,76
Net income				,352	,352
Dividends declared common stock				(3,9 6)	(3,9 6)
Dividends declared preferred, including \$400 of accretive dividends				(,600)	(,600)
Dividends paid as restricted stock units			36	(36)	
Stock based compensation			223		223
Balances, April 30, 20 8	3,982,400	\$ 40	\$ 86,63	\$ (6,95)	\$ 69,820
Net income				8,9 6	8,9 6
Issuance of common stock	, 83,432	2	5,964		5,976
Issuance of common stock warrants			3,730		3,730
Dividends declared common stock				(4,082)	(4,082)
Dividends declared preferred, including \$720 of accretive dividends				(2,320)	(2,320)
Dividends paid as restricted stock units			47	(47)	
Stock based compensation			85		85
Balances, April 30, 20 9	5, 65,832	\$ 52	\$ 96,557	\$ (4,484)	\$ 82,225

See accompanying notes to consolidated financial statements

Peak Resorts, Inc. and Subsidiaries
Consolidated Statements of Cash Flows
(dollars in thousands)

	Year ended April 30,		
	2019	2018	2017
Cash flows from operating activities			
Net income	\$ 8,916	\$ 1,352	\$ 1,241
Adjustments to reconcile net income to net cash provided by (used) in operating activities			
Depreciation and amortization of property, equipment and intangibles	19,618	13,231	12,713
Deferred income tax	2,868	(4,074)	303
Amortization of deferred acquisition costs	1,276	1,084	1,133
Loss on disposal of fixed assets	424		
Stock based compensation	185	223	198
Non-cash payments		2,029	
Amortization of goodwill	(10)		
Amortization of other intangibles	(36)	(36)	(36)
Gain on sale/leaseback	(333)	(333)	(333)
Changes in operating assets and liabilities			
Accounts payable	(746)	(3,477)	(311)
Inventory	396	244	515
Prepaid expenses and other intangibles	(1,150)	(10,798)	497
Other assets	682	(1,149)	155
Accounts payable and accrued expenses	(2,794)	(385)	(4,387)
Accrued salaries, wages and related taxes and benefits	4,645	(113)	116
Unearned revenue	570	1,992	859
Net cash provided by (used) in operating activities	<u>34,511</u>	<u>(210)</u>	<u>12,663</u>
Cash flows from investing activities			
Additions to property, equipment	(30,515)	(31,019)	(11,454)
Additions to deferred development	(23)	(51)	(41)
Business combinations, net of cash acquired of \$1,026, \$0 and \$0, respectively	(65,667)		
Net cash used in investing activities	<u>(96,205)</u>	<u>(31,070)</u>	<u>(11,495)</u>
Cash flows from financing activities			
Borrowings of credit		12,415	10,000
Payments of credit		(4,500)	
Borrowings on long-term debt	50,168	102	51,533
Payments on long-term debt and capital lease obligations	(2,945)	(13,932)	(2,412)
Proceeds from issuance of preferred stock	16,197		16,201
Proceeds from issuance of common stock warrants	3,730		3,446
Dividends to stockholders	(5,599)	(4,716)	(979)
Payment of deferred acquisition costs	(852)	(138)	(4,470)
Payment of convertible debentures			(11,000)
Release of EB-5 investment funds escrow			(51,504)
Net cash provided by (used) in financing activities	<u>60,699</u>	<u>(10,769)</u>	<u>10,815</u>
Net (decrease) increase in cash, cash equivalents and restricted cash	(995)	(42,049)	11,983
Cash, cash equivalents, and restricted cash, beginning of period	36,429	78,478	66,495
Cash, cash equivalents, and restricted cash, end of period	<u>\$ 35,434</u>	<u>\$ 36,429</u>	<u>\$ 78,478</u>
Supplemental cash flow information			
Cash paid for income taxes	\$ 209	\$ 59	\$ 40
Cash paid for interest, including capitalized interest of \$8,229, \$8,905 and \$0, respectively	<u>\$ 14,906</u>	<u>\$ 22,399</u>	<u>\$ 13,273</u>
Supplemental disclosures of non-cash investing and financing activities			
Business combinations and acquisition of stock	\$ 5,976	\$	\$
Capital lease agreements to acquire equipment	\$ 1,294	\$	\$ 83
Assets declassified as discontinued accounts payable	\$ 913	\$ 235	\$ 542
Reclassification of EB-5 funds from escrow to long-term debt	\$	\$ 500	\$
Accretion of dividends - Series A preferred stock	\$ 720	\$ 400	\$ 800
Accretion of dividends, common and preferred	<u>\$ 1,462</u>	<u>\$ 1,379</u>	<u>\$ 979</u>

See accompanying notes to consolidated financial statements

PEAK RESORTS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(dollars in thousands, except per share amounts)

1. Nature of Business and Summary of Significant Accounting Policies

Nature of Business

Peak Resorts, Inc., a Missouri corporation, was formed on September 24, 1997, and together with its subsidiaries, is a leading owner and operator of high quality, individually branded ski resorts in the United States and operates 7 ski resorts located in the Northeast, Mid Atlantic and Midwest United States, 6 of which are owned. The majority of the resorts are located within 100 miles of major metropolitan markets, including New York City, Boston, Philadelphia, Washington D.C., Baltimore, Cleveland, Kansas City and St. Louis, enabling day and overnight drive accessibility. The Company's resorts are comprised of more than 2,300 acres of skiable terrain appropriate to a wide range of ages and abilities. The activities, services and amenities available at the Company's resorts include skiing, snowboarding, terrain parks, tubing, dining, lodging, equipment rentals and sales, ski and snowboard instruction, golf, zip lines, mountain coasters, mountain biking, hiking, paint ball and other summer activities. Peak Resorts, Inc., together with its subsidiaries, is herein referred to as "the Company."

The Company's revenues are highly seasonal in nature. The vast majority of revenue is generated during the ski season, which occurs during the winter months in the Company's third and fourth fiscal quarters. Some of the Company's properties offer non-winter attractions, such as golf, roller coasters, swimming, summer concerts and zip rides; however, these activities comprise less than 5% of the Company's annual revenues. As a result, the Company's resorts typically experience operating losses and negative operating cash flows during the first and second quarters of each fiscal year.

The seasonality of the Company's revenues amplifies the effect of events outside its control, especially weather. While the Company's geographically diverse operating locations help mitigate the effect of weather conditions, adverse weather could lower attendance due to suboptimal skiing conditions or limited access to our resorts, render snowmaking wholly or partially ineffective in maintaining ski conditions, and increase operating costs related to snowmaking efforts and inefficient labor utilization.

The Company aggregates its operating segments into a single reportable segment - Ski Resort Operations. Management has determined a single reportable segment is appropriate based on the uniformity of services and similar operating characteristics.

Principles of consolidation

The consolidated financial statements include the accounts of Peak Resorts, Inc. and its wholly owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") in the United States requires management to make estimates and assumptions that affect i) the reported amounts of assets and liabilities, ii) the disclosure of contingent assets and liabilities at the date of the financial statements and iii) the reported amounts of revenues and expenses during the reporting period.

Estimates and assumptions are used in accounting for the following significant matters, among others:

- fair value of assets acquired and liabilities assumed in acquisitions;
- useful lives of property, equipment and intangible assets;
- long lived and intangible asset impairments, including goodwill;
- tax-related items; and
- contingencies

Cash and Cash Equivalents and Restricted Cash

The Company considers i) all credit card and debit card transactions that process in less than seven days and ii) short term highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. The amounts due from banks for credit card and debit card transactions classified as cash and cash equivalents was \$,446 and \$,669 at April 30, 20 9 and 20 8, respectively.

The provisions of certain of the Company s debt instruments require that the Company maintain a deposit with the respective lender in an amount equal to the estimated minimum interest payment through December 31 of a given year, and the proceeds from certain borrowing for capital projects are restricted as to use. Restricted cash related to interest payments and capital projects are included on the consolidated balance sheets under the captions restricted cash and restricted cash, construction, respectively.

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported with the consolidated balance sheets to the total of the same such amounts shown in the consolidated statements of cash flow:

	April 30,	
	2019	2018
Cash and cash equivalents	\$ 30,94	\$ 23,09
Restricted cash	5,240	, 63
Restricted cash, construction		2, 75
Total cash, cash equivalents, and restricted cash, end of period	<u>\$ 35,434</u>	<u>\$ 36,429</u>

Accounts Receivable

The Company s accounts receivable balance consists primarily of amounts due under advance season pass installment plans sold during the fourth quarter of its fiscal year. The Company performs ongoing reviews of the collectability of accounts receivable and, when necessary, establishes reserves for estimated credit losses. In assessing the need for and in determining the amount of any reserve for credit losses, the Company considers the level of historical bad debts, the credit worthiness of significant debtors based on periodic credit evaluations and significant economic developments that could adversely impact upon a customer s ability to pay amounts owed the Company. As of April 30, 20 9 and 20 8, the Company determined that no allowance for credit loss was required on its receivable balance as of those dates.

Inventories

The Company s inventories consist of retail goods and food and beverage products. Inventories are stated at the lower of cost or net realizable value, with cost determined using the first in, first out (FIFO) and average cost methods.

Property and Equipment

Property and equipment is carried at cost net of accumulated depreciation, amortization and impairment charges, if any. Costs to construct significant assets include capitalized interest during the construction and development period. Expenditures for replacements and major betterments or improvements are capitalized; maintenance and repair expenditures are charged to expense as incurred. Depreciation and amortization are determined using both straight line and accelerated methods over estimated useful lives ranging from 3 to 25 years for land improvements, 5 to 40 years for buildings and improvements and 3 to 25 years for equipment, furniture and fixtures.

Land Held for Development

Land held for development relates to projects in and around its Mount Snow and Liberty Mountain resorts, and is carried at acquisition cost plus costs attributable to its ongoing development, including capitalized interest.

Impairment of Long-Lived Assets

The Company reviews intangible assets with a finite life and other long lived assets for impairment if facts and circumstances exist that indicate the asset s useful life is shorter than previously estimated or the carrying amount may

not be recoverable from future operations based on undiscounted expected future cash flows. For impairment testing purposes, long lived assets are grouped at the lowest level for which there are identifiable cash flows; however, where identifiable cash flows are not independent of the cash flows of other assets, those long lived assets are evaluated for impairment on a higher level. Impairment losses are recognized in operating results for the amount by which the carrying value of the asset exceeds its fair value. In addition, the remaining useful life of an impaired asset group would be reassessed and revised, if necessary.

Goodwill

Goodwill is recorded when the consideration paid for an acquisition exceeds the fair value of identifiable net tangible and intangible assets acquired. Goodwill and other indefinite lived intangible assets are not amortized but are reviewed for impairment annually or more frequently if a triggering event were to occur in an interim period. The Company tests for goodwill impairment at the reporting unit level and has concluded that each of its resorts constitutes a reporting unit. As of April 30, 2019, the Company's goodwill balance is associated with the Hunter Mountain, Liberty Mountain, Whitetail and Roundtop Mountain resorts.

Development Costs

Costs related to major development projects at the Company's ski resorts, including planning, engineering and permitting are capitalized. When acquiring, developing and constructing real estate assets, the Company capitalizes costs. Capitalization begins when the activities related to development have begun and ceases when activities are substantially complete and the asset is available for use. Costs capitalized include permits, licenses, fees, legal costs, interest, development, and construction costs.

Deferred Financing Costs

Deferred financing costs, consisting of fees and other expenses associated with debt financing, are recorded as a reduction in the carrying amount of the related debt and are amortized to interest expense over the term of the related debt using the straight line method, which approximates the effective interest method.

Classification of Preferred Stock

The Company considers whether substantive redemption features exist in preferred stock instruments in which case it may be classified outside of equity, such as temporary equity or as a liability. Additionally, the Company evaluates whether preferred stock instruments contains any embedded or stand alone instruments, which require separate recognition. The Company presents mandatorily redeemable preferred stock as a liability and contingently redeemable preferred stock and preferred stock that is redeemable outside the control of the Company as temporary equity on the consolidated balance sheets.

Stock Warrants

The Company accounts for stock warrants as either equity or liability awards based upon the characteristics and provisions of each instrument. Warrants classified as equity are recorded at fair value as of the date of issuance with no further adjustments to their valuation made. Warrants classified as a liability are recorded at fair value at each reporting period, and the corresponding non-cash gain or loss is recorded in current period earnings. When warrants are issued in conjunction with preferred stock and long term debt, the warrants are recorded based on the proceeds received allocated to the elements' relative fair values.

Earnings or Loss Per Share

Basic earnings (loss) per common share is computed by dividing net income (loss) available to common shareholders by the weighted average common shares issued and outstanding for the period. Net income (loss) available to common shareholders represents net income adjusted for preferred stock dividends including dividends declared, accretions of discounts on preferred stock issuances and cumulative dividends related to the current dividend period that have not been declared as of year end. In addition, for diluted earnings (loss) per common share, net income (loss) available to common shareholders can be affected by the conversion of the registrant's convertible preferred stock. Where the effect of this conversion would be dilutive, net income (loss) available to common shareholders is adjusted by the associated

preferred dividends. This adjusted net income (loss) is divided by the weighted average number of common shares issued and outstanding for each period plus amounts representing the dilutive effect of stock options outstanding, restricted stock, restricted stock units, outstanding warrants, and the dilution resulting from the conversion of the registrant's convertible preferred stock, if applicable. The effects of convertible preferred stock and outstanding warrants and stock options are excluded from the computation of diluted earnings (loss) per common share in periods in which the effect would be antidilutive. Dilutive potential common shares are calculated using the treasury stock and if converted methods.

Revenue Recognition

Revenues from operations are generated from a wide variety of sources including snow pass sales, snow sports lessons, equipment rentals, retail product sales, food and beverage operations, and golf course operations. Revenues are recognized as services are provided or products are sold. Sales of season passes and other seasonal products are initially deferred in unearned revenue and recognized ratably over the number of days the Company expects they may be used.

Advertising Costs

Advertising costs are expensed at the time such advertising commences. Advertising expense for the years ended April 30, 2009, 2008 and 2007 was \$3,735, \$2,890 and \$2,700, respectively.

Taxes Collected from Customers

Taxes collected from customers and remitted to tax authorities include local and state sales taxes on snow pass sales as well as food service and retail transactions at the Company's resorts. Sales taxes collected from customers are recognized as a liability, with such liability being reduced when collected amounts are remitted to the taxing authority.

Income Taxes

Under the Financial Accounting Standards Board ("FASB") Accounting Standards Codification Topic 740, "Income Taxes" ("ASC 740"), income taxes are accounted for under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements. Under this method, deferred tax assets and liabilities are provided for differences between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to be resolved or settled. The effect of changes in tax rates on deferred tax assets and liabilities is recognized in income in the period that includes the enactment date.

Deferred tax assets are recognized to the extent the Company determines these assets are more likely than not to be realized. In making such a determination, the Company considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax planning strategies and results of recent operations. If it is determined that the future realization of deferred tax assets would be in an amount less than their net recorded amount, a valuation allowance would be provided, thereby increasing the provision for income taxes. Conversely, if it is determined that the benefit from realization of such deferred tax assets would exceed their net recorded amount, an adjustment would be made to reduce the valuation allowance thereby reducing the provision for income taxes.

ASC 740 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.

With few exceptions, the Company is no longer subject to US federal, state and local income tax examinations by tax authorities for years before 2004 due to the statute of limitations.

The Company's policy is to accrue income tax-related interest and penalties, if applicable, within income tax expense.

Reclassifications

The accompanying consolidated financial statements for prior years contain certain reclassifications to conform to the presentation used in the current period. Reclassifications had no effect on the reported amounts of net income or stockholders' equity.

Recently Adopted Accounting Standards

In March 2016, the FASB issued Accounting Standards Update ("ASU") 2016-09, "Compensation Stock Compensation (Topic 718): Improvements to Employee Share Based Payment Accounting," which provides new guidance related to accounting for share based payments. This ASU requires entities to record the income tax effect of share based payments when the awards vest or are settled, and clarifies the cash flow statement presentation of excess tax benefits and withholding tax payments. In addition, the ASU allows for a policy election to account for forfeitures either upon occurrence or by estimating forfeitures. The Company adopted this ASU as of April 30, 2019, and there was no material impact on the Company's consolidated financial statements upon adoption. The Company has elected to maintain its policy of accounting for the forfeiture of restricted stock units ("RSUs") by estimating forfeitures.

Recently Issued Accounting Standards

The Company qualifies as an "emerging growth company" under the Jumpstart Our Business Startups Act of 2012, which provides that an emerging growth company may take advantage of an extended transition period for complying with new or revised accounting standards. As an emerging growth company, the Company may delay the adoption of certain accounting standards until those standards would otherwise apply to private companies.

In February 2016, the FASB issued ASU 2016-02, "Leases (Topic 842)," which requires lessees to recognize most leases on the balance sheet. This ASU requires modified retrospective adoption and will be applicable for the Company as of April 30, 2020, with early adoption permitted. The Company is currently evaluating the impact the adoption of this ASU will have on the Company's consolidated financial statements, including an evaluation of the effect the standard will have on the Company's deferred gain on sale/leaseback (see Note 10). While the Company expects the pattern of expense for leases it currently classified as operating will be similar between the old and new guidance, it expects adoption of the new standard will result in a significant increase in assets and liabilities for right of use assets and lease obligations, respectively, for leases it currently classifies as operating. As of April 30, 2019, future minimum lease payments under operating leases was \$ 4,699.

In May 2014, the FASB issued ASU 2014-09, "Revenue from Contracts with Customers (Topic 606)," which was subsequently modified by other ASUs from 2015 through 2017. This ASU, as amended, provides new guidance for the recognition of revenue and provides for a five step analysis of transactions to determine when and how revenue is recognized. This ASU establishes a core principle that revenue is recognized to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. It also requires additional disclosures regarding the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. This ASU may be adopted using either a full or modified retrospective approach and will be applicable for the Company as of April 30, 2020, with early adoption permitted. The Company expects to adopt this ASU using the modified retrospective approach and does not expect the adoption of this ASU will have a material impact on its consolidated financial statements.

Note 2. The Snow Time Acquisition

On November 2, 2018, the Company completed its acquisition of all of the issued and outstanding shares of common stock of Snow Time, Inc. ("Snow Time") pursuant to the Stock Purchase Agreement (the "Purchase Agreement") entered into with the stockholders of Snow Time (the "Sellers"), dated as of September 24, 2018 (the "Snow Time Acquisition"). Consideration for the Snow Time Acquisition totaled \$7,643, which consisted of \$65,667 in cash, net of cash acquired of \$ 1,026, and 83,432 shares of common stock with a value of \$5,976 based on the Company's closing stock price on the day the transaction closed. The number of shares issued to the Sellers was determined pursuant to the Purchase Agreement, which provided that the Sellers had the right to receive \$6,000 of common stock as determined using the average closing price of the common stock for the 20 trading days immediately preceding the closing, which was \$5.07. The Company acquired Snow Time in order to expand its portfolio of resour-

Snow Time's resort properties include Liberty Mountain Resort, Roundtop Mountain Resort and Whitetail Resort, which are day and overnight drive ski resorts located in southern Pennsylvania serving the Baltimore and Washington, D.C. metropolitan areas. The acquired resorts also include two 18-hole golf courses, a 150-room hotel and conference center and more than 20 food and beverage locations across the three resorts, among other amenities. Net revenue and earnings before income tax from the resorts acquired in the Snow Time Acquisition of \$42,335 and \$ 3,283, respectively, was included in the consolidated statements of operations for the year ended April 30, 2009.

Purchase price allocation

The following table summarizes the Company's preliminary estimate of the fair value of the assets acquired and liabilities assumed in the Snow Time Acquisition as of November 2, 2008. The Company is in the process of completing various valuation studies which, when completed, may impact the estimated fair value of property and equipment and deferred taxes.

Tangible assets and liabilities:	
Accounts receivable	\$ 208
Inventories	969
Property and equipment	70,433
Land held for development	,000
Other current assets	,03
Accounts payable and accrued expenses	(4,66)
Accrued salaries, wages and related taxes and benefits	(7,4)
Unearned revenue	(5,499)
Deferred income taxes	(7,707)
Other long-term liabilities	(300)
Intangible assets:	
Identifiable intangible asset	2,525
Goodwill	3,79
Total preliminary purchase price allocation	<u>\$ 7,643</u>

Goodwill and Identifiable Intangible Assets

Identifiable intangible assets acquired include Snow Time's customer relationships, trade names, liquor licenses, and water and land use agreements. Values established for these items were \$944, \$689, \$490 and \$402, respectively. The liquor licenses and certain of the water rights agreements are considered indefinite-lived intangible assets, and the estimated useful lives of the customer lists, trade names and the remaining favorable agreements are 5 years, 5 years and years, respectively.

Goodwill is calculated as the excess of the purchase price over the fair value of net tangible and identifiable intangible assets acquired. Based upon the preliminary estimated fair value of the net tangible assets acquired and the values of the identifiable intangible assets acquired, the goodwill recognized in the Snow Time Acquisition was \$ 3,79 and represents the value of the assembled workforce, the additional value to the Company expected from growth as the Company expands its market position in the Mid-Atlantic United States and other intangible benefits. Approximately \$646 of the goodwill is expected to be deductible for income tax purposes.

Pro Forma Information

The following unaudited pro forma information presents the combined results of operations of Peak Resorts, Inc. and Snow Time for the years ended April 30, 2009 and 2008, as if the Snow Time Acquisition had been completed on May 1, 2007, with adjustments to give effect to pro forma events that are directly attributable to the Snow Time Acquisition. The unaudited pro forma results do not reflect any operating efficiencies or potential cost savings which may result from the consolidation of the operations of the companies. Accordingly, these unaudited pro forma results are presented for illustrative purposes and are not intended to represent or be indicative of the actual results of operations of the combined company that would have been achieved had the acquisition occurred at the beginning of each period presented, nor are they intended to represent or be indicative of future results of operations.

The following table summarizes the unaudited pro forma revenues and earnings of the combined companies:

	Year ended April 30,	
	2019	2018
Net revenue	\$ 92,527	\$ 80,297
Net loss	\$ (2,676)	\$ (5,887)

The pro forma net income was adjusted to give effect to pro forma events which are directly attributable to the Snow Time Acquisition. Adjustments to the pro forma net income for the year ended April 30, 2019 included: i) the exclusion of \$,045 of acquisition related costs incurred by Peak Resorts, Inc , ii) the addition of interest and financing cost amortization of \$2,507 and iii) the increase of \$2,942 of net expense related to fair value adjustments to acquisition date net assets acquired. Adjustments to the pro forma net income for the year ended April 30, 2018 included the addition of interest and financing cost amortization of \$3,892 and the increase of \$5,538 of net expense related to fair value adjustments to acquisition date net assets acquired.

Transaction Costs

During the year ended April 30, 2019, the Company incurred \$,045 of acquisition related costs which have been included in general and administrative costs in the consolidated statements of operations.

Note 3. Property and Equipment

The composition of property and equipment is as follows:

	April 30, 2019	April 30, 2018
Land and improvements	\$ 73,486	\$ 54,785
Buildings and improvements	4 ,439	75,32
Equipment, furniture and fixtures	20 ,773	75,532
Construction in progress	8, 98	6,787
	424,896	322,425
Less: accumulated depreciation and amortization	37,775	8,330
	\$ 287, 2	\$ 204,095

Depreciation expense for the years ended April 30, 2019, 2018 and 2017, was \$ 9,468, \$ 3, 74 and \$ 2,655, respectively. As of April 30, 2019 and 2018, equipment under capital leases with a cost of \$9,935 and \$7,753, respectively, and accumulated depreciation of \$2, 09 and \$,368, respectively, was included in property and equipment.

Note 4. Goodwill and Intangible Assets

Goodwill

As of April 30, 2019, the Company had goodwill of \$ 8, 73 related to acquisitions. The Company conducts an assessment of the carrying value of goodwill annually, as of last day of March, or more frequently if circumstances arise which would indicate the fair value of a reporting unit with goodwill is below its carrying amount. The Company did not record any impairment of goodwill for the years ended April 30, 2019 or 2017. As a result of the annual assessment as of March 31, 2018, the Company recorded an impairment loss of \$443 of goodwill associated with its Alpine Valley ski resort. The Company used a discounted cash flow approach with Level 2 and Level 3 inputs. As of April 30, 2019, the balance of goodwill relates to the Company's Hunter Mountain, Liberty Mountain, Whitetail and Roundtop Mountain ski resorts.

Changes to the carrying value of goodwill over the three years ended April 30, 2019 are as follows:

	April 30, 2017	Impairment Losses	April 30, 2018	Additions	April 30, 2019
Goodwill	\$ 4,825		\$ 4,825	\$ 3,79	\$ 8,66
Accumulated impairment losses		(443)	(443)		(443)
	<u>\$ 4,825</u>	<u>\$ (443)</u>	<u>\$ 4,382</u>	<u>\$ 3,79</u>	<u>\$ 8,73</u>

Intangible Assets

The components of intangible assets subject to amortization are as follows:

	April 30, 2019			April 30, 2018		
	Gross carrying amount	Accumulated amortization	Net book value	Gross carrying amount	Accumulated amortization	Net book value
Trade names	\$,457	\$ 9	\$,266	\$ 768	\$ 20	\$ 648
Customer relationships	,04	92	949	97	4	83
Water rights agreements	25		24			
Total definite	<u>2,523</u>	<u>284</u>	<u>2,239</u>	<u>865</u>	<u>34</u>	<u>73</u>
Liquor licenses	490		490			
Water and land use agreements	377		377			
Total indefinite	<u>867</u>		<u>867</u>			
	<u>\$ 3,390</u>	<u>\$ 284</u>	<u>\$ 3,06</u>	<u>\$ 865</u>	<u>\$ 34</u>	<u>\$ 73</u>

Intangible amortization expense for the years ended April 30, 2019, 2018 and 2017, was \$ 50, \$57 and \$58, respectively. Trade names, customer relationships and certain water rights agreements are being amortized over 5 to 15 years, 5 years and 10 years, respectively. The expected future annual amortization expense for definite lived intangible assets is \$268 each year for the next five fiscal years and \$899 thereafter.

5. Long-term Debt and Revolving Credit Facilities

The composition of long term debt at April 30, is as follows:

	2019	2018
EPR Secured Notes due 2034	\$ 93,62	\$ 93,62
EPR Secured Notes due 2036	2,000	2,000
EB 5 Development Notes due 2022	52,000	52,000
Term Loan due 2020, related party debt	50,058	
Wildcat Mountain Note due 2020	3,030	3,23
Capital Leases	,746	2,426
Other borrowings	54	,84
Less: Unamortized debt issuance costs	(4,28)	(4,552)
	<u>2,7382</u>	<u>68,45</u>
Less: Current maturities	(,53)	(2,64)
	<u>\$ 2,5869</u>	<u>\$ 65,837</u>

EPR Secured Notes

The Company has various secured borrowings (the "EPR Secured Notes") under a master credit and security agreement and other related agreements, as amended, (together, the "EPR Agreements") with EPR Properties and its affiliates ("EPR"). Each of the EPR Secured Notes is secured by one or more of the Company's resort properties and is guaranteed by the Company. The EPR Secured Notes bear interest at specified interest rates which are subject to increase each year by the lesser of i) three times the percentage increase in the Consumer Price Index (as defined) or ii) a capped index (the "Capped CPI Index") which is 75% for the Hunter Mountain Secured Note and 50% for all other notes. The Company has determined the Capped CPI Index features represent an embedded derivative; however, this

derivative does not require bifurcation and separate presentation at fair value because the Capped CPI Index feature is closely related to the debt instrument

The following table illustrates the potential future interest rates applicable to the EPR Secured Notes for each of the next five years, assuming rates increase by the Capped CPI Index:

Rates as of April 30,	Hunter Mountain Secured		Alpine Valley Secured		Boston Mills/Brandywine and Jack Frost/Big Boulder Secured Notes	
	Mount Snow Secured Note	Note	Note	Note	Note	Note
2019	6 %	8.43 %	0.4 %	0.59 %		
2020	7.8 %	8.58 %	2 %	0.75 %		
2021	9.6 %	8.73 %	3.8 %	0.9 %		
2022	12.4 %	8.88 %	5.5 %	0.7 %		
2023	15.32 %	9.04 %	7.2 %	2.4 %		
2024	18.25 %	9.20 %	9.0 %	4 %		

Financial covenants set forth in the EPR Agreements consist of i) a maximum leverage ratio (as defined) of 65%, above which the Company and certain of its subsidiaries are prohibited from incurring additional indebtedness, ii) a consolidated fixed charge coverage ratio (as defined) of 1.50: 1.00 on a rolling four quarter basis, and iii) a prohibition of the Company paying dividends if the Company is in default (as defined) or if the fixed charge coverage ratio (as defined) is below 1.25: 1.00. During the first two quarters of fiscal year 2017, the Company's fixed charge coverage ratio fell below 1.25: 1.00 and, as a result, the Company was prohibited from paying dividends. As of April 30, 2019, the Company was in compliance with all debt covenants.

Non financial covenants set forth in the EPR Agreements include i) restrictions on certain transactions, including mergers, acquisitions, leases, asset sales, loans to third parties, and the incurrence of certain additional debt and liens and ii) a requirement that the Company obtain the consent of EPR prior to redeeming any preferred or common stock.

The EPR Agreements also provide that none of the EPR Secured Notes may be prepaid without the consent of EPR and that any default under any of the EPR Secured Notes, lease agreements between the Company and EPR, or credit facilities with other lenders would constitute a default under all EPR Secured Notes and lease agreements. A change in control (as defined) would also constitute an event of default.

An additional contingent interest payment would be due to EPR if, on a calendar year basis, the gross receipts (as defined) from the properties securing the EPR Secured Notes (the "Gross Receipts") are more than the result (the "Interest Quotient") of dividing the total interest charges for the EPR Secured Notes by a certain percentage rate (the "Additional Interest Rate"). In such a case, the additional interest payment would equal the difference between the Gross Receipts and the Interest Quotient multiplied by the Additional Interest Rate. This calculation is made on an aggregated basis for the notes secured by the Company's Jack Frost, Big Boulder, Boston Mills, Brandywine, Alpine Valley and Hunter Mountain ski resorts, where the Additional Interest Rate is 0%, and is made on a standalone basis for the note secured by the Company's Mount Snow ski resort, where the Additional Interest Rate is 2%. The Company has not made any additional interest payments on the EPR Secured Notes based on these provisions.

The EPR Agreements grant EPR certain other rights including i) an option to purchase the Company's Boston Mills, Brandywine, Jack Frost, Big Boulder and Alpine Valley resorts that is exercisable no sooner than two years and no later than one year prior to the maturity dates of the applicable promissory notes for such properties, with any closings to be held on the maturity dates, ii) a right of first refusal through 2021, subject to certain conditions, 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 properties, and iii) a right of first refusal through 2021 to purchase the Company's Attitash ski resort in the event the Company were to desire to sell the Attitash ski resort. To date, EPR has not exercised any purchase options. If EPR exercises a purchase option, EPR will enter into an agreement with the Company for the lease of each acquired property for an initial term of 20 years, plus options to extend the lease for two additional periods of ten years each.

Under the terms of the various borrowing agreements the Company has with EPR, it is required to, at EPR's discretion, either prepay a certain amount of interest payments to EPR or deposit the equivalent amount of cash in a restricted

account to fund interest payments to EPR. As of April 30, 2019 and 2018, the Company had prepaid interest to EPR of \$8,229 and \$8,905, respectively, which is included in the caption prepaid expenses and deposits.

The EPR Secured Notes include the following:

The Alpine Valley Secured Note. The \$4,550 Alpine Valley Secured Note provides for interest only payments through its maturity on December 31, 2034. As of April 30, 2019, interest on this note accrued at a rate of 4.04%. This note is secured by a mortgage and other interests in the Company's Alpine Valley ski resort.

The Boston Mills Brandywine Secured Note. The \$23,294 Boston Mills/Brandywine Secured Note provides for interest only payments through its maturity on December 31, 2034. As of April 30, 2019, interest on this note accrued at a rate of 0.59%. This note is secured by a mortgage and other interests in the Company's Boston Mills and Brandywine ski resorts.

The Jack Frost Big Boulder Secured Note. The \$4,268 Jack Frost/Big Boulder Secured Note provides for interest only payments through its maturity on December 31, 2034. As of April 30, 2019, interest on this note accrued at a rate of 0.59%. This note is secured by a mortgage and other interests in the Company's Jack Frost and Big Boulder ski resorts.

The Mount Snow Secured Note. The \$5,050 Mount Snow Secured Note provides for interest only payments through its maturity on December 31, 2034. As of April 30, 2019, interest on this note accrued at a rate of 6.0%. This note is secured by a mortgage and other interests in the Company's Mount Snow ski resort.

The Hunter Mountain Secured Note. The \$2,000 Hunter Mountain Secured Note provides for interest only payments through its maturity on January 5, 2036. As of April 30, 2019, interest on this note accrued at a rate of 8.43%. This note is secured by a mortgage and other interests in the Company's Hunter Mountain ski resort.

EB-5 Development Notes

The Company serves as the general partner for two limited partnerships, Carinthia Group, LP and Carinthia Group 2, LP (together, the "Limited Partnerships"), which were formed to raise \$52,000 through the Immigrant Investor Program administered by the U.S. Citizenship and Immigration Services ("USCIS") pursuant to the Immigration and Nationality Act (the "EB-5 Program"). The EB-5 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 immigrant visas to qualified individuals ("EB-5 Investors") seeking lawful permanent resident status based on their investment in a U.S. commercial enterprise.

On December 27, 2016, the Company borrowed \$52,000 from the Limited Partnerships to fund two capital projects at its Mount Snow ski resort. The development projects include i) the West Lake Water Project, which was completed during fiscal 2018 and included the construction of a new water storage reservoir for snowmaking, and ii) the Carinthia Ski Lodge Project, which was completed during fiscal 2019 and included the construction of a new skier service building. The amounts were borrowed through two loan agreements, which provided \$30,000 for the West Lake Water Project and \$22,000 for the Carinthia Ski Lodge project (together, the "EB-5 Development Notes").

Amounts outstanding under the EB-5 Development Notes accrue simple interest at a fixed rate of 0% per annum until the maturity date, which is December 27, 2022, subject to extension of up to an additional two years at the option of the borrowers with lender consent. If the maturity date is extended, amounts outstanding under the EB-5 Development Notes will accrue simple interest at a fixed rate of 7.0% per annum during the first year of extension and a fixed rate of 0.0% per annum during the second year of extension.

Upon an event of default (as defined), amounts outstanding under the EB-5 Development Notes shall bear interest at the rate of 5.0% per annum, subject to the extension increases. For so long as amounts under the EB-5 Development Notes are outstanding, the Company is restricted from taking certain actions without the consent of the lenders, including, but not limited to transferring or disposing of the properties or assets financed with the loan proceeds. In addition, the Company is prohibited from prepaying outstanding amounts owed if such prepayment would jeopardize any of the EB-5 Investors from being admitted to the U.S. via the EB-5 Program.

The Company has evaluated the facts and circumstances surrounding the Limited Partnerships and determined the Limited Partnerships do not require consolidation in the Company's financial statements as the Company does not have a variable interest in the Limited Partnerships under either the variable interest model or the voting interest model, as substantive participation rights give the limited partners the ability to effectively participate in significant decisions that would be expected to be made in the ordinary course of the Limited Partnerships' business and thereby preclude the Company as general partner from exercising unilateral control over the partnerships.

Term Loan due 2020 - Related Party Debt

The Company financed part of the cash consideration paid in the Snow Time Acquisition with a \$50,000 senior secured term loan (the "Term Loan") from Cap LLC ("Cap") pursuant to the terms of the Credit Agreement entered into with Cap on November 2, 2018. Cap is considered a related party because of the level of its ownership interest, as described below, in the Company. The Term Loan was issued at a premium of \$68, which is being amortized over the loan term. As of April 30, 2019, the carrying value of the Term Loan reflects \$58 of unamortized original issue premium.

The Term Loan has an initial term of two years and bears interest at 6.95%, payable quarterly, subject to a 2.0% increase upon an event of default. The Term Loan is secured by all real property on which the Snow Time resorts are located and improvements thereon. Amounts due under the Term Loan may be prepaid without penalty.

The Term Loan matures on November 30, 2020 and may be extended for an additional one year period at the Company's option, so long as no event of default has occurred. If extended, the Company has agreed to issue Cap a warrant to purchase 666,667 shares of common stock, exercisable immediately from the issuance date and for up to ten years from the date of issuance, at \$7.50 per share (the "Extension Warrant"). The Extension Warrant was not issued upon closing the Term Loan and will only be issued if the Company exercises the one year Term Loan extension right.

As consideration for the Term Loan and in lieu of fees, the Company also issued Cap a warrant to purchase 750,000 shares of common stock at \$0.00 per share, which is exercisable immediately and expires ten years from the date of issuance (the "Financing Warrant").

As a condition to the funding of the Term Loan, and for aggregate consideration of \$20.0 million, the Company exercised the existing Cap Option to issue to Cap an additional 20,000 shares of Series A Cumulative Convertible Preferred Stock, par value \$0.01 per share (the "Series A Preferred Stock"), along with additional warrants to purchase shares of common stock. See Note 6. The Company used the Cap Option proceeds to fund the remainder of the cash portion of the Acquisition purchase price.

Related Party Nature of Cap 1

Cap and its affiliates currently own 797,705 shares of the Company's common stock, 40,000 shares of Series A Preferred Stock and warrants to purchase up to an aggregate of 7,88,036 shares of the Company's common stock at prices ranging from \$6.50 to \$0.00 per share. See Note 6 for information regarding the Company's transactions with Cap and a summary of the Series A Preferred Stock and warrant terms and conditions.

Because Cap is entitled to vote its Series A Preferred Stock on an as converted basis, Cap and its affiliates currently own approximately 37.9% of the Company's outstanding voting power. Assuming the conversion of the Series A Preferred Stock and exercise of all warrants held by Cap, Cap would own approximately 53.4% of the outstanding shares of our common stock and voting power. Pursuant to the terms of the Amended and Restated Voting Agreement entered into between the Company, Cap and the Management Stockholders in connection with the closing of the Term Loan in November 2018, Cap has agreed that for up to three years after the issuance date or until a change of control, it will vote any shares of common stock issued upon exercise of any warrants held by Cap in favor of the board of directors' recommendations as to the election, removal or replacement of directors and all other proposals submitted to the vote of stockholders, except in the case of non-routine matters such as tender offers, mergers, acquisitions and similar transactions.

Cap also has the right to nominate a director to the Company's board of directors 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. See Note 6.

During the year ended April 30, 2019, the Company paid Cap \$ 265 of interest related to the Term Loan, and as of April 30, 2019, the Company had \$ 738 in restricted cash to fund a debt service account for the estimated interest payments due through the end of calendar 2019.

Wildcat Mountain Note

The Wildcat Mountain Note due December 22, 2020 bears interest at a fixed rate of 4.00% and is secured by a security interest in the improvements at the Company's Wildcat Mountain ski resort. The loan is payable in monthly principal and interest payments of \$27 with a balloon payment of \$2,675 due upon maturity.

Future Debt Payments

The schedule of principal payments for long term debt at April 30, 2019, is as follows:

<u>Year Ended April 30,</u>	
2020	\$ 53
2021	53,233
2022	52,599
2023	3
2024	5
Thereafter	4,209
	<u>\$ 22,500</u>

Amortization of deferred financing costs for the years ended April 30, 2019, 2018 and 2017 was \$ 276, \$ 384 and \$ 33, respectively. Amortization of deferred financing costs are estimated to be \$ 392, \$ 9, \$664, \$70, \$70 and \$74 for the years ended April 30, 2020, 2021, 2022, 2023, 2024 and thereafter, respectively.

Royal Banks of Missouri Credit Facilities

In addition to the credit facilities listed above, the Company maintains a \$ 5,000 working capital line of credit and a \$ 5,000 acquisition line of credit with Royal Banks of Missouri pursuant to a credit agreement that was renewed by the Company and Royal Banks of Missouri on December 27, 2018 (the "Royal Banks Credit Facility"). The Royal Banks Credit Facility expires on December 27, 2019. As of April 30, 2019, nothing was outstanding under the working capital line of credit and \$ 2,415 was outstanding under the acquisition line of credit, and \$ 5,000 and \$2,585 was unused and available under the lines of credit, respectively.

The Royal Banks Credit Facility was renewed for one year, and requires monthly interest only installments charged at the bank's prime rate plus 100% per annum, with any outstanding principal amounts due in December 2019. As of April 30, 2019, the Company had \$548 in restricted cash to fund a debt service account for the estimated interest payments due through the end of calendar 2019 in connection with outstanding loans under the Royal Banks Credit Facility. The Company is required to maintain a minimum debt service coverage ratio (as defined in the credit agreement) of 1.25: 1.00. In addition, were the Company's fixed charge coverage ratio (as defined in the credit agreement) to fall below 1.50: 1.00, the Company would be required to prefund certain other debt service payments, and should the ratio fall below 1.25: 1.00, the Company would be prohibited from paying dividends. The Royal Banks Credit Facility is secured by the assets of the Company's subsidiaries which operate its Hidden Valley, Paoli Peaks, Snow Creek, Crotched Mountain and Attitash resorts.

6. Series A Preferred Stock and Stock Warrants

Series A Preferred Stock

On August 22, 2016, the Company entered into a private placement (the "Private Placement") securities purchase agreement (the "Securities Purchase Agreement") with CAP and affiliates in connection with the sale and issuance of

\$20,000 in Series A Preferred Stock and three warrants (the “20 6 Warrants”) to purchase shares of the Company’s common stock, as follows: (i) 538,462 shares of 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. The Company completed the Private Placement on November 2, 2016.

As a condition to the funding of the Term Loan, and for aggregate consideration of \$20,000, on November 2, 2018, the Company exercised its existing option (the “Cap Option”) under the Securities Purchase Agreement to issue to Cap an additional 20,000 shares of Series A Preferred Stock, along with additional warrants (the “20 8 Option Warrants”) to purchase shares of common stock that expire 2 years from the date of issuance, as follows: i) 538,462 shares of 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. The rights and preferences of the Series A Preferred Stock include, among other things, the following:

Seniority. The Series A Preferred Stock generally rank, with respect to liquidation, dividends and redemption, i) senior to common stock and to any other junior capital stock; ii) on parity with any parity capital stock; iii) junior to any senior capital stock; and iv) junior to all of the Company’s existing and future indebtedness (as defined). Until the earlier of the date that no Series A Stock remains outstanding and January 1, 2027, the Company is prohibited from paying cash dividends on common stock if there are accrued and unpaid dividends with respect to the Series A Preferred Stock.

Dividend Rights. From and after the date that is nine months from the date of issuance, cumulative dividends accrue on the Series A Preferred Stock on a daily basis in arrears at the rate of 8% per annum on the liquidation value of \$1,000 per share. All accrued and accumulated dividends on the Series A Preferred Stock shall be paid prior and in preference to any dividend or distribution on or redemption of any junior securities, provided that the Company may, prior to the payment of all accrued and accumulated dividends on the Series A Preferred Stock, i) declare or pay any dividend or distribution payable on the common stock in shares of common stock; or ii) repurchase common stock held by employees or consultants of the Company upon termination of their employment or services pursuant to agreements providing for such repurchase. The Company may also redeem or repurchase junior securities at any time when there are no accrued or accumulated unpaid dividends on the Series A Preferred Stock.

Liquidation. In the event of any liquidation (as defined), dissolution or winding up of the Company, the holders of Series A Preferred Stock shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders, before any payment shall be made to the holders of junior securities, and subject to the rights of any parity or senior securities, an amount in cash equal to \$1,000 per share plus all unpaid accrued and accumulated dividends.

Redemption. The Series A Preferred Stock is subject to redemption (i) at the option of the Company at a price of \$1,250 per share, plus all unpaid accrued and accumulated dividends, at any time on or after the third anniversary of the issuance of the Series A Preferred Stock that the average closing price of the Company’s common stock on the 30 trading days preceding notice of the exercise of the redemption right is greater than \$8.00; or (ii) at the option of the holder, upon a change of control. The Company is not accreting the Series A Preferred Stock to its redemption amount because it believes that it is not probable that the Series A Preferred Stock is redeemable. With respect to (i), even upon satisfaction of the time and price contingencies, the Company must exercise its option to redeem. The holder of the Series A Preferred Stock does not have representation on the Company’s board of directors sufficient to control such actions of the Company. With respect to (ii), the Company does not deem a change of control, as defined in the Certificate of Designation, probable as of and for the year ended April 30, 2019.

Conversion. Upon the earlier of a change of control or the nine-month anniversary of the date of issuance, the holders of the Series A Preferred Stock have the right to convert the Series A Preferred Stock into shares of common stock equal to the number of shares to be converted, times the liquidation value, divided by the conversion price and receive in cash all accrued and unpaid dividends. The initial conversion price per share is \$6.29, subject to adjustment pursuant to the terms of the Certificate of Designation. Holders of the Series A Preferred Stock also have basic anti-dilution rights.

Voting Rights. Each holder of Series A Preferred Stock shall be entitled to vote, on an as-converted basis, with holders of outstanding shares of common stock, voting together as a single class, with respect to any and all matters presented to the stockholders of the Company.

Stock Warrants

Each of the 20 6 Warrants and 20 8 Option Warrants may be exercised in whole or in part at any time for a period of 2 years from the date of issuance. The Financing Warrant may be exercised in whole or in part at any time for a period of 0 years from the date of issuance. Warrants issued during the year ended April 30, 20 9, had a weighted average exercise period of 2 years.

The following table shows warrant activity for the years ending April 30, 20 9 and 20 8:

	Warrants	Weighted Average Exercise Price
Outstanding April 30, 20 7	2,7 9,0 8	\$ 7 36
Warrants granted		
Outstanding April 30, 20 8	2,7 9,0 8	7 36
Warrants granted	4,469,0 8	8 39
Outstanding April 30, 20 9	7, 88,036	\$ 8 00

Registration Rights. The Company entered into a Registration Rights Agreement with Cap , dated November 2 , 20 8, granting certain registration rights with respect to the shares of common stock underlying the Series A Preferred Stock, 20 8 Option Warrants and Financing Warrant. The terms and registration rights applicable to the Extension Warrant, if issued, are expected to be substantially the same as those applicable to the Financing Warrant. Identical registration rights were granted to Cap with respect to the Series A Preferred Stock and 20 6 Warrants issued to Cap in November 20 6 in connection with the Private Placement.

Stockholders' Agreement. On November 2 , 20 8, in connection with the closing of the Term Loan and the Snow Time acquisition, the Company, Cap and certain members of the Company's management (the "Management Stockholders") entered into the Amended and Restated Stockholders Agreement (the "Stockholders Agreement") which added the new shares of Series A Preferred Stock, 20 8 Option Warrants, Financing Warrant and Extension Warrant, and the shares of Common Stock underlying such securities, to the scope of Stockholders Agreement entered into by the parties in 20 6. The Stockholders Agreement otherwise remains unchanged and i) provides Cap a right to nominate a director to sit on the Company's board of directors so long as Cap beneficially owns, on a fully diluted, as converted basis, at least 20% of the outstanding equity securities of the Company, ii) restricts transfers of the Company's securities by Cap and the Management Stockholders, iii) provides Cap with a right of first offer to purchase shares of the Company's common stock from the Management Stockholders, iv) grants Cap preemptive rights with respect to future issuances of securities, and v) requires Cap's approval, so long as it meets certain ownership requirements (as defined), in order for the Company to a) materially change the nature of its business or b) acquire or dispose of any resorts, assets or properties for aggregate consideration equal to or greater than 30% of the enterprise value (as defined) of the Company and its subsidiaries.

7. Restructuring and Impairment

During the years ended April 30, 20 9 and 20 8, the Company incurred restructuring and impairment charges of \$ 90 and \$,692 respectively, in connection with its decision to cease operation of a restaurant and certain hotel like amenities at a condominium building adjacent to its Attitash ski resort (the "Attitash Hotel Closure"). In connection with the Company's 2007 acquisition of its Attitash ski resort, the Company acquired property and equipment constituting the commercial core of a condominium building located adjacent to the resort. Since this acquisition, the Company i) provided management services to the condominium's owners association under a management services agreement (the "Management Services Agreement"), ii) sponsored a rental management program whereby unoccupied condominium units were rented as hotel rooms, and iii) operated restaurant and other hotel type amenities. In December 20 7, the Company determined it would not be able to renew the Management Services Agreement upon its expiration on April 30, 20 8 and, as a result, decided to terminate the rental management program and cease operation of the hotel of that date. Total charges related to the Attitash Hotel Closure include \$,586 of asset impairment charges, \$36 severance expense and \$260 of other costs. As of April 30, 20 9, no amounts were accrued for costs associated with the Attitash Hotel Closure, and the Company expects it will not incur future additional charges related to the Attitash Hotel Closure.

8. Equity Incentive Plan

The Company's 2014 Equity Incentive Plan, (the "2014 Plan") was adopted in November 2014, and provides for grants of RSUs, stock options, restricted stock awards, performance share units and other stock based awards to the Company's employees and directors. Subject to additions and adjustments, 559,296 shares were authorized for issuance under the 2014 Plan. As of April 30, 2019, 357,000 shares were available for future grants, and in May 2019 the Company granted an additional 40,000 RSUs.

The 2014 Plan provides the compensation committee of the Company's board of directors the discretion to grant awards in any form and with any terms permitted by the 2014 Plan. All awards granted since the inception of the 2014 Plan through April 30, 2019 were in the form of RSUs with vesting on the first anniversary of the grant date.

Stock Compensation Expense

The Company recognizes expense associated with stock based awards ratably over the requisite service period based on the grant date fair value of the award. For RSUs, the grant date fair value is the closing price of the Company's common stock on the date the grant is made. Stock compensation expense of \$ 85, \$223 and \$ 98 was recorded in general and administrative expenses in the consolidated statements of operations for the years ended April 30, 2019, 2018 and 2017, respectively associated with this plan. As of April 30, 2019, unrecognized compensation expense related to grants of RSUs was \$80 and will be recognized over a period of approximately six months.

Restricted Stock Units

RSUs are generally convertible to shares of the Company's common stock upon vesting; however, for all of the RSUs granted since the inception of the 2014 Plan through April 30, 2019, the RSUs are not convertible until six months after the grantee leaves employment with the Company or ceases to be a member of the Company's board of directors. Outstanding RSUs accrue dividends in the form of additional RSUs based on the market price of the Company's common stock on the date cash dividends are paid to the Company's common stockholders.

The following table summarizes RSU activity for the years ended April 30:

	2019		2018		2017	
		Weighted Average Grant Date Per Share Fair Value		Weighted Average Grant Date Per Share Fair Value		Weighted Average Grant Date Per Share Fair Value
Outstanding, beginning of year	46,780	\$ 5.00	96,587	\$ 5.3	63,74	\$ 5.90
RSU awards granted	36,95	5.8	43,600	4.30	46,770	4.74
Dividends paid in RSUs	9,596	5.02	6,593	5.3	, 33	5.3
Forfeited					(5,334)	6.0
Released					(9,723)	6.0
Outstanding, end of year	92,57	\$ 5.04	46,780	5.00	96,587	5.3
Vested, beginning of year	0,98	5.3	49,262	5.87	29,69	6.0
Vested	53,336		52,79		20,093	
Vested, end of year	55,37	\$ 5.00	0,98	5.3	49,262	5.87

RSUs outstanding as of April 30, 2019, had an aggregate intrinsic value of \$845. As of April 30, 2019, there was \$80 of unamortized compensation expense related to plan awards that will be recognized over the next six months.

9. Income Taxes

The Company's income tax provision for the years ended April 30, 2019, 2018 and 2017, consists of the following:

	<u>2019</u>	<u>2018</u>	<u>2017</u>
Current:			
Federal	\$	\$ 52	\$ 59
State taxes	,836	60	27
	<u>,836</u>	<u>2</u>	<u>86</u>
Deferred:			
Federal	2,873	(4,565)	589
State	(372)	4	(22)
Valuation allowance	367	350	
	<u>2,868</u>	<u>(4,074)</u>	<u>567</u>
	4,704	(3,962)	653
Income tax related purchase accounting adjustments			96
	<u>\$ 4,704</u>	<u>\$ (3,962)</u>	<u>\$ 749</u>

The tax effects of significant temporary differences representing deferred tax assets and liabilities at April 30, 2019 and 2018, are as follows:

	<u>April 30, 2019</u>	<u>April 30, 2018</u>
Deferred tax assets:		
Deferred gain on sale/leaseback	\$ 528	\$ 598
Accrued compensation	394	226
Unearned revenue	,082	637
Interest carryforwards	367	
Net operating loss carryforwards	<u>2, 2</u>	<u>7,028</u>
	4,483	8,489
Valuation allowance	<u>(77)</u>	<u>(350)</u>
	3,766	8,399
Deferred tax liabilities:		
Property and equipment	(2,264)	(5,758)
Intangible and other assets	<u>(886)</u>	<u>(90)</u>
	<u>(22,50)</u>	<u>(5,948)</u>
	<u>\$ (8,384)</u>	<u>\$ (7,809)</u>

The Company assesses available positive and negative evidence to estimate if sufficient future taxable income will be generated to use the existing deferred tax assets. As of April 30, 2019, the Company evaluated the likelihood of its ability to deduct in future years interest carryforwards arising by virtue of the provisions of the 2017 Tax Act. Under the 2017 Tax Act, limitations are imposed on the deductibility of interest incurred. The Company's interest expense has exceeded the amount that is deductible under the 2017 Tax Act and management expects that condition to exist for the foreseeable future. While the limitations on deductible interest have the effect of accelerating the utilization of the existing net operating loss carryovers, they also give rise to a deferred tax asset, and management believes it is more likely than not that the benefit of the interest carryforwards will not be realized. Accordingly, in the year ended April 30, 2019, the Company recognized a valuation allowance of \$367 to reduce to zero the carrying value of the deferred tax asset related to interest carryforwards.

In evaluating the realization of net operating loss carryovers, significant pieces of objective negative evidence evaluated included i) the shorter net operating loss carryforward periods associated with certain states in which the Company operates and ii) the amounts of taxable income apportioned to those taxing jurisdictions over the three year period ended April 30, 2019. Such objective evidence limits the Company's ability to consider other subjective evidence, such as projections for future growth.

Based on its evaluation, as of April 30, 2019, the Company concluded it is more likely than not that the benefit of net operating loss carryforwards associated with one such state will not be fully realized. In recognition of that risk the

Company established a valuation allowance of \$350 as of April 30, 2008, to reduce the carrying value of deferred tax assets related to those state net operating loss carryforwards. As of April 30, 2009 the Company reassessed the adequacy of the valuation allowance taking into account current, relevant positive and negative evidence of the type and nature discussed above and concluded the \$350 valuation allowance remained adequate. The amount of the deferred tax assets considered realizable, however, could be adjusted in the future if estimates of future taxable income during the carryforward period are reduced or increased or if objective negative evidence is no longer present, thus allowing additional weight to be given to subjective evidence such as the Company's projections for growth.

In connection with the Company's initial public offering in November 2004, a change of ownership in the Company occurred pursuant to the provisions of the Tax Reform Act of 1986. As a result, the Company's usage of its net operating loss carryforwards will be limited each year; however, management believes the full benefit of those carryforwards will be realized prior to their respective expiration dates. The Company monitors the activity in its stock and should an ownership change occur under the Tax Reform Act of 1986, management would reassess the ability to realize net operating loss carryforwards and provide additional valuation allowances, if necessary.

Federal loss carryforwards for tax purposes as of April 30, 2009, have the following expiration dates:

Expiration date	Amount
2013	\$ 2
2032	
2033	
2034	
2035	4,256
	\$ 4,268

A reconciliation between the income tax provision computed at the federal statutory income tax rate and the effective tax rate, for the years ended April 30, 2009, 2008 and 2007, is summarized below:

	2019	2018	2017
Computed tax at statutory rates	\$ 2,860	\$ (774)	\$ 677
Permanent items	249	62	35
State taxes, net of federal benefit	, 28	(5)	2
Change in federal statutory rate		(3,6)	
Valuation allowance for deferred tax assets	367	350	
Other	00	(38)	35
Income tax expense (benefit)	\$ 4,704	\$ (3,962)	\$ 749

On December 22, 2007, the United States government enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act (the "2007 Tax Act"). The 2007 Tax Act made broad changes to the federal tax code which impacts the Company. The 2007 Tax Act included provisions that, among other things, provides for i) the reduction of the federal corporate tax rate, ii) the elimination of the corporate alternative minimum tax, iii) a new limitation on the deductibility of interest expense, iv) changes in the treatment of net operating losses after December 31, 2007, and v) bonus depreciation that allows for full expensing of qualified property.

The 2008 change in federal statutory rate as appearing in the table above, consists of two components related to the 2007 Tax Act. First, the Company recognized a discrete benefit at the enactment date of the 2007 Tax Act of \$ 24 based on re-measurement of net deferred tax liabilities at that date utilizing the reduced corporate tax rate of 21% implemented by the 2007 Tax Act. In addition, the reconciliation from the federal tax rate above applies a blended rate based on a 34% corporate tax rate for the first eight months of fiscal 2008 and a 21% corporate tax rate for the last four months of fiscal 2008. However, as the Company is a calendar year taxpayer and its business is seasonal, cumulative losses result during the first eight months of the fiscal year that are partially offset by income in the four month period ending April 30, 2008. Consequently, the actual tax rates applicable to the Company's full year pretax loss are substantially different than the blended rate, resulting in an additional beneficial impact of approximately \$3,487.

The Company accounts for unrecognized tax benefits also in accordance with ASC 740, which prescribes a minimum probability threshold that a tax position must meet before a financial statement benefit is recognized. The minimum

threshold is defined as a tax position that is more likely than not to be sustained upon examination by the applicable taxing authority, including resolution to any related appeals or litigation, based solely on the technical merits of the position

10. Sale/Leaseback

In November 2005, the Company sold its Mad River Mountain ski resort and simultaneously leased the property back for a period of 2 years. The resulting gain on the sale was deferred and is being ratably recognized in income over the term of the lease.

11. Employee Benefit Plan

The Company maintains a tax deferred savings plan for all eligible employees. Employees become eligible to participate after attaining the age of 21 and completing one year of service. Employee contributions to the plan are tax deferred under Section 401(k) of the Internal Revenue Code of 1986, as amended. Company matching contributions are made at the discretion of the board of directors. As of April 30, 2009, the Company has accrued \$598 for a matching contribution to plan. No contributions were made for fiscal years 2008 and 2007.

12. Concentrations of Credit Risk and Fair Value Measures

Concentrations of Credit Risk

The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of cash, cash equivalents and restricted cash. The Company's cash, cash equivalents and restricted cash are on deposit with financial institutions where such balances will, at times, be in excess of federally insured limits. The Company has not experienced any losses associated with such deposits.

Fair Value of Measurements

The Company measures the fair value of assets and liabilities using a three tier fair value hierarchy which prioritizes the inputs used in measuring fair value as follows: Level 1 - observable inputs such as quoted prices in active markets; Level 2 - inputs, other than quoted market prices in active markets, which are observable, either directly or indirectly; and Level 3 - valuations derived from valuation techniques in which one or more significant inputs are unobservable. In addition, the Company may use various valuation techniques, including the market approach, using comparable market prices; the income approach, using present value of future income or cash flow; and the cost approach, using the replacement cost of assets.

The Company's financial instruments consist of cash equivalents, restricted cash, accounts receivable, accounts payable, accrued liabilities, long term debt and preferred stock. For cash equivalents, restricted cash, accounts receivable, accounts payable and accrued liabilities, the carrying amounts approximate fair market value due to their short term nature. The estimated fair values of the Company's debt instruments and preferred stock as of April 30, 2009 and 2008, are as follows:

	April 30, 2019		Balance Sheet Classification
	Fair Value	Carrying Amount	
EPR Secured Notes due 2034	\$ 10,033	\$ 93,62	Long term debt, less current maturities
EPR Secured Notes due 2036	7,45	2,000	Long term debt, less current maturities
EB 5 Development Notes due 202	43,998	52,000	Long term debt, less current maturities
Term Loan due 2020, related party debt	50,000	50,058	Long term debt, less current maturities
Wildcat Mountain Note due 2020	2,897	3,030	Long term debt, including current maturities
Capital leases and other borrowings	2,260	2,260	Long term debt, less current maturities
Series A Preferred Stock	3,777	34,38	Series A preferred stock

April 30, 2018

	Fair Value	Carrying Amount	Balance Sheet Classification
EPR Secured Notes due 2034	\$ 90,77	\$ 93, 62	Long term debt, less current maturities
EPR Secured Notes due 2036	5,866	2 ,000	Long term debt, less current maturities
EB 5 Development Notes due 202	45,752	52,000	Long term debt, less current maturities
Wildcat Mountain Note due 2020	3,242	3,23	Long term debt, including current maturities
Capital leases and other borrowings	3,6 0	3,6 0	Long term debt, less current maturities
Series A Preferred Stock	9,522	7,40	Series A preferred stock

The Company estimated the fair value of the EPR Secured Notes, EB 5 Development Notes and Wildcat Mountain Note using a discounted cash flow approach and Level 2 inputs, including market borrowing yields for instruments of similar maturities. The Company estimated the fair value of the Series A Preferred Stock and related warrants and other features using Level 2 inputs, including market yields for similar instruments. The Company estimated the fair value of capital leases and other borrowings to approximate their carrying value.

Valuation of Term Loan, Preferred Stock and Stock Warrants

The Company accounts for stock warrants as either equity or liability awards based upon the characteristics and provisions of each instrument. Warrants classified as equity are recorded at fair value as of the date of issuance with no further adjustments to their valuations made. When multiple financial instruments are issued in conjunction with other financial instruments, the amounts recognized for each instrument is recorded based on the proceeds received allocated to each instrument based on its relative fair value. The aggregate \$70,000 received as consideration for the Term Loan, and the issuance of the 20,000 shares of Series A Preferred Stock, 20 8 Option Warrants and Financing Warrant have been allocated in the amount of \$50,073, \$ 6, 97, and \$3,730, respectively. The difference between the face amount of the Term Loan due 2020 and its fair value has been recorded as an original issue premium and will be amortized to interest expense over its term. No value has been assigned to the Extension Warrant as it was not issued upon the closing of the Term Loan and will only be issued if the Company exercises its right to extend the Term Loan. The 20 8 Option Warrants and Financing Warrant were valued using the Black Scholes model with the following assumptions: expected life of warrants 0 to 2 years, risk free interest rate of 3 %, expected volatility of common stock 39 9%, and expected dividend yield of 5 5%.

13. Commitments and Contingencies

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 insurance coverage and, in the opinion of the Company's management, the ultimate liabilities resulting from such claims and proceedings will not have a material adverse effect on its business, financial condition, results of operations or cash flows.

Leases

The Company leases certain land, land improvements, buildings and equipment under noncancelable operating leases. Certain of the leases contain escalation provisions based generally on changes in the consumer price index with maximum annual percentage increases capped at rates between 5% to 4 5%. Additionally, certain leases contain contingent rental provisions which are based on revenue. The Company paid no significant contingent rentals in the periods presented. Rent expense under operating leases for the years ended April 30, 20 9, 20 8 and 20 7, was \$2,560, \$2,548 and \$,669, respectively.

Future minimum lease payments under capital leases and operating leases that have initial or remaining non cancelable lease terms in excess of one year at April 30, 20 9, are as follows:

	Capital Leases	Operating Leases
2020	\$, 7	\$ 2,340
202	439	2, 45
2022	304	,530
2023		,5 0
2024		,46
Thereafter		5,7 3
	<u>,9 4</u>	<u>\$ 4,699</u>
Less: amount representing interest	<u>68</u>	
	<u>,746</u>	
Less: current po tion	<u>, 9</u>	
Long term po tion	<u>\$ 627</u>	

14. Earnings (Loss) Per Share

The computation of basic and diluted earnings (loss) per share for the years ended April 30, 20 9, 20 8 and 20 7 is as follows:

	2019	2018	2017
<u>Basic earnings (loss) per share:</u>			
Net income (loss) attributable to common shareholders (numerator)	\$ 6,596	\$ (248)	\$ 44
Weighted average number of shares outstanding:			
Common stock	4,504,407	3,982,400	3,982,400
Vested restricted stock units	33, 39	78,339	35,238
Basic average shares outstanding (denominator)	<u>4,637,546</u>	<u>4,060,739</u>	<u>4,0 7,638</u>
Basic earnings (loss) per common share	<u>\$ 0 45</u>	<u>\$ (0 02)</u>	<u>\$ 0 03</u>
Dilutive effect of unvested restricted stock units			
	38,785		23,654
Diluted average shares outstanding (denominator)	<u>4,676,33</u>	<u>4,060,739</u>	<u>4,04 ,292</u>
Diluted earnings (loss) per common share	<u>\$ 0 45</u>	<u>\$ (0 02)</u>	<u>\$ 0 03</u>

The Company accounts for its Series A Preferred Stock as temporary equity. As a result, the weighted average number of shares associated with the conversion of the Series A Preferred Stock are included in the calculation of diluted earnings (loss) per share if the effect is not antidilutive, regardless of whether the Company's stock price as of the measurement date is lower than the conversion prices associated with Series A Preferred Stock. The effect of i) 37,254, 44, 87 and 9,5 5 unvested RSUs as of April 30, 20 9, 20 8 and 20 7, respectively, and ii) the conversion of Series A Preferred Stock have been excluded for the calculation of diluted loss per share for the years ended April 30, 20 9, 20 8 and 20 7, because the impact of those items would be antidilutive.

15. Related Party Transactions

One of the members of the Company's board of directors is a partner of a law firm that provides services to the Company. For the years ended April 30, 20 9, 20 8 and 20 7 the Company paid legal fees to this firm of \$565, \$ 44 and \$393, respectively.

In December 20 7, the Company paid \$47 for land and improvements located adjacent to one of its resorts to a trust in which the Company's Chief Executive Officer was a trustee.

16. Subsequent Events

On June 26, 2019, the compensation committee of the Company's board of directors approved i) approximately \$2,250 of cash payments and ii) grants of 85,900 RSUs to eligible employees in accordance with the terms of the Company's Annual Incentive Plan.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure.

Not Applicable.

ITEM 9A. 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 3a-5(e) and 5d-5(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), as of the end of the period covered by this Report. 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 Report, 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 rules and forms of the SEC and is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. 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.

Management's Report on Internal Control Over Financial Reporting and Attestation Report of the Registered Public Accounting Firm

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rule 3a-5(f) of the Exchange Act. Management has assessed the effectiveness of our internal control over financial reporting as of April 30, 2009 based on criteria established in Internal Control Integrated Framework (2003) issued by the Committee of Sponsoring Organizations of the Treadway Commission. As a result of this assessment, management concluded that, as of April 30, 2009, our internal control over financial reporting was effective. This Report does not include an attestation report of our independent registered public accounting firm pursuant to the rules of the SEC for emerging growth companies.

Changes in Internal Control over Financial Reporting

There have been no changes in the Company's internal control over financial reporting during the fourth quarter of fiscal year 2009 identified in connection with the evaluation required by Rules 3a-5(d) and 5d-5(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.

Item 9B. Other Information.

None

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The information required by this Item 10 of Form 10-K will be included in our 2019 Proxy Statement to be filed with the SEC in connection with the solicitation of proxies for our 2019 Annual Meeting of Stockholders (the "2019 Proxy Statement") and is incorporated herein by reference. The 2019 Proxy Statement will be filed with the SEC within 30 days after the end of the fiscal year to which this report relates.

Item 11. Executive Compensation.

The information required by this Item 11 of Form 10-K will be included in our 2019 Proxy Statement and is incorporated herein by reference. The 2019 Proxy Statement will be filed with the SEC within 30 days after the end of the fiscal year to which this report relates.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information required by this Item 12 of Form 10-K will be included in our 2019 Proxy Statement and is incorporated herein by reference. The 2019 Proxy Statement will be filed with the SEC within 30 days after the end of the fiscal year to which this report relates.

Equity Compensation Plan Information

On November 4, 2014, the Company's board of directors adopted the Peak Resorts, Inc. 2014 Equity Incentive Plan (the "Incentive Plan"), and on November 5, 2014, the Company's stockholders approved the Incentive Plan. The stockholders approved a maximum of 559,296 shares to be available for issuance under the Incentive Plan. The Incentive Plan authorizes the Company to grant stock options, stock appreciation rights, restricted stock, restricted stock units, stock bonuses, other stock based awards, cash awards, or any combination thereof, as defined in and allowed by the Incentive Plan. As of April 30, 2019, 357,000 shares remained available for issuance, as illustrated in the table below:

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a))
	(a)	(b)	(c)
Equity Compensation Plans Approved by Security Holders			357,000
Equity Compensation Plans Not Approved by Security Holders			
Total			357,000

Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information required by this Item 13 of Form 10-K will be included in our 2019 Proxy Statement and is incorporated herein by reference. The 2019 Proxy Statement will be filed with the SEC within 30 days after the end of the fiscal year to which this report relates.

Item 14. Principal Accounting Fees and Services.

The information required by this Item 14 of Form 10-K will be included in our 2019 Proxy Statement and is incorporated herein by reference. The 2019 Proxy Statement will be filed with the SEC within 30 days after the end of the fiscal year to which this report relates.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a) The following documents are filed as part of this Report:

Financial Statements

The consolidated financial statements of Peak Resorts, Inc. and subsidiaries, together with the report thereon of the Company's independent registered public accounting firm, are included in Part II, Item 8, "Financial Statements and Supplemental Data" of this Report. See Index to Consolidated Financial Statements therein.

2 Financial Statement Schedules

None

3 Exhibits

The exhibits required to be filed as part of this Report are listed in the attached Exhibit Index.

(b) The exhibits filed with this Report are listed in the attached Exhibit Index.

(c) None

Item 16. Form 10-K Summary.

None

EXHIBIT INDEX

Exhibit Number	Description
2	Agreement of Sale and Purchase between Wildcat Mountain Ski Area, Inc., Meadow Green Wildcat Skilift Corp and Meadow Green Wildcat Corp, as sellers, and WC Acquisition Corp, as purchaser, effective as of October 20, 20 0 (filed as Exhibit 2 to the Registrant s Registration Statement on Form S filed on October 20, 20 4 and incorporated herein by reference).
22	Stock Purchase Agreement by and among Scott Romberger, Bradley Leber, and Robert Black, trustees of the Irvin S Naylor Trust U/D/T dated 2/ /2003 F/B/O Leah R Naylor, Irvin S Naylor Trust U/D/T dated 2/ /2003 F/B/O S Chester Naylor, II, and Irvin S Naylor Trust U/D/T dated 2/ /2003 F/B/O Sarah R Naylor, as Sellers, and Peak Resorts, Inc., as Buyer, dated as of September 24, 20 8 (filed as Exhibit 2 to the Current Report on Form 8 K filed on September 24, 20 8 and incorporated herein by reference).
3	Amended and Restated Articles of Incorporation (filed as Exhibit 3 to the Quarterly Report on Form 10 Q filed on December 8, 20 6 and incorporated herein by reference).
32	Amended and Restated Bylaws, as amended (filed as Exhibit 32 to the Quarterly Report on Form 10 Q filed on September 8, 20 6 and incorporated herein by reference).
4	Form of Peak Resorts, Inc Common Stock Certificate (filed as Exhibit 4 to Amendment No to the Registrant s Registration Statement on Form S filed on November 0, 20 4 and incorporated herein by reference).
42	Certificate of Designation of Series A Cumulative Convertible Preferred Stock of Peak Resorts, Inc (filed as Exhibit 4 to the Current Report on Form 8 K filed on October 28, 20 6 and incorporated herein by reference).
43	Warrant No 1 issued to CAP LLC, dated as of November 2, 20 6 (filed as Exhibit 4 to the Current Report on Form 8 K filed on November 8, 20 6 and incorporated herein by reference).
44	Warrant No 2 issued to CAP LLC, dated as of November 2, 20 6 (filed as Exhibit 42 to the Current Report on Form 8 K filed on November 8, 20 6 and incorporated herein by reference).
45	Warrant No 3 issued to CAP LLC, dated as of November 2, 20 6 (filed as Exhibit 43 to the Current Report on Form 8 K filed on November 8, 20 6 and incorporated herein by reference).
46	Warrant No 4 issued to Cap LLC, dated as of November 2 , 20 8 (filed as Exhibit 4 to the Current Report on Form 8 K filed on November 23, 20 8 and incorporated herein by reference).
47	Warrant No 5 issued to Cap LLC, dated as of November 2 , 20 8 (filed as Exhibit 42 to the Current Report on Form 8 K filed on November 23, 20 8 and incorporated herein by reference).
48	Warrant No 6 issued to Cap LLC, dated as of November 2 , 20 8 (filed as Exhibit 43 to the Current Report on Form 8 K filed on November 23, 20 8 and incorporated herein by reference).
49	Warrant No 7 issued to Cap LLC, dated as of November 2 , 20 8 (filed as Exhibit 44 to the Current Report on Form 8 K filed on November 23, 20 8 and incorporated herein by reference).
0	Lease Agreement by and between EPT Mad River, Inc and Mad River Mountain, Inc, dated November 7, 2005 (filed as Exhibit 024 to the Registrant s Registration Statement on Form S filed on October 20, 20 4 and incorporated herein by reference).
02	First Amendment to Lease Agreement by and between EPT Mad River, Inc and Mad River Mountain, Inc, dated June 30, 2006 (filed as Exhibit 025 to the Registrant s Registration Statement on Form S filed on October 20, 20 4 and incorporated herein by reference).
03	Second Amendment to Lease Agreement, made as of December , 20 4, by and between EPT Mad River, Inc and Mad River Mountain, Inc (filed as Exhibit 0 to the Quarterly Report on Form 10 Q filed on January 6, 20 5 and incorporated herein by reference).
04	Third Amendment to Lease Agreement, made as of June 8, 20 6, by and between EPT Mad River, Inc and Mad River Mountain, Inc (filed as Exhibit 064 to the Annual Report on Form 10 K/A filed on July 5, 20 6 and incorporated herein by reference).
05	Ground Lease by and between Crotched Mountain Properties, LLC and SNH Development, Inc, dated May 27, 2003 (filed as Exhibit 026 to the Registrant s Registration Statement on Form S filed on October 20, 20 4 and incorporated herein by reference).
06	First Amendment to Ground Lease by and between Crotched Mountain Properties, LLC and SNH Development, Inc, dated April 3, 2004 (filed as Exhibit 027 to the Registrant s Registration Statement on Form S filed on October 20, 20 4 and incorporated herein by reference).

07	Second Amendment to Ground Lease by and between Crotched Mountain Properties, LLC and SNH Development, Inc., dated January 3, 2008 (filed as Exhibit 028 to the Registrant's Registration Statement on Form S filed on October 20, 2014 and incorporated herein by reference).
08	Lease by and between the Estate of Charles Marvin Weeks and Paoli Peaks, Inc., dated September 26, 1990 (filed as Exhibit 029 to the Registrant's Registration Statement on Form S filed on October 20, 2014 and incorporated herein by reference).
09	U.S. Department of Agriculture Forest Service Special Use Permit for Attitash (filed as Exhibit 030 to the Registrant's Registration Statement on Form S filed on October 20, 2014 and incorporated herein by reference).
00	U.S. Department of Agriculture Forest Service Special Use Permit for Mount Snow (filed as Exhibit 031 to the Registrant's Registration Statement on Form S filed on October 20, 2014 and incorporated herein by reference).
0	U.S. Department of Agriculture Forest Service Special Use Permit for Wildcat Mountain (filed as Exhibit 032 to the Registrant's Registration Statement on Form S filed on October 20, 2014 and incorporated herein by reference).
02	Purchase and Sale Agreement by and between Piggy and the Three J's, LLC and the Estate of James L. McGovern, III, as seller, and Mount Snow Ltd., as buyer, dated April 5, 2013 (filed as Exhibit 043 to the Registrant's Registration Statement on Form S filed on October 20, 2014 and incorporated herein by reference).
03	Blanket Conveyance, Bill of Sale and Assignment between Wildcat Mountain Ski Area, Inc., Meadow Green Wildcat Skilift Corp. and Meadow Green Wildcat Corp., as assignors, and WC Acquisition Corp., as assignee, dated November 9, 2010 (filed as Exhibit 020 to the Registrant's Registration Statement on Form S filed on October 20, 2014 and incorporated herein by reference).
04	Promissory Note from WC Acquisition Corp. in favor of Wildcat Mountain Ski Area, Inc.; Meadow Green Wildcat Skilift Corp.; and Meadow Green Wildcat Corp., dated November 22, 2010 (filed as Exhibit 022 to the Registrant's Registration Statement on Form S filed on October 20, 2014 and incorporated herein by reference).
05	Unconditional Guaranty of Peak Resorts, Inc., dated November 2, 2010 (filed as Exhibit 023 to the Registrant's Registration Statement on Form S filed on October 20, 2014 and incorporated herein by reference).
06	Master Credit and Security Agreement, dated as of December 1, 2014, among Peak Resorts, Inc., Mount Snow Ltd., Sycamore Lake, Inc., Brandywine Ski Resort, Inc., Boston Mills Ski Resort, Inc., Deltrecs, Inc., and JFBB Ski Areas, Inc., as borrowers, and EPT Ski Properties, Inc. and EPT Mount Snow, Inc., as lender (filed as Exhibit 01 to the Quarterly Report on Form 10-Q filed on January 6, 2015 and incorporated herein by reference).
07	Amendment to Master Credit and Security Agreement, effective as of December 1, 2014, by and among Peak Resorts, Inc., Mount Snow Ltd., Sycamore Lake, Inc., Brandywine Ski Resort, Inc., Boston Mills Ski Resort, Inc., Deltrecs, Inc., and JFBB Ski Areas, Inc., as borrowers, and EPT Ski Properties, Inc. and EPT Mount Snow, Inc., as lenders (filed as Exhibit 01 to the Current Report on Form 8-K/A filed on January 29, 2015 and incorporated herein by reference).
08	Amended and Restated Promissory Note from Peak Resorts, Inc., Boston Mills Ski Resort, Inc., Brandywine Ski Resort, Inc. and Deltrecs, Inc. in favor of EPT Ski Properties, Inc., dated December 1, 2014 (filed as Exhibit 02 to the Quarterly Report on Form 10-Q filed on January 6, 2015 and incorporated herein by reference).
09	Amended and Restated Promissory Note from Peak Resorts, Inc. and Sycamore Lake, Inc. in favor of EPT Ski Properties, Inc., dated December 1, 2014 (filed as Exhibit 03 to the Quarterly Report on Form 10-Q filed on January 6, 2015 and incorporated herein by reference).
020	Amended and Restated Promissory Note from Peak Resorts, Inc. and JFBB Ski Areas, Inc. in favor of EPT Ski Properties, Inc., dated December 1, 2014 (filed as Exhibit 04 to the Quarterly Report on Form 10-Q filed on January 6, 2015 and incorporated herein by reference).
02	Amended and Restated Promissory Note from Peak Resorts, Inc. and Mount Snow Ltd. in favor of EPT Ski Properties, Inc., dated December 1, 2014 (filed as Exhibit 05 to the Quarterly Report on Form 10-Q filed on January 6, 2015 and incorporated herein by reference).

0 22	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., LBO Holding, Inc., Hidden Valley Golf and Ski, Inc., Snow Creek, Inc., Paoli Peaks, Inc. and Crotched Mountain Properties, LLC, as guarantors, dated as of January 6, 2016 (filed as Exhibit 03 to the Current Report on Form 8 K filed on January 8, 2016 and incorporated herein by reference).
0 23	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., LBO 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 7, 2016 (filed as Exhibit 03 to the Current Report on Form 8 K filed on September 7, 2016 and incorporated herein by reference).
0 24	Option Agreement between Brandywine Ski Resort, Inc., Boston Mills Ski Resort, Inc., JFBB Ski Areas, Inc. and Sycamore Lake, Inc., as seller, and EPT Ski Properties, Inc., as purchaser, dated as of December 1, 2014 (filed as Exhibit 08 to the Quarterly Report on Form 10 Q filed on January 6, 2015 and incorporated herein by reference).
0 25	Master Right of First Refusal Agreement, made as of December 1, 2014, by and between EPT Ski Properties, Inc. and Peak Resorts, Inc. (filed as Exhibit 09 to the Quarterly Report on Form 10 Q filed on January 6, 2015 and incorporated herein by reference).
0 26	Right of First Refusal Agreement (Mount Attitash), dated as of December 1, 2014, among LBO Holding, Inc. and EPT Ski Properties, Inc. (filed as Exhibit 00 to the Quarterly Report on Form 10 Q filed on January 6, 2015 and incorporated herein by reference).
0 27	Master Credit and Security Agreement among 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. and Frosty Land, Inc., as borrowers, and EPT Ski Properties, Inc., as lender, dated as of January 6, 2016 (filed as Exhibit 00 to the Current Report on Form 8 K filed on January 8, 2016 and incorporated herein by reference).
0 28	Promissory Note from 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. and Frosty Land, Inc. in favor of EPT Ski Properties, Inc., dated as of January 6, 2016 (filed as Exhibit 02 to the Current Report on Form 8 K filed on January 8, 2016 and incorporated herein by reference).
0 29	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., LBO Holding, Inc., Hidden Valley Golf and Ski, Inc., Snow Creek, Inc., Paoli Peaks, Inc., WC Acquisition Corp., Resort Holdings, LLC and BLC Operators, Inc., as guarantors, for the benefit of EPT Ski Properties, Inc. and EPT Mount Snow, Inc., made as of September 7, 2016 (filed as Exhibit 04 to the Current Report on Form 8 K filed on September 7, 2016 and incorporated herein by reference).
0 30	Modification of Master Credit Agreements, effective as of October 24, 2016, by and among Peak Resorts, Inc., Mount Snow, Ltd., Sycamore Lake, Inc., Brandywine Ski Resort, Inc., Boston Mills Ski Resort, Inc., Deltrecs, Inc., JFBB Ski Areas, Inc., Hunter Mountain Acquisition, Inc., Hunter Mountain Ski Bowl Inc., Hunter Mountain Festivals, Ltd., Hunter Mountain Rentals Ltd., Hunter Mountain Resort Vacations, Inc., Hunter Mountain Base Lodge, Inc. and Frosty Land, Inc., as borrowers, and EPT Mount Snow, Inc., EPT Ski Properties, Inc. and EPT Mad River, Inc. as lenders (filed as Exhibit 03 to the Current Report on Form 8 K filed on October 28, 2016 and incorporated herein by reference).

03	Loan Renewal Agreement made by Peak Resorts, Inc., Hidden Valley Golf and Ski, Inc., Paoli Peaks, Inc., Snow Creek, Inc., LBO Holding, Inc., and SNH Development, Inc., as borrowers, in favor of Royal Banks of Missouri, dated as of August 5, 2017 (filed as Exhibit 0 to the Current Report on Form 8 K filed on August 8, 2017 and incorporated herein by reference).
032	Restated Credit Facility, Loan and Security Agreement by and between Peak Resorts, Inc., Hidden Valley Golf and Ski, Inc., Paoli Peaks, Inc., Snow Creek, Inc., LBO Holding, Inc., and SNH Development, Inc., dated as of October 27, 2017 (filed as Exhibit 0 to the Current Report on Form 8 K filed on November 2, 2017 and incorporated herein by reference).
033	Working Line Promissory Note from Peak Resorts, Inc., Hidden Valley Golf and Ski, Inc., Paoli Peaks, Inc., Snow Creek, Inc., LBO Holding, Inc., and SNH Development, Inc. in favor of Royal Banks of Missouri, dated as of October 27, 2017 (filed as Exhibit 02 to the Current Report on Form 8 K filed on November 2, 2017 and incorporated herein by reference).
034	Acquisition Line Promissory Note from Peak Resorts, Inc., Hidden Valley Golf and Ski, Inc., Paoli Peaks, Inc., Snow Creek, Inc., LBO Holding, Inc., and SNH Development, Inc. in favor of Royal Banks of Missouri, dated as of October 27, 2017 (filed as Exhibit 03 to the Current Report on Form 8 K filed on November 2, 2017 and incorporated herein by reference).
035	First Renewal of the Restated Credit Facility, Loan and Security Agreement by and between Peak Resorts, Inc., Hidden Valley Golf and Ski, Inc., Paoli Peaks, Inc., Snow Creek, Inc., LBO Holding, Inc., and SNH Development, Inc., dated as of December 27, 2018 (filed as Exhibit 0 to the Current Report on Form 8 K filed on December 27, 2018 and incorporated herein by reference).
036	Renewed Working Line Promissory Note from Peak Resorts, Inc., Hidden Valley Golf and Ski, Inc., Paoli Peaks, Inc., Snow Creek, Inc., LBO Holding, Inc., and SNH Development, Inc. in favor of Royal Banks of Missouri, dated as of December 27, 2018 (filed as Exhibit 02 to the Current Report on Form 8 K filed on December 27, 2018 and incorporated herein by reference).
037	Renewed Acquisition Line Promissory Note from Peak Resorts, Inc., Hidden Valley Golf and Ski, Inc., Paoli Peaks, Inc., Snow Creek, Inc., LBO Holding, Inc., and SNH Development, Inc. in favor of Royal Banks of Missouri, dated as of December 27, 2018 (filed as Exhibit 03 to the Current Report on Form 8 K filed on December 27, 2018 and incorporated herein by reference).
038	Loan Agreement dated as of December 27, 2016 by and among Carinthia Group, L.P. and Carinthia Group 2, L.P., as lenders, and West Lake Water Project LLC, as borrower (filed as Exhibit 06 to the Quarterly Report on Form 10 Q filed on March 9, 2017 and incorporated herein by reference).
039	Non Revolving Line of Credit Note from West Lake Water Project LLC in favor of Carinthia Group, L.P. and Carinthia Group 2, L.P., dated as of December 27, 2016 (filed as Exhibit 07 to the Quarterly Report on Form 10 Q filed on March 9, 2017 and incorporated herein by reference).
040	Guaranty of Collection, dated as of December 27, 2016, from Peak Resorts, Inc. to Carinthia Group, L.P. and Carinthia Group 2, L.P. with respect to the Loan Agreement dated as of December 27, 2016 by and among Carinthia Group, L.P. and Carinthia Group 2, L.P., as lenders, and West Lake Water Project LLC, as borrower (filed as Exhibit 08 to the Quarterly Report on Form 10 Q filed on March 9, 2017 and incorporated herein by reference).
04	Loan Agreement dated as of December 27, 2016 by and among Carinthia Group, L.P. and Carinthia Group 2, L.P., as lenders, and Carinthia Ski Lodge LLC, as borrower (filed as Exhibit 09 to the Quarterly Report on Form 10 Q filed on March 9, 2017 and incorporated herein by reference).
042	Non Revolving Line of Credit Note from Carinthia Ski Lodge LLC in favor of Carinthia Group, L.P. and Carinthia Group 2, L.P., dated as of December 27, 2016 (filed as Exhibit 10 to the Quarterly Report on Form 10 Q filed on March 9, 2017 and incorporated herein by reference).
043	Guaranty of Collection, dated as of December 27, 2016, from Peak Resorts, Inc. to Carinthia Group, L.P. and Carinthia Group 2, L.P. with respect to the Loan Agreement dated as of December 27, 2016 by and among Carinthia Group, L.P. and Carinthia Group 2, L.P., as lenders, and Carinthia Ski Lodge LLC, as borrower (filed as Exhibit 10 to the Quarterly Report on Form 10 Q filed on March 9, 2017 and incorporated herein by reference).
044	Credit Agreement among Snow Time Acquisition, Inc., Snow Time, Inc. and Cap LLC, dated as of November 2, 2018 (filed as Exhibit 0 to the Current Report on Form 8 K filed on November 23, 2018 and incorporated herein by reference).
045	Amended and Restated Stockholders Agreement among Peak Resorts, Inc., Timothy D Boyd, Stephen J Mueller, Richard K. Deutsch and Cap LLC, dated as of November 2, 2018 (filed as Exhibit 02 to the Current Report on Form 8 K filed on November 23, 2018 and incorporated herein by reference).

046	Amended and Restated Voting Agreement among Peak Resorts, Inc., Cap LLC, Timothy D. Boyd, Stephen J. Mueller and Richard K. Deutsch, dated as of November 2, 2008 (filed as Exhibit 0.3 to the Current Report on Form 8-K and incorporated herein by reference).
047	Form of Peak Resorts, Inc. Voting Agreement (filed as Exhibit 0 to the Current Report on Form 8-K filed on October 5, 2008 and incorporated herein by reference).
048	Securities Purchase Agreement dated August 22, 2006 between Peak Resorts, Inc. and CAP LLC (filed as Exhibit 0 to the Current Report on Form 8-K filed on August 23, 2006 and incorporated herein by reference).
049	Waiver and Amendment of Securities Purchase Agreement, dated as of November 2, 2006, by and between Peak Resorts, Inc. and CAP LLC (filed as Exhibit 0 to the Current Report on Form 8-K filed on November 8, 2006 and incorporated herein by reference).
050	Registration Rights Agreement, dated as of November 2, 2006, between Peak Resorts, Inc. and CAP LLC (filed as Exhibit 0.2 to the Current Report on Form 8-K filed on November 8, 2006 and incorporated herein by reference).
05	Registration Rights Agreement between Peak Resorts, Inc. and Cap LLC, dated as of November 2, 2008 (filed as Exhibit 0.4 to the Current Report on Form 8-K filed on November 23, 2008 and incorporated herein by reference).
052	Executive Employment Agreement by and between Peak Resorts, Inc. and Timothy D. Boyd, dated as of June 1, 2004 (filed as Exhibit 0.46 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1 filed on November 10, 2004 and incorporated herein by reference).
053	Executive Employment Agreement by and between Peak Resorts, Inc. and Richard Deutsch, dated as of June 1, 2004 (filed as Exhibit 0.48 to Amendment No. 1 to the Registrant's Registration Statement on Form S-1 filed on November 10, 2004 and incorporated herein by reference).
054	Executive Employment Agreement by and between Peak Resorts, Inc. and Christopher J. Bub, dated as of October 3, 2007 (filed as Exhibit 0 to the Current Report on Form 8-K filed on October 4, 2007 and incorporated herein by reference).
055	Executive Employment Agreement by and between Peak Resorts, Inc. and Stephen J. Mueller, dated as of August 15, 2007 (filed as Exhibit 0 to the Current Report on Form 8-K filed on August 16, 2007 and incorporated herein by reference).
056	Peak Resorts, Inc. 2004 Equity Incentive Plan (filed as Exhibit 0 to the Registrant's Registration Statement on Form S-8 filed on January 15, 2005 and incorporated herein by reference).
057	Form of Peak Resorts, Inc. Director Restricted Stock Unit Agreement (filed as Exhibit 0.7 to the Quarterly Report on Form 10-Q filed on March 15, 2006 and incorporated herein by reference).
058	Form of Peak Resorts, Inc. Employee Restricted Stock Unit Agreement (filed as Exhibit 0 to the Current Report on Form 8-K filed on May 9, 2009 and incorporated herein by reference).
059	Peak Resorts, Inc. Annual Incentive Plan Document (filed as Exhibit 0.2 to the Current Report on Form 8-K filed on January 12, 2007 and incorporated herein by reference).
060	Form of Peak Resorts, Inc. Indemnification Agreement (filed as Exhibit 0.44 to the Registrant's Registration Statement on Form S-1 filed on October 20, 2004 and incorporated herein by reference).
2	List of Subsidiaries
23	Consent of RSM US LLP
3	Certification of Principal Executive Officer, pursuant to Rule 3a-4(a)/5d-4(a), as adopted pursuant to Section 302 of the Sarbanes Oxley Act of 2002
3.2	Certification of Principal Financial Officer, pursuant to Rule 3a-4(a)/5d-4(a), as adopted pursuant to Section 302 of the Sarbanes Oxley Act of 2002
32	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)
0 INS	XBRL Instance Document
0 SCH	XBRL Taxonomy Extension Schema Document
0 CAL	XBRL Taxonomy Extension Calculation Linkbase Document
0 DEF	XBRL Taxonomy Extension Definition Linkbase Document
0 LAB	XBRL Taxonomy Extension Label Linkbase Document
0 PRE	XBRL Taxonomy Extension Presentation Linkbase Document

SIGNATURES

Pursuant to the requirements of Section 3 or 5(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized

PEAKRESORTS, INC.

Date: June 28, 20 09

By: /s/ Timothy D Boyd
Timothy D Boyd
Chief Executive Officer and President
(Principal Executive Officer)

Date: June 28, 20 09

By: /s/ Christopher J Bub
Christopher J Bub
Chief Financial Officer and Vice President (Principal
Financial Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Timothy D Boyd</u> Timothy D Boyd	Chief Executive Officer, President and Chairman of the Board of Directors (Principal Executive Officer)	June 28, 20 09
<u>/s/ Christopher J Bub</u> Christopher J Bub	Chief Financial Officer and Vice President (Principal Financial Officer)	June 28, 20 09
<u>/s/ Stephen J Mueller</u> Stephen J Mueller	Executive Vice President and Director	June 28, 20 09
<u>/s/ Richard K Deutsch</u> Richard K Deutsch	Vice President Business and Real Estate Development and Director	June 28, 20 09
<u>/s/ Stanley W Hansen</u> Stanley W Hansen	Director	June 28, 20 09
<u>/s/ Carl E Kraus</u> Carl E Kraus	Director	June 28, 20 09
<u>/s/ Christopher S O Connor</u> Christopher S O Connor	Director	June 28, 20 09
<u>/s/ David W Braswell</u> David W Braswell	Director	June 28, 20 09
<u>/s/ Rory A Held</u> Rory A Held	Director	June 28, 20 09

Peak Resorts Reports Fiscal 2019 Fourth Quarter and Full Year Results

Company Release - 6/27/2019 7:00 AM ET

WILDWOOD, Mo , June 27, 2019 (GLOBE NEWSWIRE) -- Peak Resorts, Inc (NASDAQ:SKIS) (“Peak” or the “Company”), a leading owner and operator of high-quality, individually branded U S ski resorts, today reported financial results for its fiscal 2019 fourth quarter and full year as summarized below:

(in thousands, except per share data)	Three months ended April 30,		Year ended April 30,	
	2019	2018	2019	2018
Revenues	\$ 85,458	\$ 56,032	\$ 184,426	\$ 131,662
Resort operating costs	\$ 42,699	\$ 31,951	\$ 119,737	\$ 96,593
Income from operations	\$ 30,402	\$ 17,413	\$ 28,916	\$ 10,219
Net income	\$ 18,083	\$ 9,680	\$ 8,916	\$ 1,352
Net income (loss) available to common shareholders for basic EPS	\$ 17,283	\$ 9,280	\$ 6,596	\$ (248)
Net income (loss) available to common shareholders adjusted for diluted EPS	\$ 18,083	\$ 9,680	\$ 6,596	\$ (248)
Income (Loss) per share (basic)	\$ 1.13	\$ 0.66	\$ 0.45	\$ (0.02)
Income (Loss) per share (diluted)	\$ 0.83	\$ 0.56	\$ 0.45	\$ (0.02)
Weighted average common shares outstanding	15,166	13,982	14,504	13,982
Vested restricted stock units (“RSUs”)	155	102	133	78
Dilutive effect of conversion of preferred stock	6,359	3,180	-	-
Dilutive effect of unvested RSUs	36	44	39	-
Reported EBITDA*	\$ 36,898	\$ 21,515	\$ 49,769	\$ 25,585

*See page 3 for Definitions of Non-GAAP Financial Measures

Timothy D Boyd, President and Chief Executive Officer, commented, “Fiscal 2019 was a record year for Peak Resorts as we completed several transformational initiatives that drove robust year over year growth. We generated record revenue and Reported EBITDA of \$184.4 million and \$49.8 million, respectively, thanks to our successful Snow Time acquisition and the fantastic execution of our resort operating teams who provided our guests with great conditions throughout a season of variable weather. We also delivered double-digit growth across our season pass offerings, saw continued strength across key revenue streams including food and beverage, ski school and retail, and benefited from our geographic and market diversification and ongoing customer outreach initiatives.

“Revenue and Reported EBITDA grew 53% and 72% year over year in the fiscal 2019 fourth quarter, respectively, as we generated organic revenue and Reported EBITDA growth of a respective 11% and 14%. Many of our resorts benefited from our continued strategic investments, including at Mount Snow where we saw the benefit of the new Carinthia Base Lodge and at Hunter where we debuted a significant terrain expansion, contributing to increased visitation of 6% and 12%, respectively, at these resorts. In addition, consistent investments in snowmaking capacity and efficiency allowed us to ensure that our growing visitor base was able to access more terrain and more often throughout the season, even when challenged by variable weather.

“As expected, the Snow Time portfolio delivered strong results in the fiscal 2019 fourth quarter and throughout the season despite nearly 20 fewer operating days during the season. The initial implementation of our operating strategies at Liberty, Whitetail and Roundtop allowed us to more than offset the shorter season at each of the three resorts as we drove a significant improvement in profitability across the portfolio. Given that we completed the acquisition of Snow Time right before the start of the 2018-19 season, we expect to see added benefits going forward as we further refine operations at these resorts.

“As announced in early May, 2019-20 season pass sales were very strong through the discounted sales window and we expect this momentum to continue. Sales of season passes, including our Peak Pass, which allows for unlimited access to 14 of our resorts across the Northeast, Mid-Atlantic and Midwest, were up 20.8% on a unit basis and 19.8% on a dollar basis over the prior year, inclusive of Snow Time pass sales in both periods. Pass sales momentum has continued and we are well positioned heading into what we believe will be yet another great winter season in 2019-20. We see clear signs that our season pass offerings have become the leading choice for skiers and riders who make the East Coast their home.

“With a strong finish to the 2018-19 season and strong season pass sales for the upcoming 2019-20 season, Peak Resorts is positioned for further growth in fiscal 2020. We are already working on roughly \$3.5 million in snowmaking upgrades at Liberty, Whitetail and Roundtop, and expect to see a full year of benefit from our recently awarded liquor license at Whitetail and our continued efforts to enhance our food and beverage operations. We also expect to see further benefits from investments in our resorts, including at Mount Snow, Hunter and more recently at Hidden Valley. Looking at the summer and fall seasons, we expect to benefit from a packed event schedule that will leverage our amazing resorts to generate revenue during our seasonally slow periods, including food and beer festivals, concerts, outdoor entertainment events and on-mountain activities such as zip lining and mountain biking.”

Fiscal Fourth Quarter Results Review

Fiscal 2019 fourth quarter revenue increased 52.5% year over year to \$85.5 million as the Company benefited from the addition of Snow Time for the full quarter as well as organic revenue growth of roughly 11.1% over the prior year period. For the quarter, the Company recorded an 81.1% increase in ski instruction revenue, a 34.4% rise in food and beverage revenue and 57.8% growth in lift ticket and tubing revenues.

Resort operating expenses in the fiscal 2019 fourth quarter rose 33.6% year over year to \$42.7 million due to the addition of Snow Time in the quarter as the Company managed its labor and other expenses in-line with its expectations. Power and utilities expenses were up 21.1% year over year on the addition of Snow Time as well as increased snowmaking activity. Other operating expenses increased during the quarter due to the inclusion of the Snow Time resorts and organic spending on IT projects, repairs and maintenance and insurance costs. General and administrative expenses were up 184.3% to \$4.7 million driven primarily by increased compensation expense as a result of the Company’s strong fiscal 2019 fourth quarter performance and additional professional service fees associated with the Snow Time acquisition.

Reported EBITDA for the fourth fiscal quarter of 2019 was \$36.9 million, compared to \$21.5 million in the year-ago quarter. The 71.5% year over year increase in Reported EBITDA was driven primarily by the inclusion of a full quarter of operations from Snow Time as well as organic growth of roughly 14.3% over the prior year period.

Balance Sheet Update

As of April 30, 2019, the Company had cash and cash equivalents of \$30.2 million and total outstanding debt of \$229.8 million, including \$12.4 million drawn against its revolving line of credit and short and long-term debt of \$217.4 million.

Christopher J. Bub, Chief Financial Officer, added, "Peak Resorts exited fiscal 2019 positioned for further growth as we continue to integrate the Snow Time resorts and benefit from improved operations and greater scale across our resort portfolio. Our operating teams remain focused on managing costs and driving increased efficiency and enhanced profitability across each area of our business even as we maintain our commitment of providing the highest level of guest service possible."

"As our attention turns to fiscal 2020 and beyond, we believe we have the needed financial flexibility to continue to improve existing operations while also exploring opportunities to drive cash flow and improve our capital structure. With our focus on the continued improvement across the entirety of our business, we are excited by what the future holds and for the opportunities ahead."

Investor Conference Call and Webcast

The Company will host an investor conference call and webcast to discuss its fiscal 2019 fourth quarter and full year results today at 10:00 a.m. ET. Interested parties can access the conference call by dialing (844) 526-1518 or, for international callers, by dialing (647) 253-8644; the conference ID number is 8294865. A webcast of the conference call can also be accessed live at ir.peakresorts.com (select "Event Calendar"). Following the completion of the call, an archived webcast will be available for replay at the same location.

Definitions and Reconciliations of Non-GAAP Financial Measures

Reported EBITDA is not a measure of financial performance under U.S. generally accepted accounting principles ("GAAP"). The Company defines Reported EBITDA as net income before interest, income taxes, depreciation and amortization, gain on sale/leaseback, other income or expense and other non-recurring items. The following table includes a reconciliation of Reported EBITDA to the GAAP related measure of net loss:

(dollars in thousands)	Three months ended		Year ended	
	April 30,		April 30,	
	2019	2018	2019	2018
Net income	\$ 18,083	\$ 9,680	\$ 8,916	\$ 1,352
Income tax expense (benefit)	7,987	4,273	4,704	(3,962)
Interest expense, net	4,505	3,586	15,788	13,322
Depreciation and amortization	6,077	3,553	19,618	13,231
Acquisition related costs	419	-	1,045	-
Restructuring and impairment charges	-	549	190	2,135
Other income	(90)	(43)	(159)	(160)
Gain on sale/leaseback	(83)	(83)	(333)	(333)
Reported EBITDA	\$ 36,898	\$ 21,515	\$ 49,769	\$ 25,585

The Company has specifically chosen to include Reported EBITDA as a measurement of its results of operations because it considers this measurement to be a significant indication of its financial performance and available capital resources. Because of large depreciation and other charges relating to the Company's ski resorts operations, it is difficult for management to fully and accurately evaluate financial performance and available capital resources using net income alone. In addition, the use of this non-U.S. GAAP measure provides an indication of the Company's ability to service debt, and management considers it an appropriate measure to use because of the Company's highly leveraged position. Management believes that by providing investors with Reported EBITDA, they will have a clearer understanding of the Company's financial performance and cash flows 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; (ii) helps investors to more meaningfully evaluate and compare the results of the Company's operations from period to period by removing the effect of its capital structure and asset base from operating results; and (iii) is used by the Board of Directors, management and lenders for various purposes, including as a measure of the Company's operating performance and as a basis for planning.

The items excluded from net income to arrive at Reported EBITDA are significant components for understanding and assessing the Company's financial performance and liquidity. Reported EBITDA should not be considered in isolation or as an alternative to, or substitute for, net income, net change in cash and cash equivalents or other financial statement data presented in the Company's condensed consolidated financial statements as indicators of financial performance or liquidity. Because Reported EBITDA is not a measurement determined in accordance with U.S. GAAP and is susceptible to varying calculations, Reported EBITDA as presented may not be comparable to other similarly titled measures of other companies, limiting its usefulness as a comparative measure.

About Peak Resorts

Headquartered in Missouri, Peak Resorts is a leading owner and operator of high-quality, individually branded ski resorts in the U.S. The company operates 17 ski resorts primarily located in the Northeast, Mid-Atlantic and Midwest, 16 of which are company owned.

The majority of the resorts are located within 100 miles of major metropolitan markets, including New York City, Boston, Philadelphia, Baltimore, Washington D.C., Cleveland, Kansas City and St. Louis, enabling day and overnight drive accessibility. The resorts under the company's umbrella 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, golf and other summer activities. To learn more, visit the Company's website at ir.peakresorts.com or follow Peak Resorts on Facebook for resort updates.

For further information, or to receive future Peak Resorts news announcements via e-mail, please contact JCIR, at 212-835-8500 or skis@jcir.com.

Forward Looking Statements

This news release contains forward-looking statements regarding the future outlook and performance of Peak Resorts, Inc., within the meaning of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this news release include, without limitation, statements related to: the expected impact of the acquisition of Snow Time on the Company's overall business, operations and results of operations; expectations regarding the sustained effect of the acquisition on the Company's season pass sales; and the realization of anticipated cost and operating synergies. These and other forward-looking statements are based on management's current views and assumptions and involve risks and uncertainties that could significantly affect expected results. Results may be materially affected by factors such as: risks associated with acquisitions generally; failure to retain key management and employees; unfavorable weather conditions and the impact of any natural disaster; difficulties or delays in the successful transition of the operations, systems and personnel of Snow Time; future levels of revenues being lower than expected and costs being higher than expected; failure or inability to implement growth strategies in a timely manner; unfavorable reaction to the acquisition by resort visitors, competitors, vendors and employees; conditions affecting the industry generally; local and global political and economic conditions; conditions in the securities market that are less favorable than expected; and other risks described in the Company's filings with the Securities and Exchange Commission. Actual results could differ materially from those projected in the forward-looking statements. The Company undertakes no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by law.

Investor Contact:

Norberto Aja, Jim Leahy, Joseph Jaffoni
JCIR
212-835-8500 or skis@jcir.com

Condensed Consolidated Statements of Operations
(dollars in thousands, except share and per share amounts)

	Three months ended April 30,		Year ended April 30,	
	2019	2018	2019	2018
	(Unaudited)			
Net revenue	\$ 85,458	\$ 56,032	\$ 184,426	\$ 131,662
Operating expenses:				
Resort operating costs	42,699	31,951	119,737	96,593
Depreciation and amortization	6,077	3,553	19,618	13,231
General and administrative	4,740	1,667	11,221	5,797
Land and building rent	369	347	1,393	1,401
Real estate and other taxes	1,171	552	3,351	2,286
Restructuring and impairment charges	-	549	190	2,135
Income from operations	<u>30,402</u>	<u>17,413</u>	<u>28,916</u>	<u>10,219</u>
Other (expense) income:				
Interest, net of amounts capitalized of \$267 and \$783 in 2019 and \$206 and \$1,256 in 2018, respectively	(4,505)	(3,586)	(15,788)	(13,322)
Gain on sale/leaseback	83	83	333	333
Other income	90	43	159	160
	<u>(4,332)</u>	<u>(3,460)</u>	<u>(15,296)</u>	<u>(12,829)</u>
Income (loss) before income taxes	26,070	13,953	13,620	(2,610)
Income tax expense (benefit)	7,987	4,273	4,704	(3,962)
Net income	<u>\$ 18,083</u>	<u>\$ 9,680</u>	<u>\$ 8,916</u>	<u>\$ 1,352</u>
Less declaration and accretion of Series A preferred stock dividends	(800)	(400)	(2,320)	(1,600)
Net income (loss) attributable to common shareholders	<u>\$ 17,283</u>	<u>\$ 9,280</u>	<u>\$ 6,596</u>	<u>\$ (248)</u>
Basic earnings (loss) per common share	<u>\$ 1.13</u>	<u>\$ 0.66</u>	<u>\$ 0.45</u>	<u>\$ (0.02)</u>
Diluted earnings (loss) per common share	<u>\$ 0.83</u>	<u>\$ 0.56</u>	<u>\$ 0.45</u>	<u>\$ (0.02)</u>
Cash dividends declared per common share	<u>\$ 0.07</u>	<u>\$ 0.07</u>	<u>\$ 0.28</u>	<u>\$ 0.28</u>
Cash dividends declared per preferred share	<u>\$ 20.00</u>	<u>\$ 20.00</u>	<u>\$ 80.00</u>	<u>\$ 60.00</u>

Consolidated Balance Sheets
(dollars in thousands)

	April 30, 2019	April 30, 2018
Assets		
Current assets:		
Cash and cash equivalents	\$ 30,194	\$ 23,091
Restricted cash	5,240	1,163
Accounts receivable	9,514	8,560
Inventory	2,544	1,971
Prepaid expenses and other current assets	14,984	12,731
Total current assets	<u>62,476</u>	<u>47,516</u>
Property and equipment, net	287,121	204,095
Land held for development	38,657	37,634
Restricted cash, construction	-	12,175

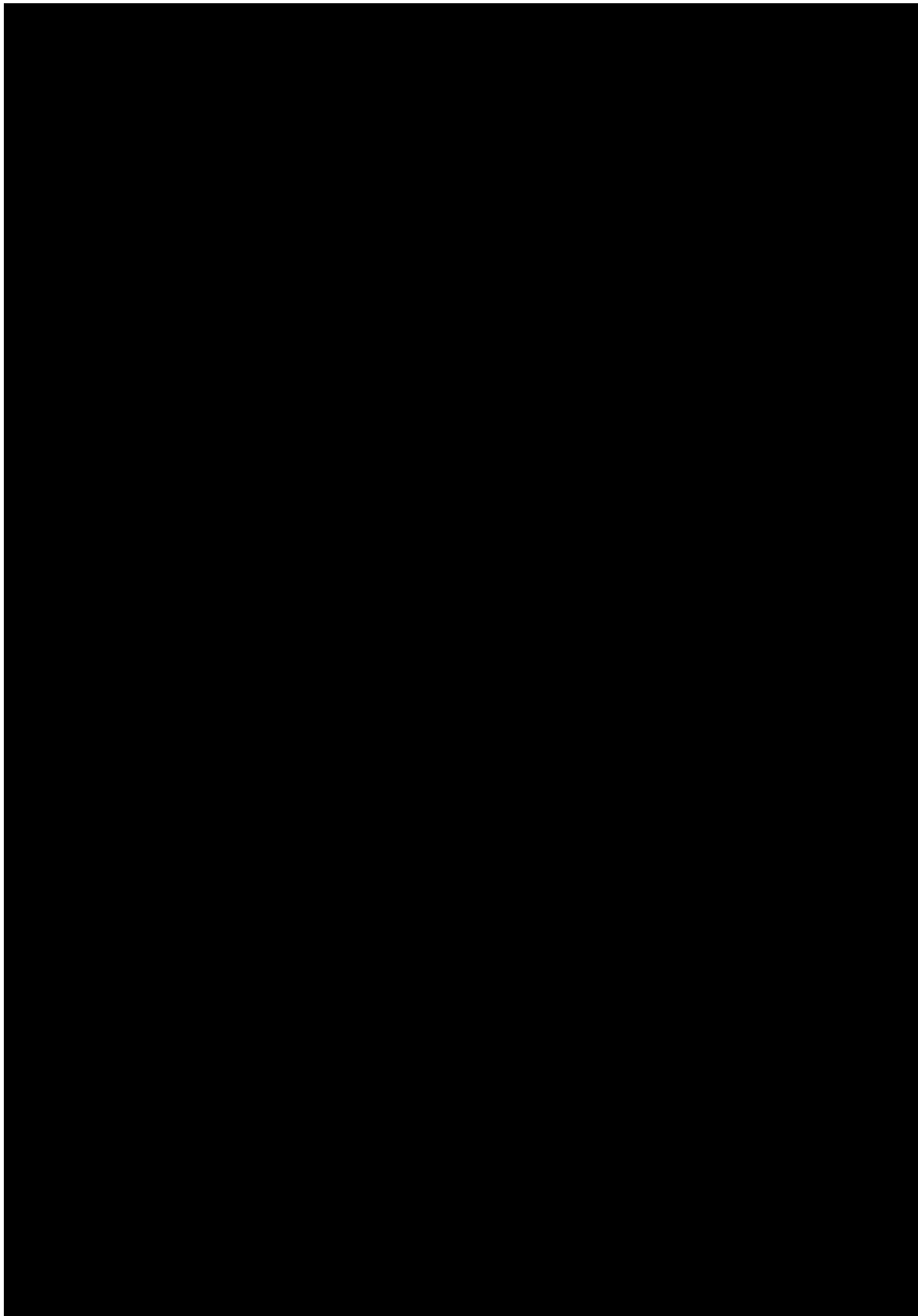
Goodwill		18,173	4,382
Intangible assets, net		3,106	731
Other assets		1,115	1,797
Total assets		<u><u>\$ 410,648</u></u>	<u><u>\$ 308,330</u></u>
Liabilities and Stockholders' Equity			
Current liabilities:			
Revolving lines of credit		\$ 12,415	\$ 12,415
Current maturities of long-term debt		1,513	2,614
Accounts payable and accrued expenses		14,207	12,079
Accrued salaries, wages and related taxes and benefits		6,281	922
Unearned revenue		22,153	16,084
Current portion of deferred gain on sale/leaseback		333	333
Total current liabilities		<u>56,902</u>	<u>44,447</u>
Long-term debt, including related party debt of			
\$50,058 and \$0, less current maturities		215,869	165,837
Deferred gain on sale/leaseback		2,180	2,512
Deferred income taxes		18,384	7,809
Other liabilities		770	504
Total liabilities		<u>294,105</u>	<u>221,109</u>
Series A preferred stock, \$0.01 par value per share, \$1,000 liquidation			
preference per share, 40,000 shares authorized, 40,000 and 20,000			
shares issued and outstanding		<u>34,318</u>	<u>17,401</u>
Commitments and contingencies			
Stockholders' equity:			
Common stock, \$0.01 par value per share, 40,000,000 shares			
authorized, 15,165,832 and 13,982,400 shares issued and outstanding		152	140
Additional paid-in capital		96,557	86,631
Accumulated deficit		(14,484)	(16,951)
Total stockholders' equity		<u>82,225</u>	<u>69,820</u>
Total liabilities and stockholders' equity		<u><u>\$ 410,648</u></u>	<u><u>\$ 308,330</u></u>

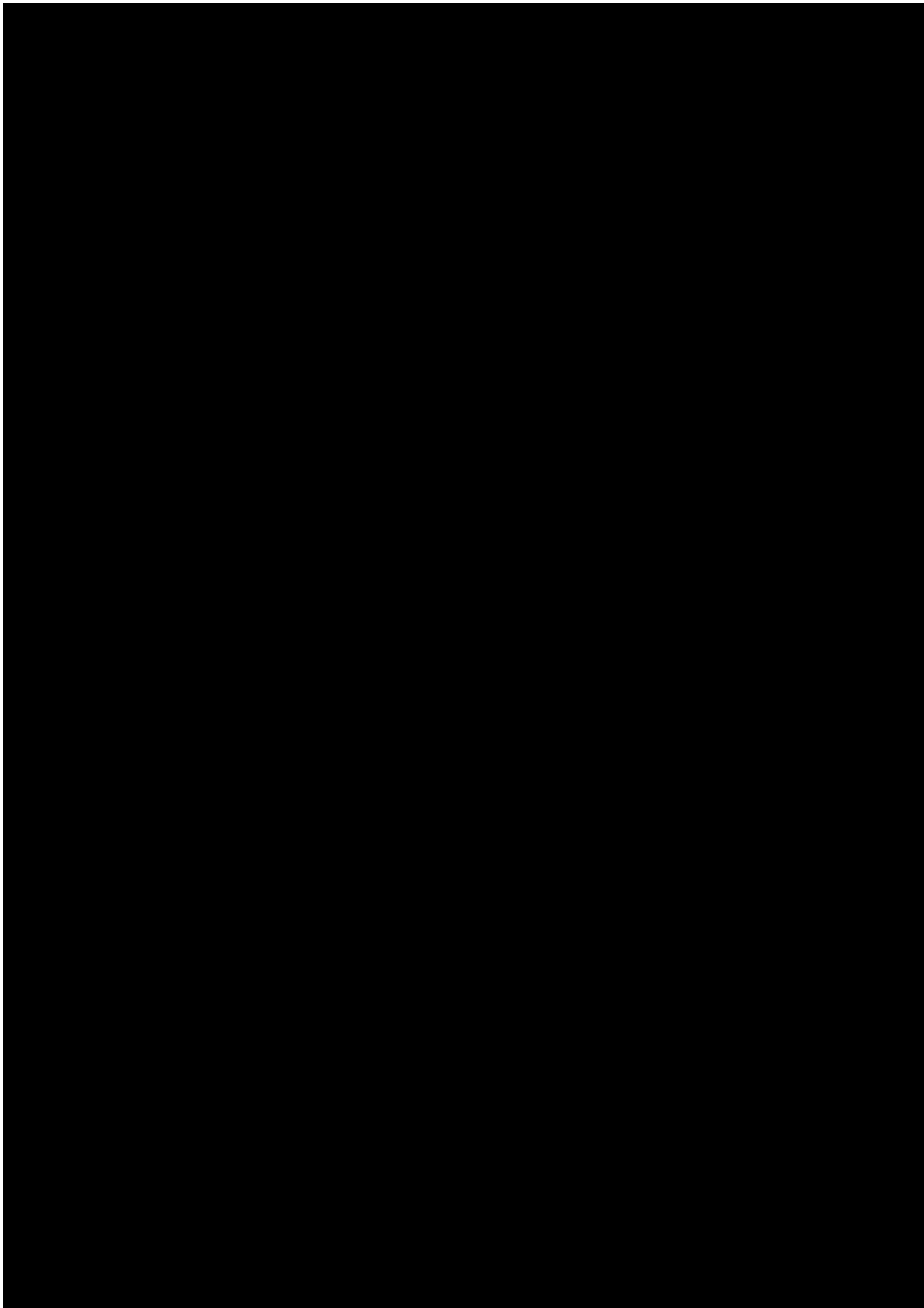
Supplemental Operating Data
(dollars in thousands)
(Unaudited)

	Three months ended		Year ended	
	April 30,		April 30,	
	2019	2018	2019	2018
Revenues:				
Lift and tubing tickets	\$ 47,796	\$ 30,285	\$ 93,168	\$ 61,683
Food and beverage	13,358	9,936	32,210	24,749
Equipment rental	7,623	3,727	15,065	9,991
Ski instruction	7,717	4,262	15,256	9,128
Hotel/lodging	3,035	3,237	8,909	9,874
Retail	3,422	2,512	9,277	6,748
Summer activities	291	-	4,727	4,459
Other	2,216	2,073	5,814	5,030
Total	<u>\$ 85,458</u>	<u>\$ 56,032</u>	<u>\$ 184,426</u>	<u>\$ 131,662</u>
Resort operating expenses:				
Labor and labor related expenses	\$ 21,709	\$ 16,637	\$ 61,440	\$ 53,026
Retail and food and beverage cost of sales	6,034	4,714	14,903	11,855
Power and utilities	3,551	2,933	11,417	8,331
Other	11,405	7,667	31,977	23,381
Total	<u>\$ 42,699</u>	<u>\$ 31,951</u>	<u>\$ 119,737</u>	<u>\$ 96,593</u>



Source: Peak Resorts, Inc





Vermont Agency of Commerce and Community Development Regional Center

AAO1890000630 / ID 1031910148 / RCW 10319101148

Exhibits to Motion to Reopen and Motion to Reconsider

6	Letter from Michael L. Goldberg, Jay Peak Receiver; spreadsheet of capital expenditures at Jay Peak Resort and Burke Mountain Resort
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MICHAEL I. GOLDBERG, RECEIVER

Las Olas Center II

350 East Las Olas Boulevard, Suite 1600

Fort Lauderdale, Florida 33301

Toll Free: (800) 223-2234

Email: jaypeak@akerman.com

Website: www.jaypeakreceivership.com

October 24, 2019

U.S. Citizenship & Immigration Services
California Service Center
24000 Avila Road, Room 2312
Laguna Niguel, CA 92677

Dear Adjudicator:

I am the court appointed receiver pursuant to an order entered on April 22, 2016, in the case of Securities and Exchange Commission v. Quiros et. al, Case No. 16-cv-21301-GAYLES currently pending in the United States District Court for the Southern District of Florida (the "Receiver"). Pursuant to the Order, the following JayPeak related entities are subject to the Receivership: Jay Peak, Inc., Q Resorts, Inc., Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II L.P., Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P., Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P., Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouses L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak GP Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., AnC Bio Vermont GP Services, LLC, Q Burke Mountain Resort, Hotel and Conference Center, L.P., Q Burke Mountain Resort GP Services, LLC, Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., Q Burke Mountain Resort, LLC.

With this letter, I am providing an update on the capital expenditures that have taken place at the Jay Peak Resort and the Burke Mountain Resort over the last year. This list is not intended to be exhaustive and additional information on expenditures, revenue, and job creation may be provided to USCIS at a later time. This letter is being provided at the request and in support of the Vermont Regional Center and is not intended to supplement or update the petitions of investors in the Jay Peak Resort and the Burke Mountain Resort.

From May 2018 to September 2020, in my capacity as the Receiver, I have continued to oversee the completion of construction related to Jay Peak Hotel Suites Stateside, LP ("Stateside") or Phase VI and the general operations of Jay Peak Resort and Burke Mountain Resort.

The Stateside construction began prior to April 13, 2016 when the Receiver was appointed and was substantially completed during the Jay Peak fiscal year ended April 30, 2019. Capital expenditures for Stateside construction in fiscal year 2019 included \$1,025,281 for the Stateside condominiums, \$118,121 for the Recreation Center and \$2,552,786 for the Athletic Fields.

Letter to U.S. Citizenship & Immigration Services

October 24, 2019

Page 2

In addition to the aforementioned construction, I also approved Jay Peak capital purchases totaling \$1,830,942 in fiscal year 2019 and \$755,504 in the five fiscal months ended September 28, 2020.

During the period May 2018 to September 2019 the Receiver approved \$1,846,662 of capital purchases at Burke Mountain including \$762,877 for a new J Bar Ski Lift, \$426,664 for snowmaking system improvements and \$148,970 for snowmaking pump.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Goldberg", is positioned below the word "Sincerely,".

Michael L. Goldberg, Receiver

Jay Peak Resort
Capital Expenditures FY Ended 4/30/2019

Department Name	Project Description	Incurred To-Date
Information Technology	Windows licensing update	46,483
Information Technology	Condo equipment upgrades	27,584
Information Technology	Storage expansion	8,520
Information Technology	Axess printer replacements	5,035
Information Technology	Trimble replacements	8,821
Information Technology	ACCPAC upgrade	9,938
IT project total		106,381
F&B	Cook tent for wedding tent	23,520
F&B	Additional and replacement inventory for conference center	5,824
F&B Project total		29,344
Taiga Spa	New Pedicure Chairs	5,651
Taiga Spa Project total		5,651
Res/Call Center	Additional Software licenses	6,226
Res/Call Center	Call Center Configuration	8,319
Res/Call Center Project Total		14,545
Lodging	Resort mattress/boxspring replacements	13,284
Lodging Project Total		13,284
Mountain Operations	Replace failing culvert and headwalls on Stateside Road by shop	133,443
Mtn Ops Project Total		133,443
Lift Maintenance	Flyer controls and drive replacement	143,220
Lift Maintenance	Axess gates, upgrades	48,563
Lift Maintenance	Flyer comm line replacement	40,937
Lift Maintenance	Metro Electrical drive upgrade	28,497
Lift Maintenance	Tram tower bolt replacements	33,646
Lift Maintenance	Motor rebuilds for two lifts	15,000
Lift Maintenance	Shorten cable on Bonaventure lift	5,570
Lift Maint Project Total		315,432
Snowmaking	25 - HKD Impulse Snow Gun towers	57,634
Snowmaking Project Total		57,634
Trail Grooming	Replacement tracks for 2 existing groomers	29,966
Trail Grooming Project Total		29,966
Vehicle Roads	Side-by-Side UTV	17,185
Vehicle Roads	Two skidoos; 1 for patrol and 1 for snowmaking	811
Vehicle Roads	Three ATV's for snowmaking and grounds	16,668
Vehicle Roads	Shop - scan tool	4,795
Vehicle Roads	Shop - tire balancer	5,141
Vehicle Roads	Sander and plow for new large truck	759
Vehicle Roads	Air Compressor	2,543
Vehicle/Roads Project Total		47,902
Hotel Jay Bldg Maintenance	HJ exterior painting	17,685
Hotel Jay Bldg Maintenance	Hotel Jay Gutter roof	45,000
Hotel Jay Bldg Maintenance	New server and controllers for BMS	112,556
Hotel Jay Bldg Maintenance	HJ fitness upgrades	62,579
Hotel Jay Bldg Maintenance	HJ Carpet Replacement	211,146
HJ Bldg Maint Project Total		448,966
Building Maintenance	Sky Haus Lightning protection	18,452
Building Maintenance	Salt Shed	14,393
Building Maintenance	Brown house/Vehicle Garage	4,750
Building Maintenance	Sky Haus waterproofing and apartment work	9,680
Building Maintenance	Sky Haus roofing	22,000
Building Maintenance	Vehicle garage wiring	3,752
Building Maintenance	Replace snowmaking motor	78,478
Bldg Maint Project Total		151,506

Jay Peak Resort
Capital Expenditures FY Ended 4/30/2019

Department Name	Project Description	Incurred To-Date
Water/Sewer	Water system controls upgrades	13,685
Water/Sewer Project Total		13,685
Tram Haus Lodge	THL new cooling tower	55,588
Tram Haus Lodge	Wiring Tramisde caf kitchen	5,075
Tram Haus Lodge Project Total		60,663
Ski Patrol	Zip-Rescue Units, 2 @ \$4,000 each	9,154
Ski Patrol Project Total		9,154
Daycare	Construct additional walls	5,583
Daycare	Reservations software	2,731
Daycare	Renovations to the Old Ski Wee Room	2,135
Daycare Project Total		10,449
MLC Daycare	Shaded area/equipment for playground	8,757
MLC Daycare Total		8,757
Pump Haus	Waterpark paint and seal	10,012
Pump Haus	Chlorine generator cells (2)	12,746
Pump Haus	Air curtain in WP	16,499
Pump Haus	Waterpark HRU controls	93,212
Pump Haus	Flow Rider Pump	61,480
Pump House Project Total		193,949
Golf Maintenance	Greens Covers	11,391
Golf Maint Project Total		11,391
1851 Arcade	New Ticket Station	11,342
1851 Arcade Total		11,342
Rental Shop	Rental ski equipment	58,767
Rental Shop	Demo rental equipment	19,231
Rental Project Total		77,998
Golf	Golf Cart Downpayment	79,500
Golf Project Total		79,500
Stateside Condominiums		1,025,281
Recreation Center		118,121
Athletic Fields		2,552,786
Total Capital Purchases		5,527,130

Jay Peak Resort

Capital Expenditures Five Months Ended 9/30/2019

Department Name	Project Description	Incurred To-Date
Phone/Information Technology	Private condo fiber node replacement - 1007	18,737
Information Technology	Windows licensing year 2 (of 3) - 1003	46,483
Information Technology	IG Upgrade - 1003	10,786
Phone/Information Technology	Music - 1007	10,233
Information Technology	PSAV	3,863
IT project total		90,101
Food and Beverage	Improvements at Clubhouse Grille restaurant	16,459
F&B Project total		16,459
THL	Replacement Lobby Furniture	1,889
Condo Mgmt Project total		1,889
Hotel Jay	Replacement Furniture in Guest Common Areas	5,592
Hotel Jay Project Total		5,592
Lift Maintenance	Flyer controls and drive replacement	3,643
Lift Maintenance	Carry over project, Metro drive upgrade	7,385
Lift Maintenance	Axxess Gate for Tram	3,299
Lift Maintenance	Tram tower bolts	23,126
Lift Maintenance	Rebuild both motors on the Flyer	23,875
Lift Maintenance	Sheave train rebuilds	3,086
Lift Maint Project Total		64,413
Snowmaking	Rebuild valve station 6 at Mixing Bowl	7,027
Snowmaking Project Total		7,027
Vehicle Roads	1 set of groomer tracks	33,308
Vehicle Roads	Tire changer for shop	5,189
Vehicle/Roads Project Total		38,497
Hotel Jay Bldg Maintenance	Ice Haus garage wiring new fixtures	2,835
HJ Bldg Maint Project Total		2,835
Roads / Parking	Pave strip at edge of HJ gravel lot and parking deck	67,137
Roads/Parking Project Total		67,137
Building Maintenance	Sky Haus water system/snowline boiler replacement	11,000
Building Maintenance	Inglenook	8,417
Building Maintenance	Wedding Chapel Drainage	2,284
Building Maintenance	Replace snowmaking switch gear	5,735
Bldg Maint Project Total		27,436
Grounds / Landscaping	Relocate/rebuild work road on Northway	41,632
Grounds / Landscaping Project Total		41,632
Tram Haus Lodge Maintenance	Tram Haus Lodge exterior painting	22,840
Tram Haus Lodge Maintenance	Tram base lodge north roof	53,776
THL Maint Project Total		76,616

Jay Peak Resort

Capital Expenditures Five Months Ended 9/30/2019

Department Name	Project Description	Incurred To-Date
Security	Surveillance Camera Server	12,736
Security Project Total		12,736
Storm Crew	Harley rake	6,360
Storm Crew Project Total		6,360
Ski Patrol	Zip-rescue units, 4 @\$4,500 each	9,116
Ski Patrol	Poma passes for remainder of Flyer towers	234
Ski Patrol Project Total		9,349
Pump House	Waterpark river repairs / resurface	180,535
Pump House	New flowrider surface/side panels	81,454
Pump House Project Total		261,989
Golf Maintenance	Storage tent replacement panels	19,339
Golf Maint Project Total		19,339
Rental Shop	1/5th turnover of rental equipment	6,098
Rental Project Total		6,098
Total Capital Purchases		755,504

Burke Mountain

Capital Expenditures May 2018 - September 2019

PROJECT #	DESCRIPTION	Incurred to Date
1819-1	Snowmaking electrical metering & dashboard	2,250
1819-2	Bunker Hill Snowmaking Project	168,219
1819-3	Snowmaking IT System	17,331
1819-4	Midburke Pump & Motor	13,693
1819-5	Submersible Pump @ River	15,475
1819-6	Compressor coolant pump	6,649
1819-7	Main River Pump	15,154
1819-8	Booster Pump house Pump	148,970
1819-9	2015 Yanmar Crawler	61,607
1819-10	Snowmaking equipment	19,186
1819-11	Move Magic Carpet	3,382
1819-11	Move Magic Carpet	26,502
1819-12	Total Capital Purchases	16,084
1819-12	Traing Hill Cleanup	2,877
1819-13	Rental equipment	6,020
1819-14	Hydrant Pads	4,296
1819-15	Hotel Stormwater Repair	1,084
1819-17	Rental Bikes, pads & helmets	39,045
1819-18	Storage array for server farm	25,362
1819-19	Snowmachine	5,141
1819-20	Replace carpet @ Midburke	4,200
1819-21	Snowmaking Pond Feasibility Study	3,190
	J Bar Lift	762,877
1920-1	Snowmaking	258,445
1920-2	IT Servers, Etc.	65,999
1920-3	Pressure Reducing Valve	11,606
1920-4	Base Lodge Improvements	28,668
1920-5	Hotel Stormwater Repair	23,320
1920-8	Bike Park Improvements	1,085
1819-1	Snowmaking Electrical Metering & Dashboard	2,250
1819-11	Magic Carpet Move	29,884
1819-12	Training Hill Cleanup	18,961
1819-21	Snowmaking Pond Feasibility Study	3,190
1819-05	Submersible Pum@ River	15,475
1819-10	Hoses, Hydrants & Seals - Snowmaking	19,186
Total Capital Purchases		<u><u>1,846,662</u></u>

Vermont Agency of Commerce and Community Development Regional Center

AAO1890000630 / ID 1031910148 / RCW 10319101148

Exhibits to Motion to Reopen and Motion to Reconsider

7	Executive Order on Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication issued on October 9, 2019
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**EXECUTIVE ORDERS**

Executive Order on Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication

Issued on: **October 9, 2019**



By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. The rule of law requires transparency. Regulated parties must know in advance the rules by which the Federal Government will judge their actions. The Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., was enacted to provide that “administrative policies affecting individual rights and obligations be promulgated pursuant to certain stated procedures so as to avoid the inherently arbitrary nature of unpublished ad hoc determinations.” *Morton v. Ruiz*, 415 U.S. 199, 232 (1974). The Freedom of Information Act, America’s landmark transparency law, amended the APA to further advance this goal. The Freedom of Information Act, as amended, now generally requires that agencies publish in the Federal Register their substantive rules of general applicability, statements of general policy, and interpretations of law that are generally applicable and both formulated and adopted by the agency (5 U.S.C. 552(a)(1)(D)). The Freedom of Information Act also generally prohibits an agency from adversely affecting a person with a rule or policy that is not so published, except to the extent that the person has actual and timely notice of the terms of the rule or policy (5 U.S.C. 552(a)(1)).

Unfortunately, departments and agencies (agencies) in the executive branch have not always complied with these requirements. In addition, some agency practices with respect to enforcement

actions and adjudications undermine the APA's goals of promoting accountability and ensuring fairness.

Agencies shall act transparently and fairly with respect to all affected parties, as outlined in this order, when engaged in civil administrative enforcement or adjudication. No person should be subjected to a civil administrative enforcement action or adjudication absent prior public notice of both the enforcing agency's jurisdiction over particular conduct and the legal standards applicable to that conduct. Moreover, the Federal Government should, where feasible, foster greater private-sector cooperation in enforcement, promote information sharing with the private sector, and establish predictable outcomes for private conduct. Agencies shall afford regulated parties the safeguards described in this order, above and beyond those that the courts have interpreted the Due Process Clause of the Fifth Amendment to the Constitution to impose.

Sec. 2. Definitions For the purposes of this order:

(a) "Agency" has the meaning given to "Executive agency" in section 105 of title 5, United States Code, but excludes the Government Accountability Office.

(b) "Collection of information" includes any conduct that would qualify as a "collection of information" as defined in section 3502(3)(A) of title 44, United States Code, or section 1320.3(c) of title 5, Code of Federal Regulations, and also includes any request for information, regardless of the number of persons to whom it is addressed, that is:

(i) addressed to all or a substantial majority of an industry; or

(ii) designed to obtain information from a representative sample of individual persons in an industry.

(c) "Guidance document" means an agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation, but does not include the following:

(i) rules promulgated pursuant to notice and comment under section 553 of title 5, United States Code, or similar statutory provisions;

(ii) rules exempt from rulemaking requirements under section 553(a) of title 5, United States Code;

(iii) rules of agency organization, procedure, or practice;

(iv) decisions of agency adjudications under section 554 of title 5, United States Code, or similar statutory provisions;

(v) internal guidance directed to the issuing agency or other agencies that is not intended to have substantial future effect on the behavior of regulated parties; or

(vi) internal executive branch legal advice or legal opinions addressed to executive branch officials.

(d) “Legal consequence” means the result of an action that directly or indirectly affects substantive legal rights or obligations. The meaning of this term should be informed by the Supreme Court’s discussion in *U.S. Army Corps of Engineers v. Hawkes Co.*, 136 S. Ct. 1807, 1813–16 (2016), and includes, for example, agency orders specifying which commodities are subject to or exempt from regulation under a statute, *Frozen Food Express v. United States*, 351 U.S. 40, 44–45 (1956), as well as agency letters or orders establishing greater liability for regulated parties in a subsequent enforcement action, *Rhea Lana, Inc. v. Dep’t of Labor*, 824 F.3d 1023, 1030 (D.C. Cir. 2016). In particular, “legal consequence” includes subjecting a regulated party to potential liability.

(e) “Unfair surprise” means a lack of reasonable certainty or fair warning of what a legal standard administered by an agency requires. The meaning of this term should be informed by the examples of lack of fair notice discussed by the Supreme Court in *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 156 & n.15 (2012).

(f) “Pre-enforcement ruling” means a formal written communication from an agency in response to an inquiry from a person concerning compliance with legal requirements that interprets the law or applies the law to a specific set of facts supplied by the person. The term includes informal guidance under section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (Title II), as amended (SBREFA), letter rulings, advisory opinions, and no action letters.

(g) “Regulation” means a legislative rule promulgated pursuant to section 553 of title 5, United States Code, or similar statutory provisions.

Sec. 3. Proper Reliance on Guidance Documents. Guidance documents may not be used to impose new standards of conduct on persons outside the executive branch except as expressly authorized by law or as expressly incorporated into a contract. When an agency takes an administrative enforcement action, engages in adjudication, or otherwise makes a determination that has legal consequence for a person, it must establish a violation of law by applying statutes or regulations. The agency may not treat noncompliance with a standard of conduct announced solely in a guidance document as itself a violation of applicable statutes or regulations. When an agency uses a guidance document to state the legal applicability of a statute or regulation, that document can do no more, with respect to prohibition of conduct, than articulate the agency’s understanding of how a statute or regulation applies to particular circumstances. An agency may cite a guidance document to convey that understanding in an administrative enforcement action or adjudication only if it has notified the public of such document in advance through publication, either in full or by citation if publicly available, in the Federal Register (or on the portion of the agency’s website that contains a single, searchable, indexed database of all guidance documents in effect).

Sec. 4. Fairness and Notice in Administrative Enforcement Actions and Adjudications. When an agency takes an administrative enforcement action, engages in adjudication, or otherwise makes a determination that has legal consequence for a person, it may apply only standards of conduct that have been publicly stated in a manner that would not cause unfair surprise. An agency must avoid unfair surprise not only when it imposes penalties but also whenever it adjudges past conduct to have violated the law.

Sec. 5. Fairness and Notice in Jurisdictional Determinations. Any decision in an agency adjudication, administrative order, or agency document on which an agency relies to assert a new or expanded claim of jurisdiction — such as a claim to regulate a new subject matter or an explanation of a new basis for liability — must be published, either in full or by citation if publicly available, in the Federal Register (or on the portion of the agency’s website that contains a single, searchable, indexed database of all guidance documents in effect) before the conduct over which jurisdiction is sought occurs. If an agency intends to rely on a document arising out of litigation (other than a published opinion of an adjudicator), such as a brief, a consent decree, or a settlement agreement, to establish jurisdiction in future administrative enforcement actions or adjudications involving persons who were not parties to the litigation, it must publish that

document, either in full or by citation if publicly available, in the Federal Register (or on the portion of the agency's website that contains a single, searchable, indexed database of all guidance documents in effect) and provide an explanation of its jurisdictional implications. An agency may not seek judicial deference to its interpretation of a document arising out of litigation (other than a published opinion of an adjudicator) in order to establish a new or expanded claim or jurisdiction unless it has published the document or a notice of availability in the Federal Register (or on the portion of the agency's website that contains a single, searchable, indexed database of all guidance documents in effect).

Sec. 6. Opportunity to Contest Agency Determination. (a) Except as provided in subsections (b) and (c) of this section, before an agency takes any action with respect to a particular person that has legal consequence for that person, including by issuing to such a person a no-action letter, notice of noncompliance, or other similar notice, the agency must afford that person an opportunity to be heard, in person or in writing, regarding the agency's proposed legal and factual determinations. The agency must respond in writing and articulate the basis for its action.

(b) Subsection (a) of this section shall not apply to settlement negotiations between agencies and regulated parties, to notices of a prospective legal action, or to litigation before courts.

(c) An agency may proceed without regard to subsection (a) of this section where necessary because of a serious threat to health, safety, or other emergency or where a statute specifically authorizes proceeding without a prior opportunity to be heard. Where an agency proceeds under this subsection, it nevertheless must afford any person an opportunity to be heard, in person or in writing, regarding the agency's legal determinations and respond in writing as soon as practicable.

Sec. 7. Ensuring Reasonable Administrative Inspections. Within 120 days of the date of this order, each agency that conducts civil administrative inspections shall publish a rule of agency procedure governing such inspections, if such a rule does not already exist. Once published, an agency must conduct inspections of regulated parties in compliance with the rule.

Sec. 8. Appropriate Procedures for Information Collections. (a) Any agency seeking to collect information from a person about the compliance of that person or of any other person with legal requirements must ensure that such collections of information comply with the provisions of the Paperwork Reduction Act, section 3512 of title 44, United States Code, and section 1320.6(a) of title

5, Code of Federal Regulations, applicable to collections of information (other than those excepted under section 3518 of title 44, United States Code).

(b) To advance the purposes of subsection (a) of this section, any collection of information during the conduct of an investigation (other than those investigations excepted under section 3518 of title 44, United States Code, and section 1320.4 of title 5, Code of Federal Regulations, or civil investigative demands under 18 U.S.C. 1968) must either:

(i) display a valid control number assigned by the Director of the Office of Management and Budget; or

(ii) inform the recipient through prominently displayed plain language that no response is legally required.

Sec. 9. Cooperative Information Sharing and Enforcement. (a) Within 270 days of the date of this order, each agency, as appropriate, shall, to the extent practicable and permitted by law, propose procedures:

(i) to encourage voluntary self-reporting of regulatory violations by regulated parties in exchange for reductions or waivers of civil penalties;

(ii) to encourage voluntary information sharing by regulated parties; and

(iii) to provide pre-enforcement rulings to regulated parties.

(b) Any agency that believes additional procedures are not practicable — because, for example, the agency believes it already has adequate procedures in place or because it believes it lacks the resources to institute additional procedures — shall, within 270 days of the date of this order, submit a report to the President describing, as appropriate, its existing procedures, its need for more resources, or any other basis for its conclusion.

Sec. 10. SBREFA Compliance. Within 180 days of the date of this order, each agency shall submit a report to the President demonstrating that its civil administrative enforcement activities, investigations, and other actions comply with SBREFA, including section 223 of that Act. A copy of

this report, subject to redactions for any applicable privileges, shall be posted on the agency's website.

Sec. 11. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Notwithstanding any other provision in this order, nothing in this order shall apply:

(i) to any action that pertains to foreign or military affairs, or to a national security or homeland security function of the United States (other than procurement actions and actions involving the import or export of non-defense articles and services);

(ii) to any action related to a criminal investigation or prosecution, including undercover operations, or any civil enforcement action or related investigation by the Department of Justice, including any action related to a civil investigative demand under 18 U.S.C. 1968;

(iii) to any action related to detention, seizure, or destruction of counterfeit goods, pirated goods, or other goods that infringe intellectual property rights;

(iv) to any investigation of misconduct by an agency employee or any disciplinary, corrective, or employment action taken against an agency employee; or

(v) in any other circumstance or proceeding to which application of this order, or any part of this order, would, in the judgment of the head of the agency, undermine the national security.