

Section 1: 8-K (FORM 8-K)

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

FORM 8-K
CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): **September 24, 2019**

PEAK RESORTS, INC.

(Exact name of registrant as specified in its charter)

Missouri
(State or other jurisdiction of
incorporation)

001-35363
(Commission
File Number)

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

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

63025
(Zip Code)

(636) 938-7474
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	SKIS	Nasdaq Global Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). Emerging growth company

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

Introductory Note

As previously disclosed in the Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on July 22, 2019 by Peak Resorts, Inc., a Missouri corporation (the “Company”), the Company entered into an Agreement and Plan of Merger (the “Merger Agreement”) with Vail Holdings, Inc., a Colorado corporation (“Parent”), VRAD Holdings, Inc., a Missouri corporation and direct, wholly-owned subsidiary of Parent (“Merger Sub”), and, solely for the purposes stated in Section 9.14 of the Merger Agreement, Vail Resorts, Inc., a Delaware corporation (“Vail Resorts”), relating to the proposed acquisition of the Company by Parent, subject to the terms and conditions set forth in the Merger Agreement.

Item 1.02 Termination of Material Definitive Agreement.

The Company’s wholly-owned subsidiary, WC Acquisition Corp., had previously issued a promissory note in favor of Wildcat Mountain Ski Area, Inc., Meadow Green-Wildcat Skilift Corp., and Meadow Green-Wildcat Corp., dated November 22, 2010 (the “Wildcat Note”). In addition, the Company, and its wholly-owned subsidiaries, Hidden Valley Golf and Ski, Inc., Paoli Peaks, Inc., Snow Creek, Inc., L.B.O. Holding, Inc. and SNH Development Inc. and Royal Banks of Missouri were parties to that First Renewal of the Restated Credit Facility, Loan and Security Agreement dated as of December 27, 2018 (the “RBOM Credit Facility”). Finally, the Company’s wholly-owned subsidiaries, Snow Time Acquisition, Inc., Snow Time, Inc., Ski Roundtop Operating Corp., Ski Liberty Operating Corp. and Whitetail Mountain Operating Corp., and Cap 1 LLC (“Cap 1”) were parties to that Credit Agreement, dated as of November 21, 2018 (the “Cap 1 Credit Agreement”).

The Company had previously issued to Cap 1 40,000 shares of its Series A Cumulative Convertible Preferred Stock, par value \$0.01 per share (the “Series A Preferred Stock”), and warrants to purchase shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), as follows: (i) 3,076,924 shares of Common Stock at \$6.50 per share; (ii) 1,250,000 shares of Common Stock at \$8.00 per share; (iii) 1,111,112 shares of Common Stock at \$9.00 per share, and (iv) 1,750,000 shares of Common Stock at \$10.00 per share (collectively, the “Warrants”). In connection with the initial issuances of Series A Preferred Stock and Warrants, on November 2, 2016, the Company entered into a Registration Rights Agreement with Cap 1 (the “2016 Registration Rights Agreement”). In connection with the Cap 1 Credit Agreement, on November 21, 2018, (i) Cap 1 and certain members of the Company’s management (the “Management Stockholders”) had entered into an Amended and Restated Stockholders’ Agreement (the “Stockholders Agreement”), (ii) the Company entered into a Registration Rights Agreement with Cap 1 (the “2018 Registration Rights Agreement”), and (iii) the Company, Cap 1 and the Management Stockholders entered into an Amended and Restated Voting Agreement (the “Voting Agreement”).

In connection with the consummation of the Merger (as defined below) and the transactions contemplated by the Merger Agreement, on September 24, 2019, (i) all amounts outstanding under the Wildcat Note, the RBOM Credit Facility and the Cap 1 Credit Agreement were repaid in full, and the Wildcat Note, the RBOM Credit Facility and the Cap 1 Credit Agreement were terminated, (ii) the Stockholders Agreement, the 2016 Registration Rights Agreement, the 2018 Registration Rights Agreement and the Voting Agreement were terminated in accordance with their terms, and (iii) the Warrants were cancelled in exchange for the consideration described in Item 2.01 of this Current Report on Form 8-K, which is incorporated by reference into this Item 1.02.

Item 2.01. Completion of Acquisition or Disposition of Assets.

In accordance with the terms of the Merger Agreement, on September 24, 2019, Merger Sub merged with and into the Company (the “Merger”), with the Company continuing as the surviving corporation in the Merger as a direct, wholly-owned subsidiary of Parent and an indirect, wholly-owned subsidiary of Vail Resorts. At the effective time of the Merger (the “Effective Time”): (i) each share of Common Stock issued and outstanding immediately prior to the Effective Time, other than Excluded Shares (as defined in the Merger Agreement), ceased to be outstanding and was converted into the right to receive \$11.00 in cash, without interest and less any applicable withholding taxes (the “Common Merger Consideration”); and (ii) each share of Series A Preferred Stock that was outstanding immediately prior to the Effective Time, other than Excluded Shares, was converted into the right to receive an amount equal to the sum of: (a) \$1,748.81; plus (b) the aggregate amount of all accrued and unpaid dividends on the applicable issuance of Series A Preferred Stock as of the Effective Time, in cash without interest.

Pursuant to the Merger Agreement, at the Effective Time: (i) each restricted stock unit (“RSU”) that was granted pursuant to the Company’s 2014 Equity Incentive Plan, as amended from time to time (the “Equity Incentive Plan”), that remained outstanding immediately prior to the Effective Time became fully vested immediately prior to the Effective Time and was cancelled and extinguished in exchange for the right to receive an amount, in cash, without interest, equal to the (a) Common Merger Consideration, multiplied by (b) number of RSUs held by such holder, less withholdings for any applicable taxes; and (ii) each Warrant was cancelled in exchange for the right to receive an amount in cash, without interest, equal to the product of: (a) the aggregate number of shares of Common Stock in respect of such Warrant; multiplied by (b) the excess of the Common Merger Consideration over the per share exercise price under such Warrant.

Furthermore, in accordance with the Merger Agreement, at the Effective Time, as a result of the Merger, each share of common stock, par value \$0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time (all of which shares were held of record by Parent) was converted into one validly issued, fully paid and nonassessable share of common stock, par value \$0.01 per share, of the Company, as the survivor of the Merger (the “Survivor Common Stock”), all of which shares of Survivor Common Stock, as a result of the Merger, (i) comprise all of the issued and outstanding capital stock of the Company as the survivor of the Merger, and (ii) are held of record by Parent.

The total amount of funds required to complete the Merger and the transactions contemplated thereby and pay related fees and expenses was approximately \$265 million, excluding related transaction fees and expenses and repayment of certain Company indebtedness, including the indebtedness described in Item 1.02 of this Current Report on Form 8-K, above. Parent funded the aggregate consideration through the proceeds from an expansion of Vail Resorts’ existing credit facility.

The foregoing summary of the Merger and the Merger Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Merger Agreement, which was attached as Exhibit 2.1 to the Company’s Current Report on Form 8-K filed with the SEC on July 22, 2019 and incorporated by reference herein.

The information set forth under “Introductory Note” of this Current Report on Form 8-K is incorporated by reference into this Item 2.01.

Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

On September 24, 2019, the Company notified The Nasdaq Stock Market LLC of the completion of the Merger and requested that The Nasdaq Stock Market LLC file with the SEC a notification of removal from listing and/or registration under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on Form 25 to delist the Common Stock from The Nasdaq Global Market and deregister the Common Stock under the Exchange Act. Trading of the Common Stock on The Nasdaq Global Market was suspended following the closing of trading on September 24, 2019. The Company intends to file with the SEC a certification on Form 15 under the Exchange Act requesting the termination of the registration of the Common Stock under Section 12(g) of the Exchange Act and the suspension of the Company’s reporting obligations under Section 13(a) and Section 15(d) of the Exchange Act.

The information set forth under “Introductory Note” and Item 2.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.01.

Item 3.03. Material Modification to Rights of Security Holders.

As set forth under Item 2.01 of this Current Report on Form 8-K, as of the Effective Time, all issued and outstanding shares of the Common Stock, other than Excluded Shares, ceased to be outstanding and were converted into the right to receive the Common Merger Consideration. At the Effective Time, all holders of Common Stock ceased to have any rights with respect thereto other than the right to receive the Common Merger Consideration pursuant to the Merger Agreement.

The information set forth under “Introductory Note,” Item 2.01 and Item 3.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

Item 5.01. Changes in Control of Registrant.

As a result of the Merger, a change in control of the Company occurred, and the Company is now a direct, wholly-owned subsidiary of Parent and an indirect, wholly-owned subsidiary of Vail Resorts.

The information set forth under “Introductory Note” and Item 2.01 and 5.02 of this Current Report on Form 8-K is incorporated by reference into this Item 5.01.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Upon consummation of the Merger, (i) at the Effective Time, Timothy D. Boyd, David W. Braswell, Richard K. Deutsch, Stanley W. Hansen, Rory A. Held, Carl E. Kraus, Stephen J. Mueller and Christopher S. O’Connor ceased service as directors of the Company and (ii) as of 5:00 PM Central Standard Time on September 24, 2019, Timothy D. Boyd, Christopher J. Bub, Richard K. Deutsch and Stephen J. Mueller shall cease to be officers of the Company. Simultaneously, Robert A. Katz and David T. Shapiro, the directors of Merger Sub immediately prior to the Effective Time, became the directors of the Company as the survivor of the Merger until their respective successors are duly elected or appointed and qualified or their earlier death, resignation or removal and Robert A. Katz and David T. Shapiro, the officers of Merger Sub immediately prior to the Effective Time, became the officers of the Company as the survivor of the Merger until their respective successors are duly elected or appointed and qualified or their earlier death, resignation or removal, in each case, in accordance with the Amended and Restated Articles of Incorporation and the Amended and Restated By-laws (each as defined herein). Information with respect to Robert A. Katz and David T. Shapiro as required by Item 5.02 is set forth in Vail Resorts’ definitive proxy statement on Schedule 14A for its 2018 annual meeting of stockholders, as filed with the SEC on October 22, 2018.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Pursuant to the Merger Agreement, at the Effective Time and as a result of the Merger, the amended and restated articles of incorporation of the Company were amended and restated in their entirety and such amended and restated articles of incorporation (the “Amended and Restated Articles of Incorporation”) were filed as Exhibit A to the Summary Articles of Merger with the Missouri Secretary of State and became the Amended and Restated Articles of Incorporation of the Company as the survivor of the Merger. Also pursuant to the Merger Agreement and resolutions adopted immediately after the Effective Time by the new directors of the Company as the surviving corporation, the amended and restated by-laws of the Company were amended and restated to read in their entirety as the by-laws of Merger Sub as in effect immediately prior to the Effective Time (the “Amended and Restated By-laws”). A copy of the Amended and Restated Articles of Incorporation and a copy of the Amended and Restated By-laws are attached as Exhibit 3.1 and Exhibit 3.2 to this Current Report on Form 8-K, respectively, and incorporated by reference herein.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits*

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
<u>2.1*</u>	<u>Agreement and Plan of Merger, dated as of July 20, 2019, by and among Vail Holdings, Inc., VRAD Holdings, Inc., Peak Resorts, Inc. and, solely for the purposes stated in Section 9.14, Vail Resorts, Inc. (filed as Exhibit 2.1 to Peak Resorts, Inc.’s Current Report on Form 8-K filed on July 22, 2019 and incorporated herein by reference).</u>
<u>3.1</u>	<u>Amended and Restated Articles of Incorporation of Peak Resorts, Inc.</u>
<u>3.2</u>	<u>Amended and Restated By-laws of Peak Resorts, Inc.</u>

* Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby undertakes to supplementally furnish copies of any omitted schedules to the Securities and Exchange Commission upon request.

SIGNATURES

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

Dated: September 24, 2019

PEAK RESORTS, INC.

(Registrant)

By: /s/ Christopher J. Bub

Name: Christopher J. Bub

Title: Chief Financial Officer

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Section 2: EX-3.1 (EXHIBIT 3.1)

Exhibit 3.1

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF PEAK RESORTS, INC.

Pursuant to the provisions of The General and Business Corporation Law of Missouri, the undersigned Corporation certifies the following:

1. The present name of the corporation is Peak Resorts, Inc. The name under which the corporation was organized is Peak Resorts, Inc.
2. The Amended and Restated Articles of Incorporation were adopted by the shareholders entitled to vote thereon at a special meeting of shareholders duly held on September 20, 2019 in connection with the adoption and approval of the Agreement and Plan of Merger.
3. The numbers of issued and outstanding shares of any class entitled to vote on the amendment were as follows:

Class	Number of Outstanding Shares	Number of Outstanding Shares Entitled to Vote
Common	15,227,562	15,227,562
Series A Cumulative Convertible Preferred	40,000	40,000

4. Each share of outstanding Series A Cumulative Convertible Preferred Stock had the equivalent of 158.9825 votes per share, or 6,359,300 votes in the aggregate, which number is equal to the number of shares of Common Stock of the corporation into which each such share of Series A Cumulative Convertible Preferred Stock was convertible on the record date for the special meeting of shareholders duly held on September 20, 2019.
5. The number of shares of each class voted for and against the amendment was as follows:

Class	No. Voted For	No. Voted Against
Common	12,889,899	1,747
Series A Cumulative Convertible Preferred	6,359,300	0

6. If the amendment provides for an exchange, reclassification, or cancellation of issued shares, or a reduction of the number of authorized shares of any class below the number of issued shares of that class, the following is a statement of the manner in which such reduction shall be effective:

Each share of Common Stock and Series A Cumulative Convertible Preferred Stock issued and outstanding at the effective time of these Amended and Restated Articles of Incorporation (the "Effective Time"), other than the Excluded Shares (as such term is defined in the Agreement and Plan of Merger), shall be converted into the right to receive such cash consideration as set forth in the Agreement and Plan of Merger among VRAD Holdings, Inc., Peak Resorts, Inc. and certain related parties, dated as of July 20, 2019. Each of the shares of Common Stock and Series A Cumulative Convertible Preferred Stock, other than the Excluded Shares, shall cease to be outstanding, shall be automatically canceled and shall cease to exist. At the Effective Time, each Excluded Share (other than Dissenting Shares, as defined in the Agreement and Plan of Merger) will be automatically canceled without payment of any consideration. Each Dissenting Share will not be converted into the right to receive the applicable merger consideration, unless and until such shareholder fails to perfect or effectively withdraws or loses such shareholder's right to appraisal under Section 351.455 of the General and Business Corporation Law of the State of Missouri, at which time each such share will be converted into and will be exchangeable only for the right to receive, as of the later of the Effective Time and the time that such right to appraisal is irrevocably lost, the applicable cash consideration as set forth in the Agreement and Plan of Merger.

7. The corporation's Articles of Incorporation are hereby amended and restated in their entirety by inserting the following attached pages in lieu thereof.

8. The effective date of the Amended and Restated Articles of Incorporation is the date it is filed by the Secretary of State of Missouri.

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
PEAK RESORTS, INC.**

ARTICLE ONE

The name of the corporation (hereinafter referred to as the "Corporation") is: Peak Resorts, Inc.

ARTICLE TWO

The address, including street and number, if any, of the Corporation's registered office in this state is 17409 Hidden Valley Drive, Eureka, MO 63025. The name of its agent at such address is Timothy D. Boyd.

ARTICLE THREE

The aggregate number, class and par value, if any, of shares which the Corporation shall have authority to issue is One Thousand (1,000) shares of Common Stock, par value of \$0.01 per share.

The preferences, qualifications, limitations, restrictions, and the special or relative rights, including convertible rights, if any, in respect of the shares of each class are as follows:

1. There shall be no preemptive rights of shareholders to acquire additional shares, and in that respect, preemptive rights are specifically denied.
2. All cumulative voting rights are hereby denied, so that the Common Stock of the Corporation shall not carry with it and no holder or owner of any share or shares of the Common Stock shall have any right to cumulative voting in the election of directors or for any other purpose.
3. The foregoing provisions are not intended to modify or prohibit any provisions of any voting trust or agreement between or among holders or owners of shares of stock or other securities of the Corporation.

ARTICLE FOUR

The duration of the Corporation is perpetual.

ARTICLE FIVE

The purpose of the Corporation is to do anything permitted of corporations formed pursuant to the provisions of The General and Business Corporation Law of Missouri, as amended from time to time.

ARTICLE SIX

The number of directors to constitute the Board of Directors of the Corporation shall be fixed by, or in the manner provided in, the Bylaws of the Corporation.

ARTICLE SEVEN

The Board of Directors is expressly authorized to make, amend, alter and rescind the Bylaws of the Corporation.

ARTICLE EIGHT

A. Actions Involving Directors and Officers. The Corporation shall indemnify each person who at any time is serving or has served as a director or an officer of the Corporation against any claim, loss, liability, damage, judgment, inquiry, fine and any fee, cost or expense incurred as a result of such service, or as a result of any other service on behalf of the Corporation, or service at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise, to the maximum extent permitted by law. Without limiting the generality of the foregoing, the Corporation shall indemnify any such person who was or is a party (other than a party plaintiff suing on his own behalf or in the right of the Corporation), or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, but not limited to, an action by or in the right of the Corporation) by reason of such service against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding.

B. Actions Involving Employees or Agents.

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

2. To the extent that an employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section B(1) of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the action, suit or proceeding.

C. Determination of Right to Indemnification in Certain Circumstances. Any indemnification required under Section A of this Article or authorized by the Corporation under Section B of this Article, unless ordered by a court, shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in or established pursuant to this Article. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the shareholders.

D. Advance Payment of Expenses. Expenses incurred by a person who is or was a director or an officer of the Corporation in defending a civil or criminal claim, action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of, and within ten (10) business days of receipt by the Company from such director or officer of a request therefor, such action, suit or proceeding, and expenses incurred by a person who is or was an employee or agent of the Corporation in defending a civil or criminal claim, action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such claim, action, suit or proceeding as authorized by the Board of Directors, in either case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such advanced amount if it is determined by a final determination of a court of competent jurisdiction (which determination is not subject to appeal) that he is not entitled to be indemnified by the Corporation as authorized in or pursuant to this Article or applicable law.

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

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

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

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

I. Certain Definitions. For the purposes of this Article:

1. Any director or officer of the Corporation who shall serve as a director, officer or employee of any other corporation, partnership, joint venture, trust or other enterprise of which the Corporation, directly or indirectly, is or was the owner of a majority of either the outstanding equity interests or the outstanding voting stock (or comparable interests) shall be deemed to be serving as such director, officer or employee at the request of the Corporation, unless the Board of Directors of the Corporation shall determine otherwise. In all other instances where any person shall serve as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise of which the Corporation is or was a stockholder or creditor, or in which it is or was otherwise interested, if it is not otherwise established that such person is or was serving as such director, officer, employee or agent at the request of the Corporation, the Board of Directors of the Corporation may determine whether such service is or was at the request of the Corporation, and it shall not be necessary to show any actual or prior request for such service.

2. References to a corporation include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director, officer, employee or agent of such a constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this Article with respect to the resulting or surviving corporation as he would if he had served the resulting or surviving corporation in the same capacity.

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

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

ARTICLE NINE

The Corporation shall have full authority to amend these Articles of Incorporation, at any time or from time to time, as permitted by the provisions of The General and Business Corporation Law of Missouri, as amended from time to time.

ARTICLE TEN

The liability of the Corporation's directors to the Corporation or any of its shareholders for monetary damages for breach of fiduciary duty as a director shall be eliminated to the fullest extent permitted under The General and Business Corporation Law of Missouri. Any repeal or modification of this Article by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

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Section 3: EX-3.2 (EXHIBIT 3.2)

Exhibit 3.2

AMENDED AND RESTATED
BYLAWS
OF
PEAK RESORTS, INC.
(effective as of September 24, 2019)

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**SECOND AMENDED AND RESTATED
BYLAWS
OF
PEAK RESORTS, INC.**

ARTICLE I.

SHAREHOLDERS' MEETINGS

Section 1.1 Annual Meetings. An annual meeting of shareholders shall be held on such date and at such time as determined by the board of directors and as indicated in the notice of such meeting. Every meeting of the shareholders shall be convened at the hour stated in the notice for said meeting and continue until declared adjourned by a vote of the shareholders present or declared adjourned by the presiding officer. At such meeting, a board of directors shall be elected and such other business shall be transacted as may properly be brought before the meeting.

Section 1.2 Notice of Annual Meeting. Written or printed notice of the annual meeting stating the place, day and hour of the meeting shall be delivered or given, either personally or by mail, to each shareholder of record entitled to vote thereat at such address as appears on the books of the corporation, not less than ten or more than sixty days before the date of the meeting. Written notice shall include, but not be limited to, notice by electronic transmission which means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

Section 1.3 Special Meetings. Special meetings of the shareholders or of the holders of any special class of stock of the corporation may be called by the chairman of the board or the president at any time unless otherwise provided by law, and shall be directed to do so by resolution of the board of directors or whenever shareholders owning not less than one fifth of all the shares issued and outstanding and entitled to vote at the particular meeting shall request such a meeting in writing. Such request shall be delivered to the president of the corporation and shall state the purpose or purposes of the proposed meeting. Upon such direction or request, it shall be the duty of the president to call a special meeting of the shareholders to be held at any time, not less than ten (10) nor more than sixty (60) days thereafter, as the president may fix. If the president shall neglect to issue such call, the person or persons making such direction or request may issue the call. The business transacted at any special meeting of shareholders shall be confined to the purposes stated in the notice.

Section 1.4 Notice of Special Meeting. Written or printed notice of a special meeting of shareholders, stating the place, day, hour and purpose or purposes thereof, shall be delivered or given, either personally or by mail, to each shareholder of record entitled to vote thereat at such address as appears on the books of the corporation, not less than ten (10) or more than sixty (60) days before the date of the meeting. Written notice shall include, but not be limited to, notice by electronic transmission which means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

Section 1.5 Place of Meetings. All meetings of the shareholders shall be held at the principal business office of the corporation or at such other place as the board of directors may specify in the notice of such meeting.

Section 1.6 Quorum; Adjournment. A majority of the shares issued and outstanding and entitled to vote thereat, represented in person or by proxy, shall constitute a quorum at all meetings of the shareholders for the transaction of business, except as otherwise provided by statute. If, however, such quorum shall not be present or represented at any meeting of the shareholders, the shareholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time for successive periods of not more than ninety days, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally scheduled.

Section 1.7 Voting. When a quorum is present at any meeting, the vote of the holders of a majority of the shares having voting power represented in person or by proxy shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the statutes, the articles of incorporation, or these bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such questions.

At any meeting of the shareholders, every shareholder having the right to vote shall be entitled to vote in person, or by proxy appointed by a proper instrument in writing subscribed by the shareholder or by his/her duly authorized attorney in fact. Each shareholder shall have one vote for each share having voting power, registered in his/her name on the books of the corporation.

Without limiting the manner in which a shareholder may authorize a person to act for the shareholder as proxy pursuant to this section, the following shall constitute a valid means by which a shareholder may grant such authority:

(a) A shareholder or the shareholder's duly authorized attorney-in-fact may execute a writing authorizing another person to act for the shareholder as proxy. Execution may be accomplished by the shareholder or duly authorized attorney-in-fact signing such writing or causing the shareholder's signature to be affixed to such writing by any reasonable means, including, but not limited to, facsimile signature;

(b) A shareholder may authorize another person to act for the shareholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, facsimile or other means of electronic transmission, or by telephone, to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram, facsimile or other means of electronic transmission, or telephonic transmission shall either set forth or be submitted with information from which it can be determined that the telegram, cablegram, facsimile or other electronic transmission, or telephonic transmission was authorized by the shareholder. If it is determined that such telegrams, cablegrams, facsimiles or other electronic transmissions, or telephonic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making such determination shall specify the information upon which they relied. "Electronic transmission" shall mean any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

Section 1.8 Action by Consent. Any action which may be taken at any meeting of the shareholders may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

Section 1.9 Waiver of Notice. Whenever any notice is required to be given, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE II.

DIRECTORS

Section 2.1 Number, Election and Term. The Board shall consist of one or more members, the number thereof to be determined from time to time by the Board. Directors need not be shareholders.

The directors, other than the first board of directors, shall be elected at the Annual Meeting of the Shareholders, and each director shall serve until the next succeeding annual meeting of shareholders and until his/her successor shall have been elected and qualified. The first board of directors shall hold office until the first Annual Meeting of the Shareholders.

Section 2.2 Resignation; Vacancy. Any director of the corporation may resign at any time by giving written notice of such resignation to the board of directors, the chairman of the board, the president, any vice president or the secretary of the corporation. Any such resignation shall take effect at the time specified therein or, if no time be specified, upon receipt thereof by the board of directors or one of the above named officers; and, unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.

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

Section 2.3 Annual Meetings. An annual meeting of the board shall be held at such time and place as shall be fixed by the vote of the shareholders at the annual meeting and no notice of such meeting shall be necessary to the directors in order legally to constitute the meeting provided a quorum shall be present, or they may meet at such place and time as shall be fixed by the consent in writing of all the directors.

Section 2.4 Regular Meetings. Regular meetings of the board of directors shall be held at such places, within or without the State of Missouri, and on such days and at such times as shall be fixed from time to time by the board of directors. Notice of such regular meetings need not be given.

Section 2.5 Special Meetings. Special meetings of the board may be held at any time and place, within or without the State of Missouri, upon the call of the chairman of the board, the president or secretary of the corporation by oral, written, telegraphic, facsimile transmission or any other mode of notice duly given, sent or mailed to each director, at such director's last known address, not less than two (2) days before such meeting provided.

Section 2.6 Quorum; Adjournment. At all meetings of the board, a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by statute. If a quorum shall not be present at any meeting of directors, the directors present thereat may adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 2.7 Place of Meetings. The directors may hold their meetings at the principal business office of the corporation or at such other place as they may determine.

Section 2.8 Board Committees. The board may designate an executive committee and one or more other committees, each committee to consist of two or more directors of the corporation. Any such committee, to the extent provided in any such resolution, shall have and may exercise all the powers and authority of the board in the management of the business and affairs of the corporation.

Section 2.9 Participation via Conference Telephone. Members of the board of directors or of any committee designated by the board of directors may participate in a meeting of the board or committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

Section 2.10 Waiver of Notice. Whenever any notice is required to be given, a waiver thereof in writing, by telegram or facsimile transmission from the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 2.11 Attendance Constitutes Waiver of Notice. Attendance of a director at any meeting shall constitute a waiver of notice of the meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 2.12 Action by Consent. Any action which is required to be or may be taken at a meeting of the directors may be taken without a meeting if consents in writing, setting forth the action so taken, are signed by all the directors.

Section 2.13 Compensation of Directors. Directors, as such, shall not receive any stated salary for their services, but by resolution of the board a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board; provided that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

ARTICLE III.

OFFICERS

Section 3.1 Number, Election, Salary and Term. The officers of the corporation shall be a president and a secretary who shall be chosen by the board of directors at its first meeting after each annual meeting of shareholders. The board of directors may also choose a chairman of the board, one or more vice chairmen, a chief executive officer, one or more vice presidents, one or more of which may be designated as senior vice presidents or executive vice presidents, a treasurer, and one or more assistant secretaries and assistant treasurers.

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

The salaries of all officers and agents of the corporation shall be fixed by the board of directors or its designee(s).

The officers of the corporation shall hold office until their successors are chosen. Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the board of directors.

Section 3.2 Chairman of the Board. The chairman of the board, if any, shall preside at all meetings of the shareholders and directors at which he/she is present and shall perform such other duties as the board of directors or these bylaws may prescribe.

Section 3.3 Vice Chairmen. In the absence of the chairman of the board, the vice chairmen, if any, in order of their seniority, shall perform the duties and exercise the powers of the chairman of the board, preside at all meetings of the shareholders and directors at which any are present and perform such other duties as the board of directors may prescribe.

Section 3.4 President/Chief Executive Officer. In the absence of the chairman of the board and any vice chairmen, the president shall preside at all meetings of the shareholders and directors at which he/she is present. If no officer has been expressly designated as chief executive officer by the board of directors, the president shall be chief executive officer of the corporation, with the powers and duties which attach to such position. He/she shall perform such duties as the board of directors may prescribe and shall see that all orders and resolutions of the board are carried into effect.

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

Section 3.5 Senior Vice Presidents and Executive Vice Presidents. Senior vice presidents and executive vice presidents shall perform such duties and exercise such powers as shall be delegated by the chief executive officer or as shall be designated by the board of directors.

Section 3.6 Vice Presidents. Vice presidents shall perform such duties and exercise such powers as shall be delegated by the chief executive officer or as shall be designated by the board of directors.

Section 3.7 Secretary and Assistant Secretaries. The secretary shall keep or cause to be kept a record of all meetings of the shareholders and the board of directors and record all votes and the minutes of all proceedings in a book to be kept for that purpose. He/she shall give, or cause to be given, notice of all meetings of the shareholders and special meetings of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or chief executive officer, under whose supervision he/she shall be.

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

Section 3.8 Treasurer and Assistant Treasurers. The treasurer, if any, shall have the custody of the corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors and shall perform such other duties as the board of directors may prescribe.

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

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

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

ARTICLE IV.

CAPITAL STOCK

Section 4.1 Share Certificates. The certificates representing shares of the corporation shall be numbered and shall be entered in the books of the corporation as they are issued. They shall exhibit the holder's name and number of shares and shall be signed by the president and the secretary or by such other officers authorized so to do by law.

Section 4.2 Transfer of Stock. Upon surrender to the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction upon its books.

Section 4.3 Registered Shareholders. The corporation shall be entitled to treat the holder of record of any share or shares as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

Section 4.4 Closing of Transfer Books and Fixing of Record Date. The board of directors shall have the power to close the transfer books of the corporation for a period not exceeding fifty (50) days preceding the date of any meeting of shareholders, or the date for payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect; provided, however, that in lieu of closing the transfer books as aforesaid, the board of directors may fix in advance a date, not exceeding fifty (50) days preceding the date of any meeting of shareholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares shall go into effect, as a record date for the determination of the shareholders entitled to notice of, and to vote at any such meeting and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or entitled to exercise the rights in respect of any such change, conversion or exchange of shares. In such case only the shareholders who are shareholders of record on the record date so fixed shall be entitled to such notice of and to vote at such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the date of closing of the transfer books or the record date fixed as aforesaid.

Section 4.5 Lost Certificate. The holder of any shares of stock of the corporation shall immediately notify the corporation and its transfer agents and registrars, if any, of any loss or destruction of the certificates representing the same. The corporation may issue a new certificate in the place of any certificate theretofore issued by it which is alleged to have been lost or destroyed and the board of directors may require the owner of the lost or destroyed certificate or such owner's legal representative to give the corporation a bond in such sum and in such form as the board of directors may direct or approve, and with such surety or sureties as may be satisfactory to the board of directors, to indemnify the corporation and its transfer agents and registrars, if any, against any claim or liability that may be asserted against or incurred by it or any transfer agent or registrar on account of the alleged loss or destruction of any such certificate or the issuance of such new certificate. A new certificate may be issued without requiring any bond when, in the judgment of the board of directors, it is proper so to do. The board of directors may delegate to any officer or officers of the corporation any of the powers and authorities contained in this section.

ARTICLE V.

DIVIDENDS

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

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

ARTICLE VI.

FISCAL YEAR

The fiscal year of the corporation shall be determined by resolution of the board of directors.

ARTICLE VII.

SEAL

The corporation shall have no corporate seal.

ARTICLE VIII.

ALTERATION, AMENDMENT OR REPEAL OF BYLAWS

All bylaws of the corporation may be amended, altered or repealed, and new bylaws may be made, by (i) the affirmative vote of a majority of the directors cast at any regular or special meeting at which a quorum is present provided that such authority has been delegated to the board of directors by the Articles of Incorporation or (ii) the affirmative vote of the holders of record of a majority of the outstanding shares of stock of the corporation entitled to vote at any annual or special meeting.