

March 6, 2023

Via Email and Certified Mail

J. Craig Smith
SMITH HARTVIGSEN, PLLC
175 South Main, Suite 300
Salt Lake City, Utah 84111
jcsmith@SHutah.law

RE: *Cease and Desist Material Breaches of License Agreement and Water System Operating Agreement between Skyline Mountain Resort and Skyline Mountain Special Service District; Notice of Default*

Mr. Smith:

This firm represents Sports Haven International d/b/a Skyline Mountain Resort (“**SMR**”). We are in the process of assembling, reviewing, and analyzing the various documents that govern the relationship between SMR and SMSSD. We have received and reviewed that certain License Agreement (the “**License Agreement**”), dated December 5, 2012, and the Water System Operating Agreement, dated February 1, 2013 (the “**Operating Agreement**” and, together with the License Agreement, the “**Agreements**”). SMSSD appears to have materially breached the Agreements. This letter constitutes SMR’s formal demand that SMSSD (1) cease and desist any ongoing breach of the Agreements, and (2) provide SMR all documents that it previously requested as discussed below.

The Operating Agreement contemplates SSMD’s receipt of funds for “certain upgrades and new facilities” relating to the “acquisition and construction of drinking water system improvements, and other related improvements to the District’s System.” See Operating Agreement, Recital D and Definitions (“Project”). The Operating Agreement requires SMR to:

advise the District and its Board regarding water rates so that the rates for all water service supplied by the System to all customers within or without the boundaries of the District shall be sufficient to pay the cost of operating and maintaining the System and the payment of debt

3165 East Millrock Drive
Suite 500
Salt Lake City, Utah
84121-4704

t (801) 438-2000
f (801) 438-2050
www.btjd.com

obligations secured by the Revenues of the System including approved funding from the Drinking Water Board any other Bonds or indebtedness of the District.

See id. § 2(c). To facilitate performance of this provision, SMSSD agreed to “cooperate” with SMR “in carrying out the express intent of [the Operating Agreement], including the timely execution of all necessary documents and the provision of records and information to [SMR] as requested.” *See id.* § 8.1.

Notwithstanding the foregoing, SMR informs us that SMSSD has failed or refused to provide SMR information and documents that it has requested regarding, without limitation, SMSSD’s current debt obligations and any proposal to incur additional indebtedness. SMSSD has apparently taken the position that such matters are of no concern to SMR. Of course, this stance violates both the letter and spirit of the Agreements. Nothing in the Agreements suggests that SMSSD may properly keep SMR in the dark regarding its operations. Indeed, as discussed above, the Operating Agreement says exactly the opposite. As such, SMR requests that SMSSD provide SMR, as soon as possible, copies of:

- All governing documents of SMSSD, including, without limitation, all articles, bylaws, policies, or procedures;
- All documents related to any current debt obligation of SMSSD;
- All documents related to any application or proposal for additional funding;
- All documents related to any agreement between SMSSD and any other party relating to any SMSSD property, including water rights; and
- All correspondence, including, without limitation, emails, letters, and text messages, relating to the foregoing documents.

SMR is also concerned that SMSSD’s refusal to provide SMR information and documents as required has masked other violations of the Agreements. For example, we understand that SMSSD has attempted to improperly expand its water system to new users and even transfer water rights to others, despite a water shortage that impairs SMSSD’s ability to meet SMR’s needs. This despite the Operating Agreement’s clear language that SMSSD may not “sell, lease, or in any manner dispose of the System or any substantial part thereof” and the “System” includes “all property, real, personal and mixed, of every nature now or hereafter owned by the District and used or useful in the operation” of the water system. *See Operating Agreement § 2(d)*. If the actual water is not to be considered “used or useful” in SMSSD’s water system, it is difficult to imagine what would be.

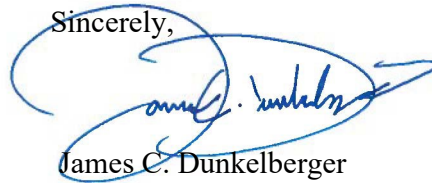
Again, SMR fears that the items discussed herein are just the tip of the iceberg. As such, pursuant to Section 7.2 of the Operating Agreement, SMR hereby gives notice that SMSSD has failed to comply with its obligation to provide information and documents previously requested by SMR. SMSSD must take immediate steps to cure and come compliant with its obligations.

In addition, SMR hereby demands that SMSSD immediately place on hold any application, transaction, or proposal that would constitute an additional violation of the Agreements, including, without limitation, any attempt to transfer water rights.

Please contact me as soon as possible to confirm that your client has complied with this cease and desist letter and acknowledge receipt of the notice provided herein. If I do not hear from you, and/or if your client persists in its current course, SMR will have no choice but to commence a lawsuit against SMSSD. Should litigation prove necessary, SMR is prepared to bring to bear its full range of remedies available under the Agreements and Utah law.

Thank you for your time and attention to this matter. Please let me know if you have any immediate questions or other follow up.

Sincerely,



James C. Dunkelberger