

WATER SYSTEM OPERATING AGREEMENT

PIPELINES & EASEMENTS/RIGHTS-OF-WAY

WATER SYSTEM OPERATING AGREEMENT

This Water System Operating Agreement ("Agreement") is entered into as of February 1, 2013, by and between the **Skyline Mountain Special Service District**, a Utah special service district whose address is 2201 Skyline Mountain Resort, Fairview, Utah 84629 ("District"), and **Sports Haven International**, a Utah non-profit corporation, DBA Skyline Mountain Resort whose address is 11860 East Clubhouse Drive, RR 1 PO Box 247, Fairview, Utah 84629 ("Company").

RECITALS

- A. The District owns a culinary water system in the Fairview area of Sanpete County.
- B. The District's culinary water system consists generally of water rights, wells, a storage tank, distribution lines, certain real property interests, and certain personal property, as is more particularly itemized in Exhibit A (collectively, the "System" as more fully defined herein).
- C. The Company, as a homeowner's association, owns and operates real properties, including recreational properties, such as a swimming pool, golf course, club house, and areas for primary and secondary homes that are within the service area of the District.
- D. The District's System is in need of certain upgrades and new facilities (the "Project") and the District has obtained a \$3,007,000 funding commitment from the State of Utah Department of Environmental Quality, Drinking Water Board ("DWB" or "Drinking Water Board") for such improvements.
- E. The value of the Company properties will be enhanced by the District's upgraded facilities, which value would be further enhanced by providing quality management and operation of the District's System.
- F. Because of the legal structure of the Company, in the event of non-payment of invoices and other amounts owing by members of the Company, it has certain enforcement measures available to it that are not available to the District, including the ability to place liens against properties of the Company's members, associated with unpaid invoices.
- G. It is the intent of the parties that the Company will send out and collect invoices for the District.

AGREEMENT

NOW THEREFORE, in consideration of the terms and conditions contained herein, which the parties expressly deem to be legally sufficient consideration, the parties hereby agree as follows:

DEFINITIONS

“Bondholder” or “Registered Owner” means the holder of any indebtedness of the District.

“Bonds” means any indebtedness of the District.

“Closing” means the closing by the District on its loan approved by the Utah Department of Environmental Quality, Drinking Water Board, whereby the District obtains funding for System improvements.

“Net Revenues” means the Revenues after provision has been made for the payment therefrom of Operation and Maintenance Expenses.

“Operation and Maintenance Expenses” means all expenses reasonably incurred in connection with the operation and maintenance of the System, after tax revenues, if any, are applied to such expenses, including the cost of water and water treatment, whether incurred by the District or paid to any other municipality or company pursuant to contract or otherwise, repairs and renewals (other than capital improvements) necessary to keep the System in efficient operating condition, the cost of audits hereinafter required, fees of the paying agents on Bonds, payment of premiums for insurance on the System hereafter required and, generally, all expenses, exclusive of depreciation, which under generally accepted accounting practices are properly allocable to operation and maintenance of the System, but only such expenses as are reasonably and properly necessary to the efficient operation and maintenance of the System shall be included.

“Project” means the acquisition and construction of drinking water system improvements, and other related improvements to the District's System, including all equipment and necessary appurtenances thereof related to the funding approved by the Drinking Water Board.

“Revenues” means all gross income and revenues of any kind, from any source whatsoever, derived from the operation of the System, including, without limitation, all fees, rates, connection charges, impact fees imposed with respect to the Project to the extent such impact fees are pledged and available for payment of Bonds, if any, and other charges, the gross revenues of all improvements, additions, and extensions of the System hereafter constructed or acquired, and all interest earned by and profits derived from the sale of investments made with the income and Revenues. Revenues does not mean property taxes imposed or collected by or on behalf of the District to be used for Operation and Maintenance Expenses.

“System” means the whole and each and every part of the culinary water system of the District, including the Project to be acquired and constructed pursuant to the funding from the DWB, and all property, real, personal and mixed, of every nature now or hereafter owned by the District and used or useful in the operation of such water system, together with all improvements, extensions, enlargements, additions, and repairs thereto which may be made.

1. OWNERSHIP OF WATER SYSTEM

The parties hereby acknowledge and recognize that at all times the District's System and all parts and components thereof, including all water rights, rights-of-way, easements, wells, tanks, etc., including, but not limited to, all assets listed on Exhibit A, are exclusively owned by the District, and only the District, and that the Company has no real or personal property interest in any part or component of the District's culinary water System, whether set forth in Exhibit A or otherwise, either now existing, or as may be acquired hereafter except the Company's reversionary interest as set forth in the Company's Bill of Sale to the District dated February 28, 2009, the Company's Water Rights Deed to the District dated February 28, 2009 and recorded in the Office of the Sanpete County Recorder on September 8, 2009 in Book 593 at Page 1204, as entry number 165581, and the License Agreement between the District and the Company dated December 5, 2012 and recorded in the Office of the Sanpete County Recorder on December 13, 2012 in Book 640 at Page 1182, as entry number 187954. The parties further acknowledge and recognize that all assets and funds of the District's System must be kept separate, apart and independent from any assets and funds of the Company and that any and all additions or improvements to the District's System shall be the sole and exclusive property of the District and that the Company shall have no ownership interest now, or at any time, in any part or component of the District's System except the Company's reversionary interest referred to above. The Company hereby agrees that it shall keep all District assets and funds separate, apart and independent from any and all Company assets and funds. Pursuant to the Company's reversionary interest referred to above in this paragraph 1, hereinafter referred to as the "Company's Reversionary Interest", title to the water distribution system, water rights, and license described in the above-referenced Bill of Sale, Water Rights Deed, and License Agreement, respectively, automatically revert to the Company upon the initiation of the dissolution process of the District. The Company's Reversionary Interest is hereby amended by adding the following requirement thereto: In the event the dissolution process of the District is initiated at any time after the date of this Agreement, said water distribution system, water rights, and license shall not revert back to the Company unless and until the Company, concurrently therewith, pays the then outstanding balance(s) of the District's Bonds, plus any amount, including penalties, to taxing authorities, that may become due and owing as a consequence of losing or no longer qualifying for tax exempt funding on System improvements. However, the Company at that time shall have the right, in the Company's sole discretion and in lieu of the foregoing, to waive the Company's Reversionary Interest, or to

assign the Company's Reversionary Interest and the assumption of the then outstanding balance(s) of the District's Bonds to a local governmental entity such as Sanpete County.

2. **OPERATION OF WATER SYSTEM**

- a. The Company, for and on behalf of the District, shall invoice all water customers of the District's System and shall take any and all steps or measures available to the Company to collect all invoices for the District, including delinquent or late payments, and the Company shall use all enforcement measures or methods available to it to collect such invoices, including the ability to place liens against property associated with members of the Company who are also customers of the System who are delinquent or late in payments to the District, consistent with the District's regulations. All Revenues collected related to the System are the funds and monies of the District and not the Company and shall be immediately delivered to the District, even if collected with the assistance of the Company. The District shall reimburse the Company for recording fees, court costs, and reasonable attorney fees expended by the Company to collect such invoices, including placing liens against property associated with members of the Company and any such lien foreclosure action or other debt collection action to collect on such invoices.
- b. Other than invoicing and collecting water payments, the System shall be operated by the District. The Company only agrees hereunder to send invoices and collect invoices for the District and otherwise does not agree to operate the District's System.
- c. The Company agrees 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 obligations secured by the Revenues of the System including approved funding from the Drinking Water Board any other Bonds or indebtedness of the District, which rates shall be sufficient to produce Net Revenues that are equal to or greater than 125% of the annual debt service on all debt obligations secured by the Revenues, provided such rates must be reasonable rates for the type, kind, and character of the service rendered. There shall be no free service to any customers, including the District.
- d. The Company will not sell, lease, mortgage, encumber, or in any manner dispose of the System or any substantial part thereof, including any and all extensions and additions that may be made. The District will not sell, lease, or in any manner dispose of the

System or any substantial part thereof, including any and all extensions and additions that may be made.

- e. The Company will not grant a franchise for the operation of any competing water system within District's limits or service area, and the Company shall not take any action or do anything that would provide competing water service within the District or its service area.
- f. The Company will maintain its identity, will make no attempt to cause its existence to be abolished and will resist all attempts by other entities to annex all or any part of the territory now or hereafter in the District or served by the System.

3. DISTRICT NOT LIABLE FOR COMPANY OBLIGATIONS

By this Agreement, the District does not assume any liabilities of the Company, nor take responsibility for any assets of the Company, nor assume any liability for the operations of the Company. The Company agrees to indemnify the District from any and all liabilities of the Company, such as employment taxes or other obligations of the Company related to Company employees or agents.

4. REPRESENTATIONS AND WARRANTIES

4.1 **Representations and Warranties of the Company.** The Company hereby represents and warrants to the District as follows:

- (a) **Status.** The Company is a Utah corporation validly existing and in good standing at this time under the laws of the State of Utah.
- (b) **Authority.** The Company has the absolute right, power, authority and capacity to enter into and perform this Agreement in accordance with its terms.
- (c) **Execution.** The execution and performance of this Agreement by the Company will not violate, or result in a breach of, or constitute a default under, any agreement, instrument, judgment, order or decree to which the Company is a party or to which the Company may be subject, nor will such execution or performance constitute a violation of any fiduciary duty to which the Company is subject.
- (d) **Binding Agreement.** Upon execution and delivery hereof, this Agreement and the agreements and instruments contemplated herein shall be legal, valid and binding obligations of the Company and shall be enforceable against the Company in accordance with their respective terms.

- (e) Suits and Proceedings. There are no suits or proceedings known to the Company to be pending or threatened in any court, arbiter or mediator, or before any administrative board, commission, or by any federal, state or other governmental department or agency, which directly or indirectly affect the District's culinary water System, or which, if adversely determined, would have a material adverse affect on the System or the transactions contemplated by this Agreement.
- (g) Third-Party Approvals. Other than Drinking Water Board approvals, no consents or approvals of any third party or parties are required prior to the execution, delivery and performance of this Agreement and the other documents referred to herein.
- (h) No Material Adverse Changes. Since the date of this Agreement there has not been and will not be any undisclosed, material adverse changes in the Company, its management or its assets, that are known to the Company.
- (i) No Misstatements. No statements of information or fact by the Company contained in this Agreement or furnished by the Company to the District pursuant to this Agreement, contain or will contain any untrue statement of a material fact, or have omitted any material fact(s) necessary to make such statements or information not misleading. There are no facts known to the Company which have not been disclosed to the District and which, in light of the circumstances presently prevailing, could reasonably be expected to have a material adverse effect on the District's System.

4.2 Representations and Warranties of the District. The District hereby represents and warrants to the Company as follows:

- (a) Status. The District is a Utah special service district duly organized, validly existing, and in good standing under the laws of the State of Utah, and has full power and authority to own, operate and lease its properties as presently owned, operated and leased.
- (b) Authority. The District has the absolute right, power, authority and capacity to enter into and perform this Agreement in accordance with its terms without any other or further authorization, action or proceeding.
- (c) Ownership of Water System. The District owns and holds legal and beneficial title of record to its culinary water System and all of the assets and rights constituting the same will be expressly set forth in Exhibit A.

- (d) Execution. The execution and performance of this Agreement by the District will not violate, or result in a breach of, or constitute a default under, any agreement, instrument, judgment, order or decree to which the District is a party or to which the District may be subject, nor will such execution or performance constitute a violation of any fiduciary duty to which the District is subject.
- (e) Binding Agreement. Upon execution and delivery hereof and as of Closing, this Agreement and the agreements and instruments contemplated herein shall be legal, valid and binding obligations of the District and shall be enforceable against the District in accordance with their respective terms.
- (f) Suits and Proceedings. There are no suits or proceedings known to the District to be pending or threatened in any court, arbiter or mediator, or before any administrative board, commission, or by any federal, state or other governmental department or agency, which directly or indirectly affect the water System, or which, if adversely determined, would have a material adverse effect on the System or the transactions contemplated by this Agreement.
- (f) Third-Party Approvals. Other than Drinking Water Board approvals, no consents or approvals of any third party or parties are required prior to the execution, delivery and performance of this Agreement and the other documents referred to herein.
- (g) No Misstatements. No statements of information or fact by the District contained in this Agreement or furnished by the District to the Company pursuant to this Agreement, contain or will contain any untrue statement of a material fact, or have omitted any material fact(s) necessary to make such statements or information not misleading. There are no facts known to the District which have not been disclosed to the Company and which, in light of the circumstances presently prevailing, could reasonably be expected to have a material adverse effect on this transaction.

5. **CONDITIONS PRECEDENT**

5.1 Conditions of the Company's Obligation to Close. The obligation of the Company to consummate the transactions contemplated by this Agreement is subject to the fulfillment (or the waiver thereof by the Company in writing) of the following conditions at or before Closing:

- (a) The District's Representations. All representations and warranties made by the District shall be true, accurate and correct as of Closing, and there shall be no breach in the warranties or covenants made hereunder by the District.

- (b) Delivery of Documents. The District shall have executed and delivered to the Company any and all documents necessary or advisable to consummate the transactions contemplated by this Agreement.

5.2 **Conditions of the District's Obligation to Close.** The obligation of the District to consummate the transactions contemplated by this Agreement is subject to the fulfillment (or the waiver thereof by the District in writing) of the following conditions at or before Closing:

- (a) The Company's Representations. All representations and warranties made by the Company shall be true, accurate and correct as of Closing, and there shall be no breach in the warranties or covenants made hereunder by the Company.
- (b) Delivery of Documents. The Company shall have executed and delivered to the District any and all documents required or necessary to consummate the transactions contemplated by this Agreement.

6. INDEMNIFICATION

6.1 **Indemnification of the Company.** Without waiving, and subject to, any governmental immunity provided by law to either party, the District shall indemnify, defend, and hold harmless the Company, and its officers, directors, employees and agents from any and all damages, claims, liabilities, losses, costs and expenses whatsoever arising out of, attributed to, or incurred with respect to: (a) any untruth, inaccuracy, or breach of any warranty or representation made by the District under this Agreement; (b) the untruths or inaccuracy of any representation in, or omission from any certificate or instrument executed and delivered or to be executed and delivered by or on behalf of the District in connection with this Agreement; (c) any obligation assumed by the District pursuant to this Agreement; and (d) any act or omission by the District in any liability, claim, loss or litigation involving the System and that relates to facts or circumstances arising prior to the Closing.

6.2 **Indemnification of the District.** Without waiving, and subject to, any governmental immunity provided by law to either party, the Company shall indemnify, defend, and hold harmless the District, and its officers, trustees, employees and agents from any and all damages, claims, liabilities, losses, costs and expenses whatsoever arising out of, attributed to, or incurred with respect to: (a) any untruth, inaccuracy, or breach of any warranty or representation made by the Company under this Agreement; (b) the untruths or inaccuracy of any representation in, or omission from any certificate or instrument executed and delivered or to be executed and delivered by or on behalf of the Company in connection with this Agreement; (c) any obligations of the Company; and (d) any act or omission by the Company in any liability, claim, loss or litigation

involving the System that relates to facts or circumstances not identified in Exhibit B arising after the Closing.

- 6.3 **Indemnification Procedures.** Upon receipt by an indemnified party of notice of any action, suit, proceeding, claim, demand or assessment against such indemnified party which might give rise to a claim for indemnification, each indemnified party shall give written notice of it to the indemnifying party indicating the nature of such matter and the basis for it. A claim to indemnity may, at the option of the indemnified party, be asserted as soon as such action has been threatened by a third party orally or in writing, regardless of whether actual harm has been suffered or out-of-pocket expenses incurred. The indemnifying party, at its expense, shall assume the complete defense of such action, suit, proceeding, claim, demand, or assessment with full authority to conduct such defense and to settle or otherwise dispose of the same, and the indemnified party will fully cooperate in such defense, and shall have the right to participate in such defense at its own cost and expense. Any such action shall be handled consistently with the commercially reasonable normal business practices of the indemnifying party. Notwithstanding anything to the contrary, the indemnifying party will not, in defense of any such action, suit, proceeding, claim, demand, or assessment, except with the consent of the indemnified party, consent to the entry of any judgment against the indemnified party or enter into any settlement which does not include as an unconditional term of it the giving by the claimant or plaintiff to the indemnified party of a release from all liability in respect of such matter. If the indemnifying party is precluded from, fails, or refuses to provide an adequate defense of the indemnified party, and the indemnified party has given notice to the indemnifying party of a demand to defend, the indemnifying party shall be liable to the indemnified party for such legal or other expenses subsequently incurred by the indemnified party in connection with the defense of any action, suit, proceeding, claim, demand, or assessment.

7. DEFAULT

In the event that any of the following occurs, the non-defaulting party shall be entitled to terminate this Agreement and to pursue any and all legal and/or equitable rights and remedies which it may have against the defaulting party including, without limitation, the remedy of specific performance:

- 7.1 **False Statement.** Any written representation, warranty or statement made by either party hereto, or any written statement, report or document which is required to be furnished to either party hereunder, which is materially false or misleading; or
- 7.2 **Failure to Comply.** Failure by either party to comply with any or all terms of this Agreement, provided that such failure has continued for ten (10) days following receipt by the other party of written notice specifying

with particularity such failure and requesting the defaulting party to cure such failure.

8. **ADDITIONAL PROVISIONS**

- 8.1 **Cooperation.** Both the Company and the District agree to cooperate with each other in carrying out the express intent of this Agreement, including the timely execution of all necessary documents and the provision of records and information to the other party as requested.
- 8.2 **Survival of Representations and Warranties.** The respective obligations of the District and the Company hereunder and all representations and warranties made in this Agreement, all exhibits hereto, and all certificates and documents delivered pursuant hereto, shall survive Closing.
- 8.3 **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.
- 8.4 **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.
- 8.5 **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.
- 8.6 **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.
- 8.7 **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.
- 8.8 **Cumulative Remedies.** The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.
- 8.9 **Merger.** Except for the Bill of Sale, Water Rights Deed, and License Agreement, all as described and referred to in paragraph 1 above, this Agreement constitutes the entire agreement between the parties relating

to the operation of the District's culinary water System and supersedes, terminates, and/or consolidates all prior agreements and negotiations concerning the matters addressed herein.

- 8.10 **Amendment.** This Agreement may not be modified except by an instrument in writing signed by the parties hereto.
- 8.11 **Interpretation.** This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.
- 8.12 **Attorney Fees.** In the event any action or proceeding is brought by either party concerning this Agreement, the prevailing party shall be entitled to recover its expenses and reasonable attorney fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.
- 8.13 **Term.** The initial term of this Agreement shall be for ten (10) years. This Agreement shall automatically be renewed for two additional ten (10) year terms unless either party provides notice in writing to the other party within one (1) year immediately preceding the expiration of the initial ten (10) year term of this Agreement or within one (1) year immediately preceding the expiration of the first renewal ten (10) year term of this Agreement, as the case may be, that the notifying party elects to not renew the Agreement. Either party may terminate this Agreement upon providing written notice to the other party at least twelve (12) months prior to termination of this Agreement.
- 8.14 **Notice.** All notices provided for herein shall be in writing and shall be given by first class mail, certified or registered, postage prepaid, addressed to the parties at their respective addresses set forth below or to such address as may hereafter be designated to the other party in writing:

to the Company: Skyline Mountain Resort
11860 East Clubhouse Drive
RR1, Box 247
Fairview, UT 84629

with a copy to: Michael R. Jensen
90 W. 100 N., Suite 3
Price, UT 84501

to the District: Skyline Mountain Special Service District
2201 SMR
Fairview, Utah 84629

with a copy to: J.Craig Smith
Smith Hartvigsen, PLLC

175 S. Main, Suite 300
Salt Lake City, Utah 84111

- 8.14 **Exhibits and Recitals.** All exhibits and/or addenda attached or to be attached hereto before closing and recitals shall be considered to be fully incorporated into, and made a part of, this Agreement as if such exhibits, addenda, and/or recitals were fully and completely set forth herein. Any internal inconsistencies, however, shall be resolved in favor of the terms specifically set forth in the body of this Agreement.
- 8.15 **Time of Essence.** Time is the essence of this Agreement.
- 8.16 **Costs.** All costs and expenses, including attorney fees, incurred by either party in conjunction with this Agreement shall be paid by the party which has incurred such costs and expenses, except as otherwise set forth herein.
- 8.17 **Assignment.** Neither party may assign its rights or delegate its duties under this Agreement to any third party without the other's prior written consent, which consent may not be unreasonably withheld or delayed.
- 8.18 **Public Announcement.** Any notices to third parties and other publicity concerning this Agreement and transactions contemplated by this Agreement must be first approved by the other party, but such approval will not be unreasonably withheld or delayed, provided, however, compliance with the Requirements of the Utah Government Records Management Act shall not be interpreted or construed as a violation of this provision. In addition, this provision does not apply to routine notices concerning Company Board and Shareholder Meetings or the District's Board Meetings, to the agenda for such meetings, or to notices or information provided in connection with obtaining lending approvals.

The District:
Skyline Mountain Special Service District

By: Edward M. Collins
Edward M. Collins, Chair

ATTEST:

Roy Fox
Roy Fox, District Clerk

(DISTRICT SEAL)



Company:
Sports Haven International
dba Skyline Mountain Resort

By: Everett Taylor
Everett Taylor, President

ATTEST:

Sue Schmidt
Sue Schmidt, Secretary

**WATER SYSTEM OPERATING AGREEMENT
EXHIBIT A**

WATER SYSTEM ASSETS			
Water Rights			
Water Right Nos.			
Real Property and Facilities			
Parcel Number	Address	Acreage	Common Description
Pipeline & Easements/Rights-of-Way			
All rights and interests of the District in and to its pipelines, appurtenances, and facilities and in and to easements and rights-of-way, whether of record, prescriptive, or otherwise, for water collection, storage, treatment, and/or distribution, including but not limited to, the following:			
See attached easements, etc.			
Personal Property – See attached section “Existing Water System Assets”			
Vehicles	N/A		
Equipment			
Supplies	N/A		
Tools	N/A		
Other	Water System		
Cash Assets – See attached financial report			
Cash			
Loan Reserves			
Accts Receivable			
Other			

**WATER SYSTEM OPERATING AGREEMENT
EXHIBIT B**

WATER SYSTEM LIABILITIES & OBLIGATIONS				
Debt Obligations				
Loans	Loan #	Balance	Payment Amount	Interest Rate
N/A				
Contract Obligations				
N/A				
Accounts Payable				
N/A				
Other Obligations or Liabilities				