

WATER LEASE

This WATER LEASE (“Lease”) is entered into and effective this ___ day of _____, 2016 (“Effective Date”) between Mount Massive Lakes, Inc., a Colorado nonprofit corporation, whose address is 1151 County Road 7, P.O. Box 1981, Leadville, CO 80461 (“Mount Massive”) and Home Stake Trout Club, Inc. a Colorado nonprofit corporation whose address is 649 County Road 21, P.O. Box 843, Leadville, CO 80461 (“Home Stake”), (collectively “Lessors”) and Sylvan Lakes Metropolitan District, a Colorado statutory district whose address is P.O. Box 156, Leadville, CO 80461 (“Lessee”). Lessors and Lessee may be referred to herein collectively as the “Parties” or individually as “Party.”

RECITALS

A. Lessors are the owners of a one-third (1/3) interest in surface water rights from the Noland Ditch (“Noland Water Right”). Lessors obtained a change of water right for the Noland Water Right, a plan for augmentation, and appropriative rights of exchange in Water Court Case No. 87CW73, Division 2 (“Water Right Decree”).

B. The Water Right Decree adjudicated 238.6 acre-feet of consumptive use credit for the Lessors. Of this 238.6 acre-feet of consumptive use credit, the Lessors have 22.36 annual acre-feet of consumptive use credit available for lease as augmentation water (“Unassigned Consumptive Use Water”).

C. The Lessee is a quasi-municipal entity and a political subdivision of the State of Colorado.

D. There are twelve lakes situated within Lessee’s Service Property (“Sylvan Lakes”). Three of the Sylvan Lakes are owned by private property owners within the Lessee’s Service Property (“Private Lakes”).

E. The Sylvan Lakes are filled by Hartner Ditch Nos. 1 and 2. The Sylvan Lakes along with Hartner Ditch No. 1 and Hartner Ditch No. 2 are decreed in District Court, Chaffee County Case No. CA3053.

F. Lessee is desirous of leasing from Lessor Unassigned Consumptive Use Water to provide an augmentation supply for the out-of-priority filling and evaporative depletions of the Sylvan Lakes. Lessor is willing to lease such Unassigned Consumptive Use Water to Lessee under the terms of this Lease.

NOW, THEREFORE, in consideration of the above recitals, the terms and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Lease of Water. Lessors hereby lease to Lessee, and Lessee hereby leases from Lessors, Lessors’ 22.36 annual acre-feet of the Unassigned Consumptive Use Water as adjudicated in the Water Right Decree (“Leased Water”). The Leased Water is for the use by the Lessee under the terms of this Lease for the replacement of out-of-priority depletions from the filling, refilling, and evaporation from Sylvan Lakes.

2. **Term of Lease.** The term of this Lease shall be 10 years, subject to the other terms of this Lease, commencing as of April 1, 2016 and terminating on October 31, 2025. The Lessee shall have the option of extending the Lease term for an additional 10 years subject to approval of the Lessors at a Rental Amount that is mutually acceptable to the Lessors and the Lessee.

3. **Lease Payments.** Rent due under the terms of this Lease shall be an annual amount of \$100.00 per annual acre-foot, as adjusted in the future pursuant to Paragraph 9, for the amount of the Leased Water (“Rental Amount”). The total Rental Amount is subject to possible reduction pursuant to Paragraphs 15 and 16. Payment for the first year’s Leased Water is due on April 15, 2016. All subsequent payments of the Rental Amount must be received by Lessors by April 15 of any subsequent year. Lessee shall pay 52% of each lease payment to Mt. Massive Lakes, Inc. and 48% of each lease payment to Home Stake Trout Club, Inc. Lessee shall deliver lease payments by hand or by U.S. Mail addressed to Lessors’ addresses described in the first paragraph above.

4. **Take or Pay.** The Leased Water is provided on a “take or pay” basis, meaning that Lessee must pay the Rental Amount for the available Leased Water each year whether or not the full amount of the available Leased Water is actually taken by the Lessee. Such “take or pay” requirement is subject to the availability of the entirety of the Leased Water amount of 22.36 annual acre-feet. If Lessors are unable to provide the entire Leased Water amount of 22.36 annual acre-feet, or if the entire Leased Water is not available under the Water Rights Decree, Lessees shall be required to only pay for the amount of Leased Water that is actually available for the Lessors to lease to Lessee. Lessors, if already in receipt of full payment by Lessee for the entire Leased Water amount of 22.36 annual acre-feet, or any amount above that which can be provided by Lessors, shall refund all such over payment to Lessees upon reasonable determination of the total amount of Leased Water that will be available for the Lessee.

5. **Timing of Leased Water.** The timing of the availability of the Leased Water for Lessee’s purposes shall be as follows and in accordance with Paragraph 31 of the Water Right Decree as follows:

<u>Month</u>	<u>Acre-Feet</u>
May	3.18
June	5.78
July	4.92
August	4.43
September	3.18
October	0.87
Total	22.36 aft

6. **Place of Delivery.** Lessee shall take delivery of the Leased Water where available under the terms of the Water Rights Decree.

7. **Flow of Tennessee Creek.** Lessee's diversions of water from West Tennessee Creek by Hartner Ditch No. 2 and Hartner Ditch No. 1 shall not, at times that the Leased Water is used as augmentation for or exchange to Sylvan Lakes, decrease the flow of Tennessee Creek to an amount that is less than the existing decreed minimum in-stream flow right of the Colorado Water Conservation Board.

8. **Non-Appropriation.** Lessors hereby acknowledge that Lessee is a metropolitan district formed under the laws of the State of Colorado. Notwithstanding anything contained herein to the contrary, in the event no funds or insufficient funds are appropriated and budgeted by Lessee to meet the financial obligations under the Lease, or are otherwise unavailable for any reason whatsoever in any fiscal period during this Lease, then Lessee will immediately notify Lessors of such occurrence and this Lease shall terminate on the last day of the fiscal period for which appropriations were made or sufficient funds were available and paid to Lessor. In the event of such termination, Lessee agrees to peaceably cease the use of the Leased Water. The Lessee shall have the right to (1) terminate this Lease without penalty, expense, or damages upon Lessee for such termination, (2) continue under the provisions of this annual non-appropriation clause.

9. **Rate Adjustment.** Beginning on April 1, 2018 and reoccurring every two years thereafter, the Rental Amount paid by the Lessee to the Lessors shall either be increased or remain the same. This shall be determined by using the percent change in the Denver-Boulder-Greeley consumer price index ("CPI") value for the previous two years. In order to adjust the Rental Amount, the Parties will use the sum of the previous two years' percent change in the CPI values to determine the percent adjustment in the Rental Amount from the then existing water rate.

10. **Use of the Water.** Lessee's use of the Leased Water shall be for exchange and/or augmentation upon the Arkansas River system for the replacement of depletions caused by Lessee's diversions into Sylvan Lakes by means of Hartner Ditch No. 1 and Hartner Ditch No. 2. Lessee's use of the Leased Water shall be subject to and in compliance with the terms, conditions, and limitations set forth in the Water Rights Decree. Lessee shall not use the Leased Water for any purposes other than those authorized by an administrative exchange, a substitute water supply plan ("SWSP"), or a Water Court approved augmentation plan and/or exchange. Lessee's use of the Leased Water shall not involve any change of the Leased Water, requantification of Lessors' water rights, or any prejudice to Lessors' decreed water rights or augmentation plan under the Water Rights Decree. Lessee agrees that it shall comply with all applicable laws, rules, and regulations regarding the use of the Leased Water.

11. **Condition of Leased Water.** The Leased Water is leased in a strictly "as is" condition. Except as may be expressly set forth in this Lease, the Lessors and their agents have not made and do not make any representations, warranties, or guarantees as to the physical or legal availability of the Leased Water, historical use of the water rights, terms of the water rights decrees, water quality, or the suitability or feasibility of the Leased Water for any augmentation, exchange, or other intended or desired uses by Lessee. Lessee is not relying upon any statement, warranties, guarantees, or representation, express or implied, made by the Lessor or its agents not embodied herein. Lessee acknowledges that Lessee's lease of the Leased Water is based upon its own investigations, inspections, examinations, and opinions.

12. Administrative Exchanges, Substitute Water Supply Plans and/or Plan for Augmentation. The use by Lessee of the Leased Water to replace its depletions to the Arkansas River by the operations of Sylvan Lakes shall be pursuant to an approved administrative exchange, SWSP, or a Water Court plan for augmentation and/or exchange. Lessee agrees to retain, at its sole expense, engineers, legal counsel, and other consultants or experts as may be required to develop and pursue approvals, as may be required from time to time, of administrative exchanges, SWSPs, and a Water Court plan for augmentation and/or exchange to implement Lessee's intended use of the Leased Water. Lessee shall diligently prosecute approval of its requested administrative exchanges, SWSPs, and Water Court augmentation plan and/or exchanges under this Lease. In the event that Lessee files an application with the Water Court for approval of a plan for augmentation, then for purposes of protecting Lessors' decreed water rights and augmentation plan and to assure compliance with this Lease, Lessors shall have the option of being joint applicants on the application submitted to the Water Court or Lessors may file a statement of opposition to the Water Court application. Lessee shall provide to Lessors, for their review and approval, a copy of the augmentation plan application that Lessee intends to file with the Water Court, together with supporting water rights engineering. Said information is to be provided at least thirty (30) days prior to filing. Lessee shall obtain Lessors' approval of the augmentation plan application to be filed, and any decree to be entered, as in compliance with this Lease and avoidance of any prejudice to Lessors' water rights or augmentation plan under the Water Right Decree, which approval shall not be unreasonably withheld or delayed. Lessee shall also provide Lessors with the same review and approval process for any applications for any administrative exchanges or SWSPs, and Lessee shall timely provide Lessors with all comments received from the Division of Water Resources ("DWR") or other parties, as well as Lessee's responses to such comments. Terms and conditions of any administrative or Water Court approvals that are contrary to the submittal approved by Lessor, and that Lessor reasonably determines would prejudice their water right, shall not be implemented. As a result, Lessee may treat such adverse terms and conditions as a denial of the plan and may proceed to terminate this Lease as provided in Paragraph 15.

13. Confidentiality, Disclosure, and Common Interest. Prior to Lessee providing to Lessors a copy of the augmentation plan application and subsequent decree for approval by Lessors, the Parties shall enter into a common interest agreement that includes provisions for the protection of sharing privileged information, confidentiality protections, and non-disclosure requirements. Lessors shall not be obligated to provide Lessee or any other party with any privileged or confidential information not related to any common interest in or prepared in anticipation of such litigation, and Lessors do not hereby waive any rights in that respect.

14. Due Diligence. For a period of sixty (60) days after the mutual execution of the Lease, Lessee shall investigate the feasibility of successfully using the Leased Water to replace evaporative depletions from the Sylvan Lakes through a Water Court approved plan for augmentation and exchange. Should the results of such investigation be unsatisfactory to the Lessee, in its discretion, based upon advice from its water rights counsel and water resources engineer, then upon written notice to Lessors within said sixty (60) days the Lessee may elect to terminate this Lease.

15. Lessee's Right to Terminate. The continuance of this Lease is conditional upon Lessee's obtaining approval from the DWR or the Water Court, as applicable, of its SWSPs, administrative exchanges, and/or the plan for augmentation and/or exchange as contemplated and set forth herein. If the DWR or Water Court determines in such administrative or Water Court process that the Leased Water may not be used by Lessee for its requested purposes, then this Lease at either Lessor's OR Lessee's option may be terminated and Lessee shall have no further obligations hereunder.

16. Lessors' Right to Terminate or Reduce Amount. In addition to other rights to terminate provided for in this Lease, Lessors may terminate the lease if Lessee fails to pay the rental amount, subject to provisions of paragraph 22. The Parties agree that Lessors' own needs for water for augmentation and replacement supply may necessitate limiting a portion or the entire amount of the available 22.36 acre-feet of the Leased Water. The Parties agree that Lessors may limit the amount of the available Leased Water to Lessee in order to meet the augmentation and replacement needs of the Lessors. In such circumstance, Lessors shall provide ninety days' written notice to Lessee concerning the amount of Leased Water that will be limited to the Lessee for use by the Lessors. Upon such notice, Lessee shall have the right to terminate this Lease by providing written notice to Lessors within sixty days of receiving notice from Lessors, or continue to operate under this Lease with a commensurate reduction in Rental Amount. In addition to other rights to terminate provided for in this lease, after April 1, 2021, Lessors may terminate the lease at any time, upon 90 days' written notice Lessee, should Lessors determine that it is in Lessors' best interest to do so. If Lessors elect to terminate this lease under the immediately preceding provision, such termination shall become effective at the end of Lessee's accounting year as provided for in Lessee's substitute water supply plan, augmentation plan, or exchange.

17. Availability of Replacement Water and Notice. Lessee recognizes that the availability of the Leased Water under this Lease is subject to the availability of the Noland Water Right under the terms of the Water Right Decree. Lessors shall not be liable to Lessee for any failure to deliver the Leased Water if Lessee is unable to utilize any amount of the Leased Water due to physical or legal unavailability of water. If such water supply conditions result in curtailing deliveries of the Leased Water to Lessee, Lessors shall notify Lessee as soon as Lessor becomes aware of such curtailment and any applicable refund to Lessee for water not available for Lessee's use shall be made as pursuant to Paragraph 4.

18. Ownership/Quiet Enjoyment. Lessors warrant and represent that (1) they are the owners of the right to use the Leased Water, (2) that the Leased Water is uncommitted under the Water Court Decree to any other use, and that the Leased Water shall remain so during the term of this Lease, and (3) there are no liens or encumbrances upon the Leased Water. Lessors further covenant that Lessee, upon performing the covenants and agreements of this Lease, shall have and hold quiet possession and enjoyment of the Leased Water per the term of this Lease.

19. Reimbursement. Following the execution of this Lease, Lessee shall promptly reimburse Lessors their reasonable attorney's and engineering fees incurred by Lessors in entering into this Lease. Lessee shall also reimburse Lessors for such amounts incurred as a result of Lessors' cooperation as requested by Lessee as set forth in Paragraph 24.

20. Measurement and Accounting. Lessee shall measure and record all Leased Water used; and shall provide Lessors on an annual basis with such records and diversion records under Lessee's administrative and Water Court approved plans.

21. Diversion of Leased Water. Lessee acknowledges that it is solely responsible for the diversion and use of the Leased Water supply at Sylvan Lakes, and for the costs and obligations of operating and maintaining such infrastructure and improvements, to divert and use water at Sylvan Lakes. Lessors shall have no responsibility or liability of any type for any such infrastructure and improvements needed by Lessee at Sylvan Lakes.

22. Default/Remedies. Lessee shall be in default of this Lease if Lessee shall fail to comply with any provision of this Lease and shall not cure such failure within twenty days after Lessors, by providing notice, have informed Lessee of such noncompliance. In the case of a breach which cannot be cured within a period of twenty days, Lessee shall have such additional time to cure the same as may be reasonably necessary, provided that Lessee proceeds promptly and with due diligence to cure such breach after receipt of said notice, but in no event shall the period of time to cure exceed ninety days from notice by Lessors. In the event of a failure to reimburse Lessors legal and engineering cost as defined in paragraph 19 or default as set forth above, Lessors shall be entitled to terminate the lease and all remedies available under Colorado law.

Should Lessors be in default under the terms of this Lease, then Lessors shall have the same cure rights as Lessee as set forth above. In the event of Lessors' default, which is not cured as provided herein, Lessee shall be entitled to all remedies available under Colorado law. Provided, however, both parties waive any claim to special damages. The above cure provisions shall not prevent either party from seeking and obtaining any appropriate injunctive relief.

23. Force Majeure. A Party shall not be deemed in default of this Lease, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of the Party, provided that the Party relying upon this provision gives prompt written notice thereof to the other Party. If an event of force majeure occurs, the party injured by the other's inability to perform may elect one of the following remedies: (a) to terminate this Lease; or (b) to suspend this Lease, in whole or part, for the duration of the force majeure circumstances.

24. Lease Rights. Upon expiration of the lease term, or termination of this Lease, Lessee shall have no further rights to use the Leased Water, and shall not assert a right to continue to use the Leased Water. Except as to the leasehold rights expressly created by this Lease, under no circumstances shall this Lease create, or be construed as creating, any interest by Lessee in Lessors' Water Rights.

25. Cooperation. The Parties shall cooperate in good faith to fulfill the terms, provisions and intent of this Lease. Lessors, upon the request of Lessee, shall cooperate with Lessee in obtaining the administrative and Water Court approvals necessary for Lessee's exchanges to Sylvan Lakes and the replacement of depletions from Lessee's operation of Sylvan

Lakes. The Parties may also, upon mutual agreement and as circumstances may allow, trade or exchange water provided under the Water Rights Decree between and among their respective lakes and reservoirs.

26. Entire Agreement. This Lease represents the entire agreement of the Parties with respect to the subject matter covered herein. All negotiations, consideration, representations and understandings between the Parties are incorporated and merged herein. This Lease may be modified or altered only by the Parties' written agreement.

27. Attorneys' Fees. In the event of any dispute between the Parties concerning this Lease, or in the event of any action to enforce this Lease or to collect damages on account of any breach of the obligations provided for herein, the prevailing Party shall be awarded as against the other Party all costs and expenses, including reasonable attorneys' fees, incurred in such litigation as well as all additional costs of collecting any judgment rendered in such action.

28. Assignment. This Lease may not be assigned, or the Leased Water subleased, by Lessee without Lessors' prior written consent, which consent may be granted or withheld within Lessors' discretion. Lessors shall have the right to assign this Lease to a successor owner of the Leased Water.

29. No Third Party Beneficiary. This Lease shall be for the sole benefit of the Parties, and no other party is entitled to have any rights or benefits by reason of this Lease as a third party beneficiary or otherwise. Allowance for use of any amount of the Leased Water by the Private Lakes is within the sole discretion of Lessee.

30. Governing Law. This Lease shall be construed in accordance with the laws of the State of Colorado. Any and all disputes concerning this matter shall be decided in any court of competent jurisdiction over Lake County, including District Court, Water Division 2 for water rights matters within the Water Court's exclusive jurisdiction.

31. Authority. All Parties to this Lease represent that they have the full power and authority to enter into and perform this Lease. Each Party shall provide the other with satisfactory evidence of an adopted entity motion or resolution authorizing the execution and performance of this Lease.

32. Severability. Unenforceability of any provision contained in this Lease shall not affect or impair the validity of any other provision of this Lease so long as the primary purposes of this Lease remain effectuated thereby.

33. Binding Effect. The covenants, agreements and obligations herein contained shall extend to, bind and inure to the benefit of the parties hereto as well as their respective personal representative, heirs, successors and assigns.

LESSORS:

Mount Massive Lakes, Inc.

ATTEST

By: _____
