

**RIGHT TO USE AGREEMENT
2018**

This right to use Agreement ("Agreement") is made and entered into by and between:

_____ [Hereinafter referred to as "Member"] and Kodiak Ski Lake, LLC [hereinafter referred to as "Kodiak Ski Lake, LLC"]

WITNESSETH:

Whereas, Kodiak Ski Lake, LLC is the operator of Kodiak Ski Lake, situated in Eagle County, Colorado (hereinafter referred to as the "Lake"); and

Whereas, Kodiak Ski Lake, LLC and Member desire to enter into an agreement for Member's use of the Lake.

Now, Therefore, in consideration of the keeping and performing of the covenants and agreements hereinafter set forth by Member, Kodiak Ski Lake, LLC hereby grants to member the right to use the Lake as follows:

1. Use Term. The term of this Agreement commences at the beginning of the water skiing season on April 1, 2018 through October 31, 2018, weather conditions permitting (hereafter called the "Term"). Member acknowledges that Kodiak Ski Lake, LLC has no control over length of Term.

2. Use Payment. Member shall pay to Kodiak Ski Lake, LLC the sum of _____, Dollars(\$_____).

For the right to use the Lake (the "Use Payment"). Said Use Payment is due prior to any use of the Lake by Member.

3. Condition of the Lake. Member acknowledges having reviewed the plans and designs of the Ski Lake, and is satisfied that the Lake, as constructed, and in its current condition, is adequate and sufficient.

4. Member's Rights to Use the Lake.

a. Member, for him/herself, family, guests or invitees, agrees to sign the Participation, Waiver and Release Agreement and Indemnification attached hereto as Exhibit "A" prior to any of the rights conferred herein becoming effective.

b. Member acknowledges that his/her use of the premises is restricted to _____ time slot[s] per week, consisting of approximately one hour and fifty minutes each, during the term of this Agreement. The weekly time slots will be designated by Kodiak Ski Lake, LLC and agreed to by Member at the time the Use Payment is made, and this Agreement is entered into. Those time slots are as follows:

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- c. Member agrees to abide completely with the Rules and Regulations, attached hereto as exhibit "B", as well as any additional reasonable rules and regulations that may be adopted from time to time by Kodiak Ski Lake, LLC. Member will be personally responsible for any damage done to the dock, the Lake, or any property from his use of the Lake, other than that caused by ordinary wear and tear, or normal use. Member will be personally responsible for any damage done to the dock, the Lake, the Towboat, or any property from the actions of his families guests, or invitees in their use of the Lake, other than that caused by ordinary wear and tear, or normal use. This Agreement may be terminated by Kodiak Ski Lake, LLC if Member does not completely abide by all such rules and regulations, or any terms of this Agreement. Any amount of money retained by Kodiak Ski Lake, LLC to pay for damages or injuries will not be the sole and exclusive remedy available to Kodiak Ski Lake, LLC for violation of this Agreement, and Member may be liable for such additional costs and expenses, as member has caused.
- d. Member acknowledges that his/her rights to use the Lake are only valid for the Term of this Agreement, and gives Member no assurances that such rights to use the Lake will be renewed in the following year.

5. No Third-Party Beneficiaries. Member acknowledges that this membership is solely for him/herself, spouse, and children. This right to use cannot be assigned, transferred, conveyed or sold to any other person or entity, whether for value or gratuitously. Any such attempt to assign, sell, lease, or gift, this right to use will void, and all monies paid by Member to Kodiak Ski Lake, LLC shall be forfeited, and no right of assignment shall be conferred upon any other party. It is the intent of this Agreement that this right to use goes solely to the Member-designated herein, his/her spouse and children, and may not be shared or divided with any other person or entity. Member is expressly prohibited from allowing children under the age of twenty-one (21) to use the Lake unless such child's parents are present in the boat.

6. Member's Insurance Requirements.

- a. Liability Insurance. Member shall be required to have at least One Million Dollars (\$1,000,000,000) in liability insurance, and shall provide proof of such insurance to Kodiak Ski Lake, LLC prior to commencement of Member's rights to use the Lake, as set forth herein. Failure by Member to pay for and maintain such liability insurance shall be grounds for termination of this Agreement.
- b. Personal Property Insurance. Member shall be required to maintain and pay for insurance on any personal property stored at the Lake. Kodiak Ski Lake, LLC shall have no responsibility to Member for any loss or damage to any personal property, including boats, used or stored at the Lake by member, or Member's guests, family, or invitees.

7. Hold Harmless. Member hereby agrees to hold Kodiak Ski Lake, LLC, as well as all members of the Lake, harmless from and against any and all damage, injury, and/or liability incurred by member, his/her family, heirs, assigns, guests or invitees, arising out of their use of the Lake. Member personally, and on behalf of any and all heirs, personal representatives, successors, or assigns, forever waives, releases and discharges every member of the Lake, as well as such members' heirs, personal representatives, successors and assigns, as well as Kodiak Ski Lake, LLC and Andrew "Ace" Lane individually, from any and all duty, liability, loss, cause of action, charge or assessment related to or arising out of, directly or indirectly, the use of the Lake, unless such loss or liability arises directly from a

proven gross negligence or willful misconduct of Kodiak Ski Lake, LLC or the parties running the Lake operation. Member agrees to have any guests or invitees sign the Waiver and Release of Liability, which will be located at the dock of the Lake prior to their use of the Lake, and prior to such guests or invitees being allowed to ride in a boat on the Lake. Member agrees to indemnify Kodiak Ski Lake, LLC for any claims or losses caused by the failure of such guests or invitees to sign the Waiver Release.

9. Personal Property. Member agrees that any boat brought upon the Lake site, whether pursuant to Paragraph 4(c) or otherwise, and any other personal property brought upon the Lake site by Member, his/her family, children, guests, or invitees, is brought there solely at member's risk and Kodiak Ski Lake, LLC shall have no duty to care for, preserve or protect such property and member shall hold harmless from any liability or cost with respect to any loss, damage, destruction or injury thereto without exception.

10. Termination. Upon the termination of this Agreement, by lapse of time or otherwise, Member shall give up any rights to the use of the Lake; and shall immediately remove his/her boat and any personal property from the premises. In the event that Member does not remove his/her boat and any personal property from the premises within thirty (30) days after Kodiak Ski Lake, LLC's mailing of notice to Member, such boat or personal property shall be deemed abandoned by Member. In such event, Kodiak Ski Lake, LLC may remove Member's property from the premises, and shall have a valid and existing lien on such removed property for any amount due, or for the costs of removing such property.

11. Notice. All notices provided for herein shall be in writing, and shall either be delivered personally or sent by certified mail, return receipt requested, postage prepaid, addressed to the parties for whom intended at the address set forth below. Any party may change its address by written notice to the other party. All notices sent by mail shall be deemed given and effective two (2) days after being deposited in the United States Mail as above required. Facsimile transmission shall not constitute notice hereunder.

Manager
Kodiak Ski Lake, LLC:
401 Tree Farm Drive
Carbondale, CO 81623

To the Member:

12. Attorneys' Fees. In the event of any litigation between Kodiak Ski Lake, LLC and Member involving the interpretation and/or enforcement of this Agreement or any provision hereof, the prevailing party shall be entitled to an award of its costs and expenses (including reasonable costs and attorneys' fees) incurred therein as a part of the judgment or stipulated settlement entered in such litigation.

13. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity; legality or enforceability of this Agreement itself or of any other provision hereof, and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.

14. Counterparts; Facsimile Signatures. This Agreement may be executed in one instrument, signed by all parties, or in counterparts, in which case all such counterparts together shall constitute one and the same instrument and Agreement, binding on all of the parties thereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart. Facsimile signatures shall be treated as original signatures on this Agreement, and on other documents provided for herein.

15. Binding Effect; Governing Law. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, and shall be construed in accordance with and governed by the laws of Eagle County and the State of Colorado, and it is agreed that the District Court for Eagle County in Eagle, Colorado, shall be the court of appropriate venue and jurisdiction. This Agreement contains the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements, writings, representations, and negotiations relating thereto.

16. Modification. This Agreement may not be amended or modified except by an instrument in writing signed by all parties.

In witness whereof, the parties hereto have executed this Agreement as of this date.

Member Date

Kodiak Ski Lake, LLC Date

STATE OF COLORADO
COUNTY _____

The foregoing instrument was acknowledged before me this _____ day of _____
20__ by _____

Witness my hand and official seal.
My commission expires:

Notary Public

EXHIBIT "A"

Participation, Waiver and Release Agreement

Please read carefully before signing. This is a Release of Liability.

In consideration for my being permitted to use the Kodiak Ski Lake, and/or its facilities, I agree to the following waiver and release:

I hereby accept and assume the risk of skiing on Kodiak Ski Lake, including, but not limited to, the design of the Lake (which includes shallow sides and ends of the Lake for wake control), the skiing course, and the Lake conditions, as they exist.

(Please initial above)

I understand that there are significant, unavoidable, and inherent dangers and risks involved in water skiing. I **acknowledge that these dangers and risks include, without limitation, the possibility of injury or death from the sport of water skiing, as well as injuries from the use of water skiing boats, and all other risks and dangers that are integral to the sport of water skiing.**

(Please initial above)

I am aware and acknowledge that water skiing has inherent dangers and risks for any water-skier. I am voluntarily participating in water skiing on Kodiak Ski Lake, with full knowledge of the dangers and risks involved, and hereby agree to accept any and all risks of injuries, paralysis, or death, which may result.

(Please initial above)

Lastly, I for myself, my heirs, successors, executors and subrogors, **hereby knowingly and intentionally waive and release, indemnify, defend and hold harmless Kodiak Ski Lake, LLC, individually, and Kodiak Ski Lake, LLC, individually,** from and against any and all claims, actions, causes of action, liabilities, suits, expenses (including reasonable attorneys' fees), and negligence of any kind or nature, whether foreseen or unforeseen, arising directly or indirectly out of any damage, loss, injury, paralysis, or death to me or my property as a result of my skiing on the Kodiak Ski Lake, and for the use of the facilities, or my child's presence at the Kodiak Ski lake, whether such damage, loss, injury, paralysis, or death results from the negligence of Kodiak Ski Lake, LLC or from some other cause.

(Please initial above)

I have carefully read, clearly understand, and voluntarily sign this Participation, Waiver and Release Agreement.

Witness

Signature

Date

Print Name

INDEMNIFICATION

Name of Minor(s):

The undersigned, parents, guardians, or next friend of the above minor(s), for themselves, and on behalf of said minor(s), hereby join in the foregoing Participation, waiver and Release Agreement, and hereby stipulate and agree to the terms of the foregoing Participation, Waiver and Release.

In consideration for the above minor(s) being permitted to use the Kodiak Ski Lake, and/or its facilities, I agree to the following waiver, release and indemnification:

The undersigned parent or guardian of the above minor(s), for themselves, and on behalf of said minor(s), hereby joins in and agrees to the provisions of the foregoing Participation, Waiver and Release Agreement, and hereby stipulates and agrees to save harmless, indemnify, and forever defend the **Kodiak Ski Lake, LLC, its officers, agents, employees, shareholders, and members, Andrew "Ace" Lane, individually**, from and against any and all claims, actions, causes of action, liabilities, suits, expenses (including reasonable attorneys' fees), and **negligence** of any kind or nature, whether foreseen or unforeseen, arising directly or indirectly out of any damage, loss, injury, paralysis, or death made or brought by said minor(s), or by anyone on behalf of said minor(s), as a result of said minor's participation in the events, including, without limitation, his or her use of Kodiak Ski Lake, and/or its facilities, and his or her presence there.

Witness Signature of Parent or Guardian

Date Print Name

EXHIBIT "B"

Rules and Regulations of Kodiak Ski Lake

The use of Kodiak Ski Lake is conditioned upon adherence to the following rules and regulations. Failure to comply with these rules may result in termination of Member's Right to Use exclusive of any refunded fees:

1. Due to the shallow nature of the Lake, there will be no diving allowed anywhere in the Lake.
2. There shall be no skiing allowed within 30 feet of any shoreline, due to the shallow nature of these areas for wave dissipation.
3. The Lake shall be limited to use by only one (1) boat at a time.
4. No skiing on the Lake before 7:30 a.m. or after sunset.
5. Drivers of the Boat will attend at least one driving clinic before using the Lake.
6. All boats shall be Insured, A.W.S.A. certified, fuel injected, and the noise levels of the boats shall not exceed 75 decibels at 100 feet.
7. There must be the proper number of life vests in each boat, i.e., one for each person in the boat. Every child under the age of 13 must wear a life vest whenever riding in a boat.
8. There is no lifeguard on the property, so use of the beach area is at the risk of each member or guest.
9. There shall be no unsupervised children under the age of 13 allowed on the beach or using the Lake.
10. Smoking is prohibited at the Lake Site.
11. There must be a fire extinguisher aboard each boat.
12. Proof of insurance coverage for liability in an amount of \$100,000.00 must be shown to Kodiak Ski Lake, LLC at the beginning of each water skiing season.
13. Absolutely No glass containers at the Site.
14. No swimming while there is a boat on the Lake.
15. Use and possession of illegal drugs on club property are prohibited.
16. Drinking of alcoholic beverages on club property is prohibited.
17. Dogs are not allowed on the dock or beach area.
18. All litter and Recycling shall be disposed of in proper containers
19. Only biodegradable soap may be used in the Lake.
20. Kodiak Ski Lake, LLC are not responsible for theft, loss, or damage of any personal property of members or guests.

21. Guests of members are NOT allowed on the property unless the member is present at all times. Any "guest" at the site without inviting member present will be considered trespassing and treated as such.
22. Any member who brings a guest or guests to the property must have such guest or guests read and sign a liability release, and failure to do so shall put all liability on said member.
23. Members are prohibited from using any boat, other than the Club Boat, on the Lake, unless prior approval is obtained from Kodiak Ski Lake, LLC.
24. Memberships may not be leased or given to other parties.
25. Members may trade time slots, but only amongst themselves.
26. Members who wish to use an unoccupied time slot must obtain prior approval from the present owner or Kodiak Ski Lake [for a spot without a member].
27. Borrowing of another member's time slot, boat, skis, or accessories without that member's permission is prohibited.
28. If member or member's guests damage the slalom course, it must be repaired prior to expiration of your time slot.
29. If the slalom course needs height adjustment as a result of water level changes, please adjust it.
30. No children under 21 allowed unless accompanied by an adult member at all times.
31. Tubes and "Air Chairs" or other similar hydrofoil devices shall not be used on the Lake.
32. No guest other than the approved driver/partner is allowed to drive KSL boats.
33. Money or barter cannot be accepted by members from guest for skiing or lake privileges.

There shall be no complaining, only compliments to Kodiak Ski Lake, LLC.

Member's signature, _____ Date, _____

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KODIAK LAKE BOAT USER'S AGREEMENT

This agreement is between Kodiak Ski Lake, LLC and _____
(Hereafter the "User").

The User is responsible for all of his/her actions while operating the ski boat maintained at Kodiak Ski Lake for the benefit of Members ("Club Boat"). Kodiak Ski Lake, LLC is not responsible for user's actions. The User will hold Kodiak Ski Lake, LLC harmless and shall indemnify Kodiak Ski Lake, LLC from all action. If the User or his/her guest damage the Club Boat in any way, the user is fully responsible for the cost to repair the damage incurred to the Club Boat. Failure to report any damage, no matter how slight, will result in loss of membership without refund.

The Club Boat is not to be treated like a rent-a-car. Upon delivery of the Club Boat a complete inspection will be made with each and every scratch and nick accounted for. The Club Boat must be treated **better** than one's own and keep it clean for the next user. When not in use, the Club Boat is to be covered. Please be sure to properly warm up the engine [if the temperature gauge has moved, this should be sufficient] before operating at skiing speeds. The throttle control should not be adjusted. Only skier-specific values should be entered. If the User has difficulty with the throttle control, he or she may phone the Manager, and they will be addressed.

Kodiak Ski Lake, LLC has gone over the Club boat safety guidelines with me and checked me out. I know that I must check out each guest or member that drives with me and determine their abilities to safely and properly operate the boat and pull skiers. If I feel my guest is not able to safely operate the Club Boat, I will not allow them to drive the boat.

Thank you for your cooperation and understanding.

User's Signature

Date