

**TOWN OF PINETOP-LAKESIDE**

**RESOLUTION NO. 18-1485**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, APPROVING THE LICENSE AGREEMENT BETWEEN SHOW LOW/PINETOP WOODLAND IRRIGATION COMPANY AND THE TOWN OF PINETOP-LAKESIDE.**

**WHEREAS**, the Town of Pinetop-Lakeside is in agreement with the terms and conditions of the License Agreement with the Show Low/Pinetop Woodland Irrigation Company, attached hereto as Exhibit "A", and

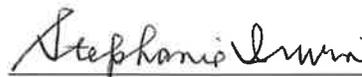
**WHEREAS**, Woodland Lake is a valuable recreational facility for Pinetop-Lakeside and the land surrounding the lake is a popular tourist destination and community recreational facility that adds aesthetic, economic and tourist value to Pinetop-Lakeside;

**WHEREAS**, the Irrigation Company is willing to give Pinetop-Lakeside the license to use Woodland Lake water for recreational purposes;

**NOW, THEREFORE, BE IT RESOLVED** that the Mayor and Town Council of the Town of Pinetop-Lakeside hereby approve the License Agreement with the Show Low/Pinetop Woodland Irrigation Company, attached hereto as Exhibit "A".

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Pinetop-Lakeside this 4<sup>th</sup> day of December 2018.

**TOWN OF PINETOP-LAKESIDE**



Stephanie Irwin

Mayor

ATTEST:

APPROVED AS TO FORM:

  
Remilie S. Miller, MMC  
Town Clerk





William J. Sims, III

Town Attorney

## LICENSE AGREEMENT (Woodland Lake)

This License Agreement (“this Agreement”) is entered effective \_\_\_\_\_, 2018 (“the Effective Date”), by and between SHOW LOW/PINETOP-WOODLAND IRRIGATION COMPANY, INC., an Arizona non-profit corporation (said corporation, together with its predecessors, called “the Irrigation Company”) and the TOWN OF PINETOP-LAKESIDE, Arizona, an Arizona municipal corporation (“Pinetop-Lakeside”) (the Irrigation Company and Pinetop-Lakeside sometimes collectively called “the Parties”).

### RECITALS:

WHEREAS, since 1874 or earlier, the Irrigation Company has delivered irrigation water to residents of the Pinetop-Lakeside area;

WHEREAS, to manage the delivery of water to its customers or members, the Irrigation Company constructed and currently operates and maintains storage reservoirs, delivery canals, dams and other infrastructure (“the Irrigation Facilities”) which include, but are not limited to, storage reservoirs known as Woodland Lake, Rainbow Lake, Scotts Reservoir and Show Low Lake;

WHEREAS, Woodland Lake is supplied by water from streams, creeks, springs, seeps, washes and other tributaries of Show Low Creek, including but not limited to Walnut Creek and Pinetop Springs, the rights to which water were claimed in notices and filings by the original settlers in the area as early as 1885;

WHEREAS, following previous work to capture the water from Walnut Creek and its tributaries, an earthen dam and irrigation storage reservoir currently known as Woodland Lake was completed by Hans Hansen in 1897;

WHEREAS, Woodland Lake is located in the SW Section 31 T9N R23E and has a storage capacity of 152.00 acre-feet of water, which water is released out of the reservoir for irrigation of land owned by the Irrigation Company’s shareholders;

WHEREAS, water released from Woodland Lake may be stored in other reservoirs that make up the Irrigation Facilities and such releases to other parts of the Irrigation Facilities are an important part of the Irrigation Company’s ability to manage its water supply and operate efficiently;

WHEREAS the Apache-Sitgreaves National Forest (“the Forest”) was created by presidential proclamation in August 1898 (all federal administrative agencies associated with the Apache-Sitgreaves National Forest, including without limitation the United States Department of the Interior, the United States Department of Agriculture, the United States Forest Service and/or the Apache-Sitgreaves National Forest hereinafter referred to as “the Forest Service”);

**EXHIBIT "A"**

WHEREAS, Woodland Lake and other portions of the Irrigation Facilities were constructed and in operation before the Forest was reserved in 1898;

WHEREAS, Woodland Lake is a valuable recreational facility for Pinetop-Lakeside and the land surrounding the lake ("the Park") is a popular tourist destination and community recreational facility that adds aesthetic, economic and tourist value to Pinetop-Lakeside;

WHEREAS, the Irrigation Company is willing to give Pinetop-Lakeside a license to use Woodland Lake for recreational and wildlife, including fish, purposes;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the terms set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Irrigation Company and Pinetop-Lakeside agree as follows:

AGREEMENT:

1. GRANT OF LICENSE. The Irrigation Company grants Pinetop-Lakeside a license to use Woodland Lake for recreational and wildlife, including fish, purposes, which includes the water stored in the portion of the lake that is under the high-water mark, the dam and the outlet works ("the Licensed Area"). The Licensed Area is depicted on the map attached to and made a part of this Agreement (*to be provided by Pinetop-Lakeside*). The license includes the unlimited access by Pinetop-Lakeside's officials, agents and employees to the Licensed Area and lands surrounding Woodland Lake for the purpose of measuring and documenting water levels and other matters discussed in this Agreement.
2. LICENSE FEE. Beginning on the Effective Date and continuing for a period of three (3) years ("the Term of this Agreement"), Pinetop-Lakeside shall pay the Irrigation Company a License Fee (herein so-called) of THREE THOUSAND AND 00/100 DOLLARS (\$3,000.00) per month. In the event that Pinetop-Lakeside defaults in its payment of the License Fee, this Agreement shall terminate and shall no longer be of any force or effect.
3. RESTRICTED RELEASES OF WATER TO DOWNSTREAM RESERVOIRS. Subject to subparagraphs a. through f. below, the Irrigation Company agrees that during the Term of this Agreement, it shall not release water out of Woodland Lake for storage in Rainbow Lake or Show Low Lake. During the Term of this Agreement, water that is stored in Woodland Lake shall be released during the Irrigation Season (herein so called and generally occurring between the months of March and October, depending on weather conditions) only to the Irrigation Company's shareholders who irrigate lands below Woodland Lake and above Rainbow Lake ("the Woodland Lake Irrigation Area"). Within sixty (60) days of the Effective Date of this Agreement, the Irrigation Company shall provide to

Pinetop-Lakeside a list of shareholders with shares associated with lands located between Woodland Lake and Rainbow Lake. The Irrigation Company shall limit releases in accordance with this Section 3. Notwithstanding the foregoing and during the Term of this Agreement:

- a. The Irrigation Company may at any time release water from Woodland Lake to the downstream reservoirs if Woodland Lake is spilling.
- b. The Irrigation Company shall not drain Woodland Lake unless the reservoir must be drained for emergency repairs based upon a court order or by order of the Arizona Department of Water Resources, in which case the Irrigation Company shall notify Pinetop-Lakeside of such order or emergency as soon as reasonably practicable prior to said draining. In the event of drainage for the reasons set forth in this subparagraph 3.b, Pinetop-Lakeside shall not be obligated to pay the License Fee, but such License Fee shall immediately resume once repairs are made.
- c. Unless otherwise agreed to by the Parties, the Irrigation Company shall cause all water from Pinetop Springs to flow into the Walnut Creek drainage which flows into Woodland Lake and shall not divert the Pinetop Springs water into Billy Creek for the irrigation of lands that are not a part of the Woodland Lake Irrigation Area or for storage in Show Low Lake.
- d. The Irrigation Company agrees that it shall not enter any negotiations with third parties for the sale, transfer, assignment or other action involving the Irrigation Company's water rights that shall diminish its storage and irrigation rights associated with Woodland Lake.
- e. The Irrigation Company and Pinetop-Lakeside agree to cooperate with one another in determining (i) the volume of water discharged from Woodland Lake for the irrigation of the Woodland Lake Irrigation Area, (ii) the full capacity of Woodland Lake, and (iii) the appropriate meaning and measurement of a "Minimum Pool" (herein so-called). To make these determinations, the Irrigation Company grants Pinetop-Lakeside's officers, employees and agents permission (i) to install measuring devices in accordance with Section 6 of this Agreement, (ii) to map and survey Woodland Lake and the Licensed Area, and (iii) to collect such other data as is reasonably necessary to fulfill the purposes of this Agreement ("the Collected Data"). Additionally, the Irrigation Company shall make a good faith effort to leave a Minimum Pool in Woodland Lake each year.
- f. The Irrigation Company agrees to fully cooperate with Pinetop-Lakeside so that Pinetop-Lakeside can obtain the Collected Data. Pinetop-Lakeside shall share the Collected Data with the Irrigation Company on a monthly, or as reasonably practicable, basis. Additionally, the Irrigation Company shall make a good faith effort to leave a Minimum Pool in Woodland Lake

each year. For purposes of this subparagraph 3.f, the contact persons for data collection purposes shall be:

FOR THE IRRIGATION COMPANY:

Ethan Ellsworth  
Phone: (928) 242-3643  
Email: [ellsworthranch@hotmail.com](mailto:ellsworthranch@hotmail.com)

FOR PINETOP-LAKESIDE:

\_\_\_\_\_  
Phone: ( ) \_\_\_\_\_ - \_\_\_\_\_  
Email: \_\_\_\_\_

4. AUGMENTATION OF WATER SUPPLY IN WOODLAND LAKE. Pinetop-Lakeside may decide to augment its water supply and to store such augmented water in Woodland Lake. Any arrangements by Pinetop-Lakeside to store augmented water supplies in Woodland Lake shall first be approved by the Irrigation Company and if approved, shall be the subject of a written agreement by and between the Irrigation Company, Pinetop-Lakeside and other potential parties that may have an interest in such an arrangement.
5. WATER RIGHTS AND EASEMENTS; AUTHORIZED WATER USES.
  - a. No Diminishment or Assignment of Water Rights or Easements. The Irrigation Company is not assigning any right, title or interest in its water rights or easements to Pinetop-Lakeside. Any agreements regarding Pinetop-Lakeside's access to or use of water in Woodland Lake, the restriction on releases of irrigation water to the Woodland Lake Irrigation Area and/or maintenance of a Minimum Pool of water do not confer to Pinetop-Lakeside an interest in or claim to the Irrigation Company's water rights, nor do they diminish the Irrigation Company's water rights associated with any part of its irrigation system, including without limitation Woodland Lake, Rainbow Lake, Scott Reservoir, or Show Low Lake.
  - b. Management of Water Resources. Subject to the provisions of this Agreement and applicable law, the management, use and releases of the water in Woodland Lake shall be solely determined by the Irrigation Company.
6. PINETOP-LAKESIDE'S RIGHTS AND OBLIGATIONS AS LICENSEE. In addition to the payment of the monthly License Fee during the Term of this Agreement, Pinetop-Lakeside agrees to the following:

- a. Use of the Licensed Area shall continue to be used “as is;” that is, as a Park and recreational area maintained by Pinetop-Lakeside.
  - b. The Licensed Area shall be kept clean and free of debris.
  - c. With prior approval of the Irrigation Company, which approval shall not be unreasonably withheld or delayed, Pinetop-Lakeside may install at its own cost and expense a measuring device below the outlet of Woodland Lake to record releases from the lake.
7. MODIFICATIONS TO THIS AGREEMENT. At any time during the Term of this Agreement, the Parties may agree in writing to modify this Agreement. Any modifications must be in writing and agreed to by both Parties.
8. OPTION TO EXTEND THE TERM OF THIS AGREEMENT. At any time, the Parties may agree in writing to extend the Term of this Agreement.
9. GENERAL PROVISIONS.
- a. Successors and Assigns. This Agreement shall be binding upon the Parties and their respective successors, heirs, beneficiaries and assigns.
  - b. Invalidity. Invalidation of any of these provisions by judgment, court order or otherwise shall in no way affect the validity of any of the other provisions of this Agreement, all of which shall remain in full force and effect.
  - c. Force Majeure. An occurrence of a Force Majeure event suspends either Party’s obligation to perform under this Agreement. A Force Majeure event is a catastrophic event that is beyond a Party’s control such as an earthquake, flood, tornado, fire, or other event making performance impossible. If a Force Majeure event continues for thirty (30) days or more, either Party may terminate this Agreement by written notice to the other Party.
  - d. Default by Pinetop-Lakeside. Should Pinetop-Lakeside fail to perform its obligations set forth in this Agreement, including failure to pay the License Fee, Pinetop-Lakeside shall be in default. Such default shall be cured by Pinetop-Lakeside within thirty (30) days following receipt of written notice by the Irrigation Company and in the event the default is not cured within such thirty (30) day period, as may be reasonably extended by the mutual agreement of the Parties, the Irrigation Company shall, at its option, declare this Agreement to be terminated and shall have the right to take such other actions to which it is entitled.
  - e. Default by the Irrigation Company. Should the Irrigation Company fail to

perform its obligations set forth in this Agreement, the Irrigation Company shall be in default. Such default shall be cured by the Irrigation Company within thirty (30) days following receipt of written notice by Pinetop-Lakeside and in the event the default is not cured within such thirty (30) day period, as may be reasonably extended by the mutual agreement of the Parties, Pinetop-Lakeside shall have the right to suspend payments to the Irrigation Company and shall, at its option, have the right to declare this Agreement to be terminated and to take such other actions to which it is entitled.

- f. Multiple Counterparts. This Agreement may be executed in multiple counterparts, with each counterpart deemed the same as the original.
- g. Notices. Unless otherwise provided for herein, notices pursuant to this Agreement shall be deemed given upon actual delivery, or by certified mail, return-receipt requested, through the United States Postal Service, addressed to the addresses below or such other addresses as the Parties may designate in writing.

To the Irrigation Company: Larry Whipple, President  
Show Low/Pinetop-Woodland Irrigation  
Company, Inc.  
Post Office Box 671  
Show Low, Arizona 85902-0671

With a copy to: David A. Brown  
Brown & Brown Law Offices, P.C.  
Post Office Box 1890  
St. Johns, Arizona 85936

To Pinetop-Lakeside: Keith Johnson, Town Manager  
Town of Pinetop-Lakeside  
958 South Woodland Road  
Lakeside, Arizona 85929

With copies to: William J. Sims, Attorney for the  
Town of Pinetop-Lakeside  
3101 North Central Avenue, Suite 870  
Phoenix, Arizona 85012

Alexandra M. Arboleda  
TSL Law Group PLC  
8096 N. 85<sup>th</sup> Way, Ste. 105  
Scottsdale, Arizona 85258

- h. Construction. Nothing in this Agreement shall be construed as to create any rights for or on behalf of any person or entity not a party to this Agreement.
- i. Interpretation. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement. Capitalized terms shall have the meanings defined herein. This Agreement and all exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and shall not be changed or added to except as provided herein.
- j. Governing Law; Venue; Dispute Resolution. This Agreement is entered into in the State of Arizona and shall be governed by and interpreted under the laws of the State of Arizona. All disputes between the Parties arising under this Agreement shall be filed in the Superior Court of Navajo County, Arizona.
- k. Approvals. Any approval required to be given by a Party shall not be unreasonably withheld, conditioned or delayed by the approving Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below but effective as of the Effective Date.

SHOW LOW/PINETOP-WOODLAND  
IRRIGATION COMPANY, INC., an  
Arizona non-profit corporation

By: \_\_\_\_\_  
Larry Whipple, President

THE TOWN OF PINETOP-LAKESIDE

By: \_\_\_\_\_  
Stephanie Irwin, Mayor

ATTEST:

\_\_\_\_\_  
Remilie S. Miller, MMC, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
William J. Sims, Town Attorney

