

SECOND AMENDMENT TO OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This Second Amendment to Option Agreement and Joint Escrow Instructions ("Second Amendment") is dated the __ day of November, 2016 by and between **TOWN OF CASTLE ROCK WATER ENTERPRISE** ("Castle Rock") and **BOX ELDER CREEK PROPERTIES, LLC**, a Colorado limited liability company ("Box Elder"). Box Elder and Castle Rock may each be individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS:

A. The Parties previously entered into that certain Option Agreement and Joint Escrow Instructions dated April 1, 2014, with respect to an option to purchase Water Rights, as defined therein, and certain real property located in the Counties of Weld and Adams, State of Colorado as described more fully therein (the "Agreement"), as amended by that certain First Amendment to Option Agreement and Joint Escrow Instructions dated August __, 2016 (the "First Amendment"). For purposes of this Second Amendment, all capitalized terms used herein shall have the meanings ascribed to them in the Agreement and/or First Amendment, unless otherwise defined herein.

B. As contemplated by the First Amendment, in the event Castle Rock purchases the Property on or before December 1, 2016, it will receive a reduction in the Purchase Price of the Property in the form of the December 1 Price Concession described in the First Amendment.

C. Box Elder is engaged in a separate water development project that includes a well field and related water rights and plan for augmentation on or affecting Box Elder Creek, as more particularly described in the Application for Approval of Conditional Underground Water Rights, Conditional Water Storage Right, and Plan for Augmentation Case No. 2013CW3108, Colorado District Court, Water Division No. 1, and other pleadings and documents filed in that case (the "Water Court Case"). Box Elder filed a Second Amendment to the Water Court Case in July, 2016.

D. Some of the Water Rights will be located on or will affect Box Elder Creek and Castle Rock filed a Statement of Opposition to the Second Amendment to assure that the water rights, changes, and plan for augmentation sought in the Water Court Case will not injure the Water Rights or other Castle Rock water rights (CR Water Rights) or adversely affect Castle Rock's ability to use the CR Water Rights in connection with the well field that is expected to be developed on the Farm in connection with Castle Rock's use of the CR Water Rights ("Box Elder Well Field").

E. As a condition to Castle Rock's purchase of the Property at a Closing in Escrow, in order to protect the CR Water Rights from injury, Castle Rock requires that the Water Court Case be dismissed with prejudice, that such dismissal be approved by order of the Water Court (the "Dismissal Order"), and that Box Elder, its principals, owners, and managers, as well as Stillwater Resources and Investments, Inc., Walraven Ketellapper and Sara Morison, do not in the future file a water court application seeking Box Elder Creek water rights, changes, and exchanges or plans for augmentation similar to those described in the Water Court Case. The foregoing requirements by Castle Rock are collectively referred to herein as the Dismissal Order Condition.

F. In order to accommodate the December 1 Price Concession and to satisfy the Dismissal Order Condition, the Parties desire to amend the Agreement so as to provide for a Closing in Escrow, as hereinafter defined, on or before December 1, 2016, pending the entry of the Dismissal Order.

G. The Parties now desire to amend the Agreement as set forth below.

AGREEMENT:

NOW THEREFORE, in consideration of the covenants and promises set forth below, and the receipt of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The recitals set forth above are true and correct and are incorporated herein in their entirety by this reference.

2. Closing in Escrow. Castle Rock may obtain the December 1 Price Concession by Closing in Escrow with the Title Company on or before December 1, 2016 (the "Closing in Escrow") in accordance with this Second Amendment. The Parties hereby agree to effect the Closing in Escrow by Castle Rock depositing the balance of the Purchase Price as set forth in the First Amendment (subject to the application of the Option Payments) with Title Company on or before December 1, 2016. Contemporaneously with the foregoing deposit, Box Elder and Castle Rock shall also execute and deliver to Title Company, as applicable, the Deed as set forth in paragraph 8.b. of the Agreement and other documents necessary or convenient to the Closing as provided in the Agreement. The Parties hereby acknowledge that Castle Rock's Limited Purchase Notice as provided by the First Amendment is still in force and effect, and that Castle Rock will provide at least ten (10) days prior written notice of the exact Closing Date for the Closing in Escrow as set forth in the First Amendment (which Closing Date must be on or before December 1, 2016 to obtain the December 1 Price Concession, as provided in the First Amendment).

3. Motion to Dismiss Water Court Case. Within five (5) business days after the Closing in Escrow as provided in paragraph 2, above, Box Elder shall file with the Division 1 Water Court a Motion to Dismiss the Water Court Case with Prejudice, substantially in the form attached hereto as **Exhibit B** (the "Motion"), together with a proposed order for dismissal of the Water Court Case with prejudice. Box Elder will be responsible for all fees and costs associated with its filing and prosecution of the Water Court Case, including all fees and costs associated with seeking and obtaining the Dismissal Order, including, but not limited to, any costs and attorney fees that may be awarded as a condition of dismissal. Box Elder will indemnify Castle Rock and hold it harmless from any fees, costs, or other expenses or claims associated with seeking and obtaining the Dismissal Order. Box Elder shall make diligent and concerted efforts to obtain the Dismissal Order. Castle Rock consents to the Motion, and shall not request that Box Elder pay any of Castle Rock's fees, costs, or other expenses associated with its participation in the Water Court Case. If a Dismissal Order dismissing the Water Court Case with prejudice is not entered by the Water Court within 90 days of the date of filing the Motion to Dismiss, Box Elder shall undertake further efforts to obtain the Dismissal Order, which may include, but are not limited to, requesting a hearing before the Water Court, filing a motion for entry of order on the Motion, or seeking appointment of a senior judge to rule on the Motion. Castle Rock may, but need not, join in such efforts or independently undertake such efforts. If, notwithstanding such efforts, the Dismissal Order has not been entered by April 1, 2018, this Second Amendment shall terminate, the Closing in Escrow shall likewise be terminated, and all monies, documents and things provided to the Title Company shall be

returned to the party that provided them, and all earnings on the escrowed funds will be disbursed to Castle Rock. If the Escrow is terminated because the Dismissal Order was not entered on or before April 1, 2018, Box Elder will reimburse to Castle Rock all costs and fees incurred by Castle Rock in connection with the Closing in Escrow, including attorney fees.

4. Agreement of Box Elder and Related Parties. Provided the purchase and sale of the Property and Water Rights is consummated through the Closing Escrow and the balance of the Purchase Price is distributed to Box Elder, Box Elder will not directly or indirectly as managers, members, directors, officers, shareholders, employees, contractors, consultants or advisors to another person or entity, or otherwise, (1) file or pursue an application for water rights, plans for augmentation or exchanges on or affecting Box Elder Creek, until after the end of the first calendar year in which Castle Rock files a water court application(s) to enable its use of the CR Water Rights ("Castle Rock Application"), (2) seek an appropriation date for any water right or exchange on or affecting Box Elder Creek that is on or earlier than the date of the Castle Rock Application, (3) apply for water rights located at or upstream of any of the CR Water Rights being used at the Box Elder Well Field or apply for exchanges with any termini located at or upstream of any of the CR Water Rights being used on Box Elder Creek or in the Box Elder Creek watershed associated with the Box Elder Well Field; (4) apply for water rights located less than three miles north of the northernmost well in the Box Elder Well Field, without a plan that provides for direct augmentation of the Box Elder aquifer to offset all depletions from water rights tributary to Box Elder Creek or the Box Elder Creek watershed; or (5) apply for exchanges with termini located less than three miles north of said northernmost well in the Box Elder Well Field; or (6) oppose any Castle Rock Application. Box Elder will also procure the same agreement, substantially in the form of **Exhibit A ("Related Parties Agreement")**, of its managers and members, of Stillwater Resources and Investments, Inc., Sara Morison and Walraven Ketellapper (collectively, "Related Parties"), for themselves, and their respective managers, members, directors, officers, shareholders, employees, heirs, successors and assigns. Nothing in this paragraph or this Agreement shall prohibit Castle Rock from opposing any water court application filed by Box Elder or any of the Related Parties, or their respective managers, members, directors, officers, shareholders, employees, heirs, successors and assigns.

5. Closing Instructions. This Second Amendment constitutes irrevocable instructions from Castle Rock and Box Elder to the Title Company following the Closing in Escrow to record and deliver the Deed and other Closing documents, as applicable, and to release and deliver the balance of the Purchase Price to Box Elder, upon Title Company's receipt of a certified copy of the Water Court's executed Dismissal Order dismissing the Water Court Case with prejudice, and a fully-executed copy of the Related Parties Agreement in substantially the form shown on Exhibit A. Moreover, at any time prior to or on April 1, 2018, the Title Company is hereby expressly instructed to disregard any unilateral instruction by Castle Rock or Box Elder contrary to the preceding sentence, or otherwise instructing the Title Company not to consummate the Closing in Escrow in accordance with this Second Amendment. If the Dismissal Order has not been entered on or before April 1, 2018, the Parties, or either of them, shall immediately advise the Title Company that the Dismissal Order has not been entered, and the escrow shall be disbursed promptly thereafter in accordance with applicable escrow instructions.

6. Default, Remedies, Specific Performance. If Box Elder fails to timely perform any of its obligations hereunder, Castle Rock shall first provide written notice of such default, and Box Elder shall have ten (10) business days within which to cure such default. If the default is not cured within such time period, Castle Rock may resort to its remedies, and may seek specific performance of the Agreement, including this Second Amendment. If, at the time of default by Box Elder, the Closing in Escrow as set forth in the First Amendment had occurred on or before December 1, 2016, no default by Box Elder,

whether or not cured, shall prevent Castle Rock from realizing the benefit of the December 1 Price Concession, should Castle Rock seek specific performance.

7. Castle Rock's Election Not to Pursue Escrow Closing. If Castle Rock fails to Close in Escrow, this Second Amendment shall thereafter be of no force or effect. In that event the Parties' respective rights and obligations shall be governed by the Agreement and the First Amendment and this Second Amendment shall have no bearing or effect on the Box Elder's ability to prosecute the Water Court Case or Castle Rock's pursuit of its objection thereto.

8. Construction. Each of the Parties acknowledges that they, and their respective counsel, substantially participated in the negotiation, drafting and editing of this Second Amendment. Accordingly, the Parties agree that the provisions of this Second Amendment shall not be construed or interpreted for or against any Party hereto based on authorship.

9. Authority. Each Party represents and warrants that it has the power and authority to execute this Second Amendment and that there are no third party approvals required to execute this Second Amendment or to comply with the terms or provisions contained herein.

10. Headings. The section headings used herein shall have absolutely no legal significance and are used solely for convenience of reference.

11. Ratified and Confirmed. The Agreement, except as modified by this Second Amendment, is hereby ratified and confirmed and shall remain in full force and effect in accordance with its original terms and provisions.

12. Counterparts; Facsimile. This Second Amendment may be executed in counterparts, each of which shall be deemed to be an original, and both of which together shall be deemed to constitute one and the same instrument. Each of the Parties shall be entitled to rely upon a counterpart of this Second Amendment executed by the other Party and sent via facsimile transmission.

13. Time of the Essence. Time is of the essence in this Second Amendment and with respect to the dates set forth herein.

14. Integration Clause. The Agreement as modified by the First Amendment and this Second Amendment is the entire agreement between the Parties with respect to this transaction. All prior discussions, agreements, and negotiations are merged herein. There are no oral promises conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the Parties. The Agreement may not be amended or modified except by a document in writing signed by both Parties.

IN WITNESS WHEREOF the Parties have executed this Second Amendment as of the date first written above.

BOX ELDER:

BOX ELDER CREEK PROPERTIES, LLC,

a Colorado limited liability company

By: _____
Michael Jeronimus, Manager

CASTLE ROCK:

ATTEST:

**TOWN OF CASTLE ROCK,
BY AND THROUGH THE TOWN OF
CASTLE ROCK WATER ENTERPRISE**

Sally A. Misare, Town Clerk

Approved as to form:

Robert J. Slentz, Town Attorney

Paul Donahue, Mayor

Approved as to content:

Mark Marlowe, Utilities Director

Exhibit A

RELATED PARTIES AGREEMENT

This Related Parties Agreement (“Agreement”) is dated the ____ day of _____ 201_, by and between the **TOWN OF CASTLE ROCK WATER ENTERPRISE** (“Castle Rock”) and **STILLWATER RESOURCES & INVESTMENTS, INC., MICHAEL JERONIMUS, KEN JERONIMUS, WAYNE ANDERSON, ESTATE OF MICHAEL GILSDORF, WALRAVEN KETELLAPPER, and SARA MORISON** (each individually a “Related Party,” and collectively “Related Parties”).

RECITALS:

A. Castle Rock and Box Elder Creek Properties, LLC (“Box Elder”) previously entered into that certain Option Agreement and Joint Escrow Instructions dated April 1, 2014, with respect to an option to purchase Water Rights, as defined therein, and certain real property located in the Counties of Weld and Adams, State of Colorado as described more fully therein, as amended by that certain First Amendment to Option Agreement and Joint Escrow Instructions dated August __, 2016 (the “First Amendment”) and that certain Second Amendment to Option Agreement and Joint Escrow Instructions dated _____, 2016 (“Second Amendment”). (The original Option Agreement, and the First and Second Amendments are referred to herein as the “Option Agreement”), a copy of which is attached as **Exhibit A**. For purposes of this Agreement, all capitalized terms used herein shall have the meanings ascribed to them in the Option Agreement.

B. Box Elder is engaged in a separate water development project that includes a well field and related water rights and plan for augmentation as more particularly described in the Second Amended Application for Approval of Conditional Underground Water Rights, Conditional Water Storage Right, and Plan for Augmentation, Case No. 2013CW3108, Colorado District Court, Water Division No. 1, and other pleadings and documents filed in that case, including any further amendments to the application (the “Water Court Case”).

C. Some of the Water Rights will be located on or will affect Box Elder Creek, and Castle Rock filed a Statement of Opposition to Box Elder’s application in the Water Court Case to assure that the water rights, changes, and plan for augmentation sought in the Water Court Case will not injure the Water Rights or adversely affect Castle Rock’s ability to use the Water Rights.

D. The Second Amendment contains provisions for a Closing in Escrow which will enable Castle Rock to purchase the Property and Water Rights and to realize the benefits of the December 1 Price Concession, will enable Box Elder to realize the benefit of an earlier closing, to the financial benefit of the Related Parties. The Second Amendment includes Box Elder’s agreement to obtain dismissal of the Water Court Case with prejudice following the Closing in Escrow, provides that Box Elder will not directly or indirectly file or pursue future water court applications that could injure the Water Rights or adversely affect Castle Rock’s ability to use the Water Rights (the “Water Court Application Restriction”), and further provides that Box

Exhibit A

Elder will secure an agreement between Castle Rock and the Related Parties that obligates the Related Parties to comply with the Water Court Application Restriction.

E. Castle Rock is relying on the representations of the Related Parties in its decision to purchase the Property and Water Rights at the Closing in Escrow.

F. The Related Parties will obtain financial benefit from the Closing in Escrow.

G. To ensure the Related Parties' compliance with the Water Court Restriction and to protect the Water Rights from injury, the Parties desire to enter into this Agreement.

NOW THEREFORE, in consideration of \$10.00, the covenants and promises set forth below, the benefits to Castle Rock and the Related Parties from the Closing in Escrow, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

AGREEMENT

1. Recitals. The recitals set forth above are true and correct and are incorporated herein in their entirety by this reference.

2. Water Court Application Restriction. Provided the purchase and sale of the Property and Water Rights is consummated through the Closing in Escrow as provided in the Second Amendment and the balance of the Purchase Price is distributed to Box Elder, the Related Parties will not directly or indirectly as managers, members, directors, officers, shareholders, employees, contractors, consultants or advisors to another person or entity, or otherwise, (1) file or pursue an application for water rights, plans for augmentation or exchanges on or affecting Box Elder Creek, until after the end of the first calendar year in which Castle Rock files a water court application(s) to enable its use of the CR Water Rights ("Castle Rock Application"), (2) seek an appropriation date for any water right or exchange on or affecting Box Elder Creek that is on or earlier than the date of the Castle Rock Application, (3) apply for water rights located at or upstream of any of the CR Water Rights being used at the Box Elder Well Field or apply for exchanges with any termini located at or upstream of any of the CR Water Rights being used on Box Elder Creek or in the Box Elder Creek watershed associated with the Box Elder Well Field; (4) apply for water rights located less than three miles north of the northernmost well in the Box Elder Well Field, without a plan that provides for direct augmentation of the Box Elder aquifer to offset all depletions from water rights tributary to Box Elder Creek or the Box Elder Creek watershed; or (5) apply for exchanges with termini located less than three miles north of said northernmost well in the Box Elder Well Field; or (6) oppose any Castle Rock Application. Moreover, Related Parties will not undertake any of the foregoing activities from the date on which the Closing in Escrow occurs, and the date on which the balance of the Purchase Price is distributed to Box Elder. Nothing in this paragraph or this Agreement shall prohibit Castle Rock from opposing any water court application filed by Box Elder or any of the Related Parties, or their respective managers, members, directors, officers, shareholders, employees, heirs, successors and assigns.

Exhibit A

3. Default, Remedies, Specific Performance. If any Related Party fails to perform or comply with any of its obligations hereunder, Castle Rock shall first provide written notice of such default to the defaulting Related Party, and the defaulting Related Party shall have ten (10) business days within which to cure such default. If the default is not cured within such time period, Castle Rock may resort to its remedies, and may seek specific performance of the defaulting Related Party's obligations under this Agreement, and shall be entitled to recover all costs of enforcement, including reasonable attorney fees.

4. Termination of Water Court Application Restriction. If Castle Rock fails to consummate the purchase and sale of the Property and Water Rights through the Closing in Escrow, or if the Dismissal Order has not been entered by the Water Court by April 1, 2018, and the Second Amendment is therefore terminated, and of no force or effect, the Water Court Application Restriction set forth in paragraph 2 shall likewise terminate and be of no force or effect. Termination of the Water Court Application Restriction as to the Related Parties shall have no bearing or effect on Castle Rock's pursuit of its objection to the Water Court Case or to any other water court application that Box Elder or any Related Party may file.

5. Notice. All notices required to be given pursuant to this Agreement shall be deemed given upon delivery, or three days following mailing by United States Certified Mail, return receipt requested, addressed to the Party to whom directed at its address shown below, or at such other address as shall be provided by notice pursuant to this paragraph.

6. Construction. Each of the Parties acknowledges that they, and their respective counsel, substantially participated in the negotiation, drafting and editing of this Agreement. Accordingly, the Parties agree that the provisions of this Agreement shall not be construed or interpreted for or against any Party hereto based on authorship.

7. Authority. Each Party represents and warrants that it has the power and authority to execute this Agreement and that there are no third party approvals required to execute this Agreement or to comply with the terms or provisions contained herein.

8. Headings. The section headings used herein shall have absolutely no legal significance and are used solely for convenience of reference.

9. Time of the Essence. Time is of the essence in this Agreement.

10. Integration Clause. The Agreement is the entire agreement between the Parties with respect to this transaction. All prior discussions, agreements, and negotiations are merged herein. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the Parties. The Agreement may not be amended or modified except by a document in writing signed by all Parties.

11. Applicable law. This Agreement shall be interpreted in accordance with the laws of the State of Colorado.

Exhibit A

12. Severability. In the event any provisions hereof or any portion of any provision hereof shall be deemed to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not alter the remaining portion of any provision or any other provision hereof as each provision of this Agreement shall be deemed to be severable from all other provisions hereof.

13. Construction of Waivers. The waiver of any party hereto of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted herein nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

14. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns.

15. Construction of Party Relationships. Nothing herein contained shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership, joint venture or of any association between Castle Rock and any or all Related Parties except for the rights set forth in this Agreement and the Option Agreement as amended.

16. Parties Not Bound. No term or provision of this Agreement or the exhibits hereto is intended to or shall be for the benefit of any person, firm, corporation or other entity not a Party hereto or to the Option Agreement and no such other person, firm, corporation or entity shall have any right or cause of action hereunder.

17. Counterparts; Facsimile. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and both of which together shall be deemed to constitute one and the same instrument. Each of the Parties shall be entitled to rely upon a counterpart of this Agreement executed by the other Party and sent via facsimile transmission.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

[Signature blocks **and** addresses]

EXHIBITS

Exhibit B

District Court, Water Division 1 State of Colorado 901 9 th Avenue Greeley, CO 80632 (970) 475-2400	Court Use Only
CONCERNING THE APPLICATION FOR WATER RIGHTS OF BOXELDER CREEK PROPERTIES, LLC IN ADAMS, ARAPAHOE, MORGAN and WELD COUNTIES	
Steven P. Jeffers #17858 Elizabeth M. Joyce #46484 Attorneys for Applicant Lyons Gaddis Kahn Hall Jeffers Dworak & Grant, PC P.O. Box 978 Longmont, CO 80502-0978 Telephone: (303) 776-9900 E-mail: sjeffers@lgkhlaw.com	Case No. 13CW3108 Water Division No. 1
UNOPPOSED MOTION TO DISMISS WITH PREJUDICE	

Applicant, Boxelder Creek Properties ("BCP"), by its undersigned attorneys, hereby moves the court to dismiss its application with prejudice as follows:

CERTIFICATION: BCP conferred by email with all objectors on December 1, 2016, pursuant to C.R.C.P. 121(1-15) providing a copy of the motion and proposed order for dismissal of the application with prejudice, asking them to respond with any changes or objections before December 6, 2016. The following parties objected to the motion: _____.

The following parties informed BCP's attorneys that they consent to or do not oppose the motion: _____.

1. BCP filed the application for conditional water rights and plan for augmentation in Case No. 13CW3108 ("BCP Plan"), proposing to replace depletions from well pumping on Box Elder Creek with water delivered on the South Platte River. The BCP Plan was modeled after a similar plan that had been approved by the Water Court in Case No. _____.

2. During the course of this litigation BCP has become aware of growing opposition to that replacement plan, including opposition by several parties on Box Elder Creek, and recent opposition by Castle Rock and Denver. BCP does not have a readily available source of replacement water on Box Elder Creek, and does not believe it can reach settlement with

the opposers without obtaining such additional supplies. BCP has decided it would rather dismiss this application than purchase such supplies or risk losing at trial on that issue, and now seeks to dismiss the application pursuant to Rule 41(a)(2), C.R.C.P. In order to protect opposers from the risk of litigating these issues again, BCP requests the application be dismissed with prejudice, with all parties paying their own fees and costs in this matter.

DATED: December __ , 2016

**ATTORNEYS FOR APPLICANT,
BOXELDER CREEK PROPERTIES**

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of December, 2016, a true and correct copy of the foregoing **UNOPPOSED** MOTION TO DISMISS WITH PREJUDICE was filed via ICCES to the following parties:

/s/ _____