

TRI-PARTY AGREEMENT REGARDING CHEROKEE RANCH & CASTLE FOUNDATION RIGHTS

THIS AGREEMENT is executed this 5th day of March, 2019, by and between the Town of Castle Rock, a Colorado home rule municipal corporation by and through the Town of Castle Rock Water Enterprise (the "Town") ; Dominion Water & Sanitation District, acting in its capacity as a Water Activity Enterprise ("Dominion") and the Cherokee Ranch & Castle Foundation, a Colorado nonprofit corporation ("Foundation"), (jointly "Parties").

WHEREAS the Town of Castle Rock is a home rule municipal corporation; and

WHEREAS, Dominion is a quasi-municipal corporation and political subdivision of the State of Colorado formed and organized pursuant to Title 32 of the Colorado Revised Statutes; and

WHEREAS, the Foundation owns the property described in **Exhibit A** ("the Property"); and

WHEREAS, the Town owns the following certain real property interests and nontributary and not nontributary water rights:

- the "Cherokee Ranch Easements" described as follows;
 - Easement Agreement dated April 22, 2013, recorded in the public records of Douglas County, Colorado April 29, 2013 at Reception No. 2013034803.
 - Second Amended Easement Deed dated December 28, 2012, recorded in the public records of Douglas County, Colorado at Reception No. 2013005243.
- approximately 1,574 acre feet per year of nontributary Denver Basin groundwater as originally decreed by the Division No. 1 Water Court in Case No. 98CW219, as modified by Case No. 03CW117, in the Arapahoe formation ("Arapahoe Water Right");
- approximately 1,614 acre feet per year of not nontributary Denver Basin groundwater as originally decreed by the Division No. 1 Water Court in Case No. 98CW219, as modified by Case No. 03CW117, in the Denver formation ("Denver Water Right");
- approximately 381 acre feet per year of nontributary Denver Basin groundwater as originally decreed by the Division No. 1 Water Court in Case No. 98CW219, as modified by Case No. 03CW117, in the Laramie Fox Hills formation ("LFH Water Right");

(collectively the "Water Rights") all of which groundwater underlies the Property; and

WHEREAS, Dominion desires to obtain the option to purchase the Water Rights and Cherokee Ranch Easements, and has negotiated an Option Agreement with the Town, which is attached hereto as **Exhibit B** ("Dominion Option Agreement").

WHEREAS, the Foundation and the Town are parties to the First Amendment to the First Amended Operating and Maintenance Agreement dated November 16, 2017 ("2017

Amendment”), attached hereto as **Exhibit C**, pursuant to which the Town has granted the Foundation a right of first refusal (“ROFR”) if the Town receives and accepts a bona fide offer to purchase the Water Rights, or any portion thereof, to consummate the transaction contemplated by the offer on the terms and subject to the conditions set forth in the offer; and

WHEREAS, the Option Agreement between Dominion and the Town provides that Dominion will assume the responsibilities to set forth in the First Amended Operating and Maintenance Agreement dated March 6, 2008 (“2008 O&M Agreement”) between the Foundation and the Town’s predecessors, Bromley District Water Providers, LLC and Robert A. Lembke, as amended by the 2017 Amendment, to provide the Foundation with the option to use capacity in one or more Arapahoe wells to deliver Arapahoe aquifer water owned by the Foundation. The 2008 O&M Agreement is attached hereto as **Exhibit D**.

WHEREAS, Dominion is authorized, pursuant to its service plan, to provide wholesale water services to customers located both within and outside of its boundaries for multiple uses, including for human consumption and household use, commercial, irrigation, industrial and other uses; and

WHEREAS, the Town, Dominion and the Foundation have mutual interests concerning the development of the Water Rights and use of the Cherokee Ranch Easements.

NOW THEREFORE, in consideration of the mutual promises and benefits described herein, the adequacy and sufficiency of which are hereby acknowledged, Dominion, the Town and the Foundation hereby agree as follows:

1. **Partial Waiver and Amendment of Foundation’s Right of First Refusal**. The Foundation hereby agrees as follows:

1.1. The Foundation agrees that a bona fide purchaser that reaches a mutual agreement with the Town may purchase up to 1,074 acre feet of 1,574 acre feet per year decreed to the Arapahoe Water Right and all of the Denver and LFH Water Rights without triggering the Foundation’s ROFR.

1.2. The Foundation shall retain a right of first refusal on 500 acre feet of the Arapahoe Water Right. If a bona fide purchaser elects to purchase a portion of the Water Rights that includes the last 500 acre feet per year of the Arapahoe Aquifer available for purchase from the Town, the Foundation shall be entitled to exercise its right of first refusal and purchase up to 500 acre feet per year of the Arapahoe Water Right at the same price as the purchaser has agreed to pay the Town.

1.2.1. The Foundation may elect to purchase all 500 acre feet, or a lesser amount in a minimum of 100 acre feet increments. The Foundation may purchase up to 500 acre feet of water annually in installments of at least 100 acre feet; provided however that if the Foundation does not make an installment payment in any year after the

initial closing, the rights of the Foundation to any remaining increment of the 500 acre feet shall terminate.

1.2.2. The Town shall notify the Foundation in writing by Certified U.S. Mail if Dominion elects to purchase a portion of the Water Rights that includes the last 500 acre feet per year of the Arapahoe Water Right. The notice shall include a summary of the price per acre foot that Dominion has offered to the Town.

1.2.3. The Foundation must exercise its ROFR by both (i) delivering written notice to the Town of the Foundation's intent to exercise such right, which notice shall be delivered to the Town on or before fifteen (15) days by Certified U.S. Mail following the date the notice of the bona fide offer ("Offer") is delivered to the Foundation, and (ii) delivering a contract executed by the Foundation that includes the relevant terms and conditions (the "Contract") within forty-five (45) days following the date the notice of the Offer is delivered to the Foundation.

1.2.3.1. The Contract terms shall identify how much water the Foundation elects to purchase, as well as an installment payment schedule, if any.

1.2.3.2. The Contract shall also identify the price per acre foot and the total price to be paid by the Foundation to the Town, which shall be equal to the price contained in the Offer; provided, however that the price to the Foundation may be adjusted as follows: if the Offer price exceeds the actual cost per acre foot expended by the Town on the acquisition of the Water Rights as determined in good faith in the sole discretion of the Town ("Actual Cost"), then the price to the Foundation shall be the Actual Cost. If the Foundation pays the Actual Price, then the Foundation agrees to retain the water for use on the Property and not to sell the subject water to third parties for a minimum of five years after the completion of any installment payments.

1.2.3.3. The Contract shall provide for a mutually agreeable closing date on or before 90 days from the date the notice of the Offer is delivered to the Foundation.

1.2.4. Failure of the Foundation to exercise its ROFR by timely meeting the deadlines described herein shall result in cancellation of the Foundation's ROFR for that transaction, and the Town shall be entitled to complete the proposed transaction described in the Offer without further obligation to the Foundation. If the terms and conditions of the proposed transaction as described in a particular Offer materially change after the Foundation has declined or failed to exercise its right of first refusal

with respect thereto, then the ROFR shall apply to the modified Offer and the Town shall provide a new notice of the modified Offer to the Foundation.

1.2.5. With respect to the Dominion Option Agreement, if the Foundation exercises its ROFR for less than 500 acre feet of the Arapahoe Water; or if the Foundation's right to purchase a portion of the 500 acre feet of Arapahoe Water is terminated by the Foundation's failure to complete an installment payment pursuant to the Contract, then Dominion shall have the right to purchase that portion of the Arapahoe Water not purchased by the Foundation pursuant to the material terms of the Dominion Option Agreement, subject to mutually agreeable changes to the Closing date, and if necessary, an extension of the Option Term, between Dominion and the Town.

1.2.6. Dominion's purchase of the Water Rights shall be adjusted, if necessary, based on the Foundation's exercise of its ROFR.

1.2.7. Section 3. G of the 2017 Amendment is deleted in its entirety.

1.2.8. The Foundation's ROFR shall apply to all Offers received by Town on or before November 16, 2027. The Foundation's ROFR shall be unenforceable and of no force and effect with respect to Offers received by the town after November 16, 2027.

2. **Arapahoe Well Capacity for Foundation**. If (a) Dominion purchases some or all of the Arapahoe water pursuant to the Option Agreement, and (b) if Dominion subsequently constructs an Arapahoe aquifer well, Dominion and the Foundation agree that the 2017 Amendment and the 2008 O&M Agreement are amended as follows to provide the Foundation with the opportunity to use a portion of the well capacity:

2.1. The cost of constructing the initial Arapahoe well shall be borne solely by Dominion.

2.2. Dominion shall notify the Foundation once an Arapahoe well has been completed, and the capacity thereof. The Foundation shall have thirty (30) days to elect whether or not to share the well capacity with Dominion, and shall provide written notice of its election to Dominion within that time.

2.3. If the Foundation elects to share in the initial Arapahoe well capacity with Dominion, Dominion shall reserve 15.5 gallons per minute (gpm) of firm capacity for the Foundation "(Foundation's Firm Capacity)" for the Foundation to pump up to 500 acre feet per year, depending on whether and to what extent the Foundation exercises its right

of first refusal as described in Section 1, above. The Foundation shall not be entitled to pump more water from a Dominion well on an annual basis than the amount it ultimately purchases from the Town.

- 2.4. If the Foundation elects to use the Foundation's Firm Capacity, the Foundation may also, use pumping capacity above 15.5 gpm, to pump its Arapahoe Water; provided, however, that use of capacity above 15.5 gpm shall only be permitted at times when Dominion is not using all or some portion of the remaining Arapahoe well capacity and pursuant to a schedule acceptable to both Dominion and the Foundation.
- 2.5. The Foundation shall be responsible for paying all operating and maintenance expenses, including without limitation, variable, fixed and capital expenses, associated with its pro rata share of total pumping as set forth in Sections 4 and 5 of the 2008 O&M Agreement. Dominion shall provide an itemized invoice to the Foundation of its operating and maintenance costs at least annually.
- 2.6. The Foundation shall have a right to purchase additional firm pumping capacity of 15.5 gpm in up to three additional Arapahoe wells, if such wells are completed by Dominion or a successor to Dominion.
 - 2.6.1. The total Firm Capacity available to the Foundation if Dominion completes four or more Arapahoe wells is 62 gpm, which may be used to deliver the Foundation's Arapahoe Water.
 - 2.6.2. The Foundation shall pay for any Firm Capacity over and above the initial 15.5 gpm provided for herein based on the Foundation's pro rata share of the total pumping capacity of the well multiplied by the cost of drilling and equipping the well.
3. **Dominion's Option to Provide Water From the Denver Aquifer.** If the Foundation elects to share well capacity pursuant to Section 2.2, and if Dominion has exercised its option to purchase sufficient Denver aquifer water pursuant to the Dominion Option Agreement, then at Dominion's election, it may provide the Foundation with an amount equivalent to the amount the Foundation has purchased in the Arapahoe Aquifer from the Town from the Denver aquifer instead of the Arapahoe aquifer pursuant to the following conditions:
 - 3.1. Dominion must first develop one or more Denver aquifer wells at its sole cost and expense.

- 3.2. Dominion shall be responsible for augmenting any Denver aquifer pumping attributable to delivery of water to the Foundation.
- 3.3. The Foundation shall have the right to a firm capacity of 50 gpm to pump its annual entitlement (up to 500 acre feet per year) from one Denver aquifer well.
- 3.4. The Foundation shall have a right to purchase additional firm pumping capacity of 50 gpm in up to three additional Denver wells, if such wells are completed by Dominion or a successor to Dominion.
- 3.5. The total Firm Capacity available to the Foundation if Dominion completes four or more Denver wells is 200 gpm, which may be used to deliver the Foundation's annual entitlement (up to 500 acre feet per year).
- 3.6. The Foundation and Dominion will complete a no-cost trade of water rights whereby the Foundation shall assign its Arapahoe aquifer water to Dominion by special warranty deed and Dominion shall convey an equal amount of water from the Denver aquifer to the Foundation by special warranty deed.

4. **Option to Purchase Potable Water.**

- 4.1. The Foundation shall have an option to purchase, through a qualified retail provider, up to 20 acre feet per year of potable water supplied through Dominion's wholesale system.
- 4.2. The Foundation's option to purchase potable water shall terminate ten (10) years from the Execution Date of this Agreement.
- 4.3. Dominion shall not be obligated to deliver potable water for the Foundation's benefit until it has all of the necessary infrastructure in place to do so.
- 4.4. If the Foundation exercises its option to receive potable water, the connection point shall be along the Eastern Regional Pipeline Project at or near the point labeled Potential Interconnect Location on the map attached hereto as **Exhibit E**. The final connection location shall be mutually agreed upon with Dominion, the retail provider and the Foundation.

5. **Default and Remedies.** In the event of default hereunder by any Party, the remedies set forth below and the provisions of Section 5 shall survive the termination of this Agreement.

5.1. A default shall be deemed to have occurred if any Party breaches its obligations hereunder and fails to cure such breach within 20 days of receipt of written notice from a non-breaching Party specifying the breach. Waiver or failure to give notice of a particular default shall not be construed as condoning or acquiescing to any continuing or subsequent default. The Parties acknowledge that due to the uniqueness of the subject matter of this Agreement, legal remedies may be inadequate. Accordingly, the non-breaching Party shall have the right to pursue any legal or equitable remedies which it may have, including specific performance, in accordance with the provisions of this Section 5.

5.2. If Dominion, the Town or the Foundation employ an attorney to enforce its rights pursuant to this Agreement because of the default of another Party, the parties agree that each will be responsible for their own attorney's fees and costs associated with any such legal action.

6. **Miscellaneous Provisions.**

6.1. Amendment. Except as otherwise provided herein, this Agreement may be modified, amended, changed, or terminated, in whole or in part, only by an agreement in writing duly authorized and executed by the Parties.

6.2. Notice. For purposes of notice pursuant to this Agreement, the Parties' representatives shall be:

For the Town: Castle Rock Water
 Attn: Director of Castle Rock Water
 175 Kellogg Court
 Castle Rock, CO 80109

With a copy to: Town Attorney
 Town of Castle Rock
 100 Wilcox Street
 Castle Rock, CO 80104

For Dominion: Dominion Water & Sanitation Dist.
 Clifton Larson Allen, LLP
 8390 E. Crescent Parkway, Suite 500
 Greenwood Village, CO 80111

With a copy to: Dominion Water & Sanitation District
 Attn: General Manager
 9250 E. Costilla Ave. Suite 210

Greenwood Village, CO 80016

With a copy to: Welborn Sullivan Meck & Tooley, P.C.
1125 17th Street, Suite 2200
Denver, CO 80220

With a copy to: MaryAnn M. McGeady
McGeady Becher P.C.
450 East 17th Ave Suite 400
Denver, CO 80203

For the Foundation: Cherokee Ranch & Castle Foundation
Attn: Executive Director

With a copy to: James J. Petrock
Petrock, Fendel, Poznanovic, P.C.
700 17th Street, Suite 1800
Denver, CO 80202

Any notices required or permitted to be given hereunder shall be in writing and shall be deemed given when given personally or sent by certified or registered mail, return receipt requested, postage prepaid. Any Party hereto may designate a new address by giving written notice thereof to the other parties as provided herein. Notice shall be effective upon receipt.

6.3. Assignment. This Agreement may not be assigned by any Party to another party unless such assignment is approved in writing by Dominion, the Town and the Foundation.

6.4. Governing Law. The terms, conditions, and provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

6.5. Defense Against Third Parties. In the event of litigation by any third party concerning this Agreement, and to the extent permitted by law, the Parties agree to jointly defend any such third party action.

6.6. No Third Party Beneficiaries. Except as otherwise explicitly provided for herein, there are no third party beneficiaries of this Agreement. No third party has any right to enforce this Agreement.

6.7. Sole Obligation of Water Activity Enterprise.

6.7.1. This Agreement shall never constitute a general obligation or other indebtedness of the Town or Dominion, or a multiple fiscal year direct or indirect debt or other

financial obligation whatsoever of the Town or Dominion within the meaning of the Constitution and laws of the State of Colorado or of the service plan, rules or regulations of the Town or Dominion.

- 6.7.2. The Town represents that this Agreement has been duly authorized, executed and delivered by the Town and constitutes a valid and legally binding obligation of the Town, enforceable against the Town in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.
- 6.7.3. Dominion represents that this Agreement has been duly authorized, executed and delivered by Dominion and constitutes a valid and legally binding obligation of Dominion, enforceable against Dominion in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.
- 6.7.4. The Foundation represents that this Agreement has been duly authorized, executed and delivered by the Foundation and constitutes a valid and legally binding obligation of the Foundation, enforceable against the Foundation in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.
- 6.8. Entire Agreement. This Agreement represents the entire agreement of the parties and none of the parties has relied upon any fact or representation not expressly set forth herein.
- 6.9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed original, but all of which constitute one and the same agreement.
- 6.10. Non-severability and Effect of Invalidity. Each provision of this Agreement is integral to the others and is not severable from the others. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both parties, the parties will immediately attempt to negotiate either valid alternative portions that as near as possible give effect to any stricken portions or a valid replacement agreement.

6.11. Joint Draft. The parties agree they drafted this Agreement jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content. Therefore, this Agreement shall not be construed for or against a party on the basis of authorship.

6.12. Intent of Agreement. This Agreement is intended to describe the rights and responsibilities of and between the parties and is not intended to and shall not be deemed to confer rights upon any persons or entities not signatories hereto nor to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of either party or any other governmental entity not a party hereto.

6.13. Non-Business Days. If any date for any action under this Agreement falls on a Saturday, Sunday or Holiday, as such term is defined in Rule 6 of the Colorado Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.

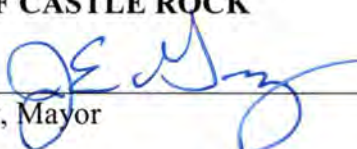
IN WITNESS WHEREOF, the parties hereby executed this Agreement on the date first written above.



ATTEST:


Lisa Anderson, Town Clerk


TOWN OF CASTLE ROCK


Jason Gray, Mayor

Approved as to form:


Robert J. Slentz, Town Attorney

Approved as to content:


Mark Marlowe, Director of Castle Rock Water
DOMINION WATER & SANITATION DISTRICT

Harold Smethills, President

ATTEST:

Denise Denslow, Secretary

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TOWN OF CASTLE ROCK

Jason Gray, Mayor

ATTEST:

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Robert J. Slentz, Town Attorney

Mark Marlowe, Director of Castle Rock Water
**DOMINION WATER & SANITATION
DISTRICT**

Harold Smethills, President

ATTEST:

Tiffany Ramackers, Secretary

**CHEROKEE RANCH & CASTLE
FOUNDATION**, a Colorado non-profit corporation

By _____
James A. Holmes, Executive Director

ATTEST:

Jason Gray, Mayor

Lisa Anderson, Town Clerk

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Mark Marlowe, Director of Castle Rock Water
**DOMINION WATER & SANITATION
DISTRICT**

ATTEST:

Harold Smethills, President

Denise Denslow, Secretary

**CHEROKEE RANCH & CASTLE
FOUNDATION**, a Colorado non-profit corporation

By _____

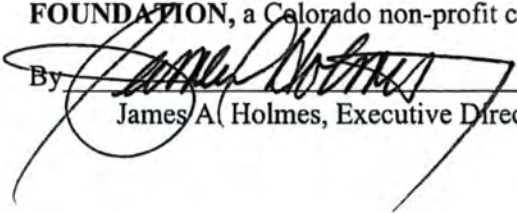

James A. Holmes, Executive Director

EXHIBIT A

To Tri-Party Agreement Regarding Cherokee Ranch & Castle Foundation Rights

A parcel of land located in Sections 5, 6, 7, 8, 17, 18, & 19 of Township 7 South, Range 67 West and in Sections 12, 13, 14 & 24 of Township 7 South, Range 68 West of the Sixth Principal Meridian, County of Douglas, State of Colorado, and being more particularly described as follows:

BEGINNING at the NE corner of Section 19, Township 7 South, Range 67 West of the Sixth Principal Meridian;

THENCE along the East line of the NE¼ of said Section 19, S 00°23'17" W, a distance of 1612.27 feet to the Northerly right of way line of State Highway No. 85;

THENCE along said Northerly right of way line the following fifteen (15) courses:

- 1) N 74°01'07" W, a distance of 442.12 feet;
- 2) N 70°56'17" W, a distance of 269.96 feet;
- 3) N 66°37'01" W, a distance of 813.47 feet;
- 4) N 78°26'56" W, a distance of 1581.82 feet;
- 5) N 73°42'23" W, a distance of 211.93 feet;
- 6) N 71°13'27" W, a distance of 281.07 feet;
- 7) N 67°40'00" W, a distance of 562.02 feet;
- 8) N 75°53'08" W, a distance of 346.26 feet;
- 9) N 80°38'47" W, a distance of 969.60 feet to a point from which the NW corner of said Section 19 bears N 05°30'46" W, a distance of 28.00 feet;
- 10) N 82°57'44" W, a distance of 1053.89 feet;
- 11) N 80°27'38" W, a distance of 584.58 feet;
- 12) N 71°01'17" W, a distance of 471.19 feet;
- 13) N 70°58'10" W, a distance of 2093.66 feet;
- 14) N 71°05'24" W, a distance of 1147.32 feet;
- 15) N 69°36'49" W, a distance of 2074.89 feet to the Southeasterly corner of a parcel of land described in deed recorded in the land records of Douglas County in Book 358 at Page 833;

THENCE along the Easterly line of said parcel the following seven (7) courses:

- 1) N 08°37'34" E, a distance of 172.03 feet;
- 2) N 31°37'52" E, a distance of 442.82 feet;
- 3) N 53°35'59" E, a distance of 194.24 feet;
- 4) N 73°28'44" E, a distance of 264.63 feet;
- 5) N 51°18'55" E, a distance of 177.71 feet;
- 6) N 38°08'20" E, a distance of 487.64 feet;
- 7) N 00°26'53" E, a distance of 391.26 feet to the Northeasterly corner of said parcel;

THENCE along the Northerly line of said parcel, S 89°41'36" W, a distance of 1438.25 feet to the Northwestern corner of said parcel;

THENCE along the Westerly line extended of said parcel, N 00°01'02" E, a distance of 213.47 feet;

THENCE N 89°41'57" E, a distance of 1979.77 feet to the North 1/16 corner between Sections 13 and 14 of T7S, R68W;

THENCE along the West line of the NW¼ of said Section 13, N 00°11'10" W, a distance of 1319.99 feet to the SW corner of said Section 12;

THENCE along the West line of the SW¼ of the SW¼ of said Section 12, N 00°09'51" W, a distance of 1309.82 feet to the South 1/16 corner of Sections 11 & 12;

THENCE along the W line of the NW¼ of the SW¼ of said Section 12, N 00°13'35" W, a distance of 1310.61 feet to the W¼ corner of said Section 12;

THENCE along the West line of the SW¼ of the NW¼ of said Section 12, N 00°09'43" W, a distance of 1309.48 feet to the N 1/16 corner of Sections 11 & 12;

THENCE along the West line of the NW¼ of the NW¼ of said Section 12, N 00°13'44" W, a distance of 1310.95 feet to the NW corner of said Section 12;

THENCE along the North line of the NW¼ of said Section 12, N 89°58'04" E, a distance of 2683.10 feet to the N¼ corner of said Section 12;

THENCE along the North line of the NE¼ of said Section 12, N 89°49'52" E, a distance of 2752.86 feet to the NE corner of said Section 12, also being the NW corner of Section 7, T7S, R67W;

THENCE along the North line of the NW¼ of said Section 7, N 89°55'53" E, a distance of 2633.78 feet to the N¼ corner of said Section 7;

THENCE N 00°05'26" W, a distance of 43.58 feet to an existing fence corner;

THENCE along an existing fence line as described in a boundary agreement between Cherokee Ranch and Castle Foundation, Sanctuary, Inc. and Paul V. and Bonnie G. Grenney, recorded in the land records of Douglas County on Nov. 3, 1997 at Reception No. 9761904 the following five (5) courses:

- 1) N 89°06'35" E, a distance of 2599.66 feet to a point at an existing fence corner from which the NE corner of said Section 7 bears S 08°34'17" W, a distance of 41.11 feet;
- 2) N 00°03'38" W, a distance of 1256.34 feet;
- 3) N 89°59'09" E, a distance of 588.75 feet;
- 4) N 87°01'25" E, a distance of 1332.82 feet;
- 5) N 85°17'08" E, a distance of 767.69 feet to a point on the Westerly right of way line of Daniels Park Road;

THENCE along said right of way line as described in Deed recorded in the land records of Douglas County in Book 541 at Page 29 the following four (4) courses:

- 1) S 11°05'24" E, a distance of 306.86 feet;
- 2) Along the arc of a curve to the right 280.45 feet, having a radius of 598.90 feet, a central angle of 26°49'49" and a chord bearing and distance of S 02°19'30" W, 277.90 feet;

- 3) S 15°44'25" W, a distance of 418.21 feet;
- 4) Along the arc of a curve to the left 307.26 feet, having a radius of 362.65 feet, a central angle of 48°32'39" and a chord bearing and distance of S 08°31'55" E, 298.15 feet to the Northeasterly corner of a parcel of land described in deed recorded in the land records of Douglas County in Book 1073 at Page 260;

THENCE along the boundary of said parcel the following seven (7) courses:

- 1) S 88°46'02" W, a distance of 399.06 feet;
- 2) N 51°04'40" W, a distance of 243.10 feet;
- 3) S 30°09'50" W, a distance of 399.37 feet;
- 4) S 87°35'11" W, a distance of 559.55 feet;
- 5) S 51°13'16" W, a distance of 336.12 feet;
- 6) S 14°44'13" W, a distance of 1028.18 feet;
- 7) N 89°40'54" E, a distance of 2019.95 feet to a point on the Westerly right of way line of Daniels Park Road, (determined to be 60 feet Westerly from the monumented Easterly right of way line shown on the plat of Castle Pines Village Filing 8-A, at Reception #9211515);

THENCE along said Westerly right of way line the following nineteen (19) courses:

- 1) S 01°18'44" E, a distance of 440.02 feet;
- 2) Along the arc of a curve to the right 183.64 feet, having a radius of 419.04 feet, a central angle of 25°06'33" and a chord bearing and distance of S 11°14'32" W, 182.17 feet;
- 3) S 23°47'49" W, a distance of 205.18 feet;
- 4) Along the arc of a curve to the left 327.65 feet, having a radius of 836.68 feet, a central angle of 22°26'14" and a chord bearing and distance of S 12°34'42" W, 325.56 feet;
- 5) S 01°21'31" W, a distance of 185.15 feet;
- 6) S 01°16'36" W, a distance of 657.56 feet;
- 7) Along the arc of a curve to the left 76.61 feet, having a radius of 1378.34 feet, a central angle of 03°11'05" and a chord bearing and distance of S 00°12'27" E, 76.60 feet;
- 8) S 01°48'06" E, a distance of 349.28 feet;
- 9) Along the arc of a curve to the right 253.68 feet, having a radius of 1711.45 feet, a central angle of 08°29'34" and a chord bearing and distance of S 02°26'41" W, 253.45 feet;
- 10) Along the arc of a compound curve to the right 167.76 feet, having a radius of 345.00 feet, a central angle of 27°51'39" and a chord bearing and distance of S 20°37'18" W, 166.11 feet;
- 11) S 34°31'24" W, a distance of 576.43 feet;
- 12) Along the arc of a curve to the left 272.42 feet, having a radius of 390.00 feet, a central angle of 40°01'18" and a chord bearing and distance of S 14°31'00" W, 266.91 feet;
- 13) S 05°31'06" E, a distance of 168.88 feet;
- 14) Along the arc of a curve to the left 177.15 feet, having a radius of 998.35 feet, a central angle of 10°10'01" and a chord bearing and distance of S 10°34'30" E, 176.92 feet;
- 15) S 15°39'30" E, a distance of 621.49 feet;

- 16) Along the arc of a curve to the left 139.59 feet, having a radius of 871.13 feet, a central angle of $09^{\circ}10'51''$ and a chord bearing and distance of $S\ 20^{\circ}13'15''\ E$, 139.44 feet;
17) $S\ 24^{\circ}48'40''\ E$, a distance of 236.86 feet;
18) Along the arc of a curve to the right 345.51 feet, having a radius of 770.23 feet, a central angle of $25^{\circ}42'05''$ and a chord bearing and distance of $S\ 11^{\circ}57'38''\ E$, 342.62 feet;
19) $S\ 00^{\circ}51'27''\ W$, a distance of 1342.16 feet to the Northeasterly corner of Lot 1, Block One of Hockaday Heights Subdivision, recorded in the land records of Douglas County at Reception #139949;

THENCE along the Northerly line of Hockaday Heights Subdivision, also being the South line of the NW $\frac{1}{4}$ of said Section 17, $S\ 87^{\circ}46'51''\ W$, a distance of 2513.82 feet to the W $\frac{1}{4}$ corner of said Section 17;

THENCE along the Westerly line of Hockaday Heights Subdivision, also being the East line of the SE $\frac{1}{4}$ of said Section 18, $S\ 00^{\circ}21'26''\ W$, a distance of 2595.77 feet to the POINT OF BEGINNING;

CONTAINING 3,140.54 acres of land, more or less.

EXHIBIT B
TRI-PARTY AGREEMENT

**INTERGOVERNMENTAL AGREEMENT FOR THE OPTION TO PURCHASE AND
RIGHT OF FIRST REFUSAL REGARDING GROUND WATER RIGHTS,
EASEMENTS AND RELATED IMPROVEMENTS**

THIS AGREEMENT is executed this 5th day of March, 2019, by and between the Town of Castle Rock, a Colorado home rule municipal corporation by and through the Town of Castle Rock Water Enterprise (the "Town" or "Seller") and Dominion Water & Sanitation District, acting in its capacity as a Water Activity Enterprise ("Dominion" or "Buyer"), (jointly "Parties").

RECITALS

WHEREAS the Town of Castle Rock is a home rule municipal corporation; and

WHEREAS, Dominion is a quasi-municipal corporation and political subdivision of the State of Colorado formed and organized pursuant to Title 32 of the Colorado Revised Statutes; and

WHEREAS, Dominion is authorized, pursuant to its service plan, to provide water services to customers located both within and outside of its boundaries for multiple uses, including for human consumption and household use, commercial, irrigation, industrial and other uses; and

WHEREAS, Dominion plans to provide wholesale water service to the Sterling Ranch development northwest of the Town and other locations in Northwest Douglas County; and

WHEREAS, the Town owns the following certain real property interests and nontributary and not nontributary water rights:

- the "Cherokee Ranch Easements" described in 1.3.3;
- approximately 1,574 acre feet per year of nontributary Denver Basin groundwater as originally decreed by the Division No. 1 Water Court in Case No. 98CW219, as modified by Case No. 03CW117, in the Arapahoe formation ("Arapahoe Water Right");
- approximately 1,614 acre feet per year of not nontributary Denver Basin groundwater as originally decreed by the Division No. 1 Water Court in Case No. 98CW219, as modified by Case No. 03CW117, in the Denver formation ("Denver Water Right");
- approximately 381 acre feet per year of nontributary Denver Basin groundwater as originally decreed by the Division No. 1 Water Court in Case No. 98CW219, as modified by Case No. 03CW117, in the Laramie Fox Hills formation ("LFH Water Right");

all of which groundwater underlies that real property in Douglas County, Colorado, as more particularly described in **Exhibit A** hereto (collectively, the "Water Rights"), and

WHEREAS, the Water Rights are surplus to the Town's needs and are not easily incorporated into the Town's existing water system; and

WHEREAS, Dominion desires to obtain the option to purchase the Water Rights, and after expiration of the option to purchase, a right of first refusal with respect to the Water Rights; and

WHEREAS, the Town is a party to that certain First Amendment to the First Amended Operating and Maintenance Agreement dated November 16, 2017 between the Cherokee Ranch & Castle Foundation (the "Foundation") and the Town pursuant to which the Town granted the Foundation a right of first refusal pertaining to the sale of the Water Rights; and

WHEREAS, Dominion, the Town and the Foundation have, concurrently with the execution of this Agreement, entered into that certain Tri-Party Agreement Regarding Cherokee Ranch & Castle Foundation Rights dated March 5, 2019 (the "Tri-Party Agreement"). Among other things, the Tri-Party Agreement modifies the Foundation's right of first refusal such that Dominion may exercise its rights pursuant to this Agreement without interfering with the Foundation's rights.

WHEREAS, the Water Rights fall within the classification under Chapter 14.02.040.B of the Castle Rock Municipal Code, and therefore the Town Council may approve by Ordinance the conveyance of extraterritorial surplus property; and

WHEREAS, the Town and Dominion have numerous existing agreements and mutually beneficial relationships, and have mutual interests in securing water supplies for the benefit of their respective citizens and customers,

NOW THEREFORE, in consideration of the mutual promises and benefits described herein, the adequacy and sufficiency of which are hereby acknowledged, Dominion and the Town hereby agree as follows:

AGREEMENT

1. **Option to Purchase.** The Town hereby grants Dominion an option to purchase the Water Rights together with certain easements and agreements as described in Section 1.3, subject to the terms and conditions as provided in this Agreement (the "Option").

1.1 **Term.** Dominion's right to exercise the option to purchase the Water Rights as described herein shall terminate on Sept. 30, 2022 ("Option Term").

1.2 **Purchase Price.** The purchase price of the Water Rights shall be as follows ("Purchase Price"):

- 1.2.1 Two Thousand Nine Hundred Dollars (\$2,900) per acre foot for the Arapahoe Water Right ("Arapahoe Purchase Price"). If Dominion exercises its option to purchase all of the Water Rights, the total Arapahoe Purchase Price shall be Four Million Five Hundred Sixty-Four Thousand Six Hundred Dollars (\$4,564,600).
- 1.2.2 One Thousand Nine Hundred Seventy Dollars (\$1,970) per acre foot for the Denver Water Right ("Denver Purchase Price"). If Dominion exercises its option to purchase all of the Denver Water Right, the total Denver Purchase Price shall be Three Million One Hundred Seventy-Nine, Five Hundred Eighty Dollars (\$3,179,580).
- 1.2.3 One Thousand Nine Hundred Seventy Dollars (\$1,970) per acre foot for the LFH Water Right ("LFH Purchase Price"). If Dominion exercises its option to purchase all of the LFH Water Right, the total LFH Purchase Price shall be Seven Hundred Fifty, Five Hundred Seventy Dollars (\$750,570).
- 1.2.4 The applicable Purchase Price shall be paid, subject to (i) application of the Initial Option Payment, as defined in 1.4, and (ii) any prorations and adjustments provided in Section 1.4.2, payable by Dominion to the Town at the Closings, described in Section 4, in cash, certified check or federal funds wire transfer.

1.3 At the Initial Closing, the Purchase Price shall include the following:

1.3.1 The amount of the Water Rights Dominion elects to purchase at any Closing.

1.3.2 All additional amounts of "banked" water associated with the Water Rights purchased at any Closing, as determined on a pro rata basis, that may be available pursuant to the water banking provision of the 98CW219 decree.

1.3.3 A non-exclusive interest in the following permanent easements (hereinafter the "Cherokee Ranch Easements"):

1.3.3.1: Easement Agreement dated April 22, 2013, recorded in the public records of Douglas County, Colorado April 29, 2013 at Reception No. 2013034803.

1.3.3.2: Second Amended Easement Deed dated December 28, 2012, recorded in the public records of Douglas County, Colorado at Reception No. 2013005243.

1.3.4 The rights and obligations of the Town provided for in the following agreements (hereinafter "O&M Agreements"):

1.3.4.1: First Amended Operating and Maintenance Agreement dated March 6, 2008 between the Cherokee Ranch & Castle Foundation, Bromley District Water Providers, LLC and Robert A. Lembke;

1.3.4.2: First Amendment to the First Amended Operating and Maintenance Agreement dated November 16, 2017 between the Cherokee Ranch & Castle Foundation and the Town of Castle Rock, acting by and through the Town of Castle Rock Water Enterprise, as modified by the Tri-Party Agreement.

1.4 Option Payments.

1.4.1 Within five (5) business days after this Option Agreement is fully executed by the Town and Dominion, Dominion shall pay the sum of Fifty Thousand Dollars (\$50,000.00) to North American Title Insurance Company (the "Title Company") as escrow holder, for deposit into an interest-bearing account. Such deposit together with any interest earned thereon is collectively referred to as the "Initial Option Payment." Title Company's receipt of the Initial Option Payment shall be acknowledged in a separate escrow agreement executed by the Town, Dominion and Title Company. The Initial Option Payment shall be nonrefundable to Dominion except in the event of (i) the Town's uncured default; or (ii) Dominion timely terminates this Option Agreement pursuant to Section 2.2 or 2.3. The Initial Option Payment will be applied against the Purchase Price at the Initial Option Closing.

1.4.2 On the first anniversary of the end of the Due Diligence Period set forth in Section 2 ("Due Diligence Anniversary"), and on each subsequent Due Diligence Anniversary thereafter during the Option Term, Dominion shall pay directly to the Town \$115 per acre foot of the amount of the Arapahoe Water Right remaining for purchase and \$78 per acre foot of the amount of the Denver Water Right and LFH Water Right remaining for purchase to maintain its Option ("Annual Option Payment"). Such Annual Option Payments shall continue until either (a) Dominion purchases all of the Water Rights, or (b) the Option Term expires, or (c) Dominion relinquishes its option on any remaining portion of the Water Rights by giving written notice to the Town, or (d) the Option terminates by mutual agreement of the Parties. The Annual Option Payments shall be non-refundable to Dominion, and shall not be applicable towards the Purchase Price at the next Closing to occur.

2. Due Diligence. Dominion shall have the right to conduct due diligence regarding the Water Rights for ninety (90) days, beginning on the Effective Date of this Option Agreement (the "Due Diligence Period").

2.1 Title Insurance. The Town has furnished to Dominion, at the Town's expense, a commitment for title insurance issued by North American Title Insurance Company, File No. 35100-18-10424, attached as **Exhibit B**, committing to insure Dominion's interest in the Cherokee Ranch Easements (the "Title Commitment"). The easement interests insured under the Title Commitment shall be referred to as the "Insured Property." The Town will cause the Title Company to deliver to Dominion, promptly after the Closing, an owner's title insurance policy issued by the Title Company insuring Dominion's interest to the Insured Property consistent with the Title Commitment (the "Title Policy"), subject only to the Schedule B-2 exceptions, as such permitted exceptions are fixed under 6.1 (the "Permitted Exceptions") identified in the Title Commitment. The Town and Dominion will each pay one half of the premium for the Title Policy at Closing. Dominion, at its discretion and at its sole expense, may obtain additional endorsements to the Title Commitment and establish a greater amount of the insurance on the Insured Properties and the endorsement, the additional cost of which shall be paid entirely by Dominion.

2.2 Cherokee Easements Title Acceptance. Dominion will have twenty (20) business days from of the Effective Date, and an additional twenty (20) business days with any amendment to the Title Commitment, to notify the Town of any objections to any items identified in the Title Commitment or subsequent amendments, or any items impacting marketable title to the Insured Property (the "Title Objection Notice"). Any exceptions noted in the amended Title Commitment or any items impacting marketable title to the Insured Property Rights that are not objected to within such twenty (20) business day period will be deemed approved by Dominion and will become Permitted Exceptions. The Town will have twenty (20) business days after receipt of Dominion's Title Objection Notice ("Cure Period") to elect, at its sole option and discretion, to (a) cure any or all items to which Dominion has objected, (b) cause such items to be modified in a manner which is satisfactory to Dominion, or (c) not to cure any or all such items. If, during the Cure Period, the Town fails to cure to the satisfaction of the Dominion any title objection in the Title Objection Notice, or elects not to cure, then the Dominion may elect, as its exclusive remedy with respect to the objections in the Title Objection Notice, either to (a) waive the objections by written notice to the Town and proceed to Closing, or (b) terminate this Agreement by giving written notice to the Town within three (3) business days after the Cure Period, in which case the Initial Option Payment will be returned to Dominion, and thereafter the parties will have no further rights and will be released from all obligations hereunder other than those rights and obligations that expressly survive termination of this Agreement. If Dominion fails to give timely notice of termination or if Dominion proceeds to Closing, Dominion will be deemed to have elected to waive all objections and accepted all of the Permitted Exceptions. The Closing Date established in Section 3.1 shall be extended on a day for day basis to accommodate the notice and cure time periods outlined in this Section 7.

2.3 Water Rights Title Acceptance. Dominion shall have the Due Diligence Period to undertake due diligence on title to the Water Rights and to notify the Town of any objections to any items impacting marketable title to the Water Rights (the "Water Title Objection Notice"). Any items impacting marketable title to the Water Rights that are not objected to within the Due Diligence Period will be deemed approved by Dominion. The Town will have twenty (20) business days after receipt of Dominion's Water Title Objection Notice ("Water Title Cure Period") to elect, at its sole option and discretion, to (a) cure any or all items to which Dominion has objected, (b) cause such items to be modified in a manner which is satisfactory to Dominion, or (c) not to cure any or all such items. If, during the Water Title Cure Period, the Town fails to cure to the satisfaction of Dominion any title objection in the Water Title Objection Notice, or elects not to cure, then Dominion may elect, as its exclusive remedy with respect to the objections in the Water Title Objection Notice, either to (a) waive the objections by written notice to the Town and proceed to Closing, or (b) terminate this Agreement by giving written notice to the Town within three (3) business days after the Water Title Cure Period, in which case the Initial Option Payment will be returned to Dominion, and thereafter the parties will have no further rights and will be released from all obligations hereunder other than those rights and obligations that expressly survive termination of this Agreement. If Dominion fails to give timely notice of termination or if Dominion proceeds to Closing, Dominion will be deemed to have elected to waive all objections and accepts title to the Water Rights.

The Closing Date established in Section 4 shall be extended on a day for day basis to accommodate the notice and cure time periods outlined in this Section.

2.4 Property Documents. Dominion acknowledges that prior to and following the Agreement Date, Dominion has had complete access to, and the Town has made available to Dominion and its consultants and representatives, copies of its files and records, except privileged documents, related to the Water Rights and Cherokee Easements (collectively, the "Property") including the following documents in the possession or control of the Town: all documents relating to the Water Rights (including, but not limited to, all documents conveying an interest in the Water Rights and/or related facilities, all water decrees, well permits, water rights engineering reports and correspondence, diversion records, and any correspondence with the local or state agencies concerning water rights or water supply issues), soils reports, mineral studies, oil, gas and mineral leases, environmental reports and studies, environmental notices received by the Town, plats, permits, development agreements, topographical and other maps, engineering plans and reports, easement agreements, and all other information and documentation pertaining to the Property in the possession of or known to the Town (collectively, the "Property Documents"). Dominion acknowledges and agrees that all Property Documents delivered or made available by the Town to Dominion are for Dominion's information and use only, and the Town makes no representation or warranty as to the accuracy or completeness of any such Property Documents or Dominion's ability to use any of such Property Documents. Dominion acknowledges that it shall be solely responsible for verifying all

information contained in the Property Documents, including the completeness, accuracy and applicability of the Property Documents.

3. Exercise of Option.

3.1 At the end of the Due Diligence Period, Dominion shall elect whether to exercise its Initial Option. If Dominion does not exercise its Initial Option and terminates this Option Agreement, then all further option rights and all rights shall terminate as described in Section 2. If Dominion elects to exercise the Initial Option, then the Parties shall, within 14 days, Close on a minimum of three hundred (300) acre feet of the Water Rights, as provided in Section 4.

3.2 Dominion may purchase all or a portion of the Water Rights at any time during the Option Period subject to 3.3. Dominion shall determine the formation(s) and the quantity of the Water Rights from each formation that it will purchase at each Closing, provided that the minimum amount that Dominion may purchase at any Closing shall be 200 acre feet. Dominion shall notify the Town in writing of the formation(s) from which and the quantity of the Water Rights in each such formation that Dominion it intends to purchase thirty (30) days prior to any Closing.

3.3 For any exercise of Dominion's Option that includes the last five hundred (500) acre feet of available Arapahoe Water Right, Dominion shall notify the Town in writing of the quantity of the Water Rights it intends to purchase thirty (30) days prior to the requested Closing. Pursuant to the Tri-Party Agreement, the Town shall provide notice to the Foundation regarding the particulars of the offer for the remaining five hundred (500) acre feet of the Arapahoe Water Right (number of acre feet, price, closing date and other relevant terms). If the Foundation exercises its right of first refusal pursuant to the Tri-Party Agreement, the Town shall notify Dominion, and the Closing between Dominion and the Town shall automatically be extended by sixty (60) days. If the Foundation and the Town enter into a written agreement for the Foundation's purchase of some or all of the final five hundred (500) acre feet of the Arapahoe Water Right within the time permitted by the ROFR Agreement, the Town shall notify Dominion in writing, and Dominion Closing will be modified or cancelled, accordingly.

4. Closings. At each closing that occurs pursuant to this Option Agreement ("Closing"), the Parties shall deliver or cause to be delivered the following:

4.1 The Town shall deliver to Dominion a Special Warranty Deed for the designated quantity of the Water Rights, free and clear of all liens and encumbrances, in the form attached hereto as **Exhibit C** (subject to variation in the amount of water being conveyed).

4.2 Dominion shall deliver to the Town the applicable Purchase Price for each formation being purchased (Arapahoe, Denver and/or LFH) multiplied by the number of acre feet being purchased from that formation. If Dominion is purchasing water from more than one

formation, the Purchase Price for each formation will be added together to derive the total Purchase Price for that Closing. The Purchase Price shall be made by wire transfer or other immediately available funds. At the Initial Closing, Dominion will receive a credit against the Purchase Price for the Initial Option Payment of Fifty Thousand Dollars (\$50,000.00) made by Dominion pursuant to Section 1.4.1.

4.3 At the Initial Closing, the Town shall execute and deliver to Dominion a special warranty deed conveying a nonexclusive interest in the Cherokee Ranch Easements in the form attached hereto as **Exhibit D**, free and clear of all liens and encumbrances except for the Permitted Exceptions.

4.4 At the Initial Closing, the Town shall assign the O&M Agreements to Dominion in the form attached hereto as **Exhibit E**.

4.5 The Parties shall deliver such other documents as may be reasonably necessary to complete the transaction described herein.

4.6 Each Closing shall occur at a mutually agreeable time and location.

4.7 Costs of Closing shall be allocated one-half each to the Town and Dominion. Dominion shall pay all recording fees. Any other expenses shall be prorated as of the date of closing ("Closing Adjustments"). Both parties are exempt from property taxation; therefore, there are no real property taxes to be prorated.

5. Right of First Refusal.

5.1 Upon expiration of the Option Term pursuant to section 11 and provided Dominion is not then in default of this Agreement, the Town hereby grants to Dominion a right of first refusal ("Right of First Refusal") to purchase the Water Rights on the following terms and conditions:

5.1.1 The term of the Right of First Refusal shall begin on October 1, 2022 and end on October 1, 2026 ("Right of First Refusal Term").

5.1.2 During the Right of First Refusal Term, if the Town receives a bona fide offer to purchase the Water Rights that the Town desires to accept ("Qualified Offer"), the Town shall notify Dominion in writing of its receipt of a Qualified Offer and shall provide a copy of the Qualified Offer to Dominion (collectively, the "Offer Notice"). Upon receipt of the Offer Notice, Dominion shall have thirty (30) days within which to notify the Town of Dominion's election to exercise its Right of First Refusal to purchase the portion of the Water Rights that is the subject of the Qualified Offer for the purchase price in the Offer Notice and otherwise substantially on the same terms and conditions as set forth in the Qualified Offer, which election shall be evidenced by written notice to the Town (the "Notice of Exercise").

5.1.3 No later than sixty (60) days from the date of the Notice of Exercise, the Town and Dominion shall work together in good faith to prepare and enter into a purchase and sale agreement for the purchase of the Water Rights by Dominion that is the subject of the Notice of Exercise ("Purchase Agreement"). Such Purchase Agreement shall provide for a closing date not later than thirty (30) days after execution of the Purchase Agreement, and shall include, without limitation, a provision which makes Dominion's obligation to purchase the Water Rights that are the subject of the Notice of Exercise subject to appropriation of the necessary funds therefore by the Dominion Board of Directors.

5.1.4 In the event that Dominion fails to timely deliver its Notice of Exercise to the Town in the same manner set forth herein, or the Purchase Agreement and closing requirements set forth in Section 5.1.3 are not met, then the Town shall be free to sell the Water Rights that are the subject of the Qualified Offer and this Right of First Refusal shall be void and of no further force or effect with regard to the Water Rights that are the subject of the Qualified Offer; provided, however, that if the Town shall enter into any modifications or amendments to the Qualified Offer which change any material provision of the Qualified Offer including, without limitation, any reduction of the purchase price, then this Right of First Refusal shall remain in full force and effect and Dominion shall have the right to exercise its Right of First Refusal with respect to any such modified or amended Qualified Offer in the same manner as the initial Qualified Offer.

6. Representations and warranties.

6.1 The Town represents and warrants to Dominion that, as of the date of this Agreement and as of the date of Closing:

6.1.1 The Town is duly authorized under its charter and ordinances to enter into and consummate this transaction. The person signing on behalf of the Town is authorized to do so.

6.1.2 There is no pending litigation, and the Town has not received any notice of any claim or action, which could materially interfere with this transaction.

6.1.3 There are no leases, encumbrances, service contracts, operating agreements, or other agreements granting rights in the Property to any third parties that have not been disclosed to Dominion.

6.1.4 The Town has received no warning or notice alleging any violation of any environmental or hazardous substance law affecting the Property.

6.1.5 The Town has not retained any broker, agent or finder or agreed to pay any commissions or finders' fees in connection with this Agreement or the transfer of the

Property. To the extent permitted by law, the Town shall indemnify and hold harmless Dominion from liability for any fees or commissions owing pursuant to this transaction caused by breach of this representation.

The above representations and warranties shall survive closing.

6.2 Dominion represents and warrants to the Town that, as of the date of this Agreement and as of the date of closing:

6.2.1 Dominion is duly authorized under its governing statutes and ordinances to enter into and consummate this transaction. The person signing on behalf of Dominion is authorized to do so.

6.2.2 Dominion has not retained any broker, agent or finder or agreed to pay any commissions or finders' fees in connection with this Agreement or the transfer of the Property. To the extent permitted by law, Dominion shall indemnify and hold harmless the Town from liability for any fees or commissions owing pursuant to this transaction caused by breach of this representation.

7. Default, Remedy and Termination.

7.1 Buyer's Default.

7.1.1. Initial Option Closing. If the Initial Option Closing the transaction contemplated herein is not completed solely as a result of the default by the Buyer of its obligations hereunder, as Seller's sole and exclusive remedy, the Title Company shall pay the Initial Option Payment to Seller as liquidated damages and in full settlement of any claims for damages, whereupon Buyer shall have no further liability or obligation hereunder to Seller and no other remedy shall be available for Buyer's breach of this Agreement.

7.1.2 Subsequent Closings. If any of the subsequent Closings contemplated herein are not consummated solely as a result of a default by Buyer of its obligations hereunder, Seller shall be entitled to terminate this Agreement, including the Right of First Refusal, as its sole and exclusive remedy.

7.2 Seller's Default.

7.2.1 Initial Option Closing. If the Initial Option Closing contemplated herein is not completed solely as a result of a default by Seller of its obligations hereunder, Buyer shall be entitled to one of the following remedies as its sole and exclusive remedy: (i) the right to terminate this Agreement, in which event this Agreement shall terminate and be of no further force or effect and the Title Company will refund to Buyer the Initial Option Payment held by

the Title Company; or (ii) seek specific performance of this Agreement; provided however, that unless Buyer has provided written notice to the Seller and the Title Company no later than ninety (90) days from the Closing Date that Buyer has elected to commence an action for specific performance, Buyer shall be deemed to have irrevocably chosen the foregoing option (i) (termination of this Agreement, refund of the Initial Option Payment).

7.2.2 Subsequent Closings. If any of the subsequent Closings contemplated herein are not consummated solely as a result of a default by Seller of its obligations hereunder, Buyer shall be entitled to one of the following remedies as its sole and exclusive remedy: (i) the right to terminate this Agreement, or (ii) seek specific performance of this Agreement, provided however, that unless Buyer has provided written notice to the Seller and the Title Company no later than one hundred eighty (180) days from the Closing Date that Buyer has elected to commence an action for specific performance, Buyer shall be deemed to have irrevocably chosen the foregoing option (i) - termination of this Agreement).

7.3 Each party waives any right to special, indirect, consequential and punitive damages, including loss of revenues in the event of an uncured default by the other party.

7.4 Prior to commencing legal action, the non-defaulting party shall give notice to the defaulting party. The defaulting party shall have 10 days to cure such default.

8. Miscellaneous Provisions.

8.1 Amendment. Except as otherwise provided herein, this Agreement may be modified, amended, changed, or terminated, in whole or in part, only by an agreement in writing duly authorized and executed by both parties.

8.2 Notice. For purposes of notice pursuant to this Agreement, the Parties' representatives shall be:

For the Town: Castle Rock Water
 Attn: Director of Castle Rock Water
 175 Kellogg Court
 Castle Rock, CO 80109

With a copy to: Town Attorney
 Town of Castle Rock
 100 Wilcox Street
 Castle Rock, CO 80104

For Dominion: Dominion Water & Sanitation Dist.
 Clifton Larson Allen, LLP

8390 E. Crescent Parkway, Suite 500
Greenwood Village, CO 80111

With a copy to: Dominion Water & Sanitation District
Attn: General Manager
9250 E. Costilla Ave. Suite 210
Greenwood Village, CO 80016

With a copy to: Welborn Sullivan Meck & Tooley, P.C.
1125 17th Street, Suite 2200
Denver, CO 80220

With a copy to: MaryAnn M. McGeady
McGeady Becher P.C.
450 East 17th Ave Suite 400
Denver, CO 80203

Any notices required or permitted to be given hereunder shall be in writing and shall be deemed given when given personally or sent by certified or registered mail, return receipt requested, postage prepaid. Either party hereto may designate a new address by giving written notice thereof to the other party as provided herein. Notice shall be effective upon receipt.

8.3 Assignment. This Agreement may not be assigned by Dominion to another party unless such assignment is approved in writing by the Town.

8.4 Governing Law. The terms, conditions, and provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

8.5 Defense Against Third Parties. In the event of litigation by any third party concerning this Agreement, and to the extent permitted by law, the Parties agree to jointly defend any such third party action.

8.6 No Third Party Beneficiaries. Except as otherwise explicitly provided for herein, there are no third party beneficiaries of this Agreement. No third party has any right to enforce this Agreement.

8.7 Sole Obligation of Water Activity Enterprise.

8.7.1 This Agreement shall never constitute a general obligation or other indebtedness of the Town or Dominion, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the Town or Dominion within the

meaning of the Constitution and laws of the State of Colorado or of the service plan, rules or regulations of the Town or Dominion.

8.7.2 The Town represents that this Agreement has been duly authorized, executed and delivered by the Town and constitutes a valid and legally binding obligation of the Town, enforceable against the Town in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

8.7.3 Dominion represents that this Agreement has been duly authorized, executed and delivered by Dominion and constitutes a valid and legally binding obligation of Dominion, enforceable against Dominion in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

8.8 Entire Agreement. This Agreement represents the entire agreement of the parties and neither party has relied upon any fact or representation not expressly set forth herein. If there is a conflict between this Agreement and the Tri-Party Agreement, the Tri-Party Agreement shall control.

8.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed original, but all of which constitute one and the same agreement.

8.10 Non-severability and Effect of Invalidity. Each provision of this Agreement is integral to the others and is not severable from the others. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both parties, the parties will immediately attempt to negotiate either valid alternative portions that as near as possible give effect to any stricken portions or a valid replacement agreement.

8.11 No Attorney's Fees and Costs. In the event of any litigation arising out of this Agreement, the parties agree that each will be responsible for their own attorney's fees and costs associated with any such legal action.

8.12 Joint Draft. The parties agree they drafted this Agreement jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content. Therefore, this Agreement shall not be construed for or against a party on the basis of authorship.

8.13 Intent of Agreement. This Agreement is intended to describe the rights and responsibilities of and between the parties and is not intended to and shall not be deemed to confer rights upon any persons or entities not signatories hereto nor to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of either party or any other governmental entity not a party hereto.

8.14 Non-Business Days. If any date for any action under this IGA falls on a Saturday, Sunday or Holiday, as such term is defined in Rule 6 of the Colorado Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.

IN WITNESS WHEREOF, the parties hereby executed this Agreement on the date first written above.

TOWN OF CASTLE ROCK

Jason Gray, Mayor

ATTEST:

Lisa Anderson, Town Clerk

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Mark Marlowe, Director of Castle Rock Water

**DOMINION WATER & SANITATION
DISTRICT**

Harold Smethills, President

ATTEST:

Tiffany Ramaekers, Secretary

**EXHIBIT A TO PURCHASE AND SALE AGREEMENT
DESCRIPTION OF WATER RIGHTS**

All of the non-tributary and not non-tributary groundwater, including those water rights originally decreed by the Division No. 1 Water Court in Case No. 98CW219, as modified by Case No. 03CW117, in the Denver, Arapahoe and Laramie Fox Hills formations, all of which groundwater underlies that real property more particularly described in the **Attachment** hereto, EXCEPT FOR:

1. One hundred (100) acre feet per year of Arapahoe formation non-tributary groundwater, which was reserved to the Cherokee Ranch and Castle Foundation by Special Warranty Deed recorded on November 21, 2002 at Reception No. 2002126810, Douglas County Clerk and Recorder;
2. Sixty (60) acre feet per year of Arapahoe formation non-tributary groundwater, which was conveyed to the Cherokee Ranch and Castle Foundation by Special Warranty Deed for Water Rights recorded March 10, 2008 at Reception No. 2008016986, Douglas County Clerk and Recorder;
3. Three hundred eighty (380) acre feet per year of the Laramie Fox Hills formation nontributary groundwater which was reserved by the Cherokee Ranch and Castle Foundation by Special Warranty Deed recorded on Mar. 6, 2008 at Reception No. 2008016984 and Special Warranty Deed recorded on Mar. 6, 2008 at Reception No. 2008016985, Douglas County Clerk and Recorder.
4. Any right, title, interest or claim to use the underground storage capacity resulting from withdrawal of any water described herein, which was reserved to the Cherokee Ranch and Castle Foundation by Special Warranty Deed recorded November 21, 2002 at Reception No. 2002126810; Special Warranty Deed for Water Rights recorded on March 10, 2008 at Reception No. 2008016984 and by Special Warranty Deed for Water Rights recorded on March 10, 2008 at Reception No. 2008016985, Douglas County Clerk and Recorder.

ATTACHMENT TO EXHIBIT A

A parcel of land located in Sections 5, 6, 7, 8, 17, 18, & 19 of Township 7 South, Range 67 West and in Sections 12, 13, 14 & 24 of Township 7 South, Range 68 West of the Sixth Principal Meridian, County of Douglas, State of Colorado, and being more particularly described as follows:

BEGINNING at the NE corner of Section 19, Township 7 South, Range 67 West of the Sixth Principal Meridian;

THENCE along the East line of the NE¼ of said Section 19, S 00°23'17" W, a distance of 1612.27 feet to the Northerly right of way line of State Highway No. 85;

THENCE along said Northerly right of way line the following fifteen (15) courses:

- 1) N 74°01'07" W, a distance of 442.12 feet;
- 2) N 70°56'17" W, a distance of 269.96 feet;
- 3) N 66°37'01" W, a distance of 813.47 feet;
- 4) N 78°26'56" W, a distance of 1581.82 feet;
- 5) N 73°42'23" W, a distance of 211.93 feet;
- 6) N 71°13'27" W, a distance of 281.07 feet;
- 7) N 67°40'00" W, a distance of 562.02 feet;
- 8) N 75°53'08" W, a distance of 346.26 feet;
- 9) N 80°38'47" W, a distance of 969.60 feet to a point from which the NW corner of said Section 19 bears N 05°30'46" W, a distance of 28.00 feet;
- 10) N 82°57'44" W, a distance of 1053.89 feet;
- 11) N 80°27'38" W, a distance of 584.58 feet;
- 12) N 71°01'17" W, a distance of 471.19 feet;
- 13) N 70°58'10" W, a distance of 2093.66 feet;
- 14) N 71°05'24" W, a distance of 1147.32 feet;
- 15) N 69°36'49" W, a distance of 2074.89 feet to the Southeasterly corner of a parcel of land described in deed recorded in the land records of Douglas County in Book 358 at Page 833;

THENCE along the Easterly line of said parcel the following seven (7) courses:

- 1) N 08°37'34" E, a distance of 172.03 feet;
- 2) N 31°37'52" E, a distance of 442.82 feet;
- 3) N 53°35'59" E, a distance of 194.24 feet;
- 4) N 73°28'44" E, a distance of 264.63 feet;
- 5) N 51°18'55" E, a distance of 177.71 feet;
- 6) N 38°08'20" E, a distance of 487.64 feet;
- 7) N 00°26'53" E, a distance of 391.26 feet to the Northeasterly corner of said parcel;

THENCE along the Northerly line of said parcel, S 89°41'36" W, a distance of 1438.25 feet to the Northwestern corner of said parcel;

THENCE along the Westerly line extended of said parcel, N 00°01'02" E, a distance of 213.47 feet;

THENCE N 89°41'57" E, a distance of 1979.77 feet to the North 1/16 corner between Sections 13 and 14 of T7S, R68W;

THENCE along the West line of the NW¼ of said Section 13, N 00°11'10" W, a distance of 1319.99 feet to the SW corner of said Section 12;

THENCE along the West line of the SW¼ of the SW¼ of said Section 12, N 00°09'51" W, a distance of 1309.82 feet to the South 1/16 corner of Sections 11 & 12;

THENCE along the W line of the NW¼ of the SW¼ of said Section 12, N 00°13'35" W, a distance of 1310.61 feet to the W¼ corner of said Section 12;

THENCE along the West line of the SW¼ of the NW¼ of said Section 12, N 00°09'43" W, a distance of 1309.48 feet to the N 1/16 corner of Sections 11 & 12;

THENCE along the West line of the NW¼ of the NW¼ of said Section 12, N 00°13'44" W, a distance of 1310.95 feet to the NW corner of said Section 12;

THENCE along the North line of the NW¼ of said Section 12, N 89°58'04" E, a distance of 2683.10 feet to the N¼ corner of said Section 12;

THENCE along the North line of the NE¼ of said Section 12, N 89°49'52" E, a distance of 2752.86 feet to the NE corner of said Section 12, also being the NW corner of Section 7, T7S, R67W;

THENCE along the North line of the NW¼ of said Section 7, N 89°55'53" E, a distance of 2633.78 feet to the N¼ corner of said Section 7;

THENCE N 00°05'26" W, a distance of 43.58 feet to an existing fence corner;

THENCE along an existing fence line as described in a boundary agreement between Cherokee Ranch and Castle Foundation, Sanctuary, Inc. and Paul V. and Bonnie G. Grenney, recorded in the land records of Douglas County on Nov. 3, 1997 at Reception No. 9761904 the following five (5) courses:

- 1) N 89°06'35" E, a distance of 2599.66 feet to a point at an existing fence corner from which the NE corner of said Section 7 bears S 08°34'17" W, a distance of 41.11 feet;
- 2) N 00°03'38" W, a distance of 1256.34 feet;
- 3) N 89°59'09" E, a distance of 588.75 feet;
- 4) N 87°01'25" E, a distance of 1332.82 feet;
- 5) N 85°17'08" E, a distance of 767.69 feet to a point on the Westerly right of way line of Daniels Park Road;

THENCE along said right of way line as described in Deed recorded in the land records of Douglas County in Book 541 at Page 29 the following four (4) courses:

- 1) S 11°05'24" E, a distance of 306.86 feet;
- 2) Along the arc of a curve to the right 280.45 feet, having a radius of 598.90 feet, a central angle of 26°49'49" and a chord bearing and distance of S 02°19'30" W, 277.90 feet;
- 3) S 15°44'25" W, a distance of 418.21 feet;
- 4) Along the arc of a curve to the left 307.26 feet, having a radius of 362.65 feet, a central angle of 48°32'39" and a chord bearing and distance of S 08°31'55" E, 298.15 feet to the Northeastly corner of a parcel of land described in deed recorded in the land records of Douglas County in Book 1073 at Page 260;

THENCE along the boundary of said parcel the following seven (7) courses:

- 1) S 88°46'02" W, a distance of 399.06 feet;
- 2) N 51°04'40" W, a distance of 243.10 feet;
- 3) S 30°09'50" W, a distance of 399.37 feet;
- 4) S 87°35'11" W, a distance of 559.55 feet;
- 5) S 51°13'16" W, a distance of 336.12 feet;
- 6) S 14°44'13" W, a distance of 1028.18 feet;
- 7) N 89°40'54" E, a distance of 2019.95 feet to a point on the Westerly right of way line of Daniels Park Road, (determined to be 60 feet Westerly from the monumented Easterly right of way line shown on the plat of Castle Pines Village Filing 8-A, at Reception #9211515);

THENCE along said Westerly right of way line the following nineteen (19) courses:

- 1) S 01°18'44" E, a distance of 440.02 feet;
- 2) Along the arc of a curve to the right 183.64 feet, having a radius of 419.04 feet, a central angle of 25°06'33" and a chord bearing and distance of S 11°14'32" W, 182.17 feet;
- 3) S 23°47'49" W, a distance of 205.18 feet;
- 4) Along the arc of a curve to the left 327.65 feet, having a radius of 836.68 feet, a central angle of 22°26'14" and a chord bearing and distance of S 12°34'42" W, 325.56 feet;
- 5) S 01°21'31" W, a distance of 185.15 feet;
- 6) S 01°16'36" W, a distance of 657.56 feet;
- 7) Along the arc of a curve to the left 76.61 feet, having a radius of 1378.34 feet, a central angle of 03°11'05" and a chord bearing and distance of S 00°12'27" E, 76.60 feet;
- 8) S 01°48'06" E, a distance of 349.28 feet;
- 9) Along the arc of a curve to the right 253.68 feet, having a radius of 1711.45 feet, a central angle of 08°29'34" and a chord bearing and distance of S 02°26'41" W, 253.45 feet;
- 10) Along the arc of a compound curve to the right 167.76 feet, having a radius of 345.00 feet, a central angle of 27°51'39" and a chord bearing and distance of S 20°37'18" W, 166.11 feet;
- 11) S 34°31'24" W, a distance of 576.43 feet;

- 12) Along the arc of a curve to the left 272.42 feet, having a radius of 390.00 feet, a central angle of 40°01'18" and a chord bearing and distance of S 14°31'00" W, 266.91 feet;
 - 13) S 05°31'06" E, a distance of 168.88 feet;
 - 14) Along the arc of a curve to the left 177.15 feet, having a radius of 998.35 feet, a central angle of 10°10'01" and a chord bearing and distance of S 10°34'30" E, 176.92 feet;
 - 15) S 15°39'30" E, a distance of 621.49 feet;
 - 16) Along the arc of a curve to the left 139.59 feet, having a radius of 871.13 feet, a central angle of 09°10'51" and a chord bearing and distance of S 20°13'15" E, 139.44 feet;
 - 17) S 24°48'40" E, a distance of 236.86 feet;
 - 18) Along the arc of a curve to the right 345.51 feet, having a radius of 770.23 feet, a central angle of 25°42'05" and a chord bearing and distance of S 11°57'38" E, 342.62 feet;
 - 19) S 00°51'27" W, a distance of 1342.16 feet to the Northeasterly corner of Lot 1, Block One of Hockaday Heights Subdivision, recorded in the land records of Douglas County at Reception #139949;
- THENCE along the Northerly line of Hockaday Heights Subdivision, also being the South line of the NW¼ of said Section 17, S 87°46'51" W, a distance of 2513.82 feet to the W¼ corner of said Section 17;
- THENCE along the Westerly line of Hockaday Heights Subdivision, also being the East line of the SE¼ of said Section 18, S 00°21'26" W, a distance of 2595.77 feet to the POINT OF BEGINNING;

CONTAINING 3,140.54 acres of land, more or less.

EXHIBIT C
TRI-PARTY AGREEMENT

FIRST AMENDMENT TO THE FIRST AMENDED
OPERATING AND MAINTENANCE AGREEMENT

This First Amendment to the First Amended Operating and Maintenance Agreement ("First Amendment") is made to be effective as of this 16 day of November, 2017, by the CHEROKEE RANCH & CASTLE FOUNDATION, a Colorado nonprofit corporation ("Foundation") and the TOWN OF CASTLE ROCK, a Colorado home rule municipality, acting by and through the TOWN OF CASTLE ROCK WATER ENTERPRISE ("the Town"). The Foundation and the Town may be referred to as the "Parties."

WHEREAS, the Foundation owns property described in **EXHIBIT A** (the "Property").

WHEREAS, the Foundation sold all of its water nontributary rights in the Laramie-Fox Hills, Arapahoe, and Denver aquifers underlying the Property and its not nontributary rights in the Denver aquifer underlying the Property (collectively, the "Subject Water Rights"), along with easements for wells and other improvements to withdraw said water to various entities and Robert Lembke ("United Affiliates"), except the Subject Water Rights do not include 160 acre feet per year of Arapahoe Aquifer underlying the Property owned by the Foundation. 57.83 acre feet out of the Foundation's 160 acre feet is not available for the Foundation's use, because that 57.83 acre feet is committed to the plan for augmentation decreed in Case No. 03CW117, Division No. 1 Water Court ("03CW117 Plan") as augmentation water. That 57.83 acre feet is not affected by this First Amendment, and shall remain committed to the 03CW117 Plan for the replacement of depletions pursuant to the 03CW2117 Plan. The uncommitted balance of 102.17 acre feet per year owned by the Foundation available for the Foundation's purposes is hereinafter referred to as the "Foundation's Water."

WHEREAS, Foundation is a party to the First Amended Operating and Maintenance Agreement dated March 6, 2008 between the Foundation and Bromley District Water Providers, LLC and Robert A. Lembke ("OA," copy attached as **EXHIBIT A**), which superseded and replaced in its entirety the original Operating and Maintenance Agreement dated November 20, 2002. Pursuant to the OA, the Foundation obtained the right to pump the Foundation's Water from a well constructed by Bromley District Water Providers, LLC subject to the terms therein. The OA provides that any assignment by one party of the OA requires written consent of the other party.

WHEREAS, Town has purchased the Subject Water Rights from the United Affiliates.

WHEREAS, the purpose of this First Amendment is to (ii) effectuate the Foundation's consent to the assignment of Bromley Water Providers, LLC and Robert A. Lemke's interests in the OA to the Town, and (ii) provide the Foundation with a right of first refusal to purchase additional nontributary water, all subject to the terms herein and in the OA.

WITNESSETH, that in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each, the Parties agree as follows:

1. This First Amendment and Foundation's consent to the assignment of the OA shall only be effective upon purchase by the Town of the Subject Water Rights, and, once effective, the terms herein shall be incorporated into the OA. In the event of any conflict between the terms of the OA and the First Amendment, the terms of the First Amendment shall control.
2. The Foundation agrees that the Town, as the successor in interest to the Subject Water Rights and the OA, has no obligation or duty to the Foundation, its successors, and assigns to construct one or more wells or appurtenant facilities for the withdrawal of nontributary or not nontributary water below the Property, including but not limited to the Subject Water Rights, the uncommitted balance, or the Foundation's Water. This representation by the Foundation is unqualified and is not dependent on the subsequent performance or action by any third party, including United Affiliates. The Foundation acknowledges and agrees that the Town has no present obligation or plans to construct, and may never construct, a well on the Property completed in the Arapahoe Aquifer ("Arapahoe Well"). However, if and when the Town determines in its sole discretion to construct an Arapahoe Well, then the Foundation shall be entitled to use that Arapahoe Well to withdraw the Foundation's Water in the Arapahoe aquifer in the manner provided in and subject to the terms and conditions of the OA. The Foundation may construct its own Arapahoe aquifer well to withdraw the Foundation's Water at any location on the Property, except the Foundation shall not construct such a well within 600 feet of the well sites provided for in the Second Amended Easement Deed dated December 28, 2012 and recorded in the real estate records of Douglas County at Reception No. 2013005243. The well sites and associated rights of way are referred to herein as the "Easements."
3. The Town hereby grants to the Foundation a right of first refusal ("ROFR") pertaining to the sale of a portion of the Subject Water Rights as follows:
 - A. In the event the Town receives and accepts a bona fide offer to purchase the Subject Water Rights, or any portion thereof, pursuant to which Grantor would sell, assign, convey, or otherwise transfer Grantor's fee simple right, title, interest or estate in or to the Subject Water Rights or any portion thereof (the "Offer"), each such Offer shall be subject to the Foundation's right to consummate the transaction contemplated by the Offer on the terms and subject to the conditions set forth in the Offer and the terms herein.
 - B. The Town shall notify the Foundation of the Offer by Certified U.S. Mail, including the number of acre feet from each aquifer, the price per acre foot in the Offer and the Actual Cost (as defined below), the closing date, and other relevant terms of the Offer that must be matched by the Foundation. In the event the Town receives an Offer that includes the sale of the Subject Water Rights with the associated easements and any wells, and the sale also includes other assets owned by the Town valued in excess of \$500,000 as determined by the Town, then this ROFR

shall not apply and the Town may proceed without providing notice to the Foundation.

- C. The Foundation must exercise the ROFR by both: (i) delivering written notice to the Town of the Foundation's intent to exercise the ROFR, which notice must be delivered to the Town on or before fifteen (15) business days by Certified U.S. Mail following the date the notice of the Offer is delivered to the Foundation, and (ii) delivering a contract executed by the Foundation that includes the relevant terms and conditions of the Offer ("Contract") within forty-five (45) days following the date the notice of the Offer is delivered to the Foundation.
- D. Notwithstanding the requirement to include the relevant terms in the Contract:
- i. the price to the Foundation may be adjusted as follows: if the Offer price exceeds the actual cost per acre foot expended by the Town on the acquisition of the Subject Water Rights as determined in good faith in the sole discretion of the Town ("Actual Cost"), then the price to the Foundation shall be the Actual Cost. If the Foundation pays the Actual Price, then the Foundation agrees to retain for use on the Property and not to sell the Subject Water to third parties for a minimum of five (5) years; and
 - ii. the closing date shall be adjusted as follows: the Contract shall provide for a mutually agreeable closing date on or before the later of either the date specified in the Offer or 90 days following the date the notice of the Offer is delivered to the Foundation.
- E. Failure of the Foundation to exercise the ROFR by timely meeting deadlines in subparagraph C above shall result in cancellation of the ROFR for that transaction, and in that case the Town shall be to complete the proposed transaction described in the Offer without further obligation to the Foundation. If the terms and conditions of the proposed transaction as described in a particular Offer materially change after the Foundation has declined or failed to exercise its ROFR with respect thereto, then the ROFR shall apply to the modified Offer and the Town shall provide a new notice of the modified Offer to the Foundation.
- F. The ROFR shall apply to all Offers received by the Town on or before the 10th anniversary of this First Amendment. The ROFR shall be unenforceable and of no force and effect with respect to Offers received by the Town after the 10th anniversary.
- G. In the event the entire amount of the Subject Water Rights is purchased from the Town by the Foundation, then the Town shall convey to the Foundation or abandon the Easements. In the event that less than the entire amount of the Subject Water Rights is acquired by the Foundation, the Easements shall be unaffected.

4. Paragraph 6.13 of the OA is replaced in its entirety with this paragraph. The OA including this First Amendment may be assigned without permission of the other Party upon sale of the Subject Water Rights in the Arapahoe Aquifer. The Foundation's ROFR granted herein shall not be assignable and shall be enforceable only by the Foundation for as long as the Foundation owns the Property.
5. This First Amendment shall be recorded in the records of the Douglas County Clerk and Recorder.

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CHEROKEE RANCH & CASTLE FOUNDATION
a Colorado non-profit corporation

By: 
Name: James A. Holmes

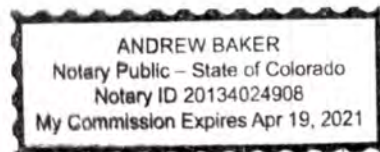
Its:

STATE OF COLORADO)
) ss
COUNTY OF Douglas)

The foregoing Assignment was acknowledged before me this 13 day of
November, 2017, by James A. Holmes as Executive Director of the Cherokee
Ranch & Castle Foundation.

My commission expires: 04/19/2021
Witness my hand and official seal.

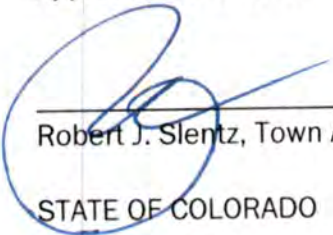

Notary Public



TOWN OF CASTLE ROCK, a Colorado home rule municipality, acting by and through the TOWN OF CASTLE ROCK WATER ENTERPRISE

By: Jennifer Green
Name: Jennifer Green
Its: Mayor

Approved as to form:


Robert J. Slentz, Town Attorney

STATE OF COLORADO)
) ss
COUNTY OF DOUGLAS)

The above and foregoing Assignment was acknowledged before me this 14 day of November, 2017, by Jennifer Green as Mayor of the TOWN OF CASTLE ROCK, a Colorado home rule municipality, acting by and through the TOWN OF CASTLE ROCK WATER ENTERPRISE.

My commission expires: 9-21-2019
Witness my hand and official seal.


Notary Public



EXHIBIT A
FIRST AMENDED OPERATING AND MAINTENANCE AGREEMENT

OFFICIAL RECORDS
DOUGLAS COUNTY CO
JACK ARROWSMITH
CLERK & RECORDER
RECORDING FEE: \$51.00
10 PGS

2008016983
03/10/2008 03:57 PM

**FIRST AMENDED OPERATING
AND MAINTENANCE AGREEMENT**



2008016983 10 PGS

This First Amended Operating and Maintenance Agreement ("Amended Agreement") dated March 6, 2008 is by and between BROMLEY DISTRICT WATER PROVIDERS, LLC, a Colorado limited liability company ("Bromley") and Robert A. Lembke, individually ("Lembke") and CHEROKEE RANCH AND CASTLE FOUNDATION, a Colorado non-profit corporation (the "Foundation").

RECITALS

- A. Bromley and Lembke are the successors-in-interest to the nontributary Arapahoe aquifer groundwater, and Bromley is the successor-in-interest to associated easements acquired by Dakota Water Resources, LLC ("Dakota") pursuant to a Water Rights Purchase and Sale Agreement dated April 29, 2002 between Dakota and the Foundation ("Purchase Agreement"). Bromley and Lembke have acquired all of the rights of Dakota with respect to the Arapahoe aquifer underlying a portion of the property known as the Cherokee Ranch (as described in the Purchase Agreement).
- B. In addition, Lembke and CAW Equities, L.L.C. (collectively referred to herein as "RAL/CAW") have acquired all of the interests in the Denver and Laramie Fox Hills aquifers as set forth in the Purchase Agreement.
- C. The Foundation reserved 100 acre feet of Arapahoe aquifer water for use for its own purposes from the initial conveyance of Arapahoe aquifer water to Dakota.
- D. As a condition of the Purchase Agreement, the Foundation adjudicated a change in the plan for augmentation originally decreed in Case No. 98CW219 to facilitate the sale of Denver and Laramie Fox Hills water to Bromley. The final decree obtained by the Foundation in Case No. 02CW117 requires that the Foundation commit 57.83 acre feet of the 100 acre feet it had reserved in the Arapahoe aquifer to augment RAL/CAW's pumping from the Denver aquifer.
- E. In order to ensure the Foundation has 100 acre feet of Arapahoe aquifer water to use for its own purposes as was originally intended by the parties, Bromley has re-conveyed to the Foundation an additional 60 acre feet of Arapahoe aquifer water to replace the 57.83 acre feet committed to replace depletions associated with RAL/CAW's pumping of Denver aquifer water. Accordingly, the Foundation owns 160 acre feet of Arapahoe aquifer water rights, of which 57.83 acre feet are dedicated to replace Denver aquifer depletions for the benefit of RAL/CAW.
- F. Bromley intends to construct wells and all associated pumping facilities and equipment to withdraw its water from the Arapahoe aquifer.
- G. The Purchase Agreement provides that the Foundation's Arapahoe aquifer water may also be withdrawn through one of Bromley's Arapahoe wells.

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10/30/07

H. Bromley and the Foundation entered into an Operating and Maintenance Agreement on November 20, 2002 regarding the Foundation's use of a Bromley well to withdraw the Foundation's Arapahoe aquifer water. The Parties have agreed to amend the 2002 Operating and Maintenance Agreement in certain respects, and this Amended Agreement is intended to replace and supersede the 2002 Operating and Maintenance Agreement in its entirety.

Now therefore, for the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties agree as follows:

AGREEMENT

1. **Definitions.** In this Amended Agreement, certain terms will have the definitions stated below:

1.1. A "Bromley Well" shall consist of the following, as the same may be constructed from time to time:

1.1.1. One or more Arapahoe aquifer wells constructed and utilized by Bromley, including pumps, equipment and conveyance structures which will allow withdrawal of groundwater from the Arapahoe aquifer. The Foundation is solely responsible for constructing, operating, maintaining and repairing any connection to a Bromley Well, as well as any pipeline, structure, equipment or facility necessary to convey the Foundation's water from a Bromley Well to the Foundation's place of use.

1.1.2. Easements held by Bromley for a well and all other equipment and facilities that are necessary to construct, operate, maintain and repair a well.

1.1.3. Any device or structure necessary to measure the amount of water withdrawn from the Arapahoe aquifer and delivered to the Foundation through a Bromley Well.

2. **Use of a Bromley Well by the Parties:**

2.1. Of the 160 acre feet of Arapahoe aquifer water owned by the Foundation, the Foundation is entitled to use 102.17 acre feet for its own purposes. The remaining 57.83 acre feet must be used to augment RAL/CAW's Denver aquifer pumping. The Foundation may drill one or more of its own wells into the Arapahoe aquifer for the delivery of its 102.17 acre feet of water. However, subject to the terms and conditions contained herein, the Foundation shall also have the right to elect to use a Bromley Well to withdraw up to 102.17 acre feet of water annually from the Arapahoe aquifer at such times as it deems appropriate, provided, however, that such withdrawals shall not exceed 25% of the base pumping rate of the Arapahoe Well or 150 gallons per minute, whichever is less. For purposes of this Agreement, the base pumping rate is the rate of pumping on a sustained basis that would allow 100 acre feet of water to be pumped continuously.

2.2. In all events, Bromley shall be responsible for pumping from one or more of the Bromley Wells and discharging to Plum Creek the 57.83 acre feet of Arapahoe aquifer water committed in Case No. 03CW117 as an augmentation supply, as and when required by the terms and conditions of that decree and/or the direction of the Division Engineer. Pumping of said 57.83 acre feet shall not be considered a withdrawal of water by the Foundation from a Bromley well for purposes of this Agreement. The cost of said pumping shall be paid by the Foundation in accordance with the principles of Section 4 hereinbelow.

2.3. If the Foundation elects to withdraw its 102.17 acre feet of water through a Bromley Well, on or before November 1 of each year, the Foundation shall submit to Bromley a written schedule of its estimated monthly demand, stated in gallons per minute (gpm) and acre-feet for the delivery of the Foundation's water during the succeeding 12 month period (the "delivery schedule"). The Foundation shall periodically revise the delivery schedule as necessary to reflect its expected demand based on current demand and supply system conditions.

2.4. Notwithstanding the foregoing paragraph 2.3, the Foundation shall be entitled to change the delivery schedule upon 48 hours notice to Bromley. Such changes in the delivery schedule shall be telephoned to Bromley and the Foundation shall confirm such changes by fax or email prior to their implementation. Bromley shall provide the Foundation with a list of contacts who may be reached by telephone to accept notice of such changes.

2.5. To the extent the Foundation is not withdrawing its water through a Bromley Well, Bromley shall be entitled to use the entire capacity of the same for its purposes. The Foundation shall use reasonable efforts to operate its water system in accordance with its estimated annual delivery schedule, thereby enabling Bromley a reasonable estimate of the amount of capacity in the Bromley Well available at any given time.

2.6. Bromley shall record and keep records of the timing and amount of water withdrawals through the Bromley Well made on behalf of the Foundation and other parties utilizing the Bromley Well. Such records shall be provided to the Foundation monthly or at any time upon request. Bromley shall be responsible for supplying all records of the Bromley Well's withdrawals and deliveries, including the Foundation's, to the Division Engineer for Water Division No. 1.

3. **Construction of a Bromley Well:** If the Foundation elects to use a Bromley Well to withdraw its Arapahoe aquifer water, the Parties agree to the following rights and responsibilities regarding construction of such Well:

3.1. Bromley shall, at its sole expense, construct any Bromley Well.

3.2. Bromley shall retain the right to increase the size of a Bromley Well at its sole expense provided that Bromley take appropriate precautions to ensure the continued delivery of the Foundation's 102.17 acre-feet pursuant to its delivery schedule during any such enlargement.

3.3. The Foundation water will be pumped from the Bromley Well located in closest proximity to the place of use of the Foundation water.

4. **Operation and Maintenance:** If the Foundation elects to use a Bromley Well to withdraw its Arapahoe aquifer water, the Parties agree to the following rights and responsibilities regarding operation and maintenance of the Bromley Well:

4.1. Bromley shall be responsible for the operation, maintenance and repair of the Bromley Well. Bromley shall conduct all of its activities pursuant to this Amended Agreement in accordance with applicable professional engineering standards. Bromley shall make prudent and reasonable efforts to conduct all of its activities respecting the Bromley Well so as not to interfere with delivery of the Foundation's 102.17 acre feet.

4.2. The Foundation shall reimburse Bromley annually for the Foundation's pro rata share of the operation, maintenance and repair costs attributable to the Bromley Well based upon the Foundation's use of the Bromley Well to pump its 102.17 acre feet as follows:

4.2.1. For variable costs (other than electricity) as reasonably determined by Bromley (being costs which vary generally based on pumping volume), such costs will be allocated over the number of acre-feet of water pumped during the preceding year by the Foundation, Bromley, and any third party users. Electric costs shall be borne based on actual cost of usage, allocated among those parties utilizing the Bromley Well at any point in time. If the pumping activity of any person using the Bromley Well shall cause the costs of pumping to be increased to other persons as a result, Bromley may reallocate such increased costs to the person whose pumping activity gave rise to the increased costs.

EXAMPLE: If a participant in the Bromley Well requests that the pumping rate be increased from 50 gpm to 100 gpm, and the peak rate of electric usage causes an increase in either the rate of charge during pumping or the rate of charge for the remainder of the billing cycle, then the person seeking such increased pumping rate may be required to bear such increased electric costs.

4.2.2. For fixed costs as reasonably determined by Bromley, (being costs which do not vary materially based upon pumping volume), such costs will be allocated over the vested water pumping capacity among the several users, regardless of actual usage.

4.2.3. Bromley shall establish the classification of variable and fixed costs, using such reasonable criteria as it may determine from time to time.

4.3. The Parties shall submit any disputes regarding the operation, maintenance and repair costs to mediation pursuant to paragraph 6.8. Bromley may invoice, and the Foundation shall pay, estimated annual operating costs, in advance, with an adjustment at the end of each annual accounting period to be made in accordance with the terms of this section 4.

5. **Capital Improvements:** If the Foundation elects to use a Bromley Well to withdraw its Arapahoe aquifer water, the Parties agreed to the following rights and responsibilities regarding capital improvements to such Well:

5.1. Bromley shall be responsible for constructing or installing any necessary capital improvements to the Bromley Well after its initial completion as may be required from time to time. Bromley shall make prudent and reasonable efforts to conduct all of its activities respecting the Bromley Well also used by the Foundation to withdraw its Arapahoe aquifer entitlement so as not to interfere with delivery of the Foundation's 102.17 acre feet.

5.2. Bromley shall be responsible for constructing or installing any necessary capital improvements to the Bromley Well after its initial completion, as may be required from time to time. Bromley shall make prudent and reasonable efforts to conduct all of its activities respecting the Bromley Well so as not to interfere with delivery of the Foundation's 102.17 acre feet of Arapahoe water.

5.3. Each Party shall be responsible for its pro rata share of capital repairs, allocated in the same manner as fixed operating costs described above. Prior to initiating any capital project, Bromley shall provide the Foundation with an itemized written estimate of the cost of the project for the Foundation's review. Each Party shall be responsible for paying its pro rata portion of capital costs as those costs are incurred and invoiced. The Parties shall submit any disputes regarding capital costs to mediation pursuant to paragraph 6.8.

6. **Other Provisions:**

6.1. **Governing Law.** This Amended Agreement shall be governed by and construed in accordance with the laws of the State of Colorado and applicable federal law.

6.2. **Authority.** Each Party represents and warrants that it has all requisite power, corporate or otherwise, to execute, deliver and perform their respective obligations pursuant to this Amended Agreement; that the execution, delivery and performance of this Amended Agreement have been duly authorized by it; and that upon execution and delivery, this Amended Agreement will constitute each Party's legal, valid and binding obligation, enforceable against it in accordance with the terms included herein.

6.3. **Default; Remedies.** In the event of default hereunder by any Party, the remedies upon default are as set forth below unless otherwise provided in this Amended Agreement. The remedies of the Parties shall survive any termination of this Amended Agreement.

6.3.1. A default shall be deemed to have occurred if either Party breaches its obligations hereunder and fails to cure such breach within 15 days of receipt of written notice from the non-breaching Party specifying the breach. Waiver or failure to give notice of a particular default or defaults shall not be construed as condoning or acquiescing to any continuing or subsequent default.

6.3.2. The Parties acknowledge that due to the uniqueness of the subject matter of this Amended Agreement, legal remedies may be inadequate. Accordingly, the non-breaching Party shall have the right to pursue any legal or equitable remedies, including specific performance and the right of rescission, which it may have.

6.3.3. If the default is a monetary default claimed against the Foundation, the Foundation may, in its discretion, elect to terminate its rights under this Agreement. In such event, the Foundation will (a) deliver a written notice of termination to Bromley and, (b) execute such conveyance documents as Bromley reasonably requests. Upon satisfaction of the foregoing, the Foundation shall be relieved of all monetary or other obligations arising under this Amended Agreement; provided, however, the Foundation shall not be relieved from loss or damages arising from its own negligence or intentional acts.

6.4. Counterparts. This Amended Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same instrument.

6.5. Further Assurance. Each of the Parties hereto, at any time and from time to time, will execute and deliver such further instruments and take such further action as may reasonably be requested by the other Party hereto, in order to cure any defects in the execution and delivery of, or to comply with or accomplish the covenants and agreements contained in this Amended Agreement and/or any other agreements or documents related thereto.

6.6. Notices. Except as provided in paragraph 1.2 hereto, if under the terms of this Amended Agreement, notice is to be provided to any Party, said notice shall be deemed provided upon (1) personal delivery, (2) three business days after the mailing of the same by registered or certified mail, return receipt requested, (3) when delivered (and receipted for) by an overnight delivery service, or (4) when delivered by facsimile transmission or e-mail transmission for which automatic confirmation has been received, address in each case as follows:

The Foundation:

Cherokee Ranch and Castle Foundation
Attention: Executive Director
6113 North Daniels Park Road
Sedalia, Colorado 80135-8716

With a copy to:

James J. Petrock, Esq.
Petrock & Fendel, P.C.
700 17th Street, Suite 1800
Denver, Colorado 80202

Bromley:

Bromley District Water Providers, LLC
Attn: Robert A. Lembke
5460 S. Quebec Street, Suite 110
Greenwood Village, Colorado 80111

With a copy to:

Carolyn F. Burr, Esq.
Ryley Carlock & Applewhite
1999 Broadway, Suite 1800
Denver, Colorado 80202

Robert A. Lembke

Robert A. Lembke
5460 S. Quebec Street, Suite 110
Greenwood Village, Colorado 80111

6.7. Negotiation. This Amended Agreement has been submitted to the scrutiny of, and has been negotiated by all Parties hereto and their counsel. It shall be given a fair and reasonable interpretation in accordance with its terms, without consideration or weight being given to its having been drafted by any Party hereto or its counsel.

6.8. Alternative Dispute Resolution. If a dispute arises relating to this Amended Agreement, and is not resolved, the Parties involved in such dispute (Disputants) shall first proceed in good faith to submit the matter to mediation. The Disputants will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. In the event the entire dispute is not resolved within thirty (30) calendar days from the date written notice requesting mediation is sent by one Disputant to the other, the mediation, unless otherwise agreed, shall terminate. This section shall not alter any date in this Amended Agreement, unless otherwise agreed. After completion of mediation, any Party may submit any unresolved disputes or controversies to binding arbitration between the Parties involved, and judgment or other judicial relief, including mandatory or other injunctive relief, may be entered upon the decision of the arbitrators in any court having jurisdiction.

6.9. Force Majeure. Notwithstanding anything herein to the contrary, the Foundation agrees not to hold Bromley responsible for any losses or damages incurred by the Foundation as a result of the Foundation's inability to deliver water through a Bromley Well due to the following causes if beyond Bromley's direct or indirect control and when occurring through no direct or indirect fault of Bromley: acts of God; natural disasters; unavailability of power, fuel, supplies or equipment critical to delivery of water through a Bromley Well; and major equipment or facility breakdown.

6.10. Partial Invalidity. If any portion of this Amended Agreement is determined by a court having jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining portions of this agreement, the intention being that the various provisions hereof are severable.

6.11. Amendment. This Amended Agreement may be further amended only in writing signed by both Parties.

6.12. Survival. This Amended Agreement shall survive the closings provided for in the Purchase Agreement.

6.13. Assignment. The primary rights and obligations under this Amended Agreement may not be assigned or delegated by either Party without the prior written consent of the other; provided however, that either Party may allocate its right to use the facilities described herein. Bromley shall have the express right to assign pumping and carriage rights and maintenance obligations under this Amended Agreement to any entity designated by Bromley; provided, however, Bromley shall remain secondarily liable for any default in the performance of any assignee or Bromley.

6.14. Expenses. Each Party shall pay its own costs and expenses, including the each Party's respective attorney fees, in connection with the operation under and administration of this Amended Agreement.

6.15. Waivers and Consents. All waivers and consents given hereunder shall be in writing. No waiver by any Party hereto of any breach or anticipated breach of any provision hereof by any other Party shall be deemed a waiver of any other contemporaneous, preceding or succeeding breach or anticipated breach, whether or not similar, on the part of the same or any other Party.

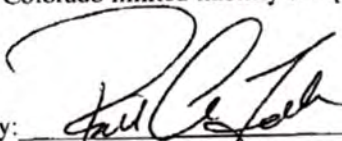
6.16. Rights of Third Parties. All conditions of the obligations of the Parties hereto, and all undertakings herein, except as otherwise provided by a written consent, are solely and exclusively for the benefit of the Parties hereto and their successors and assigns, and no other person or entity shall have standing to require satisfaction of such conditions or to enforce such undertakings in accordance with their terms or be entitled to assume that any Party hereto will refuse to complete the transaction contemplated hereby in the absence of strict compliance with such conditions and undertakings, and no other person or entity shall, under any circumstances, be deemed a beneficiary of such conditions or undertakings, any or all of which may be freely waived in whole or in part, by mutual consent of the Parties hereto at any time, if in their sole discretion they deem it desirable to do so.

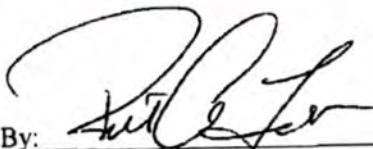
6.17. Headings. The headings contained in this Amended Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Amended Agreement.

6.18. Non Waiver and Waiver of Certain Rights Under Purchase Agreement. Nothing appearing in this Amended Agreement shall be deemed to constitute a waiver of the Foundation's right to drill a separate well, at Foundation expense, for withdrawal of the 102.17 acre feet of reserved Arapahoe formation water, provided that the location selected shall not interfere with any well site described in the Easement Deed from Cherokee to Dakota Water Resources, LLC, Bromley's predecessor-in-interest, dated November 20, 2002, and that the well location acreage used to calculate the 102.17 acre feet annual withdrawal shall be determined prior to execution of landowner consents required for drilling of Arapahoe well(s) by Bromley.

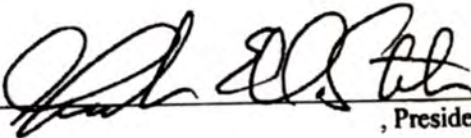
IN WITNESS WHEREOF, the Parties hereto have caused their names to be hereunto subscribed, all as of the day and year first above written.

BROMLEY DISTRICT WATER PROVIDERS, LLC,
A Colorado limited liability company

By: 
Robert A. Lembke, Manager

By: 
Robert A. Lembke

CHEROKEE RANCH AND CASTLE FOUNDATION,
a Colorado non-profit corporation

By: _____
, President

ATTEST:

By: _____
, Secretary

EXHIBIT D
TRI PARTY AGREEMENT

**FIRST AMENDED OPERATING
AND MAINTENANCE AGREEMENT**

This First Amended Operating and Maintenance Agreement ("Amended Agreement") dated March 6, 2008 is by and between BROMLEY DISTRICT WATER PROVIDERS, LLC, a Colorado limited liability company ("Bromley") and Robert A. Lembke, individually ("Lembke") and CHEROKEE RANCH AND CASTLE FOUNDATION, a Colorado non-profit corporation (the "Foundation").

RECITALS

- A. Bromley and Lembke are the successors-in-interest to the nontributary Arapahoe aquifer groundwater, and Bromley is the successor-in-interest to associated easements acquired by Dakota Water Resources, LLC ("Dakota") pursuant to a Water Rights Purchase and Sale Agreement dated April 29, 2002 between Dakota and the Foundation ("Purchase Agreement"). Bromley and Lembke have acquired all of the rights of Dakota with respect to the Arapahoe aquifer underlying a portion of the property known as the Cherokee Ranch (as described in the Purchase Agreement).
- B. In addition, Lembke and CAW Equities, L.L.C. (collectively referred to herein as "RAL/CAW") have acquired all of the interests in the Denver and Laramie Fox Hills aquifers as set forth in the Purchase Agreement.
- C. The Foundation reserved 100 acre feet of Arapahoe aquifer water for use for its own purposes from the initial conveyance of Arapahoe aquifer water to Dakota.
- D. As a condition of the Purchase Agreement, the Foundation adjudicated a change in the plan for augmentation originally decreed in Case No. 98CW219 to facilitate the sale of Denver and Laramie Fox Hills water to Bromley. The final decree obtained by the Foundation in Case No. 02CW117 requires that the Foundation commit 57.83 acre feet of the 100 acre feet it had reserved in the Arapahoe aquifer to augment RAL/CAW's pumping from the Denver aquifer.
- E. In order to ensure the Foundation has 100 acre feet of Arapahoe aquifer water to use for its own purposes as was originally intended by the parties, Bromley has re-conveyed to the Foundation an additional 60 acre feet of Arapahoe aquifer water to replace the 57.83 acre feet committed to replace depletions associated with RAL/CAW's pumping of Denver aquifer water. Accordingly, the Foundation owns 160 acre feet of Arapahoe aquifer water rights, of which 57.83 acre feet are dedicated to replace Denver aquifer depletions for the benefit of RAL/CAW.
- F. Bromley intends to construct wells and all associated pumping facilities and equipment to withdraw its water from the Arapahoe aquifer.
- G. The Purchase Agreement provides that the Foundation's Arapahoe aquifer water may also be withdrawn through one of Bromley's Arapahoe wells.

H. Bromley and the Foundation entered into an Operating and Maintenance Agreement on November 20, 2002 regarding the Foundation's use of a Bromley well to withdraw the Foundation's Arapahoe aquifer water. The Parties have agreed to amend the 2002 Operating and Maintenance Agreement in certain respects, and this Amended Agreement is intended to replace and supersede the 2002 Operating and Maintenance Agreement in its entirety.

Now therefore, for the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Definitions.** In this Amended Agreement, certain terms will have the definitions stated below:

1.1. A "Bromley Well" shall consist of the following, as the same may be constructed from time to time:

1.1.1. One or more Arapahoe aquifer wells constructed and utilized by Bromley, including pumps, equipment and conveyance structures which will allow withdrawal of groundwater from the Arapahoe aquifer. The Foundation is solely responsible for constructing, operating, maintaining and repairing any connection to a Bromley Well, as well as any pipeline, structure, equipment or facility necessary to convey the Foundation's water from a Bromley Well to the Foundation's place of use.

1.1.2. Easements held by Bromley for a well and all other equipment and facilities that are necessary to construct, operate, maintain and repair a well.

1.1.3. Any device or structure necessary to measure the amount of water withdrawn from the Arapahoe aquifer and delivered to the Foundation through a Bromley Well.

2. Use of a Bromley Well by the Parties:

2.1. Of the 160 acre feet of Arapahoe aquifer water owned by the Foundation, the Foundation is entitled to use 102.17 acre feet for its own purposes. The remaining 57.83 acre feet must be used to augment RAL/CAW's Denver aquifer pumping. The Foundation may drill one or more of its own wells into the Arapahoe aquifer for the delivery of its 102.17 acre feet of water. However, subject to the terms and conditions contained herein, the Foundation shall also have the right to elect to use a Bromley Well to withdraw up to 102.17 acre feet of water annually from the Arapahoe aquifer at such times as it deems appropriate, provided, however, that such withdrawals shall not exceed 25% of the base pumping rate of the Arapahoe Well or 150 gallons per minute, whichever is less. For purposes of this Agreement, the base pumping rate is the rate of pumping on a sustained basis that would allow 100 acre feet of water to be pumped continuously.

- 2.2. In all events, Bromley shall be responsible for pumping from one or more of the Bromley Wells and discharging to Plum Creek the 57.83 acre feet of Arapahoe aquifer water committed in Case No. 03CW117 as an augmentation supply, as and when required by the terms and conditions of that decree and/or the direction of the Division Engineer. Pumping of said 57.83 acre feet shall not be considered a withdrawal of water by the Foundation from a Bromley well for purposes of this Agreement. The cost of said pumping shall be paid by the Foundation in accordance with the principles of Section 4 hereinbelow.
- 2.3. If the Foundation elects to withdraw its 102.17 acre feet of water through a Bromley Well, on or before November 1 of each year, the Foundation shall submit to Bromley a written schedule of its estimated monthly demand, stated in gallons per minute (gpm) and acre-feet for the delivery of the Foundation's water during the succeeding 12 month period (the "delivery schedule"). The Foundation shall periodically revise the delivery schedule as necessary to reflect its expected demand based on current demand and supply system conditions.
- 2.4. Notwithstanding the foregoing paragraph 2.3, the Foundation shall be entitled to change the delivery schedule upon 48 hours notice to Bromley. Such changes in the delivery schedule shall be telephoned to Bromley and the Foundation shall confirm such changes by fax or email prior to their implementation. Bromley shall provide the Foundation with a list of contacts who may be reached by telephone to accept notice of such changes.
- 2.5. To the extent the Foundation is not withdrawing its water through a Bromley Well, Bromley shall be entitled to use the entire capacity of the same for its purposes. The Foundation shall use reasonable efforts to operate its water system in accordance with its estimated annual delivery schedule, thereby enabling Bromley a reasonable estimate of the amount of capacity in the Bromley Well available at any given time.
- 2.6. Bromley shall record and keep records of the timing and amount of water withdrawals through the Bromley Well made on behalf of the Foundation and other parties utilizing the Bromley Well. Such records shall be provided to the Foundation monthly or at any time upon request. Bromley shall be responsible for supplying all records of the Bromley Well's withdrawals and deliveries, including the Foundation's, to the Division Engineer for Water Division No. 1.
3. **Construction of a Bromley Well:** If the Foundation elects to use a Bromley Well to withdraw its Arapahoe aquifer water, the Parties agree to the following rights and responsibilities regarding construction of such Well:
- 3.1. Bromley shall, at its sole expense, construct any Bromley Well.
- 3.2. Bromley shall retain the right to increase the size of a Bromley Well at its sole expense provided that Bromley take appropriate precautions to ensure the continued delivery of the Foundation's 102.17 acre-feet pursuant to its delivery schedule during any such enlargement.
- 3.3. The Foundation water will be pumped from the Bromley Well located in closest proximity to the place of use of the Foundation water.

4. **Operation and Maintenance:** If the Foundation elects to use a Bromley Well to withdraw its Arapahoe aquifer water, the Parties agree to the following rights and responsibilities regarding operation and maintenance of the Bromley Well:

4.1. Bromley shall be responsible for the operation, maintenance and repair of the Bromley Well. Bromley shall conduct all of its activities pursuant to this Amended Agreement in accordance with applicable professional engineering standards. Bromley shall make prudent and reasonable efforts to conduct all of its activities respecting the Bromley Well so as not to interfere with delivery of the Foundation's 102.17 acre feet.

4.2. The Foundation shall reimburse Bromley annually for the Foundation's pro rata share of the operation, maintenance and repair costs attributable to the Bromley Well based upon the Foundation's use of the Bromley Well to pump its 102.17 acre feet as follows:

4.2.1. For variable costs (other than electricity) as reasonably determined by Bromley (being costs which vary generally based on pumping volume), such costs will be allocated over the number of acre-feet of water pumped during the preceding year by the Foundation, Bromley, and any third party users. Electric costs shall be borne based on actual cost of usage, allocated among those parties utilizing the Bromley Well at any point in time. If the pumping activity of any person using the Bromley Well shall cause the costs of pumping to be increased to other persons as a result, Bromley may reallocate such increased costs to the person whose pumping activity gave rise to the increased costs.

EXAMPLE: If a participant in the Bromley Well requests that the pumping rate be increased from 50 gpm to 100 gpm, and the peak rate of electric usage causes an increase in either the rate of charge during pumping or the rate of charge for the remainder of the billing cycle, then the person seeking such increased pumping rate may be required to bear such increased electric costs.

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4.3. The Parties shall submit any disputes regarding the operation, maintenance and repair costs to mediation pursuant to paragraph 6.8. Bromley may invoice, and the Foundation shall pay, estimated annual operating costs, in advance, with an adjustment at the end of each annual accounting period to be made in accordance with the terms of this section 4.

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5.1. Bromley shall be responsible for constructing or installing any necessary capital improvements to the Bromley Well after its initial completion as may be required from time to time. Bromley shall make prudent and reasonable efforts to conduct all of its activities respecting the Bromley Well also used by the Foundation to withdraw its Arapahoe aquifer entitlement so as not to interfere with delivery of the Foundation's 102.17 acre feet.

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5.3. Each Party shall be responsible for its pro rata share of capital repairs, allocated in the same manner as fixed operating costs described above. Prior to initiating any capital project, Bromley shall provide the Foundation with an itemized written estimate of the cost of the project for the Foundation's review. Each Party shall be responsible for paying its pro rata portion of capital costs as those costs are incurred and invoiced. The Parties shall submit any disputes regarding capital costs to mediation pursuant to paragraph 6.8.

6. Other Provisions:

6.1. Governing Law. This Amended Agreement shall be governed by and construed in accordance with the laws of the State of Colorado and applicable federal law.

6.2. Authority. Each Party represents and warrants that it has all requisite power, corporate or otherwise, to execute, deliver and perform their respective obligations pursuant to this Amended Agreement; that the execution, delivery and performance of this Amended Agreement have been duly authorized by it; and that upon execution and delivery, this Amended Agreement will constitute each Party's legal, valid and binding obligation, enforceable against it in accordance with the terms included herein.

6.3. Default; Remedies. In the event of default hereunder by any Party, the remedies upon default are as set forth below unless otherwise provided in this Amended Agreement. The remedies of the Parties shall survive any termination of this Amended Agreement.

6.3.1. A default shall be deemed to have occurred if either Party breaches its obligations hereunder and fails to cure such breach within 15 days of receipt of written notice from the non-breaching Party specifying the breach. Waiver or failure to give notice of a particular default or defaults shall not be construed as condoning or acquiescing to any continuing or subsequent default.

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6.3.3. If the default is a monetary default claimed against the Foundation, the Foundation may, in its discretion, elect to terminate its rights under this Agreement. In such event, the Foundation will (a) deliver a written notice of termination to Bromley and, (b) execute such conveyance documents as Bromley reasonably requests. Upon satisfaction of the foregoing, the Foundation shall be relieved of all monetary or other obligations arising under this Amended Agreement; provided, however, the Foundation shall not be relieved from loss or damages arising from its own negligence or intentional acts.

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6.8. Alternative Dispute Resolution. If a dispute arises relating to this Amended Agreement, and is not resolved, the Parties involved in such dispute (Disputants) shall first proceed in good faith to submit the matter to mediation. The Disputants will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. In the event the entire dispute is not resolved within thirty (30) calendar days from the date written notice requesting mediation is sent by one Disputant to the other, the mediation, unless otherwise agreed, shall terminate. This section shall not alter any date in this Amended Agreement, unless otherwise agreed. After completion of mediation, any Party may submit any unresolved disputes or controversies to binding arbitration between the Parties involved, and judgment or other judicial relief, including mandatory or other injunctive relief, may be entered upon the decision of the arbitrators in any court having jurisdiction.

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- 6.16. Rights of Third Parties. All conditions of the obligations of the Parties hereto, and all undertakings herein, except as otherwise provided by a written consent, are solely and exclusively for the benefit of the Parties hereto and their successors and assigns, and no other person or entity shall have standing to require satisfaction of such conditions or to enforce such undertakings in accordance with their terms or be entitled to assume that any Party hereto will refuse to complete the transaction contemplated hereby in the absence of strict compliance with such conditions and undertakings, and no other person or entity shall, under any circumstances, be deemed a beneficiary of such conditions or undertakings, any or all of which may be freely waived in whole or in part, by mutual consent of the Parties hereto at any time, if in their sole discretion they deem it desirable to do so.
- 6.17. Headings. The headings contained in this Amended Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Amended Agreement.
- 6.18. Non Waiver and Waiver of Certain Rights Under Purchase Agreement. Nothing appearing in this Amended Agreement shall be deemed to constitute a waiver of the Foundation's right to drill a separate well, at Foundation expense, for withdrawal of the 102.17 acre feet of reserved Arapahoe formation water, provided that the location selected shall not interfere with any well site described in the Easement Deed from Cherokee to Dakota Water Resources, L.L.C., Bromley's predecessor-in-interest, dated November 20, 2002, and that the well location acreage used to calculate the 102.17 acre feet annual withdrawal shall be determined prior to execution of landowner consents required for drilling of Arapahoe well(s) by Bromley.

CHEROKEE RANCH AND CASTLE FOUNDATION,
a Colorado non-profit corporation

By: _____
, President


ATTEST:

By: _____
, Secretary

IN WITNESS WHEREOF, the Parties hereto have caused their names to be hereunto subscribed, all as of the day and year first above written.

BROMLEY DISTRICT WATER PROVIDERS, LLC,
A Colorado limited liability company

By: _____


Robert A. Lembke, Manager

By: _____



Robert A. Lembke

Exhibit E to Tri-Party Agreement

