

FIRST ADDENDUM TO WATER SERVICE AGREEMENT
(ROWLEY DOWNS)

THIS FIRST ADDENDUM TO WATER SERVICE AGREEMENT is made and entered into this 10 day of October 2016 by and between THE PARKER WATER AND SANITATION DISTRICT (the "District"), a Colorado special district and political subdivision having an address at 18100 E. Woodman Drive, Parker, Colorado 80134 and ROWLEY DOWNS HOMEOWNERS ASSOCIATION (the "Association") of 2851 S. Parker Road, Suite 340, Aurora, CO 80014 (individually a "Party" and collectively the "Parties").

WHEREAS, on February 13, 1995, the Parties entered into an agreement (the "Initial Agreement"), pursuant to which the District agreed to supply the Association with water sufficient to irrigate non-metered portions of the common areas of the Rowley Downs development, which areas encompass approximately 6.354 acres as shown on the attached **Exhibit A** (the "Subject Area");

WHEREAS, the Association agreed to pay the District an annual flat fee, which would increase over time in proportion with changes to District-wide water rate changes;

WHEREAS, the Association was also required to regulate its water consumption to a reasonable agronomic rate which will sustain landscape growth appropriate to the species;

WHEREAS, the Parties desire to clarify the methodology for calculating rate increases, when determining the annual charge for the water service commencing on January 1, 2017;

WHEREAS, in addition, because water has been delivered through unmetered connections, it is difficult to determine whether the Association's water use has been reasonable, and therefore, the Parties desire to establish 5,200,000 gallons as an annual maximum amount of water that is reasonable;

WHEREAS, due to the aforementioned issues, the Parties desire to execute this First Addendum to establish how water service will be addressed commencing on January 1, 2017.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Initial Agreement. This Addendum shall become effective January 1, 2017.
2. Meter Installation. At no cost to the Association, the District shall install water meters in the Subject Area, which shall be used to measure the volume of water delivered by the District for Association use on the Subject Area.
3. Charges.
 - A. Flat fee for up to 5,200,000 gallons. Regardless of the amount of water used by the Association, each calendar year the Association shall pay to the District for water service to the Subject Area, a flat fee equal to 5,200,000 gallons of water (the "Maximum Allowable Amount") multiplied by twenty-five percent (25%) of the District's applicable Irrigation Account rate for the year in which the water will be consumed by the Association (as of October 1, 2016 \$6.45 per

thousand gallons for the remainder of 2016). Payment shall be made annually in twelve (12) equal installments.

B. Rate for usage in excess of the Maximum Allowable Amount. For water consumption in excess of the Maximum Allowable Amount in a calendar year, the Association shall pay to the District the then-applicable Irrigation Account rate. For such excess water usage, the Association shall be billed by the District in January of the year following the year in which the excess usage occurred.

C. Future Conservation - Reduction of Maximum Allowable Amount. To encourage the Association to implement water conservation measures, the Association may reduce the Maximum Allowable Amount of 5,200,000 gallons. If the Association desires to reduce the Maximum Allowable Amount, no later than sixty (60) days prior to the end of a calendar year, the Association shall notify the District in writing of a new Maximum Allowable Amount that is less than the Maximum Allowable Amount for the then-current year. Upon delivery to the District of such notice, the selected Maximum Allowable Amount shall become the new Maximum Allowable Amount for subsequent years. The Association may never increase the Maximum Allowable Amount above that for the then-current year, so any reduced amount chosen by the Association for subsequent years may never be increased. Upon reduction of the Maximum Allowable Amount, the charges shall be calculated as set forth in Subsections A and B above, using the new Maximum Allowable Amount.

D. Payment terms. Payment method and due dates shall be subject to the same terms and conditions as all other District irrigation accounts.

4. Miscellaneous.

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Douglas County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by either Party shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement and any attached exhibits constitute the entire Agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either party without the written consent of the other.

I. Governmental Immunity. The District and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the District and its officers, attorneys or employees.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

[Remainder of page intentionally left blank. Signatures on following page.]

NOTARY PUBLIC STATE OF COLORADO
My Commission Expires 11-08-2020

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Notary Public

11-08-2020

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MALEIA S GOOD
Notary Public
State of Colorado
Notary ID # 20094032507
My Commission Expires 11-08-2020

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CLAYDENE HODGE
Notary Public
State of Colorado
Notary ID 20094032507
My Commission Expires June 2, 2020

EXHIBIT A, PART ONE OF TWO
DEPICTION OF SUBJECT AREA



Legend
 Rowley Downs Irrigation
 Irrigated - Not Metered
 Irrigated - Metered

Rowley Downs
 March 2014

Parker Water
 & Sanitation District

**EXHIBIT A, PART TWO OF TWO
CALCULATIONS OF ACREAGE OF SUBJECT AREA**

**Rowley Downs Subdivision - Landscape Information
Exhibit A**

Street Name	Total Acres	Sod Acreage	Trees/ Bushes Acreage	Rock, Dirt or Sand Acreage
Main Street & Stonhenge	0.59	0.5605	0.0295	0
Cambridge Place	0.12	0.09	0.024	0.006
Cambridge Court	0.7	0.595	0.07	0.035
Edinburgh Court	0.58	0.493	0.058	0.029
Siebert Circle between Edinburgh Ct & Place	0.27	0.1485	0.0945	0.027
Edinburgh Way	0.11	0.088	0.0165	0.0055
Edinburgh Place	0.28	0.224	0.042	0.014
Williamson Drive (Split Islands) - North	0.17	0.119	0.0425	0.0085
Williamson Drive (Split Islands) - South	0.18	0.126	0.045	0.009
Aintree Court - Bottom Island	0.17	0.1615	0.0085	0
Aintree Court -Top Island	0.56	0.448	0.084	0.028
Aintree Place	0.11	0.0825	0.022	0.0055
Hilary Court	0.11	0.0825	0.022	0.0055
Hilary Place	0.1	0.065	0.02	0.015
Regency Place	0.05	0.035	0.0075	0.0075
Marlborough Street (Split Islands) - East	0.19	0.1425	0.038	0.0095
Marlborough Street (Split Islands) - West	0.19	0.1235	0.0475	0.019
Regency Court	0.57	0.399	0.114	0.057
Sussex Court	0.29	0.203	0.058	0.029
Sheffield Place	0.1	0.06	0.03	0.01
Sheffield Court	0.09	0.063	0.0225	0.0045
Parliament Place	0.05	0.0375	0.0075	0.005
Lyttle Drive (Split Islands) - North	0.06	0.03	0.015	0.015
Lyttle Drive (Split Islands) - South	0.06	0.045	0.012	0.003
Parliament Court	0.75	0.5625	0.15	0.0375
Dartmoor Place	0.26	0.195	0.052	0.013
Dartmoor Court	<u>0.06</u>	<u>0.03</u>	<u>0.012</u>	<u>0.018</u>
Totals	6.77	5.2095	1.1445	0.416
Total Sod Irrigated Acreage 5.2095				
Total Bushes and Trees Irrigated Acreage 1.1445				
Estimated Total 6.354				