

Prepared By and Return To:

Christopher Roper, Esq.  
Akerman LLP  
Post Office Box 231  
Orlando, FL 32802-0231

**RECLAIM WATER EASEMENT AGREEMENT**  
**(Lee Vista Promenade)**

**THIS RECLAIM WATER EASEMENT AGREEMENT** (the "**Agreement**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 by and between **DDR ORLANDO LLC**, a Delaware limited liability company, whose mailing address is 3300 Enterprise Parkway, Beachwood, Ohio 44122 (the "**Grantor**"), and the **CITY OF ORLANDO, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, whose mailing address is 400 South Orange Avenue, Orlando, Florida 32801 (the "**Grantee**") (Grantor and Grantee are sometimes together referred to herein as the "**Parties**", and separately as a "**Party**").

**WITNESSETH:**

**WHEREAS**, Grantor is the owner in fee simple of that certain real property being more particularly described and depicted in **Exhibit "A"** attached hereto and by this reference incorporated herein (the "**Easement Area**"); and

**WHEREAS**, Grantor desires to grant in favor of Grantee, and Grantee desires to accept from Grantor, a permanent, non-exclusive reclaim water easement on, upon, over, under, across and through the Easement Area for the limited purposes of operating, maintaining, repairing, replacing, and restoring a reclaim water line and meter and appurtenant facilities (collectively, the "**Facilities**"), subject to the provisions set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the Parties, the Parties do hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Grant of Easement.** Grantor does hereby grant, bargain, sell and convey to Grantee a permanent, non-exclusive reclaim water easement on, upon, over, under, across and through the Easement Area for the limited purposes of operating, maintaining, repairing, replacing, and restoring the Facilities in accordance with and subject to any and all applicable laws, ordinances, rules, regulations, permits and approvals, and any future modifications or amendments thereto (the "**Easement**"). Notwithstanding the foregoing, nothing contained herein

shall be deemed to create or grant any right to use the Easement Area for the provision of general utilities or communication services. Any Facilities that are replaced by Grantee within the Easement Area shall be located underground to the maximum extent feasible, and the location of any portion of such above-ground Facilities shall be subject to the reasonable approval of Grantor. Without limiting the foregoing, the Grantor hereby approves the Facilities as currently located within the Easement Area as of the effective date hereof.

3. **Right of Relocation.** Grantor shall have the right from time to time to relocate or reconfigure all or any portion of the Easement Area and/or Facilities as it deems necessary or desirable for the future development of Grantor's lands. During the term of this Agreement, Grantee hereby consents to any relocation or reconfiguration of the Easement Area and/or Facilities (either in whole or in part) proposed by Grantor; provided that (i) Grantor shall pay for all costs and expenses for the relocation or reconfiguration of the Easement Area and/or Facilities (either in whole or in part) in compliance with all governmental permits, approvals, and requirements; (ii) any relocation or reconfiguration of the Easement Area does not reduce the existing or permitted capacity of the Facilities; (iii) Grantee shall not be required to incur any additional repair or maintenance costs associated with the relocation or reconfiguration of the Easement Area and the Facilities; (iv) Grantor shall convey to Grantee any additional easements necessary to access the relocated or reconfigured Easement Area and Facilities for repair and maintenance activities; and (v) Grantor shall deliver to Grantee an amendment to this Agreement together with a legal description for the relocated Easement Area and/or Facilities (either in whole or in part), as applicable, including any easements necessary for access to the relocated or reconfigured Easement Area and/or Facilities for repair and maintenance activities. After execution of such amendment the rights of Grantee shall automatically extend and fully apply to such relocated easement area to the same extent as they applied prior to such relocation or reconfiguration of the Easement Area and/or Facilities, and subject to all of the conditions for relocation or reconfiguration being satisfied, the rights of Grantee as to the relocated or reconfigured Easement Area and/or Facilities (either in whole or in part) shall be released and immediately revert to the Grantor, its successors, transferees and assigns.

4. **Repair and Maintenance.**

(a) Grantor shall have maintenance responsibility for the pressure reducing valve (PRV) located on the downstream side of the meter along with all pipe downstream of the meter. Grantee shall have maintenance responsibility for all other Facilities, including, but not limited to, the meter and the meter assemblies from the connection to the main to the downstream flange of the meter. Both Grantor and Grantee shall repair and maintain their respective portions of the Facilities as described in the preceding sentences and shall keep the same in good order and repair in accordance with all applicable laws, ordinances, rules, regulations, permits and approvals, and any future modifications or amendments thereto and at no cost to Grantor, subject to the provisions set forth herein. With respect to relocated or reconfigured Facilities, Grantee's repair and maintenance obligations shall not take effect until construction of the Facilities has been completed and such Facilities have been accepted by the Grantee and subject to the same provisions hereof regarding repair and maintenance obligations.

(b) In the event any required repair and/or maintenance hereunder is not performed by Grantee in accordance with the foregoing standards, Grantor may deliver a notice to Grantee setting forth the maintenance deficiencies, whereupon Grantee shall have a period of fifteen (15) days to remedy the deficiencies, or forty-eight (48) hours, in case of emergency. In

the event the deficiencies are not remedied in a reasonable fashion within such fifteen (15) day period, or within such forty-eight (48) hour period in case of emergency, Grantor shall have the right to undertake all reasonably necessary maintenance and repair itself and recover from Grantee the reasonable and actual, third party out-of-pocket fees, costs and expenses incurred in connection therewith. The provisions of this section shall expressly survive the termination of this Agreement.

5. **Damage.** In the event that Grantee, its agents, employees, consultants, representatives, and contractors (and their subcontractors, employees and materialmen) cause damage to the Easement Area or Facilities (or any other real or personal property not owned by Grantee) Grantee, at its sole cost and expense, agrees to promptly commence the restoration and repair of the same to as nearly as practical the original condition and grade and shall diligently pursue and cause the completion of the same within thirty (30) days after receiving written notice of any such damage. In the event any required restoration and repair hereunder is not completed by Grantee within such thirty (30) day period, Grantor shall have the right to undertake all reasonably necessary restoration and repair itself and recover from Grantee the actual, third party out-of-pocket expenses incurred in connection therewith. The provisions of this section shall expressly survive the termination of this Agreement. In the event that Grantor, its agents, employees, consultants, representatives, and contractors (and their subcontractors, employees and materialmen) cause damage to the Easement Area and Facilities, Grantor, at its sole cost and expense, agrees to promptly commence the restoration and repair of the same to as nearly as practical the original condition and grade and shall diligently pursue and cause the completion of the same within thirty (30) days after receiving written notice of any such damage. In the event any required restoration and repair hereunder is not completed by Grantor within such thirty (30) day period, Grantee shall have the right to undertake all reasonably necessary restoration and repair itself and recover from Grantor the actual, third party out-of-pocket expenses incurred in connection therewith. The provisions of this section shall expressly survive the termination of this Agreement.

6. **Assignment and Termination.** Grantee may not assign its rights and obligations under this Agreement to any person or entity without the prior written consent of Grantor, which may not be unreasonably withheld, conditioned or delayed. If the Easement shall be abandoned by Grantee or terminated in any manner, all rights and privileges hereunder shall cease and the easement privileges and rights herein granted shall revert to Grantor. If the Easement Area or any portion thereof is conveyed, platted or otherwise dedicated to and accepted by the City of Orlando preserving the easement rights created hereunder, this Agreement shall automatically terminate as to the Easement Area or any portion thereof being platted or otherwise dedicated.

7. **Insurance.** Grantor and Grantee acknowledge that the Grantee, as a governmental entity, self-insures its general liability, automobile liability and Worker's Compensation exposure(s). Grantee shall ensure that any contractors (and their subcontractors, employees and materialmen) performing work for Grantee on the Easement Area, shall at all times maintain general public liability insurance to afford protection against any and all claims for personal injury, death or property damage arising directly or indirectly out of the exercise of the rights and privileges granted. Said insurance shall be issued by solvent, reputable insurance companies authorized to do business in the State of Florida, naming Grantor as an additional insured, in a combined-single limit of not less than \$1,000,000.00 with respect to bodily injury or death and property damage. Said insurance shall also be primary, and not contributory, as to any insurance

coverage maintained by Grantor. Nothing in this Agreement operates as a waiver of the Grantee's grant of sovereign immunity or the limits of liability established under Florida law. Furthermore, nothing in this Agreement operates to allow a claim otherwise barred by sovereign immunity or other operation of law.

8. **Indemnification.** To the extent permitted by law and without waiving sovereign immunity and any of the protections afforded by §768.28, Florida Statutes, and without waiving the limits of liability established under Florida law, which limits shall apply to the indemnification obligations referenced herein, each Party hereby agrees to indemnify and hold harmless the other Party, its officers, staff, elected or appointed officials, and employees from and against any and all actions, causes of action, claims, demands, liabilities, judgments, costs, or expenses whatsoever (including, without limitation attorneys' fees at trial and appellate levels), to the extent arising out of (i) the negligent acts or omissions or intentional misconduct of such Party or its officers, staff, elected or appointed officials, or employees, or (ii) the exercise by such Party or its agents, employees, elected or appointed officials, consultants, representatives, or contractors (and their subcontractors, employees, and materialmen) of the rights and obligations set forth herein.

9. **Obligations.** Any rights granted hereunder shall be exercised only in accordance and compliance with any and all applicable laws, ordinances, rules, regulations, permits and approvals, and any future modifications or amendments thereto. No Party shall knowingly discharge into or within the Easement Area any hazardous or toxic materials or substances, any pollutants, or any other substances or materials prohibited or regulated under any federal, state or local law, ordinance, rule, regulations or permit, except in accordance with such laws, ordinances, rules, regulations and permits.

10. **Beneficiaries of Easement Rights/Binding Effect.** The Easement set forth in this Agreement shall be solely for the benefit of Grantee, for the purpose expressly provided for herein and for no other purpose. The Easement hereby created and granted includes the creation of all incidental rights reasonably necessary for the use and enjoyment of the Easement Area for their intended purposes.

11. **No Public Dedication.** Nothing contained in this Agreement shall create or shall be deemed to create any easements or use rights in the general public or constitute a public dedication for any public use whatsoever.

12. **Liens.** Grantee shall not permit (and shall promptly satisfy or bond) any construction, mechanic's lien or encumbrance against the Easement Area or any other property in connection with the exercise of Grantee's rights hereunder.

13. **Amendments and Waivers.** This Agreement may not be terminated or amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by the Parties and recorded in the Public Records of Orange County, Florida. No delay or omission of any Party in the exercise of any right accruing upon any default of any Party shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Party of a breach of, or a default in, any of the terms and conditions of this Agreement by any other Party shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement.

14. **Notices.** Any notices which may be permitted or required hereunder shall be in writing, and shall be deemed to have been duly given (i) one day after depositing with a nationally recognized overnight courier service, or (ii) on the day of hand delivery (provided such delivery occurs prior to 5:00 pm, local Orlando time) to the addresses listed below or to such other addresses as a Party may from time to time designate by written notice in accordance with this paragraph:

To Grantor:                   DDR Orlando LLC  
3300 Enterprise Parkway  
Beachwood, Ohio 44122  
Attention: Evan Vlaeminck

and

With a copy to:               DDR Orlando LLC  
3300 Enterprise Parkway  
Beachwood, Ohio 44122  
Attention: Michele Boal, Legal Counsel

and

With a copy to:               Akerman LLP  
420 S. Orange Avenue, Suite 1200  
Orlando, Florida 32801  
Attention: Chris Roper, Esq.

To Grantee:                   City of Orlando  
400 South Orange Avenue  
Orlando, Florida 32801  
Attention: Vic Godlewski

With a copy to:               City of Orlando  
City Attorney's Office  
400 South Orange Avenue  
Orlando, Florida 32801  
Attention: Roy Payne

15. **Use of Easement Area.** It is acknowledged and agreed that the easement granted under this Agreement is not an exclusive easement and that Grantor shall have the right to use and enjoy the Easement Area in any manner not inconsistent with the easement rights created herein and that does not interfere with or disrupt Grantee's operations on the Easement Area or the functioning of the Facilities. Without limiting the foregoing, the Parties acknowledge and agree that no improvement located within the Easement Area pursuant to construction or other plans approved by the City as of the effective date hereof shall be deemed to be inconsistent with the easement rights created herein or deemed to interfere with or disrupt Grantee's operations on the Easement Area or the functioning of the Facilities, so long as such improvements are installed and maintained in accordance with such plans and the City Land Development Code.

Grantee shall not exercise its easement rights granted herein in any manner which unreasonably interferes with or unreasonably disrupts Grantor's exercise of its retained rights hereunder.

16. **Effective Date.** The Effective Date of the Agreement shall be the last day that this Agreement is signed by either Party.

17. **Attorneys' Fees.** Should any action be brought arising out of this Agreement, including, without limitation, any action for declaratory or injunctive relief, or any action for the enforcement hereof, each party shall be responsible for its own attorneys' fees and costs and expenses of investigation, all as actually incurred, including, without limitation, attorneys' fees, costs, and expenses of investigation incurred before, during or after trial or in any appellate proceedings or in any action or participation in, or in connection with, any case or proceeding under the United States Bankruptcy Code, or any successor statutes.

18. **Miscellaneous.** This Agreement contains the entire understanding of the Parties with respect to the matters set forth herein and no other agreement, oral or written, not set forth herein, nor any course of dealings of the Parties, shall be deemed to alter or affect the terms and conditions set forth herein. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to the extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be construed in accordance with the laws of the United States of America and the State of Florida. Venue for any proceeding brought hereunder shall be Orange, County, Florida. The section headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof. Where the sense of this Agreement requires, any reference to a term in the singular shall be deemed to include the plural of said term, and any reference to a term in the plural shall be deemed to include the singular of said term. Nothing in this Agreement shall be construed to make the Parties hereto partners or joint venturers or render either of said parties liable for the debts or obligations of the other. This Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same Agreement. Time is of the essence of this Agreement. The rights, privileges and easements granted and conveyed hereunder shall be a burden upon the Easement Area and exist for the benefit of and shall run with title to the applicable property. The Grantor covenants with the Grantee and warrants that it is lawfully seized of the Easement Area in fee simple, that it has good, right and lawful authority to sell and convey this Easement, and that the Easement Area is free of all monetary liens, mortgages or encumbrances except for real property taxes not delinquent. Except as provided in the preceding sentence, this Easement is being conveyed to Grantee as-is and subject to all matters of record.







**EXHIBIT "A"**

**Easement Area**

**[See Attached Sketches of Description – 4 pages]**