

Prepared By and Return To:

Sara W. Bernard, P.A.
Broad and Cassel LLP
Bank of America Center
P.O. Box 4961
Orlando, Florida 32802-4961

RECLAIM WATER EASEMENT AGREEMENT

THIS RECLAIM WATER EASEMENT AGREEMENT (the “**Agreement**”) is made and entered into this ____ day of _____, 2017 by and between **LANDPORT LAND HOLDING, LLC**, a Florida limited liability company, whose mailing address is 6900 Tavistock Lakes Boulevard, Suite 200, Orlando, Florida 32827 (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 the “**Party**”).

WITNESSETH:

WHEREAS, Grantor is the owner in fee 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 backflow preventer and meter which Grantor has constructed and installed (or will construct and install), together with related improvements and other reclaim water facilities, if inspected and approved by the Grantee (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, and for reasonable access to and from 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.

Additionally, Grantor does hereby grant, bargain, sell and convey to Grantee a permanent, non-exclusive access easement on, upon, over, under, across, and through that certain real property being more particularly described and depicted in **Exhibit “B”** attached hereto and by this reference incorporated herein (the “**Access Easement Area**”) for the sole purpose of access, ingress, egress to and from the Facilities lying within the Easement Area.

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, Access 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, Access 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, Access 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 and/or Access 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, Access Easement Area and the Facilities, (iv) Grantor shall convey to Grantee any additional easements necessary to access the relocated or reconfigured Easement Area, Access Easement Area and Facilities for repair and maintenance activities; and (iv) Grantor shall deliver to Grantee an amendment to this Agreement together with a legal description for the relocated Easement Area, Access 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, Access 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, Access 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) Grantee shall repair and maintain the meter assemblies from the connection to the main to the downstream flange of the meter, including the meter. The pressure reducing valve (PRV) located on the downstream side of the meter along with all pipe downstream of the meter shall be the Grantor’s responsibility to repair and maintain. Both Grantor and Grantee shall repair and maintain their respective portions of the Facilities as described in the preceding sentence 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 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, Access Easement Area and/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, Access Easement Area and/or 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, the Access 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, Access 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 or accessing the Access 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, each Party hereby agrees to indemnify and hold harmless the other Party, its officers, staff, elected and appointed officials or employees or from and against any and all actions, causes of action, claims, demands, liabilities, judgments, costs, expenses whatsoever (including, without limitation attorneys' fees at trial and appellate levels) to the extent arising out of the negligent acts or omissions or intentional misconduct of such Party's officers, staff, elected and appointed officials or employees or the exercise by such Party or its agents, employees, elected and appointed officials, consultants, representatives, 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 or Access 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 and Access 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, Access 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: Landport Land Holding, LLC
6900 Tavistock Lakes Boulevard, Suite 200
Orlando, Florida 32827
Attention: James L. Zboril, President

and

With a copy to: Landport Land Holding, LLC
6900 Tavistock Lakes Boulevard, Suite 200
Orlando, Florida 32827
Attention: Michelle Rencoret, Vice President & General Counsel

and

With a copy to: Broad and Cassel LLP
390 North Orange Avenue, Suite 1400
Orlando, Florida 32801
Attention: Sara W. Bernard, P.A.

To Grantee: City of Orlando
400 South Orange Avenue
Orlando, Florida 32801
Attention: Utilities Division

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

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 and Access Easement Area in any manner not inconsistent with the easement rights created herein and (ii) that does not interfere with or disrupt Grantee's operations on the Easement Area or the functioning of the Facilities or Grantee's access to the Facilities via the Access Easement Area. Grantor shall provide the Grantee sixty (60) days written notice prior to any proposed use of the Easement Area or Access Easement Area and Grantor and Grantee shall cooperate in good faith to address and resolve any concerns raised by Grantee with respect to said use. 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 Access Easement Area and exist for the benefit of and shall run with title to the applicable property.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

“GRANTEE”

Signed, sealed and delivered in the
presence of the following witnesses:

CITY OF ORLANDO, FLORIDA
a municipal corporation organized and
existing under the laws of the State of
Florida.

Print Name:_____

By: _____

Name: _____

Title: _____

Print Name:_____

STATE OF FLORIDA)

)

COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this _____ day of
_____, 2017, by _____, as
the acting _____ of the **CITY OF ORLANDO, FLORIDA**, a
municipal corporation organized and existing under the laws of the State of Florida, on behalf of
said municipal corporation. He/She is personally known to me or has produced
_____ identification.

(Signature of Notary Public)

Print Name of Notary Public

Notary Public, State of Florida

Commission No.: _____

My Commission Expires: _____

EXHIBIT “A”

EASEMENT AREA

[See Attached Sketch of Description – CS#16-194(H) – 2 Pages]

EXHIBIT “B”

ACCESS EASEMENT AREA

[See Attached Sketch of Description – CS#16-194(F) – 2 Pages]