

RECEIVED

NOV 28 2008

Transfer No. 75264WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCESAPPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of Applicant DDR Nampa, LLC c/o Tim Bruce Phone _____Post Office address 3300 Enterprise Parkway, Beechwood, OH 44122

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes Applicant is purchasing a portion of water right 63-8737 for supplemental irrigation use on landscaping at the new Nampa Gateway commercial development.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number Priority Amount (cfs/ac-ft) Nature of Use Period of Use
63-8737 (portion) April 25, 1977 0.60 cfs/135.0 ac-ft irrigation 3/15 to 11/15
63-32831 _____ _____ _____ _____ to _____
33210 _____ _____ _____ _____ to _____
2. Total amount of water being transferred 0.60 cubic feet per second and/or 135.0 acre-feet per annum.
3. Source of water ground water tributary to _____
4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion
	SW	NE	SW	18	3N	1W	Canyon	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	2W	13				0.6									20				20.6
3N	1W	18							11 Lot 2	13	25	38 Lot 3							87

Total Acres 30 acres within 107.6 acre permissible place of use

PART 1**6. General Information:**

- a. Description of diversion system well and electric pump; diversion works delivers water separately from City of Nampa pressurized irrigation system
- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
 _____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.
- c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
Land will no longer be irrigated with this supplemental water right.
- d. Remarks:
Water right is currently leased to the Idaho Water Supply Bank. Applicant requests a release from the bank when this application is approved.
Water is being transferred from lands that receive primary irrigation supply from Pioneer Irrigation District to lands supplied by Nampa and Meridian Irrigation District.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And the said application is hereby _____, subject to the following conditions:

Witness my hand this _____ day of _____, 20 _____.

 For the Director

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2**

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED (see attached *Adjudication Recommended Right Report*)

1. Right as evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice

☐ Warranty Deed

☒ Other contract of sale

3. Source of water _____ tributary to _____

4. Date or priority _____

5. Water is used for the following purposes:

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion

8. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres _____

9. Describe any other water rights used for the same purpose as described above Pioneer Irrigation District

PART 2

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No

If yes, describe Water right was placed in the Idaho Water Supply Bank in 2005

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.60 cfs/135.0 ac-ft for irrigation purposes from 3/15 to 11/15
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion: **NO CHANGE**

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion

3. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	2W	5						34	37	6									77
4N	2W	32									40	26	23	40					129

Total Acres 30 acres within 206 acre permissible place of use

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion: **NO CHANGE**

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion

3. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	2W	5						34	37	6									77
4N	2W	32									40	26	23	40					129

Total Acres 28 acres within 206 acre permissible place of use

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for the rights described in part 1. Clearly depict the land by section, township and range number.



PART 3**B. CHANGES IN NATURE OF USE (NOT APPLICABLE)**

1. New Nature of Use Amount(cfs/af-ft) Hours/days/year Period of Use
 _____ to _____
 _____ to _____

Quantity and quality of return flows and location of discharge: _____

2. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval

(Signature of Applicant)

Subscribed and sworn to before me this 13th day of November, 2008

(Notary Public)

My commission expires April 15, 2012

Jacalyn M. Demico
 Notary Public, State of Ohio
 My Commission expires
 April 15, 2012
 Recorded in Lake County

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by [Signature] Date Nov 25 Protest filed by _____

Prelim. Check by _____ Fee \$250-

Receipted by DB / W037070 Date 11-28-08

Published in _____ Copies of protest forwarded by _____

Pub. Dates _____ Hearing held by _____ Date _____

Watermaster recommendations requested on _____ Recommended for ☐ approval ☐ denial

_____ received _____ by _____

Copy of transfer sent to lien holder _____

CONTRACT FOR SALE OF A WATER RIGHT

THIS CONTRACT FOR SALE OF A WATER RIGHT (this "Agreement") is made by and between Arbor Ridge, LLC, an Idaho limited liability company ("Seller"), and DDR Nampa LLC, a Delaware limited liability company ("Buyer"). Buyer and Seller may sometimes be referred to hereinafter individually as a "Party" or collectively as "Parties."

RECITALS

A. Seller owns a ground water right, represented by Water Right No. 63-32831 (the "Water Right") in the records of the Idaho Department of Water Resources ("IDWR"), which Water Right is appropriated and used for irrigation purposes with an April 25, 1977 priority date. A copy of the current recommendation of the Water Right license in the Snake River Basin Adjudication is attached hereto as Exhibit A and made a part hereof. The Water Right authorizes a diversion rate of 1.16 cubic feet per second ("cfs") and 261.0 acre-feet per year ("afa") for irrigation of fifty-eight (58) acres in a single irrigation season within the Water Right's authorized place of use identified in Section 1 below.

B. Seller desires to sell and Buyer desires to buy a portion of the Water Right under the terms and conditions provided in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and in consideration of the recitals above, which are incorporated below, and the premises and the mutual representations, covenants, undertakings and agreements hereinafter contained, Seller and Buyer represent, covenant, undertake and agree as follows:

1. Property Purchased. Seller hereby agrees to sell to Buyer, and Buyer agrees to buy from Seller, on the terms and conditions herein specified, a portion of the Water Right described as follows (the "Purchased Right"):

Quantity: (0.60 cfs / 135.0 afa)

Acres / Place of Use: Irrigation of 30 acres within the following described permissible place of use:

T03N	R02W	S05	NWNW	34
T03N	R02W	S05	SWNW	37
T03N	R02W	S05	SEW	6
T04N	R02W	S32	NESW	40
T04N	R02W	S32	NWSW	26
T04N	R02W	S32	SWSW	23
T04N	R02W	S32	SESW	40

Within Canyon County, Idaho

2. Property Retained. Seller expressly reserves and retains and is not conveying any part of the remaining portion of the Water Right described as follows:

Quantity: (0.56 cfs /126.0 afa)

Acres / Place of Use: Irrigation of 28 acres within the following described permissible place of use:

T03N	R02W	S05	NWNW	34
T03N	R02W	S05	SWNW	37
T03N	R02W	S05	SEnw	6
T04N	R02W	S32	NESW	40
T04N	R02W	S32	NWSW	26
T04N	R02W	S32	SWSW	23
T04N	R02W	S32	SESW	40

Within Canyon County, Idaho

3. Purchase Price. The purchase price for the Purchased Right is [REDACTED] (the "Purchase Price"), payable as follows:

a. Earnest Money. Within two (2) business days of the execution of this Agreement, Buyer shall deposit with First American Title Insurance Company National Commercial Services, 9465 W. Emerald, Suite 260, Boise, ID 83704, as escrowee (the "Escrowee"), an amount equal to [REDACTED] (the "Earnest Money"). The Earnest Money shall be held under the standard escrow instructions currently in use by the Escrowee. All Earnest Money and interest earned thereon, if any, shall be applied toward the Purchase Price at Closing, defined below, provided the transaction contemplated herein proceeds through Closing.

b. Disbursement of Earnest Money. The Earnest Money shall be returned to Buyer or delivered to Seller in accordance with the terms hereof. The Parties hereto agree to promptly direct the Escrowee to deliver the Earnest Money in accordance with the terms hereof.

c. Balance of Purchase Price. [REDACTED] in current, cash or certified funds (the "Remaining Balance"), being the Purchase Price less the Earnest Money, shall be due and payable at Closing.

4. Closing.

a. Condition Precedent. This Agreement, and Buyer's obligation to close the transaction contemplated herein, is subject to the following express condition precedent: pursuant to Section 6 below, IDWR shall have approved, to Buyer's satisfaction in Buyer's sole discretion, Buyer's application for transfer of the Purchased Right. Notwithstanding anything to the contrary which may be contained herein, the condition precedent may be waived in writing by Buyer, such condition being for the exclusive protection and benefit of Buyer. Seller agrees to cooperate with Buyer and to execute any documents that may be necessary or convenient to the performance or satisfaction of this condition on or before Closing.

b. Closing Date. Within thirty (30) days of IDWR's final approval of Buyer's transfer application in connection with the Purchased Right, described in Section 6 below, or at the date provided for in Section 11a below, the Parties shall close the purchase and sale of the Purchased Right (the "Closing"). The Closing shall take place at the offices of the Escrowee on a date identified by Buyer upon not less than five (5) days prior written notice to Seller (the "Closing Date"). Buyer and Seller shall work expeditiously to conclude the Closing.

c. Seller's Deposits. On the Closing Date, Seller shall deliver the following to Escrowee:

i. Special Warranty Deed substantially similar in form to that Special Warranty Deed attached hereto as Exhibit B executed by Seller conveying the Purchased Right to Buyer.

ii. A settlement statement prepared by Escrowee and approved by Seller.

iii. Such other documents as the Escrowee, Buyer, or Buyer's attorneys may reasonably require in order to effectuate or further evidence the intent of any provision in this Agreement.

All of the documents and instruments to be delivered by Seller hereunder shall be in form and substance reasonably satisfactory to counsel for Buyer.

d. Buyer's Deposits. On the Closing Date, Buyer shall deliver the following to Escrowee:

i. A settlement statement prepared by Escrowee and approved by Buyer.

ii. Cash or certified funds in an amount sufficient to meet Buyer's obligations hereunder.

iii. Such other documents as the Escrowee, Seller, or Seller's attorneys may reasonably require in order to effectuate or further evidence the intent of any provision in this Agreement.

All of the documents and instruments to be delivered by Buyer hereunder shall be in form and substance reasonably satisfactory to counsel for Seller.

e. Conditions to Closing. In all events, the obligations of Buyer to make payments and to close the transaction contemplated by this Agreement are contingent upon: (i) title to the Purchased Right being shown to be good; (ii) the condition precedent to Closing provided for in Section 4a this Agreement being satisfied or waived by Buyer in writing; (iii) the representations, warranties and covenants of Seller being true and accurate; and (iv) Seller otherwise having performed all of Seller's obligations hereunder.

f. Escrow Closing. The Closing of the transaction contemplated herein shall take place at the office of the Escrowee. Closing shall be through escrow, using form escrow instructions then in use by the Escrowee, modified to reflect the terms and conditions of the transaction contemplated herein. The cost of the escrow relating to the transaction contemplated herein shall be equally divided between Seller and Buyer. This Agreement shall not be merged into any escrow agreement, and the escrow agreement shall always be deemed auxiliary to this Agreement. The provisions of this Agreement shall always be deemed controlling as between Seller and Buyer. The respective attorneys for Seller and Buyer are hereby authorized to enter into and execute such escrow agreement and any amendments thereto.

g. Possession. Possession of the Purchased Right shall be delivered to Buyer on the Closing Date.

5. Prorations and Adjustments. The following items shall be prorated and adjusted as of the Closing Date:

a. Any impositions on the conveyance shall be paid by Seller, and Buyer shall not be liable for any state, county, federal income, excise or sales tax liabilities of Seller.

b. If IDWR's preliminary or final approval notice in connection with the transfer of the Purchased Right should reduce the quantity of the Purchased Right, and should Buyer accept said reduction and continue with the transaction contemplated by this Agreement, then the Purchase Price shall be reduced by an amount equal to the number of acre feet, or portions thereof, reduced by the transfer, pro rata at an amount of [REDACTED] per acre foot.

c. Such other items as are customarily prorated in a transaction of the type contemplated in this Agreement.

6. Transfer of Purchased Right.

a. Application to IDWR. It is understood and agreed by and between the Parties that Buyer intends and shall have the right to file an application with IDWR as soon as practicable after the Effective Date for transfer of the Purchased Right. The application for transfer may entail a change to the place of use, nature of use, time of use, and point and means of diversion as Buyer determines.

b. Cooperation with Transfer Efforts. Seller hereby grants to Buyer permission to make said transfer and agrees to sign any documentation to that effect required by IDWR pertaining to said transfer. At Buyer's request, Seller shall cooperate with Buyer in Buyer's pursuit of any such transfer, and Seller shall provide Buyer with any information that Seller has concerning the Water Right that Buyer may reasonably request in pursuit of the transfer. All matters pertaining to said transfer, including preparation of the application and all costs associated with the transfer proceeding, shall be the responsibility of Buyer.

c. IDWR Preliminary Approval of Transfer. Buyer shall request that IDWR provide a notice of preliminary approval of the transfer to Buyer and Seller. If IDWR's preliminary approval notice indicates IDWR will deny said transfer, for any reason, Buyer shall not be obligated to close the sale and purchase of the Purchased Right pursuant to Section 4 of this Agreement. In such event, if Buyer notifies Seller that Buyer does not intend to close the transaction contemplated by this Agreement, Seller shall instruct Escrowee, as soon as practicable, to refund the Earnest Money, plus interest, if any, to Buyer.

d. Failure to Close After IDWR Final Approval. If Buyer fails to close the sale and purchase of the Purchased Right for any reason within thirty (30) days following IDWR's final approval of the transfer of the Purchased Right on terms acceptable to Buyer, Buyer hereby authorizes Seller to request IDWR to rescind the transfer. In such event, Buyer also agrees that the transfer shall be deemed null and void and Seller shall instruct Escrowee to refund the Earnest Money, plus interest, if any, to Buyer. In the event IDWR denies or fails to approve the transfer contemplated by this Agreement, Seller shall instruct Escrowee to refund the Earnest Money, plus interest, if any, to Buyer.

7. Use of Purchased Right. Until final approval of the transfer of the Purchased Right by IDWR, Seller is authorized to continue to use the Purchased Right on the Water Right's authorized place of use for irrigation purposes. Upon IDWR's final approval of the transfer, Seller shall immediately comply with all conditions of the transfer approval and shall cease diversion of the Purchased Right.

8. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer that, as of the Effective Date and through the Closing, as follows:

a. Authority. Seller owns the Purchased Right in fee simple. Seller has the full legal right, power and authority to enter into and perform this Agreement.

b. Good Title. Seller has good and marketable title to the Purchased Right, and Seller shall remove, or cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Purchased Right on or before Closing.

c. Adverse Claims. To the actual knowledge of Seller, that there are no judicial proceedings, administrative actions or examinations, claims or demands of any type which have been instituted or which are pending or threatened against Seller, the Purchased Right, or any part thereof. In the event Seller receives notice of any such proceeding, action, examination or demand, Seller shall promptly deliver a copy of such notice to Buyer.

d. Not Forfeited. The Purchased Right has not been forfeited or abandoned in whole or in part, has been placed to continual beneficial use on the Seller's property, and has never been subject to a continuous five-year period of non-use (except as such non-use may have occurred while the Purchased Right was in an appropriate water bank, claimed in the Snake River Basin Adjudication, or the appurtenant place of use was enrolled in a government annual grain base or long-term crop land set-aside program, or such non-use may have occurred by reason of any other applicable defense set forth in Idaho Code § 42-223 that protected the Purchased Right from forfeiture).

e. Snake River Basin Adjudication Status. The Seller has filed a water right claim for the Purchased Right in the Snake River Basin Adjudication (SRBA). A review of IDWR's electronic records presently reveals that IDWR has recommended to the SRBA District Court that the Water Right should be decreed as claimed by Seller. See Exhibit A.

f. No Other Warranty. Seller makes no other guarantees or warranties as to the Purchased Right, its yield upon transfer, or its transferability. Seller further disclaims any warranty as to the Purchased Right's availability in times of shortage, including any curtailment that may be ordered by IDWR to satisfy other senior ground or surface water rights.

9. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller that Buyer has the legal power, right and authority to enter into this Agreement and to perform Buyer's obligations hereunder.

10. Brokerage. Each of the Parties represents and warrants to the other that such Party has not incurred and will not incur any liability for finder's or brokerage fees or commissions in connection with this Agreement. It is agreed that if any claims for finder's or brokerage fees or commissions are ever made against Seller or Buyer in connection with this transaction, all such claims shall be handled and paid by the Party (the "Committing Party") whose actions or alleged commitments form the basis of such claim. The Committing Party further agrees to indemnify and hold the other harmless from and against any and all claims or demands with respect to any finder's or brokerage fees or commissions or other compensation asserted by any person, firm or corporation in connection with this Agreement or the transaction contemplated hereby. This representation shall survive Closing indefinitely.

11. Termination / Remedies.

a. IDWR's Failure to Approve Transfer. In the event IDWR does not approve Buyer's transfer application in connection with the Purchased Right within twenty-four (24) months from the Effective Date, defined below, for whatever reason, excluding any action or inaction of Seller, Buyer shall have the right to close on the purchase of the Purchased Right as set forth in Section 4 within thirty (30) days after the expiration of such twenty-four (24) month period. At the end of such thirty (30) day period, if Buyer has elected not to close on the purchase of the Purchased Right, this Agreement shall immediately terminate and Seller shall instruct Escrowee to refund to Buyer the Earnest Money, plus interest, if any.

b. Default by Buyer. If Buyer should fail to consummate the transaction contemplated herein for any reason other than default by Seller, Seller may elect to terminate this Agreement and retain the Earnest Money as liquidated damages. No delay or omission in the exercise of any right or remedy accruing to Seller upon the breach by Buyer under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Seller of any condition or the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other

term, covenant, condition or any subsequent breach of the same or any other term, covenant or condition contained herein.

c. Default by Seller. If Seller should fail to consummate the transaction contemplated herein for any reason other than default by Buyer, Buyer may elect, without limitation, any one or more of the following remedies: (i) to enforce specific performance of this Agreement; (ii) to bring a suit for damages for breach of this Agreement; (iii) to terminate this Agreement whereupon Seller will reimburse Buyer for Buyer's out-of-pocket expenses incurred with respect to this transaction, including reasonable attorneys' fees; or (iv) pursue any and all remedies at law or equity. No delay or omission in the exercise of any right or remedy accruing to Buyer upon the breach by Seller under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Buyer of any condition or the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant, condition or any subsequent breach of the same or any other term, covenant or condition contained herein.

12. Notices. All notices, demands, requests, and other communications under this Agreement shall be in writing and shall be deemed properly served or delivered, if delivered by hand to the Party to whose attention it is directed, or when sent, three (3) days after deposit in the U.S. mail, postage prepaid, certified mail, return receipt requested, or one (1) day after deposit with a nationally recognized air carrier providing next day delivery, or, if sent via facsimile transmission, when received, addressed as follows:

If to Seller:

Arbor Ridge, LLC
P.O. Box 344
Meridian, ID 83680
Facsimile: (208) 888-9947

If to Buyer:

DDR Nampa, LLC
3300 Enterprise Parkway
Beachwood, OH 44122
Attention: Executive Vice President of
Development
Facsimile: (216) 755-1855

With copy to:

DDR Nampa LLC
General Counsel
3300 Enterprise Parkway
Beachwood, OH 44122
Facsimile: (216) 755-1678

or to such other addresses as either Party may designate in writing and delivered in like manner.

13. Entire Agreement. This Agreement embodies the entire contract between the Parties hereto with respect to the subject matter hereof. No extension, change, modification or amendment to or of this Agreement of any kind whatsoever shall be made or claimed by Seller or Buyer, and no notice of any extension, change, modification or amendment made or claimed by Seller or Buyer shall have any force or effect whatsoever unless the same shall be endorsed in writing and be signed by the Party against which the enforcement of such extension, change, modification or amendment is sought, and then only to the extent set forth in such instrument.

14. Successors. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective heirs, personal representatives, successors and assigns.

15. Dates of Performance. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or Legal Holiday, such time for performance shall be extended to the next business day.

16. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Agreement.

17. Binding Effect. The terms, provisions, and covenants (to the extent applicable) and indemnities shall survive the closing and delivery of the deed, and this Agreement shall not be merged therein, but shall remain binding upon and for the Parties hereto until fully observed, kept or performed.

18. Interpretation. All Parties hereto have either: (i) been represented by separate legal counsel; or (ii) have had the opportunity to be so represented. Thus, in all cases, the language herein shall be construed simply and in accordance with its fair meaning and not strictly for or against a Party, regardless of which Party prepared or caused the preparation of this Agreement.

19. Captions and Headings. The captions at the beginning of the several paragraphs, respectively, are for convenience in locating the context, but are not part of the text.

20. Severability. In the event any term or provisions of this Agreement shall be held illegal, invalid or unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

21. Governing Law. This Agreement shall be governed by the laws of the State of Idaho.

22. Attorney Fees. If either Party shall default in the full and timely performance of this Agreement and said default is cured with the assistance of an attorney for the other Party and before the commencement of a suit thereon, as a part of curing said default, the reasonable attorneys' fees incurred by the other Party shall be reimbursed to the other Party upon demand. In the event that either Party to this Agreement shall file suit or action at law or equity to interpret or enforce this Agreement hereof, the unsuccessful Party to such litigation agrees to pay to the prevailing Party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing Party, including the same with respect to an appeal.

23. Time Is Of The Essence. All times provided for in this Agreement or in any other instrument or document referred to herein or contemplated hereby, for the performance of any act will be strictly construed, it being agreed that time is of the essence of this Agreement.

24. Effective Date. The "Effective Date" of this Agreement shall be the date on which both Buyer and Seller have executed this Agreement, if executed on the same day, or the later date, if executed on different days, as noted below.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Agreement as of the date written below.

SELLER:

Arbor Ridge, LLC,
an Idaho limited liability company

By: _____
Its: _____
Date: _____

BUYER:

DDR Nampa LLC,
a Delaware limited liability company

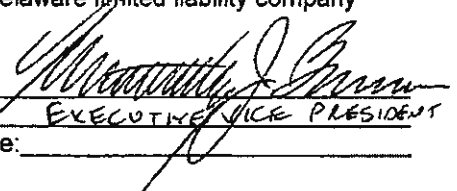
By: 
Its: EXECUTIVE VICE PRESIDENT
Date: _____

**EXHIBIT A
WATER RIGHT NO. 63-32831**

RECEIVED

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

AUG 28 2007
DEPARTMENT OF
WATER RESOURCES

RIGHT NUMBER: 63-32831
NAME AND ADDRESS: ARBOR RIDGE LLC
PO BOX 344
MURFIDALE ID 83400

SOURCE: GROUND WATER
QUANTITY: 1.140 CFS
261.000 AFT

TRIBUTARY:

The total instantaneous diversion of water from all points of diversion under Rights 63-32831 and 63-32833 shall not exceed 2.10 cfs, nor a total combined annual volume of 472.5 af.

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 af per acre at the field headgate for irrigation of the lands above.

PRIORITY DATE: 04/25/1977

POINT OF DIVERSION:

T04N R02W S32 SE34 Within CANYON County

T04N R02W S32 SE34 Within CANYON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/15 11/15	1.140 CFS 261.00 AFT

The period of use for the irrigation described in this approval may be extended to a beginning date of 1/1 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 1/15 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date of this approval.

PLACE OF USE:

IRRIGATION in CANYON County

T03N R02W S05	N34W	14.00	T03N R02W S05	S20W	27.00
T03N R02W S05	SE34W	6.00	T04N R02W S32	SE34W	40.00
T04N R02W S32	N34W	26.00	T04N R02W S32	S34W	23.00
T04N R02W S32	SE34W	40.00			

706 ACRES TOTAL

This right is limited to the irrigation of 58 acres within the place of use described above in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1-12(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

After specific notification by the Department, the right holder shall record the quantity of water diverted or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.

Use of this right is combined with water from Pioneer Irrigation District.

Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.

Place of use includes Blackhawk and Monarch Subdivisions.

Right holder shall comply with the drilling permit requirements of Section 41-235, Idaho Code and applicable Well Construction Rules of the Department.

This right is a split from former right 63-8737

**EXHIBIT B
SPECIAL WARRANTY DEED FOR WATER RIGHT**

After Recording
Return to:

FOR RECORDING INFORMATION

SPECIAL WARRANTY DEED FOR WATER RIGHT

FOR VALUE RECEIVED, Arbor Ridge, LLC , an Idaho limited liability company ("**Grantor**"), whose address is P.O. Box 344, Meridian, ID 83680 does hereby grant, bargain, sell, convey and assign unto DDR NAMPALLC, a Delaware limited liability company ("**Grantee**"), whose address is 3300 Enterprise Parkway, Beachwood, OH 44122, the following described portion of Water Right No. 63-32831 (hereinafter this portion is referred to as the "**Water Right**"):

Quantity: 0.60 cubic feet per second, 135.0 acre feet per year

Acres / Place of Use:

TO HAVE AND TO HOLD, the above-described portion of Water Right No. 63-32831 unto the Grantee and to the successors and assigns of Grantee forever. And the said Grantor does hereby represent, warrant and covenant to and with the said Grantee, that it is the owner in fee simple of the Water Right, that the Water Right is free from all encumbrances, that the Water Right has been diverted and beneficially used (or that the nonuse thereof is legally excused) so as to avoid partial or complete forfeiture or abandonment, and that the Water Right was the sole source of water used on the land to which it was appurtenant.

IN WITNESS WHEREOF, the Grantor has executed this Deed this ____ day of _____, 2008.

GRANTOR:

Arbor Ridge, LLC,
an Idaho limited liability company

By: _____
Its: _____

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of Arbor Ridge, LLC, the Idaho limited liability company that executed the within and foregoing instrument, or the person who executed the instrument on behalf of said Idaho limited liability company, and acknowledged to me that such Idaho limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at: _____
My commission expires: _____

CONTRACT FOR SALE OF A WATER RIGHT

THIS CONTRACT FOR SALE OF A WATER RIGHT (this "Agreement") is made by and between **Arbor Ridge, LLC**, an Idaho limited liability company ("Seller"), and **DDR Nampa LLC**, a Delaware limited liability company ("Buyer"). Buyer and Seller may sometimes be referred to hereinafter individually as a "Party" or collectively as "Parties."

RECITALS

A. Seller owns a ground water right, represented by Water Right No. 63-32831 (the "Water Right") in the records of the Idaho Department of Water Resources ("IDWR"), which Water Right is appropriated and used for irrigation purposes with an April 25, 1977 priority date. A copy of the current recommendation of the Water Right license in the Snake River Basin Adjudication is attached hereto as **Exhibit A** and made a part hereof. The Water Right authorizes a diversion rate of 1.16 cubic feet per second ("cfs") and 261.0 acre-feet per year ("afa") for irrigation of fifty-eight (58) acres in a single irrigation season within the Water Right's authorized place of use identified in Section 1 below.

B. Seller desires to sell and Buyer desires to buy a portion of the Water Right under the terms and conditions provided in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and in consideration of the recitals above, which are incorporated below, and the premises and the mutual representations, covenants, undertakings and agreements hereinafter contained, Seller and Buyer represent, covenant, undertake and agree as follows:

1. Property Purchased. Seller hereby agrees to sell to Buyer, and Buyer agrees to buy from Seller, on the terms and conditions herein specified, a portion of the Water Right described as follows (the "Purchased Right"):

Quantity: (0.60 cfs / 135.0 afa)

Acres / Place of Use: Irrigation of 30 acres within the following described permissible place of use:

T03N	R02W	S05	NWNW	34
T03N	R02W	S05	SWNW	37
T03N	R02W	S05	SENW	6
T04N	R02W	S32	NESW	40
T04N	R02W	S32	NWSW	26
T04N	R02W	S32	SWSW	23
T04N	R02W	S32	SESW	40

Within Canyon County, Idaho

2. Property Retained. Seller expressly reserves and retains and is not conveying any part of the remaining portion of the Water Right described as follows:

Quantity: (0.56 cfs /126.0 afa)

Acres / Place of Use: Irrigation of 28 acres within the following described permissible place of use:

T03N	R02W	S05	NWNW	34
T03N	R02W	S05	SWNW	37
T03N	R02W	S05	SENW	6
T04N	R02W	S32	NESW	40
T04N	R02W	S32	NWSW	26
T04N	R02W	S32	SWSW	23
T04N	R02W	S32	SESW	40

Within Canyon County, Idaho

3. Purchase Price. The purchase price for the Purchased Right is [REDACTED] (the "Purchase Price"), payable as follows:

a. Earnest Money. Within two (2) business days of the execution of this Agreement, Buyer shall deposit with First American Title Insurance Company National Commercial Services, 9465 W. Emerald, Suite 260, Boise, ID 83704, as escrowee (the "Escrowee"), an amount equal to [REDACTED] (the "Earnest Money"). The Earnest Money shall be held under the standard escrow instructions currently in use by the Escrowee. All Earnest Money and interest earned thereon, if any, shall be applied toward the Purchase Price at Closing, defined below, provided the transaction contemplated herein proceeds through Closing.

b. Disbursement of Earnest Money. The Earnest Money shall be returned to Buyer or delivered to Seller in accordance with the terms hereof. The Parties hereto agree to promptly direct the Escrowee to deliver the Earnest Money in accordance with the terms hereof.

c. Balance of Purchase Price. [REDACTED] in current, cash or certified funds (the "Remaining Balance"), being the Purchase Price less the Earnest Money, shall be due and payable at Closing.

4. Closing.

a. Condition Precedent. This Agreement, and Buyer's obligation to close the transaction contemplated herein, is subject to the following express condition precedent: pursuant to Section 6 below, IDWR shall have approved, to Buyer's satisfaction in Buyer's sole discretion, Buyer's application for transfer of the Purchased Right. Notwithstanding anything to the contrary which may be contained herein, the condition precedent may be waived in writing by Buyer, such condition being for the exclusive protection and benefit of Buyer. Seller agrees to cooperate with Buyer and to execute any documents that may be necessary or convenient to the performance or satisfaction of this condition on or before Closing.

b. Closing Date. Within thirty (30) days of IDWR's final approval of Buyer's transfer application in connection with the Purchased Right, described in Section 6 below, or at the date provided for in Section 11a below, the Parties shall close the purchase and sale of the Purchased Right (the "Closing"). The Closing shall take place at the offices of the Escrowee on a date identified by Buyer upon not less than five (5) days prior written notice to Seller (the "Closing Date"). Buyer and Seller shall work expeditiously to conclude the Closing.

c. Seller's Deposits. On the Closing Date, Seller shall deliver the following to Escrowee:

i. Special Warranty Deed substantially similar in form to that Special Warranty Deed attached hereto as Exhibit B executed by Seller conveying the Purchased Right to Buyer.

ii. A settlement statement prepared by Escrowee and approved by Seller.

iii. Such other documents as the Escrowee, Buyer, or Buyer's attorneys may reasonably require in order to effectuate or further evidence the intent of any provision in this Agreement.

All of the documents and instruments to be delivered by Seller hereunder shall be in form and substance reasonably satisfactory to counsel for Buyer.

d. Buyer's Deposits. On the Closing Date, Buyer shall deliver the following to Escrowee:

i. A settlement statement prepared by Escrowee and approved by Buyer.

ii. Cash or certified funds in an amount sufficient to meet Buyer's obligations hereunder.

iii. Such other documents as the Escrowee, Seller, or Seller's attorneys may reasonably require in order to effectuate or further evidence the intent of any provision in this Agreement.

All of the documents and instruments to be delivered by Buyer hereunder shall be in form and substance reasonably satisfactory to counsel for Seller.

e. Conditions to Closing. In all events, the obligations of Buyer to make payments and to close the transaction contemplated by this Agreement are contingent upon: (i) title to the Purchased Right being shown to be good; (ii) the condition precedent to Closing provided for in Section 4a this Agreement being satisfied or waived by Buyer in writing; (iii) the representations, warranties and covenants of Seller being true and accurate; and (iv) Seller otherwise having performed all of Seller's obligations hereunder.

f. Escrow Closing. The Closing of the transaction contemplated herein shall take place at the office of the Escrowee. Closing shall be through escrow, using form escrow instructions then in use by the Escrowee, modified to reflect the terms and conditions of the transaction contemplated herein. The cost of the escrow relating to the transaction contemplated herein shall be equally divided between Seller and Buyer. This Agreement shall not be merged into any escrow agreement, and the escrow agreement shall always be deemed auxiliary to this Agreement. The provisions of this Agreement shall always be deemed controlling as between Seller and Buyer. The respective attorneys for Seller and Buyer are hereby authorized to enter into and execute such escrow agreement and any amendments thereto.

g. Possession. Possession of the Purchased Right shall be delivered to Buyer on the Closing Date.

5. Prorations and Adjustments. The following items shall be prorated and adjusted as of the Closing Date:

a. Any impositions on the conveyance shall be paid by Seller, and Buyer shall not be liable for any state, county, federal income, excise or sales tax liabilities of Seller.

b. If IDWR's preliminary or final approval notice in connection with the transfer of the Purchased Right should reduce the quantity of the Purchased Right, and should Buyer accept said reduction and continue with the transaction contemplated by this Agreement, then the Purchase Price shall be reduced by an amount equal to the number of acre feet, or portions thereof, reduced by the transfer, pro rata at an amount of [REDACTED] per acre foot.

c. Such other items as are customarily prorated in a transaction of the type contemplated in this Agreement.

6. Transfer of Purchased Right.

a. Application to IDWR. It is understood and agreed by and between the Parties that Buyer intends and shall have the right to file an application with IDWR as soon as practicable after the Effective Date for transfer of the Purchased Right. The application for transfer may entail a change to the place of use, nature of use, time of use, and point and means of diversion as Buyer determines.

b. Cooperation with Transfer Efforts. Seller hereby grants to Buyer permission to make said transfer and agrees to sign any documentation to that effect required by IDWR pertaining to said transfer. At Buyer's request, Seller shall cooperate with Buyer in Buyer's pursuit of any such transfer, and Seller shall provide Buyer with any information that Seller has concerning the Water Right that Buyer may reasonably request in pursuit of the transfer. All matters pertaining to said transfer, including preparation of the application and all costs associated with the transfer proceeding, shall be the responsibility of Buyer.

c. IDWR Preliminary Approval of Transfer. Buyer shall request that IDWR provide a notice of preliminary approval of the transfer to Buyer and Seller. If IDWR's preliminary approval notice indicates IDWR will deny said transfer, for any reason, Buyer shall not be obligated to close the sale and purchase of the Purchased Right pursuant to Section 4 of this Agreement. In such event, if Buyer notifies Seller that Buyer does not intend to close the transaction contemplated by this Agreement, Seller shall instruct Escrowee, as soon as practicable, to refund the Earnest Money, plus interest, if any, to Buyer.

d. Failure to Close After IDWR Final Approval. If Buyer fails to close the sale and purchase of the Purchased Right for any reason within thirty (30) days following IDWR's final approval of the transfer of the Purchased Right on terms acceptable to Buyer, Buyer hereby authorizes Seller to request IDWR to rescind the transfer. In such event, Buyer also agrees that the transfer shall be deemed null and void and Seller shall instruct Escrowee to refund the Earnest Money, plus interest, if any, to Buyer. In the event IDWR denies or fails to approve the transfer contemplated by this Agreement, Seller shall instruct Escrowee to refund the Earnest Money, plus interest, if any, to Buyer.

7. Use of Purchased Right. Until final approval of the transfer of the Purchased Right by IDWR, Seller is authorized to continue to use the Purchased Right on the Water Right's authorized place of use for irrigation purposes. Upon IDWR's final approval of the transfer, Seller shall immediately comply with all conditions of the transfer approval and shall cease diversion of the Purchased Right.

8. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer that, as of the Effective Date and through the Closing, as follows:

a. Authority. Seller owns the Purchased Right in fee simple. Seller has the full legal right, power and authority to enter into and perform this Agreement.

b. Good Title. Seller has good and marketable title to the Purchased Right, and Seller shall remove, or cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Purchased Right on or before Closing.

c. Adverse Claims. To the actual knowledge of Seller, that there are no judicial proceedings, administrative actions or examinations, claims or demands of any type which have been instituted or which are pending or threatened against Seller, the Purchased Right, or any part thereof. In the event Seller receives notice of any such proceeding, action, examination or demand, Seller shall promptly deliver a copy of such notice* to Buyer.

d. Not Forfeited. The Purchased Right has not been forfeited or abandoned in whole or in part, has been placed to continual beneficial use on the Seller's property, and has never been subject to a continuous five-year period of non-use (except as such non-use may have occurred while the Purchased Right was in an appropriate water bank, claimed in the Snake River Basin Adjudication, or the appurtenant place of use was enrolled in a government annual grain base or long-term crop land set-aside program, or such non-use may have occurred by reason of any other applicable defense set forth in Idaho Code § 42-223 that protected the Purchased Right from forfeiture).

e. Snake River Basin Adjudication Status. The Seller has filed a water right claim for the Purchased Right in the Snake River Basin Adjudication (SRBA). A review of IDWR's electronic records presently reveals that IDWR has recommended to the SRBA District Court that the Water Right should be decreed as claimed by Seller. See Exhibit A.

f. No Other Warranty. Seller makes no other guarantees or warranties as to the Purchased Right, its yield upon transfer, or its transferability. Seller further disclaims any warranty as to the Purchased Right's availability in times of shortage, including any curtailment that may be ordered by IDWR to satisfy other senior ground or surface water rights.

9. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller that Buyer has the legal power, right and authority to enter into this Agreement and to perform Buyer's obligations hereunder.

10. Brokerage. Each of the Parties represents and warrants to the other that such Party has not incurred and will not incur any liability for finder's or brokerage fees or commissions in connection with this Agreement. It is agreed that if any claims for finder's or brokerage fees or commissions are ever made against Seller or Buyer in connection with this transaction, all such claims shall be handled and paid by the Party (the "Committing Party") whose actions or alleged commitments form the basis of such claim. The Committing Party further agrees to indemnify and hold the other harmless from and against any and all claims or demands with respect to any finder's or brokerage fees or commissions or other compensation asserted by any person, firm or corporation in connection with this Agreement or the transaction contemplated hereby. This representation shall survive Closing indefinitely.

11. Termination / Remedies.

a. IDWR's Failure to Approve Transfer. In the event IDWR does not approve Buyer's transfer application in connection with the Purchased Right within twenty-four (24) months from the Effective Date, defined below, for whatever reason, excluding any action or inaction of Seller, Buyer shall have the right to close on the purchase of the Purchased Right as set forth in Section 4 within thirty (30) days after the expiration of such twenty-four (24) month period. At the end of such thirty (30) day period, if Buyer has elected not to close on the purchase of the Purchased Right, this Agreement shall immediately terminate and Seller shall instruct Escrowee to refund to Buyer the Earnest Money, plus interest, if any.

b. Default by Buyer. If Buyer should fail to consummate the transaction contemplated herein for any reason other than default by Seller, Seller may elect to terminate this Agreement and retain the Earnest Money as liquidated damages. No delay or omission in the exercise of any right or remedy accruing to Seller upon the breach by Buyer under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Seller of any condition or the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other

term, covenant, condition or any subsequent breach of the same or any other term, covenant or condition contained herein.

c. Default by Seller. If Seller should fail to consummate the transaction contemplated herein for any reason other than default by Buyer, Buyer may elect, without limitation, any one or more of the following remedies: (i) to enforce specific performance of this Agreement; (ii) to bring a suit for damages for breach of this Agreement; (iii) to terminate this Agreement whereupon Seller will reimburse Buyer for Buyer's out-of-pocket expenses incurred with respect to this transaction, including reasonable attorneys' fees; or (iv) pursue any and all remedies at law or equity. No delay or omission in the exercise of any right or remedy accruing to Buyer upon the breach by Seller under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Buyer of any condition or the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant, condition or any subsequent breach of the same or any other term, covenant or condition contained herein.

12. Notices. All notices, demands, requests, and other communications under this Agreement shall be in writing and shall be deemed properly served or delivered, if delivered by hand to the Party to whose attention it is directed, or when sent, three (3) days after deposit in the U.S. mail, postage prepaid, certified mail, return receipt requested, or one (1) day after deposit with a nationally recognized air carrier providing next day delivery, or, if sent via facsimile transmission, when received, addressed as follows:

If to Seller:

Arbor Ridge, LLC
P.O. Box 344
Meridian, ID 83680
Facsimile: (208) 888-9947

If to Buyer:

DDR Nampa, LLC
3300 Enterprise Parkway
Beachwood, OH 44122
Attention: Executive Vice President of
Development
Facsimile: (216) 755-1855

With copy to:

DDR Nampa LLC
General Counsel
3300 Enterprise Parkway
Beachwood, OH 44122
Facsimile: (216) 755-1678

or to such other addresses as either Party may designate in writing and delivered in like manner.

13. Entire Agreement. This Agreement embodies the entire contract between the Parties hereto with respect to the subject matter hereof. No extension, change, modification or amendment to or of this Agreement of any kind whatsoever shall be made or claimed by Seller or Buyer, and no notice of any extension, change, modification or amendment made or claimed by Seller or Buyer shall have any force or effect whatsoever unless the same shall be endorsed in writing and be signed by the Party against which the enforcement of such extension, change, modification or amendment is sought, and then only to the extent set forth in such instrument.

14. Successors. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective heirs, personal representatives, successors and assigns.

15. Dates of Performance. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or Legal Holiday, such time for performance shall be extended to the next business day.

16. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Agreement.
17. Binding Effect. The terms, provisions, and covenants (to the extent applicable) and indemnities shall survive the closing and delivery of the deed, and this Agreement shall not be merged therein, but shall remain binding upon and for the Parties hereto until fully observed, kept or performed.
18. Interpretation. All Parties hereto have either: (i) been represented by separate legal counsel; or (ii) have had the opportunity to be so represented. Thus, in all cases, the language herein shall be construed simply and in accordance with its fair meaning and not strictly for or against a Party, regardless of which Party prepared or caused the preparation of this Agreement.
19. Captions and Headings. The captions at the beginning of the several paragraphs, respectively, are for convenience in locating the context, but are not part of the text.
20. Severability. In the event any term or provisions of this Agreement shall be held illegal, invalid or unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.
21. Governing Law. This Agreement shall be governed by the laws of the State of Idaho.
22. Attorney Fees. If either Party shall default in the full and timely performance of this Agreement and said default is cured with the assistance of an attorney for the other Party and before the commencement of a suit thereon, as a part of curing said default, the reasonable attorneys' fees incurred by the other Party shall be reimbursed to the other Party upon demand. In the event that either Party to this Agreement shall file suit or action at law or equity to interpret or enforce this Agreement hereof, the unsuccessful Party to such litigation agrees to pay to the prevailing Party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing Party, including the same with respect to an appeal.
23. Time Is Of The Essence. All times provided for in this Agreement or in any other instrument or document referred to herein or contemplated hereby, for the performance of any act will be strictly construed, it being agreed that time is of the essence of this Agreement.
24. Effective Date. The "Effective Date" of this Agreement shall be the date on which both Buyer and Seller have executed this Agreement, if executed on the same day, or the later date, if executed on different days, as noted below.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Agreement as of the date written below.

SELLER:

Arbor Ridge, LLC,
an Idaho limited liability company

By:

Its:

Date:

Gregory B. Johnson
Member
10/21/08

BUYER:

DDR Nampa LLC,
a Delaware limited liability company

By: _____

Its: _____

Date: _____

**EXHIBIT A
WATER RIGHT NO. 63-32831**

RECEIVED

IDaho DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

DEPARTMENT OF
INTERAGENCY

RIGHT NUMBER: 63-32831
NAME AND ADDRESS: ARBOR RIDGE LLC
PO BOX 344
MONTICELLO ID 83620

SOURCE: GROUND WATER TRIBUTARY
QUANTITY: 1.160 CFS
261.000 AFT

The total instantaneous diversion of water from all points of diversion for Rights 63-32831 and 63-32833 shall not exceed 2.30 cfs, nor a total combined annual volume of 472.5 af.

This right when combined with all other rights shall provide no more than 0.01 cfs per acre nor more than 6.5 af per acre at the field headgate for irrigation of the lands above.

PRIORITY DATE: 04/25/1977

POINT OF DIVERSION:

TOWN R22N S32 E22W Within CANYON County
T24N R22W S33 E22W Within CANYON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	3/15 11/15	1.160 CFS 261.000 AFT

The period of use for the irrigation described in this approval may be extended to a beginning date of 3/1 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 3/15 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date of this approval.

PLACE OF USE:

IRRIGATION IN CANYON County

TOWN R22N S32	W22W	34.00	TOWN R22N S32	E22W	37.00
TOWN R22N S32	E22W	6.00	TOWN R22N S32	E22W	40.00
TOWN R22N S32	W22W	26.00	TOWN R22N S32	E22W	33.00
TOWN R22N S32	E22W	40.00			

206 ACRES TOTAL

This right is limited to the irrigation of 80 acres within the place of use described above in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

After specific notification by the Department, the right holder shall record the quantity of water diverted or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.

Use of this right is combined with water from Pioneer Irrigation District.

Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.

Place of use includes Wiclihawk and Monarch Subdivisions.

Right holder shall comply with the drilling permit requirements of Section 42-215, Idaho Code and applicable Well Construction Rules of the Department.

This right is a split from former right 61-8737.

EXHIBIT B
SPECIAL WARRANTY DEED FOR WATER RIGHT

After Recording
Return to:

FOR RECORDING INFORMATION

SPECIAL WARRANTY DEED FOR WATER RIGHT

FOR VALUE RECEIVED, Arbor Ridge, LLC, an Idaho limited liability company ("Grantor"), whose address is P.O. Box 344, Meridian, ID 83680 does hereby grant, bargain, sell, convey and assign unto DDR NAMPA LLC, a Delaware limited liability company ("Grantee"), whose address is 3300 Enterprise Parkway, Beachwood, OH 44122, the following described portion of Water Right No. 63-32831 (hereinafter this portion is referred to as the "Water Right"):

Quantity: 0.60 cubic feet per second, 135.0 acre feet per year

Acres / Place of Use:

TO HAVE AND TO HOLD, the above-described portion of Water Right No. 63-32831 unto the Grantee and to the successors and assigns of Grantee forever. And the said Grantor does hereby represent, warrant and covenant to and with the said Grantee, that it is the owner in fee simple of the Water Right, that the Water Right is free from all encumbrances, that the Water Right has been diverted and beneficially used (or that the nonuse thereof is legally excused) so as to avoid partial or complete forfeiture or abandonment, and that the Water Right was the sole source of water used on the land to which it was appurtenant.

IN WITNESS WHEREOF, the Grantor has executed this Deed this 21st day of October, 2008.

GRANTOR:

Arbor Ridge, LLC,
an Idaho limited liability company

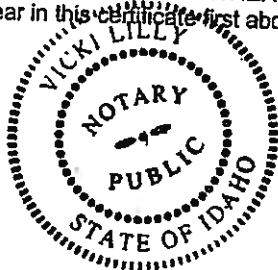
By:
Its:

Gregory B. Johnson
Member

STATE OF IDAHO)
) ss.
County of Ada)

On this 21 day of October, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Gregory Johnson, known or identified to me to be the Member of Arbor Ridge, LLC, the Idaho limited liability company that executed the within and foregoing instrument, or the person who executed the instrument on behalf of said Idaho limited liability company, and acknowledged to me that such Idaho limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Vicki Lilly
Notary Public for Idaho
Residing at: Canyon County
My commission expires: 10/2008

Delaware

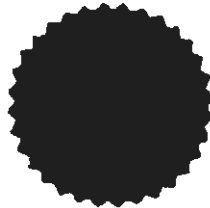
PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "DDR NAMPA LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FIFTEENTH DAY OF APRIL, A.D. 2005.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.

3955819 8300
050306982



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State
AUTHENTICATION: 3815625

DATE: 04-15-05

No. W 38486	Due no later than April 30, 2008		2. Registered Agent and Office NO PO BOX																		
Return to: SECRETARY OF STATE 450 NORTH FOURTH STREET PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE	Annual Report Form		CT CORPORATION SYSTEM 1111 W JEFFERSON STE 530 BOISE, ID 83702 USA																		
	1. Mailing Address - Correct in this box if applicable DDR NAMPA LLC ELIZABETH BERRY/DDR CORPORATION 3300 ENTERPRISE PKWY BEACHWOOD, OH 44122																				
3. Now Registered Agent Signature																					
4. Limited Liability Companies: Enter Names and Addresses of Managers. <table border="1"> <thead> <tr> <th>Office held</th> <th>Name</th> <th>Street or P.O. Address</th> <th>City</th> <th>State</th> <th>Zip</th> </tr> </thead> <tbody> <tr> <td></td> <td>Sole Member</td> <td>Developers Diversified Realty Corp</td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td>3300 Enterprise Pkwy</td> <td>Beachwood</td> <td>OH</td> <td>44122</td> </tr> </tbody> </table>				Office held	Name	Street or P.O. Address	City	State	Zip		Sole Member	Developers Diversified Realty Corp						3300 Enterprise Pkwy	Beachwood	OH	44122
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	Sole Member	Developers Diversified Realty Corp																			
		3300 Enterprise Pkwy	Beachwood	OH	44122																
5. Organized Under the Laws of: DELAWARE W 38486	6. Signature <u>Craig A Schutte</u> Name (Typed or Printed) <u>Craig A Schutte</u>		Date <u>4/29/08</u> Title <u>VP of Tax</u>																		

Issued 02/01/2008

Do Not Tape or Staple

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