

**AMENDED AND RESTATED  
IMPROVEMENT ACQUISITION AND REIMBURSEMENT AGREEMENT**

This **AMENDED AND RESTATED IMPROVEMENT ACQUISITION AND REIMBURSEMENT AGREEMENT** is made and entered into as of this 20<sup>th</sup> day of May, 2010, by and between **VDW METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "**District**"), and **VDW PROPERTIES, LLC**, a Colorado Limited Liability Company (the "**Developer**").

**RECITALS**

WHEREAS, the District, together with VDW Metropolitan Districts Nos. 2 and 3 (collectively, "**the Districts**"), was formed pursuant to Colorado Revised Statutes § 32-1-101, *et seq.*, as amended, by order of the District Court for Larimer County, Colorado, and after approval of the eligible electors of the Districts at a regular election held on May 7, 2002, to provide certain public facilities, appurtenances, and improvements, including streets and other roadway improvements, drainage facilities, park and recreation facilities and other improvements (the "**Improvements**") within and without its boundaries for the purpose of assisting in the financing and construction of certain public infrastructure for the area generally located south of U.S. Highway 34, north of East First Street and one half mile east of Denver Avenue (the "**Service Area**"); and

WHEREAS, on March 20, 2002, the City Council of the City of Loveland, Colorado approved the "Consolidated Service Plan for VDW Metropolitan Districts Nos. 1, 2 and 3" (the "**Service Plan**") for the purpose of providing certain parameters for the financing and development of the Service Area; and

WHEREAS, at the organizational election of the District held on May 7, 2002, a majority of eligible electors in the District approved the District's issuance of indebtedness and the imposition of ad valorem taxes by the Districts for the purpose of repaying such debt; and

WHEREAS, pursuant to the Service Plan, the maximum amount of debt which may be incurred by the Districts is Sixteen Million Dollars (\$16,000,000); and

WHEREAS, in furtherance of its Service Plan, the District has incurred costs associated with the Districts' organization, and has, and will continue to, incur capital costs associated with the construction of the Improvements to be located within and without the District's boundaries; and

WHEREAS, the Developer has funded the Districts' costs for organization, and has, and is willing to continue to, construct certain Improvements for the District or dedicated to third parties on behalf of the District, as set forth in the District's Service Plan, together with all things of value, including all work product, both tangible and intangible, including legal, accounting, engineering and management service related thereto; provided that the District agrees to acquire and/or purchase such Improvements; and

WHEREAS, the District's Board of Directors and the Developer's Board of Managers have authorized its officers to execute this Agreement and to take all other actions necessary and desirable to effectuate the purposes of this Agreement; and

WHEREAS, those employees and/or affiliates of the Developer who serve on the District's Board of Directors have each disclosed potential conflicts of interest in connection with this Agreement, as required by law.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the District and the Developer agree as follows:

### COVENANTS AND AGREEMENTS

1. Construction of Improvements. The Developer agrees to cause the Improvements described in the District's Service Plan to be designed, constructed, and completed subject to the terms and conditions set forth herein. The Developer agrees to design, construct, and complete the Improvements in substantial conformance with the design standards and specifications as established and in use by the District, the City of Loveland, Colorado and other appropriate jurisdictions.

2. Improvement Acquisition Procedures. Upon the Developer's completion of the Improvements to be either acquired by the District or dedicated to third parties on the District's behalf as further provided in Paragraph 5.B. hereof, the Developer shall cause a "Purchase Application" to be submitted to the District consisting of the following, reasonably satisfactory to the District, related to such Improvements:

A. A list of Improvements to be acquired and/or dedicated and costs related thereto, which costs shall represent the Purchase Price (as defined in Paragraph 4 hereof). The president or principal of the Developer shall certify, under penalty of perjury, that the list of Improvements to be acquired and/or dedicated and the costs related thereto are true, correct, and accurate to the best of the president's or principal's knowledge, information and belief;

B. A professional engineer engaged by the District or, if consented to by the District, engaged by the Developer, shall review the costs of Improvements set forth in the Purchase Application, inspect the Improvements and certify to the District, by means of an Engineer's Certification in substantially the form attached hereto as **Exhibit A**, that such costs are reasonable and that the Improvements are fit for their intended purpose. The District's accountant shall review the summation of costs and concur with the calculations set forth in the Engineer's Certification; and

C. Such additional information as the District may reasonably require.

3. District Acceptance of Improvements. Upon approval by the District of the Purchase Application, the District shall deliver a letter of acceptance which will provide, at a

6. Issuance of the Subordinate Note; Interest.

A. Upon execution of this Agreement, the District shall promptly execute and deliver to the Developer a Subordinate Note, similar in form attached hereto as **Exhibit C**. The Subordinate Note shall have an initial balance of Five Million Three Hundred Thirty-Three Thousand Eight Hundred Seventy-Five Dollars and Seventy-Five Cents (\$5,333,875.75), which amount represents a refunding of the outstanding balance due under the 2005 Note and the District's additional repayment obligations for Improvements acquired but not paid since 2005. In the event the District does not have the funds to pay for the acquisition of future Improvements as provided in Paragraph 4 hereof, the District shall record the amount of the purchase price as a loan on Schedule "A" of the Subordinate Note, subject to the provisions of Paragraph 6.B. hereof. The Subordinate Note shall be repayable only to the extent and in the amount of advances noted on Schedule A thereto, which amount shall not exceed Sixteen Million Dollars (\$16,000,000), notwithstanding any payment or prepayment of any portion of the advances pursuant to the terms thereof, unless this Agreement and the Subordinate Note are further supplemented or amended.

B. The Subordinate Note issued hereunder shall bear interest at the rate of Eight and One-Half Percent (8.5%), Simple Interest; provided, however, that all interest must be paid during the calendar year in which it accrues, subject to any legally available revenues of the District as provided herein. No interest shall be carried forward to the next calendar year if such interest cannot be paid in the year in which said interest accrues. If the Subordinate Note, or any portion thereof, is redeemed prior to its maturity date, then the interest that accrued during the calendar year in which it accrues on the Principal amount so redeemed, must be paid upon redemption; for purposes of the foregoing, interest shall be deemed to have accrued up to and including the date of redemption. Following any repayment in whole or in part of the Subordinate Note, the District may continue to acquire Improvements and note such purchases on the Subordinate Note in accordance with the provisions hereof, provided that the total of all purchases made hereunder, regardless of whether prepaid, shall not exceed the lesser of (i) the amount of indebtedness for such Improvements, together with any other Improvements previously acquired by the District, as permitted by the District's Service Plan and authorized by a vote of the eligible electors of the District or (ii) a total of \$16,000,000.

C. The terms of this Agreement may be used to construe the intent of the District and the Developer in connection with the issuance of the Subordinate Note, and shall be read as nearly as possible to make the provisions of the Subordinate Note and this Agreement fully effective. Should any irreconcilable conflict arise between the terms of this Agreement and the terms of the Subordinate Note issued hereunder, the terms of such Subordinate Note shall prevail.

D. If, for any reason, the Subordinate Note is determined to be invalid or unenforceable (except in the case of fraud by the Developer in connection therewith), the District shall issue a new promissory note to the Developer that is legally enforceable. Said new promissory note must evidence the District's obligation to pay the Purchase Price for all Improvements accepted and purchased under this Agreement.

E. Any repayment made to the Developer by the District shall be notated on Schedule "A" to such Subordinate Note.

8. Tax Covenant. In the event the District is advised by nationally recognized bond counsel that payments of all or any portion of interest due on any Subordinate Note issued hereunder may be excluded from gross income of the holder thereof for federal income tax purposes upon compliance with certain procedural requirements and restrictions that are not inconsistent with the intended uses of funds contemplated herein and are not overly burdensome to the District, the District agrees to take all action reasonably necessary to satisfy the applicable provisions of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder, in accordance with written instructions of nationally recognized bond counsel. The Developer acknowledges that no representations or warranties whatsoever have been made by the District or its Board of Directors as to the treatment for federal or state income tax purposes of any interest payable hereunder.

9. Obligations Irrevocable. The obligations created by this Agreement are absolute, irrevocable, and unconditional, unless a contrary notation is specifically made herein, and may only be modified pursuant to Paragraph 14 herein.

10. Termination. The Developer's obligations to construct the Improvements as set forth in this Agreement shall continue until such time as mutually agreed to by the Parties in writing. The District's obligations hereunder shall terminate at the earlier of the repayment in full of the Subordinate Note or thirty (30) years from the execution date hereof; provided that the District shall continue to be obligated to pay any amounts then owing under any Subordinate Note issued and outstanding hereunder in accordance with the terms thereof.

11. Time Is of the Essence. Time is of the essence hereof; provided, however, that if the last day permitted or otherwise determined for the performance of any required act under this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding business day, unless otherwise expressly stated.

12. Indemnification. The Developer hereby agrees to indemnify and save harmless the District from all claims and/or causes of action, including mechanic's liens, arising out of the Developer's performance of any act or the nonperformance of any obligation with respect to the Improvements constructed, and in that regard agrees to pay any and all costs incurred by the District as a result thereof, including settlement amounts, judgments and reasonable attorneys' fees.

13. Notices and Place for Payments. Any notice or payment required under this Agreement or any notice desired to be given by any party to this Agreement shall be in writing and may be personally delivered; sent by certified mail, return receipt requested; sent by telephone facsimile with a hard copy sent by regular mail; or sent by a nationally recognized receipted overnight delivery service, including United States Postal Service, United Parcel Service, Federal Express, or Airborne Express, for earliest delivery the next day. Any such notice shall be deemed to have been given as follows: when personally delivered to the party to whom it is addressed; when mailed, three delivery (3) days after deposit in the United States

19. Legal Existence. The District will maintain its legal identity and existence so long as any amounts due to the Developer as contemplated herein remain outstanding. The foregoing statement shall apply unless, by operation of law, another legal entity succeeds to the liabilities and rights of the District hereunder without materially adversely affecting the Developer's privileges and rights under this Agreement.

20. Effect of Prior Agreement.

A. This Agreement, and any Subordinate Note issued hereunder, constitute and represent the entire, integrated agreement between the District and the Developer with respect to the matters set forth herein and hereby supersedes any and all prior negotiations, representations, agreements or arrangements of any kind with respect to those matters, whether written or oral, including the Prior Agreement. This Agreement shall become effective upon the date of full execution hereof. The Prior Agreement is hereby terminated and shall be of no further force or effect.

B. The Developer and the District each hereby waives any claims available to it as a result of any failure by the other party to perform any covenant or condition, or to otherwise comply with the provisions of the Prior Agreement.

(Remainder of page left intentionally blank.)



**EXHIBIT B**

**BILL OF SALE**

KNOW ALL MEN BY THESE PRESENTS that VDW Properties, LLC, hereinafter referred to as "Grantor", for good and valuable consideration, the receipt of which is hereby acknowledged, paid by VDW Metropolitan District No. 1, whose address is 2725 Rocky Mountain Avenue, Suite 200, Loveland, Colorado 80538, has bargained and sold, and by these presents, does grant and convey unto VDW Metropolitan District No. 1, its successors and assigns, all of its right, title and interest in the improvements constructed pursuant to the listing of invoices on Exhibit 1, attached hereto and incorporated herein (the "Improvements") and all things of value, including all work product, both tangible and intangible, including legal, accounting, engineering, and management costs related thereto, accruing from the costs associated with the provision of the Improvements.

TO HAVE AND TO HOLD the same unto VDW Metropolitan District No. 1, its successors and assigns forever; and Grantor, its successors and assigns, shall warrant and defend the sale of said Improvements made unto VDW Metropolitan District No. 1, its successors or assigns, against all and every person or persons whomsoever, and warrants that the conveyance of the Improvements to VDW Metropolitan District No. 1, its successors or assigns, is made free from any claim or demand whatever.

IN WITNESS WHEREOF, Grantor, by and through its authorized representatives, hereby executes this Bill of Sale and sets its seal as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**VDW PROPERTIES, LLC**, a Colorado Limited Liability Company

By: McWhinney Real Estate Services, Inc., a Colorado Corporation, Manager

By: \_\_\_\_\_  
Douglas L. Hill,  
Chief Operating Officer

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Douglas L. Hill, as Chief Operating Officer of McWhinney Real Estate Services, Inc., a Colorado Corporation, Manager of VDW Properties, LLC, a Colorado Limited Liability Company.

WITNESS my hand and official seal.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**EXHIBIT C**

**FORM OF SUBORDINATE PROMISSORY NOTE**

and delivered to pay for certain indebtedness incurred on the District's behalf as set forth therein (the "Agreement"). This Note represents a refunding of an existing promissory note issued by the District to the Developer dated December 1, 2005, in the principal amount of Three Million Two Hundred Forty-Nine Thousand One Hundred Fifty-Seven Dollars and Sixty-Six Cents (\$3,249,157.66), and evidences additional indebtedness incurred, and that may be incurred in the future, on the District's behalf pursuant to the Agreement, such indebtedness not to exceed the principal amount of this Note. This Note is being issued with an initial balance of Five Million Three Hundred Thirty-Three Thousand Eight Hundred Seventy-Five Dollars and Seventy-Five Cents (\$5,333,875.75).

Pursuant to the Agreement, the District is obligated to repay both the principal amount of this Note and any interest accrued thereon; provided, however, that all interest must be paid during the calendar year in which it accrues, subject to any legally available revenues of the District as provided herein. No interest shall be carried forward to the next calendar year if such interest cannot be paid in the year in which said interest accrues. The District intends to repay any indebtedness incurred from the proceeds of any bonds issued (the "Senior Bonds"). The issuance of any such Senior Bonds shall be in the discretion of the District, and Senior Bonds shall be issued at such time or times, and contain such terms, as may be determined by the District. The foregoing shall not constitute a lien or encumbrance upon any Senior Bond proceeds now or hereafter held by the District. In the event Senior Bond proceeds are not available to fund repayment of any amounts owed hereunder, as evidenced by this Note, the District may make repayment from any legally available revenues of the District including, but not limited to, fees, rates, tolls, charges, and revenues resulting from the imposition of ad valorem taxes; provided, however, that any such repayment is subject to the terms and conditions of, and such repayment obligations shall be subordinate to, the Senior Bonds, and the provisions of any bond resolution, indenture or any other document related thereto; and **further provided that any mill levy certified by the District for the purpose of repaying this Note shall not exceed 50 mills.**

Repayment of some or all of the interest and principal due on this Note shall be contingent upon the availability of bond proceeds or other legally available revenues of the District. Failure by the District to repay the Developer as a result of insufficient funds shall not constitute a default hereunder, nor subject the District to any claims and/or causes of action by the Developer, including mechanic's liens, arising out of the District's nonperformance of its payment obligation. A failure to make a payment of principal or interest due on the Note shall not cause or permit acceleration thereof; rather, the Note shall continue to bear interest at the rate and manner specified herein.

The District shall complete the appropriate information on Schedule "A" of this Note as contemplated therein, including the recording of any indebtedness as incurred on the District's behalf, the total principal amount outstanding, interest accrued during the calendar year, and any payments made on this Note by the District.

The District's issuance of this Note constitutes a multiple fiscal year obligation under the State of Colorado Constitution, is authorized pursuant to a vote of the eligible electors of the District and shall not be subject to annual appropriation.

This Note shall not be offered, sold, transferred, negotiable, or otherwise payable to any party other than the Developer.

If, for any reason, this Note is determined to be invalid or unenforceable (except in the case of fraud by the Developer in connection therewith), the District shall issue a new promissory note to the Developer that is legally enforceable. Said new promissory note shall evidence the District's obligation to repay all amounts due hereunder.

It is hereby certified, recited and declared that all conditions, acts and things required to exist or occur by the Constitution or statutes of the State of Colorado, currently exist and either occurred prior to, or in connection with, the issuance of this Note.

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SCHEDULE A

**ENGINEER'S CERTIFICATION**

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, personally appeared \_\_\_\_\_ who, being by me first duly sworn on oath, deposes and says:

1. That he/she is an engineer duly qualified to issue a professional opinion respecting the fitness and condition of the improvements and costs described in Exhibit 1 attached hereto which have been constructed and are proposed to be conveyed to VDW Metropolitan District No. 1 (the "District") or dedicated to third parties).

2. That he/she has inspected and otherwise examined the improvements described in Exhibit 1 attached hereto (the "Improvements"), and has reviewed the costs itemized therein.

3. That he/she found the Improvements to be in satisfactory form and condition and that it is his/her professional opinion that the Improvements are fit for the purpose intended.

4. That he/she found the costs set forth in Exhibit 1 to be reasonable and consistent with costs of similar Improvements constructed for similar purposes.

**[DISTRICT ENGINEER]**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT 1**  
**To Engineer's Certification**  
**COSTS OF IMPROVEMENTS**

**BILL OF SALE**

KNOW ALL MEN BY THESE PRESENTS that VDW Properties, LLC, hereinafter referred to as "Grantor", for good and valuable consideration, the receipt of which is hereby acknowledged, paid by VDW Metropolitan District No. 1, whose address is c/o Pinnacle Consulting Group, Inc., 1627 East 18<sup>th</sup> Street, Loveland, CO 80538, has bargained and sold, and by these presents, does grant and convey unto VDW Metropolitan District No. 1, its successors and assigns, all of its right, title and interest in the improvements constructed pursuant to the listing of invoices on Exhibit 1, attached hereto and incorporated herein (the "Improvements") and all things of value, including all work product, both tangible and intangible, including legal, accounting, engineering, and management costs related thereto, accruing from the costs associated with the provision of the Improvements.

TO HAVE AND TO HOLD the same unto VDW Metropolitan District No. 1, its successors and assigns forever; and Grantor, its successors and assigns, shall warrant and defend the sale of said Improvements made unto VDW Metropolitan District No. 1, its successors or assigns, against all and every person or persons whomsoever, and warrants that the conveyance of the Improvements to VDW Metropolitan District No. 1, its successors or assigns, is made free from any claim or demand whatever.

IN WITNESS WHEREOF, Grantor, by and through its authorized representatives, hereby executes this Bill of Sale and sets its seal as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**VDW PROPERTIES, LLC,**  
a Colorado Limited Liability Company

By: McWhinney Real Estate Services, Inc., a  
Colorado Corporation, Manager

By: \_\_\_\_\_  
Julie L. Den Herder,  
Chief Operations Officer

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Julie L. Den Herder as Chief Operations Officer of McWhinney Real Estate Services, Inc., a Colorado Corporation, Manager of VDW Properties, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**EXHIBIT 1**  
**To Bill of Sale**  
**IMPROVEMENT**