

## IMPROVEMENT ACQUISITION AGREEMENT

THIS IMPROVEMENT ACQUISITION AGREEMENT is made and entered into as of the 1<sup>st</sup> day of December, 2005, by and between **VDW METROPOLITAN DISTRICT NO. 1** ("District"), a quasi-municipal corporation and a political subdivision of the State of Colorado and **VDW PROPERTIES, LLC**, a Colorado limited liability company ("Developer").

### RECITALS

WHEREAS, the District, together with VDW Metropolitan Districts Nos. 2 and 3 (collectively Districts Nos. 1 through 3 are referred to as the "Districts"), was organized pursuant to the provisions of Title 32, Colorado Revised Statutes, to provide certain public facilities, appurtenances, and improvements, including streets and other roadway improvements, drainage facilities, park and recreation facilities and other improvements within and without its boundaries (collectively, the "Public Infrastructure"); and

WHEREAS, pursuant to Section 32-1-1001(1)(d)(I), C.R.S., the District is permitted to enter into contracts and agreements affecting the affairs of the District; and

WHEREAS, the Developer owns property within the boundaries of the District and has heretofore caused to be constructed and may in the future cause to be constructed certain Public Infrastructure (as more specifically described on Exhibit A hereto, the "Improvements"), for the benefit of the District and the property anticipating that the District would acquire such Improvements from the Developer; and

WHEREAS, the District desires that Improvements continue to be provided for its benefit, and the Developer is willing to provide such Improvements on the condition that the District agrees to acquire the Improvements from the Developer and pay all reasonable costs related thereto; and

WHEREAS, the Board of Directors of the District has determined that the best interests of the District and its residents and property owners would be served by the District's acquisition of Improvements from the Developer, including the payment of costs related thereto, and the District is willing to acquire certain Improvements in the future from the Developer as contemplated herein; and

WHEREAS, the District has authority to incur indebtedness through the issuance of bonds or by the execution of contracts to obtain funds for the acquisition, construction, installation or completion of Improvements in order to carry out the objectives and purposes of the District, which indebtedness was approved at the organizational election of the qualified election of the District, held on May 7, 2002, by a majority of those qualified to vote and voting at such election; and

WHEREAS, the District expects to finance the Improvements by the issuance of general obligation bonds of the District (the "Senior Bonds"), which Senior Bonds when issued may constitute a refunding of the indebtedness evidenced by this Agreement and authorized by the electors of the District on May 7, 2002; and

WHEREAS, employees of Developer and its affiliates who serve on the board of directors of the District have advised the District that they have each disclosed potential conflicts of interest in connection with this Agreement as required by law; and

WHEREAS, the District and the Developer desire to set forth the procedures for funding, construction and acquisition of the Improvements, and for the payment of related costs, and the parties desire to set forth procedures pursuant to which Improvements will continue to be provided for the benefit of the District.

NOW THEREFORE, in consideration of the mutual covenants and promises expressed herein, the Developer and the District hereby agree as follows:

### **COVENANTS AND AGREEMENTS**

1. Purpose of Agreement. The Parties acknowledge that the District has heretofore requested the Developer to design and construct certain Improvements on behalf of the District with the understanding that the District would acquire such Improvements now and in the future from the Developer or other appropriate entities from available funds. The Parties agree that this Agreement sets forth the procedures by which the District shall acquire Improvements now and in the future from the Developer or other appropriate entity, and by which the Developer or other entities will be authorized to design and construct Improvements to be acquired by the District. This Agreement also sets forth the procedures by which Improvements will be conveyed to the District, or conveyed to other entities at the direction of the District, in return for payment by the District to the Developer.

2. Construction of Improvements. The Developer agrees to cause the Improvements to be designed, constructed, and completed in substantial conformance with the design standards and specifications as established and in use by the District and other appropriate jurisdictions and as approved by a professional engineer licensed in the State of Colorado and designated by the Board of Directors to review the plans and specifications for the Improvements.

3. Determination of Price. The "Purchase Price" for all or any portion of completed Improvements, or Improvements for which work is in process, shall be equal to the District Costs with respect to such Improvements, and shall be in accord with the District's Service Plan and all other applicable laws. The "District's Costs" for such Improvements shall equal the amount so certified in the Engineer's Certification (as described in Section 4.C.(3) hereof), and approved by the District's Board as reasonable and appropriate, but shall not exceed one hundred percent (100%) of the actual construction costs (which shall also include design engineering and other items identified in Exhibit A, but which shall not include any interest or other compensation to Developer). Allowance shall be made for inclusion in the Purchase Price of related soft costs, but shall exclude Developer overhead and/or profit. The District is exempt from Colorado sales and use taxes. The Developer shall use reasonable efforts to assure that the Purchase Price does not include sales and use taxes. Notwithstanding the foregoing, in no event may the Purchase Price for the Improvements exceed the lesser of (i) the amount of indebtedness for such

Improvements, together with any other Improvements previously acquired by the District, permitted by the District's Service Plan and authorized by a vote of the eligible electors of the District or (ii) a total of \$16,222,226. If, at such time as the District accepts the Improvements pursuant to Paragraph 4.D. of this Agreement, the District does not have the funds to pay for the acquisition of the Improvements, the District shall issue a promissory note or other obligation to the Developer, as permitted by law, reflecting the Purchase Price for the Improvements being acquired.

4. Improvement Acquisition Procedures. The following paragraphs set forth the procedures that shall be required for any and all acquisitions by the District pursuant to this Agreement. The District shall keep accurate records of the Purchase Application package for each acquisition of completed Improvements or any portion of Improvements in process, including the Improvement Notice, Engineer's Certification and Bill of Sale related to each acquisition and as more particularly described below.

A. Improvement Notice. The Developer shall submit to the District an "Improvement Notice" in substantially the form attached hereto as Exhibit B setting forth a listing of the Improvements to be constructed and conveyed to the District hereunder. The Improvement Notice shall further set forth such other information applicable to the Improvements as may be required by the District. Upon receipt by the District of said Notice, the District shall determine whether such Improvements are permitted by the District's Service Plan and whether it is appropriate that such Improvements be provided, and shall advise the Developer in writing of such determination within twenty (20) days of receipt of such Notice. The District shall not be obligated to acquire any Improvement constructed by the Developer prior to approval by the District of the Improvement Notice.

B. Construction Standards. 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 and other appropriate jurisdictions and as approved by a professional engineer licensed in the State of Colorado and designated by the Board of Directors to review the plans and specifications for the Improvements. Developer agrees to provide such information to the District with the Purchase Application required under paragraph 4.C. hereof.

C. Application for Acquisition. Upon completion of the Improvements or upon completion of any portion of the Improvements proposed to be acquired from the Developer by the District in accordance with this Agreement, the Developer shall cause a "Purchase Application" to be submitted to the District consisting of the following, reasonably satisfactory to the District, related to each such Improvement:

(1) The "Improvement Notice" and approval thereof by the District.

(2) A list of Improvements to be acquired and costs related thereto, which costs shall represent the Purchase Price (as defined in Section 3 hereof). The president or principal of the Developer shall certify, under penalty of perjury, that the list of Improvements to

be acquired and costs related thereto are true, correct, and accurate to the best of the president's or principal's knowledge, information and belief.

(3) 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 C 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.

(4) Such additional information as the District may reasonably require.

D. District Acceptance of Improvements. Upon approval by the District of the Purchase Application, the District shall deliver a letter of acceptance ("Acceptance Letter") of the Improvements to the Developer upon the following conditions:

(1) The District has preliminarily inspected the Improvements and determined that the Improvements substantially meet applicable standards and specifications of the District as contained in the rules and regulations of the District, the Service Plan of the District, or as contained in plans which have been approved by the District's engineer, in writing.

(2) The Developer has caused to be furnished to the District at the District's request:

(a) A complete set of 24" by 36" mylar reproducible "as-built" drawings of the Improvements which are certified by a professional engineer registered in the State of Colorado showing accurate size and location of all Improvements. Such drawings shall be in form and content reasonably acceptable to the District, but shall not be required until such time as the Improvements are finally accepted by the appropriate governmental entity;

(b) Evidence satisfactory to the District, reflecting that all Improvements and easements or other interests in property upon which the Improvements are located, are free and clear of all grants, bargains, sales, liens, taxes (except for current taxes), assessments and encumbrances of whatever kind which would impair the District's ownership of such easements or other interests in property in such a manner as would render the District unable to use or benefit from such Improvement, or which would require the District to pay any amounts to protect its interests therein;

(c) A statement of the value of all Improvements installed.

(3) The Developer has executed or caused to be executed and delivered to the District any easements necessary to the Improvements, or some other good and sufficient instruments of transfer in a form acceptable to the District conveying easement interests necessary to the Improvements, or, if permitted solely in the discretion of the District, Developer has provided

assurance acceptable to the District that the Developer will execute or cause to be executed such easements or other documentation.

5. Conveyance of Improvements; Dedication.

A. At such time as the District has provided its Acceptance Letter and supplied the Purchase Price, as provided in Section 3 hereof, the Developer shall convey Improvements and related work to the District by means of a “Bill of Sale” in substantially the form set forth in Exhibit D, or shall convey Improvements at the request of the District to other parties for the benefit of the District, together with conveyance of the easement interests specified in Section 4(D)(3) hereof.

B. If at any time during the design and/or construction of the Improvements, the Developer becomes aware that it may be necessary to convey such Improvements to third parties for any reason, or if such dedication is to be caused by a pre-existing plat dedication or other similar requirements, the Developer shall advise the District in writing of such circumstances prior to the completion of construction of such Improvements. The Developer and the District shall therefore coordinate their efforts with respect to the anticipated dedication or conveyance of such Improvements so the District is a party to such conveyance or dedication in a manner reasonably satisfactory to the District. The Parties agree to cooperate and coordinate in order to effect the dedication of the Improvements to the appropriate governmental entity for operation and maintenance.

C. The Developer shall assign to the District any warranties associated with the Improvements.

6. Representations. The Developer hereby represents and warrants to and for the benefit of the District that:

a. It has the full power and legal authority to enter into this Agreement;

b. Neither the execution and delivery of this Agreement nor the compliance by the Developer with any of its terms, covenants or conditions is or shall become a default under any other agreement or contract to which the Developer is a party or by which the Developer is or may be bound; and

c. The Developer has taken or performed all requisite acts or actions that may be required by the organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

d. The Developer is an “accredited investor” as that term is defined in Sections 3(b) and 4(2) of the federal Securities Act of 1933, as amended, and regulations promulgated thereunder by the Securities and Exchange Commission.

These representations and warranties are made as of the date hereof and shall be deemed continually made by the Developer to the District for the entire term of this Agreement.

7. 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 performance of any act or the nonperformance of any obligation with respect to the Improvements, 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.

8. Integration. This Agreement and its Exhibits represent the entire, integrated agreement between the parties with respect to the matters set forth herein and supersedes all negotiations, representations or agreements with respect to those matters, either written or oral.

9. Amendments. This Agreement, and each and every of its terms and conditions, may be added to or amended only by the mutual written agreement of the parties hereto, which agreement shall be executed with the same formalities as this original Agreement. Special terms and conditions, if any, which are agreed upon by the parties hereto at the time this Agreement is executed shall be reduced to writing in accordance with this paragraph and appended to this Agreement. Any amendment in contravention of this Section 9 shall be null and void and of no force or effect.

10. Notice. Any notices, demands, or other communications required or permitted to be given in writing hereunder shall be delivered personally or sent by registered mail, postage prepaid, return receipt requested, addressed to the parties at the addresses set forth below, or at such other address as either party may hereafter or from time to time designate by written notice to the other party given in accordance herewith. Notice shall be considered given when personally delivered or mailed and shall be considered received by the party to whom it is addressed on the third day after such notice is given.

Notices to the District: VDW Metropolitan District No. 1  
2725 Rocky Mountain Avenue, Suite 200  
Loveland, CO 80538  
Attn: Peggy Dowswell

With a copy to: White, Bear & Ankele Professional Corporation  
1805 Shea Center Drive, Suite 100  
Highlands Ranch, CO 80129  
Attn: Alan D. Pogue

Notices to the Developer: VDW Properties, LLC  
2725 Rocky Mountain Avenue, Suite 200  
Loveland, CO 80538  
Attn: Doug Hill

11. Severability. If any clauses or provisions of this Agreement shall be adjudged to be invalid and unenforceable by a court of competent jurisdiction or by operation of any law, such

clauses or provisions shall not affect the validity of this Agreement as a whole, or of the remaining clauses and provisions.

12. Enforcement. This Agreement shall inure to the mutual benefit of the parties hereto, their respective heirs, successors and permitted assigns, and shall be enforceable according to its terms and conditions under the laws of the State of Colorado. In this regard, the parties hereto agree that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or pursuant to such other legal and/or equitable relief as may be available under the laws of the State of Colorado.


13. Counterparts. This Agreement may be executed in two counterparts and, as so executed, shall constitute one Agreement, binding on the parties even though both of the parties have not signed the same counterpart. Any counterpart of this Agreement that has attached to it separate signature pages, which altogether contain the signatures of all the parties, shall be deemed a fully executed instrument for all purposes.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**



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

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

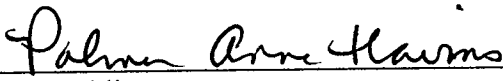
  
By: Douglas L. Hill  
Its: Chief Operating Officer

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF LARIMER    )

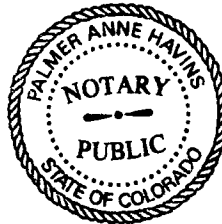
The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of January, 2006, by Douglas L. Hill, as Chief Operating Officer of McWhinney Real Estate Services, Inc., a Colorado Corporation, as Manager of VDW PROPERTIES, LLC, a Colorado Limited Liability Company.

Witness my hand and official seal.

My Commission Expires: June 6, 2009

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

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0605.0401



My Comm. Expires  
June 6, 2009

**EXHIBIT A  
IMPROVEMENTS**

**EXHIBIT B  
IMPROVEMENT ACQUISITION NOTICE**

**TO :** VDW METROPOLITAN DISTRICT NO. 1

**FROM:** \_\_\_\_\_

**DATE :** \_\_\_\_\_

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\_\_\_\_\_, ("Builder") desires to convey certain completed Improvements within VDW Metropolitan Districts Nos. 1, 2 and 3 (the "Districts") to VDW Metropolitan District No. 1 (the "District") pursuant to the terms of the Improvement Acquisition Agreement ("Agreement") between the District and VDW Properties, LLC (the "Developer"). The Improvements proposed for acquisition by the District are specifically listed in Exhibit 1, attached hereto.

The Builder represents that the Improvements proposed for acquisition specifically benefit that real property of the Districts, and that the Improvements have been or will be completed in accordance with all applicable local, state and national standards.

The Builder hereby requests the District to determine whether the Improvements listed on Exhibit A are permitted by the District's Service Plan and whether such Improvements are appropriate for acquisition, and to advise the Builder in writing of its determination within twenty (20) days of receipt of this Notice.

**BUILDER**

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

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

**EXHIBIT 1**  
**To Improvement Acquisition Notice**  
**LIST OF IMPROVEMENTS**



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



**EXHIBIT 1**  
**To Bill of Sale**  
**IMPROVEMENTS**