

ASSIGNMENT AND AMENDMENT OF STREETS OVERSIZING AGREEMENT

THIS ASSIGNMENT AND AMENDMENT OF STREETS OVERSIZING AGREEMENT (this “**Assignment**”), is entered into this ____ day of July, 2018 (the “**Effective Date**”), by and among the CITY OF LOVELAND, COLORADO, a municipal corporation (referred to herein as the “**City**”), VDW METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and a political subdivision of the State of Colorado (referred to herein as the “**District**”), and VDW PROPERTIES, LLC, a Colorado limited liability company (referred to herein as the “**Developer**”). The City, the District and the Developer may be referred to hereafter individually as a “**Party**” or collectively as the “**Parties.**”

RECITALS

A. The City and the Developer entered into that certain Streets Oversizing Agreement, dated April 13, 2007, as recorded at Reception No. 20070030065 on April 24, 2007 in the records of the Larimer County Clerk and Recorder (the “**Agreement**”), whereby the Developer agreed to install and construct certain street improvements (the “**Improvements**”) located on lands owned by the Developer which are known as Millennium SW Third Subdivision (the “**Property**”). A true and correct copy of the Agreement is attached hereto as Exhibit A and incorporated herein by this reference. Any capitalized words or terms used but not otherwise defined herein shall have the meanings given to such words or terms in the Agreement.

B. Pursuant to the Agreement, and as part of the City’s Capital Improvements Plan, the City agreed to reimburse the Developer for a portion of the costs incurred by the Developer in constructing the Improvements (the “**Reimbursable Costs**”).

C. The District has reimbursed the Developer in full for the Reimbursable Costs, as evidenced by the Schedule of Loans from and Payments to VDW Properties, LLC, attached hereto as Exhibit B and incorporated herein by this reference.

D. The Parties have conferred and desire to enter into this Assignment, pursuant to which the Developer shall assign its rights under the Agreement to the District, so that the City may direct all future payments for the Reimbursable Costs to the District.

AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the recitals above are true and correct and incorporated herein by this reference and further agree as follows:

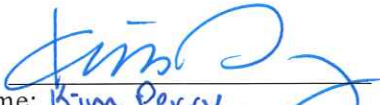
1. Assignment of Rights and Amendment of Agreement. The Developer hereby assigns its rights under the Agreement to be reimbursed for the Reimbursable Costs to the District. Any references in the Agreement to the “Developer” with regard to the Developer’s right to be reimbursed for the Reimbursable Costs are hereby amended to insert the District in place of the Developer.

2. Effect; Reaffirmation. Except as modified herein, all of the terms, covenants, conditions, and provisions of the Agreement shall remain in full force and effect, and the same are hereby ratified, in accordance with their terms. In the event of any conflict between the provisions of this Assignment and the Agreement, the terms of this Assignment shall control.

IN WITNESS WHEREOF, the Parties have executed this Assignment and Amendment to Streets Oversizing Agreement as of the date first above written.

THE DISTRICT:

VDW METROPOLITAN DISTRICT No. 1,
a quasi-municipal corporation and
political subdivision of the State of Colorado

By: 
Name: Kim Perry
Title: Board President

THE DEVELOPER:

VDW PROPERTIES, LLC,
a Colorado limited liability company

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

By: 
Michael S. Warren,
Senior Vice President & General Counsel

THE CITY:

THE CITY OF LOVELAND,
a municipal corporation

CITY OF LOVELAND

Official Acceptance:

Date

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**EXHIBIT A
STREETS OVERSIZING AGREEMENT**

(Attached)

STREETS OVERSIZING AGREEMENT

THIS AGREEMENT is made and entered into this 13th day of April, 2007 by and between the CITY OF LOVELAND, COLORADO, a municipal corporation, hereinafter called the "City," and VDW Properties, LLC of 2725 Rocky Mountain Ave, Suite 200, Loveland CO 80538, hereinafter called the "Developer."

WITNESSETH

WHEREAS, the Developer finds it necessary and desirable to provide for the installation of certain street improvements ("Improvements") that are the subject of this Agreement, in order to properly develop lands owned by the Developer which are known as Millennium SW Third Subdivision ("Property"). The Improvements are depicted on the Millennium SW Third Subdivision Phase One, Sculptor Drive drawings as shown within the Public Improvement Drawings and known as Project Number ENR031 on file with the City and incorporated herein; and

WHEREAS, the City has adopted the Capital Improvements Plan which identifies the need for such Improvements if the Property is to be developed as the Developer proposes; and

WHEREAS, a portion of the Improvements are needed to accommodate the City's requirements as set forth in the Capital Improvements Plan; and

WHEREAS, it is the policy of the City to reimburse developers for that portion of public improvements which are required to be installed to meet City requirements when monies have been so appropriated.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed as follows:

1. COSTS

The Developer has provided documents for the actual costs of the Improvements to the City as described in Exhibit A attached and incorporated herein. The City has determined that the cost estimate in Exhibit A is eligible for reimbursement. The not to exceed amount eligible for reimbursement is \$431,270.75.

2. REFUNDING

The City may make partial reimbursements for the completed and accepted Public Improvements. The City agrees to pay to the Developer monies as they are appropriated from the Capital Improvements account for the Developer's installation and construction of the Improvements. Partial Streets Oversizing Agreement payments will be made to the Developer on an annual basis until the remaining monies have been paid, subject to annual City Council budget and appropriation

approval. No monies shall be due to Developer in any year in which funds have not been so appropriated.

3. TERMS, EFFECT AND INTEGRATION

- A. It is expressly understood and agreed that the terms of this Agreement shall be binding upon and inure to the benefit of the heirs, successors, representatives, and assigns of the parties hereto.
- B. No assignment by the Developer of any rights under this Agreement shall be effective with respect to the City until written notification from the Developer of such assignment is received by the City.
- C. This Agreement does not constitute a multiple fiscal year direct or indirect debt or other obligation of the City.
- D. This Agreement constitutes the entire Agreement of the parties, and may be altered, amended or revised only by written agreement of the parties hereto.

APPROVED AS TO FORM:

THE CITY OF LOVELAND
A Municipal Corporation

Grant L. Ellis
City Attorney, *Asst.*

[Signature] 2/1/07
Public Works Director

ATTEST:

[Signature]
City Clerk



DEVELOPER:

ATTEST (if a Corporation):

VDW Properties, LLC
2725 Rocky Mountain Ave, Suite 200
Loveland CO 80538

[SEAL]

By: [Signature] 1/8/07
McWhinney Real Estate Services,
Inc., a Colorado Corporation,
Manager

[Signature] 1/8/07
Secretary

EXHIBIT B

SCHEDULE OF LOANS FROM AND PAYMENTS
(Attached)

EXHIBIT B

VDW Metropolitan District - Capital Advances
Schedule of Loans from and Payments to VDW Properties, LLC

	Date	Loan	Payment	Balance
Loan	2/22/2005	7,103.50		7,103.50
Loan	5/5/2005	1,755.10		8,858.60
Loan	5/24/2005	3,057.62		11,916.22
Loan	6/17/2005	272.60		12,188.82
Loan	11/17/2005	3,249,157.66		3,261,346.48
Loan	1/19/2006	3,293,566.07		6,554,912.55
Loan	12/26/2006	8,505.00		6,563,417.55
Loan	11/15/2007	1,530,525.54		8,093,943.09
Payment	12/21/2007		2,679,136.40	5,414,806.69
Loan	2/19/2009	135,841.56		5,550,648.25
Payment	11/24/2009		216,772.50	5,333,875.75
Payment	12/22/2010		64,641.00	5,269,234.75
Payment	8/30/2011		1,064,981.72	4,204,253.03
Loan	3/13/2013	891,336.82		5,095,589.85
Loan	1/14/2013	49,190.00		5,144,779.85
Loan	2/12/2013	56,496.77		5,201,276.62
Loan	3/7/2013	62,218.23		5,263,494.85
Loan	4/9/2013	41,845.76		5,305,340.61
Loan	4/19/2013	10,752.00		5,316,092.61
Loan	5/3/2013	20,496.00		5,336,588.61
Loan	5/13/2013	13,104.00		5,349,692.61
Loan	5/15/2013	43,046.50		5,392,739.11
Loan	5/29/2013	16,821.64		5,409,560.75
Loan	6/28/2013	29,062.13		5,438,622.88
Loan	8/19/2013	97,518.05		5,536,140.93
Loan	9/17/2013	33,792.29		5,569,933.22
Loan	10/4/2013	487,363.97		6,057,297.19
Loan	11/8/2013	224,495.58		6,281,792.77
Loan	12/6/2013	593,010.74		6,874,803.51
Loan	1/8/2014	245,809.26		7,118,612.77
Payment	2/4/2014		50,000.00	7,068,612.77
Loan	2/18/2014	119,591.87		7,188,204.64
Loan	3/11/2014	96,073.96		7,284,278.60
Loan	4/4/2014	44,782.62		7,329,061.22
Loan	5/8/2014	125,173.36		7,454,234.58
Loan	10/10/2014	8,043.14		7,462,277.72
Payment	3/27/2015		117,392.00	7,344,885.72
Payment	3/31/2015		100,000.00	7,244,885.72
Interest	3/24/2016	177,262.44		7,422,148.16
Payment	3/24/2016		7,422,148.16	0.00
		<u>11,715,071.78</u>	<u>11,715,071.78</u>	<u>0.00</u>