

Development Services Current Planning

500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

Planning Commission Staff Report March 11, 2013

Agenda #: Regular Agenda - 2

Title: Koldeway

Applicant: Loveland Midtown Development

Request: Rezoning and Easement Vacation

Location: 907 & 985 N. Denver Avenue

Existing Zoning: I-Developing Industrial District

Proposed Zoning: B - Developing Business District

Staff Planner: Noreen Smyth

Staff Recommendation:

Subject to additional evidence presented at the public hearing, City staff recommends the following motions:

Recommended Motions:

"Move to make the findings listed in Section IX of this report dated March 11, 2013; and, based on those findings, recommend approval of the rezoning of the Koldeway property from I-Developing Industrial to B - Developing Business, as amended on the record."

"Move to make the findings listed in Section X of this report dated March 11, 2013; and, based on those findings, recommend approval of the associated access easement vacation, as described and depicted in Attachments #1 and #2 of this staff report, subject to the Condition specified in Section XXII of this report."

Summary of Analysis

This is a public hearing to consider a rezoning of two lots totaling 3.12 acres in the Koldeway Second Industrial Subdivision. The subject property is zoned I-Developing Industrial and is currently vacant. The owner is in discussions with a developer of assisted living facilities who is interested in purchasing the property for development of such a facility. The current owner is pursuing the zoning change to B-Developing Business, in conjunction with amending the Development Agreement applicable to the subdivision, to allow the proposed use. A request to vacate an access easement to change the adjacent drive from a public alley to a private drive accompanies the request.

If the rezoning is approved, the applicant has stated that the property will be sold to the assisted living developer, who would then submit a site development plan and other necessary applications in pursuit of approval. However, any use allowed in the B zone by the Development Agreement could potentially be established on the property.

Staff is supportive of the requested B zoning because it would be consistent with the B-zoned lot to the north and the uses allowed under the B zoning are more compatible with the adjacent residential neighborhood to the west. Staff is also supportive of the public access easement vacation because it serves no public benefit.

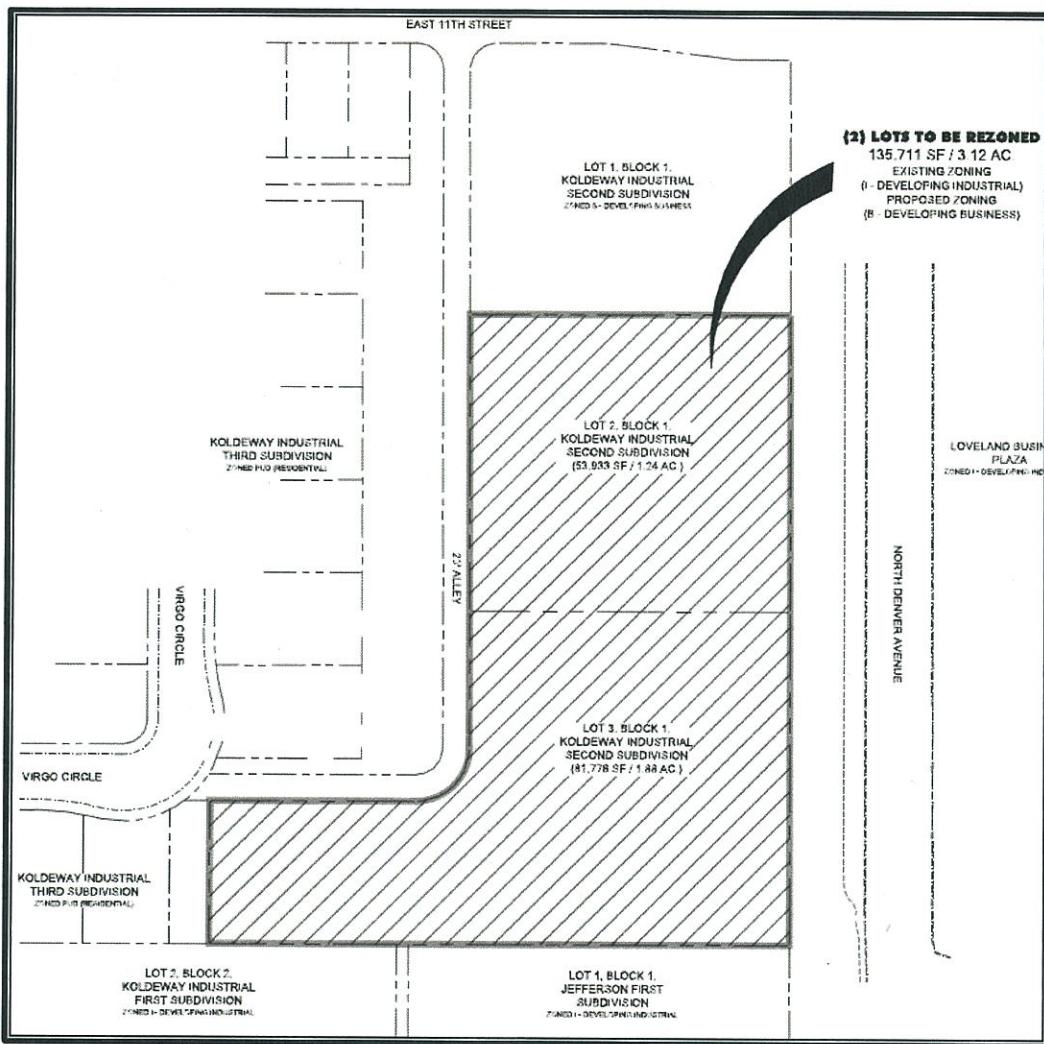
I. ATTACHMENTS:

1. Rezoning map exhibit
2. Vacation easement exhibit
3. Amended Development Agreement-draft
4. Koldeway 2nd Subdivision Plat
5. Rezoning assessment/explanation
6. Vacation explanation
7. Private access easement
8. Emergency access easement

II. VICINITY MAP:



III. REZONING EXHIBIT:



The total area to be rezoned consists of approximately 3.12 acres. A larger version of the rezoning map is attached to this report. (See **Attachment # 1**).

IV. PUBLIC HEARING:

This is a public hearing item to consider a rezoning of two lots within the Koldeway Industrial Second Subdivision, as described and depicted in **Attachment #1**, from the I-Developing Industrial District to B-Developing Business District, and to consider an associated request to vacate the public access easement on a drive next to the property. Per Chapter 16.36 of the Municipal Code, while most types of vacations require only City Council review, the vacation of access easements or rights-of-way require a Planning Commission public hearing.

The Planning Commission's consideration of the zoning request is quasi-judicial, meaning that their consideration and recommendation is to be made on the basis of adopted policies, codes and standards as they apply to this property. Consideration of the easement vacation is a legislative matter. The Planning Commission's recommendations will be forwarded to the City Council, to be considered as part of their subsequent public hearing, currently scheduled for April 16, 2013.

The associated amendment to the Development Agreement will be addressed by the City Council with their review of the rezoning. The Planning Commission is not required to make a recommendation on the amendment to the Agreement. Essentially, a favorable recommendation on the rezoning request would suggest support for the amending the Development Agreement as specified by staff.

V. KEY ISSUES:

City staff have reviewed the applications on the basis of all applicable City policies, codes and standards, including the findings necessary for approval of a rezoning and a vacation. Staff believes that all key issues have been resolved through the review process. No issues or concerns were raised at the neighborhood meeting.

VI. SITE DATA:

ACREAGE OF SITE (GROSS ACRES).....	3.12 ACRES
EXISTING ZONING	I- DEVELOPING INDUSTRIAL
PROPOSED ZONING.....	B- DEVELOPING BUSINESS
MASTER PLAN DESIGNATION.....	EMPLOYMENT
EXISTING USE.....	VACANT
PROPOSED USE	LONG-TERM CARE FACILITY/ASSISTED LIVING
NUMBER OF DWELLING UNITS PROPOSED	NA (REZONING ONLY AT THIS TIME)
GROSS DENSITY (DU/A)	NA
NET DENSITY (DU/A)	NA
EXISTING ADJACENT ZONING AND USE - NORTH	B- DEVELOPING BUSINESS; ASSISTED LIVING FACILITY
EXISTING ADJACENT ZONING AND USE - EAST	I- DEVELOPING INDUSTRIAL; SELF-SERVICE STORAGE FACILITY
EXISTING ADJACENT ZONING AND USE - SOUTH.....	I- DEVELOPING INDUSTRIAL; UTILITY
EXISTING ADJACENT ZONING AND USE - WEST	PUD; SINGLE-FAMILY RESIDENTIAL
UTILITY SERVICE PROVIDER - SEWER.....	CITY OF LOVELAND
UTILITY SERVICE PROVIDER - ELECTRIC	CITY OF LOVELAND
UTILITY SERVICE PROVIDER - WATER.....	CITY OF LOVELAND

VII. PROJECT DESCRIPTION:

Background

The subject property, located west of Denver Avenue and one lot south of 11th Street, consists of two lots zoned I-Developing Industrial that are a part of the Koldeway Industrial Second Subdivision (2004). The lot immediately north of the subject property, which is a part of the same subdivision, is zoned B-Developing Business. This property to the north is developed with an assisted living facility (Aspen House).

A Development Agreement was approved and recorded in conjunction with the plat of subdivision that specified the uses permitted by right and by special review on the I-zoned properties and on the B-zoned properties in the subdivision. The Development Agreement limits the range of allowable uses in both zone districts.

While “Long-term care facility” (an assisted living or nursing facility aimed primarily at seniors) is a use by right under the standards of the B district in the zoning code, it is not listed as an allowed use for B properties in the Development Agreement for the Koldeway property. In 2006, the Development Agreement was amended to add such facilities to the permitted uses list for the B district. However, a note was added stating that this use “shall only be allowed on Lot 1, Block 1” of the subdivision, which is the lot immediately north of the subject property. An assisted living facility, Aspen House, was subsequently developed on the 1.1-acre lot. Therefore, it is necessary to amend the Development Agreement in association with the zone change in order to allow the proposed use.

Rezoning

The owner of the two-lot subject property has been in negotiation with a developer of assisted living facilities concerning the establishment of such a facility on the property. The new facility would be immediately south of the existing Aspen House assisted living facility. The subject property is zoned I with no special provision in the Development Agreement to allow such facilities on the property. The owner is therefore seeking to rezone the property to B and amend the Development Agreement to include the two lots of subject property as lots on which such facilities are permitted by right. Thus, the amended Development Agreement would read “Lots 1, 2 and 3 of Block 1” after “Long-term care facility” to extend the use to the subject property in conjunction with its rezoning to B.

The assisted living developer does not wish to purchase the land or design the proposed facility until zoning is in place to allow for its development. Therefore, a site plan, architectural drawings or other details about the facility such as number of residents are not available at this time. It should be noted that while the requested rezoning and amendment to the Development Agreement will allow for the development of the long-term care facility, approval of the rezoning and the amendment to the Development Agreement does not obligate the owner to have the property developed as a care facility. Any of the B uses allowed by right or by special review, as listed under Finding II below, may be developed on the subject property if the rezoning is approved.

If the property is rezoned and the assisted living developer proceeds with their proposal, a number of additional applications will need to be submitted for staff review, including a lot merger (to combine the two parcels into one), a site development plan (SDP), a site work permit, and a building permit. In addition, any applicable permitting for such care facilities will need to be obtained from the appropriate state agency.

Vacation of Access Easement

A paved drive with a 20 foot public access easement is situated to the immediate west of the subject property. The easement was established at the time of subdivision and is labeled “alley” on the plat (see **Attachment #4**). The land on which the easement sits is owned by the current applicant (who developed the subdivision). The drive provides access from 11th Street and Virgo Circle to the subject property and to the parking lot of the assisted living facility to the north. It is not utilized by any other lot.

It has been determined that development of the subject property would result in an exceedance of the city’s ACF ordinance for alley traffic volumes. As such, the applicant is requesting to vacate the public access easement so that the alley will instead be designated a private drive (in a future action). Staff is supportive of the request as there are no other properties utilizing the drive and no public benefit to the presence of the public access easement. A private access easement to allow use of the drive by adjacent property owners and an emergency access easement would be established on the drive following the vacation of the public access easement.

VIII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION:

- A. Notification:** An affidavit was received from the applicant’s representative certifying that notice of the hearing for the rezoning and vacation was mailed to all owners of property within 500 feet of the site and to all surface owners and owners of the easement to be vacated and that notices were posted in prominent locations on the perimeter of the project site at least 15 days prior to the date of the Planning Commission hearing. In addition, a notice was published in the Reporter Herald on February 23, 2013.
- B. Neighborhood Response:** A noticed neighborhood meeting was held at 6:00 pm on January 30 in the Loveland Public Library. The neighborhood meeting is required for the rezoning and not the vacation, although information on the vacation was presented at the meeting. Two persons attended the meeting, along with City staff and the applicants’ representatives. No concerns or objections were raised at the neighborhood meeting; those in attendance inquired about the proposed long-term care facility. Responses and information were offered by the applicant’s representative and planning staff. No changes were made or required to the application as a result of the meeting.

IX. FINDINGS AND ANALYSIS – REZONING

Finding 1. *The purposes set forth in Section 18.04.010 of the Loveland Municipal Code would be met if any use permitted by right in the zone district being requested was developed on the subject property.*

Current Planning: Staff believes this finding can be met. The purposes set forth in Section 18.04.010 of the Loveland Municipal Code include lessening of congestion on public streets, secure safety from fire and panic, promote general health and welfare, provide adequate light and air, prevent overcrowding of land, avoid undue concentration of population, and facilitate adequate provision of public facilities and infra-structure. These matters will be further reviewed in greater detail at the time additional development applications (lot merger, site development plan, site work permit and building permit) are submitted to the city. Established provisions of the code and associated development standards are satisfactory to ensure that future development will not result in congestion, safety, health and related negative consequences.

Finding 2. *Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in development that is compatible with existing land uses adjacent to and in close enough proximity to the subject property to be effected by development of it.*

Nearby Properties and Uses: The following existing land uses are adjacent, or in close proximity, to the land proposed for rezoning:

North: The Aspen House assisted living facility (senior housing) is immediately to the north. Farther north, on the opposite side of 11th Street, is a vacant parcel of land that is also a B-zoned parcel within the Koldeway Industrial Second Subdivision. Past that parcel is Wal-Mart. Other smaller commercial and office uses are on the north side of 11th Street in the vicinity of the subject property.

East: A utility easement extends down the east side of the subject property and contains overhead power lines. Immediately to the east is Denver Avenue. A self-storage facility is on the opposite side of Denver.

South: A transformer substation is immediately to the south and an undeveloped property is to the southwest. Beyond that is a railroad line followed by a multi-tenant commercial/industrial building.

West: To the immediate west beyond the driveway is a single-family residential subdivision.

Permitted Uses: The proposed zoning of B-Developing Business District as modified by the amended Koldeway Development Agreement permits the following uses:

By right:

1. Retail stores
2. Banks, savings and loan, and finance companies
3. Personal service shops
4. Offices and clinics
5. Churches
6. Membership clubs
7. Public and private schools
8. Recreational uses, indoor
9. Parks
10. Accessory buildings and uses
11. Government or semipublic uses
12. Combined use developments of permitted use
13. Restaurants and other eating and drinking places, indoor
14. Retail laundries
15. Licensed child care centers
16. Printing shops
17. Long-term care facilities (on designated lots)

By special review:

1. Fast food or drive-in restaurants
2. Restaurants and other eating and drinking places, outdoor
3. Self-storage units
4. Warehouses and enclosed storage
5. Motor vehicle sales and services
6. Convenience stores and/or gas stations
7. Car wash facilities
8. Plumbing, electrical and carpenter shops
9. Pet stores and small animal hospitals

Current Planning: Staff believes this finding can be met. The assisted living facility that the potential purchaser is interested in developing on the property is a good fit with the surrounding uses. It matches the use to the north and provides a type of buffer between the single family residential uses to the west and the utilities on the east and south. It is not anticipated to be a disturbance to the residential subdivision, as it is a low generator of noise and traffic. Other uses allowed by right or by special review with the proposed rezoning could be detrimental to the nearby residential neighborhood if they generate significant noise, traffic or odors or result in the development of a particularly large building. However, the risk of detrimental uses locating on the subject property is not higher with the proposed B zoning than with the existing I zoning. Additionally, the adjacency of the subject property to utility uses is a greater deterrent to the establishment of other B uses than to I uses. Staff believes that the uses allowed by the rezoning to B would not be likely to negatively impact the nonresidential uses to the north, east and south.

Finding 3. *Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and services master plans.*

Current Planning: Staff believes this finding can be met. A site specific development plan has not yet been prepared for the long-term care facility proposing to locate on the subject property. Once a site plan for that or any other use that may locate on the property is prepared, a site development plan will be required for review by the city based on all applicable codes and standards. This will assure that the use would result in impacts on city infrastructure and services that are consistent with current infrastructure and service master plans.

PW-Transportation: The proposed rezoning will not create a negative impact upon the City's public streets. The proposed rezoning has demonstrated compliance with the City's ACF Ordinance for traffic.

Fire: Staff believes that this finding can be met, due to the following:

- The site will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company (Station 6).
- The proposed rezoning will not negatively impact fire protection for the subject development or surrounding properties.

PW-Stormwater: Staff believes that this finding can be met, due to the following:

- Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and service master plans.

Power: A 200-amp three-phase underground power line located along the east side of the alley between North Boise Avenue and Virgo Circle will be the source of power for the subject property. An underground electric vault is located on the east side of the alley at the north property line of Lot 2 Block 1. Two 4 inch conduits run south from this vault parallel with the alley into Lot 3 Block 1. The existing uses as well as any future development requirements are current with the Power Division's existing infrastructure and system master plan. The proposed development meets the criteria for level of service as outlined in the ACF ordinance.

Water/Wastewater: This development is situated within the City's current service area for both water and wastewater. The Department finds that the Development will be compliant to ACF for the following reasons:

- The proposed development will not negatively impact City water and wastewater facilities

Finding 4. *Development of the subject property pursuant to any of the uses permitted by right under the zoning district being requested would result in development that is consistent with relevant policies contained in Section 4.0 of the 2005 Loveland Comprehensive Plan, as amended.*

Loveland Comprehensive Master Plan, Section 4.2: Land Use Goals and Objectives: Goals outlined in this section that are relevant to the requested rezoning are as follows:

- **LUI:** Emphasize flexibility within the Land Use Plan while building on the existing land use pattern.
- **LUS5:** Encourage the development of multi-use, high-quality employment districts where campus-type settings are appropriate, particularly along the transportation corridors of I-25, US 34, and south side of SH 402.
- **RES3:** The development of a full range of housing types to meet the needs of all age and socio-economic groups is encouraged.
- **RESS:** Quality design and compatible land use relationships with all proposed and existing developments is encouraged.
- **CLU2 (2A):** Commercial developments including intensity of activities should be in scale with the neighborhood context.

Loveland Comprehensive Master Plan: Land Use Categories & Future Land Use Map: The subject property is designated as *Employment* on the Land Use Map.

Current Planning: Staff believes this finding can be met. Compatibility with future land use goals is considered at the time of a proposed rezoning. The 2005 Comprehensive Plan, as amended, recommends *Employment* uses for the land on the west side of Denver Avenue between the commercial area on US 34 (Eisenhower) south to First Street. The proposed rezoning to B-Developing Business is suitable for this category.

The specific use the applicant intends to locate on the site is a long-term care facility. While such a facility does require the employment of staff, uses of this type are not specifically recommended for *Employment* areas by the Comprehensive Plan. However, a mixture of uses is encouraged in areas designated *Employment*; also, staff believes that the change in zoning creates a more compatible arrangement within the established neighborhood context.

Finding 5. *Development of the subject property pursuant to any of the uses permitted by right under the zoning district being requested would result in development that would not be detrimental to the health, safety, or welfare of the neighborhood or general public.*

Current Planning: Staff believes this finding can be met. As discussed above under Finding 2, compatibility of uses allowed by the proposed district with existing uses in the area, some of the uses allowed by the B district per the Development Agreement could have a negative impact on nearby residential properties, but the impacts should not be of a nature detrimental to health, safety, or welfare. No such negative impact to the general public is anticipated.

Finding 6. Colorado Revised Statute 34-1-305 and Municipal Code Section 18.52.040.
The proposed location and the use of the land, and the conditions under which it would be developed, will not interfere with the present or future extraction of a commercial mineral deposit underlying the surface of the land, as defined by CRS 34-1-302 (1), as

amended. Owners of all severed mineral estates have been notified of the public hearing at least 30 days prior to the hearing date.

Current Planning: Staff believes this finding can be met. Requirements of state statute for consideration of mineral estates are relevant to the time of subdivision and development plan. The rezoning action of the city does not constitute a development plan under these provisions. Therefore no written notice to any holders of severed mineral interests was required or provided.

X. FINDINGS AND ANALYSIS – EASEMENT VACATION

The following two findings must be met in order to vacate the access easement. These findings are included in section 16.36.010.B of the Loveland Municipal Code.

***Finding 1.** That no land adjoining any right-of-way to be vacated is left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement.*

Current Planning: Staff believes this finding can be met. No land will be left without an established connection to another right-of-way or easement as a result of the public access easement vacation because a private access easement will be established in its place.

***Finding 2.** That the easement to be vacated is no longer necessary for the public use and convenience.*

PW-Transportation: The Transportation Development Review Division has no objections to the proposed alley vacation as long as the proposed development dedicates a private access easement along the same alignment.

Fire: Staff believes that this finding can be met, due to the following:

- The site will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company (Station 6).
- The proposed rezoning will not negatively impact fire protection for the subject development or surrounding properties.

Water/Wastewater: The subject area to be vacated is the City's current service area for both water and wastewater. There is an existing water main within the area. Therefore the Department requires that with the vacation there be a following a reservation of a utility easement for the full area. The Department finds that:

- The existing easement to be vacated does not impact the existing water and wastewater utility configuration within and adjacent to this development.
- The existing easement to be vacated is no longer necessary for public use and convenience.

Power: Three-phase 200-amp underground cable, conduit and vault are located in the utility easement to the east of the area proposed to be vacated. Open access must be provided to the existing electrical equipment so that they can be maintained. The area to be vacated is not being used for any power utilities.

PW-Stormwater: Staff believes that this finding can be met, due to the following:

- The existing alley to be vacated is not used to convey public Stormwater and thus is not necessary for the public use and conveyance of Stormwater.

XI. RECOMMENDED CONDITIONS - REZONING

Since this is a proposed rezoning to a standard zone district and not a PUD there are no recommended conditions. However, the Development Agreement includes a number of requirements related to development of the site. Any development and use of the property will be governed by all applicable City policies, codes and standards.

XII. RECOMMENDED CONDITIONS - VACATION

1. Prior to the recording of the alley vacation, a private access easement for the connection to 11th Street must be dedicated. (PW-Transportation)

KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
ZONED B-DEVELOPED BUSINESS

EAST 11TH STREET

(2) LOTS TO BE REZONED
LOT 1, BLOCK 1,
KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
ZONED B-DEVELOPED BUSINESS

155,711 SF / 3.12 AC.
EXISTING ZONING
(I - DEVELOPING INDUSTRIAL)
PROPOSED ZONING
(B - DEVELOPING BUSINESS)

LOVELAND BUSINESS
PLAZA
ZONED B-DEVELOPED INDUSTRIAL

NORTH DENVER AVENUE

REZONING MAP
KOLDEWAY INDUSTRIAL SECOND SUBDIVISION
907 & 985 N DENVER AVE
LOVELAND, COLORADO
MAP DRAWN BY: KOLDEWAY INDUSTRIAL
B-DEVELOPED BUSINESS
10/22/2012

LOT 1, BLOCK 1,
KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
(B-178 SF / 1.38 AC.)

20' ALLEY

KOLDEWAY INDUSTRIAL
THIRD SUBDIVISION
ZONED NO RESIDENTIAL

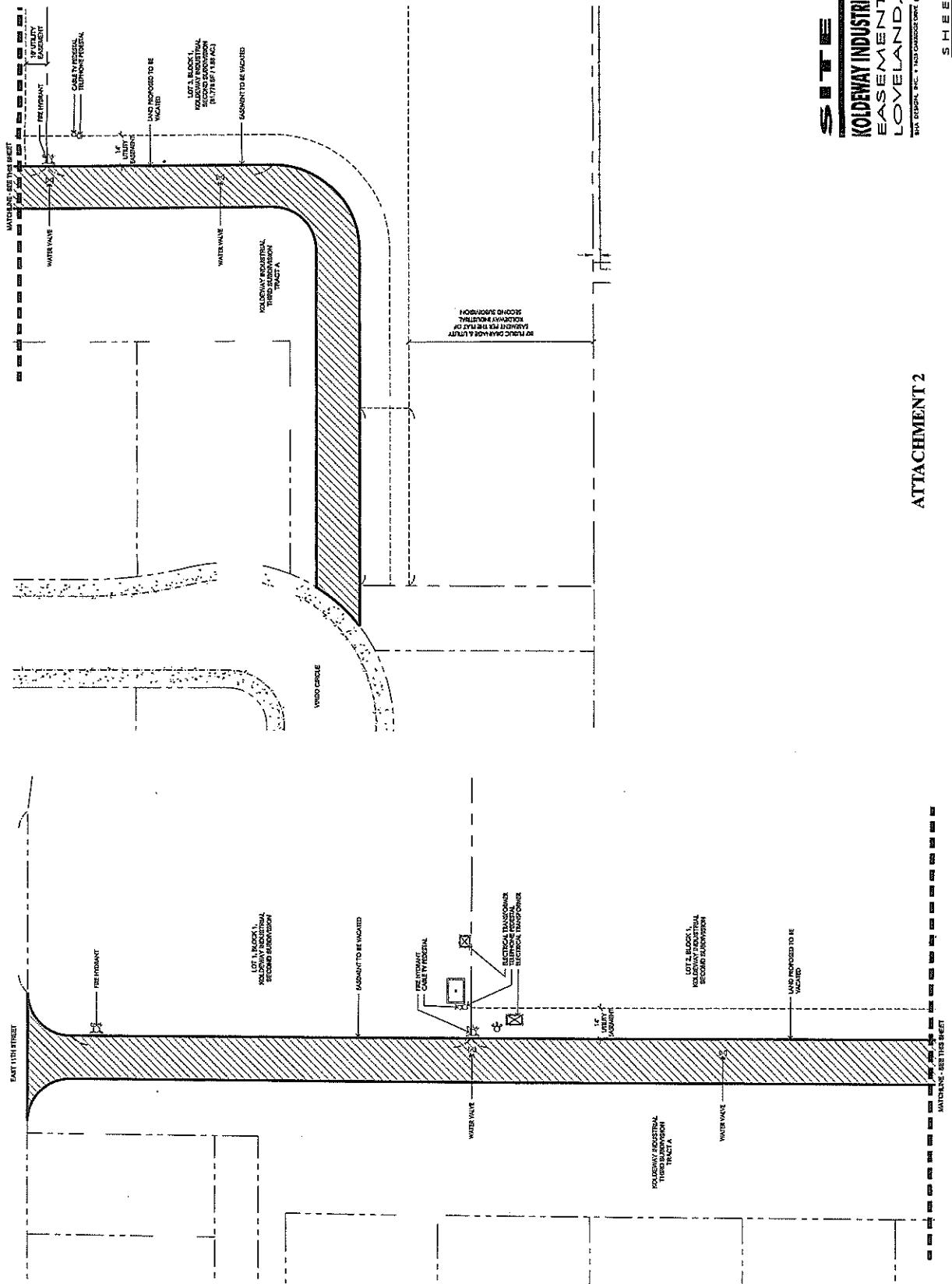
VIRGO CIRCLE

LOT 2, BLOCK 1,
JEFFERSON FIRST
SUBDIVISION
ZONED B-DEVELOPED INDUSTRIAL

LOT 2, BLOCK 2,
KOLDEWAY INDUSTRIAL
FIRST SUBDIVISION
ZONED B-DEVELOPED INDUSTRIAL

ATTACHMENT 1

SHEET 1 OF 1
OCTOBER 2, 2012



SHEET 1 OF 1
NOVEMBER 16, 2012

SHA DESIGN, INC. • 7433 CAMDEN DR. • SUITE 200 • FT. COLLINS, CO 80523 • 970.223.7357

111

SHEET 1 OF 1

SHEET 1 OF 1

ATTACHMENT 2

EXHIBIT "A"

LEGAL DESCRIPTION for ALLEY TO BE VACATED

A parcel of land located in Section 18, Township 5 North, Range 68 West of the Sixth Principal Meridian, City of Loveland, Larimer County, Colorado, being the 20.00 foot wide alley adjacent to the West and North sides of Lots 1, 2, and 3 Block 1 in the Koldeway Industrial Second Subdivision according to the Final Plat recorded at Reception Number 20050008253 of Larimer County Records, more particularly described as Follows:

the West line of said Lots 1, 2, and 3 was assumed to bear South 00°04'17" East, according to the Final Plat of said Koldeway Second Subdivision, with all bearings contained herein relative thereto.

Beginning at a Point of a Curve on the North line of said Lot 1 at the Northwesterly corner of said Lot 1;

thence along the arc curve to the left, the radius point of which bears South 00°04'17" East, having a central angle of 90°00'00" and a radius of 20.00 feet, an arc distance of 31.42 feet, the chord of said curve bears South 44°55'43" West a distance of 28.28 feet; thence South 00°04'17" East, along the West lines of said Lots 1, 2, and 3, a distance of 511.65 feet to a point of curve;

thence along the arc of said to the right, having a central angle of 90°00'00" and a radius of 40.00 feet, an arc distance of 62.83 feet, the chord of said curve bears South 44°55'43" West a distance of 56.57 feet;

thence South 89°55'43" West, a distance of 172.56 feet to a point on a non-tangent curve on the Easterly right-of-way of Virgo Circle;

thence along the arc of said non tangent curve to the left, the radius point of which bears North 37°35'57" West, having a central angle of 20°28'25" and a radius of 76.00 feet, an arc distance of 27.16 feet, the chord of said curve bears North 42°09'52" East a distance of 27.01 feet;

thence North 89°55'43" East, a distance of 154.41 feet to a point of curve;

thence along the arc of said curve to the left, having a central angle of 90°00'00" and a radius of 20.00 feet, an arc distance of 31.42 feet, the chord of said curve bears North 44°55'43" East a distance of 28.28 feet;

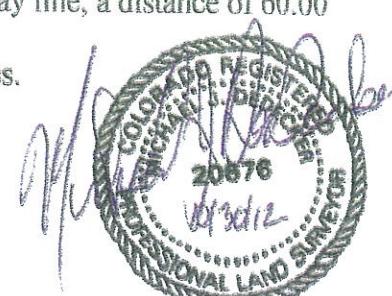
thence North 00°04'17" West, a distance of 511.65 feet to a point of curve

thence along said curve to the left, having a central angle of 90°00'00" and a radius of 20.00 feet, an arc distance of 31.42 feet, the chord of said curve bears North 45°04'17" West a distance of 28.28 feet, to a point on the Southerly right-of-way of East 11th Street;

thence North 89°55'43" East, along said Southerly right-of-way line, a distance of 60.00 feet to the POINT OF BEGINNING.

Containing 14,993.38 square feet or 0.3442 acres, more or less.

Prepared October 30, 2012, by Michael J. DeDecker PLS,
for and on behalf of CDS Engineering Corp. 165 2nd Street SW,
Loveland Co. 80537



EAST 11th STREET

CURVE LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD
C3	31.42'	20.00'	90°00'00"	N44°55'43"E
C4	27.16'	76.00'	20°28'25"	N42°09'52"E
C11	62.85'	40.00'	90°00'00"	S44°55'43"W
C12	31.42'	20.00'	90°00'00"	N45°04'17"W
C13	31.42'	20.00'	90°00'00"	S44°55'43"W

N89°55'43"E
60.00'

C12

C13 POINT OF
BEGINNING

FINAL PLAT OF KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION AS RECORDED AT
RECEPTION NUMBER 20050008253 OF
LARIMER COUNTY, COLORADO WAS
RELIED UPON FOR INFORMATION USED
TO PREPARE THIS EXHIBIT MAP

KOLDEWAY INDUSTRIAL,
SECOND SUBDIVISION
LOT 1, BLOCK 1

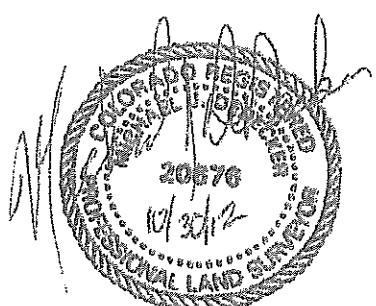
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BASES OF BEARINGS
N. 7.000

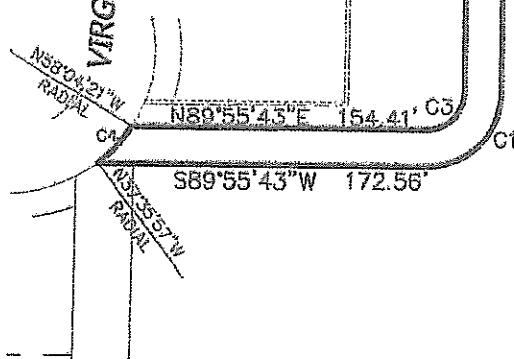
KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
LOT 2, BLOCK 1

20' ALLEY BEING VACATED
BY THIS DOCUMENT

KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
LOT 3, BLOCK 1



VRGO CIRCLE



NORTH DENVER AVENUE

EXHIBIT "B"
EXHIBIT MAP FOR ALLEY VACATION

KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
LOVELAND, COLORADO

100 0 100

SCALE 1"=100'

SCALE: 1" = 100'
DATE: 10-26-2012
FIELD BOOK: N/A
DRAWN: DEW
CHECKED: DEW



Engineering
Corporation
165 2nd ST SW
LOVELAND, COLORADO 80538
(970) 667-8010

PROJECT NO. P08-4836.1
DRAWING NO. 4836/SITE
REVISION NO. 0
SHEET 1 OF 1

**THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR
PORTIONS OF KOLDEWAY INDUSTRIAL SECOND SUBDIVISION, AND ALL OF
KOLDEWAY INDUSTRIAL THIRD AND FOURTH SUBDIVISIONS**

THIS THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of the _____ day of _____ 20____, by and between the CITY OF LOVELAND, COLORADO, a home rule municipality, (the "City"), and LOVELAND MIDTOWN DEVELOPMENT, INC., a Colorado corporation (the "Developer").

RECITALS

WHEREAS, the City, Art Koldeway and Agnes Koldeway ("Koldeways"), and North Boise, LLC, a Colorado limited liability company ("North Boise") entered into a Development Agreement dated July 15, 2004 and recorded December 6, 2004 at Reception No. 2004-0116915 of the Larimer County, Colorado records ("the Development Agreement"); and

WHEREAS, the Development Agreement governs the development of the real property ("the Property") which has been platted as Koldeway Industrial Second Subdivision ("the Second Subdivision"), Koldeway Industrial Third Subdivision ("the Third Subdivision"), and Koldeway Industrial Fourth Subdivision ("the Fourth Subdivision"); and

WHEREAS, at the time the Development Agreement was made, Koldeways were the owners of the Property and North Boise was the developer of the Property; and

WHEREAS, the Koldeways are no longer the owners of any of the Property, and

WHEREAS, North Boise has assigned its right to develop the Property to Loveland Midtown Development, Inc., (the "Developer"); and

WHEREAS, the Developer and the City entered into an Amended and Restated Development Agreement for Portions of Koldeway Industrial Second Subdivision, and all of the Koldeway Industrial Third and Fourth Subdivisions, dated December 8, 2005, and recorded at Reception No. 2005-0109107 of the Larimer County Colorado records ("the First Amended Development Agreement"); and

WHEREAS, the Developer and the City entered into a Second Amended and Restated Development Agreement for Portions of Koldeway Industrial Second Subdivision, and all of the Koldeway Industrial Third and Fourth Subdivisions, dated October 23, 2006, and recorded at Reception No. 2006-0084194 of the Larimer County Colorado records ("the Second Amended Development Agreement"); and

WHEREAS, certain lots and blocks of the Property have subsequently been conveyed to other owners, and are no longer under the control of the Developer; and

WHEREAS notwithstanding the conveyance of certain lots and blocks, the Developer continues to be solely responsible for installation of all required public improvements required for development of the Property, as shown on the approved PICP and in compliance with other provisions of the Development Agreement, the First Amended Development Agreement, and the Second Amended Development Agreement; and

WHEREAS, the parties hereto desire to amend the First Amended Development Agreement and Second Amended Development Agreement as it pertains to property currently owned by the Developer and described as Lots 2 and 3, Block 1, Koldeway Industrial Second Subdivision ("the Developer's Property"), to allow the construction of a long-term care facility; and

WHEREAS, the City and Developer agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the City in connection with the development of the Developer's Property, and that such matters are necessary to protect, promote and enhance the public welfare.

THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. Section II.B.1 of the First and Second Amended Development Agreements is hereby further amended so that subsection (r), added by the Second Amended Development Agreement, reads as follows:

II. Special Conditions for the Second and Fourth Subdivisions.

....

B. Allowable uses in the B-Zone:

1. Notwithstanding any provision of Chapter 18.28 of the Municipal code for the B-Zone to the contrary, the uses permitted by right on lots described in Exhibit E shall be limited to:

...

r. Long-term care facility (Note: this use shall only be allowed on Lots 1, 2, and 3, Block 1, Koldeway Industrial Second Subdivision).

2. All other terms of the First Amended Development Agreement and Second Amended Development Agreement shall remain the same.

IN WITNESS WHEREOF, the parties have caused this THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR PORTIONS OF KOLDEWAY INDUSTRIAL SECOND SUBDIVISION, AND ALL OF KOLDEWAY INDUSTRIAL THIRD AND FOURTH SUBDIVISIONS to be executed as of the date first written above.

THE CITY OF LOVELAND, COLORADO

By: _____
William D. Cahill, City Manager

Date: _____, 2013

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

STATE OF COLORADO)
)
) ss.
COUNTY OF LARIMER)

The foregoing THIRD AMENDED AND RESTATED DEVELOPMENT
AGREEMENT FOR PORTIONS OF KOLDEWAY INDUSTRIAL SECOND SUBDIVISION,
AND ALL OF KOLDEWAY INDUSTRIAL THIRD AND FOURTH SUBDIVISIONS was
executed before me this _____ day of _____, 2013, by William D. Cahill, as
City Manager, and by Theresa Andrews, as City Clerk, of the CITY OF LOVELAND,
COLORADO, a municipal corporation.

WITNESS my hand and official seal.

My commission expires _____

Notary Public

LOVELAND MIDTOWN DEVELOPMENT, INC.

By: _____

Blaine Rappe, President

Date: _____, 2013

STATE OF COLORADO)
)
) ss.
COUNTY OF LARIMER)

The foregoing THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR PORTIONS OF KOLDEWAY INDUSTRIAL SECOND SUBDIVISION, AND ALL OF KOLDEWAY INDUSTRIAL THIRD AND FOURTH SUBDIVISIONS was executed before me this _____ day of _____, 2013, by Blaine Rappe, as President, of LOVELAND MIDTOWN DEVELOPMENT, INC.

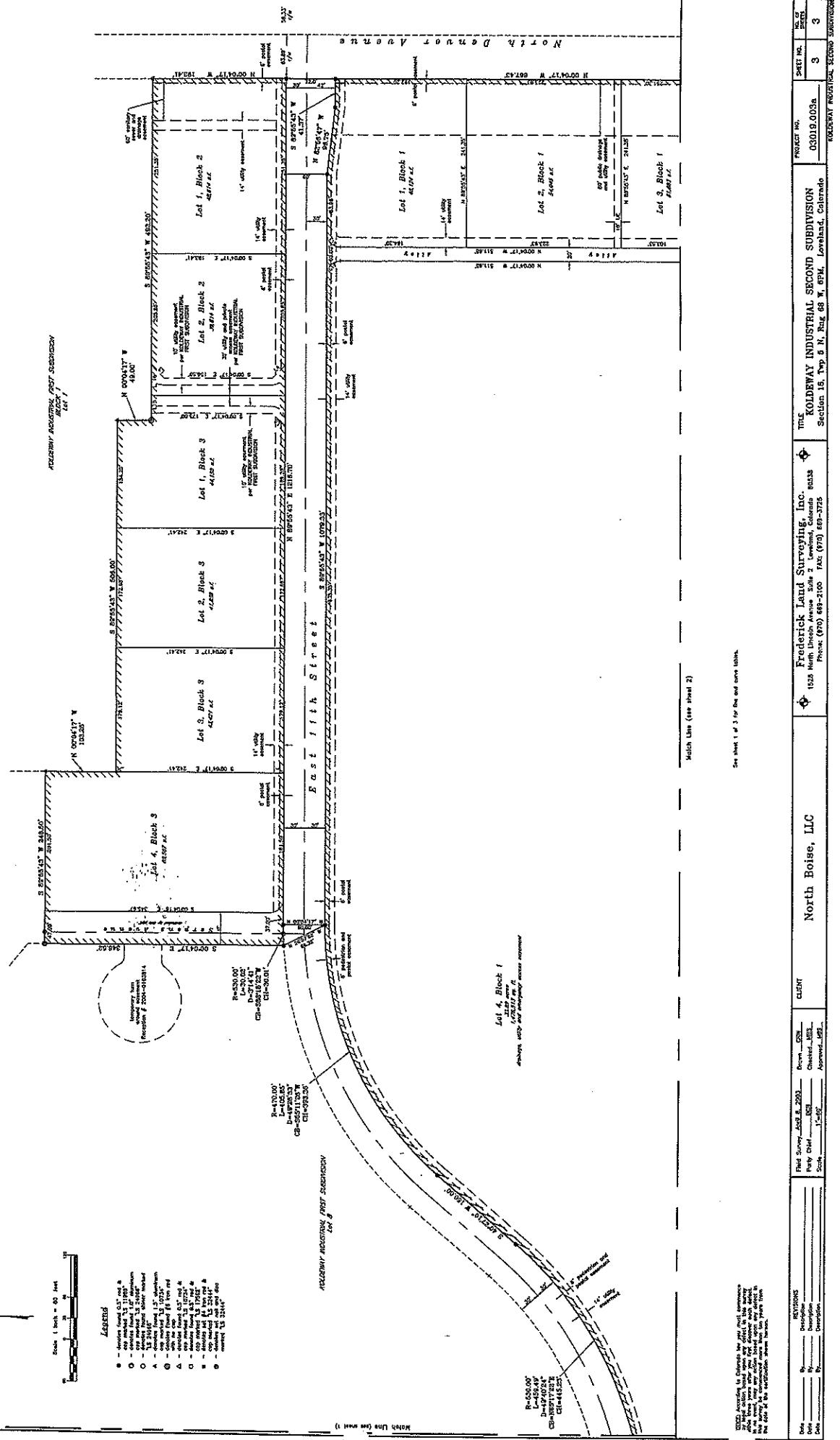
WITNESS my hand and official seal.

My commission expires _____

Notary Public

KOLDEWAY INDUSTRIAL SECOND SUBDIVISION

Being a Subdivision of Lot 1, Block 2 and Lots 6 and 7, Block 1, KOLDEWAY INDUSTRIAL FIRST SUBDIVISION, located in Section 18, Township 5 North, Range 68 West of the 6th P.M., City of Loveland, Larimer County, State of Colorado



BHA Design Incorporated
1603 Oakridge Drive
Fort Collins, CO 80525

November 7, 2012



City of Loveland
500 E 3rd Street, Suite 310
Loveland, CO 80537

RE: Koldeway Industrial Second Subdivision Rezoning

Dear Mr. Paulson,

There are two lots in the Koldeway Industrial Second Subdivision that are currently zoned I – Developing Industrial that are being requested to change zoning to B – Developing Business. The reason for this is an existing landowner directly north of the properties is requesting the zoning change before purchase so he may develop Assisted Living facilities similar to what is on the existing lot to the north.

The two lots in question are surrounded by varying uses. Currently there is single family residential lots zoned PUD to the west, an existing Assisted Living facility to the north zoned B – Developing Business, and the south and east sides are zoned I with existing industrial uses.

There are significant buffers between the existing industrial uses and the lots in question, as there is the Great Western Railway and power substation bordering the south side and Denver Avenue bordering the east side. These buffers represent solid identifiable boundaries that provide a good transition from the industrial uses to a business use that mixes well with the residential to the west and assisted living to the north.

The subject properties are within the Employment Land Use Category of the Loveland Comprehensive Master Plan. The Employment Land Use Category allows for residential development with an emphasis on vertical mixed-use developments. The nature of this residential development, however, is much less dense. The emphasis on "Campus-type" development and the importance of buffers to adjacent areas highlight the need for a buffer between the single family residential to the west and light industrial to the east. The Developing Business zoning district, could provide that critical buffer between the residential and industrial. More specifically, multiple-family dwellings for the elderly, would be a great bookend to the single family residential as it transitions to the industrial.

The use by right that would result in the greatest impact to the neighborhood, which is allowed by the development agreement, would be an indoor restaurant. The incompatibility with the neighborhood would be the greatest impact for that use. Since these lots being rezoned are internal to the neighborhood, it would create unwanted traffic patterns through the neighborhood at times not conducive to the residential area.

BHA Design Incorporated
1603 Oakridge Drive
Fort Collins, CO 80525

bha

The size and constraints of the lot, however, discourage this allowed use due to the restaurants need for parking. The fact that the lots are internal to the neighborhood provides an even greater deterrent to the development of a restaurant as their value is diminished without visible, easy access from a collector road. It is because of these reasons that the future development of the lots has a greater chance of taking on a low impact, long term care facility that is currently developed adjacent to them.

Since the property shall be developed into the use by right, and we cannot force the property to be developed into the assumed use, alternate facilities would mix well with the surroundings as well. The adjacent Walmart provides parking and shopping within a walkable distance to the Koldeway lots that would minimize traffic in the area. Assisted living facilities in general benefit greatly from shopping within close proximity, and in this case it would create a vibrant mixed use neighborhood that promotes walkability.

Comments from city infrastructure and service departments indicate that the requested zoning district would be consistent with current infrastructure and services master plans and will not negatively impact City facilities.

One possible issue for the proposed development would be the proximity of the property to the Great Western Railway to the south and the noise generated from passing trains. Easing concerns for this issue is the amount of residential development already established along this railway corridor. Whereas our lots are almost 350' from the railroad, there are single family residences on the same corridor that sit as close as 20' from the railway, alleviating our concerns that the railroad will have a significant negative impact on the property.

Thank you for your consideration

Sincerely,

Mike McBride
for BHA Design, Inc.

BHA Design Incorporated
1603 Oakridge Drive
Fort Collins, CO 80525

November 7, 2012

bha

City of Loveland
500 E 3rd Street, Suite 310
Loveland, CO 80537

RE: Koldeway Industrial Second Subdivision Rezoning – Easement Vacation Request

Dear Mr. Paulson,

We are currently in the process of rezoning two lots in the Koldeway Industrial Second Subdivision from I – Industrial to B – Developing Business for the future development of two assisted living facilities on the properties. It has become apparent during the process that the current alley will need to be vacated and become a private driveway in order for the proposed uses to comply with the City's ACF ordinance for traffic.

Thanks for your consideration

Sincerely,

Mike McBride
for BHA Design, Inc.

ATTACHMENT 6

PRIVATE ACCESS EASEMENT

THIS INDUTURE, made this _____ day of _____, 20____, by **LOVELAND MIDTOWN DEVELOPMENT, INC.**, whose address is 1043 Eagle Drive, Loveland, Colorado 80537 (owner) hereby grants and dedicates the easement hereinafter described for access, ingress and egress, over, upon, through and across the real estate hereinafter described, for the benefit and use of the owners, patrons, invitees, and guests of A PARCEL OF LAND LOCATED IN SECTION 18, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LOVELAND, LARIMER COUNTY, COLORADO, BEING THE 20.00 FOOT WIDE EASEMENT ADJACENT TO THE WEST AND NORTH SIDES OF LOTS 1,2, AND 3 BLOCK 1 IN THE KOLDEWAY INDUSTRIAL SECOND SUBDIVISION ACCORDING TO THE FINAL PLAT RECORDED AT RECEPTION NUMBER 20050008253 OF LARIMER COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

See Exhibit "A" and "B"

WITNESSETH

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the owner has this day hereby grant and dedicate this non-exclusive Private Access Easement in, over and across the real estate hereinafter described, including the perpetual right to enter upon said property at any time it may see fit, and to construct, repair, replace, relocated, inspect, operate and maintain access systems across, through, upon and over the lands hereinafter described. The term "access systems" as used herein shall include gravel, pavement, concrete, curb & gutter, pipes, channels and other equipment, appurtenances and structures associated with such systems.

IN WITNESS WHEREOF, the first party has executed this Grant of Easement the day and year first above written.

OWNER(S):

LOVELAND MIDTOWN DEVELOPMENT, INC.

Name

Title

STATE OF COLORADO)
)
County of Larimer) ss

The foregoing instrument was acknowledged before me this _____
day of _____, 2012, by _____.

My commission expires: _____.

(SEAL)

Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION for 20' EASEMENT TO BE GRANTED (Private Access Easement)

A parcel of land located in Section 18, Township 5 North, Range 68 West of the Sixth Principal Meridian, City of Loveland, Larimer County, Colorado, being the 20.00 foot wide easement adjacent to the West and North sides of Lots 1, 2, and 3 Block 1 in the Koldeway Industrial Second Subdivision according to the Final Plat recorded at Reception Number 20050008253 of Larimer County Records, more particularly described as Follows:

the West line of said Lots 1, 2, and 3 was assumed to bear South 00°04'17" East, according to the Final Plat of said Koldeway Second Subdivision, with all bearings contained herein relative thereto.

Beginning at a Point of a Curve on the North line of said Lot 1 at the Northwesterly corner of said Lot 1;

thence along the arc curve to the left, the radius point of which bears South 00°04'17" East, having a central angle of 90°00'00" and a radius of 20.00 feet, an arc distance of 31.42 feet, the chord of said curve bears South 44°55'43" West a distance of 28.28 feet; thence South 00°04'17" East, along the West lines of said Lots 1, 2, and 3, a distance of 511.65 feet to a point of curve;

thence along the arc of said to the right, having a central angle of 90°00'00" and a radius of 40.00 feet, an arc distance of 62.83 feet, the chord of said curve bears South 44°55'43" West a distance of 56.57 feet;

thence South 89°55'43" West, a distance of 172.56 feet to a point on a non-tangent curve on the Easterly right-of-way of Virgo Circle;

thence along the arc of said non tangent curve to the left, the radius point of which bears North 37°35'57" West, having a central angle of 20°28'25" and a radius of 76.00 feet, an arc distance of 27.16 feet, the chord of said curve bears North 42°09'52" East a distance of 27.01 feet;

thence North 89°55'43" East, a distance of 154.41 feet to a point of curve;

thence along the arc of said curve to the left, having a central angle of 90°00'00" and a radius of 20.00 feet, an arc distance of 31.42 feet, the chord of said curve bears North 44°55'43" East a distance of 28.28 feet;

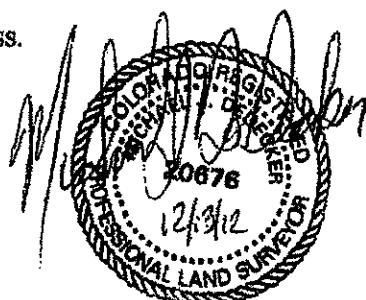
thence North 00°04'17" West, a distance of 511.65 feet to a point of curve

thence along said curve to the left, having a central angle of 90°00'00" and a radius of 20.00 feet, an arc distance of 31.42 feet, the chord of said curve bears North 45°04'17" West a distance of 28.28 feet, to a point on the Southerly right-of-way of East 11th Street;

thence North 89°55'43" East, along said Southerly right-of-way line, a distance of 60.00 feet to the POINT OF BEGINNING.

Containing 14,993.38 square feet or 0.3442 acres, more or less.

Prepared December 13, 2012, by Michael J. DeDecker PLS,
for and on behalf of CDS Engineering Corp. 165 2nd Street SW,
Loveland Co. 80537



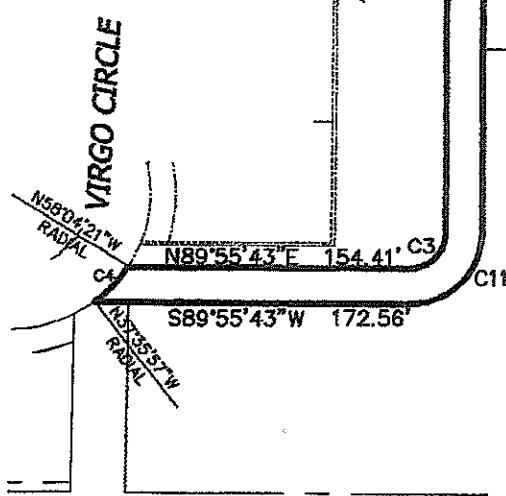
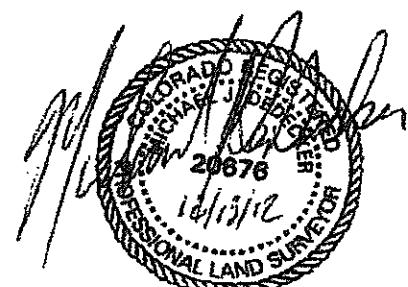
EAST 11th STREET

N89°55'43"E

60.00'

CURVE LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD
C3	31.42'	20.00'	N44°55'43"E	28.28'
C4	27.16'	76.00'	N42°09'52"E	27.01'
C11	62.83'	40.00'	S44°55'43"W	56.57'
C12	31.42'	20.00'	N45°04'17"W	28.28'
C13	31.42'	20.00'	S44°55'43"W	28.28'

FINAL PLAT OF KOLDEWAY INDUSTRIAL SECOND SUBDIVISION AS RECORDED AT RECEPTION NUMBER 20050008253 OF LARIMER COUNTY, COLORADO WAS RELIED UPON FOR INFORMATION USED TO PREPARE THIS EXHIBIT MAP



KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
LOT 1, BLOCK 1

KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
LOT 2, BLOCK 1

20' EASEMENT BEING GRANTED
BY THIS DOCUMENT

NORTH DENVER AVENUE

KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
LOT 3, BLOCK 1

EXHIBIT "B"
EXHIBIT MAP FOR GRANT OF EASEMENT
KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
LOVELAND, COLORADO

100 0 100

SCALE 1"=100'

SCALE: 1" = 100'
DATE: 12-13-2012
FIELD BOOK: N/A
DRAWN: MJD
CHECKED:

CDS Engineering
Corporation
165 2nd ST SW
LOVELAND, COLORADO 80538
(970) 667-8010

PROJECT NO. P08-4836.140
DRAWING NO. 4836/SITE
REVISION NO. 0
SHEET 1 OF 1

GRANT OF EMERGENCY ACCESS EASEMENT

THIS INDENTURE, made this _____ day of _____, 20____, by and between Loveland Midtown Development, Inc., ("Grantor") whose address is 1043 Eagle Drive, Loveland, Colorado 80537, and the CITY OF LOVELAND, COLORADO, a municipal corporation, ("City"), whose address is 500 East Third Street, Loveland, Colorado 80537.

WITNESSETH:

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, Grantor has this day bargained and sold, and by these presents does bargain, sell, convey, transfer and deliver unto the City, its successors and assigns, a permanent nonexclusive easement in, over and across the real estate hereinafter described, for purposes of access by local, state or federal emergency response agencies and any entity responding at the direction of such an agency.

The easement hereby granted, situated in Larimer County, Colorado is described as follows:

A parcel of land located in Section 18, Township 5 North, Range 68 West of the Sixth Principal Meridian, City of Loveland, Larimer County, Colorado, being the 20.00 foot wide easement adjacent to the West and North sides of Lots 1,2, and 3 Block 1 in the Koldeway Industrial Second Subdivision according to the Final Plat recorded at Reception Number 20050008253 of Larimer County Records, more particularly described as Follows:

See Exhibit "A"

TO HAVE AND TO HOLD said easement unto the City, its successors and assigns forever. The Grantor does hereby covenant with the City that it is lawfully seized and possessed of the real property above described, that it has a good and lawful right to convey the easement herein granted, that the said easement is free and clear of all encumbrances, and that it will forever warrant and defend the title thereto against lawful claims of all persons whomsoever.

The Grantor further covenants and agrees to construct and maintain in good repair and unobstructed at all times, a permanent all-weather emergency access road capable of supporting fire apparatus over and across the easement. Prior to construction, Grantor shall prepare and submit plans and specifications for the emergency access road to the City and such plans and specifications shall be subject to approval by Loveland Fire Rescue Authority. Grantor, for itself and its successors and assigns, covenants and agrees that it shall not modify the width, location, or configuration of the emergency access road without the prior written approval from the City.

IN WITNESS WHEREOF, the Grantor has executed this Grant of Easement the day and year first above written.

GRANTOR:

Name

Title

STATE OF COLORADO)
)
County of Larimer) ss

The foregoing instrument was acknowledged before me this _____
day of _____, 2012, by _____.

My commission expires: _____.

(SEAL)

Notary Public

ACCEPTED BY CITY OF LOVELAND

By:

ATTEST:

APPROVED AS TO FORM

City Clerk

City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION for 20' EASEMENT TO BE GRANTED

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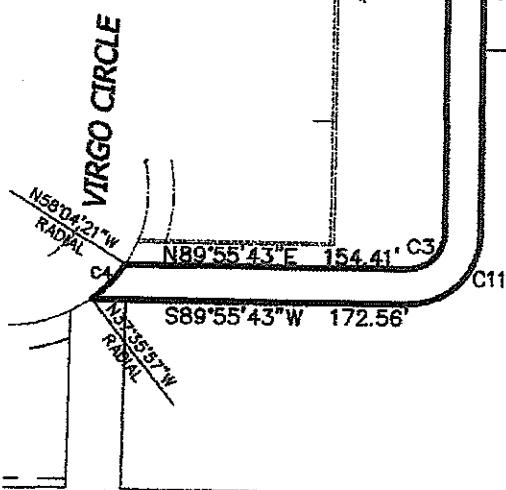
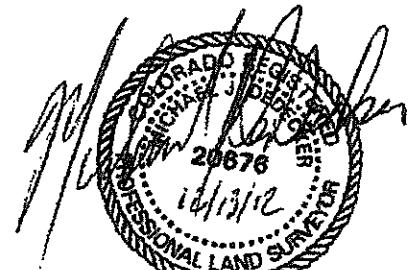
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Prepared December 13, 2012, by Michael J. DeDecker PLS,
for and on behalf of CDS Engineering Corp. 165 2nd Street SW,
Loveland Co. 80537



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FINAL PLAT OF KOLDEWAY INDUSTRIAL SECOND SUBDIVISION AS RECORDED AT RECEPTION NUMBER 20050008253 OF LARIMER COUNTY, COLORADO WAS RELIED UPON FOR INFORMATION USED TO PREPARE THIS EXHIBIT MAP



EAST 11th STREET

N89°55'43"E

60.00

C12

POINT OF
BEGINNING

KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
LOT 1, BLOCK 1

BASIS OF BEARINGS

KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
LOT 2, BLOCK 1

20' EASEMENT BEING GRANTED
BY THIS DOCUMENT

NORTH DENVER AVENUE

KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
LOT 3, BLOCK 1

100 0 100

SCALE 1"=100'

EXHIBIT "B"
EXHIBIT MAP FOR GRANT OF EASEMENT
KOLDEWAY INDUSTRIAL
SECOND SUBDIVISION
LOVELAND, COLORADO

SCALE: 1" = 100'
DATE: 12-13-2012

FIELD BOOK: N/A

DRAWN: MJD CHECKED:

CDS

Engineering
Corporation
165 2nd ST SW
LOVELAND, COLORADO 80538
(970) 667-8010

PROJECT NO. P08-4836.140

DRAWING NO. 4836/SITE

REVISION NO. 0

SHEET 1 OF 1