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Kate J. Madden  
Attorney at Law  
303.223.1138 direct  
kmadden@bhfs.com

Current Planning Division  
City of Loveland  
410 E. 5<sup>th</sup> Street  
Loveland, CO 80537  
Attn: Bob Paulsen

RE: 12<sup>th</sup> Major Millennium GDP Amendment (PZ-22-199)

Dear Mr. Paulsen:

As you know, we are representing McWhinney Real Estate Services, Inc. ("**McWhinney**") in connection with the 12<sup>th</sup> Major Millennium GDP Amendment (PZ-22-199). Because the 11<sup>th</sup> Major Millennium GDP Amendment (PZ-22-196, PZ-22-197, and PZ-22-198) has been withdrawn, we are providing the City of Loveland (the "**City**") with this cover letter, to clarify: (I) the impact of the withdrawal on the 12<sup>th</sup> Major Millennium GDP Amendment and (II) how the applications specific to the 12<sup>th</sup> Major Millennium GDP Amendment satisfies the relevant criteria in the City of Loveland Unified Development Code (the "**Code**"). These three applications have been submitted to the City to:

1. Revise the Millennium General Development Plan (the "**Millennium GDP**") as set forth in the enclosed proposed amendment (the "**GDP Amendment**");
2. Amend the Amended and Restated Annexation and Development Agreement for the Millennium General Development Plan (the "**Development Agreement Amendment**") as set forth in the enclosed Fifth Amendment to the Amended and Restated Annexation and Development Agreement, which includes an extension of vested property rights for all properties subject to the Millennium GDP (the "**Property**"); and
3. Amend the existing Agreement Regarding Environmental Fees as set forth in the enclosed Seventh Amendment to Agreement Regarding Environmental Fees to subject the Property to collection of residential and non-residential environmental fees (the "**Environmental Fees Agreement Amendment**.")

Collectively, these items are referred to as the "**Applications**."

McWhinney has submitted the Applications to the City to secure the foregoing entitlements and approvals. This letter is delivered in connection with the Applications to provide the City with additional information that may aid the City in reviewing and approving the Applications.

### **Background**

As you know, McWhinney has invested and participated in the Loveland community for more than twenty-five years, and has a long history of collaborating with the City. The culmination of this collaboration is the development of the GDP – a first-rate, mixed-use community that establishes a sense of place through its innovative design and combination of residential and commercial uses, and recreational and lifestyle amenities. As you know, this development is guided by the Millennium GDP and several related documents entered into between the City and McWhinney. The Millennium GDP is intended to master plan the entire development area with an emphasis on unifying design elements; a better mix of integrated land uses; the pedestrian experience; a range of housing opportunities in close proximity to jobs; quality housing, shopping and work places; social gathering spaces; a sense of community; and harmony between the natural and the built environment. It is remarkable how well the Millennium GDP and related documents have stood the test of time over the past two decades. However, during the decades of development, McWhinney and the City have routinely identified several issues in these documents which it has addressed through the amendment process and proposes to address again through these Applications, along with several minor revisions and corrections for consistency and to reflect current practices, updated nomenclature, and other assorted updates. Approval of the Applications will ensure that these documents continue to play an important role in the thoughtful, well-orchestrated development of the eastern part of the City.

### **Withdrawal of 11<sup>th</sup> Major Millennium GDP Amendment**

A recommended condition of approval from the Planning Commission for the 12<sup>th</sup> Millennium GDP Amendment was that if City Council did not approve the 11<sup>th</sup> Major Millennium GDP Amendment, all references to Centerra West relating to density, acreage, special conditions, and amendment history would be deleted from the 12<sup>th</sup> Major Millennium GDP Amendment. Because the 11<sup>th</sup> Major Millennium GDP Amendment (PZ-22-196, PZ-22-197, and PZ-22-198) was withdrawn on August 31, 2023, these changes have been made. The resulting changes are:

#### **Section 1**

- Section 1.1.1 – Remove the 56 acres for Centerra West; and
- Section 1.2.1 and General Condition 12 – Remove the 650 dwelling units for Centerra West.

#### **Section 4**

- Section 4.1 – Remove the 56 acres for Centerra West;
- Section 4.2.2 – Remove the 650 dwelling units for Centerra West;

- Section 4.2.2, Special Condition Nos. 9 and 11, – Remove reference to Subparcel C-3 (Centerra West);
- Section 4.4.2 – Remove reference to Boyd Lake;
- Section 4.5 – Remove reference to the Environmentally Sensitive Areas report for Subparcel C-3 (Centerra West); and
- Special Condition Nos. 23 and 29 – Remove the required improvements that were specific to Subparcel C-3 (Centerra West).

#### Section 11

- Remove Subparcel C-3 (Centerra West) from all maps and land use tables.

#### Section 15

- Remove the 11<sup>th</sup> Millennium GDP Amendment (PZ-196, -197, and -198) from the amendment history.

#### Annexation and Development Agreement Amendment

- Delete vested rights for Subparcel C-3 (Centerra West);
- Remove reference to the Fourth Amendment; and
- Remove Subparcel C-3 (Centerra West) from the legal description.

#### Environmental Fees Agreement Amendment

- Delete reference to Subparcel C-3 (Centerra West);
- Remove reference to the Sixth Amendment; and
- Remove Subparcel C-3 (Centerra West) from the legal description.

#### Analysis

The remainder of this letter will discuss how the Applications satisfy the applicable criteria for approved provided in the Code and the Create Loveland Comprehensive Plan (the “**Comprehensive Plan**”).

I. **Millennium GDP**

As noted above, McWhinney has identified several substantive issues and minor revisions that would be beneficial to the Millennium GDP. Following is a summary of applicable revisions.

- **Early Building Permits.** McWhinney and the City both see a need to clarify when early building permits may be granted for commercial developments, what criteria apply and how the process will work. Proposed revisions, mostly in Section 12 of the Millennium GDP, are intended to clarify and simplify this process, so that these permits can quickly be issued where appropriate.
- **Interaction Between the GDP and City Documents.** Although the Millennium GDP has always provided that the GDP controls in the case of a conflict, several situations have arisen in which a difference of interpretation about what constitutes a conflict has delayed or complicated resolution of the issues. Several suggested clarifications, mostly in Section 12, propose to more clearly define what constitutes a conflict or inconsistency between the Millennium GDP, the Code, and the Loveland Municipal Code, and how such conflicts should be handled, especially when one document is silent on a specific issue in question.
- **Role of Centerra DRC.** Similarly, there is significant overlap between the Centerra Design Review Committee (the “**Centerra DRC**”)’s review of applications and the City’s Planning Department review, which can result in lengthier reviews. Several proposed revisions seek to clarify the role of the Centerra DRC and to document the role of the City staff representative to the Centerra DRC, so that the review process is more well-defined and streamlined.
- **Modification of Standards and Alternative Compliance.** In situations where an applicant wishes to deviate from the performance standards set forth in the Millennium GDP, the GDP Amendment proposes to clarify the review process, and the City and Centerra DRC’s role in approving the deviation.
- **Use Transfer.** Given the dramatic fluctuations in market demand in recent years, the GDP Amendment also proposes a mechanism for converting proposed use areas from commercial uses to residential uses, and vice versa.
- **Timelines for City Review.** Although the Millennium GDP always provided that City review of development applications within Centerra should be expedited according to an agreed-upon set of timelines, these timelines were not incorporated into the Millennium GDP as an exhibit but more informally used. Also, the Millennium GDP did not specify the outcome in the event the timelines were not met. This draft proposes revisions to add specific timing information to Section 12.

- Completion Confirmation. Since the Millennium GDP was approved and development commenced, many required actions, such as mineral notice, land dedications, and construction of improvements, have been completed. This proposed GDP Amendment leaves in many of the original obligations, for historical record keeping purposes, but adds a statement of what has been completed or partially completed where that is the case.
- Definitional Changes. Where necessary or convenient to support or illuminate the substantive revisions, new definitions have been added. Some existing definitions have also been clarified. Similarly, defined terms throughout the different sections of the Millennium GDP have been revised for internal consistency.
- References. References to the Code and the Loveland Municipal Code have been revised to match the appropriate sections.
- Formatting. Internal formatting in tables of contents, numbering, tables, headers and footers, has been updated for consistency.

The Millennium GDP meets all the relevant standards for rezoning in Section 18.17.09.01 of the Code and for a PUD zoning document in Section 18.17.08.07.G of the Code, to the extent applicable. What follows is an analysis of how the GDP Amendment complies with the applicable Code criteria.

- A. *The GDP Amendment Will Not Reduce the Level of Protection for Significant Natural Resources on the Subject Property or Expose Additional People or Personal Property to Unmitigated Natural Hazards.*

As shown by the reports accompanying the Applications, no negative changes to natural resources on the Property will be caused by the GDP Amendment. Nor will the GDP Amendment expose people or personal property to unmitigated natural hazards on the Property. Rather, the GDP Amendment will facilitate a master planned community that has been painstakingly designed by McWhinney to protect natural resources, residents, and personal property throughout the Property.

It is also worth noting that the ancillary agreements, such as the Development Agreement Amendment and Environmental Fees Agreement Amendment, will also ensure that natural resources, residents, and personal property are adequately protected. Therefore, the GDP Amendment satisfies this criterion.

B. *The GDP Amendment Satisfies the Criteria Related to Plan Consistency and Public Benefits.*

1. The Proposed Zone, as Applied to the Subject Property, is Consistent with its Land Use Designation in the Comprehensive Plan or an Amendment to the Comprehensive Plan is Approved in Accordance with Section 4 of the Comprehensive Plan Prior to the Approval of the Rezoning Application.

The GDP Amendment and the resulting development is consistent with and will further several policies and goals in the Comprehensive Plan, including but limited to:

- Create convenient, safe and diverse physical activity opportunities by connections into the city-wide trail system, active and passive recreation amenities and access to the east to the High Plains School and ball fields;
- Protect and maintain environmental resources and quality by incorporating environmentally sensitive area setbacks and including the High Plains Environmental Center provisions for building permit fees and services and programs;
- Plan a safe, efficient, coordinated and convenient multimodal transportation system by incorporating a number of pedestrian and bicycle-friendly improvements on the Property, as well as developing an integrated roadway system, incorporated with existing roadways in the area;
- Provide infrastructure to make walking and bicycling convenient and viable for all types of trips and for all ages, abilities, and income levels;
- Encourage development of diverse housing types and complete neighborhoods by incorporating a variety of building types, such as apartments, condominiums, townhomes, duplexes, cluster homes and single family detached homes;
- Align new housing development with resident needs and community values by creating a premier development that incorporates a variety of amenities and community-building elements, such as access to the High Plains Environmental Center, High Plains School, city trails as well as Centerra trails;
- Promote integration of housing in commercial and employment centers by constructing residential uses in close proximity to existing commercial development directly south along the Hwy 34 corridor; and

- Encourage a pattern of compact and contiguous development by developing vacant property that is surrounded by existing developments on three sides.

*Comprehensive Plan, Ch. 1, p. 11.; Ch. 2, pp. 2-4.*

Additionally, approval of the GDP Amendment will ensure that the Millennium GDP continues to guide creative and imaginative development with a keen eye towards the interplay between development and the environment, which will in turn continue to attract new residents and businesses, and will help the City fulfill its vision of creating a vibrant community surrounded by natural beauty “where you belong.” *Comprehensive Plan, Ch. 1, p. 1.* Therefore, the GDP Amendment satisfies this criterion.

2. Rezoning to the Proposed Zone will Provide a Benefit to the Community or Immediate Area that Cannot be Provided under the Existing Zone, and the Balance Between the Anticipated Benefit, if any, and the Anticipated Burden on the Community or Immediate Area, if any, is Either Neutral or Favors the Rezoning.

The GDP Amendment will undoubtedly benefit the immediate area and the City for many reasons. First, it will clarify some ambiguities currently present in the Millennium GDP, incorporating a variety of important topics identified by the Developer and City Staff. Second, the GDP Amendment will better allow McWhinney to construct a premier development with numerous improvements, such as trails and open space, that benefit the immediate area. Third, the GDP Amendment will benefit the entire community by creating a development that attracts new residents and retailers to the City. Fourth, the cohesive development of approximately 3,000 acres permitted by the GDP Amendment confers a substantial benefit to the City by preventing piecemeal development of the Property and ensuring that the properties are developed pursuant to the high-quality design standards set forth in the GDP Amendment. Finally, the GDP Amendment has been crafted to establish robust performance standards that result in a highly creative and imaginative development that includes a number of unique features and amenities above and beyond that in the Millennium GDP. Therefore, the GDP Amendment satisfies this criterion.

3. The Proposed Zone Would not Cause an I Zone to Share a Boundary with an ER, R1e, R1, R2, R3e, or R3 Zone, Unless There is Sufficient Land Area on the Subject Property to Provide a Buffer, as Set out in Division 18.08.03, Standards for Bufferyards, and a Development Agreement is Approved to Mitigate Use Incompatibilities with Fencing, Walls, Landscaping, Noise and Lighting Restrictions, or Other Appropriate Techniques.

This criterion does not apply to the GDP Amendment because the amendment will not cause an industrially-zoned property to share a boundary with any properties with one of the zoning designations referenced in Section 18.17.09.01.C.3 of the Code.

4. Adequate Community Facilities are Available to Serve Development in the Proposed Zone in Accordance with Section 18.15.02.05, Determination Regarding Adequacy; or the Proposed Zone Would Limit Demands upon Community Facilities More than the Existing Zone; or Reasonable Assurances are Provided that Adequate Community Facilities will be Made Available to Serve New Development by the Time the New Development Places Demands on the Facilities.

The GDP Amendment and related documents ensure that the Property will include adequate community facilities. This is something that McWhinney intentionally included in the Millennium GDP and intends to carry over in the GDP Amendment. Moreover, the Development Agreement Amendment also addresses several other community facilities. Therefore, the GDP Amendment satisfies this criterion.

C. *The GDP Amendment Meets the Following Additional Criterion in Section 18.17.09.01.D of the Code.*

1. The Proposed Zone is More Appropriate than the Existing Zone to Implement an Adopted or Approved Current City Plan that was Developed with Public Input (e.g., the Comprehensive Plan, the Highway 287 Strategic Plan, etc.)

Although the GDP Amendment is substantially similar to the Millennium GDP, it is more appropriate than the Millennium GDP because of the number of beneficial changes McWhinney has made via the GDP Amendment. Because these changes will make the Millennium GDP better, the GDP Amendment will more effectively implement many key policies in the Comprehensive Plan, which are discussed in depth above in Section I.B.1. In short, approval of the GDP Amendment will allow McWhinney to develop the Property to promote cohesive and well-orchestrated economical and efficient land uses, with important updates based on McWhinney's decades of experience and input from numerous members of City Staff. Therefore, the GDP Amendment satisfies this criterion.



D. *The GDP Amendment Also Complies with the Standards set Forth in Section 18.17.08.07.G of the Code.*

In addition to meeting the criteria for rezoning, the Millennium GDP, as amended, complies with all the standards set forth in Section 18.17.08.G of the Code. As discussed above in Section I.C.1, the Millennium GDP and GDP Amendment are consistent with the policies and goals of the Comprehensive Plan. *Code, § 18.17.08.07.G.1*. Additionally, the mixture of residential uses envisioned by the amended Millennium GDP promotes an economical and efficient use of land that is harmonious, will facilitate a project that assists in the implementation of adopted City plans, and the inclusion of additional property into the development addresses a unique situation in the City in that the size of the development which will prevent piecemeal, a substantial benefit to the City. *Code, § 18.17.08.07.G.2.a*.

Moreover, the Millennium GDP, as amended, complies with all applicable City standards, except to the extent modified by the Millennium GDP; the amended Millennium GDP is connected with adjacent development through street connections, sidewalks, trails, multi-use pathways and other similar features; the numerous safeguards and guardrails incorporated throughout the Millennium GDP and ancillary agreements ensure that there will be no significant adverse impacts on adjacent properties or the general community; sufficient services, such as public safety, transportation, and utilities will be available as the 3,000 acres are developed, and in fact, the development will help generate revenue for these important items; and other techniques in the Code would not be able to accomplish the same development as what will be permitted by the Millennium GDP. *Code, § 18.17.08.07.G*. Therefore, the Millennium GDP, as amended satisfy the standards for zoning documents in the Code.

## II. **Development Agreement Amendment: Vested Rights**

As you know, the City has previously approved McWhinney's requests for vested rights for Centerra, as a result of the unique characteristics of the project – namely, the large size of the development and expected 25-year buildout. Throughout the years, as McWhinney has purchased more property, each parcel has been annexed and zoned into the Millennium GDP with additional extensions of vested rights. Centerra is almost 30% built out after more than twenty-five years of development with much more development to happen in the next twenty-five years. In light of the changes proposed by McWhinney in the Applications, McWhinney is requesting an extension of the existing period of vested rights for the Property, to expire on December 31, 2048, to make the period of vested rights consistent throughout all of the GDP. This request satisfies the criteria in Section 18.14.03.15.E of the Code.

First, the extended vested rights period for the Property is necessary for development of the GDP because the development is approximately 3,000 acres in size and will be completed in multiple phases, and therefore cannot reasonably be completed within three years. *Code, § 18.14.03.15.E.2.a*.

Second, as we have seen with the unprecedented impact of COVID-19 on the housing market and the recent increases in the federal reserve interest rate, McWhinney's ability to develop the GDP is highly sensitive to local, regional, state, and national economic cycles. Therefore, the longer period of vested rights will ensure that McWhinney has the flexibility to respond to economic cycles while still developing a high-quality project that benefits the City. *Code, § 18.14.03.15.E.2.b.*

Third, because the GDP is much larger than many developments in the City, a longer period for development is necessary to ensure that the City and indeed the northern Colorado market can adequately absorb the sale and leasing of residential homes and retail pads. *Code, § 18.14.03.15.E.2.c.*

Fourth, as discussed above in Section I.B.1, development of the GDP furthers a number of policy goals in the Comprehensive Plan. Therefore, by approving the Development Agreement Amendment, the City will be facilitating a project that is not only consistent with, but advances many of the City's stated objectives for future growth and development. *Code, § 18.14.03.15.E.2.d.*

Fifth, as you may know, McWhinney has incorporated a number of unique public amenities into the GDP, such as hundreds of acres of open space and trails owned by High Plains Environmental Center, restored and newly created valuable wetland habitat, diverse ecosystems in newly constructed drainage and detention ponds, lakes, and park spaces; and the Chapungu Sculpture Park. McWhinney's ability to provide these unique types of amenities and community services is directly contingent upon City Council's approval of vested rights. Without vested rights, the required development schedule needed to complete the project within three years would not only be impossible to meet, McWhinney would not have the resources to provide similar amenities and benefits that enhance the GDP and the overall attractiveness of the community. *Code, § 18.14.03.15.E.2.e.*

Sixth, the scale of Centerra will provide a considerable public financial benefit to the City by building tax base in the form of new residents, attracting and growing local businesses, and encouraging retailers to locate in the City. The granting extension of vested rights for the Property is a key element of this. Additionally, the extended vested rights period for the Property ensures that all costs for operation and maintenance of new public amenities or infrastructure dedicated to the City are incurred in a measured way, spread over a number of years, rather than imposed within a three-year period. *Code, § 18.14.03.15.E.2.f.*

Seventh, the vested rights extension for the Property is entirely consistent with what the City has previously approved for the GDP. The Millennium GDP was extensively negotiated by the City and McWhinney to permit a more creative and imaginative development than permitted under conventional zoning regulations, and to preserve the City's ability to apply future regulations relating to public infrastructure, public services, public facilities, and to meet evolving community needs. *Code, § 18.14.03.15.E.2.g.*

Eighth, as discussed throughout this letter, the GDP Amendment is necessary to update the Millennium GDP relating to the issues discussed above. The extension of vested rights for the Property is similarly necessary. It will ensure that McWhinney can complete the GDP and construct a preeminent development in northern Colorado in such a way that supports and furthers numerous Comprehensive Plan goals. *Code, § 18.14.03.15.E.2.h.*

Finally, it is worth noting that by approving the extension of vested rights for the Property, the City can ensure that the entirety of the Property will be subject to a single deadline for vested rights, which will greatly simplify the monitoring of the vesting period for the different properties for all parties. *Code, § 18.14.03.15.E.2.i.*

III. **Environmental Fees Agreement Amendment**

McWhinney is also requesting approval of the Environmental Fees Agreement Amendment. This amendment, based upon existing amendments to the Agreement Regarding Environmental Fees, will subject the Property to the terms and conditions of the Agreement Regarding Environmental Fees. Therefore, once the City has approved the Environmental Fees Agreement Amendment, the corresponding environmental fees will be paid for the construction of any residential or non-residential development, as designated in the Millennium GDP.

**CONCLUSION**

As summarized in this letter, the Applications satisfy the applicable criteria for approval in the Code and the Comprehensive Plan. Therefore, McWhinney respectfully requests approval of the Applications, and looks forward to continuing to collaborate with the City to partner with the City to develop the preeminent mixed-use development in northern Colorado. Thank you for your consideration.

Sincerely,



Kate J. Madden