

**APPROVAL OF THIS PLAN OR AGREEMENT CONSTITUTES A VESTED
PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, C.R.S., AS
AMENDED, AND SECTION 18.14.03.15 OF THE LOVELAND UNIFIED
DEVELOPMENT CODE AS AMENDED,
SUBJECT TO ALL THE TERMS, CONDITIONS AND
LIMITATIONS HEREOF AND SUBJECT TO THE
PROVISIONS OF SUCH CITY OF
LOVELAND UNIFIED DEVELOPMENT CODE CHAPTER 18.14
THE EFFECTIVE DATE OF THIS VESTED
PROPERTY RIGHT IS
_____, 20__**

**FOURTH AMENDMENT TO THE
AMENDED AND RESTATED ANNEXATION
AND DEVELOPMENT AGREEMENT
FOR THE MILLENNIUM GENERAL DEVELOPMENT PLAN**

This Fourth Amendment to the Amended and Restated Annexation and Development Agreement for the Millennium General Development Plan (“**Forth Amendment**”) is entered into as of the ___ day of _____, 20__ by and among the CITY OF LOVELAND, COLORADO, a home rule municipality (“**City**”); and MCWHINNEY REAL ESTATE SERVICES, LLC, a Colorado limited liability company f/k/a McWhinney Real Estate Services, Inc., a Colorado corporation (“**Developer**”).

For and in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby confessed and acknowledged, the parties agree as follows:

**SECTION 1
DEFINITIONS**

Unless the context clearly indicates otherwise, the following terms when used in this Fourth Amendment and capitalized, shall have the meaning given in this Section 1. Capitalized terms which are not defined herein shall have the meaning given in Section 1 of the Restated Agreement.

1.1 **Centerra South MFA:** The Master Financing and Intergovernmental Agreement (Centerra South) by and among Centerra South Development, Inc., the CPW Properties Owner, VDW Properties, LLC, the City, and the Loveland Urban Renewal Authority, dated June 8, 2023, as may be amended and on file with the City.

1.2 **Code:** The City of Loveland Unified Development Code.

1.3
which Final Approval has occurred.

Effective Date: The date upon

1.4
Eleventh GDP Amendment:
The 11th Major Amendment to the Millennium GDP approved by Ordinance No. [REDACTED] effective [REDACTED], 20[REDACTED], for the purposes of: (i) facilitating the development of Subparcel B-13; and (ii) granting certain vested rights for the Millennium GDP Property.

1.5
Fourth Amendment: This Fourth Amendment to the Amended and Restated Annexation and Development Agreement for the Millennium GDP, together with all exhibits thereto, and any approved amendments, modifications or restatements thereof. References to sections or exhibits are to this Fourth Amendment unless otherwise qualified.

1.6
Final Approval: The date of the later of the following two actions: (i) the Developer and the City have mutually executed and delivered this Fourth Amendment; and (ii) the effective date of the 20[REDACTED] Ordinances.

1.7
Subparcel: A defined portion of Parcel A, B, C or D as defined in the Millennium GDP, which may also be referred to as a portion of a "Parcel" as defined in the Millennium GDP. The Millennium GDP Property is legally described and depicted on Exhibits A-1 and A-2 attached hereto and incorporated herein by this reference.

1.8
20[REDACTED] Ordinances: The ordinances of the City Council approving: (i) this Fourth Amendment; (ii) the Eleventh GDP Amendment; and (iii) creating certain vested property rights for the Eleventh GDP Amendment, with conditions acceptable to the Developer and the City.

SECTION 2 RECITALS

2.1
The City and the Developer are parties, among others, to the Restated Agreement which was approved by Ordinance Nos. 5094 and 5096 of the City Council, effective July 11, 2006 and recorded in the Larimer County Records on July 11, 2006, at Reception No. 2006-0051709.

2.2
The City and the Developer are parties to the First Amendment which was approved by Ordinance No. 5333 of the City Council, effective July 15, 2008 and recorded in the Larimer County Records on September 23, 2008, at Reception No. 20080060421.

2.3
The City and the Developer are parties to the Second Amendment which was approved by Ordinance No. 5417 of the City Council, effective May 19, 2009 and recorded in the Larimer County Records on June 3, 2009, at Reception No. 20090035948.

2.4 The City and the Developer are parties, among others, to the Third Amendment which was approved by Ordinance No. 6190 of the City Council, effective April 13, 2018 and recorded in the Larimer County Records on April 16, 2018, at Reception No. 20180022018.

2.5 An application has been filed with the City for the Eleventh GDP Amendment for the purposes, among other things, of revising certain sections of the Millennium GDP; and granting an extension of the term of vested property rights for the Millennium GDP Property.

2.6 The City and the Developer desire to amend the Restated Agreement and the Millennium GDP to extend the term of vested property rights for the Millennium GDP Property.

2.7 The Restated Agreement provided that any amendments thereto shall only be by the consent in writing of the City and Developer, and those third parties, if any, which have been granted the right to consent by the Developer; however, the Developer has not granted to any third party such right to consent.

2.8 The Restated Agreement further provided that any amendments thereto would require the consent of McStain in the event that McStain continued to own any of the McStain Property and that such property was affected by the amendment. McStain no longer owns any of the McStain Property and the right to consent was not extended to McStain's successor in title, therefore, neither the consent of McStain nor its successor is required for amendments to the Restated Agreement.

2.9 The parties agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the City by this Fourth Amendment and the Millennium GDP, the City recognizing and reciting that such matters are necessary to protect, promote and enhance the public health, safety and welfare.

SECTION 3 RESTATED AGREEMENT, FIRST AMENDMENT, SECOND AMENDMENT, THIRD AMENDMENT

The parties agree that all sections of this Fourth Amendment, with the exception of Section [5.2 and Section 6](#), are additions to the Restated Agreement which do not supersede or replace any section in the Restated Agreement, the First Amendment, the Second Amendment, or the Third Amendment. Therefore, except as hereinafter set forth in Section [5.2 and Section 6](#) below, all other provisions, terms and conditions of the Restated Agreement, the First Amendment, the Second Amendment, and the Third Amendment, shall remain in full force and effect and apply to the Fourth Amendment.

SECTION 4 AMENDMENT OF THE MILLENNIUM GDP

4.1 Conditions Precedent.
Amendment of the Millennium GDP in accordance with this Fourth Amendment shall not be effective until Final Approval.

4.2 Regulatory
Procedures/Performance Standards/General Conditions/Special Conditions. The Regulatory Procedures, the Performance Standards, the General Conditions and the Special Conditions of the Millennium GDP shall be applied, as applicable, to the Millennium GDP Property and shall expressly supersede and modify any City guideline, plan, administrative procedure, policy, requirement or Code provision which is in conflict or inconsistent therewith.

4.3 Compliance with the Millennium
GDP. Any application for development of property within the Millennium GDP Property submitted to the City after Final Approval shall comply with the terms and conditions of the Millennium GDP.

4.4 Chapter 18 Modifications.
Chapter 18.17 of the Code permits modifications of any regulation or requirement imposed by Chapter 18.17 (Planned Unit Development). The General Conditions, Special Conditions and all regulations and requirements set forth in this Fourth Amendment and the Millennium GDP, which are intended to govern development of property within the Millennium GDP Property, were approved by the City Council in its adoption of the [REDACTED] Ordinances as modifications to Chapter 18.17 of the Code, to the extent such regulations and requirements are inconsistent or in conflict with such provisions of Chapter 18.17.

SECTION 5 VESTED PROPERTY RIGHTS

- 5.1 Vesting of Property Rights.
- (a) The Developer represents that a material consideration of the Eleventh GDP Amendment, and the development of the Millennium GDP Property under the Millennium GDP, is the City's agreement to permit development of such properties in accordance with the terms and conditions of this Fourth Amendment and particularly the vested property rights granted herein.
- (b) The Developer and the City agree that this Fourth Amendment and the Eleventh GDP Amendment each constitute an approved "site specific development plan" as defined in the Vested Property Rights Statute and the Code, and that pursuant to the Code, the Developer and its successors and assigns shall have vested property rights to undertake and complete the development and use of the Millennium GDP Property under the terms and conditions of the Fourth Amendment and the Millennium GDP as it applies to the Millennium GDP Property, provided that the requirements of Chapter 18.14 of the Code have been met.
- (c) The Fourth Amendment and the Eleventh GDP Amendment, as site specific development plans creating vested property rights,

shall each be adopted legislatively and be subject to the right of referendum as provided in the Vested Rights Statute.

(d) In consideration of the Developer's representations, the public benefit to be derived from the development of the Millennium GDP Property and the obligations and commitments of the Developer pursuant to this Fourth Amendment, the vested property rights granted to the Developer shall specifically include the City's express agreement, as a material term hereof, that the City will take no action which would unilaterally: (a) change any term or condition of this Fourth Amendment; (b) impose a moratorium or otherwise materially delay the development of the Millennium GDP Property; or (c) limit the number of building or utility permits to which the Developer would otherwise be entitled under this Fourth Amendment.

(e) The Developer acknowledges that Section 18.14.03.15 of the Code and Section 24-68-105 of the Vested Rights Statute contain certain exceptions to vested property rights and agrees that such exceptions shall apply to those vested property rights granted herein which are based on Section 18.14.03.15 of the Code or the Vested Rights Statute.

5.2 Terms of Extended Vested Property Rights. The term of the vested property rights granted herein for [Parcel B of the Millennium GDP Property](#) shall commence on the Effective Date and continue until December 31, 2050 (the "**Vested Rights Termination Date**"). Such parcels and the date of expiration of vested property rights is summarized and depicted on **Exhibit N-1**, attached hereto and incorporated herein by this reference.

The extended vesting is granted pursuant to Section 24-68-104 of the Vested Rights Statute which authorizes local governments to enter into development agreements granting vested property rights for a period exceeding three (3) years where warranted in light of all relevant circumstances. The parties agree that the extended vesting herein granted is warranted in view of the following factors: (1) the large size of [Parcel B of the Millennium GDP Property](#); (2) the Developer's significant investment in public infrastructure improvements; (3) the mixed-use nature of [Parcel B of the Millennium GDP](#); (4) the anticipated minimum of an additional overall build-out of [Parcel B of the Millennium GDP Property](#) in multiple phases; and (5) expected changes in economic cycles and market conditions over the remainder of the overall build-out period.

5.3 Compliance with Applicable Land Use Approvals. Nothing in this Section 5 shall exempt the Millennium GDP Property from subsequent reviews and approvals by the City to ensure compliance with this Fourth Amendment, applicable provisions of the Restated Agreement, the First Amendment, the Second Amendment and the Third Amendment and the terms and conditions of such project's applicable City land use approvals.

5.4 Compliance with General Regulations. The establishment of the rights vested under this Fourth Amendment shall not preclude the application by the City of building, fire, plumbing, engineering, electrical and

mechanical codes or other similar technical codes and standards of the City, as all of the foregoing exist on the date of this Fourth Amendment may be enacted or amended after the date hereof. The Developer does not waive its rights to oppose adoption of any such regulations.

5.5 Timing of Development. In recognition of the size and complexity of the Millennium GDP, the time required to complete development, the need for development to proceed in phases and the possible impact of economic conditions and economic cycles and varying market conditions during the course of development, the Developer shall have the right to develop the Millennium GDP Property in such order, at such rate and at such time as the market dictates within the structure of this Fourth Amendment.

5.6 Disconnection Remedy. In addition to all other remedies set forth in this Fourth Amendment, in the event that the City, either by City Council or by initiative or referendum, takes any action, unless mandated by State or Federal law, which would materially alter, impair, prevent or diminish the Developer's vested property rights as described in this Section 5, the Developer, at its sole discretion and, to the extent permitted by law, shall have the option to disconnect all or any part of the Millennium GDP Property from the City except as limited herein below. In such event, the City agrees to act in good faith to accomplish such disconnection as expeditiously as possible and further agrees, upon request of the Developer, and to the extent legally permissible, to provide City utility service to the disconnected property to the extent that such service is reasonably available and on the same terms and conditions offered to other parties who are outside the City limits and are then receiving City utility service (without the need to annex the disconnected property). If the City does not act to disconnect in accordance herewith and court action is required, the City herein stipulates, provided the materiality requirement set forth hereinabove is met, that it consents to the disconnection for purposes of such court action, and without the imposition of any limitations on type and timing of land uses within the disconnected property other than those imposed by the governing jurisdiction. The provisions of this Section 5.6 shall be deemed notice to Larimer County under any applicable intergovernmental agreement with the City that, in the event of an action giving rise to a disconnection remedy as provided herein, the City does not desire or require the annexation of the disconnected property and that such property may be developed in the County pursuant to County land use requirements for the same.

In the event of any disconnection as permitted hereinabove, the following limitations shall apply:

(a) Individual development projects within the Millennium GDP Property which have been fully built out shall not be included in any disconnection of the property set forth above;

(b) Individual development projects within the Millennium GDP Property which the City has determined in its sole discretion that common law vesting has been established (so that full build-out of such project may proceed without regard to later zoning, land use, moratorium or building permit limitation action taken by the City Council or by citizen initiative or referendum) shall not be included in any disconnection of the property set forth above; and

(c) In the event of an action by the City which would give rise to the disconnection remedy set forth herein, the Developer shall give the City at least 60 days written notice of such default and its intention to seek disconnection, and the City shall have a right to cure the default during such period.

SECTION 6
AMENDMENTS WHICH ~~SUBSTITUTE AND SUPERSEDE~~
PROVISIONS OF THE RESTATED AGREEMENT
PROVISIONS OF THE RESTATED AGREEMENT

The parties agree that the following amendments shall supersede ~~and replace~~ certain sections, subsections and exhibits of the Restated Agreement as follows:

6.1 Section 7.2 of the Restated Agreement, as amended, shall be amended and superseded ~~in its entirety~~ by Section 5.2 of this Fourth Amendment with respect to Parcel B of the Millennium GDP Property only.

6.2 Exhibit N-1 to the Restated Agreement ~~containing the depiction of the parcels within the Millennium GDP and the termination dates of the vested property rights for each parcel or portion of a parcel, as previously replaced and superseded in its entirety by Exhibit N-1 to the Third Amendment, shall be replaced,~~ as amended, shall be amended and superseded ~~in its entirety~~ by **Exhibit N-1** attached hereto with respect to Parcel B of the Millennium GDP Property only.

6.3 Exhibit N-2 to the Restated Agreement ~~containing, as amended, shall be amended to delete~~ the termination dates of the vested property rights for each parcel or portion of a parcel within Parcel B of the Millennium GDP, as previously replaced and superseded in its entirety by Property only. For avoidance of doubt, (i) the vested rights for Parcels A, C, and D of the Millennium GDP Property shall remain as set forth on Exhibit N-2 attached to the Third Restated Amendment, shall be deleted in its entirety and (ii) the vested rights for Parcel B shall be set forth in Section 5.2 and depicted on Exhibit N-1 attached hereto.

SECTION 7
ADEQUATE COMMUNITY FACILITIES

7.1 Compliance. Other than the exceptions to the ACF Regulations set forth in the General Conditions, the Special Conditions and the Restated Agreement, all development projects within the Millennium GDP Property shall comply with the ACF Regulations.

7.2 Exceptions to the ACF Regulations. Section 18.15 of the Code permits the City Council in its discretion to grant exceptions to the requirements and regulations of Title 18 upon certain findings, including extraordinary commercial benefit which may result from a proposed project. In recognition thereof, the City Council, by adoption of the Ordinances, has approved as exceptions to Title 18, the provisions of this Fourth Amendment which are inconsistent or in conflict with the

provisions of Title 18 including, but not limited to, the exceptions to the ACF Regulations described in the Millennium GDP.

7.3 Vested Property Rights. Nothing in Section 5 above (Vested Property Rights) shall be construed to relieve the development projects within the Millennium GDP Property from the requirement to comply with the ACF Regulations with the exceptions thereto as described in Subsection 7.1 hereof.

SECTION 8 OTHER AGREEMENTS

8.1 PVH Agreement/MFA. Nothing in this Fourth Amendment or the Millennium GDP as it applies to the Millennium GDP Property shall be construed as amending or superseding any provision of the PVH Agreement or the MFA or Centerra South MFA, as applicable, and they shall remain in full force and effect and continue to bind the parties thereto throughout their terms. In the event of a conflict between one or more provisions of this Fourth Amendment or the Millennium GDP as it applies to the Millennium GDP Property and one or more provisions of either the PVH Agreement or the MFA or Centerra South MFA, as applicable, the provision or provisions of the PVH Agreement or those of the MFA or Centerra South MFA, as applicable, shall control.

8.2 Non-City Agreements. The parties to this Fourth Amendment acknowledge that there are a number of Non-City Agreements. The parties hereto expressly acknowledge that this Fourth Amendment is not intended, and shall not be construed, to alter, modify, amend or otherwise affect the obligations set forth in the Non-City Agreements.

8.3 City Agreements. In addition to the PVH Agreement and the MFA and Centerra South MFA, as applicable, a number of project-specific agreements have been executed by the City and various developers of properties within the Millennium GDP including, without limitation, development, easement and reimbursement agreements. With the exception of the Superseded Documents, nothing in this Fourth Amendment is intended, nor shall be construed, to alter, modify, amend or otherwise affect such agreements, nor shall the Developer become liable for any obligations under such agreements except as expressly set forth herein or in such agreements.

SECTION 9 REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties by the City. The City represents and warrants, as of the date of execution of this Fourth Amendment, the following:

(a) The City is a Colorado home-rule municipality and has the power to enter into, and has taken all actions to date required to authorize, this Fourth Amendment and to carry out its obligations hereunder;

(b) The City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Fourth Amendment that has not been disclosed in writing to the Developer;

(c) The execution and delivery of this Fourth Amendment and the documents required hereunder and the consummation of the transactions contemplated by this Fourth Amendment will not conflict with or contravene any law, order, rule or regulation applicable to the City or to the City's governing documents;

(d) This Fourth Amendment constitutes a valid and binding obligation of the City, enforceable according to its terms, except to the extent any monetary obligations hereunder may be limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. In accordance with Section 15.7 of the Restated Agreement, the City will defend the validity of this Fourth Amendment in the event of any litigation arising hereunder that names the City as a party or which challenges the authority of the City to enter into or perform its obligations hereunder. Should the foregoing representations and warranties of the City prove to be inaccurate, in whole or in part, any such inaccuracy shall constitute a material default or breach by the City under this Fourth Amendment. However, damages for such default shall be limited to those amounts for which the City would have been liable under this Fourth Amendment had this Fourth Amendment been valid and binding as represented and warranted by the City. The City recognizes that the Developer intends to commence construction and expend substantial monies in reliance upon the accuracy of the representations and warranties of the City as set forth in this Section 9.1.

9.2 Representations and Warranties by the Developer. The Developer represents and warrants, as of the date of execution of this Fourth Amendment, the following:

(a) The Developer is duly organized, validly existing and in good standing under the laws of the State of Colorado and qualified to do business in the State of Colorado and has the legal capacity and the authority to enter into and perform its obligations under this Fourth Amendment;

(b) The execution and delivery of this Fourth Amendment and the performance and observance of the terms, conditions, and obligations therein have been duly and validly authorized by all necessary action on its part to make this Fourth Amendment and such performance and observance valid and binding upon the Developer;

(c) The execution and delivery of this Fourth Amendment and the documents required hereunder and the consummation of the transactions contemplated by this Fourth Amendment will not conflict with or contravene any law, order, rule or regulation applicable to the Developer or to the Developer's governing documents;

(d) The Developer knows of no litigation, proceeding or investigation, or threat of any of the same, contesting the powers of the City, the Developer or any of its principals or officials with respect to this Fourth Amendment that has not been disclosed in writing to the City; and

(e) This Fourth Amendment constitutes a valid and binding obligation of the Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights.

SECTION 10 MISCELLANEOUS

10.1 Amendment of Restated Amendment and Millennium GDP. Except as otherwise set forth herein, the Restated Amendment and the Millennium GDP may be amended, restated, extended and terminated only by an instrument signed in writing by both the City and the Developer. For the purposes of any such amendment, restatement, extension or termination, "Developer" shall mean only the signatory to the Restated Amendment constituting the Developer and those parties, if any, to whom such signatory, has specifically granted, in writing, the right to enter into any such amendment, restatement, extension or termination agreement, and written notice of such right has been given to the City by the Developer. The consent of any owner of property within the Millennium GDP Property shall not be required for any amendment, restatement, extension or termination of the Restated Amendment or the Millennium GDP. Nothing in this Section 10.1 shall be construed as granting to the Developer any right after the Effective Date to amend, modify, alter or otherwise affect any zoning or building permit, development plan, subdivision plat, development agreement, development condition or any other land use approval which has been, or in the future is, granted by the City in connection with any development project within the Millennium GDP Property in which the Developer is neither the owner nor applicant except for the exercise of rights of the Developer pursuant to the Restated Amendment to ensure that projects within the Millennium GDP comply with the provisions of the Restated Amendment and the Millennium GDP.

10.2 Exclusion of Property. In the event of a final judicial determination that the [REDACTED] Ordinances, this Fourth Amendment and/or the Millennium GDP have impermissibly subjected a third party owner's real property to the provisions of the Millennium GDP and/or this Fourth Amendment, the parties to this Fourth Amendment agree that the Developer shall have the right to amend the Millennium GDP and this Fourth Amendment to exclude therefrom any such property without affecting the validity and enforceability of any other provisions of such documents.

10.3 Applicable Law/Severability. This Fourth Amendment shall be construed in accordance with the laws of the State of Colorado. The parties to this Fourth Amendment recognize that there are legal restraints imposed upon the City by the constitution, statutes and laws of the State of Colorado, and that, subject to such restraints, the parties intend to carry out the terms and conditions of this Fourth Amendment. Whenever possible, each provision of this Fourth Amendment shall be interpreted in such a

manner as to be effective and valid under applicable law, but if any provision of this Fourth Amendment or any application thereof to a particular situation shall be held invalid by a court of competent jurisdiction, such provision or application thereof shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or any other provision of this Fourth Amendment. Provided, however, if any obligation of this Fourth Amendment is declared invalid, the party deprived of the benefit thereof, shall be entitled to an equitable adjustment in its corresponding obligations and/or benefits and, in that event, the Developer and the City agree to negotiate in good faith to accomplish such equitable adjustment.

10.4 Assignment. The Developer shall have the right, without the consent of any other party to this Fourth Amendment, to assign or transfer all or any portion of its interests, rights or obligations under this Fourth Amendment to any Affiliate of the Developer or to any third party acquiring an interest or estate in the Millennium GDP Property, including, but not limited to, purchasers or long-term ground lessees of individual lots, parcels or of any improvements now or hereafter located within the Millennium GDP Property. The express assumption of any of the Developer's obligations under this Fourth Amendment by its assignee or transferee shall thereby relieve the Developer of any further obligations under this Fourth Amendment with respect to the matter so assumed. The Developer shall give the City written notice of any such assignment or assumption.

10.5 Binding Effect. This Fourth Amendment shall be binding upon and, except as otherwise provided in this Fourth Amendment, shall inure to the benefit of the successors in interest, assigns and the legal representatives of the parties hereto.

10.6 City Findings. The City hereby finds and determines that approval of the [REDACTED] Ordinances and execution of this Fourth Amendment are in the best interests of the public health, safety and general welfare of the City. Pursuant to Chapter 18.14 of the Code, the City further finds that the Eleventh GDP Amendment constitutes a substantial change to the type and intensity of uses of the Millennium GDP and, therefore, determines that the term of the extended vested property rights granted herein shall commence on the Effective Date.

10.7 Conflicts. The terms, conditions and criteria set forth in the Fourth Amendment and the Millennium GDP, and applicable provisions of the First Amendment, the Second Amendment, the Third Amendment, and the Restated Agreement, shall govern the development of the Millennium GDP Property, and shall supersede any inconsistent or conflicting provisions of any City plan, guideline, administrative rule, resolution or ordinance (the “**City Regulations**”) as now enacted or hereafter amended. In the event of a conflict between this Fourth Amendment, the Third Amendment, the Second Amendment, the First Amendment, the Restated Agreement, and Millennium GDP which affects the Millennium GDP Property, the provisions of this Fourth Amendment shall control. Where this Fourth Amendment, the Third Amendment, the Second Amendment, the First Amendment, the Restated Agreement and the Millennium GDP do not address a specific subject, the applicable provisions of the City Regulations shall, to the extent such provisions are not inconsistent with any provision of this Fourth Amendment, the Third Amendment, the Second Amendment, the First Amendment, the Restated Agreement and the Millennium GDP, control

the development of the Millennium GDP Property. Without limiting the generality of the foregoing, approval of the Eleventh GDP Amendment expressly supersedes and modifies any inconsistent or conflicting provision of the City Regulations as applied to the Millennium GDP Property.

10.8 Cooperation in Defending Legal Challenges. If any legal or equitable action or other proceeding is commenced by a third party challenging the validity of the Eleventh GDP Amendment, the Developer and the City agree to cooperate in defending such action or proceeding. The Developer shall take the lead role in defending any such action, including, but not limited to, preparing all pleadings and other required documents, accomplishing any necessary service of process, generating necessary correspondence among the parties and paying 100% of both court filing fees and the costs of any expert witnesses, depositions, interrogatories, transcripts or other similar costs. Each party shall pay its own attorney fees.

Unless the City at its option decides to take a more active role in defending any such action or proceeding, the City and the Developer agree that the City's role therein shall be limited to the following:

(a) In the event of any legal action filed against the City in connection with the Eleventh GDP Amendment or any appeal filed by third parties in connection with such action, the review and signing of all pleadings and other documents reasonably required to defend such suit, including any appropriate counterclaims; and

(b) In the event the Developer decides to appeal any negative judicial decision in connection with the Fourth Amendment or the Eleventh GDP Amendment, to be named as an appellant along with the Developer and to review and sign all pleadings and other documents reasonably required in connection with such appeal.

Although it is the intent of this Section 10.8 that the City shall cooperate with the Developer in defending any legal proceeding so long as the Developer determines to continue such defense, in the event there is a controlling decision of the Supreme Court of the United States, Tenth Circuit Court of Appeals, Supreme Court of the State of Colorado, or Colorado Court of Appeals governing one or more of the issues raised in the legal proceeding which is adverse to the City's position, the City shall not be obligated to contest or continue the defense of such issue.

10.9 Counterparts. This Fourth Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

10.10 Covenants. The provisions of this Fourth Amendment shall constitute covenants and equitable servitudes which shall touch, attach to and run with the Millennium GDP Property.

10.11 Default/Remedies. In the event of a breach or default by the City or the Developer, as determined by a court of competent

jurisdiction, the non-breaching party shall be entitled to any and all remedies provided under this Fourth Amendment or available at law or equity, including actions for specific performance and injunctive relief.

10.12 Further Assurances. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Fourth Amendment in order to provide and secure to the other parties the full and complete enjoyment of their rights and privileges under this Fourth Amendment.

10.13 Good Faith. The parties shall act in good faith and shall not act arbitrarily or capriciously in the performance of their obligations under this Fourth Amendment.

10.14 Interpretation. The terms and provisions of this Fourth Amendment have been negotiated among the parties and shall not be construed in favor of or against the party primarily responsible for the drafting of this Fourth Amendment. Except as otherwise provided by law, to the extent that any of the terms or provisions of this Fourth Amendment may conflict with any current or future provision of the Code, the terms and provisions of this Fourth Amendment shall govern and shall be deemed to have superseded such provisions. To the full extent permitted by law, the provisions of the Code shall be applicable only as expressly provided in this Fourth Amendment to the extent such provisions are not in conflict with any of the terms or provisions of this Fourth Amendment.

10.15 Jurisdiction and Venue. The parties stipulate and agree that in the event of any dispute arising out of this Fourth Amendment, the courts of the State of Colorado shall have exclusive jurisdiction over such dispute and venue shall be proper in Larimer County. All parties hereby submit themselves to jurisdiction of the State District Court, 8th Judicial District, County of Larimer, State of Colorado.

10.16 Multi-Fiscal Year Obligations. To the extent that any of the obligations of the City contained in this Fourth Amendment are or should be considered multi-fiscal year obligations, such obligations shall be subject to annual appropriation by the City Council.

10.17 No Joint Venture or Partnership. Nothing contained in this Fourth Amendment shall be construed as making the Developer and the City joint venturers or partners.

10.18 Notices. Any notice required or desired to be given by either party to this Fourth Amendment shall be in writing and may be personally delivered; sent by certified mail, return receipt requested; sent by email with a hard copy sent by regular mail; or sent by a nationally recognized receipted overnight delivery service, including United States Postal Service, United Parcel Service, Federal Express, or Airborne Express, for earliest delivery the next day. Any such notice shall be deemed to have been given as follows: when personally delivered to the party to whom it is addressed; when mailed, three days after deposit in the United States mail, postage prepaid; when by email, on the day sent if

sent on a day during regular business hours (9 a.m. to 5 p.m.) of the recipient, otherwise on the next day at 9 a.m.; and when by overnight delivery service, one day after deposit in the custody of the delivery service. The addresses and email addresses of the mailing, transmitting, or delivering of notices shall be as follows:

If to City: City of Loveland
ATTN: City Manager
500 East Third Street
Loveland, CO 80537
Email: citymanagersoffice@cityofloveland.org

With a copy to: City of Loveland
ATTN: City Attorney
500 East Third Street
Loveland, CO 80537
Email: cityattorney@cityofloveland.org

If to Developer: McWhinney Real Estate Services, LLC
ATTN: EVP, General Counsel
1800 Wazee Street
Denver, CO 80202
Email: legalnotices@mcwhinney.com

With a copy to: Brownstein Hyatt Farber Schreck, LLP
675 15th Street, Suite 2900
Denver, Colorado 80202
Attention: Carolynne White
Email: cwhite@bhfs.com

Notice of a change of address or email of any party to this Fourth Amendment shall be given in the same manner as all other notices as hereinabove provided.

10.19 Recordation. The City shall record this Fourth Amendment in the Larimer County Records, and the Developer shall pay the cost of the same.

10.20 Third Party Beneficiaries. No rights created in favor of any party to this Fourth Amendment shall be construed as benefiting any person or entity that is not a party to this Fourth Amendment, except that all owners of property within the Millennium GDP Property are intended third party beneficiaries of this Fourth Amendment but only to the extent necessary to enforce the terms and provisions of the Millennium GDP as it applies to the Millennium GDP Property, and Section 5 of this Fourth Amendment (Vested Property Rights) as such terms and provisions are specifically applicable to the development of the Millennium GDP Property.

10.21 Time is of the Essence. Time is of the essence of each and every term, covenant, condition and provision of this Fourth Amendment.

10.22 Waiver. No waiver of one or more of the terms of this Fourth Amendment shall constitute a waiver of other terms. No waiver of any provision of this Fourth Amendment in any instance shall constitute a waiver of such provision in other instances.

10.23 Waiver of Defects. In executing this Fourth Amendment, the Developer waives all rights it may have concerning defects, if any, of the form or substance of this Fourth Amendment and the formalities whereby it is executed, concerning the power of the City to impose conditions on the Developer as set forth herein and concerning the procedure, substance and form of the [REDACTED] Ordinances. Similarly, the City waives all rights it may have concerning defects, if any, of the form or substance of this Fourth Amendment and the formalities whereby it is executed as well as defects, if any, concerning the procedure, substance and form of the [REDACTED] Ordinances.

[SIGNATURES ON FOLLOWING PAGES]

CITY:

CITY OF LOVELAND, COLORADO, a home rule
municipality

By: _____

Date: _____, 20__

ATTEST:

By: _____

APPROVED AS TO LEGAL FORM:

By: _____

DEVELOPER:

MCWHINNEY REAL ESTATE SERVICES, LLC,
a Colorado limited liability company f/k/a
McWhinney Real Estate Services, Inc., a Colorado
corporation

By: _____

Date: _____, 20__

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Fourth Amendment was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of McWhinney Real Estate Services, LLC, a Colorado limited liability company f/k/a McWhinney Real Estate Services, Inc., a Colorado corporation.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

Exhibit CA-1

Legal Description of the Millennium GDP Property

DESCRIPTION: GDP OVERALL EAST

A tract of land located in the South Half of Section 2, the Southeast Quarter of Section 3, the East Half of Section 10, the West Half of Section 11, the Northeast Quarter of Section 11 and the Northwest Quarter of Section 14 all in Township 5 North, Range 68 West of the 6th Principal Meridian, City of Loveland, State of Colorado being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 10 as bearing North 89°05'00" East and with all bearings contained herein relative thereto:

Commencing at the North Quarter corner of said Section 10; thence along said North line of the Northeast Quarter, North 89°05'00" East, 107.08 feet to the East right-of-way line of Interstate 25, said point being the POINT OF BEGINNING; thence along said East right-of-way line, North 00°35'04" East, 2,631.27 feet to the North line of the Southeast Quarter of said Section 3; thence along said North line, North 89°19'03" East, 2,566.66 feet to the West Quarter corner of said Section 2; thence along the North line of the Southwest Quarter of said Section 2, North 89°03'30" East, 2,643.82 feet to the Center Quarter corner of said Section 2; thence along the East line of said Southwest Quarter, South 01°13'28" West, 2625.29 feet to the North Quarter corner of said Section 11; thence, along the North line of the Northeast Quarter of said Section 11, North 89°08'13" East, 2,618.77 feet to the West line of Astrolabe Avenue (County Road 3); thence along said West line, South 00°27'50" West, 2,641.18 feet to the South line of the Northeast Quarter of said Section 11; thence along said South line, South 89°09'44" West, 2,613.31 feet to the Center Quarter corner of said Section 11; thence along the East line of the Southwest Quarter of said Section 11, South 00°20'46" West, 1926.24 feet to the Southwesterly line of the Union Pacific Railroad; thence along said Southwesterly line, North 68°08'51" West, 536.85 feet; thence continuing along said Southwesterly line and along a curve concave to the northeast having a central angle of 08°44'52" with a radius of 3,919.83 feet, an arc length of 598.47 feet and the chord of which bears North 63°46'25" West, 597.89 feet to a point being on the East line of Parcel B-2 of the Millennium Addition; thence along the East line of said Parcel B-2, South 00°20'17" West, 938.15 feet; thence along the North line of said Parcel B-2, South 88°14'17" East, 528.37 feet; thence along the East line of said Parcel B-2 and the East line of Parcel B-3 of said Millennium Addition, South 00°50'26" East, 76.28 feet; thence along the North line of Parcel B-4 of said Millennium Addition, South 89°03'44" East, 23.48 feet; thence along the East line of said Parcel B-4, South 00°20'17" West, 23.11 feet; thence, South 00°47'17" East, 180.91 feet to the South right-of-way line of East Eisenhower Boulevard (U.S. Highway 34); thence along said South right-of-way line, South 89°11'17" West, 2,158.63 feet; thence, North 00°00'00" East, 50.00 feet to the Southwest Corner of said Section 11; thence, along the West line of the Southwest Quarter of said Section 11, North 00°20'47" East, 130.00 feet to the North line of U.S. Highway 34; thence along said North line, South 89°13'08" West, 1,552.37 feet; thence along the Easterly right-of-way line of Interstate 25 the following 10 courses and distances; North 47°25'44" West, 197.70 feet; thence, South 89°09'42" West, 100.40 feet; thence, North 79°01'48" West, 292.40 feet; thence, North 48°50'18" West, 351.88 feet; thence, along a

non tangent curve concave to the northeast having a central angle of 50°42'44" with a radius of 586.70 feet, an arc length of 519.28 feet and the chord of which bears North 23°28'47" West, 502.50 feet; thence, North 00°10'40" East, 471.50 feet; thence, North 00°33'26" East, 451.62 feet; thence, North 00°35'10" East, 230.11 feet; thence, North 00°36'55" East, 457.83 feet; thence, North 00°35'04" East, 2,637.06 feet to the POINT OF BEGINNING.

The above described tract of land contains 1069.037 acres more or less and is subject to all easements and rights-of-way now on record or existing.

AND

DESCRIPTION: GDP OVERALL SOUTHWEST

All of Parcels E-1, E-2, F-1, F-2, F-3, G-1, G-2, and G-3, Millennium Addition located in Section 17, Township 5 North, Range 68 West of the 6th Principal Meridian, City of Loveland, County of Larimer, State of Colorado.

ALSO:

A tract of land being a portion of the right-of-way of East Eisenhower Boulevard located in Section 8 and Section 17, Township 5 North, Range 68 West of the 6th Principal Meridian, City of Loveland, County of Larimer, State of Colorado being more particularly described as follows:

Considering the North line of the Northwest Quarter of said Section 17 as bearing North 89°39'42" East and with all bearings contained herein relative thereto:

BEGINNING at the Northwest Quarter corner of said Section 17; thence along the West line of the Southwest Quarter of said Section 8, North 00°12'19" East, 114.00 feet to a point on the North right-of-way line of said East Eisenhower Boulevard; thence along said North line, South 89°54'15" East, 2332.62 feet; thence, departing said North line, South 00°05'45" West, 157.18 feet to a point on the South right-of-way line of said East Eisenhower Boulevard; thence along said South line the following 2 courses and distances, South 89°27'40" West, 736.72 feet; thence North 89°51'21" West, 1596.16 feet to a point on the West line of the Northwest corner of said Section 17; thence along said West line, North 00°05'34" East, 50.00 feet to the Point of Beginning.

ALSO:

A tract of land being a portion of the right-of-way of East First Street located in Section 17 and Section 20, Township 5 North, Range 68 West of the 6th Principal Meridian, City of Loveland, County of Larimer, State of Colorado being more particularly described as follows:

Considering the South line of the Southwest Quarter of said Section 17 as bearing North 89°55'16" East and with all bearings contained herein relative thereto:

BEGINNING at the Southwest Quarter corner of said Section 17; thence along the West line of the Southwest Quarter of said Section 17, North 00°06'12" East, 30.00 feet to a

point on the North right-of-way line of East First Street; thence along said North right-of-way line, North 89°55'16" East, 2587.46 feet to a point on the East line of the Southwest Quarter of said Section 17; thence along said East line, South 00°31'12" West, 30.00 feet to the South Quarter corner of said Section 17; thence, along the East line of the Northwest Quarter of said Section 20, South 00°23'57" East, 50.00 feet to a point on the South right-of-way line of East First Street; thence, along said South line by the following 3 course and distances, South 89°55'16" West, 1347.06 feet; thence, North 00°04'44" West, 20.00 feet; thence, South 89°55'16" West, 1240.55 feet to a point on the West line of the Northwest Quarter of said Section 20, thence along said West line, North 00°05'26" East, 30.00 feet to the Point of Beginning.

ALSO:

A tract of land being a portion of GOROM FIRST ADDITION to the City of Loveland, a portion of North Boyd Lake Avenue and a portion of East Fifth Street, located in the Southeast Quarter of Section 17, Township 5 North, Range 68 West of the 6th Principal Meridian, City of Loveland, County of Larimer, State of Colorado being more particularly described as follows:

Considering the North line of said Southeast Quarter as bearing South 89°47'41" West, and with all bearings contained herein relative thereto:

Commencing at the East Quarter corner of said Section 17; thence, South 89°47'41" West, along the North line of said Southeast Quarter, 30.00 feet to the **POINT OF BEGINNING**; thence, South 00°53'24" West, 30.00 feet; thence, North 89°47'41" East, 60.00 feet to a point being on the East right-of-way line of North Boyd Lake Avenue, thence, along said East right-of-way line and the South right-of-way line of East Fifth Street by the following six (6) courses and distances, South 00°53'24" West, 1286.81 feet; thence, South 69°58'48" West, 96.09 feet; thence, South 88°54'56" West, 271.28 feet; thence, North 86°29'37" West, 98.39 feet; thence, South 89°42'08" West, 810.37 feet; thence, South 89°23'07" West, 73.88 feet; thence, departing said right-of-way line, North 00°53'52" East, 29.65 feet to a point being the Southeast 1/16th corner of said Section 17; thence, along the West line of the Northeast Quarter of the Southeast Quarter of said Section 17 and the East line of Outlot 5, Millennium SW First Subdivision, North 00°41'45" East, 1319.29 feet to the Center-East 1/16th corner; thence, along the North line of the Southeast Quarter of said Section 17, North 89°47'41" East, 1287.94 feet to the Point of Beginning.

ALSO:

Lot 1, PfiEFF Minor Land Division File No. 15-S3349 as recorded at Reception No.20160026252, County of Larimer, State of Colorado.

The above described tracts of land contain a combined area of 426.447 acres more or less and is subject to all easements and rights-of-way now on record or existing.

AND

DESCRIPTION: GDP OVERALL WEST

A tract of land located in the South Half of Section 34, Township 6 North, Range 68 West, Sections 3, 4, 5, 8, 9 and 10 all in Township 5 North, Range 68 West of the 6th Principal Meridian, City of Loveland, County of Larimer, State of Colorado being more particularly described as follows:

Considering the North line of the Northwest Quarter of said Section 4 as bearing South 89°29'39" East and with all bearings contained herein relative thereto:

Commencing at the Northwest corner of said Section 4; thence along said North line, South 89°29'39" East, 30.00 feet to the East right-of-way line of North Boyd Lake Avenue; thence along said East right-of-way line, South 01°03'56" West, 1,335.52 feet to the **POINT OF BEGINNING**; thence, South 89°18'01" East, 2,597.19 feet; thence, South 89°17'53" East, 1,291.58 feet to a point on the Southwesterly line of that tract of land described at Reception No. 20040112371 on file at the Office of the Clerk and Recorder of said Larimer County; thence, along said Southwesterly line, South 49°21'40" East, 1729.20 feet to a point on the East line of the Northwest Quarter of said Section 4; thence, along said East line, North 01°20'53" East, 32.31 feet; thence, departing said East line, South 49°21'40" East, 38.76 feet to the West line of Myers Group Partnership #949 First Subdivision; thence along the boundary lines of said Myers Group Partnership #949 First Subdivision the following 11 courses and distances, North 01°20'51" East, 2,456.35 feet; thence, North 00°25'35" West, 30.00 feet; thence, South 89°57'25" East, 1,084.99 feet; thence, South 00°02'35" West, 60.00 feet; thence, South 65°43'55" East, 109.70 feet; thence, South 89°57'25" East, 900.00 feet; thence, South 51°28'25" East, 108.50 feet; thence, South 13°27'25" East, 935.84 feet; thence, South 00°34'47" West, 2,793.54 feet; thence, South 07°41'05" West, 201.60 feet; thence, South 00°33'47" West, 456.50 feet; thence, departing said line, South 29°49'16" West, 152.83 feet to the Southwesterly line of Union Pacific Railroad; thence along said Southwesterly line, North 49°06'59" West, 56.74 feet to the East line of Twin Peaks Addition; thence along the boundary lines of said Twin Peaks Addition the following 10 courses and distances, South 00°02'56" West, 86.80 feet; thence, South 12°10'04" East, 269.40 feet; thence, South 00°02'56" West, 358.81 feet; thence, South 88°48'27" West, 1,342.99 feet; thence, South 01°14'31" East, 1,346.99 feet; thence, South 89°36'03" East, 1,305.48 feet; thence, North 89°47'57" East, 10.00 feet; thence, South 00°12'03" East, 282.32 feet; thence, South 00°29'04" West, 939.22 feet; thence, South 89°07'26" West, 54.28 feet to the Southerly line of Tract D, McWhinney Eleventh Subdivision; thence along said Southerly line the following 16 courses and distances, South 28°40'36" West, 120.41 feet; thence, along a non tangent curve concave to the northwest having a central angle of 43°45'26" with a radius of 300.00 feet, an arc length of 229.11 feet and the chord of which bears South 50°33'18" West, 223.58 feet; thence, South 72°25'56" West, 75.60 feet; thence, along a curve concave to the north having a central angle of 21°53'22" with a radius of 630.00 feet, an arc length of 240.69 feet and the chord of which bears South 83°22'42" West, 239.23 feet; thence, North 85°40'36" West, 258.28 feet; thence, along a curve concave to the south having a central angle of 12°58'27" with a radius of 740.00 feet, an arc length of 167.57 feet and the chord of which bears South 87°50'10" West, 167.21 feet; thence, South 81°20'56" West, 402.96 feet; thence, along a curve concave to the north having a central angle of 04°55'58" with a radius of 200.00 feet, an arc length of 17.22 feet and the chord of which bears South 83°48'55" West, 17.21 feet; thence,

South 86°16'54" West, 159.73 feet; thence, along a curve concave to the north having a central angle of 10°15'15" with a radius of 1,415.00 feet, an arc length of 253.24 feet and the chord of which bears N 88°35'28" West, 252.90 feet; thence, along a compound curve concave to the north, having a central angle of 13°43'37" with a radius of 200.00 feet, an arc length of 47.92 feet and the chord of which bears North 76°36'02" West, 47.80 feet; thence, along a compound curve concave to the northeast, having a central angle of 18°13'26" with a radius of 850.00 feet an arc length of 270.36 feet and the chord of which bears North 60°38'25" West, 269.22 feet; thence, along a compound curve concave to the northeast, having a central angle of 13°26'27" with a radius of 300.00 feet an arc length of 70.38 feet and the chord of which bears North 44°48'28" West, 70.21 feet; thence, along a reverse curve concave to the southwest, having a central angle of 25°41'09" with a radius of 200.00 feet, an arc length of 89.66 feet and the chord of which bears North 50°55'49" West, 88.91 feet; thence, North 63°45'29" West, 101.22 feet; thence, North 15°47'12" East, 23.85 feet to the North line of the Southwest Quarter of Section 10; thence along said North line, South 89°05'34" West, 144.59 feet to the West Quarter corner of said Section 10; thence along the North line of the Southeast Quarter of Section 9, North 89°19'44" West, 2570.74 feet to the Center Quarter corner of said Section 9; thence along the North line of the Southwest Quarter of Section 9, North 89°16'54" West, 2,624.87 feet to the West Quarter corner of said Section 9; thence, North 89°16'54" West, 30.00 feet to the West right-of-way line of North Boyd Lake Avenue; thence along said West right-of-way line the following 5 courses and distances, North 00°24'03" East, 1,848.66 feet; thence, North 88°07'20" West, 20.01 feet; thence, North 00°24'03" East, 788.48 feet; thence, North 01°03'10" East, 2,672.03 feet; thence, North 01°03'56" East, 627.97 feet; thence, departing said West line, South 88°56'07" East, 80.00 feet to a point on the East right-of-way line of North Boyd Lake Avenue; thence along said East right-of-way line, North 01°03'56" East, 663.56 feet to the POINT OF BEGINNING.

EXCEPT:

That tract of land described at Reception No. 96050699 on file at the Larimer County Office of the Clerk and Recorder.

The above described tract of land contains 1,188.539 acres more or less.

ALSO EXCEPT:

A parcel of land being a part of Savanna First Subdivision and Savanna Second Subdivision (Reception No. 20160059269), in the North One-Half of Section 4, Township 5 North, Range 68 West, of the Sixth Principal Meridian, in the City of Loveland, County of Larimer, State of Colorado, said parcel being more particularly described as follows:

Basis of Bearings: Bearings are based upon the South Line of the Northwest One-Quarter of said Section 4, said to bear North 89°18'02" West (Per the recorded plat of said Savanna Second Subdivision), a distance of 2,624.85 Feet between the monuments listed below:

Center One-Quarter Corner of Section 4 - Monumented by a 2" aluminum cap on #6 rebar, LS 7242 (Per the recorded plat of Savanna Second Subdivision).

West One-Quarter Corner of Section 4 - Monumented by a 2.5" aluminum cap on #6 rebar, LS 32829, 2012 (Per the recorded plat of Savanna Second Subdivision).

Commencing (P.O.C.) at said West One-Quarter Corner of Section 4; Thence North $01^{\circ}03'28''$ East along the West Line of said Northwest One-Quarter of Section 4, a distance of 1,321.01; Thence South $89^{\circ}18'01''$ East, a distance of 60.00 Feet to the Northwest Corner of said Tract A, Savanna Second Subdivision; Thence South $89^{\circ}18'01''$ East along the North Line of said Tract A, Savanna Second Subdivision, a distance of 796.95 Feet; Thence continuing South $89^{\circ}18'01''$ East continuing along said North Line of Tract A, Savanna Second Subdivision, a distance of 626.58 Feet to the **POINT OF BEGINNING (P.O.B.)**;

Thence continuing along said North line the following two (2) courses and distances, South $89^{\circ}18'01''$ East, 1,143.83 feet; Thence, South $89^{\circ}17'56''$ East, 1,096.70 feet to the Southwesterly right-of-way line of the Union Pacific Railroad; Thence along said Southwesterly line South $49^{\circ}21'43''$ East, a distance of 1,766.92 feet; Thence departing said Southwesterly line, South $25^{\circ}20'57''$ West, a distance of 15.16 feet; Thence along a curve concave to the East having a central angle of $37^{\circ}55'36''$ with a radius of 221.00 feet, an arc length of 146.29 feet and the chord of which bears South $06^{\circ}19'52''$ West, a distance of 143.63 feet to the North right-of-way line of East 37th Street; Thence North $89^{\circ}17'55''$ West along said North right-of-way line and North right-of-way line extended, a distance of 987.25 feet; Thence departing said North right-of-way line extended, North $49^{\circ}21'40''$ West, a distance of 31.04 feet to the South line of Savanna Second Subdivision; Thence continuing North $49^{\circ}21'40''$ West, a distance of 507.01 feet; thence along a curve concave to the Southwest having a central angle of $39^{\circ}56'13''$ with a radius of 324.00 feet, an arc length of 225.84 feet and the chord of which bears North $69^{\circ}19'46''$ West, a distance of 221.29 feet; Thence North $89^{\circ}17'53''$ West, a distance of 331.23 feet; Thence continuing North $89^{\circ}17'53''$ West, a distance of 27.00 feet; Thence along a non-tangent curve concave to the Southwest having a central angle of $09^{\circ}09'42''$ with a radius of 816.00 feet, an arc length of 130.48 feet and the chord of which bears North $49^{\circ}07'43''$ West, a distance of 130.34 feet; Thence North $89^{\circ}18'00''$ West, a distance of 467.85 feet; thence continuing North $89^{\circ}18'00''$ West, a distance of 1,041.52 feet; Thence North $00^{\circ}42'22''$ East, a distance of 141.77 feet; Thence continuing North $00^{\circ}42'22''$ East, a distance of 644.12 feet to the Point of Beginning.

The above described exception parcel contains 2,756,765 square feet or 63.287 acres more or less.

AND

Rocky Mountain Village 14th Subdivision, being a subdivision of Outlot A, Rocky Mountain Village Ninth Subdivision, to the City of Loveland, County of Larimer, State of Colorado.

Containing 23.426 acres more or less and is subject to all easements and rights-of-way now on record or existing.

AND

Lot 1, Block 1, McWhinney Seventh Subdivision, in the City of Loveland, according to the Plat thereof recorded on July 19, 1996, at Reception No. 96052293 of the Larimer County, Colorado records.

Containing 1.148 acres more or less and is subject to all easements and rights-of-way now on record or existing.

AND

A tract of land being a portion of Tract E of the McWHINNEY ELEVENTH SUBDIVISION, located in the Southwest Quarter of Section 10, Township 5 North, Range 68 West of the 6th Principal Meridian, City of Loveland, County of Larimer, State of Colorado being more particularly described as follows:

Considering the South line of said Tract E as bearing South 86°24'11" West and with all bearings contained herein relative thereto:

Commencing at the Southeast corner of said Tract E; thence along the South line of said Tract E, and the North right-of-way line of McWhinney Boulevard, South 86°24'11" West, 367.80 feet to the POINT OF BEGINNING; thence, continuing along said South and North line, South 86°24'11" West, 873.21 feet; thence along a curve concave to the Northeast having a central angle of 42°52'57" with a radius of 75.00 feet, an arc length of 56.13 feet and the chord of which bears North 72°09'20" West, 54.83 feet; thence along a curve concave to the Northeast having a central angle of 22°19'11" with a radius of 45.96 feet, an arc length of 17.90 feet and the chord of which bears North 24°16'59" West, 17.79 feet to a point on the East right-of-way line of Rocky Mountain Avenue; thence, along said East right-of-way line by the following eight (8) courses and distances, along a curve concave to the East having a central angle of 12°24'25" with a radius of 285.77 feet, an arc length of 61.88 feet and the chord of which bears North 06°55'11" West, 61.76 feet; thence, North 00°42'58" West, 54.42 feet; thence, North 01°49'57" West, 131.44 feet; thence, North 03°12'54" West, 216.41 feet; thence along a curve concave to the East having a central angle of 02°29'59" with a radius of 1050.00 feet, an arc length of 45.81 feet and the chord of which bears North 01°57'55" West, 45.81 feet; thence, North 00°42'55" West, 260.65 feet; thence along a curve concaved to the Southeast having a central angle of 16°44'05" with a radius of 1050.00 feet, an arc length of 306.68 feet and the chord of which bears North 07°39'08" East, 305.59 feet; thence, North 16°01'10" East, 44.02 to a point on the North line of said Tract E; thence; along said North line by the following four (4) courses and distances, South 33°11'24" East, 48.55 feet; thence along a curve concave to the Northeast having a central angle of 26°16'54" with a radius of 200.00 feet, an arc length of 91.74 feet and the chord of which bears South 46°19'51" East, 90.94 feet; thence, South 59°28'18" East, 187.49 feet; thence along a curve concave to the Northeast having a central angle of 23°25'53" with a radius of 800.00 feet, an arc length of 327.16 feet and the chord of which bears South 71°11'15" East, 324.89 feet; thence departing said North line, South 14°22'12" West, 184.24 feet; thence along a curve concave to the Southwest having a central angle of 01°46'17" with a radius of 830.00 feet, an arc length of 25.66 feet and the chord of which bears South 58°15'46" East, 25.66 feet; thence, South

57°22'37" East, 117.65 feet; thence along a curve concave to the Southwest having a central angle of 53°46'48" with a radius of 530.00 feet, an arc length of 497.48 feet and the chord of which bears South 30°29'13" East, 479.42 feet; thence, South 03°35'49" East, 102.53 feet; thence along a curve concave to the Northeast having a central angle of 90°00'00" with a radius of 20.00 feet, an arc length of 31.42 feet and the chord of which bears South 48°35'49" East, 28.28 feet to the Point of Beginning. The above described tract of land contains 16.296 acres more or less and is subject to all easements and rights-of-way now on record or existing.

AND

A portion of the southwest quarter of Section 10, Township 5 North, Range 68 West of the 6th Principal Meridian, Larimer County, Colorado, more particularly described as follows:

Considering the north line of the northwest quarter of said Section 10 as bearing North 89°02'24" East with all bearings contained herein relative thereto;

Commencing at the west quarter corner of said Section 10; thence North 89°21'24" East along the north line of the southwest quarter of Section 10 a distance of 144.97 feet to a point on the east right-of-way line of Rocky Mountain Avenue also being a point on the north line of McWhinney Eleventh Subdivision; thence North 89°21'24" East along the north line of McWhinney Eleventh Subdivision a distance of 2330.47 feet to the west right-of-way line of Interstate Highway 25; thence along the west right-of-way line of Interstate Highway 25 the following two (2) courses: South 00°08'49" East a distance of 57.83 feet; South 03°09'36" East a distance of 60.19 feet to the Point of Beginning; thence along the west right-of-way line of Interstate Highway 25 South 03°45'05" East a distance of 262.09 feet to the north line of Tract E, McWhinney Eleventh Subdivision; thence North 89°09'50" West along the north line of Tract E a distance of 383.80 feet to the south line of Outlot A, McWhinney Eleventh Subdivision also being the south line of the Greeley-Loveland Irrigation Canal; thence along the south line of said Outlot A and the Greeley-Loveland Irrigation Canal the following three (3) courses: North 70°40'10" East a distance of 200.00 feet; North 53°06'10" East a distance of 100.00 feet; North 37°03'10" East a distance of 162.50 feet to the Point of Beginning, containing 35,873 square feet or 0.82 acres more or less.

AND

A tract of land located in the Southeast Quarter of Section 11, Township 5 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

Considering the East line of the North Half of the Southeast Quarter of said Section 11 as bearing North 00°28'28" East and with all bearings contained herein relative thereto:

Commencing at the East Quarter Corner of said Section 11; thence along the North line of said Southeast Quarter, South 89°09'44" West, 30.01 feet to a point on the West right-of-way line of High Plains Blvd. (Larimer County Road No. 3), said point being the **POINT OF BEGINNING**; thence, along said West line, South 00°28'28" West, 1320.89 feet to a point on

the South line of the North Half of the Southeast Quarter of said Section; thence, along said South line, South 89°10'58" West, 2610.29 feet to the South 1/16 Corner on the West line of the Southeast Quarter of said Section; thence, along said West line, North 00°20'38" East, 1319.88 feet to the Center Quarter Corner of said Section; thence, along the North line of the Southeast Quarter of said Section, North 89°09'44" East, 2613.31 feet to the Point of Beginning.

The above described tract of land contains 3,447,775 square feet or 79.150 acres more or less and is subject to all easements and rights-of-way now on record or existing.

AND

A tract of land located in the Southwest Quarter of Section 11, Township 5 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

Considering the South line of the Southwest Quarter of said Section 11 as bearing North 89°11'17" East and with all bearings contained herein relative thereto:

Commencing at the South Quarter Corner of said Section 11; thence along the East line of said Southwest Quarter, North 00°20'30" East, 131.31 feet to a point on the North right-of-way line of East Eisenhower Blvd. (U.S. Highway No. 34), said point being the **POINT OF BEGINNING**; thence, along said North line, and along a curve concave to the north having a central angle of 00°11'45", a radius of 28,557.90 feet, an arc length of 97.61 feet and the chord of which bears South 89°03'54" West, 97.61 feet; thence, continuing along said North line, South 89°09'47" West, 386.50 feet to a point on the Northerly line of Millennium East First Subdivision; thence, along said line the following five courses and distances, North 00°20'28" East, 23.11 feet; thence, North 89°03'44" West, 23.49 feet; thence, North 00°50'13" West, 76.16 feet; thence, North 88°14'04" West, 528.37 feet; thence, North 00°20'30" East, 938.15 feet to a point on the Southerly right-of-way line of the Union Pacific Railroad; thence, along said Southerly line along a non-tangent curve concave to the northeast having a central angle of 08°44'52", a radius of 3,919.83 feet, an arc length of 598.47 feet and the chord of which bears South 63°46'12" East, 597.89 feet; thence, continuing along said Southerly line, South 68°08'38" East, 536.80 feet to a point on the East line of said Southwest Quarter; thence, along said East line, South 00°20'30" West, 582.75 feet to the Point of Beginning.

The above described tract of land contains 776,597 square feet or 17.828 acres more or less and is subject to all easements and rights-of-way now on record or existing.

AND

A tract of land located in the Northeast Quarter of Section 16, Township 5 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 16 as bearing South 89°24'51" East and with all bearings contained herein relative thereto:

Commencing at the Northeast Corner of said Section 16; thence along the East line of the Northeast Quarter of said Section 16, South 00°18'41" West, 50.00 feet to a point on the South right-of-way line of East Eisenhower Blvd. (U.S. Highway No. 34), said point being the **POINT OF BEGINNING**; thence, continuing along said East line, South 00°18'41" West, 2,491.52 feet to the North right-of-way line of Great Western Railroad; thence, along said North right-of-way line, North 89°33'50" West, 2,634.75 feet to the West line of said Northeast Quarter; thence along said West line, North 00°27'00" East, 1,227.75 feet to the North 1/16 corner of said Section 16; thence, continuing along said West line, North 00°27'25" East, 1,270.62 feet to a point on the South right-of-way line of East Eisenhower Blvd. (U.S. Highway No. 34); thence, along said South right-of-way line, South 89°24'51" East, 2,628.58 feet to the Point of Beginning.

The above described tract of land contains 6,565,932 square feet or 150.733 acres more or less and is subject to all easements and rights-of-way now on record or existing.

AND

A tract of land located in the Northwest Quarter of Section 4, Township 5 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

Considering the South line of the Northwest Quarter of said Section 4 as bearing North 89°18'02" West and with all bearings contained herein relative thereto:

Commencing at the West Quarter corner of said Section 4; thence, North 45°52'55" East, 42.56 feet to the **POINT OF BEGINNING**, said point being a point on the East right-of-way line of Boyd Lake Avenue; thence, along said East right-of-way line, North 01°03'56" East, 320.01 feet; thence, South 89°18'02" East, 670.01 feet; thence, South 01°03'53" West, 320.01 feet to a point being on the North right-of-way line of East 37th Street; thence, along said North right-of-way line, North 89°18'02" West, 670.01 feet to the Point of Beginning.

The above described tract of land contains 214,404 square feet or 4.922 acres more or less and is subject to all easements and rights-of-way now on record or existing.

AND

A tract of land located in the Northwest Quarter of Section 10, Township 5 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado being more particularly described as follows:

Considering the East line of the Northwest Quarter of said Section 10 as bearing North 00°21'14" East and with all bearings contained herein relative thereto:

Commencing at the North Quarter corner of said Section 10; thence, South 81°10'16" West, 225.65 feet to the **POINT OF BEGINNING**, said point being a point on the West right-of-way

line of Interstate Highway No. 25; thence, along said West right-of-way line, South 00°04'38" East, 1383.69 feet to a point on the North line of Lot 1, Block 1, Twin Peaks First Subdivision; thence, along said North line, South 89°48'11" West, 10.00 feet; thence, continuing along said North line; North 89°35'49" West, 1305.48 feet to a point on the East line of Outlot B, Twin Peaks First Subdivision; thence, along said East line, North 01°14'19" West, 1346.99 feet to a point on the South right-of-way line of East 29th Street; thence, along said South right-of-way line, North 88°48'40" East, 1342.99 Feet to the Point of Beginning.

The above described tract of land contains 1,814,642 square feet or 41.658 acres more or less and is subject to all easements and rights-of-way now on record or existing.

Exhibit ~~CA~~-2

Depiction of Millennium GDP Property

Exhibit N-1

Map of Parcels/Vested Property Rights Termination

Summary report: Litera Compare for Word 11.2.0.54 Document comparison done on 1/7/2025 4:02:03 PM	
Style name: Brownstein	
Intelligent Table Comparison: Active	
Original DMS: iw://dm.bhfs.com/ACTIVE/30959310/1	
Modified DMS: iw://dm.bhfs.com/ACTIVE/30959310/2	
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Add	28
Delete	19
Move From	1
Move To	1
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	49