

MUNICIPAL COURT, LOVELAND, COLORADO 810 East 10th Street, Suite 200, Loveland, CO 80537 Telephone (970) 962-2482	
<b>Plaintiffs:</b> RICHARD BALL, an individual and resident of the City of Loveland, DAVE CLARK, an individual and resident of the City of Loveland; JOHN FOGLE, an individual and resident of the City of Loveland; DONALD OVERCASH, an individual and resident of the City of Loveland; DANIEL MILLS, an individual and resident of the City of Loveland; CHAUNCEY TAYLOR, an individual and resident of the City of Loveland; CHRISTY TAYOR, an individual and resident of the City of Loveland; and CLAIRE HAENNY, an individual and resident of the City of Loveland  v.  <b>Defendant:</b> CITY OF LOVELAND	<b>RECEIVED</b> JAN 18 2024 LOVELAND MUNICIPAL COURT
<i>Attorneys for Plaintiffs:</i> Russell W. Sinnett SINNETT LAW OFFICE, LLC P.O. Box 644 Loveland, CO 80539-0644 Phone: 970-800-3751 <a href="mailto:russell.sinnett@russell970.com">russell.sinnett@russell970.com</a> Attorney Registration No.: 32723	▲ COURT USE ONLY ▲ Case No: Division:
<b>VERIFIED COMPLAINT</b>	

COMES NOW, Plaintiffs Richard Ball, David Clark, John Fogle, Donald Overcash, Daniel Mills, Chauncey Taylor, Christy Taylor, and Claire Haenny (collectively, "Plaintiffs"), to hereby submit this *Verified Complaint* against the Defendant, City of Loveland, (hereinafter, "the City"), and in support thereof, state and allege as follows:

**I. PARTIES**

1. Plaintiff Richard Ball, Esq., at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023,

and is currently an eligible voter. Mr. Ball is also a former Loveland City Council member and was a member of the original Home Rule Charter Commission that wrote the Loveland City Charter adopted by the citizens of Loveland upon their vote in a special election on May 21, 1996, and submitted to the Colorado Secretary of State on May 23, 1996.

2. Plaintiff Dave Clark, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter. Mr. Clark is also a former Loveland City Council member.

3. Plaintiff John Fogle, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter. Mr. Fogle is also a former Loveland City Council member.

4. Plaintiff Donald Overcash, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter. Mr. Overcash is also a former Loveland City Council member.

5. Plaintiff Daniel Mills, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter.

6. Plaintiff Chauncey Taylor, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter. Mr. Taylor is also a former Loveland City Council member.

7. Plaintiff Christy Taylor, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter.

8. Plaintiff Claire Haenny, at all times relevant hereto, was and is a resident of the City, was an eligible voter who cast a ballot in the general elections held November 7, 2023, and is currently an eligible voter.

9. Defendant, the City of Loveland, is a home-rule municipal government situated in Larimer County, Colorado. Defendant acts, in part, through its nine (9) elected members of the City Council (hereinafter, the "Council") comprised of the Mayor and eight (8) City Councilors. At all times relevant hereto, the Council is authorized to act on behalf of the City under the Municipal Charter of the City of Loveland (hereinafter, the "Charter"). As is relevant to this action, the Council has authority, *inter alia*, to participate in the development and sustainability of the City on behalf of its citizens through resolutions and ordinances at public meetings of the Council, and to enter into binding contracts involving development projects which include "Urban Renewal."

10. At all times relevant hereto, the Mayor and the members of the Council were employees of the City and were acting in their official capacity as those actions or inactions of the Mayor or Council Members are set forth below.

## II. JURISDICTION and VENUE

11. This Court is vested with original jurisdiction to hear matters arising under the Charter,<sup>1</sup> and as it may be subject to, or otherwise not violate, the United States Constitution and the Constitution of the State of Colorado.<sup>2</sup>

12. The claims in this case arise, first and foremost, under the provisions of the Charter.

13. The claims in this case concern actions taken by the Council in their official elected capacity on behalf of citizens of the City and pursuant to the Council's authority granted to it by the Charter, as is more specifically set forth below.

14. Accordingly, this Court has original jurisdiction over the subject matter and the named parties.

15. Venue is appropriate in this Court as established by the Charter, its application, and the original jurisdiction vested in this Court to hear this matter.

16. Venue is also appropriate in this Court as the actions of the Council which are the subject matter of this case occurred in Loveland, Colorado and involve Urban Renewal Development in Loveland, Colorado.

## III. FACTUAL ALLEGATIONS

17. Plaintiffs incorporate the allegations set forth above in the paragraphs one (1) through sixteen (16) above as if fully set forth herein.

18. This case arises from the actions or inaction of the Council regarding the multi-use development known as "Centerra South," in Loveland. Centerra South is a mixed use,

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<sup>1</sup> SECTION 9-2 -- MUNICIPAL COURT; MUNICIPAL JUDGE

(a) There shall be a Municipal Court vested with jurisdiction over matters arising under the Charter and ordinances of the City. The Municipal Court shall be a court of record.

<sup>2</sup> SECTION 2-4 -- POWERS OF THE CITY

(a) The City shall have all the power of local self-government and home rule and all power possible for the City under the State Constitution. All such powers shall be exercised in a manner consistent with the United States Constitution, the State Constitution, and this Charter.

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planned community situated on 139 acres of land near the interchange of Interstate 25 and U.S. Highway 34 (or Eisenhower Boulevard).

19. Centerra South, described as a community, includes open or public spaces, attainable housing, office spaces, and retail spaces anchored by a nationwide organic grocery store franchise together with its world headquarters that were to be relocated to Loveland.

20. Centerra South is a development that by definition includes urban renewal or otherwise is an Urban Renewal Plan.

21. The Centerra South project fell under the direction and control of the Loveland Urban Renewal Authority (hereinafter, "LURA"), a public-private partnership that began as early as 2002 with the development of the original Centerra project in the same area of Loveland.

22. On May 2, 2023, and May 16, 2023, the City, through its Mayor and Council, approved resolutions #R-50-2023 and #R-54-2023 respectively. These resolutions created a binding contractual relationship between the City and the various entities involved in the development of Centerra South, as memorialized in a "Master Financing and Intergovernmental Agreement" (hereinafter referred to as the "MFIA Contract"), originally executed and approved beginning on January 20, 2004.

23. On October 3, 2023, the Council approved a third resolution, #R-111-2023, a measure that contained final modifications to the specific Centerra South Urban Renewal Plan, as well as a ratification of the original plan from 2004 referenced above. This resolution passed by an 8-1 vote. Notably, Mayor Jacki Marsh cast the sole vote against the final resolution.

24. In the months following the initial approval of Centerra South, citizens began collecting signatures for a ballot measure regarding urban renewal and development projects and the right of Loveland citizens to vote upon and approve or disapprove such development projects adopted as a proposal by the Council. Upon information and belief, Mayor Jacki Marsh, as well as Councilors Erin Black and Jon Mallo signed the Petition.

25. The Urban Renewal ballot measure obtained enough signatures that it was included on the ballot in the City's general elections held November 7, 2023. It became ballot measure 301, which read substantially as follows:

**Amendment to Article 15 of the Loveland City Charter to Require Voter Ratification of the Approval or Modification of Urban Renewal Plans by the City Council in Certain Circumstances.**

Shall Article 15 of the Loveland City Charter be amended to add Section 15-9 to provide that any council action approving or modifying an urban renewal plan, pursuant to Urban Renewal Law of state statutes, must be subsequently ratified by the registered electors of the City if the approval or modification of the urban renewal plan authorizes the use of or a

change to area boundaries, eminent domain, condemnation, tax increment financing, revenue sharing, or cost sharing, and shall such amendment become effective immediately upon the date of approval by the City's voters?

- Yes
- No

26. As the proposed amendment reads, a "yes" vote would amend the city charter to require voter approval of plans in urban renewal areas and that this requirement become effective immediately; a "no" vote would keep the decisions in the hands of the Loveland URA board and City Council.

27. The City held its general election on November 7, 2023, and ballot measure 301 was approved by the voters.<sup>3</sup>

28. Upon information and belief, the November 7, 2023, vote to pass ballot measure 301 was certified on November 21, 2023, by the Larimer County Clerk and Recorder.

29. Ballot measure 301, by its own terms, became law effective immediately and the Charter was accordingly amended as follows:

**Section 15-9 -- URBAN RENEWAL**

Any council action approving or modifying an urban renewal plan, pursuant to Urban Renewal Law of state statues, must be subsequently ratified by the registered electors of the City if the approval or modification of the urban renewal plan authorizes the use of or a change to area boundaries, eminent domain, condemnation, tax increment financing, revenue sharing, or cost sharing.

30. This new amendment to the Charter was valid law and binding upon the new Council when it convened for its regular meeting on the evening of November 21, 2023.

31. In the days prior to the November 21, 2023, meeting, Mayor Marsh submitted two new agenda items, both misleading as to their claimed nature to be addressed at the meeting; the new items added to the agenda were categorized by Mayor Marsh as "new business"<sup>4</sup> when they clearly were not.

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<sup>3</sup> Notably, Mayor Jacki Marsh was re-elected, and three new Councilors were elected on November 7, 2023. The Mayor and Councilors Black, Light-Kovac, and Mallo were sworn in at the next regular meeting on November 14, 2023. Councilor Krenning was not sworn in until the evening of November 21, 2023, because his background check information had not yet been received by the City from the third party vendor hired to specifically complete a separate background check on candidate Krenning after he refused to provide his consent to the background check completed by all other candidates.

<sup>4</sup> Procedurally, "new business" items do not require public comment to the extent other Council items typically receive.

- a. Item one was a motion to completely rescind Resolution #R-50-2023 (the prior approval by the Council for the Centerra South Urban Renewal Plan. *See*, ¶ 20, *infra*.
- b. Item two was a motion to completely rescind Resolution #R-54-2023 (the prior approval of the MFIA Contract). *See, Id.*<sup>5</sup>

32. The items described in paragraph 29, above, were placed on the November 21, 2023, Council agenda when they were not properly published ahead of time, no provisions for public comment were made, and the items did not include any recognition of, or provision for, the newly added section 15-9 to the Charter or the procedures required thereunder. Simply stated, the actions of Mayor Marsh circumvented established, proper procedure of which the Mayor was well aware, and completely ignored the requirements under the newly amended Charter and section 15-9 as it pertains to Urban Renewal Developments and the required approval of the citizens of Loveland by their vote.

33. The Council meeting held November 21, 2023, lasted several hours and into the early morning hours of November 22, 2023. The length of the meeting was due, in part, to numerous public comments addressing the Council in the early stages of the meeting about its intent to vote again on Centerra South.

34. During the November 21, 2023, meeting, when Mayor Marsh sought to introduce her two intended motions, she imposed improper procedures on those motions designed to prevent any meaningful discussion of the motions by other Councilors, including that each motion would be given only ten (10) minutes of total time for the Council's consideration of each motion or agenda item related to the Resolutions she sought to invalidate through a new vote.

35. In bringing her first motion (regarding #R-50-2023), Mayor Marsh spoke for eight and a half minutes introducing or explaining her motion. Mayor Marsh allowed Councilor Black to comment on the motion for approximately one (1) minute before Mayor Marsh ended Council comments (interrupting Councilor Black's comments) and called for a vote on the motion with seconds to spare in the time allotment for the motion.

36. At that point, Councilor Dana Foley demanded a point of order for improper procedure which Mayor Marsh promptly overruled. Similarly, Councilor Andrea Samson interjected with a request to seek input from the City Attorney, Moses Garcia, who was present at the meeting. Councilor Samson's proposed questions to the City Attorney were similarly stifled by Mayor Marsh through constant interruptions while Councilor Samson sought guidance from the City Attorney.

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<sup>5</sup> Notably, the agenda items added by Mayor Marsh did not include the Council's previous approval of Resolution #R-111-2023, which modified and ratified the Plan. *See*, ¶ 21, *supra*.

37. While Councilor Samson sought the input and advice of the City Attorney, the time for Mayor Marsh's first motion expired without a vote by the Council and the motion should have been declared defeated. Councilor Foley called for a point of order on that singular procedural fact but was interrupted by the Mayor and Councilor Troy Krenning with demands to continue forward with a vote. At that point, Councilor Foley, stating that he believed the actions and procedure to be illegal, walked out of the Council Chambers so as to be absent from the vote, and that no abstention would be entered as to Councilor Foley.<sup>6</sup>

38. Mayor Marsh then called for the vote which passed with support of the intentional votes of the Mayor, and Councilors Black, Light-Kovacs, Krenning, and Mallo.<sup>7</sup>

39. The Council then heard, in similar fashion, Mayor Marsh's second motion regarding #R-54-2023, which the Mayor took five (5) minutes to explain. After very limited discussion, Mayor Marsh called the vote and the motion passed with the supporting votes of the same four Councilors: Black, Light-Kovacs, Krenning, and Mallo.

40. In relevant summary, the Mayor used improper procedure in bringing the motions, and the Council rescinded its agreements under #R-50-2023 and #R-54-2023. Stated differently, the Council voted down two resolutions affecting \$1.2 billion of local development partnership commitments after a combined total of less than five minutes of Council comment or debate within the twenty (20) minutes of total time allotted on the Council agenda by Mayor Marsh.

41. Mayor Marsh commented several times on the record that the Council's actions that evening would be considered a breach of the City's agreements regarding Centerra South, exposing the City to a judgment and damages for breach of contract, among other claims.

42. The irregular procedure prompted Councilor Samson to comment, on the record, that it appeared there may have been improper discussion, and possibly an improper agreement, among certain members of Council to coordinate their intent to rescind the Resolutions upon votes which they had predetermined in private meetings or communications.

43. The actions of the Council on November 21/22, 2023, particularly those of Mayor Marsh and Councilors Black, Light-Kovacs, Krenning, and Mallo were intentional violations of the newly amended Charter.

44. The Motions described above (#R-50-2023 and #R-54-2023), were never placed on a ballot, as a ballot measure or otherwise, for approval by the citizens of Loveland through their vote.

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<sup>6</sup> Under the procedural rules, if a Councilor abstains from a vote, that abstention is counted as a "yes" vote.

<sup>7</sup> Councilor Samson voted for the motion but did so after she made it clear on the record she would vote "yes" with the intent and expectation that the motion would be "brought back" for another vote and a chance to vote it down after full comments from the Council and the advice of the City Attorney could be sought and considered.

45. In short fashion, following the Council's rescission of the Centerra South Agreements, McWhinney Real Estate Services and its affiliated companies involved in the development of Centerra South, filed a Complaint in the District Court of the 8th Judicial District against the City, alleging breach of contract, unlawful termination of the Urban Renewal Plan and MFIA Contract, unlawful procedure by the Council, relief under the Charter provisions, declaratory judgment, and violation of the contract clauses contained in the United States and Colorado Constitutions. *See, Exhibit 1*, attached, Verified Complaint, *McWhinney Real Estate Serv., et. al. v. City of Loveland*, Civil Action No. 2023CV30956.

#### IV. FIRST CLAIM FOR RELIEF (Declaratory Judgment)

46. Plaintiffs incorporate the allegations set forth above in the paragraphs one (1) through forty-five (45) above as if fully set forth herein.

47. Pursuant to the Charter, as well as C.R.S. § 13-51-106<sup>8</sup> and C.R.C.P. 57, the Court had jurisdiction and the power to declare the rights of the Plaintiffs through Declaratory Judgment.

48. Pursuant to C.R.C.P. Rule 57(m) the Court "may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar."

49. Plaintiffs request a forthwith decision as a declaratory judgment in this matter. *See, also*, section VIII of this Complaint, *infra*.

50. Plaintiffs seek declaratory judgment regarding the actions of the Council on November 21 and 22, 2023, to rescind and revoke #R-50-2023 and #R-54-2023 as those actions are governed by the Charter and applicable rules, ordinances, or other laws, and as prayed for in this Complaint.

51. Because the questions presented in this Complaint must be answered in favor of Plaintiffs and against the City, the relevant actions or inactions by the Council on November 21 and 22, 2023, as they pertain to the rescission of the Resolutions involving Centerra South must be declared invalid, void, and of no effect because those actions directly violated the Charter, and other applicable law.

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<sup>8</sup> *See, also*, § 13-51-105. **Power and force of declaration**

Courts of record within their respective jurisdictions have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

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52. Plaintiff further seeks an injunction against the Council from taking any further action regarding the above resolutions until such time as the Court can rule upon the Plaintiffs' claims.

**V. SECOND CLAIM FOR RELIEF  
(Violation of Due Process)**

53. Plaintiffs incorporate the allegations set forth above in the paragraphs one (1) through fifty-two (52) above as if fully set forth herein.

54. The United States Constitution and the Bill of Rights, specifically the Fourteenth Amendment therein, provide as follows:

**U.S. Const. amend. XIV, § 2.**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

53. The Constitution of the State of Colorado provides as follows:

**Art. II, § 25. Due process of law**

No person shall be deprived of life, liberty or property, without due process of law.

55. Due process of law is deemed to be a guaranty against the exercise of arbitrary power. The exercise of arbitrary power by any department of government, or agency thereof, is inconsistent with democracy.

56. Due process of law is summarized as a constitutional guarantee of respect for those personal immunities which are so rooted in the traditions and conscience of the people as to be ranked as fundamental or are implicit in the concept of ordered liberty.

57. Denial of "due process" includes a denial of "equal protection of the law." The contention that a governmental action may abridge the privileges and immunities of citizens and denies equal protection of the law is included within the objection that it denies "due process". They stand or fall together.

58. "Liberty", as used in the Due Process Clause, connotes far more than mere freedom from physical restraint; it is broad enough to protect one from governmental interference in the exercise of his intellect, in the formation of opinions, in the expression of

them and in action or inaction dictated by his judgment, or choice in countless matters of purely personal concern. "Liberty" includes the right to vote. Accordingly, a denial of the right to vote is likewise a violation of due process.

59. As is pertinent in this action, for the evaluation of fairness in procedural due process, Plaintiffs allege: (1) Plaintiffs' private interests have been and will be affected by the official action; (2) Plaintiffs were deprived of their interests through the procedures used by the Council and the probable value, if any, of additional or substitute procedural safeguards will not remedy the deprivation of rights which has already occurred; and (3) the City's interest in the function involved and the fiscal and administrative burdens that any additional or substitute procedural requirement would entail do not supersede the City's ability and obligation to act in accordance with the requirements of due process already established under the Charter, its amendments, and other applicable law.

60. The Council votes on November 21/22 involving the rescission of Centerra South violated the due process rights of Plaintiffs in at least two ways:

(1) they were denied process of law when some of the Councilors who were elected by the People of Loveland were stifled and otherwise not allowed to participate in the discussion and have a chance to state on the record their opinions, comments, or objections on behalf of Loveland residents and for themselves in their official capacity; and

(2) they were denied their right under the Charter (section 15-9) to vote on the actions of the Council as they involved an Urban Renewal Project.

## **VI. THIRD CLAIM FOR RELIEF**

### **(Per Se Violation of C.R.S. § 24-18-103; Breach of Fiduciary Duty by a Public Officer)**

61. Plaintiffs incorporate the allegations set forth in the paragraphs one (1) through sixty (60) above as if fully set forth herein.

62. Defendant had a duty to the Plaintiffs and to the public in general to carry out its duties for the benefit of the people based on the public's trust and the confidence which the electorate reposes in the integrity of the City, its public officers, elected members of the City government, and employees of the City who must carry out their duties to for the benefit of the resident and citizens of Loveland.

63. Defendant breached the duty of care it owed to the Plaintiffs when the Mayor and Councilors Black, Light-Kovacs, Krenning, and Mallo violated the Charter, specifically section 15-9, where such conduct departed from their fiduciary duty, and the City is liable to the people of the City for their actions under official color or right or authority.

64. Defendant's conduct in failing to adhere to Charter requirements involving the Centerra South project constitutes liability per se under C.R.S. § 24-18-103, which provides as follows:

**§ 24-18-103. Public trust - breach of fiduciary duty**

(1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee.

65. The conduct of the City, through its elected officers and employees, has in the past and will in the future result in damages to the Plaintiffs, including but not limited to violation of their due process rights, and the requirements of the Charter.

## **VII. REMEDIES**

66. Plaintiffs incorporate the allegations set forth above in the paragraphs one (1) through sixty-four (64) above as if fully set forth herein.

67. Plaintiffs do not seek monetary damages from Defendant.

68. Plaintiffs seek remedies consistent with the provisions of the Charter, the United States Constitution, and the Constitution of the great State of Colorado.

69. Plaintiffs seek equitable relief for the claims set forth above, as follows:

a. *Declaratory Judgment.*

Plaintiffs seek a judgment declaring the actions of the Council taken on November 21 and 22, 2023, regarding Centerra South to be null, void, and of no effect because those actions violated the Charter, including section 15-9.

b. *Due Process Violation.*

Plaintiffs seek a judgment declaring the actions of the Council taken on November 21 and 22, 2023, regarding Centerra South to be null, void, and of no effect because those acts violated the due process rights of Plaintiffs and certain Councilors whom the Plaintiffs, as citizens of Loveland, elected to represent them.

c. *Breach of Fiduciary Duty.*

Plaintiffs seek a judgment declaring the actions of the Council taken on November 21 and 22, 2023, regarding Centerra South to be null, void, and of no effect because those acts were a violation of the fiduciary duties the City and its elected officials and employees, owed to Plaintiffs and certain Councilors whom the Plaintiffs, as citizens of Loveland, elected to represent them.

d. *Remedies Required Under the Charter.*

(1) The Charter itself contains the necessary remedies for the violations set forth above, and specifically upon a judgment that Mayor Marsh, and Councilors Black, Light-Kovacs, Krenning, and Mallo, all elected officials and employees of the City, willfully violated the Charter on November 21 and 22, 2023.

(2) The Charter provides, in pertinent part, the following:

**SECTION 3-3 -- MAYOR AND COUNCIL MEMBERS -  
QUALIFICATIONS**

\* \* \*

(c) No person who has been convicted of embezzlement of public funds, bribery, perjury, solicitation of bribery, subornation of perjury, *or a willful violation of this Charter*, shall be nominated or elected as Mayor or Council member.

\* \* \*

(f) The Mayor and each Council member shall continue to meet the requirements of this section throughout the term of office.  
*(emphasis added)*

(3) A conviction is the establishment of guilt by plea or verdict.<sup>9</sup> A judgment is included or synonymous with a verdict in favor of Plaintiffs in this action.

(4) Declaratory judgment, or otherwise a finding under any of the three claims for relief set forth in this Verified Complaint, begins with a finding that the Mayor and Councilors Black, Light-Kovacs, Krenning, and Mallo willfully and intentionally violated the Charter when they voted to rescind the Centerra South

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<sup>9</sup> See, e.g., *People v. Kiniston*, 262 P.3d 942, 944–45 (Colo.App.2011).

contract, with full knowledge of the amendment to the Charter (section 15-9) which required their decision to be approved by the citizens of Loveland in a special or general election.

(5) A judgment or verdict in favor of Plaintiffs is a finding that the Mayor and Councilors Black, Light-Kovacs, Krenning, and Mallo willfully and intentionally violated the Charter.

(6) Plaintiffs seek the remedy set forth in the Charter as to the Mayor and Councilors Black, Light-Kovacs, Krenning, and Mallo who willfully violated the Charter in that they all be declared ineligible for office effective immediately.

### **VIII. REQUEST FOR FORTHWITH TRIAL TO THE COURT**

70. Plaintiffs request a forthwith trial of this matter.

71. In the alternative, Plaintiffs request a bifurcated trial, and that the first claim for relief (Declaratory Judgment), be set for trial forthwith upon the authority of C.R.S. § 13-51-105 and 106, together with C.R.C.P. Rule 57(m).

72. The case *McWhinney, et.al. v. City of Loveland* (see *supra*) is scheduled for a two-day trial commencing February 29, 2024 in Larimer County District Court. That case presents, as part of its claims for relief, the same issues arising from the conduct of the Mayor and Councilors Black, Light-Kovacs, Krenning, and Mallo, and alleges substantially some of the same remedies.

73. This Court is the Court of original jurisdiction, as set forth in the Charter, regarding these issues and it is appropriate and necessary that this Court render findings of fact and conclusions of law for questions arising under the Charter as the Court of first instance.

74. The remedies sought are intended to prevent a finding of liability against the City and consequently, damages awarded against the City which could be determined to be as high as tens of millions of dollars at a time when the City's budget restraints cannot afford it.

75. It is the province of this Court to determine these matters at the threshold level.

76. Plaintiffs specifically seek, at minimum, a determination of this Court upon Declaratory judgment (as set forth above) prior to February 29, 2024.

WHEREFORE, Plaintiffs respectfully request judgment in their favor and against Defendant upon the claims above, including declaratory judgment, a finding of violation of Plaintiffs' due process rights, and a finding that the City, through the Mayor and Councilors Black, Light-Kovacs, Krenning, and Mallo, are liable for breach of fiduciary duty, a finding that public officials for the City of Loveland breached their fiduciary duties to the public for which the City is ultimately responsible, an injunction directed to the City and the Council to stay all proceedings or decisions involving the Centerra South Project, together with any other findings and conclusions of law which are lawful, equitable, proper, and just.

RESPECTFULLY SUBMITTED this 18th day of January, 2024.

**SINNETT LAW OFFICE, LLC**

By:   
Russell W. Sinnett, #32723  
*Attorneys for Plaintiffs*

#### **VERIFICATION**

Verifications for each Plaintiff are submitted as attachments to this Verified Complaint, one page for each Plaintiff.