

RESOLUTION #R-32-2009

**A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING
THE FOURTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND
INTERGOVERNMENTAL AGREEMENT**

WHEREAS, on January 20, 2004, the City of Loveland (the "City") and the Loveland Urban Renewal Authority ("LURA") entered into that certain Centerra Master Financing and Intergovernmental Agreement (the "MFA"), dated January 20, 2004, with Centerra Properties West, LLC (the "Developer"), Centerra Metropolitan District No. 1 (the "Service District"), Centerra Public Improvement Collection Corporation (the "PIC"), and Centerra Public Improvement Development Corporation (the "PID"); and

WHEREAS, the City, LURA, the Developer, the Service District, the PIC and the PID shall be hereafter referred to collectively as "the Parties"; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006 ("First Amendment") to include the Centerra Parkway / Crossroads Extension within the definition of "Regional Improvements" as defined in MFA Section 1.43, which First Amendment was approved by the City Council in Resolution #R-114-2006; and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007 ("Second Amendment") to address various issues associated with the Mixed Use Village Center Project and to include certain parking improvements within the definition of "Local Improvements" as defined in MFA Section 1.54, which Second Amendment was approved by the City Council in Resolution #R-75-2007; and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008 ("Third Amendment") to address the addition of certain real property to the URA Project Area, as defined in the MFA, and to set forth the terms and conditions pursuant to which the URA Project Area, as amended, shall benefit from property tax increment revenues generated from within the URA Project Area, which Third Amendment was approved by the City Council in Resolution #R-101-2008; and

WHEREAS, on September 16, 2008, the Loveland City Council approved, in Resolution #R-109-2008, the Service Plan for Centerra Metropolitan District No. 5 ("District No. 5"); and

WHEREAS, following approval of the eligible electors of District No. 5, at an election duly called and held on November 4, 2008, the District Court in and for Larimer County, Colorado entered an Order and Decree Organizing Centerra Metropolitan District No. 5 dated November 19, 2008, which Order and Decree was recorded in the Larimer County Clerk and Recorder's Office on December 2, 2008, at Reception No. 20080073856; and

WHEREAS, the Third Amendment expanded the acreage within the "Commercial Area," as defined in the MFA, to include, among other properties, the property within the boundaries of District No. 5; and

WHEREAS, the Service Plan for District No. 5 limits the authority of District No. 5 to certain administrative functions until such time as an Amended and Restated Service Plan for District No. 5 is submitted to and approved by the Loveland City Council; and

WHEREAS, the Board of Directors of District No. 5 has submitted to the Loveland City Council an Amended and Restated Service Plan, which, if approved by the Loveland City Council, would permit District No. 5 to fully exercise all of the powers provided for in the Amended and Restated Service Plan; and

WHEREAS, Section 17.1 of the MFA provides that the Parties may amend the MFA by an instrument signed by all of the Parties; and

WHEREAS, the City and LURA have been asked by the other Parties to amend the MFA to provide for the inclusion of District No. 5 and the property within its boundaries to the terms and conditions of the MFA; and

WHEREAS, to accomplish this the Parties have negotiated the "Fourth Amendment to the Centerra Master Financing and Intergovernmental Agreement" attached hereto as Exhibit "A" and incorporated herein by reference (the "Fourth Amendment"); and

WHEREAS, after reviewing the Fourth Amendment and receiving information from City staff and others, the City Council has determined that the Fourth Amendment will be in the best interests of the City and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND:

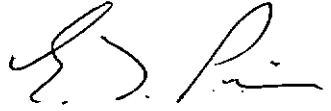
Section 1. That the City Council hereby finds that the Fourth Amendment is in the best interests of the public and will serve the public purposes of (1) providing social and economic benefits to the City; (2) furthering the City's economic goals as established in the City's economic development plan; and (3) generally benefiting the public's health, safety and welfare.

Section 2. That the Fourth Amendment is hereby approved and that the City Manager is authorized, following consultation with the City Attorney, to modify the Fourth Amendment in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Fourth Amendment on behalf of the City of Loveland.

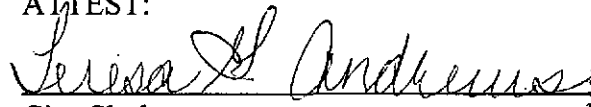
Section 4. This Resolution shall take effect on the date and at the time of its adoption.

ADOPTED this 24th day of March, 2009.



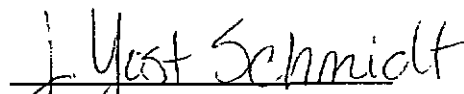
Eugene N. Pielin, Mayor

ATTEST:



Terisa Andrews
City Clerk

APPROVED AS TO FORM:



J. Yost Schmidt
Deputy City Attorney

**FOURTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND
INTERGOVERNMENTAL AGREEMENT**

THIS FOURTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND INTERGOVERNMENTAL AGREEMENT (the "Fourth Amendment") is entered into this _____ day of _____, 2009, by and among the CITY OF LOVELAND, COLORADO, a Colorado home rule municipality (the "City"); the LOVELAND URBAN RENEWAL AUTHORITY, a body corporate and politic ("LURA"); CENTERRA PROPERTIES WEST, LLC, a Colorado limited liability company (the "Developer"); CENTERRA METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the "Service District"); CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION, a Colorado non-profit corporation (the "PIC"); and the CENTERRA PUBLIC IMPROVEMENT DEVELOPMENT CORPORATION, a Colorado non-profit corporation (the "PID")."

WHEREAS, the City, LURA, the Developer, the Service District, the PIC and the PID shall be hereinafter referred to collectively as the "Parties"; and

WHEREAS, the Parties have entered into that certain Centerra Master Financing and Intergovernmental Agreement dated January 20, 2004, ("the MFA") to provide, among other things, for the financing of "Public Improvements" and "Regional Improvements" related to the development of Centerra, as these terms in quotes are defined in the MFA; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006 ("First Amendment"); and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007 ("Second Amendment"); and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008 ("Third Amendment"); and

WHEREAS, on September 16, 2008, the Loveland City Council approved, in Resolution #R-109-2008, the Service Plan for Centerra Metropolitan District No. 5 ("District No. 5"); and

WHEREAS, following approval of the eligible electors of District No. 5, at an election duly called and held on November 4, 2008, the District Court in and for Larimer County, Colorado entered an Order and Decree Organizing Centerra Metropolitan District No. 5 dated November 19, 2008, which Order and Decree was recorded in the Larimer County Clerk and Recorder's Office on December 2, 2008, at Reception No. 20080073856; and

WHEREAS, the Third Amendment expanded the acreage within the "Commercial Area," as defined in the MFA, to include, among other properties, the property within the boundaries of District No. 5; and

WHEREAS, the Service Plan for District No. 5 limits the authority of District No. 5 to certain administrative functions until such time as an Amended and Restated Service Plan for District No. 5 is submitted to and approved by the Loveland City Council; and

WHEREAS, the Board of Directors of District No. 5 has submitted to the Loveland City Council an Amended and Restated Service Plan, which, if approved by the Loveland City Council, would permit District No. 5 to fully exercise all of the powers provided for in the Amended and Restated Service Plan; and

WHEREAS, the Parties desire to further amend the MFA to provide for the inclusion of District No. 5 and the property within its boundaries to the terms and conditions of the MFA; and

WHEREAS, Section 17.1 of the MFA provides that the MFA may be amended by an instrument signed by all of the Parties.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, the Parties agree as follows:

1. Defined Terms.

1.1 That unless the context clearly indicates otherwise, all capitalized words and terms used in this Fourth Amendment shall have the meaning given to them in the MFA, as the same has been amended previously.

1.2 That for purposes of this Fourth Amendment, the term "Industrial District" shall mean and refer to Centerra Metropolitan District No. 5, a quasi-municipal corporation and political subdivision of the State of Colorado.

1.3 That for purposes of this Fourth Amendment, the term "Industrial Mill Levy" shall mean and refer to the total number of Mills levied by the Industrial District as an ad valorem tax on taxable Property within the Industrial District.

2. That Exhibit B to the MFA, described at Section 1.21 of the MFA as the "Commercial Area," as the same was amended by Paragraph 4 of the Third Amendment to restate the legal description of the Commercial Area, is hereby further amended by the addition of the map attached to this Fourth Amendment as **Exhibit A**.

3. That Section 1.57 of the MFA is hereby amended in its entirety as follows:

1.57 "Metro District Improvements" shall mean and refer to any and all improvements that could be acquired, owned or Constructed by the Service District for the

benefit, in whole or in part, of the Commercial District, the Industrial District, or the Regional District to the maximum extent permitted by the Special District Act and the Service Plan as the Service Plan presently exists or as it may be amended from time to time.

The Metro District Improvements shall include the PVH Improvements but only to the extent the PVH Improvements, as a result of the termination of the PVH Agreement, are not constructed by any other Governmental Authority.

4. That Exhibit G to the MFA, defined at Section 1.58 of the MFA as the "Metro District Map," is hereby amended and replaced with the map attached to this Fourth Amendment as **Exhibit B**.

5. That Section 1.60 of the MFA is hereby amended in its entirety as follows:

1.60 "Metro Districts" shall mean and refer to Centerra Metropolitan Districts Nos. 1-5 inclusive, quasi-municipal corporations and political subdivisions of the State organized and acting pursuant to the provisions of the Special District Act.

6. That Section 1.100 of the MFA is hereby amended in its entirety as follows:

1.100 "Sales Tax Credit" shall mean and refer to a credit to be given by the City pursuant to applicable City Regulations against the sales tax collected by the City on Sales made within the Commercial District and the Industrial District under all Regulations in effect at the time the Sales Tax Credit is given.

7. That Section 1.106 of the MFA is hereby amended in its entirety as follows:

1.106 "Service Plan" shall mean and refer to, collectively, the Consolidated Service Plan for the Centerra Metropolitan Districts Nos. 1-4, as approved by Resolution #R-7-2004 adopted by the City Council on January 20, 2004 and the Service Plan for Centerra Metropolitan District No. 5, as approved by Resolution #R-109-2008 adopted by the City Council on September 16, 2008, each as may be amended from time to time.

8. That Section 5.6 of the MFA is hereby amended in its entirety as follows:

5.6 Mill Levy and Sales Tax Credit Reduction. So long as the District Mill Levy shall be equal to or greater than 35 Mills, the Sales Tax Credit for Sales within the Commercial District shall be for a retail sales tax equal to 1.25%. If the District Mill Levy is reduced below 35 Mills, then the Sales Tax Credit for Sales within the Commercial District, at the option of the City in its sole discretion, may be reduced (and shall not thereafter be increased except as provided in §7.4) by the same percentage as the percentage reduction in the District Mill Levy. (For example, if the District Mill Levy is reduced by 10% from 35 Mills to 31.5 Mills, the Sales Tax Credit for Sales within the Commercial District may be reduced by the City by 10% from 1.25% to 1.125 %.). So long as the Industrial Mill Levy shall be equal to or greater than 10 Mills, the Sales Tax Credit for Sales within the Industrial District shall be for a retail sales tax equal to 1.25%. If the Industrial Mill Levy is reduced below 10 Mills, then the Sales

Tax Credit for Sales within the Industrial District, at the option of the City in its sole discretion, may be reduced (and shall not thereafter be increased except as provided in §7.4) by the same percentage as the percentage reduction in the Industrial Mill Levy. (For example, if the Industrial Mill Levy is reduced by 10% from 10 Mills to 9 Mills, the Sales Tax Credit for Sales within the Industrial District may be reduced by the City by 10% from 1.25% to 1.125%).

In the event the statutory or constitutional method of calculating the assessed value of Property is changed after the Effective Date, the District Mill Levy and the Industrial Mill Levy may be reduced to reflect the change in the method of calculating the assessed value of Property without a corresponding reduction in the Sales Tax Credit. So long as the actual tax revenues generated by the District Mill Levy or Industrial Mill Levy, as adjusted, do not decrease, the Sales Tax Credit shall not be reduced. A change in the ratio of actual valuation to assessed valuation shall be considered a change in the method of calculating the assessed valuation of Property. In no event shall an increase in the District Mill Levy or the Industrial Mill Levy result in an increase in the Sales Tax Credit as established in Section 9.

9. That Section 7.1 of the MFA shall be amended in its entirety as follows:

7.1 Establishment of PIF. The PIF Covenant shall be approved by the City Attorney who shall have thirty (30) Days after its submittal to the City to review and provide comments in writing to the Developer with regard to the same. In the event that the City Attorney's written approval is not received within such period, the PIF Covenant shall be deemed to have received City approval. Upon approval, the Developer shall record the PIF Covenant against all of the real estate within the Commercial Area. The PIF Covenant may not be amended, modified, or terminated during the PIF Term in a manner inconsistent with the provisions of this Agreement without the prior written consent of the City Council. The PIF shall be 1.25% during the PIF Term; provided, however that, subject to §7.4, the PIF shall be reduced to the extent the Sales Tax Credit is reduced as a result of a reduction in the District Mill Levy below 35 Mills or a reduction in the Industrial Mill Levy below 10 Mills as provided in §5.6.

10. That Section 9 of the MFA, as previously amended in its entirety by Paragraph 12 of the Third Amendment, is hereby amended in its entirety as follows:

Section 9

SALES TAX CREDIT

For and in consideration of the imposition of the PIF by the Developer, and the collection and application of the PIF by the PIC pursuant to this Agreement, the City hereby grants a Sales Tax Credit equal to 1.25% of all Sales made within the Commercial Area during the PIF Term (without extension pursuant to §7.4) in accordance with the provisions of §3.16.590 of the City's Municipal Code, as such Code exists on the Effective Date of this Agreement. This Sales Tax Credit shall not apply to any real estate added to the Commercial Area unless the addition of such real estate and the application of the Sales Tax Credit to such real estate have been approved by the City Council, and such real estate has been included within

the boundaries of the Commercial District or the Industrial District and has been subjected to the terms and conditions of the PIF Covenant.

11. That Section 16.3.1 of the MFA is hereby amended in its entirety as follows:

16.3.1 TIF. Upon the expiration of the URA Term, any TIF held by the Service District, except that portion of the TIF generated by the District Mill Levy and the Industrial Mill Levy, shall be paid to the LURA. The portion of the TIF generated by the District Mill Levy and the Industrial Mill Levy to be retained by the Service District shall be in an amount in proportion to the amount of the TIF collected by the LURA from the District Mill Levy and the Industrial Mill Levy.

12. That Paragraph 13 of the Third Amendment is hereby amended in its entirety as follows:

No Building Permit shall be issued for the construction of any non-residential Building within the Flex URA Modification Area, unless the platted lot upon which said Building is to be constructed has been included within the boundaries of the Commercial District or the Industrial District and has been subjected to the terms and conditions of the PIF Covenant.

13. That the City, LURA, and the Service District each finds and determines that the execution of this Fourth Amendment is in the best interest of the public health, safety, and general welfare of the City, LURA, and the Service District respectively, and that it will serve the public purposes of providing significant social and economic benefits to the City, LURA, and the Service District.

14. That each exhibit attached to this Fourth Amendment is incorporated herein by reference.

15. That except as provided in the First Amendment, the Second Amendment, the Third Amendment, and this Fourth Amendment, all other terms and conditions of the MFA shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment or counterpart copies thereof as of the date first written above.

(Remainder of page intentionally left blank)

CITY OF LOVELAND, COLORADO, a Colorado
municipal corporation

By: _____
Eugene N. Pielin, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

J. West Schmidt
Deputy City Attorney

LOVELAND URBAN RENEWAL AUTHORITY,
a Colorado body corporate and politic

By: _____
Eugene N. Pielin, Chairman

ATTEST:

By: _____
_____, Secretary

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

By: _____
Kim L. Perry, President

ATTEST:

By: _____
Daniel Herlihey, Secretary

CENTERRA PUBLIC IMPROVEMENT
COLLECTION CORPORATION, a Colorado non-
profit corporation

By: _____
Douglas L. Hill, President

ATTEST:

By: _____
_____, Secretary

CENTERRA PUBLIC IMPROVEMENT
DEVELOPMENT CORPORATION, a Colorado
non-profit corporation

By: _____
Douglas L. Hill, President

ATTEST:

By: _____
_____, Secretary

CENTERRA PROPERTIES WEST, LLC
a Colorado Limited Liability Company

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

By: _____
Douglas L. Hill, Chief Operating Officer

ATTEST:

By: _____

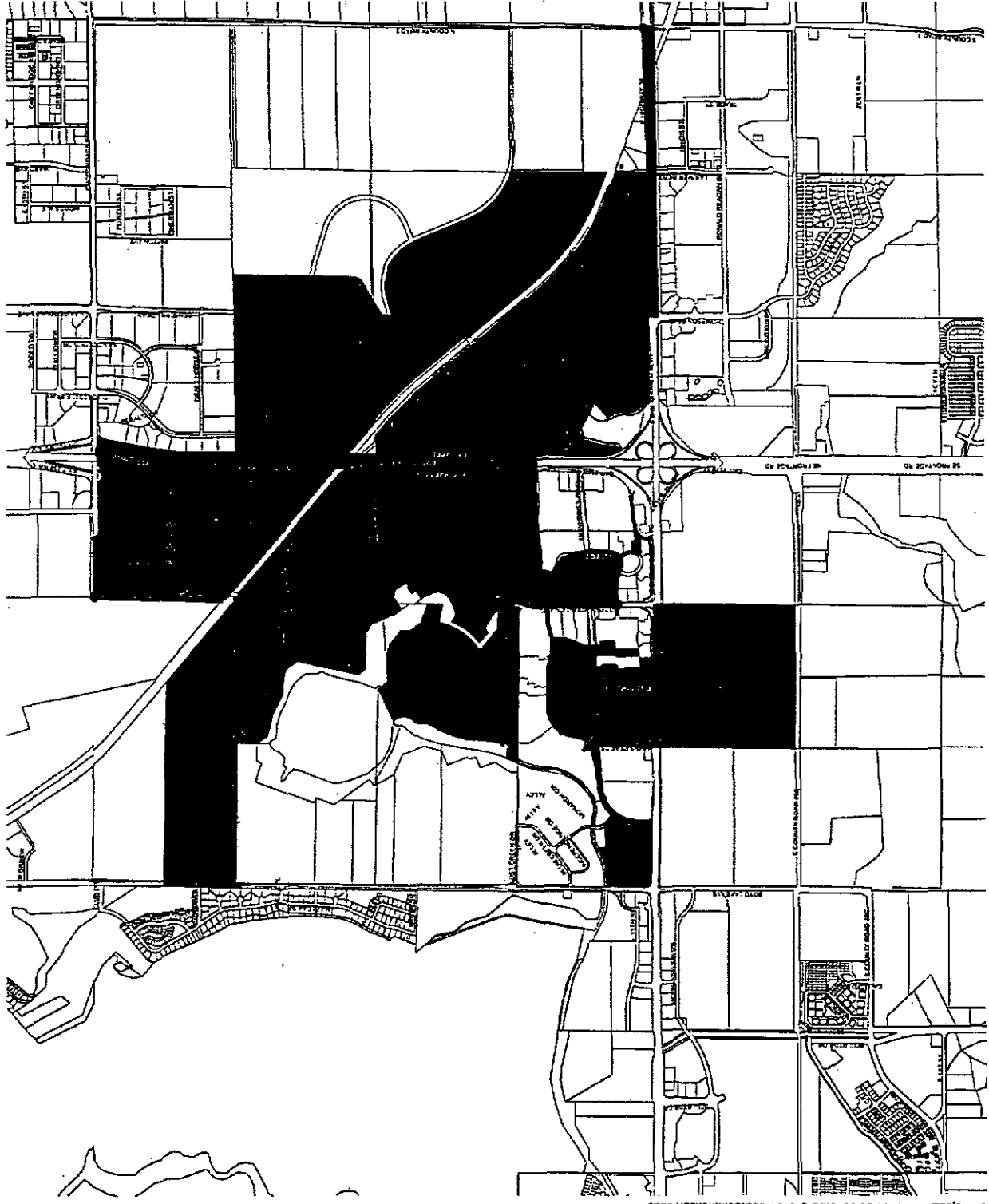
EXHIBIT A
COMMERCIAL AREA MAP



Commerical Area

LEGEND

Commerical Area
Acreage = 1884.5



McWHINNEY
www.mcwhinney.com
970-962-9999

Date: August 13, 2008



Prepared By: **NE**
Date: 8/13/08
Note: This information is provided for informational purposes only and is not intended to be used for any other purpose. The information herein is subject to change without notice.

EXHIBIT B
METRO DISTRICT MAP



CENTERRA METROPOLITAN DISTRICTS

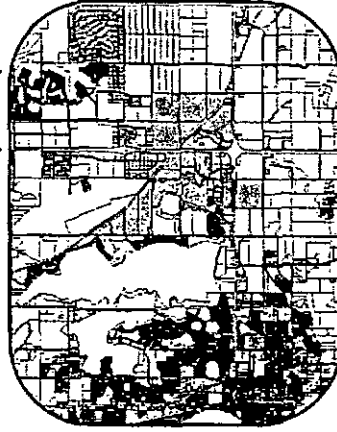
CENTERRA DISTRICT MAP

SECTIONS 3, 4, 9, 10, 11, TOWNSHIP 5 NORTH,
RANGE 68 WEST,
CITY OF LOVELAND,
COUNTY OF LARIMER,
STATE OF COLORADO

Legend

- Centerra Metro District No. 1
- Centerra Metro District No. 2 and Regional Improvement District No. 4
- ◐ Centerra Metro District No. 2 - DEBT ONLY DISTRICT
- ◑ Centerra Metro District No. 3
- Centerra Metro District No. 5

VICINITY MAP (N.T.S)



Prepared By:
NE
NORTHWEST
INSTITUTE



McWHINNEY
www.mcwhinney.com
970-983-9990

Date: February 9, 2009

