

AGENDA
SPECIAL MEETING
OF THE CITY COUNCIL
CITY OF LAKEWOOD, COLORADO
VIRTUAL MEETING
MONDAY, MARCH 15, 2021
5:30 PM

To watch the Council meeting live, please use either one of the following links:

City of Lakewood Website: <https://www.Lakewood.org/CouncilVideos>

or

Lakewood Speaks: <https://lakewoodspeaks.org/>

Phone Number for Public Comment: 1-346-248-7799

Webinar ID: 984 5578 8710

(press # after entering the webinar id then press # once more to join the meeting)

Press *9 to Request to Speak, you will be prompted when to speak.

Press *6 to Unmute

(After speaking, you can hang up or hold to speak on a different agenda item)

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ITEM 1 – CALL TO ORDER

ITEM 2 – ROLL CALL

ORDINANCES ON SECOND READING AND PUBLIC HEARINGS

ITEM 3 – ORDINANCE O-2021-5 – AUTHORIZING A SUPPLEMENTAL APPROPRIATION OF \$12,500,000 TO THE 2021 ANNUAL BUDGET AND AUTHORIZING EXPENDITURE OF GRANT FUNDS FROM THE DENVER REGIONAL COUNCIL OF GOVERNMENTS TO ASSIST THE CITY OF LAKEWOOD IN IMPROVING SAFETY ON COLFAX AVENUE BETWEEN WADSWORTH AND SHERIDAN BOULEVARDS

ITEM 4 – ORDINANCE O-2021-2 - AUTHORIZING THE SALE OF THE WESTLAND TOWN CENTER PARKING LOT IN ACCORDANCE WITH THAT CERTAIN OPTION CONTRACT ENTERED INTO AS OF JUNE 16, 1992, BETWEEN THE CITY OF LAKEWOOD AND THE OWNERS OF THE WESTLAND MALL/WESTLAND TOWN CENTER

ITEM 5 – ADJOURNMENT

STAFF MEMO

DATE OF COUNCIL MEETING: March 15, 2021 / AGENDA ITEM NO. 3

To: Mayor and City Council

From: Jay N. Hutchison, Director of Public Works, 303-987-7901
Holly Björklund, Chief Financial Officer, 303-987-7601

Subject: **Ordinance Amending the 2021 Annual Budget and Authorizing the Expenditure of Grant Funds for the Colfax Safety Project**

SUMMARY STATEMENT: This ordinance would revise the 2021 budget to provide the \$2,500,000 match required of the City for the \$10,000,000 *Safer Main Streets Initiative* grant and authorize expenditures to improve safety and other features along Colfax Avenue between Wadsworth and Sheridan boulevards.

BACKGROUND INFORMATION: West Colfax Avenue between Wadsworth and Sheridan boulevards has the highest concentration of traffic injuries and deaths in the City of Lakewood.

In December 2020, the City was notified that it was awarded a \$10,000,000 grant by the Denver Regional Council of Governments to improve safety and provide other features along this section of Colfax. The grant application included data from the six-year period between June 2014 and June 2020. During that time, there were 312 serious injuries and eight fatalities along this 1.5 mile stretch of road. Eighty-one of the serious injuries and 6 of the deaths were pedestrians or cyclists.

Three additional pedestrian deaths have occurred since mid-2020.

Development of this project has been a collaboration of multiple City departments, the Colorado Department of Transportation, Regional Transportation District, Lakewood-West Colfax Business Improvement District, and 40 West Art District. The grant application was also supported by the West Colfax Community Association, Two Creeks Neighborhood Organization, the ArtLine project team, West Corridor Transportation Management Association, Metro West Housing Solutions, FirstBank, Broad Street, and Denver Streets Partnership.

Both business owners and residents will remain closely informed of the project as it is implemented. Public input will be received for project components such as landscaping, fencing and barriers. Certain project elements, such as art will include the local community and local artists as much as feasible. Affected businesses and neighborhoods will be kept informed and involved in the implementation process to minimize negative effects of construction and to make both the process and completed project an asset to the community.

BUDGETARY IMPACTS: Previous information was that the City's match for the grant would be \$2.0 million. On February 4, the City was notified by the Colorado Department of

Transportation that a mathematical error had occurred and the required City match is \$2.5 million. An alternative would be for the \$10 million grant to be reduced to \$8 million to keep the City match at \$2.0 million, which would not be adequate funding for the project.

Funding for the \$2.5 million City match will initially come from the following sources:

- \$1,000,000 – TABOR transportation project contingency funds and savings experienced on 2020 TABOR transportation project bids.
- \$500,000 – Additional TABOR transportation funds available in 2021 and attributable to 2020 revenues.
- \$1,000,000 – Capital Improvement Fund balance.

The Capital Improvement Fund balance is intended to be replenished from savings on TABOR transportation projects or future TABOR transportation funds, if any.

STAFF RECOMMENDATION: Approval of the ordinance.

ALTERNATIVES: City Council could choose to not approve this ordinance resulting in the Colfax Safety Project grant being declined or City Council could select other funding sources for the required \$2.5 million match for the grant.

PUBLIC OUTREACH: Notification has been made through the City Council agenda process.

NEXT STEPS: If the City Council approves the ordinance, the Colfax Safety Project will move forward.

ATTACHMENTS: Ordinance O-2021-5

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

O-2021-5

AN ORDINANCE

AUTHORIZING A SUPPLEMENTAL APPROPRIATION OF \$12,500,000 TO THE 2021 ANNUAL BUDGET AND AUTHORIZING EXPENDITURE OF GRANT FUNDS FROM THE DENVER REGIONAL COUNCIL OF GOVERNMENTS TO ASSIST THE CITY OF LAKEWOOD IN IMPROVING SAFETY ON COLFAX AVENUE BETWEEN WADSWORTH AND SHERIDAN BOULEVARDS

WHEREAS, Section 12.8 of the City Charter allows City Council to make supplemental appropriations by ordinance during the fiscal year for unanticipated expenditures required for the operation of the City using monies not anticipated in the adopted budget;

WHEREAS, Section 3.04.080 of the Lakewood Municipal Code requires approval by the City Council for any unbudgeted purchase or any purchase of more than fifty thousand dollars that has a change in funding source;

WHEREAS, the City of Lakewood has been awarded a \$10,000,000 *Safer Main Streets Initiative* grant to improve safety and other features of Colfax Avenue between Wadsworth and Sheridan boulevards;

WHEREAS, the Lakewood City Council desires to appropriate the required grant matching funds of \$2,500,000 for the Colfax Safety Project to the 2021 Capital Improvement and Preservation Fund;

WHEREAS, the sources of such grant matching funds shall be: \$1,500,000 from the transportation portion of TABOR funds and \$1,000,000 from Capital Improvement Fund balance, which shall be replenished from transportation TABOR funds available in the future, if any;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal; and

WHEREAS, approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies the proposal.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Appropriation and Expenditure. The City Council hereby appropriates and authorizes the expenditure of twelve million five hundred thousand dollars (\$12,500,000) for fiscal year 2021 to fund the Colfax Safety Project.

SECTION 2. Effective Date. This Ordinance shall take effect thirty (30) days after final publication.

SECTION 3. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 22nd day of February, 2021; published by title in the Denver Post and in full on the City of Lakewood's website at www.lakewood.org, on the 25th day of February, 2021; set for public hearing to be held on the 15th day of March, 2021; read, finally passed and adopted by the City Council on the 15th day of March, 2021; and signed by the Mayor on the ____ day of _____, 2021.

Adam Paul, Mayor

ATTEST:

Bruce Roome, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

STAFF MEMO

DATE OF COUNCIL MEETING: March 15, 2021 / AGENDA ITEM NO. 4

To: Mayor and City Council

From: Robert Smith, Economic Development Director, 303-987-7732

Subject: **ORDINANCE O-2021-2 SALE OF THE CITY-OWNED WESTLAND TOWN CENTER PARKING LOT TO RCG VENTURES I, LLC PER EXISTING OPTION CONTRACT**

SUMMARY STATEMENT: RCG Ventures, I, LLC (“RCG”), the current owner of the Westland Town Center and successor in interest to all rights and liabilities of the previous owners of such real property, has asked to exercise an option to purchase the Westland Town Center parking lot (“Parking Lot”) from the City for the pre-established price of one million dollars (\$1,000,000).

BACKGROUND INFORMATION: The City of Lakewood (the “City”) acquired by condemnation the 21.54-acre Parking Lot at the Westland Town Center located at 10425-10755 West Colfax Avenue (identified by Parcel ID 39-333-11-002 & 39-334-11-026). In 2016, RCG acquired the Westland Town Center property (identified by Parcel ID 39-334-11-021 & 39-334-11-027), which includes the Lowe’s building and retail strip. The adjacent former Sears property (identified by Parcel ID 39-333-11-003), is now owned by Seritage Growth Properties.

- In the 1960s, the above properties, generally between Colfax & 17th Avenues and Owens & Miller Streets, were developed into the Westland Mall and included some additional retail pad sites.
- For the better part of three decades, the Westland Mall played a top tier role in the commercial success of Lakewood. By the late 1980s/early 1990s, the properties were experiencing greatly declining sales, high vacancy and the deterioration of buildings.
- Because a significant share of the operating revenue of the City at that time was derived from sales tax revenue, the City worked with the owner of the retail center to redevelop the Westland Mall into the Westland Town Center in an effort to restore its status as an economic driver within the City and to avoid the material and adverse negative social and public consequences of allowing the continued deterioration of the property.
- The City acquired the Parking Lot through eminent domain. While eminent domain does not involve a willing seller, the owners of the Westland Mall agreed not to contest the condemnation action if the compensation to be paid by the City was at least \$5,000,000, and the City agreed to such value contingent upon payments being made in accordance with the completion of critical steps toward redevelopment of the Mall property.
- A Construction, Operation, and Reciprocal Easement Agreement entered into by all owners of real property associated with the redeveloped mall provided that the owners of the adjacent retail property would assume responsibility for the maintenance and insurance of the Parking Lot while the City agreed to never use the property for anything other than public parking.
- For the two decades following, the Westland Town Center again played a significant role in Lakewood’s commercial success. However, by the late 2010s, the property was struggling to maintain commercial viability.

The City entered into numerous agreements with the owners of the retail center to facilitate the redevelopment in the 1990s. Some of those agreements strictly limit the use of the City-owned parcel to a parking lot for the use of the adjacent retail properties. Another one of those agreements was an Option Contract, which gave the owners of the Westland Town Center the option to buy back the Parking Lot from the City for the greater of the remaining balance of the Sales Tax and Revenue Bonds (“Bonds”) or one million dollars (\$1,000,000). The Bonds (which were issued to finance the acquisition and improvement of the Parking Lot) were paid off in 2012. Therefore, the transfer value of the Parking Lot pursuant to the Option Contract is one million dollars (\$1,000,000). The City has administratively executed various estoppel certificates over the years representing to successors in ownership, including RCG, that the Option Contract was and remains valid.

With its purchase of the Westland Town Center, RCG became the successors in interest to all of the previously executed agreements. RCG has notified the City that it wishes to exercise their rights under Option Contract and reacquire the Parking Lot. By reuniting it with the balance of the Westland Town Center property the opportunities for re-use or redevelopment of the whole area are greatly enhanced. Despite the commitments made under the Option Contract, to comply with the mandatory provisions of the City’s Charter, transfer of City-owned property requires the approval of the City Council via Ordinance.

BUDGETARY IMPACTS: In alignment with the Option Contract, the City will receive one million dollars (\$1,000,000) for the transfer of the Parking Lot. Additionally, the currently tax-exempt, city-owned property, will generate income to the City when it becomes subject to property tax.

STAFF RECOMMENDATIONS: Staff recommends approving Ordinance O-2021-2

ALTERNATIVES: If this Ordinance is not approved, the transfer back to previous ownership would not take place, and the City would retain ownership of the Parking Lot under the various agreements, requiring the property to be used solely for pedestrian and vehicular access and parking for the Westland Town Center. According to RCG, this would make redevelopment or reuse of the Westland Town Center impractical, and RCG would have to decide whether to accept the Council’s decision or take other action.

PUBLIC OUTREACH: Proper notice of this Council consideration of O-2021-2 was given.

ATTACHMENTS: Ordinance O-2021-2
Parking Lot Option Contract
Property Map

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison Brown McKenney, City Attorney

O-2021-2

AN ORDINANCE

AUTHORIZING THE SALE OF THE WESTLAND TOWN CENTER PARKING LOT IN ACCORDANCE WITH THAT CERTAIN OPTION CONTRACT ENTERED INTO AS OF JUNE 16, 1992, BETWEEN THE CITY OF LAKEWOOD AND THE OWNERS OF THE WESTLAND MALL/WESTLAND TOWN CENTER

WHEREAS, in the early 1990s, the Westland Mall, located on the north side of Colfax Avenue between Miller and Owens Streets in Lakewood, Colorado (the “Westland Mall”), was suffering from declining sales, high vacancy rates and building deterioration;

WHEREAS, the City of Lakewood (the “City”) worked with the then-owners of the Westland Mall (the “Westland Owners”) to convert the retail center into the “Westland Town Center” by redeveloping the property;

WHEREAS, to support the redevelopment process, the Lakewood City Council agreed to infuse approximately \$5,000,000 into the project by acquiring the parking lot of the Westland Mall/Westland Town Center (the “Westland Parking Lot”) via a “friendly” condemnation and compensating the Westland Owners in that amount;

WHEREAS, as part of the City’s acquisition of the Westland Parking Lot, the City and the Westland Owners entered into various agreements, including a contract executed June 16, 1992, attached hereto as Exhibit A (the “Option Contract”), which provided the Westland Owners with the option to re-acquire the Westland Parking Lot for \$1,000,000;

WHEREAS, the current owner of the Westland Town Center, RCG Ventures, I, LLC (“RCG”), has notified the City that it has chosen to exercise its option to re-acquire the Westland Parking Lot in accordance with the provisions of the Option Contract;

WHEREAS, pursuant to the City’s home rule charter, the sale of City-owned real property must be accomplished by ordinance;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal; and

WHEREAS, approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies the proposal.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The sale of the Westland Parking Lot to RCG in accordance with the provisions of the Option Contract is hereby approved.

SECTION 2. The City Manager is hereby authorized to take all actions necessary to complete the sale of the Westland Parking Lot to RCG.

SECTION 3. This ordinance shall take effect thirty (30) days after final publication.

SECTION 4. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a regular meeting of the Lakewood City Council on the 22nd day of February, 2021; published by title in the Denver Post and in full on the City of Lakewood's website at www.lakewood.org, on the 25th day of February, 2021; set for public hearing to be held on the 15th day of March, 2021; read, finally passed and adopted by the City Council on the 15th day of March, 2021; and signed by the Mayor on the ____ day of March, 2021.

Adam Paul, Mayor

ATTEST:

Bruce Roome, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney

EXHIBIT A

OPTION CONTRACT

THIS OPTION CONTRACT is entered into effective as of the ____ day of _____, 199__, between the City of Lakewood, a municipal corporation of the State of Colorado ("Lakewood") and CenterMark Properties, Inc. a Missouri corporation ("CenterMark").

WITNESSETH:

WHEREAS, Lakewood is the owner of that certain real property located in the City of Lakewood, Colorado as are more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Lakewood Property"); and

WHEREAS, CenterMark is the owner of that certain real property located in the City of Lakewood, Colorado, as more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the "Westland Town Center"); and

WHEREAS, Lakewood has acquired the Lakewood Property by eminent domain proceedings;

WHEREAS, Lakewood, CenterMark and Sears Roebuck and Company have entered into a First Amendment to the Amended and Restated Construction, Operating and Reciprocal Easement Agreement (the "First Amendment") pursuant to which, among other things, Lakewood has granted certain rights to the use of the Lakewood Property in consideration for the assumption of certain obligations by CenterMark; and

WHEREAS, CenterMark desires to obtain from Lakewood and Lakewood is willing to grant to CenterMark an option to buy the Lakewood Property from Lakewood on the terms and conditions set forth in this Contract (the "Option").

NOW, THEREFORE, in consideration of the premises and the following mutual covenants and agreements, the parties hereto hereby agree as follows:

ARTICLE I THE OPTION

1.01 **Grant of Option.** Lakewood hereby grants to CenterMark the right and option to purchase the Lakewood Property from Lakewood upon and subject to the terms and conditions set forth in this Contract. The sale of the Lakewood Property shall include the interest of Lakewood as fee simple owner of the Lakewood Property in: (i) any rights-of-way, easements, improvements, structures and other property rights appurtenant to the Lakewood Property, (ii) any right, title and interest in adjoining or adjacent streets, roads, or rights-of-way and vacated alleys, appurtenant to the Lakewood Property, and (iii) any and all contracts rights, agreements, rights of use, permits, licenses or other benefits which are appurtenant to, or for the benefit of, the Lakewood Property.

1.02 **Statement of Intent.** Lakewood and CenterMark expect that the Lakewood Property shall remain the property of the City for the term of this Option and CenterMark has no present intent to exercise the Option.

1.03 **Consideration for Option.** This Option is granted as additional consideration for, and as an inducement to CenterMark to enter into, the First Amendment. Lakewood hereby acknowledges and confesses the adequacy and sufficiency of the consideration received by it for granting the Option.

1.04 **Term and Exercise of Option.** Unless sooner exercised or unless earlier terminated by the other provisions of this Contract, this Contract and the Option to buy the Lakewood Property granted hereby shall terminate at 5:00 p.m. Mountain Standard Time June 15, 2082. At any time prior to expiration of the Option, CenterMark may exercise the Option to purchase the Lakewood Property by delivering written notice of exercise of the Option to Lakewood in accordance with the provisions of Section 9.11 of this Contract. Notwithstanding the preceding sentence, the Option may not be exercised prior to six months following the stated maturity date of the Bonds (as defined in Section 1.05(a) below) unless the City shall have received an opinion, dated the date of the exercise of the Option, of an attorney or firm of attorneys of nationally recognized standing in the field of municipal financing agreed upon by CenterMark and the City, to the effect that exercise of the Option will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds. CenterMark shall not exercise the Option if such exercise would cause the interest on the Bonds to lose its exclusion from gross income for federal income purposes.

1.05 **Exercise Price.** The consideration payable by CenterMark to Lakewood shall be the greater of the following:

a. The outstanding principal balance at the time of exercise of the Option of any municipal bonds (the "Bonds") issued by Lakewood to provide the funds required for performance of its obligations to (i) reimburse CenterMark for costs of construction of public improvements on the Lakewood Property and at the Westland Town Center (the "Public Improvements") plus and (ii) finance the cost of acquisition of the Lakewood Property, together with all interest accrued but unpaid under the Bonds and any and all costs and expenses, including attorneys fees reasonably anticipated to be incurred in connection with payment or defeasance of the Bonds, or

b. \$1,000,000.

The parties agree that the initial principal balance of the Bonds will be an amount equal to the actual funding by Lakewood to CenterMark for acquisition of the Public Improvements and the Lakewood Property (anticipated to be approximately \$10,000,000) regardless of whether the actual funding is derived from a larger bond issue or a series of bonds.

ARTICLE II TERMS OF PURCHASE

The following provisions shall apply to the purchase of the Lakewood Property pursuant to this Agreement.

2.01 **Right of Purchase.** On the Closing Date, as hereinafter defined, CenterMark shall purchase from Lakewood, and Lakewood shall sell and convey to CenterMark, the Lakewood Property in accordance with the terms and conditions contained in this Article.

2.02 **Purchase Price.** The purchase price to be paid by CenterMark to Lakewood at closing shall be the price described in Section 1.04 of this Contract.

2.03 **Payment of Purchase Price.** Subject to the full and timely performance by Lakewood hereunder, the purchase price for the Lakewood Property shall be payable to Lakewood by CenterMark on the Closing Date by certified check or cashier's check or wire transfer.

2.04 **Closing and Closing Date.** The transaction shall be closed at the offices of the Title Insurance Company providing title insurance in accordance in Section 3.01 below on or before the expiration of forty-five (45) days after the exercise of the Option by CenterMark as set forth in Section 1.03 above. If the parties are unable to agree on a Closing Date, the Closing Date shall be determined by CenterMark.

ARTICLE III TITLE INFORMATION AND CONVEYANCE

3.01 **Evidence of Title.** On or before thirty (30) days prior to closing, Lakewood shall furnish to CenterMark, at Lakewood's expense, a current commitment for an owner's title insurance policy in an amount equal to the purchase price (the "Title Commitment") from a title insurance company (the "Title Insurance Company") reasonably acceptable to CenterMark. Lakewood shall cause the Title Insurance Company to furnish CenterMark copies of instruments shown of record in the office of the clerk and recorder of Jefferson County, Colorado, as affecting title to the Lakewood property or listed as exceptions to title in the Title Commitment (the "Exceptions"). The Title Commitment, together with any copies of instruments which comprise the Exceptions constitute the title documents (the "Title Documents"). Lakewood shall cause the Title Insurance Company to deliver to CenterMark copies of instruments listed as exceptions no later than five (5) calendar days after CenterMark's receipt of the Title Commitment. Lakewood shall have the title insurance policy delivered to CenterMark as soon as practicable after closing and pay the premium at closing.

3.02 **Title.**

a. **Title Review.** CenterMark shall have the right to inspect the Title Documents. The Title Documents shall be satisfactory to CenterMark in all material respects. If the Title Documents reveal any matters which are objectionable to CenterMark, CenterMark shall notify Lakewood of such objection in writing. Written notice by CenterMark of unmerchantability of title or of any other unsatisfactory title conditions shown by the Title Documents shall be signed by or on behalf of CenterMark and given to Lakewood on or before twenty (20) calendar days after the receipt of Title Documents or within ten (10) calendar days after receipt by CenterMark of any Title Documents or endorsements adding new Exceptions to the Title Commitment together with a copy of the Title Documents adding new Exceptions to title. If Lakewood does not receive CenterMark's notice by the date(s) specified above, CenterMark shall be deemed to have accepted the condition of title as disclosed by the Title Documents as satisfactory.

b. **Matters Not Shown by the Public Records.** Lakewood shall deliver to CenterMark at least twenty (20) days prior to closing, true copies of all leases and surveys in Lakewood's possession pertaining to the Lakewood Property and shall disclose to CenterMark all easements, liens or other title matters not known by the public records of which Lakewood has actual knowledge. CenterMark shall have the right to inspect the Lakewood Property to determine if any third party has any right in the Lakewood Property not shown by the public records (such as an unrecorded easement, unrecorded lease, of boundary line discrepancy). Written notice of any unsatisfactory conditions disclosed by Lakewood or revealed by such inspection shall be signed by or on behalf of CenterMark and given to the Seller on or before five (5) days prior to closing. If Lakewood does not receive CenterMark's notice by said date, CenterMark shall be deemed to have accepted title subject to such rights, if any, of third parties of which CenterMark has actual knowledge.

c. **Right to Cure.** If Lakewood receives notice of unmerchantability of title or any other unsatisfactory title conditions as provided in subparagraphs (a) or (b) above, Lakewood shall use reasonable

efforts to correct said unsatisfactory title conditions within thirty (30) days following delivery of notice thereof. In addition, if the objection to title arises from a lien securing a monetary obligation of Lakewood or a grant or conveyance of an interest by Lakewood in violation of Section 5.02 with respect to the Lakewood property ("Lakewood Encumbrances"), Lakewood shall cause such objection to title to be removed at or prior to the closing. If Lakewood fails to correct said unsatisfactory title conditions within such thirty (30) days period, CenterMark shall have the right to terminate this contract, provided, however, CenterMark may, by written notice received by Lakewood prior to expiration of the Option Period, waive objection to said unsatisfactory title conditions. Notwithstanding the foregoing, Lakewood shall have no obligation to undertake any cure of an objection to title other than a Lakewood Encumbrance. Lakewood may use the proceeds from the sale of the Lakewood Property at closing to satisfy any title objections based upon monetary encumbrances, including, without limitation, the Lakewood Encumbrances.

3.03 **Conveyance.** Subject to due exercise of the option and compliance with the other terms and conditions hereunder by CenterMark, Lakewood shall convey the Lakewood Property to CenterMark at closing upon payment of the Purchase Price to Lakewood in accordance with Section 4.02 below. Conveyance shall be made by special warranty deed. The title to the Lakewood Property at the time of conveyance shall be transferred subject to (a) easements, rights-of-way, restrictions, covenants, liens and other encumbrances of record as of the date of closing, other than the Lakewood Encumbrances, and (b) those matters approved by CenterMark, or to which CenterMark did not object, pursuant to the provisions of Section 3.02 of this agreement. The allowable exceptions to titles described in clauses (a) and (b) of this section are referred to herein as the "Permitted Exceptions".

ARTICLE IV CLOSING

4.01 **Conditions Precedent to Closing.** If the Option is exercised, CenterMark's obligation to purchase the Lakewood Property shall be conditioned upon satisfaction prior to closing of the following condition:

a. The Title Commitment (as modified and/or endorsed pursuant to Article III above) shall be satisfactory to CenterMark in form and substance. The Title Commitment shall be deemed satisfactory to CenterMark provided that there are no exceptions to title other than the Permitted Exceptions.

b. All representations and warranties of Lakewood in this Contract shall be true and correct as of the Closing Date.

4.02 **Closing.** At closing the following shall occur:

a. CenterMark shall deliver to Lakewood the purchase price in the form of a cashier's check, certified funds or wire transfer, as adjusted by closing costs and prorations, if any.

b. Lakewood shall deliver to CenterMark a duly executed acknowledged special warranty deed conveying title to the Lakewood Property to CenterMark free and clear of all liens and encumbrances except for the Permitted Exceptions.

c. CenterMark and Lakewood shall execute and deliver to each other or for the benefit of the Title Insurance Company, as appropriate, such other documents as may be reasonably requested by the other party or the Title Insurance Company to facilitate or effectuate the conveyance contemplated by this Contract.

**ARTICLE V
COVENANTS AND AGREEMENTS OF LAKEWOOD**

5.01 **CenterMark's Access to Property.** Lakewood covenants and agrees that from and after the date of Lakewood's execution hereof, CenterMark and its agents and/or employees may enter upon the Lakewood Property for the purpose of making surveys, engineering studies, soil tests, obtaining topographical information and for similar information concerning the Lakewood Property; provided, however, that such activities shall not be conducted in a manner which unreasonably restricts public access to the Lakewood Property. CenterMark hereby agrees to indemnify, defend and hold Lakewood harmless from (a) any claims of any nature against Lakewood arising from CenterMark's activities on the Lakewood Property, and (b) any mechanic's liens which might be filed against the Lakewood Property by reason of any of such activities of CenterMark on such properties.

5.02 **Lakewood's Use of the Property Prior to Closing Date.** From and after the date of Lakewood's execution hereof, Lakewood shall not grant or convey any easement, lease, encumbrance, license, permit or any other legal or beneficial interest in or to the Lakewood Property, without the prior written consent of CenterMark which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Lakewood may grant or convey, without CenterMark's prior written consent, any of the foregoing title encumbrances so long as they are terminable upon closing of the Option or are customary easements for utility services.

5.03 **Delivery of Materials to CenterMark.** Lakewood hereby covenants and agrees to make available to CenterMark, at no expense to CenterMark, from time to time during the term of this Option, any and all engineering studies, zoning information, soil investigations and reports, water and sewer studies, topographic maps, platting and other materials in Lakewood's possession or control concerning the Lakewood Property. Lakewood makes no representations or warranties of any nature concerning the accuracy, validity of suitability for CenterMark's use of any such information furnished to CenterMark.

**ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF LAKEWOOD**

6.01 **Representations and Warranties.** Lakewood hereby represents and warrants to CenterMark as follows:

a. Lakewood is a municipality and governmental entity duly organized and validly existing under the laws of the State of Colorado. Lakewood has the authority to enter into this Contract and to consummate the transactions contemplated hereby. The making and performance of this Contract and the agreements and other instruments required hereunder to be executed by Lakewood have been, or on the Closing Date will have been, duly authorized by all necessary municipal and other governmental action and will not violate any provision of the City Charter or any other City laws, ordinances and regulations, or violate any provision of any license, permit, loan or other type of agreement to which the Lakewood is or will be subject.

b. When executed and delivered, this Contract will constitute a legal and binding obligation of Lakewood, and will be valid and enforceable against Lakewood in accordance with the terms hereof except that (i) the enforcement of certain rights and remedies created by this Contract is subject to bankruptcy, insolvency, reorganization and similar laws of general application affecting the rights and remedies of parties, and (ii) the enforceability of any particular provision of this Contract under principles of equity or the availability of equitable remedies, such as specific performance, injunctive relief, waiver or other equitable remedies is subject to the discretion of courts of competent jurisdiction.

c. The consummation by Lakewood of the transactions contemplated by this Contract will not result in a breach of any material term or provision of, or constitute a material default under, any other agreement or instrument to which Lakewood is a party and there are no conditions, obligations, or judicial or regulatory orders which prevent, prohibit or constrain the City's ability to perform under this Contract.

6.02 **Closing Certificates.** If requested by CenterMark, Lakewood shall, on the Closing Date, execute a certificate stating that, to the best of its knowledge and belief, Lakewood has performed all of, and there exists no non-performance or breach in respect of, any of the foregoing representations and warranties.

ARTICLE VII REPRESENTATIONS AND WARRANTIES OF CenterMark

7.01 **Representations and Warranties.** CenterMark hereby represents and warrants to Lakewood as follows:

a. CenterMark is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri. CenterMark has corporate power to enter into this Contract and to consummate the transactions contemplated hereby. The making and performance of this Contract and the agreements and other instruments required hereunder to be executed by CenterMark have been, or on the Closing Date will have been, duly authorized by all necessary corporate action and by all required action by the shareholders of the CenterMark and will not violate any provision of the Articles of Incorporation or Bylaws of the CenterMark or violate any provision of any license, permit, loan or other type of agreement to which the CenterMark is or will be subject.

b. When executed and delivered, this Contract will constitute a legal and binding obligation of CenterMark, and will be valid and enforceable against CenterMark in accordance with the terms hereof except that (i) the enforcement of certain rights and remedies created by this Contract is subject to bankruptcy, insolvency, reorganization and similar laws of general application affecting the rights and remedies of parties, and (ii) the enforceability of any particular provision of this Contract under principles of equity or the availability of equitable remedies, such as specific performance, injunctive relief, waiver or other equitable remedies is subject to the discretion of courts of competent jurisdiction.

c. The consummation by CenterMark of the transactions contemplated by this Contract will not result in a breach of any material term or provision of, or constitute a material default under, any other agreement or instrument to which the CenterMark is a party.

7.02 **Closing Certificates.** If requested by Lakewood, CenterMark shall, on the Closing Date, execute a certificate stating that, to the best of its knowledge and belief, CenterMark has performed all of, and there exists no non-performance or breach in respect of, any of the foregoing representations and warranties.

ARTICLE VIII DEFAULT: REMEDIES

8.01 **Default.** Time is of the essence hereof, and if any payment or any other condition hereof is not made, tendered or performed as herein provided, the party who has failed to make or tender payment or

performance as required under this Contract shall be deemed to have defaulted under this Contract and the provisions of this Article shall apply.

8.02 **CenterMark's Failure to Close.** If CenterMark exercises the Option but wrongfully fails to close in accordance with the terms of this Contract, Lakewood shall have the remedies of specific performance, damages or both, in addition to any other rights at law for breach of this Contract by CenterMark.

8.03 **Lakewood's Failure to Close.** If CenterMark exercises the Option and Lakewood fails to close in accordance with this Contract, CenterMark shall have the remedies of specific performance, damages or both in addition to any other rights at law for breach of this Contract by Lakewood.

8.04 **Other Remedies.** The remedies described in this Article are in addition to, and not in lieu of, any other remedies the CenterMark or Lakewood may have at law or in equity by reason of the default of the other party.

ARTICLE IX PROVISIONS OF GENERAL APPLICATION

9.01 **Recordation.** Neither Lakewood nor CenterMark shall record this Contract without the consent of the other party. If either party records this Contract without the consent of the other party, such recordation shall be deemed a material breach of this Contract. CenterMark shall have the right to record a memorandum of option setting forth the principal terms of this Contract if it so desires. Upon request by CenterMark, Lakewood shall execute a memorandum of option reasonably acceptable to Lakewood to facilitate recording thereof by CenterMark.

9.02 **Commissions.** CenterMark hereby represents that no brokerage commission or other compensation is due to any real estate broker, agent, or salesman by reason of CenterMark's entry into or performance of this Contract. CenterMark agrees to indemnify, defend and hold Lakewood harmless against any and all claims based in whole or in part on any act of CenterMark for commissions, fees, or other compensation made by any real estate broker, agent, or salesman as the result of the sale of the Lakewood Property by Lakewood to CenterMark contemplated hereby.

Lakewood hereby represents that no brokerage commission or other compensation is due to any real estate broker by reason of Lakewood's entry into or performance under this Contract. Lakewood agrees to indemnify, defend and hold CenterMark harmless against any and all claims based in whole or in part on any act of Lakewood for commissions, fees, or other compensation made by any real estate broker, agent, or salesman as the result of the sale of the Lakewood Property by Lakewood to CenterMark contemplated hereby.

9.03 **Risk of Loss.** In the event any of the Lakewood Property is substantially damaged by fire, flood or other casualty between the date of exercise of the Option and Closing Date, this Contract may, at the option of the CenterMark, be declared null and void.

9.04 **Condemnation.** In the event that any portion of the Lakewood Property shall be taken in condemnation or under the right of eminent domain after CenterMark's exercise of the Option for the Lakewood Property and before the Closing Date for the sale of the Lakewood Property to CenterMark, the obligation of CenterMark to purchase the Lakewood Property, at the option of CenterMark, may either: a) be declared null and void and all funds deposited or paid by CenterMark, shall then immediately be returned to CenterMark; or b) continued with respect to the Lakewood Property with an abatement in purchase price for the Lakewood Property based on the reduced value from the condemnation.

9.05 **Further Instruments.** Each party hereto shall from time to time execute and deliver such further instruments as the other party or its counsel may reasonably request to effectuate the intent of this Contract.

9.06 **Governing Law.** The parties hereto hereby expressly agree that the terms and conditions hereof, and the subsequent performance hereunder, shall be construed and controlled by the laws of the State of Colorado.

9.07 **Headings.** Article and Section headings used in this Contract are for convenience of reference only and shall not affect the construction of any provision of this Contract.

9.08 **Compliance With Laws, Ordinances and Regulations.** In performing the obligations, covenants and conditions of this Contract, Lakewood and CenterMark shall comply with all applicable laws, ordinances and regulations.

9.09 **Entire Agreement -- Alteration or Amendment.** The entire agreement of the parties is set forth in this Contract and in the First Amendment and the parties are not bound by any agreements, understandings, conditions, or inducements otherwise than are expressly set forth and stipulated hereunder and thereunder. No change, alteration, amendment, modification or waiver of any of the terms or provisions hereof shall be valid unless the same is in writing and signed by the parties.

9.10 **Assignment.** This Contract shall be binding upon, and shall inure to the benefit of, Lakewood and CenterMark and their respective successors and assigns. CenterMark may assign its rights under this Contract only to a purchaser of all or substantially all of CenterMark's interest in the property commonly known as the Westland Town Center and CenterMark may not sell all or substantially all of CenterMark's interest in the Westland Town Center without assignment of this Contract. CenterMark shall promptly notify Lakewood of any such assignment. Lakewood may assign its rights under this Contract to any municipal or quasi-municipal or other governmental agency or organization in connection with the transfer of the Lakewood Property to such entity. Lakewood shall promptly notify CenterMark of any such assignment. Except for the assignment rights set forth in this section, neither party may assign its rights under this Contract without the express written consent of the other party.

9.11 **Notices.** All notices provided for hereunder shall be deemed given and received when (a) personally delivered during business hours on a business day or (b) two days after the same is deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the applicable party at the address indicated below for such party, or as to each party, at such other address as shall be designated by such party in a written notice to the other party:

TO CenterMark:

James F. Dausch
Sr. Vice President
CenterMark Properties, Inc.
611 Olive Street
St. Louis, Missouri 63101-1797

WITH A COPY TO:

CenterMark Properties, Inc.
611 Olive Street
St. Louis, Missouri 63101-1797
Attn: General Counsel

TO Lakewood:

City of Lakewood
445 South Allison Parkway
Lakewood, Colorado 80226

Attention: City Manager

WITH A COPY TO:

Gorsuch, Kirgis, Campbell, Walker and Grover
1401 - 17th Street, Suite 1100
Denver, CO 80202
Attention: Lakewood City Attorney

9.12 **Nonbusiness Day.** If the Closing Date is to occur on a holiday or other nonbusiness day, or if any period of time set forth in this Contract expires on a holiday or other nonbusiness day, then such Closing Date or expiration date shall be the next business day.

9.13 **Survival; Condition Precedent.** The agreements, representations, covenants and warranties on the part of Lakewood and CenterMark contained in this Contract or any amendment or supplement hereto shall survive the Closing and delivery of deed for the Lakewood Property and shall not be merged thereby.

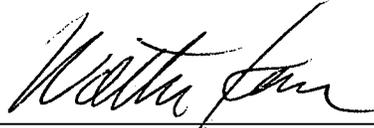
9.14 **Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Contract, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

9.15 **Municipal Rights and Duties.** Nothing contained in this Contract is intended or shall be construed to affect any rights, duties, interests or property of Lakewood in its municipal capacity but only the proprietary interests of Lakewood as fee simple owner of the Lakewood Property.

IN WITNESS WHEREOF, the parties hereto have caused this Option Contract to be executed and delivered as of the day and year first above written.

LAKEWOOD:

CITY OF LAKEWOOD, COLORADO

By: 
Walter C. Kane, City Manager

CENTERMARK:

CENTERMARK PROPERTIES, INC., a Missouri corporation

By: *William Grafstrom*
William E. Grafstrom, Chairman *weg*

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 16th day of June, 1992 by Walter C. Kane, as City Manager of the City of Lakewood, Colorado.

Witness my hand and official seal.

My commission expires: My Commission Expires
December 3, 1994

Cush Russell
Notary Public
Address: *445 S. Allison Parkway
Lakewood Co. 80226*

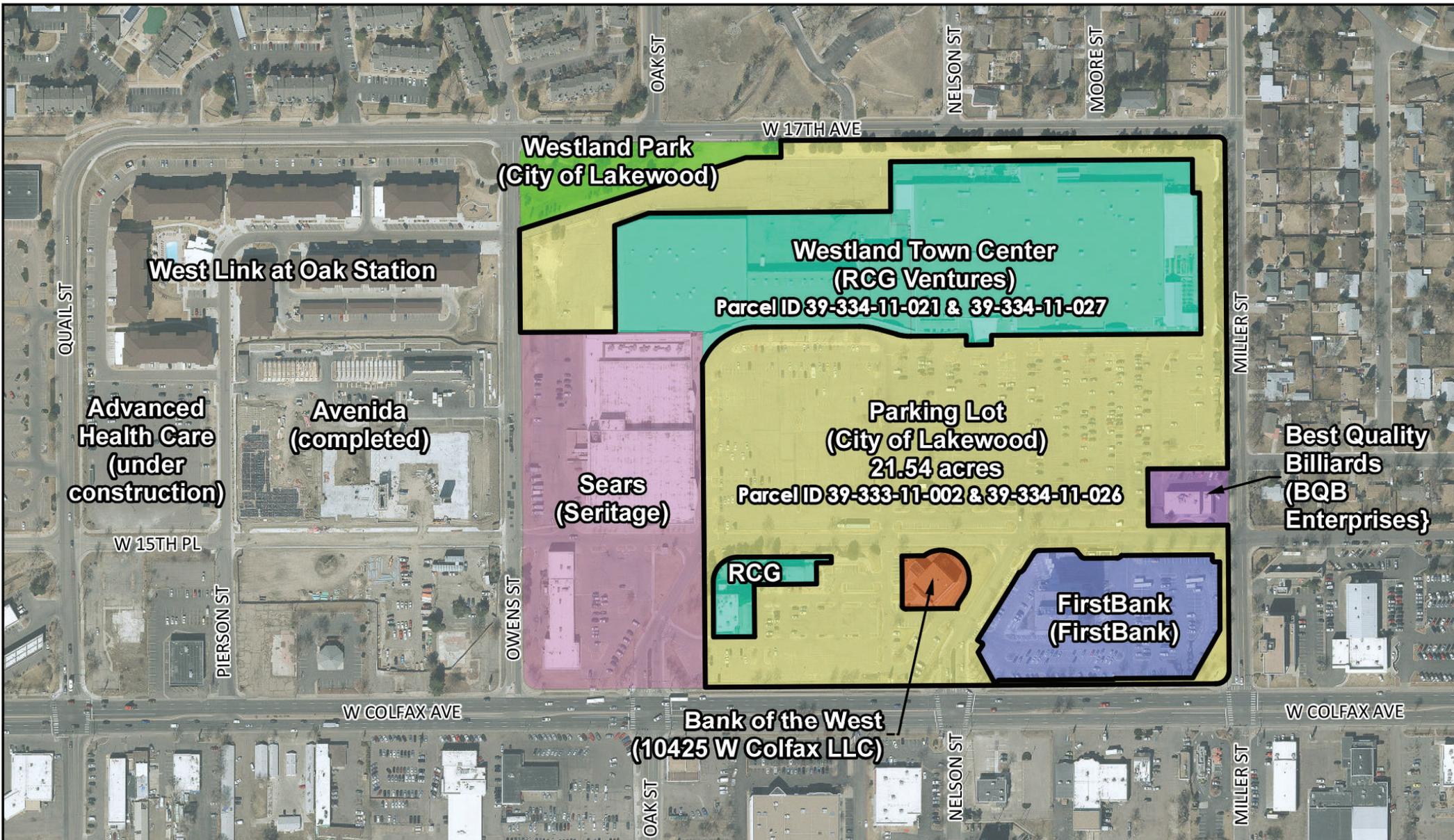
STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 16th day of June, 1992 by William E. Grafstrom, as Chairman of CenterMark Properties, Inc.

Witness my hand and official seal.

My commission expires: My Commission Expires
December 3, 1994

Cush Russell
Notary Public
Address: *445 S. Allison Parkway
Lakewood Co. 80226*



WESTLAND PARKING LOT



As Lakewood City Council considers Ordinance O-2021-2, this supplemental Westland Parking Lot Information is provided in addition to the Ordinance, the Staff Memo and a Powerpoint presentation.

The parcel lines of the Westland properties seem odd, what’s the history with these properties?

The parcels in the Westland project are atypical.

It’s challenging to put ourselves into the thoughts of those former City leaders in the early 1990s as they likely saw great economic obstacles ahead for the Lakewood community.

In the early 90s there was no Colorado Mills. The Villa Italia Mall at Alameda and Wadsworth hadn’t yet been redeveloped into Belmar. The Westland Mall, a top tier economic producer for Lakewood for nearly 30 years was struggling. So, the goal became to reposition and redevelop the Westland Mall, turning it into the Westland Town Center. The Mall owners and the City mutually agreed to turn the indoor enclosed mall into an open air power center.

The City agreed to support the redevelopment of the property by providing financial assistance to ensure and hasten the redevelopment of the struggling mall. The parking lot was acquired through an eminent domain action but the purchase price of \$5M was paid out in stages to ensure the redevelopment occurred quickly and in accordance with a preapproved timeline.

If the City owns the Parking Lot, can’t the City do what it wants with the property?

No. The City’s ownership of the property was and remains constrained by agreements entered into at the time of the condemnation action and property redevelopment.

The City’s influence over the parking lot property is greatly limited by three factors: 1) Condemnation Agreements through which it was acquired, 2) The Construction Operation and Reciprocal Easement Agreement (C.O.R.E.A.) that protects the interests of all parties who rely upon the parking lot, and 3) The Option Contract to return the parking lot to its previous owners.

The City acknowledged when it condemned the parking lot, that its action “landlocked” the mall and that the mall’s success relied upon the continued existence of the parking lot. Therefore, Lakewood became a signatory of the existing C.O.R.E.A., through an Amendment to that agreement, and agreed that the property be limited to use as a public parking lot for the benefit of the tracts of land held by the other

owners. The City cannot change its use from a parking lot into another use, such as a public park.

Is it possible to legislatively rezone property?

The quick answer is yes but there are many elements associated with rezoning processes.

All Lakewood properties were legislatively rezoned with the adoption of the current Zoning Regulations in 2013. All of the [City’s standard zoning districts](#) are listed on the City’s website.

Spot zoning is not a lawful use of the zoning power. Spot zoning is zoning a specific parcel or parcels of land within a larger zoned area to create an island of zoning at odds with a city’s master plan and the surrounding zoning. Therefore, a legislative rezoning of an area comprised of several adjacent properties must be done in alignment with a larger plan for the area.

Generally, a change in zoning from one property to the next occurs for reasons related to the built environment. Major streets, access to light rail, and development history and patterns are examples which might support a transition in zoning. In the case of the Westland area, the zoning immediately across Colfax to the south is [M-G-T](#), while Westland itself is [M-G-U](#). Most of the Colfax corridor has some form of M-G zoning.

I’ve heard about vested development rights under the City’s zoning code. Will these affect the redevelopment of Westland?

No. There are no additional vested development rights in the Westland properties

Does the City of Lakewood have tools to help guide the redevelopment of the Westland properties?

Absolutely. We have several.

The primary driver of development guidance is zoning. The Westland properties are zoned [M-G-U](#) which allows for a wide variety of uses including retail, office, multi-family residential and more. The zoning also controls things like building form, green space requirements, parking and overall site planning.



As Lakewood City Council considers Ordinance O-2021-2, this supplemental Westland Parking Lot Information is provided in addition to the Ordinance, the Staff Memo and a Powerpoint presentation.

Additionally, a community vision, like the Colfax 2040 Plan helps translate the aspirations of area stakeholders into implementable steps for smart development.

Moreover, the City and the Lakewood Reinvestment Authority (LRA) are able to provide financial incentives on a case-by-case basis. These incentives may be used to help projects create enhanced outcomes desired by the community. Incentive agreements must be approved by the Council and/or LRA Board.

Since the City basically invested \$5M in the Town Center Redevelopment Project back in the 90s, did Lakewood make money on the investment?

Yes. The redeveloped Westland Town Center has reliably generated between one and two million dollars in sales tax revenue each year. Taking the average across the 29 years of Town Center operations, more than \$37M has been generated in City Sales Taxes.

Receiving \$1M for the ownership transfer of 21.54 acres doesn't seem like a lot of money – is it?

It's challenging to assign a free market value to the parking lot property because its value has to be viewed through the frame of both the C.O.R.E.A. and the Option Contract. The property cannot be sold on the free market because the contractual obligations on the property cannot be ignored.

The Option Contract is a conveyance or transfer of land but is not a sale as that term is commonly understood. Most people understand a "sale" to involve a willing buyer, a willing seller and an exchange at fair market value in dollars (consideration). The transfer of the parking lot back to the previous owners is better described as a transaction or conveyance in that the value provided in both the condemnation and in the subsequent Option Contract to return the land was a negotiated value that was not based on fair market value but other forms of value to both parties.

As to the consideration agreed to by the parties in 1992, the Option Contract provides in pertinent part, "This option is granted as additional consideration for, and as an inducement to CenterMark to enter into, the First Amendment. Lakewood hereby acknowledges and confesses the adequacy and sufficiency of the consideration received by it for granting this Option." This language makes

clear consideration beyond the \$1,000,000 transfer price was received by the City.

Someone mentioned the idea that the Option Contract might be an "unconscionable agreement." Is it?

An unconscionable agreement is one in which one party was forced or tricked into entering because they were powerless to do otherwise (lack of knowledge, lack of money, etc...) "The basic test of unconscionability of a contract is whether under circumstances existing at the time of making of contract and in light of general commercial background and commercial needs of the particular trade or case, clauses involved are so one-sided as to oppress or unfairly surprise the other party." (Black's Law Dictionary, 5th Ed.)

In this case, at the time the Option Contract was entered into by the parties, 1) the City had attorneys providing legal advice, 2) no one was surprised by the terms, 3) the value was accepted by the parties because it incorporated the value the City was receiving from the redevelopment of the mall, and 4) the City was following through on an understanding of the initial condemnation that the City would return the land if the property was redeveloped.

The \$5,000,000 value of the parking lot included in the condemnation was part of a redevelopment agreement that provided the property owner wouldn't contest the value placed on the land, wouldn't contest the condemnation in that it acted to "landlock" the mall, and wouldn't contest payment of the funds associated with the condemnation would only be made after the owner of the mall had met specific points in the shopping mall redevelopment plan.

If the Option Contract was agreed to in the early 1990's why is the current City Council being asked to approve the transfer?

The City's Charter provides that any "sale" or other form of "disposition" of public real property must be accomplished via ordinance. While the agreements associated with the condemnation and redevelopment plans were entered into pursuant to Ord 0-92-10, because no ordinance was passed specifically transferring the parking lot during 1992 it falls to the current City Council to finalize this transaction for the 1992 City Council.