

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