

Orem, Utah
Store No. 1966

WESTERN STATES
TITLE COMPANY
ORDER NO. 11327

5962

FIRST AMENDMENT
CONSTRUCTION, OPERATION AND
RECIPROCAL EASEMENT AGREEMENT
(UNIVERSITY MALL)

THIS AGREEMENT, made and entered into as of the 31ST day of JANUARY, 1973, by and between UNIVERSITY MALL, INC., a Utah corporation, hereinafter referred to as "Developer", ZIONS COOPERATIVE MERCANTILE INSTITUTION, a Utah corporation, hereinafter referred to as "ZCMI", and J. C. PENNEY PROPERTIES, INC., a Delaware corporation, hereinafter referred to as "Penney",

W I T N E S S E T H:

WHEREAS, Developer, ZCMI and Penney did enter into a certain Construction, Operation and Reciprocal Easement Agreement (hereinafter referred to as "REA"), dated as of the 2nd day of October, 1971, which said REA was recorded in the Recorder's Office at Utah County on November 3, 1971, in Book 1244 at Page 410, as Instrument No. 14867;

WHEREAS, Developer, ZCMI and Penney are desirous of modifying certain provisions of said REA.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements herein contained, IT IS AGREED that the said REA dated as of the 2nd day of October, 1971, is hereby modified and amended in the following particulars:

1. Developer covenants and warrants it holds title to the Developer's tract in fee simple and has full right and lawful authority to enter into this agreement.

2. Section XI captioned "OPERATION AND MAINTENANCE OF THE COMMON AREA" shall be and the same hereby is amended by deleting from page 56 the following sentence:

"Unless within thirty (30) days after receipt of such notice by Developer, Developer shall have cured such default to the satisfaction of the Parties who shall have served such notice, or unless the holder of the first mortgage on Developer's Site shall have assumed maintenance of the common facilities (excluding the Enclosed Mall) on Developer's Site, then a non-profit corporation formed by both department stores ("Maintenance Corporation") may elect to take over maintenance and operation of the common facilities (excluding the Enclosed Mall) of the Shopping Center by serving notice of such intention upon Developer, which notice shall set forth the date upon which the Maintenance Corporation will commence maintenance of the common facilities (excluding the Enclosed Mall) on the Shopping Center."

and substituting in place therefor the following:

"Unless within thirty (30) days after receipt of such notice by Developer, Developer shall have cured such default to the satisfaction of the Parties who shall have served such notice (but in no event within sixty (60) days after receipt of such notice by the holder of the first mortgage on Developer's Site, if such holder of such first mortgage shall within said sixty (60) day period have assumed maintenance of the common facilities [excluding the Enclosed Mall] on Developer's Site), then a non-profit corporation formed by both department stores ("Maintenance Corporation") may elect to take over maintenance and operation of the common facilities (excluding the Enclosed Mall) of the Shopping Center by serving notice of such intention upon Developer, which notice shall set forth the date upon which the Maintenance Corporation will commence maintenance of the common facilities (excluding the Enclosed Mall) on the Shopping Center."

BOOK 1322 PAGE 667

3. The description of the Developer tract set forth on Part I of Exhibit A attached to the REA shall be and the same hereby is deleted and in place therefor the description set forth on Part I of Exhibit A attached hereto and hereby made a part hereof shall be and the same here is substituted.

4. The description of the Penney tract set forth on Part II of Exhibit A attached to the REA shall be and the same hereby is deleted and in place therefor the description of the Penney tract set forth on Part II of Exhibit A attached hereto and hereby made a part hereof shall be and the same hereby is substituted.

5. The distance "6.72" feet appearing on Exhibit B attached to the REA, and being a common boundary line between the Penney tract and the Developer tract, shall be and the same hereby is deleted and in place therefor the distance "7.39" feet shall be and the same hereby is substituted.

6. The distance "141.50" feet appearing on Exhibit B attached to the REA, and being a common boundary line between the Penney tract and the Developer tract, shall be and the same hereby is deleted and in place therefor the distance "142.17" feet shall be and the same hereby is substituted.

7. Exhibit C attached to said REA shall be and the same hereby is amended by deleting the Penney store building height limit of fifty-four (54) feet from ground floor to top of parapet and substituting in place therefor a building height limit for said Penney store of sixty-five (65) feet from ground floor to top of parapet.

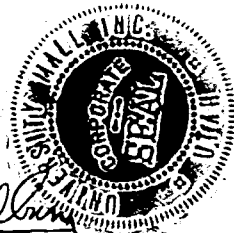
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ATTEST:

Ralph H. Brown
Secretary

UNIVERSITY MALL, INC.

BY Wallace Woodruff
President



ZIONS COOPERATIVE MERCANTILE INSTITUTION

BY Wendell Johnson
Vice President

ATTEST:

R. Henry H. Smith
Assistant Secretary

J. C. PENNEY PROPERTIES, INC.

BY L. E. Sears
Vice President



BOOK 1322 PAGE 669

STATE OF UTAH }
COUNTY OF SALT LAKE } ss.:

On this the 31ST day of JANUARY, 1973, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared WALLACE R. WOODBURY AND RALPH O. BROWN residing at SALT LAKE CITY AND PROVO, UTAH, respectively to me known and known to me to be PRESIDENT and VICE-President of UNIVERSITY MALL, INC., one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, each executed the foregoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

May 12, 1974.....

John M. Williams



STATE OF UTAH }
COUNTY OF SALT LAKE } ss.:

On this the 23RD day of MARCH, 1973, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared DEAN R. WILLIAMS AND WENDELL E. ADAMS residing at SALT LAKE CITY, UTAH Secretary and VICE-President of ZIONS COOPERATIVE MERCANTILE INSTITUTION, one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, each executed the foregoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

May 12, 1974.....

John M. Williams



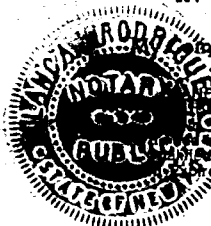
STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this the 5TH day of April, 1973, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared F.E. SEARS AND EITING H. SMITH residing at Jackson Heights, New York and Pelham Manor, New York to me known and known to me to be a Vice President of J. C. PENNEY PROPERTIES, INC., one of the corporations described in the foregoing instrument, and acknowledged that as such officers, being authorized so to do, each executed the foregoing instrument on behalf of said corporation by subscribing the name of said corporation by themselves as such officers and caused the corporate seal of said corporation to be affixed thereto, as their free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

Blanca Rodriguez
Notary Public



BLANCA RODRIGUEZ
Notary Public
State of New York
#4500425
New York County
Kings County
March 30, 1978

EXHIBIT A

LEGAL DESCRIPTIONS

PART I

DEVELOPER TRACT

(PART 1)

BEGINNING AT A POINT WHICH IS 301.73 FEET NORTH AND 495.98 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 23, T6S, R2E, SLB, 8 M;

THENCE NORTH 00°13' WEST 199.32 FEET;
THENCE SOUTH 89°18' EAST 46.70 FEET;
THENCE NORTH 00°13' WEST 330.00 FEET;
THENCE NORTH 89°18' WEST 46.20 FEET;
THENCE NORTH 00°13' WEST 39.71 FEET;
THENCE NORTH 85°58' WEST 906.38 FEET;
THENCE SOUTH 00°32' WEST 256.98 FEET;
THENCE SOUTH 89°25' EAST 79.84 FEET;
THENCE SOUTH 00°33' EAST 149.49 FEET;
THENCE NORTH 88°55' WEST 467.95 FEET;
THENCE SOUTH 04°02' WEST 283.22 FEET;
THENCE NORTH 85°58' WEST 56.57 FEET;
THENCE SOUTH 04°02' WEST 460.00 FEET;
THENCE SOUTH 85°58' EAST 284.07 FEET;
THENCE SOUTH 04°02' WEST 116.43 FEET;
THENCE SOUTH 00°59' WEST 164.29 FEET;
THENCE NORTH 89°03' EAST 26.51 FEET;
THENCE SOUTH 88°46' EAST 136.38 FEET;
THENCE SOUTH 86°42' EAST 80.06 FEET;
THENCE SOUTH 84°43' EAST 50.43 FEET;
THENCE SOUTH 82°08' EAST 133.89 FEET;
THENCE SOUTH 79°32' EAST 130.04 FEET;
THENCE NORTH 04°02' EAST 284.12 FEET;
THENCE NORTH 85°58' WEST 7.39 FEET;
THENCE NORTH 04°02' EAST 460.00 FEET;
THENCE SOUTH 85°58' EAST 142.17 FEET;
THENCE NORTH 04°02' EAST 151.52 FEET;
THENCE SOUTH 85°58' EAST 381.12 FEET
TO POINT OF BEGINNING.
AREA = 28.772 ACRES

(PART 2)

AND BEGINNING AT A POINT WHICH IS 554.48 FEET NORTH AND 2675.24 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 23, T6S, R2E, SLB 8 M;

THENCE SOUTH 18°31' EAST 31.64 FEET;
THENCE SOUTH 88°44' EAST 301.25 FEET;
THENCE NORTH 04°02' EAST 29.77 FEET;
THENCE NORTH 88°43' WEST 115.49 FEET;
THENCE NORTH 88°44' WEST 197.90 FEET;
TO POINT OF BEGINNING.
AREA = 0.210 ACRES
TOTAL AREA = 28.992 ACRES

BOOK 1322
PAGE 671

PART II

PENNEY TRACT

BEGINNING AT A POINT WHICH IS 540.00 FEET ALONG THE SECTION
LINE BEARING NORTH 89°18' WEST AND 25.00 FEET NORTH FROM THE
SOUTHEAST CORNER OF SECTION 23, T6S, R2E, SLB 8 M;

THENCE NORTH 00°13' WEST 140.00 FEET;
THENCE SOUTH 89°18' EAST 45.00 FEET;
THENCE NORTH 00°13' WEST 130.68 FEET;
THENCE NORTH 85°58' WEST 381.12 FEET;
THENCE SOUTH 04°02' WEST 151.52 FEET;
THENCE NORTH 85°58' WEST 142.17 FEET;
THENCE SOUTH 04°02' WEST 460.00 FEET;
THENCE SOUTH 85°58' EAST 7.39 FEET;
THENCE SOUTH 04°02' WEST 284.12 FEET;
THENCE SOUTH 79°32' EAST 28.67 FEET;
THENCE SOUTH 78°11' EAST 115.50 FEET;
THENCE SOUTH 78°00' EAST 79.29 FEET;
THENCE SOUTH 78°32' EAST 224.66 FEET;
THENCE SOUTH 81°56' EAST 166.63 FEET;
THENCE SOUTH 88°52' EAST 116.93 FEET;
THENCE NORTH 00°39' WEST 638.53 FEET;
THENCE NORTH 89°18' WEST 180.00 FEET;
THENCE NORTH 62.00 FEET

TO POINT OF BEGINNING.
AREA = 13.208 ACRES

BOOK 1322
PAGE 672

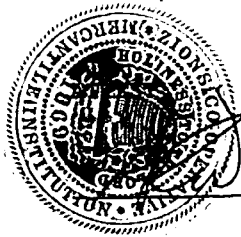
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ATTEST:

[Signature]
Secretary

UNIVERSITY MALL, INC.

By [Signature]
President



ZIONS COOPERATIVE MERCANTILE INSTITUTION

[Signature]
Secretary

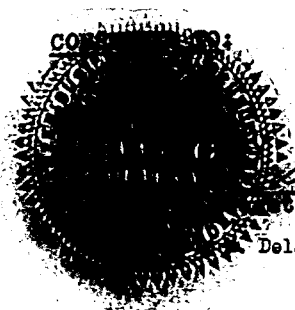
By [Signature]
President

ATTEST:

Assistant Secretary

J. C. PENNEY PROPERTIES, INC.

By _____
Vice President



THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

By: [Signature]
A. B. Jackson Vice President

BOOK 1322 PAGE 673
5962

RECORDED AT THE REQUEST OF
WESTERN STATES TITLE INS. CO.

360X PAGE

1973 APR 10 AM 11:38

UTAH COUNTY RECORDER
DEPT. OF PUBLIC SAFETY
PL. 5 T R
PR. ASS. INC.

WESTERN STATES TITLE INS. CO.