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After recording, return to:  
Paul E. Foshee  
Senior Counsel, Real Estate  
J.C. Penney Corporation, Inc.  
6501 Legacy Drive, m/s 1106  
Plano, TX 75024-3698

EN 2242510 PG 1 OF 77  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
15-FEB-07 12:17 PM FEE \$165.00 DEP 960  
REC FOR: LANDMARK TITLE CO

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION (the "**Declaration**"), is made and entered into as of the date of the last execution hereof, which date is the 14th of FEBRUARY, 2007, by and between RIVERDALE CENTER IV, L.C. ("**RC IV**"), a Utah limited liability company, having an address of 90 South 400 West, Suite 200, Salt Lake City, Utah 84101, and J.C. PENNEY PROPERTIES, INC., a Delaware corporation, having an address of 6501 Legacy Drive (MS 1106), Plano, Texas 75024-3698 ("**J.C. Penney**") (the foregoing parties hereinafter collectively referred to as the "**Parties**").

**WITNESSETH:**

WHEREAS, J.C. Penney is the owner of that certain tract of land located in Weber County, Utah, as more particularly described as the "**J.C. Penney Property**" on Exhibit A attached hereto and shown on the site plan attached as Exhibit B (the "**Site Plan**"), both of which exhibits are made a part hereof by this reference; and

WHEREAS, RC IV is the owner of a certain tract of land located in Weber County, Utah, located contiguous with and adjacent to the J.C. Penney Property, which property is designated on Exhibit B as the "**RC IV Property**" and is more particularly described on Exhibit C attached hereto and made a part hereof; and

WHEREAS, the J.C. Penney Property and the RC IV Property will collectively comprise a shopping center to be constructed for which RC IV and J.C. Penney are to construct certain

improvements thereon, as more particularly described herein (the J.C. Penney Property and the RC IV Property are hereinafter collectively referred to as the "Entire Premises"); and

WHEREAS, J.C. Penney and RC IV desire to set forth their respective obligations for the construction and operation of the Entire Premises as an integrated and unified shopping center pursuant to the terms hereof.

#### AGREEMENT:

NOW, THEREFORE, the Parties hereby declare that all of the parcels within the bounds of the Entire Premises shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof. Further, in consideration of the premises, the promises and covenants of the Parties hereto, the mutual benefits and advantages accruing to them, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### ARTICLE I

##### DEFINITIONS

Section 1.1 "Common Area" shall mean the parking areas, parking area lighting, streets, roads, driveways, fire corridors, underground service drives, tunnels, aisles, sidewalks, sidewalk area lighting, landscaped areas and related sprinkler system, if any, utility and sewer lines and systems, and other facilities and service areas for common use, whether or not shown on Exhibit "B" hereto, and any additions thereto or enlargements thereof, together with all Common Area Improvements, which are located anywhere within the Entire Premises.

Section 1.2. **“Floor Area”** shall mean, with respect to each building or structure on the Entire Premises, the number of square feet of floor area at each level or story (including basements, and floor area occupied for storage, but excluding mezzanines occupied for storage) lying within the exterior faces of exterior walls, exclusive of any pilasters (except party walls as to which the center line, not the exterior faces, shall be used for measurement purposes) excluding, however, (i) penthouse or other physically separated areas used exclusively for mechanical, electrical, telephone or other operating equipment, (ii) patio or outside selling areas which are not permanently heated or air-conditioned, (iii) loading docks which are not heated or air conditioned, (iv) fire exit corridors serving more than one Occupant, and (v) the upper levels of multi-deck stock areas.

Section 1.3 **“Institutional Lender”** shall mean a bank, an investment bank, real estate finance company, an insurance company, a welfare, pension or retirement fund or trust, or system of a state or municipality or of a corporation whose shares are listed on the New York Stock Exchange, or a real estate investment trust, foundation, or a bona fide special purpose entity managed, controlled or directed by any of the foregoing; any other entity in the business of making real estate loans with net current assets of over One Hundred Million Dollars (\$100,000,000.00), provided such entity is not affiliated with the borrower entity; and any trust or other entity established for the purpose of holding and/or securitizing real estate loans with net current assets of over One Hundred Million Dollars (\$100,000,000.00), which is not affiliated with the borrower entity; provided, in each case, such entity is subject to the jurisdiction of the courts of the state where the Entire Premises are located.

Section 1.4 **“Mortgage”** shall mean a lien indenture of mortgage, a deed of trust to a trustee, or any other instrument in the nature thereof creating a lien on or other security interest in any portion of the Entire Premises.

Section 1.5 **“Occupant”** shall mean any one entitled by ownership, lease, or other written agreement to use and occupy Floor Area within the Entire Premises including, without limitation, the Parties hereto.

Section 1.6 "Owner" shall mean and refer to the record owner, or any entity that is controlled by or is under common control with the record owner and is operating its business at the Shopping Center, whether one or more persons or entities, of a fee simple title to any parcel which is a part of the Shopping Center, as hereinafter defined, but excluding those having such interest merely as security for the performance of any obligation.

Section 1.7 "Parcel" shall mean and refer to each parcel of land located within the Entire Premises owned by an Owner. "Outparcel" shall mean and refer to those parcels of land shown for identification (and not for survey) purposes on Exhibit B as Restaurant, Side A, Retail 4, Side B and Retail 5, Side B. Every Outparcel shall be a Parcel, such that all references herein to Parcels shall apply with equal force to Outparcels; however, references to Outparcels shall be specific to Outparcels as herein defined.

Section 1.8 "Shopping Center" shall mean and refer to the Entire Premises and the buildings and improvements from time to time situated thereon.

Section 1.9 "Supplemental Agreement" shall mean the agreement between RC IV and J.C. Penney of even date hereof which supplements the terms and provisions of this Declaration, will not be filed of record and shall control as between RC IV and J.C. Penney to the extent any provisions thereof are in conflict with provisions of this Declaration.

Section 1.10 "Unavoidable Delays" shall mean delays due to strike, lockout, or other labor or industrial disturbance (whether or not on the part of employees of any Party), civil disturbance, future order of any government, court or regulatory body claiming jurisdiction, war, act of the public enemy, riot, sabotage, blockade, embargo, acts of terrorism, failure or inability to secure materials or labor by reason of priority or similar regulation or order of any government or regulatory body, lightning, earthquake, fire, storm, hurricane, flood, washout, explosion, act of God or any cause whatsoever beyond the reasonable control of any Party whether or not similar to any of the causes hereinabove stated; provided, however, that for purposes of this definition, lack of funds or inability to obtain financing shall not be deemed to be a cause beyond the control of a Party.

ARTICLE II  
EASEMENTS

Section 2.1 Definitions and Documentation. For the purposes of this Article (and for defined terms, for any other Article or Section of this Declaration where such term is referenced), the following will apply:

(a) A Party granting an easement is called the “**Grantor**,” it being intended that the grant shall thereby bind and include not only such Party but also its successors and assigns.

(b) A Party to whom the easement is granted is called the “**Grantee**,” it being intended that the grant shall benefit and include not only such Party but its successors, assigns, occupants and permittees. Further, the Grantee may permit from time to time its officers, partners, directors, members, agents, employees, customers, patrons, invitees, licensees and tenants to use such easements; provided, however, that no such permission nor the division of the dominant estate shall permit or result in a use of the easement in excess of the use contemplated at the date of the creation of such easement.

(c) The term “**Building(s)**” means the building(s) which has (have) been, will be or may be constructed within a Party’s Permissible Building Area (as that term is hereinafter defined in Section 2.1(i), but such term does not include Common Area Improvements (as that term is hereinafter defined in Section 2.1 (d)). All Buildings shall be one (1) story in height unless otherwise designated on the Site Plan as being two (2) stories, and any expansion of such Buildings must be within the Permissible Building Area for such specific Building shown on the Site Plan.

(d) The term “**Common Area Improvements**” means all improvements which will be or may be constructed under the terms of this Declaration, all perimeter sidewalks and all other improvements which would be part of the “Common Area” under the above definition, and all improvements constructed from time to time in replacement of the same or in such redesign of the same as may be agreed to by the Parties.

(e) The term "**Common Utility Facilities**" means utility systems and facilities from time to time situated on or serving the Shopping Center for use of service in common by the Parties or for the service of the Common Area, such as the following: storm drainage, detention, retention and disposal facilities and sanitary sewer systems, detention and/or retention lakes and ponds, wetlands preservation areas, manholes, underground domestic and fire protection water systems (including any booster pumps required by fire insurance rating organizations of any Party), underground natural gas systems, underground electric power cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities and other forms of energy, signals or services for such common use or service, including, without limitation, those installed under the provisions of this Declaration and as replacements thereto.

(f) The term "**Improvements**" means Building(s) and the Common Area Improvements on a Parcel.

(g) The word "in" with respect to an easement granted "in" a particular Parcel means, as the context may require, "in," "to," "on," "over," "through," "upon," "across," and "under," or any one or more of the foregoing.

(h) The term "**Party**" means RC IV or J.C. Penney, and "**Parties**" means both of the foregoing, or any successor person(s) acquiring any interest of a Party in or to any portion of such Party's Parcel.

(i) The term "**Permissible Building Area**" means an area designated as such on the Site Plan within which a Building of a certain size and height may be constructed as hereinafter more fully provided. No building, structure or improvements (other than Common Area Improvements) shall be erected or maintained outside of a Permissible Building Area.

(j) The term "**Separate Utility Facilities**" means any of the following not installed under the terms of this Declaration and/or not for use in common by other Parties or for service of the Common Area: storm drainage, detention, retention and disposal facilities and sanitary sewer systems (including, without limitation, underground storm and sanitary sewer systems), underground domestic and fire protection water systems (including any booster pumps

required by fire insurance rating organizations of any party), underground natural gas systems, underground electric power, cables and systems, underground telephone and television cables and systems, and all other utility systems and facilities reasonably necessary for the use or service of any Improvement situated on any Parcel.

(k) All easements granted herein are non-exclusive and are irrevocable.

(l) All easements herein shall be easements appurtenant and not easements in gross.

(m) In the event a Party transfers or conveys a portion of its Parcel in accordance with the terms of this Declaration, those easements granted under this Article 2 which benefit, bind, and burden the remainder of the Parcel not transferred or conveyed shall benefit, bind, and burden the portion of the Parcel so transferred or conveyed, and those easements granted under this Article 2 which benefit, bind, and burden the portion so transferred or conveyed shall benefit, bind, and burden the remainder of the Parcel of which it was a part.

(n) All easements granted hereunder shall exist by virtue of this Declaration, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Parcel, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of a Party, the other Parties will sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is approved by the other Parties. No grant of an easement pursuant to this Article 2 shall impose any greater obligation on any Party to construct or maintain its Building except as expressly provided in this Declaration.

Section 2.2 Easements for Use of Common Area. Each Party hereby grants to the other Party easements in the Common Area on its (Grantor's) Parcel for:

- (a) ingress to and egress from the Grantee's Parcel;
- (b) the passage of vehicles;

(c) the passage and accommodation of pedestrians;

(d) vehicular parking upon, over and across those portions located on the Grantor's Parcel which are identified with striping, paint or otherwise from time to time as "parking stalls." Provided, however, notwithstanding such reciprocal parking easement, (i) each Party shall be required to maintain on its Parcel (including the Outparcels) sufficient and adequate parking stalls to comply with the parking requirements in Section 5.6 and all applicable municipal parking requirements and ratios; and

(e) the doing of such other things as are authorized or required to be done on the Common Area under this Declaration, or to use such Common Areas for their intended use(s) as set forth in this Declaration;

Provided, however, that such easements are limited to such portions of the Common Area of the Grantor's Parcel as are now or hereafter from time to time set aside or intended to be set aside, maintained and authorized for such use under this Declaration, including those portions of the Common Area shown on Exhibit B.

Enjoyment of the easements granted by this Section shall commence on the date of this Declaration, or, if applicable, the date when the portion of such Common Area in question is required to be improved and/or is substantially completed.

Each Party hereby reserves the right to eject from the Common Area on its Parcel any person or entity not authorized to use the same. In addition, each Party reserves the right to close off the Common Area of its Parcel for such reasonable periods of time as may be legally necessary in the reasonable opinion of its attorneys to prevent the acquisition of prescriptive rights by anyone; provided, such closures shall occur at times which shall minimize the impact on all Occupants located on the Shopping Center. Before closing off any part of the Common Areas as provided above, such Party must give notice to the other Parties of its intention to do so and must coordinate its closing with the activities of the other Parties so that no unreasonable interference with the operation of the Shopping Center occurs.

The easements provided for in this Section 2.2 are subject to the rights to use the Common Area for other purposes provided for in this Declaration; provided, however, that (1) no



changes shall be made in the Common Area located on Side A of the Shopping Center (as indicated on the Site Plan) or in the location or design of Common Area Improvements located on Side A of the Shopping Center (as indicated on the Site Plan) without the express written consent of all Parties, such consent not to be unreasonably withheld, conditioned or delayed, and (2) no changes shall be made in the Common Area located on Side B of the Shopping Center (as indicated on the Site Plan) (inclusive of the improvement of Pacific Avenue and 550 West Street (those portions located on the Entire Premises)) or in the location or design of Common Area Improvements located on Side B of the Shopping Center (as indicated on the Site Plan) (inclusive of the improvement of Pacific Avenue and 550 West Street (those portions located on the Entire Premises)) without the express written consent of J.C. Penney.

All easements granted under this Section 2.2 except for the reciprocal parking easement shall be perpetual and shall survive and extend beyond the termination of this Declaration. The reciprocal parking easement granted under this Section 2.2 shall terminate upon the termination of this Declaration.

**Section 2.3 - Easements for Access Roads.** Each Party hereby grants to the other Party easements for pedestrian and vehicular traffic in those strips of land (not less than the widths therefor shown on Exhibit B) on its (Grantor's) Parcel which are shown on Exhibit B as shaded roadways (hereinafter collectively referred to as the "Access Roads") for the purpose of providing ingress to and egress from the Grantee's Parcel and each of Riverdale Road, 550 West Street and any other public road or highway adjacent to the Entire Premises to which such shaded roadways are physically connected, together with the following rights and subject to the following restrictions and reservations:

(a) The use of the Access Road easements by any person entitled to the use thereof shall be in common with all other persons. The Access Road easements and the land upon which they are located shall be considered in all respects part of the Common Area, and the improvements thereon shall be considered in all respects part of the Common Area Improvements;

(b) As further provided in Section 2.10 herein, Grantors of the Access Road easements agree not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the roadways which comprise the Access Road, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control, and to prevent a dedication thereof or the accrual of any prescriptive rights to any person therein; and

(c) The access points and drive lanes as shown on Side A of the Shopping Center (as indicated on the Site Plan) shall not be changed without the express written consent of all Parties, which consent shall not be unreasonably withheld, conditioned or delayed. The access points and drive lanes as shown on Side B of the Shopping Center (as indicated on the Site Plan) (inclusive of the improvement of Pacific Avenue and 550 West Street (those portions located on the Entire Premises)) shall not be changed without the express written consent of J.C. Penney.

(d) Upon expiration of this Declaration, each Party shall maintain in good repair and condition those portions of the Access Road on its respective Parcel. In the event a Party fails to so maintain and repair such portions of the Access Road located on its Parcel, any other Party hereto may, after giving not less than thirty (30) days prior written notice to the defaulting Party, enter upon and perform such maintenance or repair on the defaulting Party's Parcel, unless, during such thirty (30) day period, the defaulting Party shall have cured such default. Notwithstanding the foregoing, the thirty (30) day cure period shall be extended for an additional period of time to the extent necessary with respect to repairs that cannot reasonably be performed within such thirty (30) day period, provided the defaulting Party commences to cure such default within such thirty (30) day period and diligently prosecutes same to completion. The defaulting Party shall reimburse the performing Party for its actual costs incurred within thirty (30) days after receipt of a statement therefore accompanied by supporting information. Nothing in this paragraph shall be construed to prohibit a Party from altering or reconfiguring the layout of the Access Road after termination of this Declaration, if otherwise permitted under this Declaration.

The easements granted under this Section 2.3 shall be perpetual and shall survive and extend beyond the termination of this Declaration.

Section 2.4 Easements for Utility Facilities. Each Party hereby grants to the other Parties perpetual easements to its (Grantor's) Parcel (but not under any Building or Permissible Building Area), for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities and Separate Utility Facilities serving the Parcel of the Grantee.

All Separate Utility Facilities installed in the Common Area, whether installed under this Section or otherwise, and all Common Utility Facilities, shall, unless otherwise indicated on the Site Plan (e.g., all existing overhead electrical power lines and certain relocated overhead power lines as set forth on the Site Plan shall be maintained), be underground, and the location of the Separate Utility Facilities shall be subject to the approval of the Party across whose Parcel the same are to be located. All Separate Utility Facilities or Common Utility Facilities shall be installed so as to not in impair the reasonable and anticipated use of any other existing or reasonably anticipated Separate Utility Facility or Common Utility Facility.

Except as otherwise provided herein, the Grantee of any easement for Separate Utility Facilities under this Section shall be responsible, as between such Grantee and Grantor, for the installation, maintenance, repair, replacement, relocation and removal at the Grantee's cost of all Separate Utility Facilities installed by the Grantee pursuant to the easement grant, as well as for all Separate Utility Facilities installed by the Grantee on its own parcel. Any such installation, maintenance, repair, replacement, relocation and removal of Separate Utility Facilities shall be performed by the Grantee only after ten (10) days advance notice to the Grantor of the Grantee's intention to do such work. However, in the case of an emergency, any such work may be immediately performed after giving such advance notice to the Grantor as is practicable under the circumstance. In addition, the Parties agree that all such installation, maintenance, repair, replacement, relocation and removal shall be performed in a manner that causes as little disturbance to the Grantor, the parking areas located within the Common Area and the operation of the Shopping Center as may be practicable under the circumstances; and any

and all portions of the surface area of the Grantor's Parcel which may have been excavated, damaged or otherwise disturbed as a result of such work shall be restored, at the sole cost and expense of the Grantee, to essentially the same condition as the same were in prior to the commencement of any such work. No such work or restoration, except emergency repair work or work required by governmental authorities, shall be carried on during the period from November 1 through the next succeeding January 4, or during the 30 day period prior to Easter, or on any weekends.

The Grantee shall defend, indemnify and hold the Grantor harmless from and against any and all liens, losses, liabilities, costs or expenses (including reasonable attorney's fees), incurred in connection with the Grantee's exercise of the Separate Utility Facilities easements under this Section 2.4, except to the extent occasioned by the Grantor's negligent or wrongful act or omission to act.

The Grantor of any easement for Separate Utility Facilities under this Section 2.4 may use the utility facilities installed pursuant to such easement; provided, however, that the increase in costs incurred in order to make such utility facilities adequate to serve the Grantor's additional use shall be borne by such Grantor; and provided, further, that the Grantor gives written notice within the time period called for under subparagraph (a) and otherwise complies with the requirements of subparagraphs (b), (c), and (d) of the following paragraph of this Section 2.4.

Except during the period from November 1 through the following January 15, the Grantor of any easement under this Section 2.4 may relocate on its Parcel any Separate Utility Facilities or Common Utility Facilities installed thereon under any easement granted by it; provided, however, that such relocation:

- (a) may be performed only after the Grantor has given the Grantee thirty (30) days' written notice of its intention to relocate such facilities;
- (b) shall not interfere with or diminish the utility services to the Grantee (however, temporary interferences with and diminutions in utility services shall be permitted if they occur during the non-business hours of the Grantee, and the Grantee has been so notified

under Subsection 2.4(a)). The Grantor shall promptly reimburse the Grantee for all costs, expenses and losses incurred by the Grantee as a result of such interferences or diminutions, or both.);

(c) shall not reduce or unreasonably impair the usefulness or function of the facilities in question;

(d) shall be located underground (except that all existing overhead powerlines and certain relocated powerlines shall remain overhead as shown on the Site Plan); and

(e) shall be performed without cost or expense to the Grantee and if Common Utility Facilities or Separate Utility Facilities which provide service to the Grantee are involved, in accordance with plans approved by the Grantee, which approval shall not be unreasonably withheld or delayed.

All Common Utility Facilities lying within any Common Area shall for all purposes be deemed to be included within the definition of Common Area Improvements.

The easements granted under this Section 2.4 shall be perpetual and shall survive and extend beyond the termination of this Declaration.

**Section 2.5 Construction Easements.** Each Party hereby grants to the other Party easements in the Common Area of its (Grantor's) Parcel, and prior to the construction of any Improvements thereon, where applicable in the Permissible Building Area on its Parcel, for the following:

(a) The initial construction of the Improvements contemplated within this Declaration.

(b) With respect to any Parcels on which fresh dirt is dumped, the area shall be sloped to meet any contiguous property within the Shopping Center or public roads, and shall be smoothed in a level manner consistent with the contours of the adjoining property or in accordance with a grading plan approved by the Grantor, which approval shall not be unreasonably withheld, conditioned or delayed.

(c) For awnings, canopies, roof projections and/or wall projections (all of which shall not exceed six feet (6') in length) which tie into, but are not supported by, the

adjoining Owner's Building; provided that same does not affect the separate insurance rating of any Party's Building.

(d) For the installation and maintenance of special lighting within the Shopping Center.

The locations of all easements under this Section 2.5 shall be subject to the approval of the Grantor.

Each Grantee agrees to pay the Grantor that additional cost of construction, maintenance, repair and replacement of any improvement or structure constructed by the Grantor which arises on account of the Grantee's exercise of its easement rights under this Section 2.5. Each Grantee further agrees to use due care in the exercise of the rights granted under this Section 2.5 and, in the event the exercise of the rights granted under this Section 2.5 requires the Grantee to enter upon the parcel of the Grantor, to first obtain the consent of the Grantor as to the methods and timing in the exercise of such rights.

Each Party covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the Buildings or other Improvements of any other Party and shall not interfere with or interrupt the business operation conducted by any other Party in the Shopping Center. In addition, each Grantee, at its sole cost and expense, shall promptly repair, replace or restore any and all improvements of the Grantor which have been damaged or destroyed in the exercise by the Grantee of the easements granted under this Section 2.5 and shall defend, indemnify and hold the Grantor harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) incurred in connection with or arising out of the Grantee's exercise of said easements, except to the extent occasioned by the Grantor's negligent or wrongful act or omission to act.

The Grantee's improvements in such easements shall, for purposes of maintenance, operation, insurance, taxes, repairs, reconstruction and restoration under this Declaration, be deemed to be part of the Grantee's Parcel and Building and shall be deemed not to be part of the Grantor's Parcel or Building for such purposes.

Except as reasonably necessary for and during the construction of any Building, no structure of a temporary character shall be erected or allowed to remain on any Parcel.

The easements granted under this Section 2.5 shall terminate upon the later of (1) the termination of this Declaration or (2) the date that any of the Buildings are no longer in existence if such Buildings are relying on such easements, excluding periods of rebuilding after damage or destruction.

Section 2.6 Exterior Light Easements. Each Party hereby grants to the other Parties who share a common boundary, an easement to install, maintain, repair and replace, at the individual expense (including electricity) of the Grantee, lights for the purpose of highlighting the exterior of the Grantee's Building. The precise positions, locations, specifications, character, and method of installation of such lighting equipment shall be reasonably acceptable to both Grantor and Grantee, and shall be in compliance with all applicable laws and approvals. Each Grantee agrees to use due care in the exercise of the rights granted under this Section 2.6 and to obtain the Grantor's consent as to the methods and timing in the exercise of such rights, and further agrees, at the Grantee's expense, to promptly repair, replace and restore any and all improvements of the Grantor which have been damaged or destroyed by the Grantee in the exercise of the rights granted under this Section 2.6 and to defend, indemnify and hold the Grantor harmless from all loss, liability, cost or expense incurred in connection with or arising out of the exercise of such rights. The easements granted under this Section 2.6 shall terminate on the expiration of the term of this Declaration.

Section 2.7 Easements for Drainage. Each Party grants to the other Party and to the Outparcels the irrevocable, perpetual, non-exclusive right and easement to discharge storm and surface water from each of their respective Parcels within the Entire Premises to and across each Parcel in the Entire Premises and from the Outparcels to and across each Parcel in the Entire Premises and the Outparcels. Each Party grants to the other Party and to the Outparcels an irrevocable, perpetual, non-exclusive easement across their respective Parcels, at the approximate locations to be shown on RC IV's working drawings, utility plan or survey as required by the Supplemental Agreement, for storm drainage lines, conduits and facilities from

each Parcel, as applicable, to storm drainage lines and conduits that connect with the stormwater retention ponds designated on the Site Plan. Each Party grants to the other Party an irrevocable, perpetual, non-exclusive easement to use the existing drainage facilities and any facilities to be constructed to provide storm drainage from the Entire Premises and the Outparcels to the detention and/or retention ponds and to use any off-site detention and/or retention ponds serving the Entire Premises for the drainage and storage of surface waters. No drainage lines from property other than the Entire Premises, the Outparcels, and upstream properties (which already drain onto the Entire Premises as of the date of this Declaration or the drainage from which the Entire Premises may be required to accept in the future) shall be permitted to tap into the existing storm drainage lines on the Entire Premises if such tap would result in exceeding the capacity of the drainage lines. The easements granted under this Section 2.8 shall be perpetual and shall survive and extend beyond the termination of this Declaration.

**Section 2.8 Areas Dedicated; Easements to Public Utilities.** Any areas of the Entire Premises that are deeded and dedicated to an appropriate governmental body or authority for use as a public street and/or for street widening purposes shall automatically and *ipso facto* be deleted from the terms, covenants and conditions of this Declaration. The parties hereto agree to reasonably cooperate in facilitating the dedication of such areas of the Entire Premises. Nothing contained in this Declaration, including without limitation the easements herein granted or reserved, shall be deemed to constitute a dedication of any part of the Entire Premises to any governmental body or agency or to the general public. Each Party shall have the right to grant easements to any governmental unit, public body and/or utility company permitting the construction, installation, operation, maintenance, repair, relocation, modification, extension or alteration of sanitary sewers, storm drainage systems, fire protection installations, gas, water, power and telephone lines, mains and trunks in, under or across their respective Parcel, provided that such easements do not adversely affect the parking area in, or the use of, the Common Area. Any such grant or other conveyance of an easement to a public utility by the Grantor on its Parcel shall, without necessity of further recital in the conveyancing instrument, be deemed to



include the following conditions, covenants and restrictions to which such public utility and its successors shall be bound unless specifically stated otherwise in such instrument.

- (a) The easement is non-exclusive;
- (b) All facilities installed pursuant to the easement shall be underground, except for manholes and manhole covers which shall be flush with adjacent grade and except as otherwise shown on plans approved by the Grantor;
- (c) The Grantor retains the right to use the surface areas as the Grantor sees fit, subject to the terms of this Declaration;
- (d) The Grantor reserves the right to require the Grantee to relocate its facilities (and vacate the easement) to another location on the Grantor's Parcel, subject to the conveyance of a similar easement, all at the Grantor's cost and expense;
- (e) The Grantee shall not, in its use or installation, interfere with other installations and easements in the area;
- (f) The Grantee shall protect its facilities against uses of the surface made by the Grantor and others;
- (g) The Grantee shall make adequate provisions for the safety and convenience of all persons using the area;
- (h) The Grantee shall, following installation or other work, replace and restore the areas and improvements to the condition in which they were immediately prior to performance of such installation and work;
- (i) The Grantee shall defend, indemnify and hold harmless the Grantor against all loss, liability, and costs (including reasonable attorney's fees) which may result to the Grantor from the negligent act or omission of its agents, employees and contractors; and
- (j) The Grantee shall not permit any claim, lien or encumbrance to attach against Grantor's Parcel or any interest therein.

RC IV covenants that all easements required to bring public sanitary sewer lines and public sanitary sewer service to the Entire Premises have been obtained, or, if not, that RC IV shall

obtain such easements to facilitate the initial construction of the improvements on the Entire Premises.

Section 2.9 Location of Utility and Drainage Easements. Upon completion of any utility and drainage facilities constructed pursuant to this Article II, the Parties shall join with any Party so requesting in the execution of a mutually acceptable easement agreement, in recordable form, appropriately identifying the type and location of each respective utility or drainage facility.

Section 2.10 No Barrier Agreement. No barriers, fences, grade changes or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of the Shopping Center from time to time devoted to pedestrian access, vehicular roadways or parking areas, or in any manner unreasonably restrict or interfere with the use and enjoyment by any of the Parties of the rights and easements created by this Article II. The preceding sentence shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes. In addition, each Owner may temporarily close or block traffic on its Parcel for the time necessary for the purpose of protecting ownership rights and preventing creation of easements to the public and unrelated third parties (provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Owner shall give fifteen (15) days written notice to each other Owner of its intention to do so and shall coordinate such closing with each other Owner, so that no unreasonable interference in the passage of pedestrians or vehicles shall occur), any may temporarily fence off portions of its Parcel as reasonably required for the purpose of repair, construction and reconstruction.

Section 2.11 Abandonment of Easements. After the termination of this Declaration, the perpetual easements set forth herein, or all or any part or parts thereof, may be abandoned and terminated if the use thereof shall have ceased and cessation thereof continues for a continuous period of five (5) years. Thereafter, the then record Owner of the fee of the Parcel burdened with such easement may give written notice (to be provided as prescribed herein) to the then record Owner of the fee of the Parcel benefited by such easement and the then record Owner, if any, of

any leasehold interest in such benefited Parcel, stating that such easement has been abandoned and may place of record in the Real Property Records of Weber County, Utah, an affidavit that such abandonment has taken place and that such notice has been properly given. If the then record Owner of the fee of the benefited Parcel fails to place of record in the Real Property Records of Weber County, Utah, within ninety (90) days after the giving of such notice, an affidavit that such easement has not ceased to be used for such continuous five (5) year period, such easement shall thereupon be conclusively deemed abandoned and any person having or thereafter acquiring an interest in the Parcel previously burdened shall hold and take such interest free of and unencumbered by such easement.

### ARTICLE III RESTRICTIONS

**Section 3.1 Land Use and Building Type.** Every Parcel shall be used only for financial institutions, service shops, offices, and retail stores selling retail merchandise normally carried in other shopping centers and restaurants where sale of alcoholic beverages comprise less than fifty (50%) percent of gross revenues. No structures shall be erected or allowed to remain on any Parcel unless such structure is located within a Permissible Building Area. A complete set of proposed construction plans including a site, foundation, floor plan and elevation drawings of all sides shall be presented to and approved in writing by the Parties prior to commencing clearing, grading, or construction of any Building located within the Entire Premises. Notwithstanding any provision herein to the contrary, all Parties other than J.C. Penney hereby waive the requirement for the submission of construction plans and elevation drawings for the Building to be initially constructed on the J.C. Penney Property or any Building subsequently constructed thereon to be occupied and operated by national and/or regional retailer provided that such Buildings are designed, including elevations, colors and signage, consistent with the prototype for such operators and are consistent with the architectural and color theme of the Shopping Center. Further, J.C. Penney's approval shall not be required for any Building to be occupied and operated by national and/or regional retailers or national and/or regional restaurants

provided that such Buildings are designed, including elevations, colors and signage, consistent with the prototype for such operators and are consistent with the architectural and color theme of the Shopping Center.

**Section 3.2 Completion of Improvements.** Upon completion of the foundation, an actual field survey of the foundation shall be presented to the Parties to ensure that it has been constructed in accordance with the Site Plan. All improvements shall comply with the plans as presented by the Owner unless changes are approved in writing by the Parties. The right to make inspections necessary to assure compliance is reserved to the Parties. Except as otherwise set forth in the Supplemental Agreement, weather permitting, all paving and landscaping will be finished upon completion of the Building, but in no event shall it be installed later than ninety (90) days after the Building is occupied. Total construction time from pouring footings to the completion of the Building ready for occupancy shall not exceed one (1) year. All Buildings within the Shopping Center shall be constructed within the Permissible Building Area as depicted on the Site Plan, and no Building shall exceed the maximum square footage for such Building as provided on the Site Plan. The construction traffic route and the staging areas for any construction or any total or partial reconstruction of any building or improvement, or permitted expansion thereof, located on Side A of the Shopping Center (as indicated on the Site Plan) and occurring after the opening of the J.C. Penney Building, shall be subject to the approval of the Parties hereto, such approval not to be unreasonably withheld, conditioned or delayed. The construction traffic route and the staging areas for any construction or any total or partial reconstruction of any building or improvement, or permitted expansion thereof, located on Side B of the Shopping Center (as indicated on the Site Plan) (inclusive of the improvement of Pacific Avenue and 550 West Street (those portions located on the Entire Premises)) and occurring after the opening of the J.C. Penney Building, shall be subject to the approval of the J.C. Penney.

**Section 3.3 Nuisances.** Subject to the provisions of Section 3.1, no Parcel shall be used for anything other than purposes which may be permitted by applicable zoning regulations,

nor shall anything be done on any Parcel which is a nuisance or any annoyance to the community.

**Section 3.4 Use Restrictions; Signs.**

(a) During the term of this Declaration, no portion of the Shopping Center may be used for any of the following purposes without the written consent of RC IV and J.C. Penney:

- (i) A tavern, bar, nightclub, discotheque or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant where the sale of alcoholic beverages therein comprises less than fifty (50%) percent of the restaurant's gross revenues.
- (ii) A bowling alley or game room.
- (iii) A theater (motion picture or live performance).
- (iv) A service station or truck stop. Provided, however, RC IV shall have the right to operate a convenience store in conjunction with a fuel facility located on Side A of the Shopping Center.
- (v) A flea market.
- (vi) A school.
- (vii) A car wash, except on an Outparcel and where the same shall have constructed and shall use sanitary sewer, water and storm water drainage lines entirely separate from those utilized by any other Occupant of the Entire Premises.
- (viii) A dry cleaning plant or central laundry or Laundromat, provided this limitation shall not be deemed to prohibit a dry cleaning retail establishment that utilizes off-site dry cleaning facilities but which may include on-site laundering services.
- (ix) A pet shop or pet store.
- (x) Any purpose inconsistent with a first-class community shopping center.

(b) During the term of this Declaration, the portions of the Shopping Center described below may not be used for any of the following purposes without the written consent of RC IV and J.C. Penney:

(i) Within three hundred feet (300') of any Building constructed on the J.C. Penney Property, a full-service restaurant with table wait staff where meals are regularly served at tables for consumption on premises and/or other food service establishment which has a "buffet" style meal-serving system where patrons predominately serve themselves; provided, however, notwithstanding the foregoing, (A) any full-service restaurant or other food service establishment may be located and operated on the Outparcel identified as Restaurant, Side A of the Shopping Center (as shown on the Site Plan), and the space identified as Retail 4, Side B of the Shopping Center (as shown on the Site Plan) and (B) a food service space (e.g. a sandwich shop, bagel shop, ice cream store, etc., but exclusive of full-service restaurants and "buffet" style food service establishments (each as described above)) may be located and operated within the Buildings constructed on the space identified as Retail 3 and Retail 5, Side B of the Shopping Center (as shown on the Site Plan) or in any Building constructed on Side A of the Shopping Center (as shown on the Site Plan).

(ii) Within one thousand feet (1000') of any Building to be constructed on the J.C. Penney Property, a theater, beauty salon, nail salon, health spa, health awareness facility, gym or exercise facility; provided, however, the foregoing shall not be deemed to prohibit the construction and operation of a "day spa" not exceeding 5,000 square feet within the foregoing radius restriction, nor a beauty salon or nail salon within any portion of Side A of the Shopping Center (as shown on the Site Plan) or in the space identified as Retail 3, Side B of the Shopping Center (as shown on the Site Plan).

(c) During the term of this Declaration, no portion of the Shopping Center may ever be used for any of the following uses whatsoever:

(i) An adult-type bookstore or other establishment selling, displaying or exhibiting pornographic materials or providing adult type entertainment or displays of variety involving or depicting nudity or lewd acts.

(ii) A skating rink.

(iii) A mortuary.

(iv) A mobile home or trailer court, labor camp, junkyard or stockyard.

(v) A land fill, garbage dump, or for the dumping, disposing, incineration or reduction of garbage.

(vi) A casino, off-track betting facility or other similar gambling facilities/operations.

(vii) Any use or purpose which may cause obnoxious odors or untidiness; provided, however, that this restriction shall not be deemed to prohibit any restaurant or food service use in the Shopping Center which is otherwise permitted herein.

(d) Attached hereto as Exhibit "D" is a sign criteria (the "Sign Criteria") for the Shopping Center. All signs constructed in the Shopping Center shall be subject to and comply with the Sign Criteria. Notwithstanding anything to the contrary in this Declaration, but subject to governmental laws and approvals, J.C. Penney shall be allowed to erect its building signs on the front, rear and sides of the J.C. Penney Building, such signs to be electrical or non-electrical, parallel to the J.C. Penney Building or at any angle thereto. RC IV shall, at its expense, design and construct those pylon and/or monument signs and tenant identification pylon and/or monument signs as shown on the Site Plan (each such sign being a "**Monument/Pylon Sign**"). RC IV shall not be entitled to install any other Monument/Pylon Signs except as expressly provided herein. The panel sizes, dimensions, and positions on the Monument/Pylon Signs shall be as shown on Exhibit D and J.C. Penney shall be responsible for the cost of fabricating its own panel (it is understood that Exhibit D shall not govern the font and other specifications of the graphics (including logo and color) of the J.C. Penney panel). With respect to the Monument/Pylon Sign located on that portion of the Shopping Center designated as Side B

(as shown on the Site Plan) near the main entrance to the Shopping Center, J.C. Penney shall have the top merchant panel on the sign with dimensions of eleven (11) feet by eleven (11) feet, in accordance with the specifications set forth in the Sign Criteria. J.C. Penney will furnish its own sign panels and RC IV shall install same. During the term of the Declaration, all Monument/Pylon Signs shall be illuminated during the evening hours until both the Building constructed on the J.C. Penney Property and the Shopping Center (to the extent same has been constructed) are closed for business or until 10 P. M., whichever is later. RC IV shall have the obligation to maintain, repair, replace, insure and illuminate the Monument/Pylon Signs, subject to reimbursement as provided herein. Each Party's share of the cost to maintain, repair, replace, insure and illuminate a Monument/Pylon Sign (but not the panels thereon) shall be equal to the cost of such maintenance, repair, replacement, illumination and insurance, multiplied by a fraction, the numerator of which is the square footage of each Party's sign panel thereon and the denominator of which is the total square footage of all sign panels on such sign (including any panel not in use or no longer in use by an Occupant); such expense shall not be included in the Common Area maintenance costs of the Shopping Center. Each occupant of the sign shall maintain, repair, replace and insure its own sign panel at such occupant's own cost.

(e) Notwithstanding any provision herein to the contrary, following the execution and delivery of this Declaration, RC IV shall install a billboard type sign produced by J.C. Penney at a location within the Entire Premises selected by J.C. Penney, subject to RC IV's reasonable approval, advertising the fact that J.C. Penney intends to open a store on the J.C. Penney Property. Such sign shall be maintained by RC IV at the site where erected until such store shall be opened for business and shall then be removed by RC IV.

(f) Notwithstanding any provision herein to the contrary, but subject to compliance with any applicable municipal ordinance, J.C. Penney shall be permitted for a period not to exceed twenty (20) days to display (i) vinyl banners attached to the J.C. Penney Building measuring thirty-five feet by seven feet (35' x 7') announcing the grand opening of the J.C. Penney Building, along with the new Sephora operation as part of J.C. Penney's business and (ii)



outdoor decoration, including roof top decoration, supplementing the announcement of the grand opening.

(g) Notwithstanding any provision herein to the contrary, (1) the J.C. Penney Property may be used for a retail department store, and for any other purpose permitted by the applicable municipality and consistent with the operation of a first class shopping center, and (2) the number and types of departments to be operated in the J.C. Penney Building, the particular contents, wares, and merchandise to be offered for sale and the services to be rendered (including but not limited to banking, financial, insurance sales and services), the methods and extent of merchandising and storage thereof, and the manner of operating J.C. Penney's store, in every respect whatsoever, shall be within the sole and absolute discretion of J.C. Penney, except as provided by applicable laws or ordinances.

Section 3.5 Outparcel Development.

(a) Any Outparcel sold or developed on the Shopping Center will be developed only under the guidelines set forth in this Section 3.5 as well as those restrictions set forth in Exhibit E attached hereto and made a part hereof. RC IV agrees to use all commercially reasonable efforts to enforce the provisions herein that apply to the Outparcel development and operation.

(b) Any party or independent Owner purchasing or leasing from RC IV and having an ownership or leasehold interest in an Outparcel shall repair any damage caused to any of the utility facilities, as described in Section 2.4 of this Declaration, serving the Shopping Center and the Outparcel by such party, or a lessee or user of the Outparcel, to the extent the Outparcel benefits from any of the utility facilities serving the Shopping Center and the Outparcel.

(c) In the event any building, structure or other improvement on an Outparcel shall be damaged or destroyed by any casualty, the Owner, lessee or user of the Outparcel shall within ninety (90) days of such damage or destruction (a) commence to repair and/or reconstruct such improvements to not less than their condition prior to such damage or destruction to a size of at least 80% but not more than 100% of the Floor Area of such Building space which existed

prior to such damage or destruction, or (b) in accordance with Section 6.4, level such improvement, remove the debris from the Outparcel and keep the Outparcel neat, orderly and clean until subsequently improved and constructed upon.

(d) Any of the restrictions set forth in this Section 3.5 may be waived, amended, modified, released, or terminated in writing at any time and from time to time by RC IV and J.C. Penney; provided that either Party shall not waive, amend, modify, release, or terminate this Declaration without the prior written consent of the other Party. However, RC IV and/or J.C. Penney, as the case may be, shall not amend or modify any of the foregoing restrictions if any such amendment or modification would impose additional restrictions on an Outparcel without the prior written consent of the fee Owner or leasehold tenant of the Outparcel. The fee Owner of such Outparcel, however, may impose additional restrictions on an Outparcel as such fee Owner deems appropriate, subject to any exceptions thereto imposed on said fee Owner at the time of conveyance of said Outparcel by RC IV to said fee Owner.

(e) RC IV may subdivide, convey, lease or assign any Outparcel or any portion thereof through any means including, but not limited to, subdivision, lease, ground lease, condominium declaration or air-lot condominium declaration.

(f) The foregoing restrictions and agreements are imposed on each of the Outparcels for the benefit of the Shopping Center. The agreements, restrictions and covenants herein made shall be deemed restrictive covenants running with the land and shall be binding upon each of the Outparcels and any person who may from time to time own, lease, or otherwise have an interest in any of the Outparcels.

ARTICLE IV  
CONSTRUCTION

**Section 4.1 RC IV's Construction.** RC IV shall construct, at its expense, those improvements referenced in the Supplemental Agreement as the Off-Site Improvements and the On-Site Improvements, in accordance with the terms of the Supplemental Agreement. Further,

RC IV shall construct, at its expense, or cause to be constructed, the Common Area Improvements as well as all Buildings (other than the J.C. Penney Building) as shown on the Site Plan, in such Permissible Building Areas and containing the Floor Area set forth on the Site Plan. Except as otherwise set forth in the Supplemental Agreement, RC IV shall complete (or cause the completion of) the construction of such Buildings and Common Area Improvements no later than April 1, 2008. RC IV shall procure all building and other permits required for the construction and shell occupancy of such improvements as RC IV is required to construct.

Section 4.2 J.C. Penney Building. J.C. Penney shall construct the J.C. Penney Building as more particularly set forth in the Supplemental Agreement. Except as otherwise set forth in the Supplemental Agreement, J.C. Penney shall procure all building and other permits required for the construction and occupancy of the J.C. Penney Building.

Section 4.3 Staging and Storage Areas During Construction. During all times that either Party is constructing, remodeling, restoring or enlarging improvements within the Permissible Building Areas shown on the Site Plan, such Party shall have the right to utilize a staging and storage area in the Common Area on its Parcel at a location designated on the Site Plan; and if not so designated, at a location to be agreed upon by RC IV and J.C. Penney, provided vehicle and pedestrian traffic throughout the Entire Premises, and visibility of buildings within the Entire Premises shall not be materially and adversely affected. Each Party shall have the right to relocate its staging area one time to a location mutually acceptable to RC IV and J.C. Penney to facilitate construction of any Common Area required to be constructed by RC IV. Any drives must be kept open or rerouted temporarily to a location reasonably acceptable to the Parties. Each Party may during such construction, remodeling, restoring or enlarging, at its sole expense, fence off the staging and storage area; provided that, upon completion of such construction, remodeling, restoring or enlarging, such Party promptly removes such fence and repair any damage caused by such fence or its use of such area. The Party commencing construction shall require and enforce a parking restriction requiring all persons performing work on such construction to park their automobiles in the staging area or in the employee parking area within such Party's Parcel or such other areas as may be determined by RC IV, and J.C.

Penney if affected thereby. The Party commencing construction shall require and enforce a restriction requiring that all trucks bringing materials or labor to the construction site use only an entrance to the Entire Premises which is mutually agreed upon by the Parties unless specifically indicated herein or on the Site Plan. The Party commencing construction shall, immediately upon completion of construction, repair, or cause to be repaired, any damage to the Common Area or other improvements in the Shopping Center in any way caused by or related to such construction. Prior to commencing any construction (excluding construction of tenant improvements), the Party commencing construction shall cause its general contractor to deliver evidence of insurance in amounts and types required herein. Except as may be otherwise agreed by the Parties, such construction shall be architecturally compatible with existing construction on the Entire Premises, and all such work shall be performed in such a manner that it does not unreasonably interfere with the operation of the Shopping Center.

Section 4.4 Unlimited Building Area Requirement. RC IV acknowledges that J.C. Penney proposes to construct a building which is classified as an "unlimited area building" under certain building codes. The term "unlimited area building" refers to a building that is allowed to exceed area limitations stipulated in the applicable building code, not by virtue of its construction type, but as a condition of its isolation on the property and by its inclusion of a sprinkler system. J.C. Penney and RC IV agree that all buildings constructed adjacent to the J.C. Penney Building shall comply with the following requirements:

(a) No building shall be constructed within sixty (60) feet of the building area on an adjoining tract unless such building, hereinafter referred to as the "**Adjacent Building**", shall be located immediately adjacent to the common boundary line and is attached to the building, if any, on the adjacent tract.

(b) If an Adjacent Building exists, then no building shall be located within sixty (60) feet of the Adjacent Building unless such building is attached to the Adjacent Building. The Adjacent Building and all other buildings on the tract that are attached to the Adjacent Building and to each other are hereinafter referred to as the "**Building Group**".

(c) Any building that is not part of the Building Group shall be located at least sixty (60) feet distant from the Building Group.

(d) The Adjacent Building or the Building Group, as the case may be, shall comply with the building code requirements applicable to an "unlimited area building", including without limitation the installation of an approved sprinkler system for fire protection.

(e) In addition to the requirements set forth above, RC IV and J.C. Penney agree that no building shall initially be placed or constructed on their respective Parcels in a manner which will, based on then existing governmental requirements, either preclude the construction of an "unlimited area building", or cause an existing "unlimited area building" thereon to no longer be in conformance with applicable building code requirements, it being understood and agreed, however, that subsequent changes in governmental requirements shall not obligate RC IV or J.C. Penney to modify or alter its existing building.

(f) In the event that RC IV is unable to obtain an "unlimited area building" ruling from the applicable governmental agency, and so long as the J.C. Penney Building is to be constructed in the location set forth on the Site Plan, then RC IV shall reimburse J.C. Penney on demand for all additional costs incurred by J.C. Penney in the construction of its Building due to the fact that an "unlimited area building" ruling was not obtained.

Section 4.5 Attachment of Buildings to J.C. Penney Building; Use Restrictions. RC IV shall have the right to attach to the J.C. Penney Building the Adjacent Building shown on the Site Plan but not to receive any structural support therefrom, provided J.C. Penney shall have approved the plans and specifications for such attachment. RC IV shall have the obligation at its sole cost and expense to furnish, install and maintain the flashing and seal between such Adjacent Buildings and the J.C. Penney Building, shall repair at RC IV's sole cost any damage to the J.C. Penney Building caused in making or maintaining such attachment, and shall indemnify, defend and hold Penney (and its affiliates, successors, and assigns) harmless from any and all claims, liability, cost, damage, loss, and expense (including without limitation attorneys' fees and legal costs), whether in connection with personal injury, property damage or otherwise, which result from or arise out of the making or failure to maintain (except as provided below) such

attachment, excluding any damage caused by J.C. Penney, its agents, employees and/or contractors. Each Party shall be responsible for maintenance of that portion of the expansion joint erected by it, as shown in the final improvement plans and specifications. Such Adjacent Building shall be no more than one story above grade or exceed (including such building's parapet wall) a height that is greater than two feet below the height of the parapet wall of the J.C. Penney Building, and shall only be used for a retail purpose (or office use related directly to such retail use) and shall not be used for any use prohibited in Section 3.4 hereof, even as incidental to another use, without J.C. Penney's prior written consent. Any construction of such Adjacent Buildings shall be completed prior to the opening of the J.C. Penney Building to the public and in any event shall not interfere with the construction or use of the J.C. Penney Building. The Owner of such Adjacent Building shall carry commercial general liability insurance having the same limits and provisions as required of RC IV and which, in any event, shall include coverage for third party property damage. The Owner of such Adjacent Building shall also install, repair, maintain and replace bollards meeting the specifications of J.C. Penney along the Penney Building walls that are adjacent to any truck dock serving any Adjacent Building. The Owner of such Adjacent Building shall indemnify, defend and hold J.C. Penney (and its affiliates, successors, and assigns) harmless from any and all claims, liability, cost, damage, loss, and expense (including without limitation attorneys' fees and legal costs), whether in connection with personal injury, property damage or otherwise, which result from or arise out of any truck dock serving the Adjacent Buildings, excluding any damage caused by J.C. Penney, its agents, employees and/or contractors. The Owner of the J.C. Penney Building shall indemnify, defend and hold the Owner of the Adjacent Building (and its affiliates, successors, and assigns) harmless from any and all claims, liability, cost, damage, loss, and expense (including without limitation attorneys' fees and legal costs), whether in connection with personal injury, property damage or otherwise, which result from or arise out of any truck dock serving the J.C. Penney Building, excluding any damage caused by the Owner of such Adjacent Building, its agents, employees and/or contractors.

Section 4.6 Exterior Equipment. All roof mounted equipment on any Building within the Entire Premises will be screened from view and shall be set back from the perimeter or edge of such building in order that such equipment shall not be visible from the outer perimeter drive of the Shopping Center. All grade-level equipment and service areas will be screened from view in accordance with the final plans and specifications for the Entire Premises. The Owner of a Building may erect and maintain aerials, antennas or satellite dishes for television, radio and the receiving of data and video transmissions and the transmitting of data on the roof of such Owner's Building, provided such items are screened from view as provided in this Section.

Section 4.7 Mechanic's Liens.

(a) If any mechanic's, materialman's, or other similar lien shall at any time be filed against any part of the Entire Premises (including, without limitation, the J.C. Penney Property or the improvements thereon) on account of any work, labor or services performed or claimed to have been performed, or on account of any materials furnished or claimed to have been furnished, for or at the direction of J.C. Penney or anyone holding or occupying the J.C. Penney Building through or under J.C. Penney, J.C. Penney shall, without cost or expense to RC IV, forthwith cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise; provided, however, such action(s) shall not prejudice (or be deemed or construed to limit or forfeit) J.C. Penney's rights to contest such lien in accordance with applicable law.

(b) If any mechanic's, materialman's or other similar lien shall at any time be filed against any part of the Entire Premises comprising Common Area for any reason whatsoever or be filed against any other part of the Entire Premises (including, without limitation, the J.C. Penney Property or the improvements thereon) on account of any work, labor or services performed or claimed to have been performed, or on account of any materials furnished or claimed to have been furnished, for or at the direction of RC IV or any one holding or occupying any part of the Entire Premises exclusive of the J.C. Penney Property through or under RC IV, RC IV shall, without cost or expense to J.C. Penney, forthwith cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise; provided,

however, such action(s) shall not prejudice (or be deemed or construed to limit or forfeit) RC IV's rights to contest such lien in accordance with applicable law.

**Section 4.8 As-Built Survey.** On or before two (2) months following the grand opening of the Shopping Center, RC IV shall, at RC IV's expense, deliver to J.C. Penney an "as-built" survey of the Entire Premises then constructed as applicable, which shall: (i) be prepared to standards of the American Land Title Association ("ALTA"), certified to the parties and sealed by a surveyor registered in the state where the Entire Premises is located; (ii) show the exact location of all buildings and other improvements on the Entire Premises and all setback lines; (iii) show the exact location of all easements, rights-of-way, drives and roads within the Entire Premises, which, if existing by virtue of a recorded instrument, must be identified on the face of the survey by the recording data of the instrument creating same; (iv) show any variance from the Site Plan, together with a notation setting forth the reason for such variance; and (v) show the location of the Outparcels. Should J.C. Penney have an "as-built" survey of the J.C. Penney Property completed after completion of the J.C. Penney Building, J.C. Penney shall make such available to RC IV. In the event that the legal descriptions on such "as-built" survey of the Entire Premises, or any of them, vary in a material manner from the legal descriptions made a part of this Declaration as exhibits hereto or contained in the documents of conveyance of such Parcels, then (i) RC IV shall, at RC IV's sole cost and expense, cause an amendment to be made to this Declaration correcting the legal descriptions hereto and following execution thereof by RC IV and J.C. Penney, shall cause the amendment to this Declaration to be filed of record, and (ii) the appropriate parties shall have prepared, executed and recorded corrective instruments of conveyance, including deeds, subdivision plats and dedications which will address any discrepancy between the original legal descriptions of their respective Parcels and the corresponding legal descriptions on the "as-built" survey.



ARTICLE V  
COMMON AREA

Section 5.1 Common Area. Except as otherwise provided herein or by the terms of the Supplemental Agreement, the costs of maintaining, lighting, repairing, replacing, insuring and operating the Common Area and all Common Area Improvements shall be borne entirely by RC IV. For purposes of Common Area cost, the maintenance, repair and replacement costs for any detention or retention ponds, areas and drainage facilities shall be included in the Common Area. The Common Area shall not include any drives or driveways from and after the date on which they are dedicated as public streets or which are the responsibility of any governmental authority to repair and/or maintain. Any part of the Common Area within the Permissible Building Areas shown on the Site Plan shall cease to be a part of the Common Area when incorporated into any building.

Section 5.2 Lighting of Common Area. The Parties will each keep or cause to be kept all Common Area on their respective Parcels well lighted (but not less than in accordance with the minimum requirements hereinafter specified) during all hours of darkness when the J.C. Penney Building is open for business and during a period of one (1) hour after the J.C. Penney Building shall have closed for business. Further, for purposes of security, the Parties shall cause the Common Areas on their respective Parcels to be lighted during night hours of non-business operations in accordance with the minimum requirements hereinafter specified. All exterior lighting for the Shopping Center shall have a minimum maintained intensity at ground level as follows:

- (a) open parking areas and all sidewalks - one foot candle.
- (b) roadways - one and one half foot candles.
- (c) intersections of entrance/exitways and public roads - four foot candles.
- (d) sheltered parking areas and walkways - five foot candles.
- (e) 25% evenly distributed security night lighting on a dusk to dawn basis.

The cost of lighting the Common Area of each Parcel (i.e., the electric power consumed for such purpose) shall be borne by the Owner of such Parcel, unless otherwise provided in the Supplemental Agreement.

**Section 5.3 Sales in Common Area.** In connection with RC IV's operations of the Common Area, RC IV covenants that no vending machines, push carts, kiosks or similar selling or service displays or devices and no selling or solicitation of any kind (including charges for admission, rides or entertainment) shall be conducted or permitted on any portion of the Common Area unless J.C. Penney shall give its prior written consent thereto. In the event of a violation of this covenant, J.C. Penney shall have the right to injunctive relief, in addition to its remedies at law or in equity, after first giving RC IV five (5) days notice, during which period RC IV may cure such violation.

**Section 5.4 Common Area Maintenance.** RC IV shall at all times keep and maintain all Common Area on the RC IV Property and, except as provided in the Supplemental Agreement, on the J.C. Penney Property (including any Common Area between the J.C. Penney Building and the perimeter sidewalks), in a first-class state of repair. RC IV's obligations hereunder shall include, but not be limited to providing security (when warranted or when security is customarily provided in shopping centers comparable to the Shopping Center and located within the Riverdale, Utah market trade area), repairing all Common Utility Facilities (except within those utility easements granted to any governmental authority or utility company, which has maintenance and repair obligations thereover), repairing and replacing all lighting facilities, and maintaining and replacing as necessary the plants located within the landscaped and planted areas (including any Common Area between the J.C. Penney Building and the perimeter sidewalks). All parking areas in the Common Area shall be resurfaced, restriped and replaced as needed by RC IV. All holes or breaks in the paving in the Common Area shall be repaired as needed by RC IV within a reasonable time after the same appear. RC IV shall not, except in the event of an emergency, make repairs to the parking areas in the period from November 1 to December 31.

Section 5.5 Common Area Cleaning.

(a) RC IV shall at all times keep all Common Area on the RC IV Property and, except as provided in the Supplemental Agreement, on the J.C. Penney Property, in a clean, neat and sanitary condition consistent with the operation of a first class shopping center and shall keep all such areas exposed to the elements free from ice and snow and debris. Without limiting the generality of the foregoing, RC IV shall:

- (i) Empty all trash containers in the Common Area as needed;
- (ii) Pick up paper and trash in all Common Area each day as needed and sweep all sidewalks, all drives adjacent to all Buildings, and the entire parking area as needed;
- (iii) Remove, and treat, ice and remove snow from the exposed areas as soon as practicable;
- (iv) Cause all garbage receptacles of all Occupants of all Buildings (other than the J.C. Penney Building) to be emptied, and the garbage removed as needed; and
- (v) Repair and replace, as necessary, light bulbs and ballasts on the Common Area lighting fixtures.

Section 5.6 Parking Requirements; Parking Area. Each Party shall maintain or cause to be maintained in the Shopping Center, including all Outparcels, self-supporting parking and each Parcel shall contain the following number of parking spaces, notwithstanding the erection of new structures or the enlargement of an existing structure (unless applicable law requires a greater number of parking spaces, then such greater number shall apply): (i) 4.5 parking spaces for each 1,000 square feet of Floor Area on the J.C. Penney Property, (ii) 4.5 parking spaces for each 1,000 square feet of Floor Area on the RC IV Property. Provided, however, that (10) spaces per each 1,000 square feet of Building floor area constructed thereon will be required for full-service restaurants with table wait staff where meals are regularly served at tables for consumption on premises and/or other food service establishments which have a "buffet" style meal-serving system where patrons predominately serve themselves. Except in instances of condemnation, no parking deck shall be permitted. All parking areas shall be used for parking purposes only and for no other purpose or use whatsoever. RC IV and J.C. Penney hereby

designate the sections of the parking areas on their respective Parcels shown on the Site Plan for the use of employees of the stores and other establishments situated on their respective Parcel. RC VI agrees that each lease or agreement hereafter executed under which space in the RC IV Property is rented to or occupied by an operator of a store or other establishment will require such operator to exert reasonable efforts to cause its employees to use only the areas so designated for parking purposes. J.C. Penney agrees to exert reasonable efforts to cause its employees to use only parking areas located on the J.C. Penney Property and designated for such purposes.

## ARTICLE VI

### DESTRUCTION

Section 6.1 Damage to J.C. Penney Property. J.C. Penney shall have no obligation to repair or restore the J.C. Penney Building irrespective of the extent of the damage thereto.

Section 6.2 Damage to RC IV Property and Common Area Improvements. Except as provided below and in Section 3.5 regarding Outparcels, if any of the Buildings located on the RC IV Property, or any Common Area Improvements, including those on the J.C. Penney Property (collectively, the “**Developer Reconstruction Improvements**”) are damaged by fire or other casualty, whether insured or uninsured, RC IV shall promptly commence and diligently prosecute to completion repair of all such damage and shall restore and replace the Developer Reconstruction Improvements to not less than their condition prior to such damage or destruction. Notwithstanding the foregoing, RC IV shall not have any obligation to restore and replace the Developer Reconstruction Improvements if the J.C. Penney Building experienced a loss or destruction resulting in the vacancy of the J.C. Penney Building and J.C. Penney has not promptly commenced reconstruction, or irrevocably committed to RC IV in writing to commence such reconstruction within a date certain (not to exceed one hundred eighty (180) days after the event of loss or destruction), following such event of loss or destruction and, subject to Unavoidable Delays, carried such reconstruction through diligently to conclusion

within eighteen (18) months of the event of loss or destruction. RC IV's reconstruction obligation, if any, shall be commenced promptly following any loss or destruction (and in any event within ninety (90) days thereafter) and be carried through diligently to conclusion (and in any event all Common Area Improvements on or serving the J.C. Penney Property within nine (9) months after the time when the loss or destruction occurred, and all other improvements, within eighteen (18) months after the time when the loss or destruction occurred). All repaired and rebuilt Buildings and improvements shall be to as good a condition, to the same general appearance and on the same level or story as the Buildings and improvements were immediately prior to such damage or destruction.

Section 6.3 Quality of Reconstruction. The Parties agree that all work or repair or reconstruction on any Building or other improvements that such Party is required or elects to rebuild or repair pursuant to this Declaration shall, subject to the terms of this Declaration, be commenced promptly following any loss or destruction and be carried through diligently to conclusion by such Party; provided, however, that if such restoration is delayed by reason of Unavoidable Delays, then the Party so delayed shall be entitled to an extension of time for a period equal to the time between the date that the Party so delayed notifies the other Party that it claims a permitted extension of time until the event causing such delay is terminated. All such repaired and rebuilt Buildings and improvements shall be to as good a condition, to the same general appearance and on the same level or story as the Buildings located upon its Parcel immediately prior to such damage or destruction.

Section 6.4 Razed Buildings. Whenever a Party is not obligated hereunder to restore, repair or rebuild any Building or other Improvements that have been damaged or destroyed and elects not to do so, then, and in such event, such Party shall within a reasonable time after such damage or destruction raze such Buildings or other Improvements or such part thereof as has been so damaged or destroyed, clear its Parcel of all debris, and all areas not restored to their original use shall be leveled, cleared and left in a sightly condition.

ARTICLE VII  
INSURANCE; INDEMNIFICATION

Section 7.1 Property Insurance.

(a) All Parties (other than RC IV) shall during the term of this Agreement maintain property insurance upon any Building and other structures (including all improvements, alterations, additions and changes thereto) which are located within such Party's Parcel with coverage for perils at least as broad as Insurance Services Office form CP 1030 (Causes of Loss-Special Form), with coverage extended for the perils of flood and earth movement, in an amount not less than 90% of the full insurable replacement cost (i.e., total cost less value of land and non-destructibles such as foundations and underground utilities). Such insurance shall also contain an ordinance and law endorsement and a debris removal coverage endorsement. Such Party shall be responsible for determining the amount of property coverage insurance to be maintained. If any heating boilers exist within any buildings located within such Party's Parcel then such Party shall maintain insurance on all such boilers in an amount not less than \$1,000,000 per accident. If such insurance has a deductible clause, such Party shall be liable for such deductible amount in the event of an insured loss. J.C. Penney shall have the right to comply with and satisfy the obligations under this paragraph by means of self-insurance to the extent of all or any part of the insurance required to be carried hereunder, but only as and to the extent that J.C. Penney has, or is guaranteed by an entity which has, a net worth of at least \$100,000,000.

(b) RC IV shall during the term of this Agreement keep, or cause to be kept, property insurance upon all Buildings and other structures (including all improvements, alterations, additions and changes thereto) within the RC IV Property with coverage for perils at least as broad as Insurance Services Office form CP 1030 (Causes of Loss-Special Form), with coverage extended for the perils of flood and earth movement, in an amount not less than 90% of the full insurable replacement cost (i.e., total cost less value of land and non-destructibles such as foundations and underground utilities). Such insurance shall also contain an ordinance and law

endorsement and a debris removal coverage endorsement. RC IV shall be responsible for determining the amount of property coverage insurance to be maintained. If any heating boilers exist within any buildings located within the RC IV Property then RC IV shall maintain insurance on all such boilers in an amount not less than \$1,000,000 per accident. If such insurance has a deductible clause, RC IV shall be liable for such deductible amount in the event of an insured loss.

Section 7.2 Payment and Disposition of Insurance Proceeds.

(a) Anything herein to the contrary notwithstanding, it is understood and agreed that the policy or policies providing the insurance which each Party is obligated to maintain, or cause to be maintained, hereunder may be made payable to the holder of any first Mortgage which is a lien upon the insured property, as its interest may appear, under a standard mortgagee clause, provided such mortgagee is an Institutional Lender and agrees that it will in the event of loss hold the proceeds for payment of the cost of repairing, rebuilding or restoring the damaged premises as may be required pursuant to the provisions of Article VI hereof captioned "Destruction".

(b) Any loss covered by the insurance required to be maintained under the foregoing provisions of this Article VII shall be adjusted with the Owner of the insured property or any insured designated by such owner to adjust such loss.

(c) If restoration or repair of the damaged premises is required under the terms of this Declaration, the party hereto responsible for such restoration work shall apply the insurance proceeds or cause them to be applied in payment of the cost of such restoration work to the extent that such proceeds are required for such purpose and any excess shall be retained by the Owner of the insured premises or its designee.

Section 7.3 Liability Insurance.

(a) RC IV shall maintain from and after the execution and delivery of this Declaration and until the expiration of the term hereof commercial general liability insurance written on an occurrence basis, including contractual liability insurance, against claims on account of bodily injury, death or property damage incurred upon any part of the Common Area

or arising as a result of RC IV's operation of the Shopping Center on the Entire Premises. Such insurance shall have a combined single limit of not less than \$5,000,000 per occurrence and \$10,000,000 annual aggregate for bodily injury, death and property damage. Such insurance shall be endorsed to provide that the insurance shall be primary to and not contributory to any similar insurance carried by any other Party. RC IV shall be liable for any deductible amount in the event of an insured loss.

(b) All Parties (other than RC IV) shall maintain from and after the execution and delivery of this Declaration and until the expiration of the term hereof commercial general liability insurance written on an occurrence basis, including contractual liability insurance, against claims for bodily injury or death and property damage occurring in the Building constructed on such Party's Parcel. Such insurance shall afford protection to the combined single limit of not less than \$5,000,000 per occurrence and \$10,000,000 annual aggregate for bodily injury, death and property damage. Such insurance shall be endorsed to provide that the insurance shall be primary to and not contributory to any similar insurance carried by RC IV. J.C. Penney shall have the right to comply with and satisfy the obligations under this paragraph by means of self-insurance to the extent of all or any part of the insurance required to be carried hereunder, but only as and to the extent that J.C. Penney has, or is guaranteed by an entity which has, a net worth of at least \$100,000,000.

Section 7.4 General Provisions. All insurance policies required to be maintained hereunder shall be procured from insurance companies rated at least A-VIII or better by the then current edition of Best's Insurance Reports published by A. M. Best Co. All liability insurance policies shall provide that they shall not be canceled or materially changed without at least providing 30 days prior written notice to the other Party. Liability insurance limits may be provided through any combination of primary and/or excess insurance policies.

Section 7.5 Evidence of Insurance. Each Party shall deliver to the other Party upon request certificates of the insurance required to be maintained under this Article. Each such certificate shall state that the insurance evidenced thereby shall not be reduced, cancelled or materially changed unless thirty (30) days prior written notice shall have been given by the



insurer to the other Party. To the extent J.C. Penney is providing self-insurance as permitted hereunder, a letter to the effect that J.C. Penney is so providing shall be deemed to be a certificate of insurance for the purposes of this paragraph.

Section 7.6 Indemnification.

(a) Each Party (other than RC IV) covenants to indemnify and hold harmless RC IV from and against all claims and all costs, expenses, and liabilities incurred in connection with such claims, including any action or proceeding brought thereon, arising from or as a result of (a) any accident, injury, loss, or damage whatsoever caused to any natural person, or to the property of any person, alleged to have occurred within a Building located on such Party's Parcel during the term of this Declaration or (b) the intentional misconduct or negligent acts or omissions of such Party or of any tenant, concessionaire, licensee or departmental lessee of such Party or of the agents, contractors, servants or employees of such Party or of any such subtenant, concessionaire, licensee or departmental lessee of such Party or (c) the use and operation by such Party of its Building; excepting, however, in each case, claims, accidents, injuries, loss or damages arising from or as a result of the intentional misconduct or negligent acts or omissions of RC IV or its agents, contractors, servants or employees.

(b) RC IV covenants to indemnify and hold harmless each and every other Party from and against all claims and all costs, expenses, and liabilities incurred in connection with such claims, including any action or proceeding brought thereon, arising from or as a result of (a) any accident, injury, loss, or damage whatsoever caused to any natural person, or to the property of any person, alleged to have occurred in or about the Entire Premises exclusive of such Party's Building during the term of this Declaration or (b) the intentional misconduct or negligent acts or omissions of RC IV or the agents, contractors, servants or employees of RC IV or (c) the use, operation and maintenance of the Common Area no matter where located; excepting, however, in each case, claims, accidents, injuries, loss, or damages arising from or as a result of the intentional misconduct or negligent acts or omissions of such Party or of any tenant, concessionaire, licensee or departmental lessee of such Party or of the agents, contractors,

servants or employees of such Party or of any such tenant, concessionaire, licensee or departmental lessee of such Party.

(c) Each Party shall promptly notify the other of any claim asserted against such party with respect to which such Party is indemnified against loss by the other Party hereunder, and the Party giving such notice shall promptly deliver to the other Party the original or a true copy of any summons or other process, pleading, or notice issued or served in any suit or other proceeding to assert or enforce any such claim. The Party so notified of any claim against which such Party has indemnified the other Party hereunder against loss shall defend any such suit at its sole cost and expense with attorneys of its own selection, but the Party so indemnified shall have the right, if it sees fit, to participate in such defense at its own expense.

#### ARTICLE VIII CONDEMNATION

**Section 8.1 - Condemnation.** In the event that (a) 20% or more of any Party's Parcel, or (b) any part of the Building located on such Parcel shall be condemned and taken by right of eminent domain or for public or quasi-public use or sold under threat of condemnation, or (c) as a result of condemnation or sale under threat of condemnation, the J.C. Penney Property is separated from and no longer contiguous to the RC IV Property, the Party whose Parcel shall have been so condemned or sold, may, in any of such events and at its option, exercisable by written notice to the other Parties hereto, within the period from ninety (90) days before to ninety (90) days after the taking or sale, terminate this Declaration as to it's Parcel and thereupon shall be released from any further liability hereunder. If there shall be a condemnation of any part of the Entire Premises which shall not result in a termination of this Declaration, the parties hereto shall enter into an amendment to this Declaration in recordable form (i) substituting for the description of each Parcel which shall have been reduced in size because of such condemnation and/or added to by reason of the creation of a substitute Building(s) or substitute Common Area a revised description of such Parcel as so changed, and (ii) substituting for the description of the

Entire Premises a revised description thereof taking into account the changes in the descriptions of the individual Parcels which comprise the Entire Premises.

Section 8.2 Separate Awards. If all or any part of a Parcel is condemned or taken (instead of being sold under threat of condemnation), the Parties agree, if permitted by law, to seek separate awards from the condemning authority for the taking of its Parcel and further agree that in such event no other Party shall have any right to any part of any such award.

Section 8.3 Substitute Parking. Substitute parking facilities provided by any Party shall be in the form of one or more parking decks or ground level parking areas of comparable quality to the parking area taken and contiguous to the remaining parking area. If RC IV or J.C. Penney shall provide substitute parking facilities, they shall be located on their respective Parcels or on land contiguous thereto. Anything herein to the contrary notwithstanding, RC IV shall not be required to replace parking spaces on RC IV's Property lost through condemnation if the remaining spaces thereon comprise 90% or more of the original number of spaces on such land.

Section 8.4 RC IV's Participation. RC IV covenants and agrees that neither RC IV, nor its affiliates, nor any of their directors, officers, partners, members, shareholders, employees, representatives and/or agents shall directly or indirectly initiate, instigate, encourage, recommend, direct, further or participate in (collectively "**RC IV's Participation**") any condemnation, eminent domain, "taking", deed in lieu of condemnation or similar proceedings (collectively, "**Taking**"), of the whole or any part of the Entire Premises, or any right or interest therein or related thereto, or any right or interest granted to J.C. Penney in this Declaration or in the Supplemental Agreement (collectively "**Protected Rights**"). In the event that any Protected Rights are subject to Taking, whether or not RC IV's Participation was involved in such Taking, RC IV, on behalf of itself and any successor RC IV, agrees to continue to be bound by, and honor, all of the provisions of this Declaration and the Supplemental Agreement without modification to address any such Taking, as if such covenants were personal covenants of the RC IV.

ARTICLE IX  
TERMINATION

**Section 9.1 Termination.** This Declaration shall terminate on the earlier of the following dates (the "**Termination Date**"):

- (a) October 31, 2050;
- (b) Such date as the Parties may elect by written notice of Termination executed by all of the Parties and recorded in the office of the Weber County Recorder; or
- (c) Such earlier termination as provided pursuant to and in accordance with this Agreement; Provided that the term of the Declaration shall be automatically extend for independent five (5) year periods unless a Party hereto delivers written notice to the other Party six (6) months prior to the expiration date of the then current term.

**Section 9.2 Survival.** All easements granted herein, except those that by their terms survive the termination of this Agreement, shall terminate on the termination of this Agreement.

ARTICLE X  
UTILITIES AND TAXES

**Section 10.1 Utilities.** Each Party shall make arrangements for and pay for, or cause to be paid, all charges for utility services supplied to the Building(s) on its Parcel, unless otherwise provided herein or in the Supplemental Agreement.

**Section 10.2 Real Estate Taxes.**

- (a) RC IV shall pay, or cause to be paid, when due, all real estate taxes, fees in lieu of taxes and assessments upon the RC IV Property that shall be assessed, levied, imposed or become a lien thereon, including all Special Assessments for Shopping Center Off-Site Improvements assessed against the Entire Premises (including the J.C. Penney Property). Each other Party (except for RC IV) shall pay, when due, all real estate taxes, fees in lieu of taxes and assessments upon its Parcel which shall be assessed, levied, imposed or become a lien thereon,

except for Special Assessments for Shopping Center Off-Site Improvements. RC IV shall, at RC IV's sole cost and expense, arrange to have the J.C. Penney Property taxed as a separate tax parcel.

(b) In the event a Party shall deem any real estate tax, fees in lieu of taxes; or assessment (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) to be paid by such Party to be excessive or illegal, such party shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Section 10.2 shall require such party to pay any such real estate tax or assessment as long as the amount or validity thereof shall be contested in good faith, and in the opinion of counsel for such Party, any other Party's Parcel shall not thereby be in danger of being forfeited.

(c) **"Special Assessments for Shopping Center Off-Site Improvements"** shall mean any special assessment that may be levied against the J.C. Penney Property or against the Entire Premises and/or the improvements thereon by reason of the construction, installation, expansion, or extension of any roads, acceleration or deceleration lanes, highway widening improvements, gutters, curbs, entrances, overpasses, traffic signals or other traffic control devices, sanitary sewers, storm sewers and drains, or other off-site improvements of any nature whatsoever made in connection with the development of the Shopping Center, or the subsequent expansion thereof or the erection of additional Floor Area therein.

(d) Notwithstanding anything herein to the contrary, in no event shall J.C. Penney shall be liable for any increase in any real estate taxes or assessments for any improvements or additions made to the Entire Premises (excluding the J.C. Penney Property) unless such improvements or additions are for the benefit of J.C. Penney or required by applicable law.

ARTICLE XI  
MISCELLANEOUS

Section 11.1 RC IV Covenants in Favor of J.C. Penney. RC IV covenants with J.C. Penney that during the term of this Declaration:

(a) The name of the Shopping Center shall be "Riverdale Center", and such name shall not be changed without J.C. Penney's consent having been first obtained.

(b) All Buildings to be constructed on the Entire Premises (except for the J.C. Penney Building) shall remain substantially as shown on the Site Plan, and RC IV shall not expand an existing building or erect a new building except within the Permissible Building Areas. The Common Area to be constructed on the Entire Premises shall remain substantially as shown on the Site Plan.

(c) Without the prior approval of J.C. Penney there shall not be constructed within any part of the Entire Premises (i) any facilities for the parking of motor vehicles other than at ground level in the locations shown on the Site Plan; (2) any building or structure except within the Permissible Building Areas shown on the Site Plan; or (3) any improvements, or any replacements of, or alterations or additions to, existing improvements which do not conform in general exterior architectural treatment to the other portions of the Shopping Center.

(d) After the opening of the J.C. Penney Building for business with the public and for so long thereafter as J.C. Penney is operating a retail store under the name 'J.C. Penney' or which includes 'Penney' therein, RC IV will, subject to Unavoidable Delays and temporary cessations, operate and maintain, or cause to be operated and maintained, the Entire Premises as an attractive first class shopping center in a manner consistent with the best standards of first class community shopping center practice and will use all commercially reasonable efforts to keep all buildings located on the Entire Premises occupied. A "temporary cessation of business" shall mean a cessation of business for a limited and commercially reasonable period of time which (i) is occasioned by the making of repairs, alterations, or renovations due to damage or destruction of the premises where such cessation of business occurs; or (ii) is for taking

inventory; or (iii) is occasioned by remodeling; provided that in any such event such temporary cessation of business is only for reasonable periods of time and reasonably diligent efforts are made to reopen and resume operations as soon as is reasonably practical.

Section 11.2 J.C. Penney Covenants in Favor of RC IV. J.C. Penney covenants with RC IV that during the term of this Declaration:

(a) The J.C. Penney Building shall remain substantially as shown on the Site Plan, and J.C. Penney shall not expand an existing building or erect a new building except within the Permissible Building Areas.

(b) Without the prior approval of RC IV there shall not be constructed within any part of the J.C. Penney Property (i) any facilities for the parking of motor vehicles other than at ground level in the locations shown on the Site Plan; (2) any building or structure except within the Permissible Building Areas shown on the Site Plan; or (3) any improvements, or any replacements of, or alterations or additions to, existing improvements which do not conform in general exterior architectural treatment to the other portions of the Shopping Center.

Section 11.3 Transfer of Ownership or Interest.

(a) When used in this Section, the following capitalized terms have the meanings stated in this Section:

(i) **Affiliate** - With respect to any Person, another Person controlled by, or controlling, or under common control with the Person in question ("control" for this purpose means, in the case of a corporation, partnership, limited liability company, or other legal entity, the legal or beneficial ownership of in excess of 50% of the voting securities or interests of the Person controlled).

(ii) **Person(s)** - Individuals, partnerships, limited liability companies, firms, associations and corporations, or any other form of legal entity.

(iii) **Sale and Leaseback** - A Transfer in which the Transferor, or an Affiliate thereof, acquires as part of the same transaction a leasehold interest in all or substantially all of

the property transferred, which lease has an initial term which will not expire prior to the expiration of 10 years from the date of the commencement of operations by a party.

(iv) **Transfer** - A sale, assignment, grant or other conveyance (other than a condemnation) of all or any portion of the fee of a Parcel (and if of less than the entire fee of all thereof, then whether by conveyance of the entire fee of any portion or of an undivided interest), including, without limitation, the sale portion of a Sale and Leaseback, but excluding (i) the making of a Mortgage and (ii) a 1031 Exchange.

(v) **Transferee** - The purchaser, assignee, grantee or Transferee in a particular Transfer.

(vi) **Transferor** - The seller, assignor, grantor or Transferor in a particular Transfer.

(b) Except as otherwise provided in this Section, in the event of a Transfer of all or any portion of the fee of a Parcel, it shall be deemed and construed, without further agreement between the Parties hereto and the Transferee, that the Transferee has expressly assumed and covenanted, effective upon the making of such Transfer, to perform and be bound by all the terms, covenants and conditions under this Declaration to be performed by the Transferor; however, if such Transfer is of less than the entire interest in such Parcel, such Transferee shall be deemed to be jointly and severally liable with all other owners of interests in such Parcel in connection with all terms, covenants and conditions under this Declaration binding the owner(s) of such Parcel. Upon any Transfer, the Transferee shall enter into an assumption agreement covering the foregoing matters.

(c) In the case of a Sale and Leaseback in which the Transferee is an Institutional Lender (or an investor or a Person who as part of the same transaction is procuring some or all of the funds for such purchase by means of a Mortgage loan from an Institutional Lender), the Transferee, and its successors and assigns, notwithstanding the provisions of subsection (b) of this Section, shall not: (i) be deemed to have assumed the terms, covenants and conditions under this Declaration to be performed by the Transferor, or (ii) be personally liable to the other Party for default in performance of any of the terms, covenants and conditions under this Declaration



to be performed in respect of the Parcel being Transferred; but the Transferor (or a related Party thereof, as the case may be), or successor, assignee or sublessee thereof, as holder of the leasehold interest under the lease which is a part of such Sale and Leaseback, shall be deemed to have agreed to be bound hereby and shall, if requested by the other party, execute a recordable instrument binding itself hereby (if it is not otherwise liable therefor on any other basis) for the benefit of the other party to this Declaration; however, the Transferee, or its successors at such time as owner of such Parcel shall, without further act, become (and shall be deemed to have agreed so to become) liable upon such terms, covenants and conditions, to the extent thereafter to be performed (but shall not be liable for the performance of any such term, covenant or condition as to any matter which arose prior thereto), with respect to such Parcel on the date when such lease is terminated for default or is surrendered or when the demised term thereunder expires, but only if and as long as such Transferee, or its successors at such time as owner thereof, has not entered into another lease, in which case the tenant thereunder shall be deemed and construed to have assumed the terms, covenants and conditions under this Declaration to be performed by the Transferor with the same effect as if it had been the Transferee in a Transfer as provided in subsection (b) of this Section.

(d) In the event of the making of any Mortgage, the holder of such Mortgage shall take its interest subject to this Declaration, provided that nothing in this Declaration shall be deemed to make the holder thereof liable for the performance of any term, covenant or condition under this Declaration to be performed by the owner of such mortgaged Parcel; provided, however, that if and when title to such Parcel becomes vested in any Person as a result of a foreclosure under said Mortgage or by deed in lieu of foreclosure or the holder of the Mortgage becomes a mortgagee in possession of such Parcel, then such Person or mortgagee shall so become liable for the performance of any such term, covenant and condition thereafter to be performed (but shall not be liable for the performance of any such term, covenant or condition as to any matter which arose prior thereto, except to the extent that any such term, covenant or condition is an ongoing obligation which continues thereafter), and it shall remain so liable only for the performance of such terms, covenants or conditions to be performed during the period

when such title to such Parcel is vested in it or it has become a mortgagee in possession of such Parcel. Neither the making of such Mortgage nor its foreclosure shall release the maker thereof from any liability it would have had under this Declaration had such Mortgage not been made. No mortgagee shall be deemed a mortgagee in possession if such mortgagee cures any default under said Mortgage or this Declaration or cures any default or exercises any right of self-help under said Mortgage or under law. The parties hereto recognize and agree that the failure of any Party to perform any of its obligations, duties, agreements or covenants hereunder may constitute a default under any Mortgage of the defaulting party.

(e) Upon the consummation of a Transfer, unless such Transfer is of a character described in subsection (c) of this Section or is a Transfer in connection with foreclosure by a mortgagee or acceptance of a deed in lieu of foreclosure where the Transferor Transfers its entire interest in such Parcel, the Transferor shall, provided it has delivered notice of such Transfer to the other Parties and provided the Transferee specifically assumes in writing the obligations of the Transferor under this Agreement and agrees to be bound thereby, be released from any and all liability which would thereafter arise from or in connection with any term, covenant or condition under this Declaration to be performed after the Transfer. However, the Transferor shall remain liable for all such liability in respect of events theretofore occurring and shall remain primarily obligated under this Declaration until the date of such Transfer.

(f) Nothing in this Section shall be construed to limit the enforcement of any rights of a mortgagee under a Mortgage.

Section 11.4 Estoppel Certificates. Each Party shall upon not less than thirty (30) days from receipt of written notice from the other Party execute and deliver to such other Party a certificate in recordable form stating that (i) either this Declaration is unmodified and in full force and effect or is modified (and stating the modification); and (ii) whether or not to the best of its knowledge any other Party is in default in any respect under this Declaration and if in default, specifying such default.

Section 11.5 Perpetuity of Declaration. Except as specifically set forth in this Declaration, the easements, covenants, conditions, restrictions and agreements contained herein

binding and benefiting the Parties shall be deemed to be perpetual and shall be construed to run with the land.

Section 11.6 Maintenance of Buildings. RC IV shall maintain and repair (or cause the maintenance and repair of) the Buildings on the RC IV Property in good order, condition and state of repair in accordance with the standards of first class shopping center operations. So long as RC IV is fulfilling its obligations under the preceding sentence, J.C. Penney shall maintain and repair the exterior of the J.C. Penney Building in good order, condition and state of repair in accordance with the standards of first class shopping center operations.

Section 11.7 Ordinances.

(a) RC IV shall at all times during the term hereof promptly comply with, or cause to be complied with, all present and future laws and ordinances and all rules and regulations of duly constituted governmental authority and the local fire insurance rating organization having jurisdiction (and any other organization or board exercising similar functions,) affecting the Entire Premises (exclusive of the J.C. Penney Building and, after the completion of the On-Site Improvements in accordance with the terms of the Supplemental Agreement, the J.C. Penney Property), the business conducted therein, and the cleanliness, safety, use and occupation thereof, except as otherwise provided herein or in the Supplemental Agreement. RC IV shall also be responsible for such compliance as respects construction work which RC IV performs or causes to be performed on the RC IV Property and the J.C. Penney Property.

(b) All other Parties (other than RC IV) shall at all times during the term hereof promptly comply with, or cause to be complied with, all present and future laws and ordinances and all rules and regulations of duly constituted governmental authority and the local fire insurance rating organization having jurisdiction (and any other organization or board exercising similar functions) affecting the Buildings constructed on such Party's Parcel, the business conducted therein, and the cleanliness, safety, use and occupation thereof, and which do not require the making of any changes, improvements, alterations or additions to other parts of the Entire Premises; provided, however, that such other Parties shall not be responsible for such compliance as respects construction work which RC IV performs or causes to be performed on

such other Party's Parcel. Notwithstanding the foregoing, in the event that any law, ordinance, rule or regulation which becomes effective after the date of this Declaration would require J.C. Penney to make structural changes to J.C. Penney Building, J.C. Penney may, in lieu of complying with such law, ordinance, rule or regulation, elect to cease operations in the J.C. Penney Building.

(c) Notwithstanding the foregoing, any Party hereto may refrain from complying with or causing compliance with any such law, ordinance, rule or regulation so long as the validity thereof shall be contested in good faith by appropriate proceedings; provided that (i) such Party shall defend and hold harmless the other Parties hereto from penalties or other expenditures arising from or as a result of such non-compliance, (b) the other Party hereto would not be in danger of incurring any civil or any criminal penalty or liability by reason of such contest, and (c) neither the J.C. Penney Property nor the remainder of the Entire Premises nor any part thereof or interest therein would be in danger of being sold, forfeited or lost by reason of such proceedings or would be subject to the imposition of any lien as a result of a failure to comply with any such law, ordinance, rule or regulation.

Section 11.8 Superiority of Declaration. This Declaration and all amendments hereafter entered into shall be prior and superior to the title, lien or encumbrance of any Mortgage, lease, ground lease, or other interest in, or encumbrance upon the Entire Premises.

Section 11.9 Notices. Any notice required or permitted to be given under this Declaration shall be in writing and shall be deemed to have been given upon deposit in the United States Mail as Certified Mail, Return Receipt Requested, or by a recognized national courier service which provides confirmation of delivery, such as, but not limited to, Federal Express or United Parcel Service, postage prepaid, postage prepaid, and addressed to the Party being notified at the address given below (or such other address which any Party may designate for itself from time to time hereafter by ten (10) days prior written notice to the other Parties):

**RC IV:** Riverdale Center IV, L.C.  
90 South 400 West, Suite 200  
Salt Lake City, Utah 84101  
Attn: Lew Swain

With a copy to:

Robert A. McConnell  
Parr Waddoups Brown Gee & Loveless  
185 South State Street, Suite 1300  
Salt Lake City, Utah 84111

**J.C. Penney:** (if by certified mail)  
J.C. Penney Corporation, Inc.  
P.O. Box 10001  
Dallas, Texas 75301-1106  
Attn: Real Estate Counsel

(if by overnight mail)  
J.C. Penney Corporation, Inc.  
6501 Legacy Drive  
Plano, Texas 75024-3698  
Attn: Real Estate Counsel

**Section 11.10 Assignment.** The rights and obligations of any Party hereunder may be assigned in whole or in part to one or more ground lessees which rights and obligations shall be expressly assumed by such ground lessee or lessees for the term of the ground lease or leases between such Party and such ground lessee or lessees; provided, however, such assignor Party shall remain liable and responsible under this Declaration.

**Section 11.11 Adjacent RC IV Parcels.** RC IV may, in its sole discretion but on notice to the other Parties, subject the parcels of the property adjacent to the Shopping Center which are

owned by RC IV (the "Adjacent RC IV Parcels") to the terms and conditions of this Declaration at which time the Adjacent RC IV Parcels shall be subject to the obligations created herein and shall benefit from the rights granted to RC IV herein. If such Adjacent RC IV Parcels are incorporated in the Shopping Center and if there are any continuing liabilities of the Parties based on proration of land area, then the proration shall be adjusted accordingly.

Section 11.12 Term and Enforcement. The easements, restrictions and obligations created and imposed herein shall be effective upon the date hereof, shall run with land, and shall inure to the benefit of and be binding upon the parties, their heirs, executors, administrators, successors, successors-in-title, assigns and tenants, including any ground lessee under a ground lease and the customers, employees and invitees of such parties. Said easements, restrictions and obligations shall be unaffected by any change in the ownership of any property covered by this Declaration or by any change of use, demolition, reconstruction, expansion or other circumstances, except as specified herein. Each of the rights created hereunder may be enforceable in a court of equity by the Owner of any property covered by this Declaration; however, enforcement hereunder shall be sought solely against the then Owner of the property or of the parcel (or the Owner of an interest in such property or parcel) alleged to be in default subject to the limitation on liability as set forth in Section 11.3 hereof.

Section 11.13 Harmony. RC IV and J.C. Penney agree to cooperate in creating a harmonious exterior appearance for the improvements to be constructed by them on the Shopping Center. After initial construction of the Buildings, no Party shall make alterations that will substantially change the exterior architecture of its Building in a manner that is inconsistent with the existing architectural theme of the Shopping Center without the consent of the other Parties, such consent not to be unreasonably conditioned or withheld.

Section 11.14 No Covenant to Continuously Operate. Except as set forth in Section 11.1 hereof, neither J.C. Penney nor RC IV is obligated to continuously operate a business on the J.C. Penney Property or the RC IV Property and neither party is obligated to continuously operate or operate for any specific period of time on their respective Property. Except as set forth in Section 11.1 hereof, nothing contained in this Declaration shall be construed, interpreted or

otherwise read to require J.C. Penney to operate a business on the J.C. Penney Property or RC IV to operate a business on the RC IV Property or to prevent J.C. Penney from closing its business on the J.C. Penney Property or RC IV from closing any business on the RC IV Property.

Section 11.15 Severability. In the event any provision or portion of this Declaration is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 11.16 Breach; No Termination. In the event of breach or threatened breach of this Declaration, only Owners of more than 15,000 square feet of enclosed Building area of the RC IV Property or the record Owner of J.C. Penney Property so long as it or any affiliate has an interest as Owner or lessee of J.C. Penney Property, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. In the event of a breach hereof, the non-prevailing Party shall pay the reasonable attorney's fees of the prevailing Party(s). Notwithstanding the foregoing, if under this Agreement a Party is compelled or elects to pay any sum of money or do any acts that require the payment of money by reason of another Party's failure or inability to perform any of the provisions of this Agreement to be performed by such other Party, the defaulting Party shall promptly, upon demand, reimburse the paying Party for such sums. All such sums shall bear interest at the rate of one percent (1%) per annum over the then existing prime rate of interest from time to time charged by Citibank, N.A., New York, New York, or its successor (or, if there shall then be no such banking institution in existence, by the commercial bank in New York, New York whose assets at such time are the largest of any such bank in that city) (but in no event exceeding the applicable maximum rate per annum permitted by law in the state in which the Entire Premises is located) from the date of expenditure until the date of such reimbursement (the "Interest"). If such payment shall not be made within ten (10) days after such demand is made, the paying Party shall have the right to deduct the amount thereof, together with Interest, from any sums then due or thereafter becoming due from it to the defaulting Party under this Agreement or the Supplemental Agreement,

regardless of who may have an interest in the Parcel of the defaulting Party at the time such deduction(s) is/are made.

Except as may otherwise be specifically provided herein, no default under this Agreement or the Supplemental Agreement shall entitle either Party to terminate, cancel or otherwise rescind this Agreement or the Supplemental Agreement; provided, however, this limitation shall not affect any other rights or remedies the Parties may have by reason of any default under this Agreement or the Supplemental Agreement.

**Section 11.17 Joint and Several Obligation.** If, at any time, more than one Party is the Owner of the RC IV Property, all such Parties shall be deemed to be such Owner hereunder and their obligations in such capacity shall be joint and several.

**Section 11.18 Site Plan Notes.** Any and all notes and statements appearing on the Site Plan are part of this Declaration. Such notes and statements shall be deemed to constitute covenants.

**Section 11.19 Construction of 'Including'.** The words "including" or "inclusive" or similar wording as used herein shall be deemed to mean "including without limitation" whenever used herein.

**Section 11.20 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

**Section 11.21 Relationship of the Parties.** Nothing contained herein shall be construed or interpreted as creating a partnership, joint enterprise or joint venture between or among the Parties. It is understood that the relationship between the Parties is an arms-length one that shall at all times be and remain that of separate owners of real property. No Party shall have the right to act for or on behalf of another Party, as agent or otherwise, unless expressly authorized to do so by separate written instrument signed by the Party to be charged or bound.

**Section 11.22 Amendment.** All negotiations and oral agreements acceptable to the Parties have been incorporated herein. Except as otherwise provided herein, this Declaration may not be modified in any respect whatsoever or rescinded, in whole or in part, except by a



writing executed by J.C. Penney and the Owners of fifty percent (50%) of the land area comprising RC IV Property and duly recorded.

Section 11.23 Declaration of Easements, Covenants and Restrictions Between RC IV, Riverdale Center II, L.C. and Martha M. Craig, Trustee of the Martha M. Craig Revocable Living Trust. RC IV hereby agrees that it shall have the sole responsibility and obligation to perform any of the covenants and/or obligations which may be imposed on J.C. Penney pursuant to Section 4 of that certain Declaration of Easements, Covenants and Restrictions Between RC IV, Riverdale Center II, L.C. and Martha M. Craig, Trustee of the Martha M. Craig Revocable Living Trust dated as of January 24, 2007 (the "**Subway Declaration**") (recorded February 1, 2007 as Entry No. 2239510 of the Official Records of the Weber County Recorder) due to the fact of J.C. Penney's ownership of a portion of Parcel C (as such Parcel C is defined in the Subway Declaration). This Section 11.23 shall survive and extend beyond the termination of this Declaration.

[Remainder of page intentionally left blank. Signature page follows.]



STATE OF UTAH )  
 )ss  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of February 2007, by Deanna M. Manna, a Manager of the THE BOYER COMPANY, L.C., a Utah limited liability company, Manager of Riverdale Center IV, L.C., a Utah limited liability company.

[Notary Seal]



Rachael N. Niusulu  
Notary Public

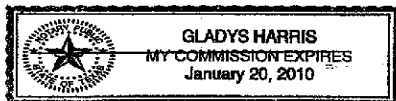
STATE OF Texas )  
 )ss  
COUNTY OF Collin )

The foregoing instrument was acknowledged before me this 04<sup>th</sup> day of February 2007, by Paul W. Freddo, a PRESIDENT of J.C. Penney Properties, Inc., a Delaware corporation.

[Notary Seal]

Gladys Harris  
Notary Public

My Commission Expires:



**EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

---

J.C. Penney Property

A tract of land situated in Weber County, State of Utah, more particularly described as follows:

All of Lot 1, **RIVERDALE CENTER IV SUBDIVISION**, according to the official plat thereof, filed on February 1, 2007, as Entry No. 2239519, in Book "65" of Plats at Page 47 of the Official Records of the Weber County Recorder.

06-305-0001

OUT OF TAX PARCEL #s  
06-270-0005  
06-003-0003 (PT)  
06-020-0001 (PT)  
06-000-0030 (PT)

**EXHIBIT B  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

---

Site Plan

SEE ATTACHED (4 pages)







**dixon + associates**  
 architecture, planning, interior  
 142 West 200 South, Suite 202  
 Salt Lake City, Utah 84111

**CONSULTANTS**

**GREAT BLAIN ENGINEERING NORTH**  
 CONSULTING ENGINEERS AND SURVEYORS  
 5745 South 1475 East  
 Suite 200  
 Ogden, Utah 84403  
 P.O. Box 140008  
 Ogden, Utah 84415  
 Ogden (801)231-4318  
 Salt Lake City (801)331-0222  
 Fax (801)362-7554

**RIVERDALE IV  
 RIVERDALE,  
 UTAH**

• DATE DESC.

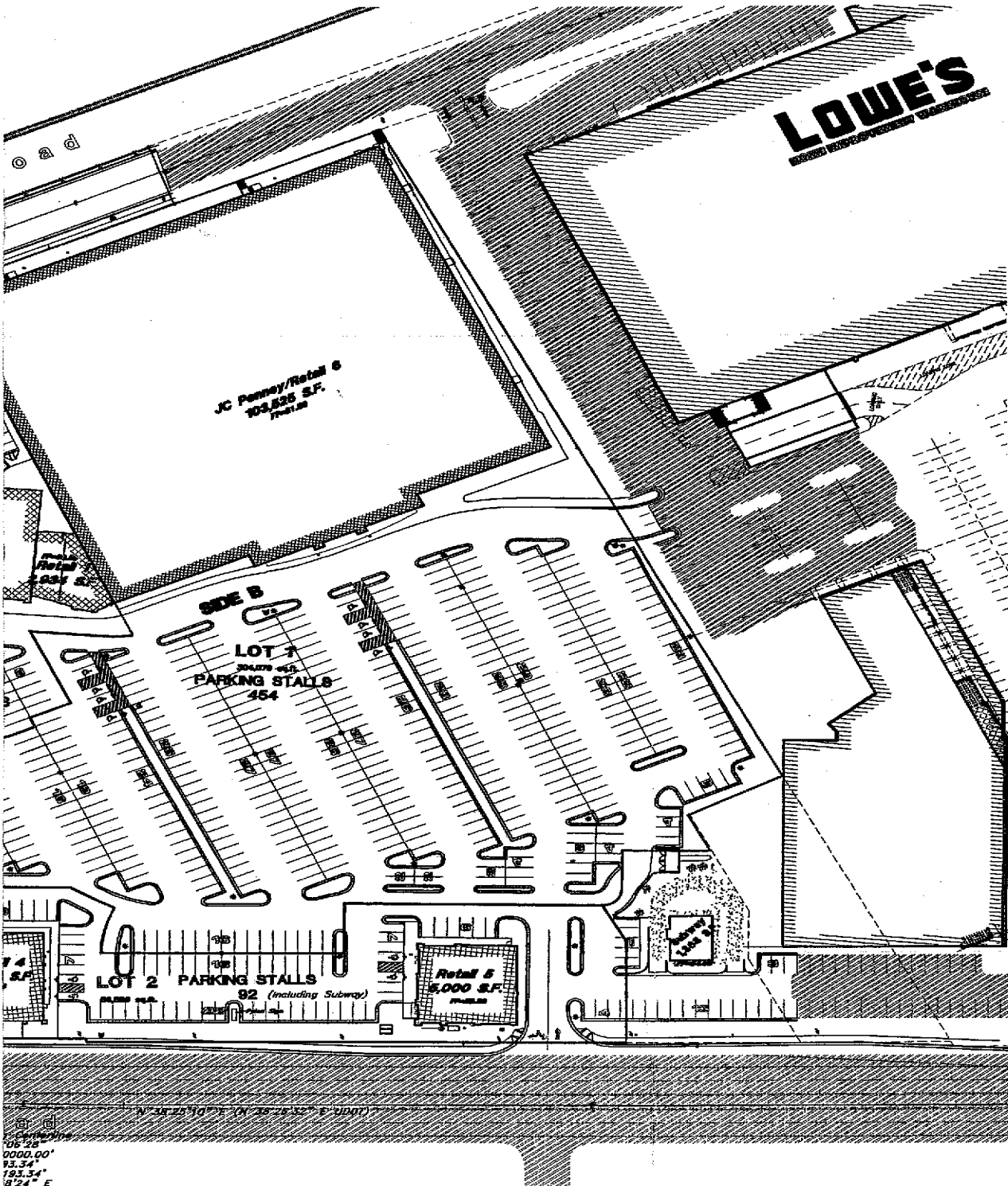
DATE	DESC.

ISSUE: 09 February 2007  
 PROJECT NO: 05N221  
 CAD DWG FILE: 05N2216.DWG  
 DRAWN BY: RP/TK  
 CHECKED BY: MEB

SHEET TITLE

**PARKING  
 EXHIBIT**

**FY102**





**General Site Notes:**

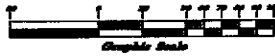
1. Stalls designated as handicap will require a painted handicap symbol. (See Details)
2. Fire lane markings and signs to be installed as directed by the Fire Marshall.
3. Aisle markings, directional arrows and stop bars will be painted at each driveway as shown on the plans.
4. See Horizontal Control plan for coordinates, radusess and detailed dimensions of site improvements.
5. Building sidewalks, ramps, and bollards are building contractor responsible items. See architectural plans.
6. All dimensions are to back of curb unless otherwise noted.
7. All deteriorated, damaged or missing surface improvements surrounding the perimeter of the development will need to be replaced or installed, i.e., curb and gutter, sidewalk, landscaping, park strip improvements, street lights, etc.
8. All park strips must be maintained by the project owners.

**PRIVATE ENGINEER'S NOTICE TO CONTRACTORS**

The Contractor agrees that he shall assume sole and complete responsibility for job site conditions during the course of construction of this project, including safety of all persons and property; that this requirement shall apply continuously and not be limited to normal working hours; and that the contractor shall defend, indemnify, and hold the owner and the engineer harmless from any and all liability, real or alleged, in connection with the performance of work on this project, excepting for liability arising from the sole negligence of the owner or the engineer.



Scale 1" = 50'



**RIVERDALE CITY APPROVAL**

This site plan, as drawn, will permit the JC Penney building to be constructed and classified as an unimproved area building.

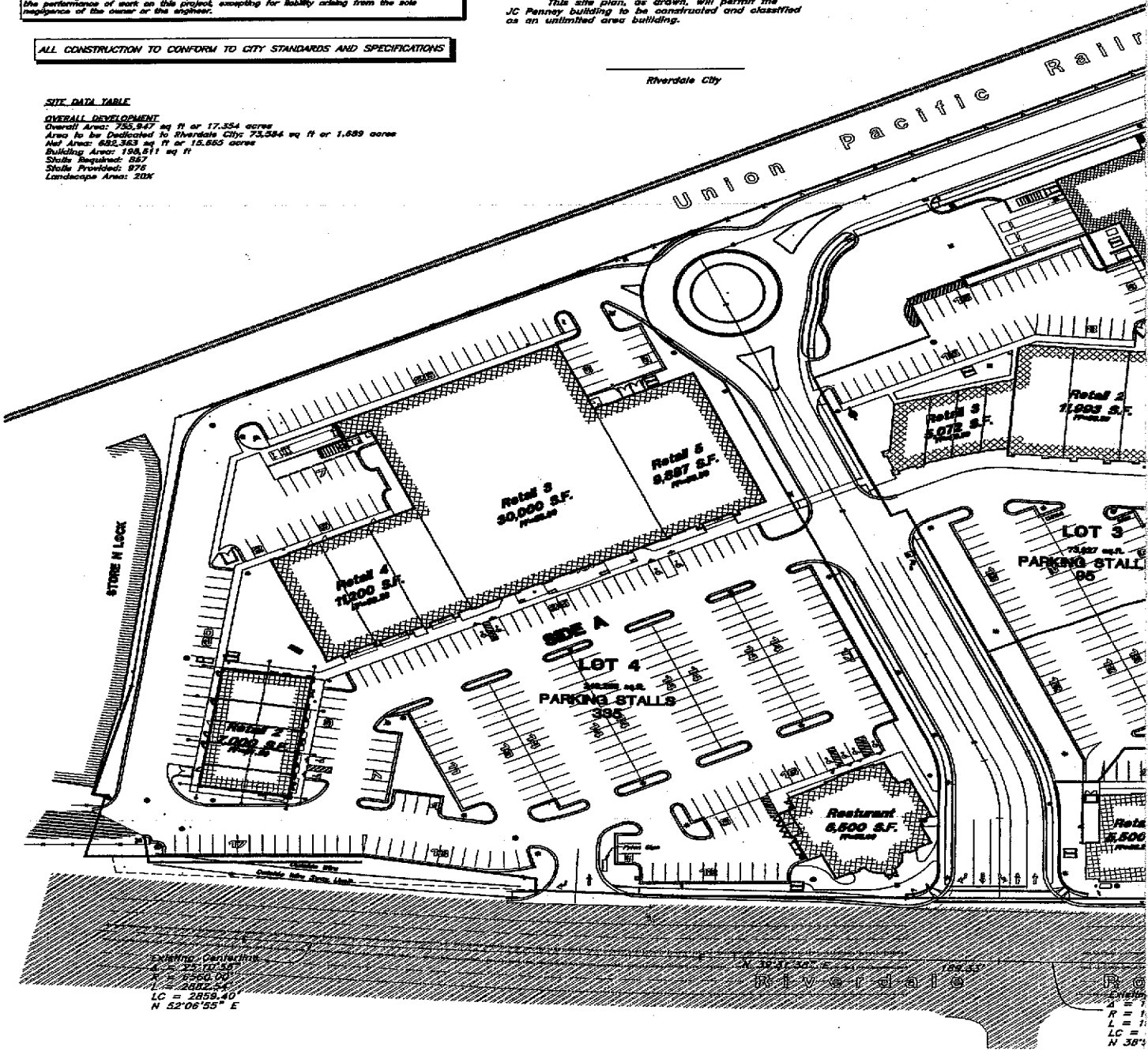
**ALL CONSTRUCTION TO CONFORM TO CITY STANDARDS AND SPECIFICATIONS**

Riverdale City

**SITE DATA TABLE**

**OVERALL DEVELOPMENT**

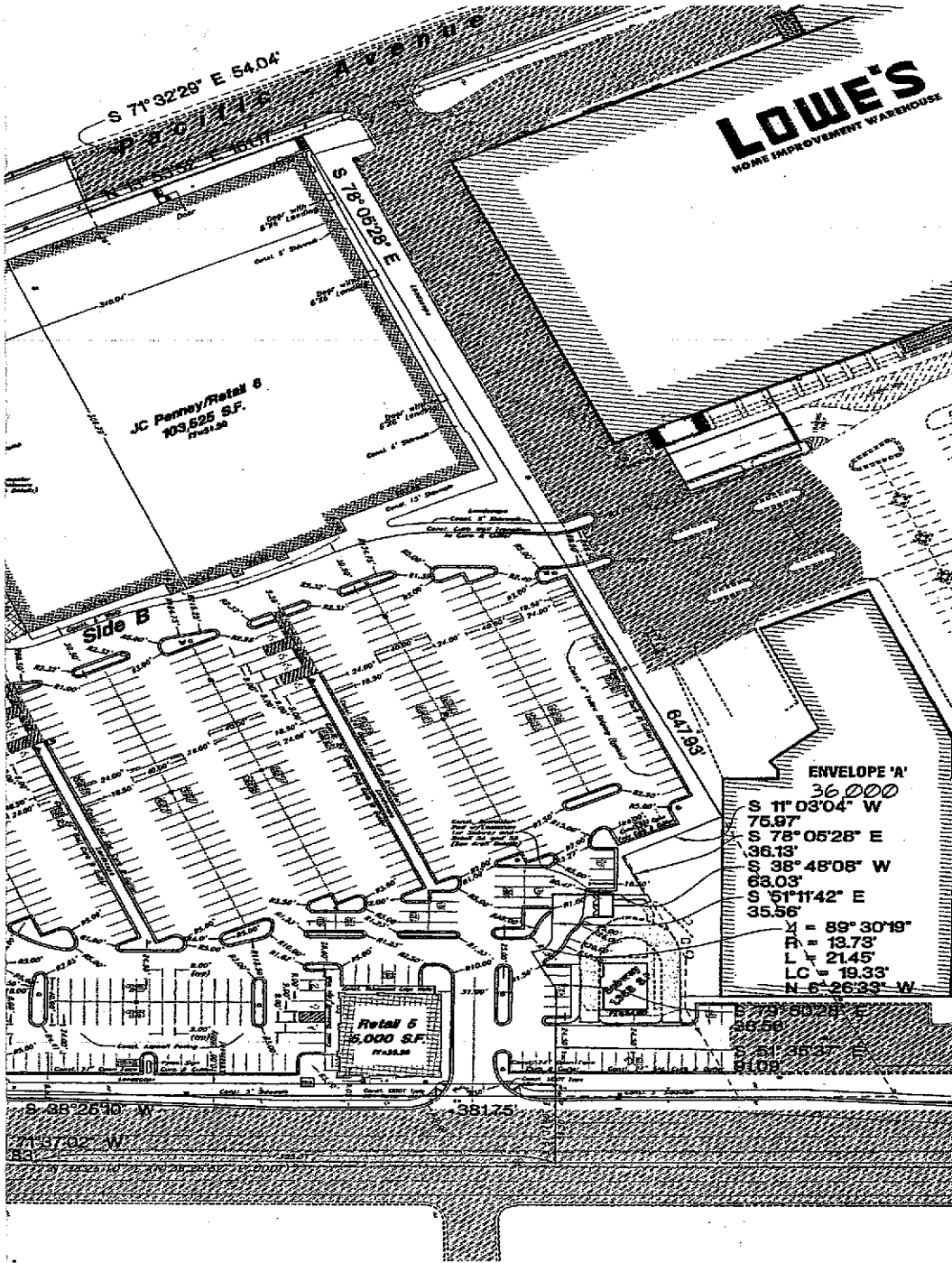
Overall Area: 755,847 sq ft or 17.354 acres  
 Area to be Dedicated to Riverdale City: 75,584 sq ft or 1.689 acres  
 Net Area: 680,263 sq ft or 15.665 acres  
 Building Area: 190,611 sq ft  
 Stalls Required: 857  
 Stalls Provided: 876  
 Landscape Area: 2DK



Existing Conditions  
 1. 2550 N  
 2. 2482 S  
 LC = 2551.40  
 N 52°06'55" E

North Arrow  
 A = 1  
 R = 1  
 L = 1  
 LC = 1  
 N 38°

incl Location



**dixon + associates**  
 architects, planning, interiors  
 142 east 200 south, suite 202  
 salt lake city, utah 84111

**CONSULTANTS**

**GREAT BASIN ENGINEERING NORTH**  
 CONSULTING ENGINEERS AND SURVEYORS  
 5746 South 1475 East Suite 200  
 Ogden, Utah 84403  
 P.O. Box 150048  
 Ogden, Utah 84475  
 Phone (409)394-0315  
 Fax (409)394-0322  
 Toll Free (801)261-7944

**RIVERDALE IV  
 RIVERDALE,  
 UTAH**

DATE	DESC.

ISSUE: 09 February 2001  
 PROJECT NO: 05N221  
 CAD DWG FILE: 05N2215.DWG  
 DRAWN BY: RP/TK  
 CHECKED BY: MEB

SHEET TITLE

**SITE  
 EXHIBIT**

**EX103**

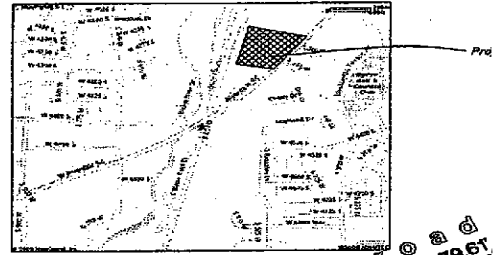
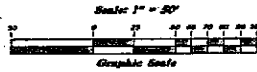
**General Site Notes:**

1. Signs designated as handicap will require a pointed handicap symbol. (See Details)
2. Fire lane markings and signs to be installed as directed by the Fire Marshal.
3. Aisle markings, directional arrows and stop bars will be painted at each driveway as shown on the plans.
4. See Horizontal Control plan for coordinates, roduses and detailed dimensions of site improvements.
5. Building sidewalks, ramps, and bollards are building contractor responsible items. See architectural plans.
6. All dimensions are to back of curb unless otherwise noted.
7. All deteriorated, damaged or missing surface improvements surrounding the perimeter of the development will need to be replaced or installed, i.e., curb and gutter, sidewalk, landscaping park strip improvements, street lights, etc.
8. All park strips must be maintained by the project owners.

**PRIVATE ENGINEER'S NOTICE TO CONTRACTORS**

The Contractor agrees that he shall assume sole and complete responsibility for job site conditions during the course of construction of this project, including safety of all persons and property that this requirement shall apply continuously and not be limited to normal working hours, and that the contractor shall defend, indemnify, and hold the owner and the engineer harmless from any and all liability, real or alleged, in connection with the performance of work on this project, accepting full liability arising from the sole negligence of the owner or the engineer.

**ALL CONSTRUCTION TO CONFORM TO CITY STANDARDS AND SPECIFICATIONS**



**RIVERDALE CITY APPROVAL**  
This site plan, as drawn, will permit the JC Penney building to be constructed and classified as an unlimited area building.

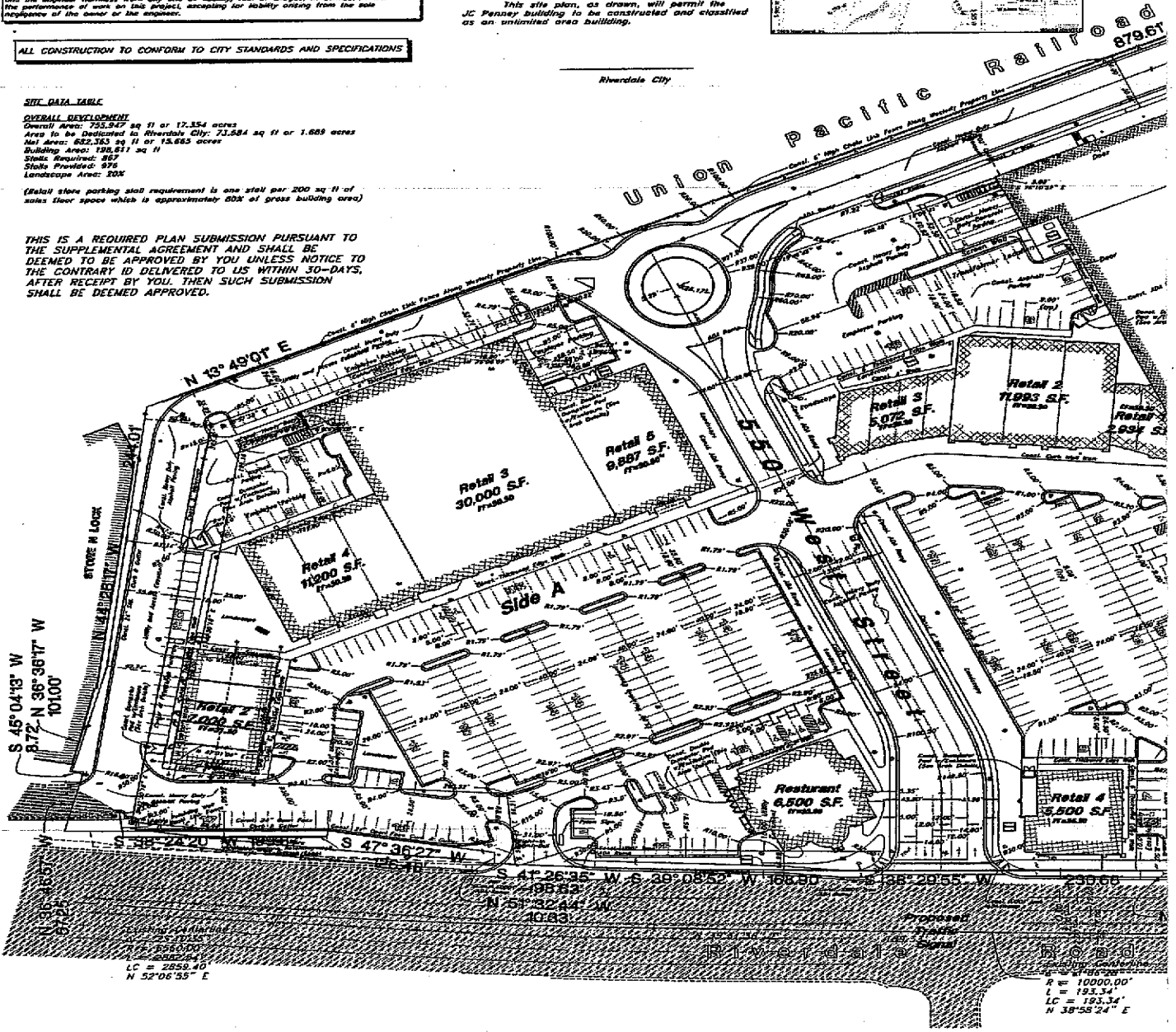
**SITE DATA TABLE**

**OVERALL DEVELOPMENT**

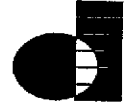
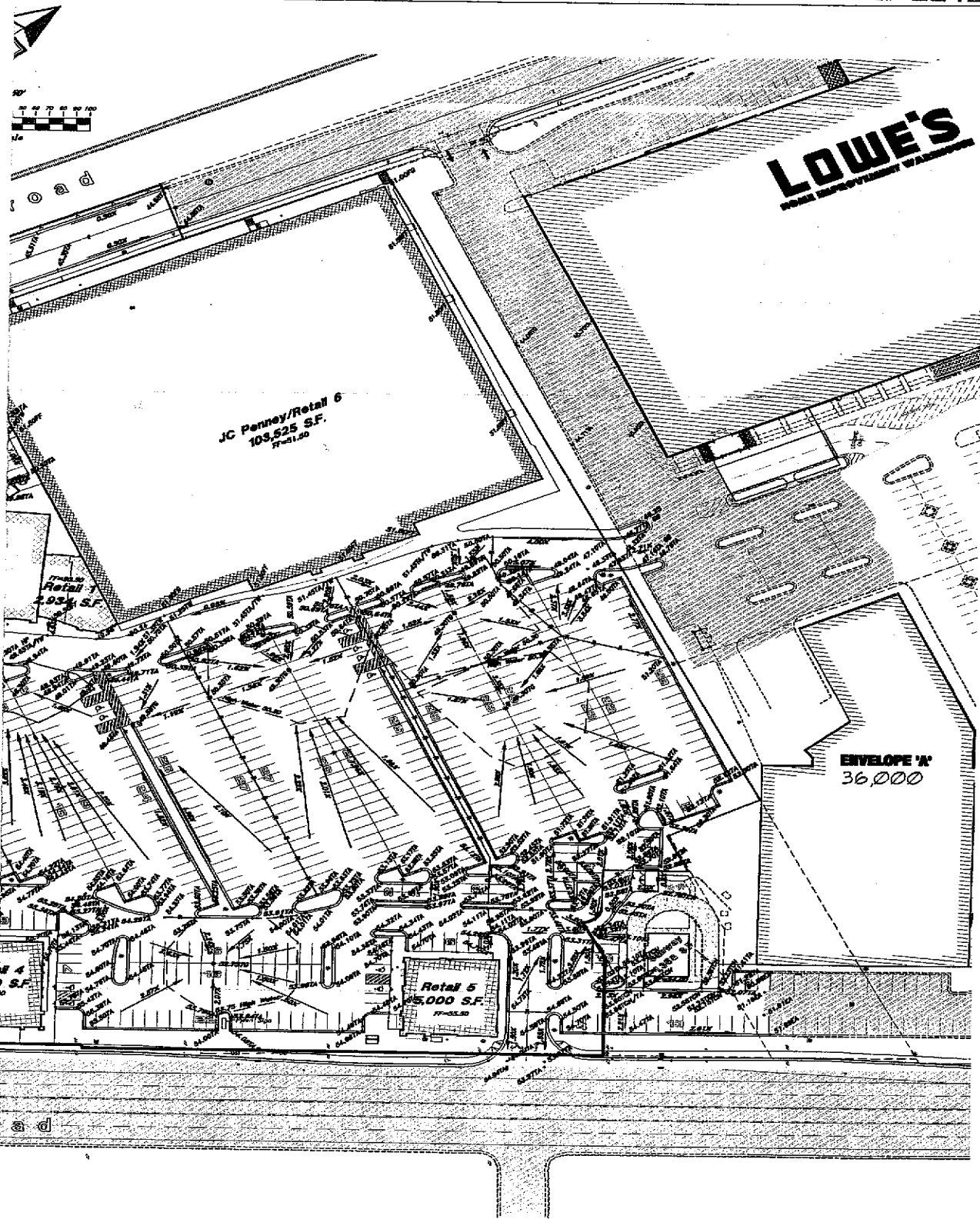
Overall Area: 753,947 sq ft or 17.354 acres  
 Area to be Dedicated to Riverdale City: 71,584 sq ft or 1.629 acres  
 Net Area: 682,363 sq ft or 15.683 acres  
 Building Area: 129,811 sq ft  
 Stalls Required: 857  
 Stalls Provided: 976  
 Landscape Area: 20X

(Retail store parking stall requirement is one stall per 200 sq ft of sales floor space which is approximately 80X of gross building area)

**THIS IS A REQUIRED PLAN SUBMISSION PURSUANT TO THE SUPPLEMENTAL AGREEMENT AND SHALL BE DEEMED TO BE APPROVED BY YOU UNLESS NOTICE TO THE CONTRARY IS DELIVERED TO US WITHIN 30-DAYS, AFTER RECEIPT BY YOU. THEN SUCH SUBMISSION SHALL BE DEEMED APPROVED.**



LC = 2859.40'  
 N 52°06'55" E



**cixon + associates**  
 architects, planning, interiors  
 142 west 200 south, suite 202  
 salt lake city, utah 84111

**CONSULTANTS**

**GREAT BARN ENGINEERING NORTH**  
 CONSULTING ENGINEERS AND SURVEYORS  
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 P.O. Box 150048  
 Ogden, Utah 84415  
 Ogden (801)394-4510  
 Salt Lake City (801)221-0232  
 Fax (801)332-7544

**RIVERDALE IV  
 RIVERDALE,  
 UTAH**

DATE	DESC.

ISSUE: 09 February 2007  
 PROJECT NO: 05N221  
 CAD DWG FILE: 05N2216.DWG  
 DRAWN BY: RP/TK  
 CHECKED BY: MEB

**SHEET TITLE**

**GRADING &  
 DRAINAGE  
 EXHIBIT**

**FY10A**



**EXHIBIT C  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

---

RC IV Property

The land situated in Weber County, State of Utah, more particularly described as follows:

All of Lots 2, 3 and 4, **RIVERDALE CENTER IV SUBDIVISION**, according to the official plat thereof, filed on February 1, 2007, as Entry No. 2239519, in Book "65" of Plats at Page 47 of the Official Records of the Weber County Recorder.

*06-305-0002, 0003, 0004*

*OUT OF TAX PARCEL #'S*

- 06-003-0003*
- 06-028-0007 (PT)*
- 06-030-0030 (PT)*
- 06-030-0031*
- 06-003-0007 (PT)*
- 06-003-0010, -0011, -0012*

**EXHIBIT D  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

---

Sign Criteria & Monument/Pylon Sign

1. There shall be no flashing, rotating, exposed light or moving signs or markers of any type.
2. There shall be no signs painted on the exterior surface of any building.
3. There shall be no freestanding or pylon signs other than (i) a pylon sign(s) to be erected and maintained by RC IV at the location(s) shown therefore on the Site Plan.
4. All signs which front on the façade of the Shopping Center shall be (i) not more than five (5') feet in height, (ii) approximately flush with the wall of the building to which affixed (i.e. raceway mounted letters are expressly permitted), (iii) of a length which does not exceed 80% of the linear frontage of the store upon which it fronts, and (iv) of a design which is uniform with other signs similarly placed.
5. Signs which are under building canopies shall be (i) at right angles to the store front, (ii) of a design which is uniform with other signs similarly placed under building canopies, and (iii) not more than four and one-half (4 1/2') feet wide and twelve (12") inches high.
6. There shall be no rooftop signs.
7. The provisions of paragraphs 4 and 5 shall not apply to the J.C. Penney Building.
8. Notwithstanding anything in this Exhibit D to the contrary, all signage shall be subject to the requirements of applicable Riverdale City, Utah ordinances.

**DEPICTION OF MONUMENT/PYLON SIGNS**

**SEE ATTACHED (1 page)**

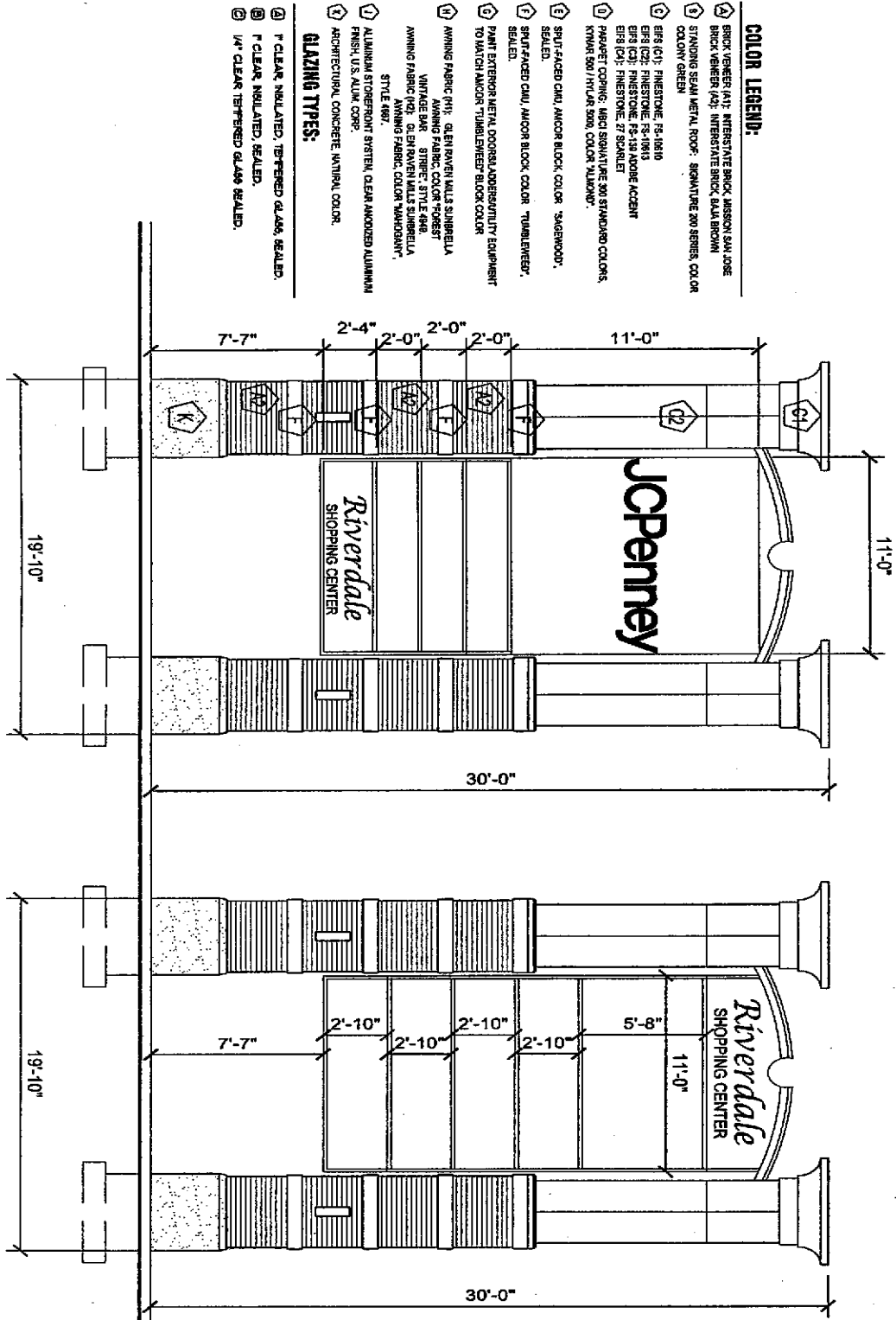


**COLOR LEGEND:**

- Ⓐ BRICK VENEER (A1): INTERSTIVE BRICK, JESSON SAN JOSE BRICK VENEER (A2): INTERSTIVE BRICK, BALABRON
- Ⓑ STANDING SEAM METAL ROOF: SIGNATURE 200 SERIES, COLOR COLOMAY GREEN
- Ⓒ BRK (C1): FIRESTONE RS-1180
- Ⓒ BRK (C2): FIRESTONE RS-1181
- Ⓒ BRK (C3): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C4): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C5): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C6): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C7): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C8): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C9): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C10): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C11): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C12): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C13): FIRESTONE RS-119 ADORE ACENT
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- Ⓒ BRK (C15): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C16): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C17): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C18): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C19): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C20): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C21): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C22): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C23): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C24): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C25): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C26): FIRESTONE RS-119 ADORE ACENT
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- Ⓒ BRK (C37): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C38): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C39): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C40): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C41): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C42): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C43): FIRESTONE RS-119 ADORE ACENT
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- Ⓒ BRK (C98): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C99): FIRESTONE RS-119 ADORE ACENT
- Ⓒ BRK (C100): FIRESTONE RS-119 ADORE ACENT

**GLAZING TYPES:**

- Ⓐ F CLEAR UNLATED, TEFERED GLASS, SEALED.
- Ⓑ F CLEAR UNLATED, SEALED.
- Ⓒ 1/4" CLEAR TEFERED GLASS, SEALED.



**EXHIBIT E  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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Outparcel Restrictions

A. COMMON AREA MAINTENANCE CONTRIBUTION

The Owner of each Outparcel shall be required to make a pro rata contribution toward the cost incurred for maintaining the Common Area of the Shopping Center.

B. SITE IMPROVEMENTS

1. Parking:

There shall be maintained on each Outparcel the number of parking spaces required under Section 5.6 of this Declaration.

2. Utilities:

(a) General – Except for existing overhead lines set forth on the Site Plan, all utility lines and equipment shall be entirely underground.

(b) Sanitary Sewers - No on-site septic system or sanitary sewer treatment facility will be permitted on any Outparcel.

3. Traffic Flow:

Pavement markings, directional signs and other traffic indicators upon each Outparcel shall be in accordance with plans/drawings approved by J.C. Penney, and shall provide for a traffic scheme compatible with that of the Shopping Center.

4. Landscaping:

All buffer strips and other undeveloped land areas shall be landscaped with trees, shrubs, or suitable ground cover in a uniform manner consistent with the plans/drawings approved by J.C. Penney.

C. BUILDING CRITERIA

1. Layout:

The size, placement, orientation and setback requirements of any building and other improvements on any Outparcel shall be in conformity with Site Plan.

2. Height:

No building or other improvement erected upon any Outparcel shall be more than one story above grade or exceed 23'0" in height, measured from finished floor elevation to the parapet (except for the Outparcel identified as Retail 5, Side B on the Site Plan which may not exceed 24'0") and 25'0" in height, measured from finished floor elevation to the top of the highest building protrusion or appurtenance, including roof-mounted equipment, decorative roof screening, etc. (except for the Outparcel identified as Retail 5, Side B on the Site Plan which may not exceed 30'0").

3. Building Aesthetics:

Decorative screening and/or landscaping shall be installed so as to obscure from public view all trash rooms, trash holding receptacles, loading or service areas, mechanical or electrical equipment, storage facilities or bins, or other unsightly building appurtenances. Appropriate screening shall be provided to obscure all roof-mounted equipment and appurtenances, roof vents, etc. from public view.

D. SIGN CRITERIA

In addition to those requirements set forth in Exhibit D attached hereto, the following shall apply to each Outparcel:

1. General Requirements and Prohibitions:

- (a) No signs or other advertising devices shall be installed or permitted on any Outparcel except to the extent specifically permitted thereby.
- (c) No exposed wiring, conduits, tubing, lamps, ballast boxes or raceways will be permitted.
- (d) All cabinets, conductors, transformers, ballasts, attachment devices, and other equipment shall be concealed.

- (e) The advertising or informative content of all signs shall be limited to letters designating the establishment name and/or type of establishment (which designation will be generally descriptive and shall not include any specification of the merchandise offered for sale therein or the services rendered therein) and shall contain no advertising devices, slogans, symbols or marks.

**2. Building Mounted Sign(s):**

- (a) Any building erected upon any Outparcel which is readily visible to the public from only one direction may contain only one building mounted sign; any other building may contain only two signs, which shall be located on separate walls or facades of such building.
- (b) The length of any building mounted sign shall not exceed the lesser of 40% of the length of the wall or facade upon which the sign is mounted or 30'0"; nor shall the height of any such sign exceed 60".
- (c) No building mounted sign or any portion thereof may project above the parapet wall or top of the exterior wall or building facade upon which it is mounted.
- (d) No signs perpendicular to the face of the building or facade will be permitted.
- (e) The letters on all signs shall be script or individual block type. No boxed signs will be permitted, and all individual letters shall be illuminated.

**3. Freestanding Signs:**

- (a) No freestanding sign or sign not attached to a building may be installed on any Outparcel other than one permanently affixed freestanding monument type sign identifying the business or name of the occupant of the building.
- (b) The maximum height from the bottom of the base to the top of any such monument type sign structure shall not exceed 5'0", and the maximum height of the sign panel shall not exceed 3'0".
- (c) The maximum width of the sign structure shall not exceed 9'0".

(d) The maximum thickness of the structure shall not exceed 30".

E. ACCESS

Vehicular access between each Outparcel and the entrance/exitways of the Shopping Center shall be limited to the locations designated therefore on the Site Plan, and no additional means of access shall be installed, nor shall any such means of access be relocated.

F. MAINTENANCE

Each Outparcel shall be maintained in good order and condition and kept free of any accumulation of trash or debris, such maintenance to be at least equal to that provided for the Shopping Center. RC IV shall include such obligation in any lease or sale of any Outparcel, and shall reserve effect means to enforce performance of such obligation by any purchaser or lessee of any Outparcel.