



W2242512

E# 2242512 PG 1 OF 15
ERNEST D ROWLEY, WEBER COUNTY RECORDER
15-FEB-07 1227 PM FEE \$47.00 DEP SGC
REC FOR: LANDMARK TITLE CD

When recorded, mail to:

Brian D. Cunningham, Esq.
SNELL & WILMER L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

ASSIGNMENT OF SUPPLEMENTAL AGREEMENT

THIS ASSIGNMENT OF SUPPLEMENTAL AGREEMENT (the "Assignment") is entered into as of the 15 day of February, 2007, by and between RIVERDALE CENTER IV, L.C., a Utah limited liability company ("Borrower"), and WACHOVIA FINANCIAL SERVICES, INC., a North Carolina corporation ("Bank"), and is consented to by J.C. PENNEY PROPERTIES, INC., a Delaware corporation (the "J.C. Penney"), pursuant to that certain Consent attached hereto as Exhibit B.

RECITALS

A. On or about the date hereof, Borrower and Bank entered into that certain Construction Loan Agreement ("Loan Agreement") whereby the Bank agreed to extend to Borrower one or more loans (collectively, the "Loan") evidenced by the Promissory Note of even date herewith, by Borrower and payable to Bank, in the principal amount of \$17,400,000.00 (as amended, modified, extended, and renewed from time to time, the "Note"), to finance the construction of multiple buildings to be used for retail purposes together with certain other improvements on certain real property located in Weber County, State of Utah (the "Property"). The Project is legally described in Exhibit A attached hereto and made a part hereof. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

B. In connection with the Loan and to secure the Note, Borrower has executed and delivered (i) a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") made by Borrower to the trustee named therein for the benefit of Bank and encumbering the Project, and (ii) the other Loan Documents. All instruments, agreements and certificates governing, evidencing, guaranteeing or securing the Loan, as the same may be amended, modified, supplemented, extended, or renewed from time to time, are referred to in this Assignment as the "Loan Documents."

C. Borrower intends to use the Loan to finance the acquisition of the Property and the construction and development of approximately 90,700 square feet of retail space on the Property (the "Improvements" and together with the Property, the "Project"), which is contiguous to an approximately 6.98 acre pad (the "J.C. Penney Pad"), which Borrower sold to J.C. Penney prior to the extension of the Loan. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

D. All instruments, agreements and certificates governing, evidencing, guaranteeing or securing the Loan or the Line of Credit referenced in and governed by the Loan Agreement, as the same may be amended, modified, supplemented, extended, or renewed from time to time, are referred to in this Assignment as the "Loan Documents."

E. In connection with the development of the Project, Borrower and J.C. Penney executed that certain Supplemental Agreement, dated February 14, 2007 wherein J.C. Penney and Borrower set forth certain rights and obligations of the parties with respect to the development of the J.C. Penney Pad and the Property (the "Supplemental Agreement").

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F. As a condition precedent to the funding of the Loan by Bank under the Loan Agreement, Bank has required, as security for the performance of Borrower's obligations under the Loan Documents, that Borrower execute and deliver to Bank an assignment of Borrower's interest in the Supplemental Agreement, and that J.C. Penney consent to said assignment on the terms and conditions contained in the attached Consent.

NOW, THEREFORE, with reference to the foregoing Recitals, all of which are incorporated herein by this reference, and in order to induce Bank to enter into the Loan Agreement and make the advances thereunder, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Assignment; Security Interest. As additional security for Borrower's obligations under the Loan Documents and all other obligations of Borrower which are secured by the Deed of Trust in favor of Bank, Borrower hereby assigns, conveys and transfers to Bank, and grants to Bank a first priority security interest in, all of Borrower's right, title, interest, privileges, benefits and remedies in, to and under the Supplemental Agreement. It is expressly understood and agreed by Borrower and J.C. Penney, by its execution of the attached Consent to Assignment and Estoppel Certificate, that Bank does not hereby assume any of Borrower's obligations or duties concerning the Supplemental Agreement, unless and until Bank exercises its rights hereunder and under the Supplemental Agreement.

2. Definitions. For purposes of this Assignment, terms which are denoted in this Assignment by the first letter of each word being capitalized, but which are not otherwise defined in this Assignment, shall have the respective meanings assigned to such terms in the Loan Agreement.

3. Sale and Purchase; On and Off Site Contribution Payments.

(a) Pursuant to the Supplemental Agreement, J.C. Penney has agreed to pay certain "Penney's Site Contribution" payments in the amount of Three Million and No/100 Dollars (\$3,000,000.00) to Borrower, as more particularly set forth in Section 5 of the Supplemental Agreement, subject to and in accordance with the terms, provisions and conditions contained in the Supplemental Agreement. At closing, J.C. Penney shall deposit into escrow Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) (the "Initial Site Contribution"). After subtracting the costs of sale associated with J.C. Penney Pad, the remaining portion of the Initial Site Contribution, which shall not be less than Six Hundred Thousand and No/100 Dollars (\$600,000.00), shall be disbursed to Bank as a prepayment of the Loan. Borrower hereby directs J.C. Penney to pay to Bank on each of the dates set forth in Section 5(a) of the Supplemental Agreement or any other date upon which any other Penney's Site Contribution payment is made, and not to Borrower, all such Penney's Site Contribution payment's in the aggregate amount of Two Million Two Hundred Fifty Thousand and No/100 Dollars (\$2,250,000.00) to be applied as a prepayment of the Loan upon receipt by Bank.

(b) In the event that, notwithstanding the foregoing provisions directing J.C. Penney to pay all Penney's Site Contribution payments to Lender, Borrower shall have received any payment or distribution of Penney's Site Contribution payments contrary to such provisions (including any payment received from and after the occurrence of an event of default under any Loan Document), then and in such event such payment or distribution shall be received and held in trust for Lender and shall be immediately paid over or delivered to Lender.

(c) Payment of any of the foregoing amounts to Bank shall discharge J.C. Penney's obligation to pay such amounts under the Supplemental Agreement. If Borrower receives any payment described in this Section 3, Borrower shall promptly tender such payment to Bank for application as a prepayment of the Loan.

4. Actions by Bank. Bank shall not exercise its rights under this Assignment until the occurrence and continuation of an Event of Default (as defined in the Loan Agreement) under the Loan Documents. Upon the occurrence of such an Event of Default, Bank may, at its option, upon written notice to

J.C. Penney expressly stating its intention to exercise its rights under this Assignment and to satisfy all of Borrower's obligations under the Supplemental Agreement, exercise any or all of the rights and remedies granted to Borrower under the Supplemental Agreement as if Bank had been an original party to the Supplemental Agreement. Upon giving such notice expressly stating its intention to exercise its rights under this Assignment and to satisfy all of Borrower's obligations under the Supplemental Agreement to J.C. Penney, Bank shall satisfy all obligations of Borrower, including all defaults of Borrower under the Supplemental Agreement occurring prior to the time Bank gives such notice to J.C. Penney; provided, however, in the event a default by Borrower is not reasonably curable by Bank within any time limitations or deadlines under the Supplemental Agreement, Bank shall have such longer period of time as may be reasonably necessary to effect such cure, so long as Bank promptly cures such defaults and at all times diligently pursues such cure. Any notice given by Bank to J.C. Penney under this Assignment shall be given in the same manner and at the same address for J.C. Penney as set forth in the Supplemental Agreement.

5. Power of Attorney. Upon the occurrence and continuation of an Event of Default, Bank shall have the right (and Borrower hereby irrevocably constitutes and appoints Bank as its attorney-in-fact, which power is coupled with an interest, to do so) to demand, receive and enforce Borrower's rights with respect to the Supplemental Agreement, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower, and to do any and all acts in the name of Borrower in the name of Bank with the same force and effect as Borrower could do if this Assignment had not been made.

6. Representations, Warranties and Covenants of Borrower. Borrower hereby certifies, represents, warrants and covenants to Bank as follows:

- (a) The Supplemental Agreement is in full force and effect.
- (b) Borrower has full title and right to assign its interest in the Supplemental Agreement to Bank pursuant to this Assignment.
- (c) No consent or approval of any person, other than Supplemental Agreement, is required for the execution and delivery of this Assignment.
- (d) Borrower has delivered to Bank a true and complete copy of the executed counterpart of the Supplemental Agreement, together with all amendments and modifications thereto.
- (e) Except for this Assignment, no other assignment of all or any part of any interest of Borrower in and to the Supplemental Agreement has been made which remains in effect.
- (f) There exists no monetary default under the Supplemental Agreement, nor, to the best knowledge of Borrower, any non-monetary default or any event or conditions which, with notice or the passage of time or both, would constitute such a monetary or non-monetary default or would result in a breach of the Supplemental Agreement or would give any party thereto the right to terminate the Supplemental Agreements.
- (g) No offsets, credits or defenses to the payment or performance of any obligation under the Supplemental Agreement exist.
- (h) Borrower shall not assign, transfer or hypothecate (other than to Bank) the whole or any part of its interest under the Supplemental Agreement.
- (i) Borrower shall obtain the prior written consent of Bank, before entering into any agreement that amends, alters, modifies or terminates the Supplemental Agreement. Bank shall not unreasonably withhold or delay its consent to an amendment or modification of the Supplemental Agreement, so long as Borrower shall have consented to such amendment or modification and as long

as such amendment or modification does not materially and adversely affect Bank's security for the Loan or the rights and benefits of Borrower under the Supplemental Agreement.

(j) Borrower agrees to perform and comply in all respects with all the terms, conditions, covenants and requirements by it to be performed or observed in this Assignment and the Loan Documents.

7. Performance by Borrower. Borrower shall at all times diligently enforce its rights in, under and to the Supplemental Agreement, unless otherwise directed by Bank in writing, and shall, at Borrower's sole cost and expense, appear in and defend Bank in any action or proceeding in any way connected with the Supplemental Agreement, and shall pay all reasonable costs and expenses, including, without limitation, attorneys' fees, which Bank may incur in connection with Bank's appearance, voluntarily or otherwise, in any such action or proceeding in any way connected with the Supplemental Agreement.

8. Indemnification by Borrower. Borrower hereby agrees to pay and protect, defend, and indemnify and hold Bank harmless from, for and against, any and all claims, demands, liabilities, losses, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys' fees) to which Bank may become exposed, or which Bank may incur, in connection with the Supplemental Agreement exercising its rights under this Assignment.

9. Limitation on Liability. Nothing in this Assignment shall be deemed to be or construed to be an agreement by Bank to perform any covenant of Borrower under the Supplemental Agreement unless and until it obtains title to the Property by power of sale or judicial foreclosure or deed in lieu thereof or obtains possession of the Property pursuant to the terms of the Deed of Trust or otherwise.

10. Waiver. No course of dealing on the part of Bank and no delay or failure by Bank to exercise any right which Bank may have hereunder shall be deemed a waiver thereof or otherwise prejudice any of its respective rights, remedies or powers hereunder unless so agreed in writing by Bank, and the waiver by Bank of a default by Borrower hereunder shall not constitute a continuing waiver or any other default or of the same default on any other occasion.

11. Cumulative Remedies. The rights and remedies of Bank under this Assignment are cumulative and are not in lieu of, but are in addition to, any other rights or remedies which Bank may have under the Loan Agreement or the other Loan Documents at law, or otherwise.

12. Severability. If any provision of this Assignment shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of any other provisions of this Assignment or of the other Loan Documents.

13. Amendment. This Assignment may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by the party against whom enforcement of the waiver, amendment, change, modification or discharge is sought.

14. Successors and Assigns. This Assignment shall be binding upon Bank and Borrower and their respective successors and assigns, and shall inure to the benefit of Bank and its respective successors and assigns.

15. Termination. Upon the satisfaction of all obligations of Borrower to Bank under the Loan Agreement, the Note and the other Loan Documents and the due recordation of the release or reconveyance of all deeds of trust now or hereafter securing said obligations, this Assignment shall automatically terminate. Bank hereby agrees, upon termination of this Assignment to execute a release of this Assignment and all further documents, if any, necessary or required in order to evidence the termination of this Assignment.

16. Governing Law. THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES (REGARDLESS OF THE PLACE OF BUSINESS, RESIDENCE, LOCATION OR DOMICILE OF BORROWER, PURCHASER OR BANK OR ANY PRINCIPAL THEREOF).

17. Notices. All notices given under this Assignment shall be in writing and shall be given by personal delivery, overnight receipted courier or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below. Notices shall be effective upon receipt (or on the date when proper delivery is refused). Addresses for notices may be changed by any party by notice to all other parties in accordance with this Section. Service of any notice on any one Borrower shall be effective service on Borrower for all purposes.

To Bank:	Wachovia Financial Services, Inc. Real Estate Financial Services Mail Code GA-4506 171 17 th Street, 6 th Floor Atlanta, Georgia 30363 Attention: Christa Nobbe
with a copy to:	Snell & Wilmer L.L.P. Gateway Tower West 15 West South Temple, Suite 1200 Salt Lake City, Utah 84101 Attention: Brian D. Cunningham, Esq.
To Borrower:	Riverdale Center IV, L.C. 90 South 400 West, Suite 200 Salt Lake City, Utah 84101 Attention: Brian Gochnour
With a copy to:	Parr Waddoups Brown Gee & Loveless 185 South State, Suite 1300 Salt Lake City, Utah 84111 Attention: David E. Gee, Esq.
To J.C. Penney:	J.C. Penney Properties Inc. 6501 Legacy Drive (MS 1106) Plano, Texas 75024-3698 Attention: Real Estate Counsel

18. Counterpart. This Assignment may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered shall be an original, but also such counterparts shall together constitute one and the same instrument.


[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date first set forth above.

BORROWER:

RIVERDALE CENTER IV, L.C.
a Utah limited liability company

By: THE BOYER COMPANY, L.C.
a Utah limited liability company, its Manager

By: 
Name: Donna Gunn
Title: Manager

Tracking #: [_____]

CAT - Deal # [_____] Facility ID [_____]

BANK:

WACHOVIA FINANCIAL SERVICES, INC.
a North Carolina corporation

By: _____
Name: Christa Nobbe
Title: Assistant Vice President

“Bank”

STATE OF UTAH)
)
) :SS
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 13th day of February, 2007, by Dennis Quinn, a manager of THE BOYER COMPANY, L.C. a Utah limited liability company and a manager of RIVERDALE CENTER IV, L.C., a Utah limited liability company, on behalf of said limited liability company.



Rachael Niusulu
NOTARY PUBLIC
Residing at Salt Lake City

[Seal]

STATE OF ARIZONA)
)
) :SS
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of February, 2007, by CHRISTA NOBBE, an Assistant Vice President of WACHOVIA FINANCIAL SERVICES, INC., a North Carolina corporation, on behalf of such corporation.

NOTARY PUBLIC
Residing

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date first set forth above.

BORROWER:

RIVERDALE CENTER IV, L.C.
a Utah limited liability company

By: THE BOYER COMPANY, L.C.
a Utah limited liability company, its Manager

By: _____
Name: _____
Title: Manager

Tracking #: [_____]

CAT - Deal # [_____] Facility ID [_____]

BANK:

WACHOVIA FINANCIAL SERVICES, INC.
a North Carolina corporation

By: Christa Nobbe
Name: Christa Nobbe
Title: Assistant Vice President

“Bank”

STATE OF ~~UTAH~~ *AR*)
 :ss
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ____ day of February, 2007, by _____, a manager of THE BOYER COMPANY, L.C. a Utah limited liability company and a manager of RIVERDALE CENTER IV, L.C., a Utah limited liability company, on behalf of said limited liability company.

NOTARY PUBLIC
Residing at _____

[Seal]

STATE OF ARIZONA)
 :ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 13th day of February, 2007, by CHRISTA NOBBE, an Assistant Vice President of WACHOVIA FINANCIAL SERVICES, INC., a North Carolina corporation, on behalf of such corporation.



Nancy J. Stewart

NOTARY PUBLIC
Residing _____

EXHIBIT A
PROPERTY DESCRIPTION

That certain real property located in Weber County, State of Utah, and more particularly described as follows:

EXHIBIT A**PARCEL 1:***06-305-0002, 0003, 0004*

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.

PARCEL 2:

The non-exclusive right-of-way and easement for pedestrian and vehicular ingress and egress, appurtenant to **PARCEL 1** described herein, as created, defined and described pursuant to the provisions of that certain Declaration Of Easements, Covenants And Conditions, by and between MARTHA M. CRAIG, TRUSTEE OF THE MARTHA M. CRAIG REVOCABLE LIVING TRUST, RIVERDALE CENTER II, L.C., a Utah limited liability company, and RIVERDALE CENTER IV, L.C., a Utah limited liability company, recorded February 1, 2007, as Entry No. 2239510, of the Official Records of the Weber County Recorder, on, over and across the following described properties (as provided for in said instrument), to-wit:

- 06-028-0007*
- (A) A part of the Northwest Quarter of Section 8, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at a point on the Westerly right of way line of Riverdale Road, said point being 1323.18 feet South 1°00'35" West along the Section line and 598.14 feet South 88°59'25" East from the Northwest Corner of said Section 8; and running thence South 38°44'02" West 75.15 feet along said Westerly right of way; thence North 79°50'28" West 4.02 feet to the new Westerly right-of-way line of Riverdale Road (SR-26), which is 56.5 feet perpendicularly distant Northwesterly from the existing centerline of said road; thence South 38°25'10" West 48.95 feet along said new right-of-way line; thence North 51°35'37" West 91.09 feet; thence North 79°50'28" West 36.56 feet; thence Northerly along the arc of a 13.73 foot radius curve to the left 21.45 feet (Central Angle equals 89°30'19" and Long Chord bears North 6°26'33" West 19.33 feet); thence North 51°11'42" West 35.56 feet; thence North 38°48'08" East 63.03 feet; thence South 78°05'28" East 31.02 feet; thence South 89°41'28" East 14.21 feet; thence South 68°22'35" East 16.93 feet; thence South 51°29'55" East 42.85 feet; thence South 78°05'28" East 87.20 feet to the point of beginning.

PARCEL 2 CONTINUED

06-274-0002

- (B) A part of the Northwest Quarter of Section 8, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at the Southwest Corner of Lot 2, Riverdale Center II Subdivision, Riverdale City, Weber County, Utah; said point being 1111.12 feet South 1°00'35" West along the Section line and 261.52 feet South 78°05'28" East from the Northwest Corner of said Section 8; and running thence North 13°35'10" East 268.96 feet; thence South 76°24'50" East 158.53 feet; thence North 13°35'10" East 36.33 feet; thence North 25°21'26" East 38.51 feet; thence South 66°49'12" East 41.48 feet; thence South 51°31'42" East 302.37 feet to the Westerly line of Riverdale Road; thence two (2) courses along said Westerly line as follows: South 38°24'20" West 217.50 feet and South 78°05'28" East 18.52 feet to the New Westerly right-of-way line of Riverdale Road (SR-26), which is 56.5 feet perpendicularly distant Northwesterly from the existing centerline of said road at UDOT Project No. SP-0026(4)0 engineering station 145+80.13; thence South 38°25'10" West 106.32 feet; thence North 78°05'28" West 82.78 feet; thence North 51°29'55" West 42.85 feet; thence North 68°22'35" West 16.93 feet; thence North 89°41'28" West 14.21 feet; thence North 78°05'28" West 67.15 feet; thence North 11°03'04" East 75.97 feet to the South line of Lot 2 of said Riverdale Center II Subdivision; thence North 78°05'28" West 141.52 feet along said South line of Lot 2 of said subdivision to the point of beginning.

06-305-0001

- (C) 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.

PARCEL 3:

The non-exclusive rights-of-way and easements for pedestrian and vehicular ingress and egress, and for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities, appurtenant to **PARCEL 1** described herein, as created, defined and described pursuant to the provisions of that certain Declaration Of Easements, Covenants And Restrictions, by and between LOWE'S HIW, INC., a Washington corporation, RIVERDALE CENTER II, L.C., a Utah limited liability company, and RIVERDALE CENTER IV, L.C., a Utah limited liability company, recorded February 1, 2007, as Entry No. 2239512, of the Official Records of the Weber County Recorder, on, over, across, through and/or under the following described properties (as provided for in said instrument), to-wit:

06-274-0001, 0003
(A) Lots 1 and 3, **RIVERDALE CENTER II SUBDIVISION**, according to the official plat thereof filed on July 3, 2000, as Entry No. 1714139, in Book "52" of Plats, at Page 52 of the Official Records of the Weber County Recorder.

06-305-0001
(B) 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.

PARCEL 4:

The non-exclusive Easements for Use of Common Area, for Access Roads, Utility Facilities, Construction, Exterior Lights and Drainage, appurtenant to **PARCEL 1** described herein, as created, defined and described pursuant to the provisions of that certain Declaration Of Covenants, Conditions And Restrictions, by and between RIVERDALE CENTER IV, L.C., a Utah limited liability company, and J.C. PENNEY PROPERTIES, INC., a Delaware corporation, recorded February 15, 2007, as Entry No. 2242510, of the Official Records of the Weber County Recorder, over, across and through the following described property (as provided in said instrument), to-wit:

06-305-0001
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.

FOR REFERENCE PURPOSES ONLY:

Affecting Tax Parcel Numbers

~~OUT OF #'S 06-274-0005, 06-003-0003, 06-028-0007(PT), 06-030-0030
06-030-0031, 06-003-0007(PT), 06-003-0010(PT), 06-003-0011, 06-003-0012(PT)
PARCEL 3(A) 06-274-0001, 06-274-0003
PARCEL 2(A) 06-028-0007
PARCEL 2(B) 06-274-0002, 06-028-0009~~

EXHIBIT B

CONSENT TO ASSIGNMENT AND ESTOPPEL AGREEMENT

J.C. Penney hereby assents and consents to the foregoing Assignment to Bank, and hereby acknowledges and agrees that in the event Bank notifies J.C. Penney of an event of default under the Supplemental Agreement, J.C. Penney shall pay all sums due to Borrower under the Supplemental Agreement to Bank or Bank's designated agent.

WHEREFORE, J.C. Penney has caused this Consent to be duly executed as of February 9, 2007.

J.C. PENNEY PROPERTIES, INC.

APPROVED
PEF
ATTORNEY

By: *Paul W. Freddo*
 Name: Paul W. Freddo
 Its: PRESIDENT

STATE OF Texas)
)
 COUNTY OF Collin)
) :ss

The foregoing instrument was acknowledged before me this 9th day of February, 2007, by Paul W. Freddo, a President of J.C. PENNEY PROPERTIES, INC., a Delaware corporation, on behalf of such corporation.

Gladys Harris
 NOTARY PUBLIC
 Residing

