

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



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ERNEST D ROWLEY, WEBER COUNTY RECORDER
21-NOV-07 139 PM FEE \$49.00 DEP LF
REC FOR: SNELL & WILMER

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

~~November~~ ~~October 21~~ SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT dated ~~October 21~~, 2007 (the "Agreement"), between WACHOVIA FINANCIAL SERVICES, INC., a North Carolina corporation ("Bank"), RIVERDALE CENTER IV, L.C., a Utah limited liability company ("Landlord"), and THE TJX COMPANIES, INC., a Delaware corporation ("Tenant").

BACKGROUND

A. As security for a loan made (or to be made) by Bank to Landlord, Landlord has given (or is about to give) to Bank a Construction Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing, which was recorded on February 15, 2007 in the Public Records for the County of Weber, Utah (the "Security Instrument") as Entry No. 2242514, constituting a first lien against the Property described on Schedule "A" attached hereto (the "Property").

B. Tenant has entered into the Lease Agreement dated June 21, 2007, (the "Lease") covering all or a portion of the Property (the "Leased Premises").

C. As a condition of making the loan, Bank has required that the Lease be subordinated to the Security Instrument and that Tenant agree to attorn to the purchaser of the Property at foreclosure of the Security Instrument in the event of such foreclosure, or to Bank prior to foreclosure in the event Bank elects to collect the rents and other sums due and becoming due under the Lease, and Tenant is willing to so attorn, if Bank will recognize Tenant's rights under the Lease, on the terms and conditions hereinafter provided.

AGREEMENT

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants herein contained, and intending to be legally bound, hereby agree as follows:

1. **SUBORDINATION OF LEASE.**

This Lease shall be and is hereby made subordinate to the lien of (but not the terms and conditions of) the Security Instrument and to all increases, renewals, modifications, amendments, consolidations and extensions thereof, to the full extent of the principal amount and other sums secured thereby and interest thereon, as if the Lease had been executed and delivered after the execution, delivery and recording of the Security Instrument.

2. **ATTORNMENT.**

In the event Bank comes into possession of or acquires title to all or any portion of the Property as a result of foreclosure or other enforcement of the Security Instrument, or as a result of any other means, Bank agrees to recognize Tenant's possession of the Leased Premises and Tenant agrees to attorn to and accept Bank

as landlord under the Lease for the balance of the then remaining of the term of the Lease, subject to all of the terms and conditions of the Lease.

Upon any attornment under this Paragraph 2, the Lease shall continue in full force and effect as a direct lease between Tenant and Bank, and Bank will, subject to the terms and conditions of this Agreement, assume and perform all of Landlord's obligations under the Lease, except that Bank shall not be:

- (a) Liable for any damages for any breach, act or omission of any prior landlord (including Landlord) under the Lease except for acts or omissions of a continuing nature which continue after such time as Bank comes into possession of or acquires title to all or any portion of the Property, or
- (b) Subject to any offsets, claims or defenses which Tenant might have against any prior landlord (including Landlord) except to the extent such right of offset or defense is specifically set forth in the Lease, or unless Bank have been given notice and opportunity to cure the act or event giving rise to such offset or defense; or
- (c) Bound by any rent or additional rent or other payment in lieu of rent which Tenant might have paid to any prior landlord (including Landlord) more than 30 days in advance of its due date under the Lease, unless such prepayment is required pursuant to the terms of the Lease; or
- (d) Bound by any amendment or modification to the Lease which has the effect of decreasing the rent payable under the Lease, materially increasing Landlord's monetary obligations under the Lease; materially reducing the size of the Leased Premises; or modifying the term of the Lease (excluding any options to extend the term expressly granted in the Lease), made without Bank's written consent which consent shall not be unreasonably withheld, conditioned or delayed; or
- (e) Liable for any security deposit unless actually received by Bank.

3. NON-DISTURBANCE.

So long as Tenant is not in default under the Lease of such a nature as would permit Landlord to terminate the Lease pursuant to default provisions of the Lease, Bank shall not, in the exercise of any right, remedy, or privilege granted by the Security Instrument, or otherwise available to Bank at law or in equity:

- (a) Disturb Tenant's possession, enjoyment, use or occupancy of the Leased Premises and the appurtenant rights thereto under the Lease during the term of the Lease (including any extensions, renewal, or modifications thereof); or
- (b) Join or name Tenant as a party to any foreclosure or other proceeding instituted by Bank to enforce the terms of the Security Instrument against Landlord.

So long as Bank complies with the foregoing provision, Tenant shall not appear in any foreclosure action under the Security Instrument. In the event Bank comes into possession of or acquires title to all or any portion of the Property as a result of any enforcement of the Security Instrument, or any other means, Tenant shall peaceably and quietly have, hold and enjoy the Leased Premises and the rights of Tenant appurtenant thereto for the term of the Lease as the same may be extended, subject to the terms, covenants, provisions and agreements thereto.

4. ASSIGNMENT OF RENTS.

Landlord hereby advises Tenant that the Security Instrument provides for the direct payment to Bank of all rents and other monies due and to become due to Landlord under the Lease upon the occurrence of certain conditions as set forth in the Security Instrument without Bank's taking possession of the Demised Premises or otherwise assuming Landlord's position or any of Landlord's obligations under the Lease. After written notice is given to Tenant by Bank in form reasonably acceptable to Tenant, that Landlord has defaulted under the Security Instrument and that the rentals under the Lease should be paid to Bank, Tenant shall pay to Bank, or in accordance with the direction of Bank all rentals and other monies due and to become due to the Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments as directed by Bank and hereby releases and discharges Tenant of, and from any liability to Landlord on account of any such payments. Tenant shall have no responsibility to ascertain whether such demand by Bank is permitted under the Security Instrument. Furthermore, in connection with the aforesaid, and notwithstanding anything to the contrary contained elsewhere, Landlord, its successor and/or assigns hereby agree to indemnify and hold harmless Tenant against any expenses, claims, losses, or damages incurred by Tenant resulting from or arising out of claims by Landlord, its successors or assigns that such rental payments should not have been, or cannot be, made to Bank or the like.

5. RIGHT TO CURE DEFAULTS.

So long as the Security Instrument is in force and effect, Tenant agrees not to terminate the Lease by reason of default by Landlord under the Lease without giving prior written notice thereof to Bank and Bank shall have the right (but not the obligation until Bank comes into possession of or acquires title to all or any part of the Property) to cure any of Landlord's defaults under the Lease within the same time period as is available to Landlord for the curing thereof under the Lease after receipt of such notice except Tenant shall have the right to exercise its enumerated termination rights set forth in the Lease without giving Bank notice or the opportunity to cure.

6. AGREEMENTS.

Tenant will not voluntarily subordinate the Lease to any lien or encumbrance (other than the Security Instrument) without Bank's prior consent and Landlord agrees not to request Tenant to subordinate the Lease to any other lien or encumbrance prior to satisfaction of the Security Instrument. This Agreement satisfies any requirement in the Lease relating to the granting of a non-disturbance agreement from a lender.

7. NOTICES.

All notices and other communications pursuant to the provisions of this Agreement shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by a reputable commercial overnight carrier that provides a receipt, such as Federal Express or Airborne Express, and shall be deemed given when received and addressed as noted below, or to such other address or addresses as shall from time to time be designated by notice by any party to the others as herein provided.

If to Tenant	The TJX Companies, Inc. 770 Cochituate Road Framingham, MA 01701 Attn: Vice President - Real Estate
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If to Bank:	Wachovia Financial Services, Inc. 16435 N. Scottsdale Road, Suite 200,
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Scottsdale, AZ 85254

If to Landlord: Riverdale Center IV, L.C.
90 South 400 West, Suite 200
Salt Lake City, Utah 84101

Any party may change the place that notices are to be sent by written notice delivered in accordance with this Agreement.


8. **MISCELLANEOUS.**

- (a) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. Nothing contained in this Agreement shall in any way affect or impair the lien created by the Security Instrument, except as specifically set forth herein.
- (b) **Modifications.** This Agreement may not be supplemented, amended or modified unless set forth in writing and signed by the parties hereto.
- (c) **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Utah.
- (d) **Successors and Assigns.** As used in this Agreement, the term "Tenant" shall mean Tenant and any subsequent holder or holders of an interest of the lessee under the Lease, and the term "Bank" shall mean Bank or any other subsequent holder or holders of the Security Instrument or any party becoming a Security Instrument in possession or acquiring title to the Property or the Demised Premises by purchase at a foreclosure sale, deed in lieu of foreclosure, other enforcement of the Security Instrument, by deed of the Bank, or otherwise. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. The terms Lease, Security Instrument and Assignment shall include any and all amendments, modifications, replacements, substitutions, extensions, renewals and supplements thereto. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceable shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- (e) **Recordation.** Bank agrees to record this Agreement promptly upon full execution of the same. Upon recorded satisfaction of the Security Instrument, this Agreement shall become null and void and be of no further effect.
- (f) **Authority.** The individuals executing this Agreement hereby represent and warrant that they are empowered and duly authorized to so executed this agreement of behalf of the parties they represent.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed and delivered this Agreement under seal as of the day and year first above written.

BANK:

WACHOVIA FINANCIAL SERVICES, INC.
a North Carolina corporation

By: 
Name: Christa Nobbe
Title: Vice President

TENANT:

THE TJX COMPANIES, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

LANDLORD:

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

BANK:

WACHOVIA FINANCIAL SERVICES, INC.
a North Carolina corporation

By: _____
Name: Christa Nobbe
Title: Vice President

TENANT:

THE TJX COMPANIES, INC.
a Delaware corporation

By: Ann McCauley
Name: Ann McCauley
Title: Executive Vice President, General Counsel and Secretary

By: Mary B. Reynolds
Name: Mary B. Reynolds
Title: Senior Vice President - Finance and Treasurer

LANDLORD:

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

BANK:

WACHOVIA FINANCIAL SERVICES, INC.
a North Carolina corporation

By: _____
Name: Christa Nobbe
Title: Vice President

TENANT:

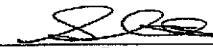
THE TJX COMPANIES, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

LANDLORD:

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: Steven B. Osh
Title: Manager

TENANT ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS)
):ss
COUNTY OF MIDDLESEX)

The foregoing instrument was acknowledged before me this 19 day of October, 2007, by Ann McCauley, the Executive Vice President, General Counsel and Secretary and by Mary B. Reynolds, the Senior Vice President – Finance and Secretary of **THE TJX COMPANIES, INC.**, a Delaware corporation, on behalf of such corporation.



NOTARY PUBLIC
My Commission Expires ERICA JEAN ZILEMBO
Notary Public
Commonwealth of Massachusetts
My Commission Expires Mar 14, 2008



STATE OF _____)
):ss
COUNTY OF _____)

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

NOTARY PUBLIC
Residing at _____

[Seal]

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

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

NOTARY PUBLIC
Residing at _____

STATE OF _____)
:SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by _____, the _____ of THE TJX COMPANIES, INC., a Delaware corporation, on behalf of such corporation.

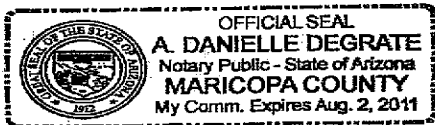
NOTARY PUBLIC
Residing at _____

[Seal]

STATE OF Arizona)
:SS
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 18th day of October, 2007, by CHRISTA NOBBE, a Vice President of WACHOVIA FINANCIAL SERVICES, INC., a North Carolina corporation, on behalf of such corporation.

A. Danielle DeGrate
NOTARY PUBLIC
Residing at Wachovia Bank, AZ



STATE OF UTAH)
:SS
COUNTY OF SALT LAKE)

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

NOTARY PUBLIC
Residing at _____

[Seal]

STATE OF _____)
:SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by _____, the _____ of **THE TJX COMPANIES, INC.**, a Delaware corporation, on behalf of such corporation.

NOTARY PUBLIC
Residing at _____

[Seal]

STATE OF _____)
:SS
COUNTY OF _____)

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

NOTARY PUBLIC
Residing at _____

[Seal]

STATE OF UTAH)
:SS
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 14th day of November, 2007, by Shawn B. Opler, the Manager of **THE BOYER COMPANY, L.C.** a Utah limited liability company and the manager of **RIVERDALE CENTER IV, L.C.**, a Utah limited liability company, on behalf of said company.



Rachel N. Niusulu
NOTARY PUBLIC
Residing at Salt Lake City

[Seal]

SCHEDULE A
DESCRIPTION OF PROPERTY

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:

06-038-0007

- (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

06-028-0009 / 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 HW, 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:

- (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. *06-274-0001, 0003*
- (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. *06-305-0001*

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

cut of #'s ~~06-274-0005~~, ~~06-274-0007~~, ~~06-028-0007~~^(PT), ~~06-028-0008~~^(PT), ~~06-030-0007~~, ~~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) 06.028.0009, 06.274.0002