

## **AGENDA**

### **WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY SPECIAL MEETING**

**MONDAY, MARCH 28, 2016  
AT 7:00 P.M.**

- 1. Roll Call**
- 2. Consideration of Minutes of the Preceding Meetings** (February 29, 2016)
- 3. Public Hearings and New Business**
  - A. Public Hearing on the Budget Amendment for the Westminster Economic Development Authority.
  - B. Resolution No. 166 re 2015 WEDA Budget Supplemental Appropriation
  - C. Resolution No. 167 re Amended Lease Agreement with JC Penney Properties, Inc.
  - D. Public Hearing for the WEDA Required Budget Amendment.
  - E. Resolution No. 168 re WEDA Budget Supplemental Appropriation to the 2016 Budget
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
MONDAY, FEBRUARY 29, 2016, AT 7:10 P.M.

ROLL CALL

Present at roll call were Chairperson Herb Atchison, Vice Chairperson Alberto Garcia, and Board Members Bruce Baker, Shannon Bird, Maria De Cambra, Emma Pinter, and Anita Seitz. Also present were Donald M. Tripp, Executive Director, David Frankel, Attorney, and Michelle Parker, Secretary.

CONSIDERATION OF MINUTES

It was moved by Board Member De Cambra, seconded by Board Member Baker, to approve the minutes of the previous meeting of February 8, 2016, as presented. The motion passed unanimously.

DEVELOPMENT AGREEMENT WITH SHERMAN ASSOCIATES FOR BLOCK B-1/C-1

It was moved by Board Member Bird, seconded by Board Member De Cambra, to authorize the WEDA Executive Director to execute a Development Agreement with Sherman Associates and the City of Westminster in substantially the same form as presented to the Board for the development of the B-1/C-1 block in Downtown Westminster. The motion carried by a vote of 6:1, with Board Member Baker dissenting.

PURCHASE AND SALE AGREEMENT FOR HANCOOP @ WESTMINSTER, LLC

Board Member Bird moved, seconded by Board Member De Cambra, to authorize the WEDA Executive Director to sign a Purchase and Sale Agreement with Hancoop @ Westminster LLC for a mixed-use commercial and office building on Lot 2 Block C-3 of the Downtown Westminster site in substantially the same form as presented to the Board. The motion passed by a vote of 6:1, with Board Member Baker voting no.

ADJOURNMENT

With no further business for the Authority's consideration, Chairperson Atchison adjourned the meeting at 7:12 p.m.

ATTEST:

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Chairperson

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Secretary

# **WEDA Agenda Items 3 A & B**

## **Agenda Memorandum**

Westminster Economic Development Authority Meeting  
March 28, 2016



**SUBJECT:** Public Hearing and Resolution No. 166 re: Westminster Economic Development Authority Supplemental Appropriation to the 2015 budget

**Prepared By:** Karen Creager, Special Districts Accountant

### **Recommended Board Action**

1. Hold a Public Hearing on the budget amendment for the Westminster Economic Development Authority.
2. Adopt Resolution No. 166 authorizing a supplemental appropriation to the 2015 Westminster Economic Development Authority budget.

### **Summary Statement**

- When necessary, City Staff (Staff) prepares a resolution to appropriate unanticipated revenues and adjust the budget side of transactions that occur during the year. Typically, supplemental appropriations are prepared on a periodic basis for the Westminster Economic Development Authority (WEDA) Urban Renewal Areas (URA) to simplify administrative procedures and reduce paper work.
- This supplemental appropriation covers activity for the 3<sup>rd</sup> and 4<sup>th</sup> Quarter 2015.
- 2015 Amendments:
  - North Huron URA
    - \$93 Interest earnings
    - \$1,784,269 Carryover
  - Westminster Center Urban Reinvestment Plan (WURP) Area URA
    - \$72,233 Sales Tax increment
    - \$28,222 Interest
    - \$226,545 Rents
    - \$10,854,351 Carryover
  - Holly Park URA
    - \$770 Interest
- A public hearing is required pursuant to Section 29-1-108 of the Colorado Revised Statutes.

**Expenditure Required:** \$12,966,483

**Source of Funds:** Carryover from prior years, interest earnings, sales tax increment and rent revenue

**Policy Issue**

Should the WEDA Board appropriate funds as set forth in the attached Resolution?

**Alternatives**

1. In accordance with the Compass Mortgage Corporation Loan Agreement (loan agreement), use of the loan proceeds is to be applied solely to capital expenditures in the North Huron URA. Interest earnings on the unspent loan proceeds carry the same restriction. Alternatively, the Board could decide to appropriate the interest earnings to a different project in the North Huron URA instead of Orchard Parkway. This alternative is not recommended as appropriating the interest to the Orchard Parkway project is the best method for tracking the interest earnings to ensure compliance with the loan covenants.
2. The Board could decide not to appropriate carryover in the amount of \$1,784,269 in the North Huron URA to be transferred to the city to reimburse costs the city incurred for improvements related to Orchard Parkway and the 136<sup>th</sup> Avenue/144<sup>th</sup> Avenue bridge pedestrian railing repairs. However, this alternative is not recommended. Use of prior year excess revenues is restricted for use in the North Huron URA. Reimbursing the city for these costs is an appropriate use of the funds currently available at the Trust. Additionally, it shifts the burden of costs in the URA to the area benefitting from the improvements as contemplated when the intergovernmental cooperation agreement (ICA) between WEDA and the city was approved. Alternatively, the Board could decide to appropriate carryover to other yet-to-be-determined capital improvement projects (CIP) in the North Huron URA. This alternative is also not recommended as the Orchard Parkway and 136<sup>th</sup> Avenue/144<sup>th</sup> Avenue bridge repair projects are the most immediate needs in the URA.
3. The rents from the remaining tenants at the former Mall site, as well as sales tax increment and interest earnings, are not restricted in their use. Staff recommends continuing to use these types of revenue to cover costs associated with providing services to the tenants and the continued redevelopment at the site. Alternatively, the Board could decide to appropriate the rent revenue, sales tax increment and interest earnings to a yet-to-be determined CIP in the WURP URA. However, the WURP City Participation project is the only CIP in the URA with current commitments toward the redevelopment endeavor.
4. The Board could decide not to appropriate carryover of \$10,854,351 to the WURP City Participation project for the land conveyed to the city. This option is not recommended as the appropriation is necessary for the budget to correspond to the land purchase expense in order for the accounting records to accurately reflect the conveyance of the land by WEDA to the city when the plat was recorded.
5. The Board could decide not to appropriate the interest earnings to the Holly Park project. This alternative is not recommended as there is currently no other form of funding available for the maintenance of the property during the marketing effort.

**Background Information****Holly Park URA***Interest Earnings*

Interest earnings on project funds totaling \$770 through December 31, 2015 are requested to be appropriated to the Holly Park CIP. These funds are necessary to continue maintaining the property that is currently for sale.

**North Huron URA***Carryover*

The North Huron Urban Renewal Plan (“Plan”), approved by the city on January 26, 2004, includes as one of its primary objectives providing an efficient system of streets, roads and other transportation facilities necessary to support urban development within the URA. The Plan provides for WEDA to undertake certain actions that would make the URA more attractive for private investment and eliminate blight. Such actions may include street and traffic improvements, streetscape improvements, storm water and other

drainage improvements, landscaping, parks and recreation facilities, utility improvements and public arts projects. In recognition that the city incurs costs for maintenance and other contractual obligations associated with improvements located within the North Huron URA, WEDA and the city entered into an ICA on December 9, 2013 that provides for WEDA to reimburse the city for costs the city incurs related to improvements made within the URA. In accordance with the ICA, Staff has determined that reimbursement to the city for costs incurred by the city for the projects listed below is an allowable use under the loan agreement of excess incremental revenues held in the North Huron Supplemental Reserve Trust account.

Therefore, Staff is requesting appropriation of prior year excess revenues to fund payments to the city totaling \$1,784,269 as described below. With this action, all of the project funds have been exhausted from the debt financing issued for this URA.

- Orchard Parkway (\$1,004,269) - Funding for the completion of Orchard Parkway came from a variety of sources. Some of the expenses paid from the City's General Capital Improvement Fund qualify to be reimbursed by WEDA in accordance with the above mentioned ICA between WEDA and the City. At the end of 2014, final payments including retainage had not been paid. Therefore, WEDA was not able to reimburse the costs at that time. Now that the Orchard Parkway project has been completed, the City is able to bill WEDA for such costs totaling \$1,004,269. Additionally, Staff has included a transfer between the Orchard Parkway project and the McKay Drainage Outfall project in WEDA to ensure that the project appropriations correspond to the cash flow. In order to spend down the oldest funds first, expenses for McKay Drainage were paid before expenses for Orchard Parkway. This transfer does not change the appropriations in the WEDA fund but adjusts the appropriations to correspond to the actual payout of the project cash.
- Bridge repairs (\$780,000) – On December 18, 2015, City Council authorized a contract not to exceed \$780,000 with Signature Underwriters, Inc. for 136<sup>th</sup> Avenue and 144<sup>th</sup> Avenue bridge pedestrian railing corrosion repairs. During the quarterly analysis of the North Huron Supplemental Reserve Account, Staff was able to identify a portion of the excess funding in the Reserve account was available for the bridge repairs. These repairs are covered under the IGA and qualify as an allowable use under the Compass loan agreement. Appropriating carryover funds at this time provides the appropriations in the bridge repair project in WEDA in preparation for WEDA to reimburse the city for costs incurred for the bridge repairs. It is anticipated that reimbursements will begin in the first quarter of 2016. If the actual total cost of the repairs is lower than the not to exceed amount, the appropriations will expire and the associated cash will remain at the Compass Bank Trust.

#### *Interest Earnings*

The unspent project funds for Orchard Parkway continue to earn interest until spent. Interest earned on project funds for the 3<sup>rd</sup> and 4<sup>th</sup> quarter totals \$93. The loan agreement specifies that the interest earned on the project funds must be spent on projects in the North Huron URA; therefore, the interest earned in the 3<sup>rd</sup> and 4<sup>th</sup> quarter is requested to be appropriated to the Orchard Parkway project to ensure proper tracking for compliance purposes.

#### **Westminster Center Urban Reinvestment Plan Area URA**

##### *Carryover*

As part of the year end audit work in 2011, the land purchase expense for the former Westminster Mall site, now commonly referred to as Downtown Westminster, was reclassified in the accounting records for WEDA as an asset - Inventory held for resale. The corresponding budget for this purchase was closed out and has been included in the WURP URA restricted fund balance since that time. During 2015, a portion of this land was conveyed to the City by WEDA when the Downtown site was replatted. In order for WEDA's accounting records to reflect this conveyance, the value of the land conveyed to the city for right-of-way and public green space will be reclassified to land purchases expense in the WURP City Participation project. Accordingly, fund balance, or carryover, will need to be appropriated for the budget side of the transaction. For this reason, Staff is requesting appropriation of \$10,854,351 of carryover to the WURP City Participation project to bring the accounting records in-line with the action recorded with the replat.

*Sales tax increment*

In 2015, incremental sales tax receipts in the URA were over the established base sales tax receipts by \$72,233. Staff is requesting that the incremental revenue be appropriated to the WURP City Participation project.

*Rental income*

Although only a few tenants continue to operate at the Mall site during the redevelopment, monthly rents are received from those tenants. There are unappropriated rents totaling \$226,545 received in 2015. Therefore, Staff is requesting that the rents be appropriated to the WURP City Participation project to continue to provide services for the tenants and the redevelopment efforts.

*Interest Earnings*

The unspent project funds in the WURP fund continue to earn interest until spent. Unappropriated interest earned on project funds through December 31, 2015 totals \$28,222. Although not restricted for use in the WURP area, Staff is requesting that the interest earned on the unspent project funds be appropriated to the WUPR City Participation project to continue the redevelopment efforts.

The amendments listed in the attached resolution will bring WEDA's accounting records up-to-date to reflect the various detailed transactions.

The action requested in this agenda memorandum relates to City Council's Strategic Plan goals of Dynamic, Diverse Economy and Financially Sustainable Government Providing Excellence in City Services. These goals are met by ensuring revenues are appropriated to expenditure accounts so the funds can be utilized as intended including continued improvements in the North I-25 development area, the Holly Park area and the redevelopment efforts at the Downtown Westminster site.

Respectfully submitted,

Donald M. Tripp  
Executive Director

Attachment: WEDA Resolution

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **166**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2016

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**2015 WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
BUDGET SUPPLEMENTAL APPROPRIATION**

WHEREAS, the Westminster Economic Development Authority (WEDA) initially adopted the 2015 budget on October 13, 2014; and

WHEREAS, proper notice for this amendment was published on March 24, 2016, pursuant to the requirements of Section 29-1-106 Colorado Revised Statutes; and

WHEREAS, a public hearing for this amendment was held on March 28, 2016, pursuant to the requirements of Section 29-1-108 Colorado Revised Statutes; and

WHEREAS, as necessary a resolution to make adjustments to the budget is presented to the Board; and

WHEREAS, there are adjustments to be made to the 2015 budget; and

WHEREAS, the revenue adjustment consists of an increase of \$12,966,483; and

WHEREAS, the expense adjustment consists of an increase of \$12,966,483.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Westminster Economic Development Authority:

Section 1. The \$12,966,483 increase shall be allocated to WEDA Revenue and Expenditure accounts as described below:

**REVENUES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Carryover – No Huron	6800.40020.0183	\$(87,323)	\$1,784,269	\$1,696,946
Interest- North Huron	6800.42520.0183	124	93	217
Interest–Holly Park	6800.42520.0187	0	770	770
Carryover - WURP	6800.40020.0191	86,655	10,854,351	10,941,006
Rents - WURP	6800.40900.0191	192,592	226,545	419,137
Sales Tax increment - WURP	6800.40065.0191	0	72,233	72,233
Interest - WURP	6800.42510.0191	0	<u>28,222</u>	28,222
Total Change to Revenues			<u>\$12,966,483</u>	

**EXPENDITURES**

Description	Account Number	Current Budget	Amendment	Revised Budget
Transfers GCIF	68010900.79800.0750	\$350,000	\$840,990	\$1,190,990
Appropriation Holding – Orchard Parkway	81268030997.80400.8888	147,721	163,372	311,093
Appropriation Holding – Bridge repair	81268035999.80400.8888	0	780,000	780,000
Appropriation Holding – Orchard Parkway	81268030997.80400.8888	311,093	(276,617)	34,476
Appropriation Holding – McKay Drainage	80968030953.80400.8888	393,379	276,617	669,996
Appropriation Holding – Holly Park	80568030419.80400.8888	44,222	770	44,992
Appropriation Holding-WURP City Participation	80968005952.80400.8888	2,286,175	<u>11,181,351</u>	13,467,526
Total Change to Expenses			<u>\$12,966,483</u>	

Section 2. The resolution shall be in full force and effect upon its passage and approval.

PASSED AND ADOPTED 28<sup>th</sup> day of March, 2016.

ATTEST:

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Chairperson

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Secretary

# WEDA Agenda Item # 3 C-E

## Agenda Memorandum

Westminster Economic Development Authority  
March 28, 2016



**SUBJECT:** Resolution No. 167 re Lease Agreement with JC Penney Properties, Inc., Public Hearing, and Resolution No. 168 re Westminster Economic Development Authority Budget Supplemental Appropriation to the 2016 budget

**Prepared By:** Sarah Nurmela, Downtown Westminster Real Estate & Development Manager  
John Burke, Downtown Westminster Development & Construction Manager  
Jody Andrews, Deputy Executive Director

## Recommended WEDA Board Action

1. Adopt resolution No. 167 authorizing the Executive Director to execute an amended and restated lease with JC Penney Properties, Inc. in substantially the same form as attached for the Downtown Westminster JC Penney building premises.
2. Hold a Public Hearing for the Westminster Economic Development Authority on the required budget amendment in the amount of \$2,500,000.
3. Adopt Resolution No. 168 authorizing a supplemental appropriation in the amount of \$2,500,000 to the 2016 Westminster Economic Development Authority budget.

## Summary Statement

- Staff and JC Penney Properties have reached a mutually acceptable amendment to the existing JC Penney lease in the Downtown Westminster project. This lease amendment is vital to the continuation of block-by-block development on the site. The amendment reduces the JC Penney lease area to the building footprint, allowing the City to pursue the development of block B1/C1 and other adjacent blocks.
- Establishing a strong, cohesive presence in the first phase of development in the Downtown is essential to the success of the project and fulfilling the City's vision of becoming the next urban center in Colorado's Front Range. Continued operation of the JC Penney store will provide a significant and well-established retail presence for this first phase.
- JC Penney has been an anchor within the Downtown site since 1986. The store has a dedicated patronage and long history within the community.
- As the City and WEDA implement the City's vision for a true downtown, transitioning the suburban retail format of the JC Penney building requires amendment to the existing ground lease that encompasses almost 11 acres of primarily surface parking over five blocks, as shown in **Attachment A**.
- Staff has reached agreement with JC Penney Properties, Inc. on the terms for an amended and restated lease, as attached in **Attachment B**.
- Both parties will contribute financial resources to meet the terms of the agreement. In addition to the approximately \$670,000 surrender payment WEDA paid JC Penney for the release of Westminster Boulevard right-of-way in 2015, WEDA will make a payment of \$2,500,000 to JC Penney and construct common area facilities and signage. JC Penney will in turn invest \$3,170,000 in building and store improvements.
- WEDA's commitment to related expenses include constructing common area facilities including the "sky bridge" to the C-2 parking garage and necessary building modifications, two common area

entrances on the west and east building faces at such time as the building is wrapped, and construction and other signage. These additional costs will be brought to the WEDA Board for authorization once the exact costs and timing have been determined.

- Additional terms of the lease agreement establish the lease term, rent rate, options for repurchase by WEDA, events of default, and additional obligations for both parties.
- WEDA Board action is requested to authorize a supplemental appropriation to appropriate transfer revenue of \$2,500,000 from the City of Westminster General Capital Improvement Fund to fund this payment.

**Expenditure Required:** Anticipated expenditure of \$2,500,000 for surrender payment for demised premises.

**Source of Funds:** General Capital Improvement Fund –Westminster Economic Development Authority City Participation project

## Policy Issue

Should WEDA enter into an amended and restated lease agreement with JC Penney Properties, Inc. and commit financial assistance toward JC Penney building improvements and common area facilities?

## Alternatives

The Board could choose to not amend the existing lease with JC Penney Properties, Inc. This alternative is not recommended, since the existing ground lease area encompasses 10.8 acres of land in a key location in the Downtown site, including all or portions of blocks A-1, B-1/C-1, B-2 and C-2. The entire B-1/C-1 block is encompassed by the existing ground lease. The block is the subject of a Development Agreement with Sherman Associates for, which requires WEDA to obtain possession of the land for sale to Sherman Associates. Failure to gain control of the B-1/C-1 block is an event of default of the agreement and will inhibit development of the B-1/C-1 project, significantly impacting other planned projects within the first phase. The inability to obtain control of the remainder of the ground lease area outside of the JC Penney building footprint would directly impact the ability to develop projects on the A-1 and B-2 sites.

The Board could choose to instruct Staff to try to negotiate alternative terms to the lease agreement with JC Penney. This alternative is not recommended as Staff believes that the lease terms reached with JC Penney are beneficial to both parties, achieving the best value and outcome possible for transitioning a suburban mall anchor building into the City's downtown urban context. Additionally, further delaying the lease agreement will impact WEDA significantly. WEDA is obligated as part of the Development Agreement with Sherman Associates to complete a Purchase and Sale Agreement on the B-1/C-1 block by May 1, 2016.

The Board could choose not to appropriate transfer revenue of \$2,500,000. This alternative is not recommended as funding for this payment to JC Penney is available in the Phase I Public Improvements project in the City's General Capital Improvement Fund (GCIF). Over the last few years, funds have been appropriated in the City's GCIF in anticipation of this type of expenditure related to the Phase I Public Improvements in the Downtown. Not knowing whether WEDA or the City would be the party making the actual payment, it was determined that the funding would reside in the GCIF until needed. At this time, it is necessary for the funds to be transferred to WEDA to provide sufficient budget for the JC Penney payment. For this reason, Staff recommends authorizing the attached resolution to amend the 2016 budget.

## Background Information

The repositioning of the Westminster Mall into a vibrant, authentic downtown has been a primary goal for the City since 2008. The Westminster Economic Development Authority (WEDA) purchased the majority of the mall site in 2011, providing site control and an opportunity to reshape the remaining development on site. The majority of the mall structure was demolished by 2012, excluding the JC Penney, US Bank, and Olive Garden buildings, all of which remain under separate ground leases with WEDA. The current ground lease with JC Penney comprises approximately 10.8 acres, encompassing the existing building, parking area, and landscaped setback along 88<sup>th</sup> Avenue, as shown in **Attachment A**. A portion of the original lease area (approximately 1.5 acres) was purchased by WEDA in 2015 to accommodate construction of Westminster Boulevard.

JC Penney was part of the Westminster Mall, and has long been an active and successful anchor on the Downtown site. The Downtown JC Penney store has established a dedicated and loyal patronage that has continued to support the store's success through the mall downturn, demolition, and current on-site construction. In fact, the Downtown store is one of the strongest performing JC Penney stores in the state. The store's success and presence not only benefit the City economically, but more importantly, provide a well-established retail anchor as part of the first phase of development of Downtown. As such, the City has worked diligently to ensure that the Downtown store remains successful and continues to thrive throughout the build-out of the City's new downtown.

Negotiations towards a lease amendment between WEDA and JC Penney Properties, Inc. began in 2014, with a focus on addressing the shift from retail mall to an urban, mixed-use downtown. Key terms addressed by the amended lease agreement reflect this shift, including reduction of ground area to accommodate intensification of the site; replacement of surface parking with structured parking; and building and store improvements to fortify continued successful operation of the Downtown store. Additional terms of the agreement provide both parties with assurances of high quality build-out and operation of the Downtown site and the JC Penney store.

Initial terms of the amended lease were established in a signed mutual Letter of Intent between WEDA and JC Penney in September of 2015, leading into development of the final terms of the agreement as summarized below.

### **Lease Term and Rent Rate**

- The initial term of the lease will be 15 years, with three successive options for renewal for five-year terms (total of 30 years).
- The lease rent rate for the first 15 years will be \$1.00 per year. The lease rent rate will rise to \$500,000 per year from year 16 to 30.
- In addition to the fixed rent rate, JC Penney will pay WEDA 3.0% of retail sales above specific breakpoints: \$15,000,000 of retail sales within the first 15 years and \$16,667,000 from year 16 to 30.

### **Lease Assignment and Go-Dark Provisions**

- WEDA will have the right of repurchase upon each notice of lease assignment and each notice of discontinuance (“going dark”) by JC Penney.
- WEDA will have 90 days to exercise the right of repurchase upon the receipt of a notice of assignment.
- WEDA will have 120 days to exercise the right of repurchase upon the receipt of the notice of discontinuance.
- The purchase price will be calculated using an existing base value of \$3,830,000, application of the Consumer Price Index, and depreciation based on the decreasing lease term.

### **Lease Area Surrender**

- The existing 10.8-acre lease area will be reduced to the 2.2-acre building footprint and loading area. This will allow WEDA to regain control of surrounding land area for new development, including the Sherman Associates project on block B-1/C-1, future development on a portion of block A-1, and a development wrap around the JC Penney building on block B-2. Recapture of the land area will also allow dedication and development of a portion of the South Park.
- In addition to the approximately \$670,000 already paid and approved by the WEDA Board to JC Penney for the release of the Westminster Boulevard right-of-way, WEDA will pay \$2,500,000 as a Surrender Payment toward the demised premises.

### **WEDA Commitments**

#### Parking

- WEDA will replace the existing JC Penney surface parking with access to the C-2 public parking garage. The agreement ensures that the garage will accommodate 660 non-exclusive parking spaces that can be utilized by JC Penney patrons and employees.
- JC Penney will have access to all other public parking facilities, including on-street parking, the block A-1 and B-2 temporary surface parking lots, and block B-1/C-1.
- JC Penney will have access and parking rights on block B-1/C-1 until January 2, 2017.

#### Common Facilities and Public Improvements

- WEDA will construct, maintain and operate common facilities including entranceways through the B-2 development wrap into the JC Penney building and a “sky bridge” connecting the C-2 parking garage

third level parking deck to the second level of the JC Penney store. Funding for the “sky bridge” will be included as part of the C-2 parking structure construction contract. Construction of the common entranceways will be included in the development agreements or construction contracts for the development of the wrap building around the JC Penney store.

- WEDA will construct, maintain and operate public improvements including streets and alleys that will service the JC Penney building, the C-2 parking garage, and temporary surface parking located on blocks A-1 and B-2, all of which are not exclusive to JC Penney and will be accessible to the public.

#### Signage

WEDA will provide the following signage:

- Temporary construction signage at 88th Avenue at Westminster Boulevard and Eaton Street.
- JC Penney signage on the C-2 garage facing onto US 36.
- Directional signage within the C-2 parking garage to the store.
- Signage at the existing building entrances or entranceways of the future wrap building.

#### Elimination of Blight

- WEDA will agree to certify to JC Penney that any condition of blight related to the JC Penney parcel and block C-2 have been eliminated upon the effective date of the amended lease agreement.

#### **JC Penney Commitments**

- JC Penney will release approximately 8.6 acres of the ground lease area, allowing WEDA to sell and develop adjacent land and a building wrap on the west and north sides of the building.
- JC Penney agrees to the rent rate and profit share above the breakpoint sales levels stated above as well as WEDA’s right to repurchase and the purchase price valuation.
- Within three years of the effective date of the lease, JC Penney will expend a minimum of \$3,170,000 on improvements to the store, including addition of a Sephora, new fixtures and equipment, building repair, furnishings, finishes, and sales floor upgrades.
- JC Penney will be subject to an operating covenant that requires continual operation of a JC Penney store for 10 years. The covenant will expire earlier if all tenant improvements as described above are completed.
- JC Penney will continue to pay monthly Common Area Maintenance (CAM) charges of \$9,200 until December 31<sup>st</sup> of the year in which the Effective Date of the General Improvement District (GID) occurs. Beginning with January 1 of the following year, JC Penney will pay the property tax attributable to the property for the GID.

#### **Events of Default**

- Events of default include failure to pay rent or to perform any of the provisions of the lease. Timelines and measures to cure any default are outlined in the lease.
- Specific events of default that are incapable of being cured are also addressed and include, but are not limited to, failure or refusal to submit the JC Penney premises to the GID, or failure to expend or complete construction of required building or store improvements. These events of default may be the basis for a termination or forfeiture of the lease.

This agreement was reviewed in detail with City Council and the WEDA Executive Board on March 21, 2016, and Staff was directed to bring this back for official action at tonight’s meeting.

Over the last few years, funds have been appropriated in the City’s GCIF in anticipation of this type of expenditure related to the Phase I Public Improvements in the Downtown area. Not knowing whether WEDA or the City would be the party making the actual payment, it was determined that the funding would reside in the GCIF until needed. At this time, it is necessary for the funds to be transferred to WEDA to provide sufficient budget for the JC Penney payment. While the total appropriations in the GCIF will not change, the First Quarter

2016 supplemental appropriation for the City will include an item that moves \$2,500,000 from the Phase I Public Improvements project to Transfers to WEDA and request authorization to transfer the funds.

As summarized above, the amended lease agreement emphasizes and supports continued operation of the JC Penney store within the new Downtown site. As a long-standing anchor store in the community, JC Penney's presence in the Downtown will provide a connection to the past and present as new development occurs over the next several years. The anchor store will also support and complement new retail uses as they develop, further underlining Downtown Westminster as a community destination. Finally, this amendment to the JC Penney lease supports the City Council's Strategic Plan goals of *Vibrant, Inclusive and Engaged Community; Beautiful, Desirable, Safe and Environmentally Responsible City; and Dynamic, Diverse Economy.*

Respectfully submitted,

Donald M. Tripp  
Executive Director

Attachments: Resolution No. 167  
Resolution No. 168  
Attachment A – JC Penney Existing and Amended Lease Area  
Attachment B – Amended and Restated Lease with JC Penney Properties, Inc.

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **167**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2016

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**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN AMENDED  
LEASE AGREEMENT WITH J. C. PENNEY PROPERTIES, INC.**

WHEREAS, the Authority is a body corporate and has been duly created, organized, established and authorized to transact business and exercise its powers as an urban renewal authority within the City, all under and pursuant to Part I of Article 25 of Title 31, C.R.S.

NOW, THEREFORE, the Board of Commissioners of the Westminster Economic Development Authority resolves that:

1. The Executive Director is hereby authorized to enter into an amended lease agreement with J. C. Penney Properties, Inc., in substantially the same form as Exhibit A, attach hereto and incorporated herein by reference.

PASSED AND ADOPTED this 28<sup>th</sup> day of March, 2016.

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Chairperson

ATTEST:

APPROVED AS TO LEGAL FORM:

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Secretary

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Attorney for Authority

# Attachment A

## JC Penney Existing and Amended Lease Areas



AMENDED AND RESTATED LEASE COVERING PREMISES AT 5453 W. 88<sup>TH</sup> AVENUE,  
WESTMINSTER, COLORADO 80031

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

Landlord,

TO

J. C. PENNEY PROPERTIES, INC.,

Tenant.

STORE 2160

AMENDED AND RESTATED LEASE COVERING PREMISES AT 5453 W. 88<sup>TH</sup> AVENUE,  
WESTMINSTER, COLORADO 80031

Amended and Restated LEASE, dated as of \_\_\_\_\_, 2016 (the “**Effective Date**”), between WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY, having an address of 4800 West 92<sup>nd</sup> Ave., Westminster, CO 80031 (“**Landlord**”), and J. C. PENNEY PROPERTIES, INC., a Delaware corporation, having an address at 6501 Legacy Drive, Plano, TX 75024 Attn: Real Estate Counsel (“**Tenant**”).

THE PARTIES HERETO DO HEREBY COVENANT AND AGREE AS FOLLOWS:

## ARTICLE I

### INTRODUCTORY PROVISIONS

#### **Section 1.1 Definitions.**

- A. The following terms for purposes of this lease shall have the meanings hereinafter specified:
- (a) “**Adjacent Property**” shall mean tract or tracts of land consisting of Block B-1; Block C-1; Block B-2, other than the Tenant Premises and Public Improvements; and Block C-2, other than the C-2 Parking Deck, and shown and depicted on Exhibit B hereto with the improvements erected and/or to be erected thereon.
- (b) “**Common Facilities**” shall mean (i) the north and west entranceways to the perimeter of Tenant’s Store Building, which may be enclosed; (ii) the Sky Bridge, and (iii) until dedicated to the public: the C-2 Parking Deck, the street level entranceway to Tenant’s Store Building from the C-2 Parking Deck, and the parking area directly south of Tenant’s Store Building all of which will be initially constructed by or on behalf of Landlord without cost to Tenant upon

land owned by Landlord or City or upon land subject to permanent easement or dedication for the purposes of such Common Facilities. **Common Facilities** shall also include such other improvements and facilities that Landlord and Tenant may mutually agree in writing to add as Common Facilities in the future.

- (c) “**Common Facilities Maintenance Charge**” shall mean the charge imposed on Tenant by the section of this lease captioned “Common Facilities Maintenance Charge”.
- (d) “**Condemnation**” shall mean a taking of all or part of the Tenant Premises, or any interest therein or right accruing thereto (including Tenant’s interest in this lease), in one or more proceedings by the public authorities exercising the right of condemnation or eminent domain, or one or more conveyances to any public authority which has the power of condemnation or eminent domain and has threatened to exercise such power with respect to the property or interest conveyed.
- (f) “**Downtown Westminster**” shall mean the Downtown Westminster redevelopment project located approximately to the northwest of 88<sup>th</sup> Avenue and Sheridan Boulevard in the City being developed in accordance with the Downtown Plan.
- (e) “**Floor Area**” shall mean, with respect to a building or structure, the number of square feet of floor area at each level or story (including mezzanines, basements, and floor area occupied for storage) lying within the exterior faces of exterior walls (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 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 multideck stock areas.

- (f) “**Institutional Lender**” shall mean a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a private four-year college or university, a welfare, pension or retirement fund 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 whose shares are listed on the New York Stock Exchange; provided, in each case, such entity is subject to the jurisdiction of the courts of the state where the Tenant’s Premises are located.
- (g) “**Landlord**” shall mean and include, at any given time and subject to the provisions of the section hereof captioned “Transfer of Landlord’s Interest”, Landlord herein named and each successor to or assignee of any interest of Landlord herein named under this lease.
- (h) “**Landlord’s Parcel**” shall mean that part of the Adjacent Property owned by Landlord as of the Effective Date and located outside the boundaries of Tenant’s Parcel.
- (i) “**Lease Year**” shall mean a period of time conforming to the following: The first “Lease Year” of the term of this lease shall mean the period beginning on the date of this Lease and ending 12 months after the first day of the first month following such date unless such date is the first day of a month, in which case the first Lease Year shall terminate on the date 12 months after such date, the second Lease Year of the term of this lease shall commence on the day following the last day of the first Lease. Year and end 12 months thereafter; and succeeding Lease Years during the term of this lease shall commence and end on dates corresponding to those on which the second Lease Year begins and ends.

- (j) “**Mortgage**” shall mean an 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. A Mortgage shall be deemed to include, to the extent applicable, a sale and leaseback transaction or a lease and sublease back transaction. “**Mortgagee**” means a mortgagee, beneficiary or other financing entity or lender under a Mortgage
- (k) “**Occupant**” shall mean any one entitled by ownership, lease, or other written agreement to use and occupy Floor Area within the Adjacent Property or Tenant’s Premises, including, without limitation, the parties hereto.
- (l) “**Penney**” shall mean J. C. Penney Company, Inc., a Delaware corporation, of which Tenant herein named is a wholly owned subsidiary.
- (m) “**Penney Properties**” shall mean J. C. Penney Properties, Inc. in whose name this lease has been signed.
- (n) “**Permittee**” shall mean any Occupant and its officers, directors, employees, agents, partners, contractors, customers, visitors, and invitees.
- (o) “**Public Improvements**” shall mean (i) the C-2 Parking Deck; (ii) the parking area directly south of Tenant’s Store Building, (iii) the east-west oriented alley between Blocks B-2 and C-2 to the north and Blocks B-1 and C-1 to the south, and (iv) the north-south oriented alley between Blocks B-2 and C-2, all of which will be initially constructed by the City without cost to Tenant upon land owned by the Landlord or City or upon land subject to permanent easement or dedication for the purposes of such Public Improvements. This list of Public Improvements is not exhaustive of the public improvements to be constructed in Downtown Westminster.
- (p) “**Related Corporation**” shall mean a corporation, partnership, or other business entity, which, directly or indirectly, controls, is controlled by, or is under

common control with, another corporation, partnership, or other business entity.

If more than 50 per cent of the voting stock of a corporation shall be owned by another corporation or by a partnership or other business entity, the corporation whose stock is so owned shall be deemed to be controlled by the corporation, partnership, or business entity owning such stock.

- (q) "**Successor Corporation**" shall mean a corporation or other business entity into or with which another corporation or other business entity shall be merged or consolidated or to which all or substantially all of the assets of such other corporation or other business entity shall be transferred.
- (r) "**Tenant**" shall mean and include, at any given time, subject to the provisions of paragraph B of Section hereof captioned "Subletting and Assigning by Tenant" and paragraph B of Section hereof captioned "Rights of Leasehold Mortgagees and Subtenants", Penney Properties and any person, firm, corporation or other legal entity to whom or to which Tenant's interest in this lease shall be assigned pursuant to the terms of this lease.
- (s) "**Tenant's Parcel**" shall mean the tract or tracts of land demised to Tenant hereunder as described in Exhibit A hereto, including the loading dock serving the Tenant's Store Building.
- (t) "**Tenant's Premises**" shall mean Tenant's Parcel together with Tenant's Store Building and other improvements located on Tenant's Parcel.
- (u) "**Tenant Premises Wrap Parcel**" shall mean a portion of Block B-2 as depicted on Exhibit B hereto with the improvements erected and/or to be erected thereon.
- (v) "**Tenant's Store Building**" shall mean the existing retail store building located on Tenant's Parcel at the location shown therefor on Exhibit B, as it may be repaired, replaced or re-constructed in the future within Tenant's Parcel.

- (w) “**Unavoidable Delays**” shall mean delays due to strike, lockout, or other labor or industrial disturbance (whether or not on the part of employees of either party hereto), civil disturbance, future order of any government, court or regulatory body claiming jurisdiction, war, act of the public enemy, riot, sabotage, blockade, embargo, 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 either party hereto 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 either party.
- (x) “**Existing Lease**” shall mean that certain Indenture of Lease dated as of February 13, 1986, by and between Westminster Mall Company, as Landlord’s predecessor in interest, and Tenant, concerning Tenant’s Parcel and other land and improvements, collectively described therein as the “Demised Premises”, as the same has been supplemented and amended by the following: Term Agreement dated June 18, 1993; Letter dated February 6, 2015 and Lease Amendment Agreement dated August 10, 2015.
- (y) “**WEDA**” shall mean Westminster Economic Development Authority

B. The term “**Net Retail Sales**” wherever used in this lease shall have the meaning specified in the Rent Rider hereto.

C. Each of the following additional terms shall as respects the article or section(s) of this lease referred to in the clause of this lease defining such term, or wherever used in this lease if the definition of such term is not restricted to a particular part of this lease, have the meaning specified or attributed to such term in the section (or section and paragraph thereof) set forth below opposite such term:

<u>Term</u>	<u>Section (or Section and Paragraph) Where Defined</u>
B-1/C-1 Project	6.1B
Building Envelopes	6.1A
C-2 Parking Deck	10.3A
CAM Reimbursement	4.3A
City	10.1D
Commencement Date	2.2
Development Agreement	6.1B
Downtown Plan	5.1(d)
Eligible Fee Mortgagor	9.3A(b)
Fee Mortgage	9.3A(a)
Fee Mortgagee	9.3A(c)
GID	4.3B
GID Effective Date	4.3B
Improvements	10.7
Initial Term	2.2
Leasehold Estate	9.2A(a)
Leasehold Mortgage	9.2A(c)
Leasehold Mortgagee	9.2A(d)
Notice of Discontinuance	9.1A
Off-Site Improvements	5.1(d)
Operating Covenant	8.1A
Partial Release	2.4
Period of Tenant's Tax Responsibility	5.1(e)
Prohibited Uses	6.1A
Purchase Price	9.1A
Real Estate Taxes	5.1(a)
Real Estate Taxes Applicable to Tenant's Premises	5.1(c)
Sky Bridge	10.3C
Special Assessments for Off-Site Improvements	5.1(d)
Sublease	9.2A(e)
Subleasehold Estate	9.2A(b)
Subtenant	9.2A(f)
Sum A	9.1A
Sum B	9.1A
Surrender Parcel	2.4
Surrender Payment	2.4
Temporary Parking Area	10.3
Tenant's Premises Expenditure Improvements	2.4
Title Company	2.4
Trustee	11.3C
Wrap Project	6.1B

### **Section 1.2 Interpretation.**

For purposes of interpreting provisions of this lease the following shall apply:

- (a) The words “term of this lease”, “the term hereof”, or words of like import shall be deemed to refer to the Initial Term of this lease provided for in Section 2.2 hereof captioned “Term” together with any extension or renewal thereof which shall become effective pursuant to the provisions of this lease or by reason of the exercise of an option or right granted hereunder.
- (b) Any and all notes and statements appearing on Exhibit B hereto are part of this lease. Such notes and statements shall be deemed to constitute covenants.
- (c) Words and phrases used in the singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender.
- (d) Captions throughout this lease and the index are inserted only as a matter of convenience and are not to be given any effect whatsoever in construing this lease.

### **Section 1.3 Rent Rider and Exhibits to Lease.**

Attached to this lease and hereby made a part hereof are the following, which for the purpose of identification have been initialed by the parties hereto or their attorneys:

- (a) Intentionally Omitted.
- (b) RENT RIDER - a statement of the rent which is to be paid by Tenant together with provisions pertaining to the payment of such rent.
- (c) EXHIBIT A - description of the Tenant's Parcel.
- (d) EXHIBIT B - a plot plan of the Adjacent Property and Tenant's Store Building showing the location of Tenant's Store Building, Common Facilities, and Tenant Premises Wrap Parcel to be constructed on the Adjacent Property.
- (e) Intentionally deleted.
- (f) EXHIBIT D – Sign Renderings
- (g) EXHIBIT E – Prohibited Uses

- (h) EXHIBIT F - parking and road closure designations.
- (I) EXHIBIT G - Preliminary C-2 Parking Deck Design

## ARTICLE II

### PREMISES AND TERM

#### **Section 2.1 Premises.**

For the consideration and upon and subject to the covenants, agreements, terms and conditions herein set forth, Landlord hereby demises and leases to Tenant, and Tenant hereby leases from Landlord, Tenant's Parcel for the term hereinafter stated, and Landlord hereby grants to Tenant for such term:

- (a) a non-exclusive easement, right and privilege for it and its Permittees and the Permittees of any subtenant, concessionaire or licensee of Tenant, to use without charge the Common Facilities in common with Landlord, other Occupants and their Permittees;
- (b) an exclusive easement, right and privilege to use all utility and sewer lines and installations, if any, which (i) are situated within Downtown Westminster and (ii) serve improvements on Tenant's Parcel exclusive of improvements located elsewhere within Downtown Westminster; and
- (c) such other easements, rights and privileges as may be granted to Tenant in and by this lease; reserving, however, to Landlord a non-exclusive easement, right and privilege for it and its Permittees and the Permittees of any tenant, subtenant, concessionaire or licensee of Landlord, to use the sidewalks and any other Common Facilities located within Tenant's Parcel in common with Tenant and other Occupants and their Permittees.

#### **Section 2.2 Term.**

Tenant shall have and hold Tenant's Parcel, together with any and all appurtenances belonging or appertaining thereto, and the easements, rights and privileges herein granted to Tenant, for a term

(“**Initial Term**”) commencing on the Effective Date (the “**Commencement Date**”) and continuing thereafter through and including the date fifteen (15) years from the first day of the first month immediately following such Commencement Date, unless the term of this lease is earlier terminated as hereinafter provided.

### **Section 2.3 Options to Extend.**

Tenant shall have three (3) successive options to extend the term of this lease, each for a separate additional period of five (5) years, from the date upon which such term would otherwise expire upon the same terms and conditions (including rent) as those herein specified, except as otherwise expressly provided herein. If Tenant elects to exercise any of said options, it shall do so by giving Landlord notice of such election at least twelve (12) months before the beginning of the additional period for which the term hereof is to be extended by the exercise of such option; provided, however, that if Tenant shall fail to give any such notice within such 12 month time limit, Tenant’s right to exercise its option shall nevertheless continue until 60 days after Landlord shall have given Tenant notice of Tenant’s failure to elect such option, and Tenant may exercise such option at any time until the expiration of said 60-day period, but in no event later than the last day of the then current term of the lease. It is the intention of the parties to avoid forfeiture of Tenant’s rights to extend the term of this lease under any of the options set forth in this article through inadvertent failure to give notice thereof within the time limits prescribed. If Tenant gives such notice, the term of this lease shall be automatically extended for the additional period of five (5) years covered by the option so exercised without execution of an extension or renewal.

### **Section 2.4 Delivery of Tenant’s Premises; Partial Surrender of Demised Premises.**

Landlord and Tenant acknowledge and agree that Tenant is currently in possession of Tenant’s Premises pursuant to the Existing Lease. For the avoidance of doubt, Landlord and Tenant acknowledge and agree that as of the Effective Date, the Existing Lease is amended and restated in its entirety by virtue of this lease and is superseded in its entirety by this lease. Accordingly, as of the Effective Date, Tenant hereby surrenders to Landlord that portion of the Demised Premises (as such term is used in the Existing Lease) located outside the boundaries of Tenant’s Parcel together with all improvements thereon (the

“**Surrender Parcel**”), and Landlord accepts the same in its current AS IS, WHERE IS condition, with all faults, and releases Tenant from any responsibility for the condition thereof.

As consideration for such surrender, on or before three business days after (i) Tenant signs and delivers this lease; and (ii) Tenant signs and delivers to Landlord a quit claim deed or other applicable documentation acceptable to the Title Company, in recordable form, quit claiming any interest in the Surrender Parcel; and (iii) Tenant delivers a Request for Partial Release (collectively if more than one, the “**Partial Release**”) of the Surrender Parcel from each Mortgagee whose Mortgage encumbers the Surrender Parcel; and (iv) Tenant delivers its wire instructions to Landlord, Landlord hereby agrees to deliver to Tenant the amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) (the “**Surrender Payment**”). Landlord and Tenant acknowledge that the Surrender Payment was calculated using a certain valuation of the Demised Premises; however, that valuation is for the purposes of this partial surrender provision only, and will not be binding upon the parties in any subsequent condemnation or litigation proceedings or in any subsequent appraisal valuation pursuant to the Section of this lease entitled “Subletting and Assigning by Tenant; Right of Landlord to Purchase Tenant’s Premises”. If Tenant elects upon notice to Landlord, the delivery of this lease, the quit claim deed, the Partial Release and the Surrender Payment may be delivered in escrow to First American Heritage Title Company (the “**Title Company**”). Landlord will pay the recording fee for the quit claim deed, Tenant will pay the release fees incident to the Partial Release, Landlord and Tenant will share equally any escrow fee of First American Heritage Title Company, and Landlord will pay the premium for any title insurance policy issued in connection with the Surrender Parcel.

The Surrender Payment will be forwarded to J. C. Penney Corporation, Inc., Controllers Shared Services, Building A, Floor 3, Attn: Nancy Reed, Mailstop 1318, 6501 Legacy Drive, Plano, Texas 75024 if paid by check (also, please note on check name of Shopping Center, JCPenney Store #2160 and nature of payment) or if Landlord pays by wire transfer instead of a check then Landlord shall wire the funds pursuant to wire instructions to be provided by Tenant. If such money is wire transferred then simultaneously therewith Landlord shall telephone Nancy Reed at 972-431-1346 of the placement of the

wire transfer, together with the Federal Reference Number. In the event Landlord shall not have paid Tenant such amount within the time frame set forth herein, Tenant, in addition to any other rights and remedies Tenant may have available at law or in equity, shall have the right (without risk of forfeiture) to deduct such amount plus interest thereon at the highest interest rate permitted under applicable law, from the date due until paid to, or recouped by, Tenant, from all rents and other charges then due or thereafter coming due under the Lease, and irrespective of who may own or have an interest in the Tenant's Premises at the time such deduction(s) are made.

#### **Section 2.5 Tenant's Premises Expenditure Improvements.**

Within three (3) years of the Effective Date, Tenant will expend a minimum of Three Million One Hundred Seventy Thousand Dollars (\$3,170,000.00) on improvements to the Tenant's Premises (the "**Tenant's Premises Expenditure Improvements**"), which will include the addition of a Sephora Inside JC Penney and may also include but are not limited to the following: fixtures and equipment, furnishings, finishes, and sales floor upgrades. Tenant will provide Landlord with reasonable evidence of its expenditures for the Tenant's Premises Expenditure Improvements, which evidence may consist of a certificate from Tenant's independent third party architect confirming such amount.

#### **Section 2.6 Continued Possession of Tenant.**

If Tenant continues to occupy Tenant's Premises after the last day of the term hereof and Landlord elects to accept rent thereafter, a monthly tenancy terminable by either party on not less than one month's notice shall be created, which shall be upon the same terms and conditions, including rent, as those herein specified which are in effect immediately prior to the termination of such term.

#### **Section 2.7 Title to Improvements.**

The ownership and title to Tenant's Store Building and to all other improvements erected by or for Tenant on Tenant's Parcel under the provisions of this lease and to all alterations, changes, improvements and additions to such building and improvements shall be and remain in Tenant during and throughout the term of this lease.

#### **Section 2.8 Surrender.**

Tenant shall on the last day of the term of this lease or on the date of any earlier termination of this lease pursuant to the terms hereof, quit and surrender Tenant's Parcel, Tenant's Store Building and any other building, structure, improvements, alterations, additions and building equipment which may on that day be on Tenant's Parcel (other than trade fixtures and equipment and other personal property which Tenant shall have the right to remove under the provisions of the Section hereof captioned "Alterations; Installation and Removal of Equipment"), all of which shall on that day (and not before) become the property of Landlord, free and clear of any liens or encumbrances created by Tenant.

## **ARTICLE III**

### **TITLE AND QUIET POSSESSION**

#### **Section 3.1 Covenant of Title.**

Landlord represents and warrants that:

- (a) Landlord has full right and lawful authority to enter into and perform Landlord's obligations under this lease for the full term hereof and has good and marketable title in fee simple to Tenant's Parcel, free and clear of all contracts, leases, tenancies, agreements, easements, restrictions upon use or occupancy or other restrictions, violations, Mortgages and other liens, encumbrances or exceptions to title of any nature whatsoever that would prohibit the intended exercise or use of the rights, powers, options and easements granted to Tenant as provided for in this lease. Landlord represents and warrants that the Existing Lease has not been assigned by Landlord, nor have the rentals payable under the Existing Lease been assigned. Landlord further covenants and warrants that no consents of any nature whatsoever are required for Landlord to enter into this lease or for this lease to be enforceable against Landlord or any successor Landlord.
- (b) Intentionally Deleted;

- (c) Tenant's Parcel is zoned in conformity with applicable laws in a manner whereby it may be used for the purposes of the operation of a retail department store on Tenant's Parcel;
- (d) the operation of Tenant's Store Building in accordance with the provisions of this lease will not violate any presently existing laws, ordinances, orders, rules or regulations of any governmental authority, agency or instrumentality having jurisdiction over Downtown Westminster; and
- (e) all access roads shown on Exhibit B hereto as leading from Tenant's Parcel to public streets afford legal access to the public right-of-way of such streets.

Landlord also warrants and covenants that this lease is not and shall not be subject or subordinate to any Mortgage created by Landlord.

Tenant warrants and represents that the Existing Lease has not been assigned by Tenant (other than partial assignments as permitted by this lease to licensees and concessionaires). Tenant further covenants and warrants that Tenant has full right and lawful authority to enter into this lease and to perform Tenant's obligations under this lease for its term and all extensions thereto, if any, and that no consents of any nature whatsoever are required for Tenant to enter into this lease or for this lease to be enforceable against Tenant, any successor Tenant or any Mortgagee claiming under a Mortgage created by Tenant, other than the Partial Release.

### **Section 3.2 Covenant of Quiet Enjoyment.**

Landlord further covenants that if Tenant shall discharge the obligations herein set forth to be performed by Tenant, Tenant shall have and enjoy, during the term hereof, the quiet and undisturbed possession of (i) Tenant's Parcel and all appurtenances appertaining thereto and (ii) the exclusive and non-exclusive easements, rights and privileges herein granted to Tenant with respect to the Common Facilities outside Tenant's Parcel.

## **ARTICLE IV**

### **RENT AND OTHER CHARGES**

### **Section 4.1 Rent.**

Tenant shall pay Landlord the rent provided for on the Rent Rider hereto.

### **Section 4.2 Appportionment of Annual Charges.**

If under the terms of this lease any charges other than rent shall be payable to Landlord for a first Lease Year which is longer than 365 days (or 366 days if such year includes the date “February 29”) or for any fractional Lease Year, the amount payable for such first Lease Year or fractional Lease Year shall be adjusted by multiplying the amount of the Lease Year payment by a fraction having as its numerator the number of days in such first Lease Year or fractional Lease Year and having as its denominator the number “365” (or “366” if such first Lease Year or fractional Lease Year includes the date “February 29”), and the amount so arrived at shall be the amount payable for such first Lease Year or fractional Lease Year, as the case may be.

### **Section 4.3 Common Facilities Maintenance Charge/GID.**

A. So long as Landlord shall operate and maintain the Common Facilities in accordance with the provisions of the Section hereof captioned “Maintenance of Common Facilities” and so long as Landlord shall provide the temporary parking required to be provided by Landlord prior to the completion of construction of the C-2 Parking Deck, Tenant shall reimburse Landlord for a share of the costs so incurred by Landlord during the term of this lease by paying to Landlord the sum of Nine Thousand, Two Hundred Dollars (\$9,200) per month (the “**CAM Reimbursement**”) beginning on the first day of the month following the Effective Date and continuing on the first day of each month during the term until the GID Effective Date.

B. The City of Westminster Downtown General Improvement District (the “**GID**” has been established which includes an applicable mill levy of no more than 50 mills per year attributable to the GID. Tenant agrees to participate in the GID during the term hereof at no cost to Tenant, save and except the taxes levied pursuant thereto. Tenant further agrees to sign any reasonable petition or similar legal document required to evidence its agreement to subject the Tenant’s Premises to the GID within 30 days following request by Landlord. Landlord shall provide notice to Tenant of the tax year for which the GID

taxes will become effective (the “**GID Effective Date**”). Tenant shall continue to pay the CAM Reimbursement through December 31<sup>st</sup> of the year in which the GID Effective Date occurs (and Landlord will continue to pay the operating expenses, including the GID covered operating expenses, as applicable for such period), and then on January 1 of the following year, in lieu of the CAM Reimbursement, Tenant will instead pay the property tax levy attributable to the Tenant Premises for the GID.

F. Anything herein to the contrary notwithstanding, the CAM Reimbursement amount payable by Tenant under the provisions of paragraph A for any period of time shall abate proportionally with any abatement which may occur in the fixed rent payable by Tenant hereunder with respect to such period.

#### **Section 4.4 Utility Charges.**

Tenant shall during the term of this lease pay, before the same becomes delinquent, all charges for gas, electricity, water, sewer and other utilities furnished, used or consumed in Tenant’s Store Building. Tenant shall contract for same in Tenant’s name, except at the request of Tenant, Landlord agrees to join in any application or take such other steps as may be necessary to enable Tenant to obtain utilities, but without creating any payment obligation for Landlord. Landlord shall pay before the same become delinquent all charges for gas, electricity, water, sewer and other utilities furnished, used or consumed by Landlord in the construction and installation or work, if any, required to be done by Landlord on Tenant’s Parcel pursuant to this lease, and any utilities required for the maintenance of the Common Facilities.

### **ARTICLE V**

#### **TAXES**

##### **Section 5.1 Definitions Respecting Real Estate Taxes.**

For purposes of this article in determining the amount of real estate taxes to be paid by Landlord and Tenant for any tax fiscal year as hereinafter provided, the following terms shall have the meanings hereinafter specified:

- (a) “**Real Estate Taxes**” shall mean and include all real estate taxes and all assessments for public improvements or benefits whether general or special, or ordinary or extraordinary, unforeseen as well as foreseen (except as otherwise may be provided for in this Article V) which shall be assessed or levied against or upon Tenant’s Parcel and the improvements thereon (including Tenant’s Store Building); provided, however, with respect to any assessment levied against or upon Tenant’s Parcel and the improvements thereon and which under the laws then in force may be paid in annual installments, there shall be included within the definition “real estate taxes” with respect to any tax fiscal year only the current annual installment for such tax fiscal year. The term “Real Estate Taxes” shall not include or be deemed to include any income, gross income, franchise, personal property, devolution, estate, inheritance or gift taxes which may at any time be levied or assessed against or become a lien upon Tenant’s Parcel and the improvements thereon, the property of which Tenant’s Parcel and the improvements thereon are a part or the rents payable hereunder (except as hereinafter set out). If at any time during the term any taxes are levied or assessed against Landlord on the rent payable hereunder (or on Landlord’s right to receive such rent) in substitution in whole or in part for real estate taxes, Tenant covenants to pay and discharge such tax if and to the extent it can be reasonably ascertained that there has been such a whole or partial substitution and that Tenant has been relieved thereby of the payment of all or a portion of real estate taxes, provided, however, that the amount of such tax deemed to be included in the term real estate taxes shall be determined as if the land, buildings and improvements were the only assets of Landlord and as if the rent paid hereunder were the only income of Landlord.
- (b) Intentionally Omitted.

- (c) “**Real Estate Taxes Applicable to Tenant’s Premises**” shall mean:
- (1) if the land and improvements comprising Tenant’s Premises are separately assessed, the Real Estate Taxes assessed or levied on such land and improvements; OR
  - (2) if Tenant’s Premises are not separately assessed, the aggregate Real Estate Taxes assessed or levied on the all of the land comprising the tax parcel which includes Tenant’s Premises, multiplied by a fraction, the numerator of which shall be the average number of square feet of land area in Tenant’s Parcel during such year and the denominator of which shall be the average number of square feet of land area during such year in all of the land comprising the tax parcel which includes Tenant’s Premises; together with the aggregate Real Estate Taxes assessed or levied on all of the improvements located on the tax parcel which includes Tenant’s Premises, multiplied by a fraction, the numerator of which shall be the average number of Square Feet of improvements on Tenant’s Parcel during such year and the denominator of which shall be the average number of Square Feet of improvements located on all of the land comprising the tax parcel which includes Tenant’s Premises;
- (d) “**Special Assessments for Off-Site Improvements**” shall mean any special assessment which may be levied against Tenant’s Premises or against any of the property in Downtown Westminster and 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 any development of Downtown Westminster in connection

with the Downtown Specific Plan dated November 24, 2014, and adopted by the City of Westminster, Colorado (the “**Downtown Plan**”) (such improvements, “**Off Site Improvements**”) and as further amended on September 28, 2015. The GID taxes are not included in the definition of Special Assessments for Off-Site Improvements.

- (e) “**Period of Tenant’s Tax Responsibility**” shall mean the term of this lease.
- (f) Intentionally Deleted.

#### **Section 5.2 Taxes on Tenant’s Premises.**

A. Landlord agrees to cause Tenant’s Premises to be separately assessed and Tenant agrees to cooperate in such endeavor, including joining in any application which will effect such separate assessment of Tenant’s Premises. Except as aforesaid Landlord further agrees that Landlord will not make any application to the taxing authorities which, if granted, would change the manner in which Tenant’s Premises is being or will be assessed or which would have the effect of increasing the assessed valuation of Tenant’s Premises without first giving Tenant 30 days advance notice of Landlord’s intention to make such application and an opportunity to join in or oppose such application and participate in any hearings or conferences preliminary thereto or in connection therewith.

If Tenant’s Premises are separately assessed, Landlord shall pay or cause to be paid

- (a) all Real Estate Taxes Applicable to Tenant’s Premises for any tax fiscal year ending prior to the date of commencement of the Period of Tenant’s Tax Responsibility,
- (b) in respect to any tax fiscal year occurring partially within and partially outside the Period of Tenant’s Tax Responsibility a pro rata share of the Real Estate Taxes Applicable to Tenant’s Premises allocable to the portion of such tax fiscal year occurring outside said period,
- (c) all Special Assessments for Off-Site Improvements.

Tenant in the event of such separate assessment shall pay or cause to be paid

- (e) all Real Estate Taxes Applicable to Tenant's Premises for any tax fiscal year occurring wholly within the Period of Tenant's Tax Responsibility, and
- (f) in respect to any tax fiscal year occurring partially within and partially outside the Period of Tenant's Tax Responsibility a pro rata share of the Real Estate Taxes Applicable to Tenant's Premises allocable to the portion of such tax fiscal year occurring within said period, excluding in each case, however, any Special Assessments for Off-Site Improvements.

B. Each party shall deliver to the other a copy or copies of a received tax bill or bills showing payment of the Real Estate Taxes for the tax fiscal year last past which such party is required to pay and discharge under the provisions of this paragraph B within 30 days after the other party shall have requested the same or within 30 days after the last day upon which such tax is due and payable without penalty, whichever is the later date.

Anything herein to the contrary notwithstanding, if either party hereto in good faith shall desire to contest the validity or amount of any Real Estate Taxes herein agreed to be paid by such party and shall notify the other party hereto in writing of such party's intention to contest the same, such party shall not (unless applicable law shall require payment as a condition precedent to the contest) be required to pay, discharge or remove such Real Estate Taxes so long as such party shall, in good faith, at such party's own expense, contest the same or the validity thereof by appropriate proceedings. Such proceedings may be brought by Tenant in the name of Landlord if necessary (for which purposes Landlord hereby appoints Tenant as its attorney-in-fact), and pending such proceedings Landlord shall not have the right to pay, remove or discharge any such Real Estate Taxes thereby contested, and such delay by Tenant in paying the same until final determination of such disputed matter shall not be deemed a default in the conditions of this lease, provided Tenant shall at all times effectually stay or prevent any official or judicial sale of said property for such non-payment under execution or otherwise and pay any final judgment enforcing the Real Estate Taxes so contested and thereafter promptly furnish Landlord evidence of satisfaction of such judgment.

C. If for all or any part of the term of this lease Tenant's Premises are not separately assessed but are included within an assessment of all or part of Downtown Westminster, Landlord will within 30 days after the assessed valuations of the land and improvements included within such assessment shall be available for public inspection furnish Tenant a statement setting forth the amounts of such assessments and describing the land and improvements with respect to which such assessments have been made, and Landlord will pay or cause to be paid all real estate taxes so assessed.

Tenant shall in such case reimburse Landlord for

- (a) any Real Estate Taxes Applicable to Tenant's Premises so paid by Landlord for any tax fiscal year occurring wholly within the Period of Tenant's Tax Responsibility, and
- (b) a pro rata share of any Real Estate Taxes Applicable to Tenant's Premises so paid by Landlord for each tax fiscal year occurring partially within the Period of Tenant's Tax Responsibility,

excluding in each case, however, Special Assessments for Off-Site Improvements (which shall be borne by Landlord); provided, however, that if Landlord for any tax fiscal year shall fail to furnish Tenant within such 30-day period the aforesaid statement of assessed valuations the amount of Real Estate Taxes Applicable to Tenant's Premises for such tax fiscal year for which Tenant shall be required to reimburse Landlord shall be limited to the amount of the Taxes Applicable to Tenant's Premises for the preceding tax fiscal year (excluding any Special Assessments for Off-Site Improvements). As soon as reasonably possible after Landlord shall have made a tax payment for which Landlord is to be reimbursed in part by Tenant under the provisions of this paragraph C, Landlord shall submit to Tenant a statement setting forth the amount of such tax payment and the share thereof which Landlord seeks to recover from Tenant and showing in reasonable detail how Landlord has arrived at the amount for which reimbursement is sought. With each such statement Landlord shall submit to Tenant a copy or copies of a receipted tax bill or bills showing payment of the Real Estate Taxes with respect to which such statement is being rendered.

Payment by Tenant of the amount due Landlord for Tenant's share of such tax payment shall be made within 60 days after Tenant shall have received such documents from Landlord.

### **Section 5.3 Tenant's Right to Contest.**

Tenant shall, upon notice to Landlord, have the right either (i) to contest itself on behalf of Landlord any and all Real Estate Taxes assessed with respect to the Tenant Premises or (ii) to require Landlord to contest the amount of such Real Estate Taxes. Landlord agrees to cooperate in any such contest which may be undertaken by Tenant and to initiate such a contest if required to do so by Tenant and diligently prosecute the same. Any such proceedings, whether brought by Tenant or Landlord, shall be undertaken at the cost and expense of Tenant and by counsel selected by Tenant, and if Tenant deems it appropriate such measures shall be taken in the name of Tenant. If the result of any such contest shall be a reduction in the amount of the Real Estate Taxes so contested, each refund or recovery from the taxing authorities with respect to such Real Estate Taxes shall belong to Tenant unless Landlord shall promptly after receiving notice from Tenant of such refund or recovery reimburse Tenant for its proportionate share of all costs and expenses incurred by Tenant in such proceedings, in which case the refund or recovery shall be divided between Landlord and Tenant in such manner as will result in each of them having paid only such party's proportionate share of the contested taxes as so reduced.

If Landlord shall contest the amount of such Real Estate Taxes without participation by Tenant in the cost and expenses of such proceedings, each refund or recovery arising therefrom shall belong to Landlord unless Tenant shall promptly after receiving notice from Landlord of such refund or recovery reimburse Landlord for its proportionate share of all costs and expenses incurred by Landlord in such proceedings, in which case the refund or recovery shall be divided between Landlord and Tenant in such manner as will result in each of them having paid only such party's proportionate share of the contested taxes as so reduced.

Landlord shall not, without the prior approval of Tenant, make, enter into, or agree to any settlement, compromise or other disposition of any contest, or discontinue or withdraw from any contest,

or accept any refund, adjustment or credit with respect to any Real Estate Taxes which Tenant shall have contested or required Landlord to contest.

Each party's proportionate share of the costs and expenses incurred in such proceedings shall be determined by multiplying such costs and expenses by a fraction having as its numerator such party's proportionate share of the contested taxes as reduced by reason of such proceedings and as its denominator the entire amount of such taxes as so reduced.

Any dispute arising under this section, if not resolved by the parties hereto within 30 days after either party shall have notified the other of the existence of such dispute, setting forth the nature of the dispute in reasonable detail, shall be determined by arbitration in accordance with the provisions of the Section hereof captioned "Arbitration".

#### **Section 5.4 Creation of Special Assessment District.**

If at any time during the term of this lease any governmental subdivision shall undertake to create an improvement or special assessment district, the proposed boundaries of which shall include any portion of Tenant's Parcel, Tenant shall be entitled to appear in any proceeding relating thereto and to exercise all rights of Landlord to have Tenant's Parcel excluded from the proposed improvement or assessment district and to determine the degree of benefit to Tenant's Parcel resulting therefrom; provided, however, that nothing herein shall prevent Landlord from taking a different position than Tenant with respect to any part of Downtown Westminster which lies outside Tenant's Parcel. Landlord shall promptly advise Tenant of the receipt of any notice or other information relating to the proposed creation of any such improvement or special assessment district the boundaries of which include any portion of Tenant's Parcel. If any Real Estate Taxes imposed on Tenant's Parcel to finance any improvement made or proposed by any such district shall be payable in installments over a period of time extending beyond the term of this lease, Tenant shall only be required to pay such installments thereof as shall become due and payable during the term of this lease. This section 5.4 shall not apply to the GID.

## **ARTICLE VI**

## CONSTRUCTION OF FUTURE IMPROVEMENTS

### **Section 6.1 Plans for Future Construction.**

A. Following the initial construction of the Common Facilities by or on behalf of Landlord, unless made in accordance with final plans and specifications theretofore submitted and approved in accordance with the provisions of this section, (i) Tenant shall not make any substantial alterations or additions to the Common Facilities on Tenant's Parcel, and prior to the date on which Landlord conveys the Common Facilities to the City, Landlord agrees that no substantial alterations or additions shall be made to the Common Facilities outside of Tenant's Parcel, unless the plans and specifications for such construction shall have been submitted to and approved by Landlord in the case of alterations and additions to be made on Tenant's Parcel and by Tenant in the case of alterations and additions to be made elsewhere within the Common Facilities, such approval in each case not to be unreasonably conditioned, withheld or delayed, and (ii) Landlord further agrees that, except for buildings or improvements shown on Exhibit B attached hereto, no buildings or improvements will be constructed on that part of the Adjacent Property located outside the boundaries of Tenant's Parcel, and no building or improvements within any such part of the Tenant Premises Wrap Parcel shall have its exterior substantially altered or be expanded, or, if damaged be rebuilt or restored (other than a rebuilding or restoration substantially in accordance with the Site Plan) unless the final plans and specifications for such construction shall have been submitted to Tenant for approval, which approval shall not be unreasonably withheld or delayed. The C-2 Parking Deck will be constructed by Landlord in substantial conformance with the design depicted in Exhibit G; Landlord and Tenant will work diligently to agree upon the location of the elevator shafts and Sky Bridge attachment from the C-2 Parking Deck to the Tenant's Store Building.

Notwithstanding the foregoing, Tenant's approval shall not be required for (i) the initial construction of the Common Facilities and Public Improvements, or (ii) buildings and other structural improvements constructed, rebuilt, restored, or renovated in those areas identified on Exhibit B attached hereto as "**Building Envelopes**", provided that any such buildings and structural improvements conform to the Development Agreement applicable thereto (as defined below) and are used only for uses which

comply with the Downtown Plan and will not be used for uses included on the Prohibited Uses list attached hereto as Exhibit E (the “**Prohibited Uses**”).

B. Landlord intends to enter into development agreements (each a “**Development Agreement**”) for the construction of a mixed use project on Blocks B-1 and C-1 (the “**B-1/C-1 Project**”) and for the construction of a mixed use project on the Tenant Premises Wrap Parcel (the “**Wrap Project**”) following the execution of this lease by Landlord and Tenant. Construction on the B-1/C-1 Project or the Wrap Project shall not commence before January 2, 2017. Each Development Agreement will be promptly recorded in the real estate records of Jefferson County and will include provisions requiring construction of the contemplated improvements and remedies in the event the contemplated improvements are not timely constructed in accordance with plans approved by Landlord. Landlord agrees to regularly advise Tenant regarding the planning for the B-1/C-1 Project and the Wrap Project and to provide a draft of the Development Agreement to Tenant in a timely fashion prior to submission of the Development Agreement to the WEDA Board of Directors for approval. The provision of a draft of the Development Agreements to Tenant shall be for informational purposes only. The controlling documentation and implementation for the Wrap Project will be subject to Tenant’s prior written approval as to all material elements save and except financial terms (which may be redacted), including but not limited to design and plans for construction, schedule of construction, staging areas, signage, and other similar concepts, which approval will not be unreasonably withheld, conditioned or delayed.

#### **Section 6.2 Attachment to Tenant’s Store Building.**

No building or structure will be attached to Tenant’s Store Building save and except the Sky Bridge, as defined below. Plans and specifications for such Sky Bridge must be submitted to Tenant for review and approval (such approval not to be unreasonably withheld, conditioned or delayed) as to structural integrity, watertight construction, life safety issues, legal and regulatory compliance, and other technical aspects which could affect Tenant’s Store Building.

Landlord will not permit or suffer any improvements constructed near or adjacent to Tenant’s Store Building which block or impede access and egress to and from Tenant’s loading dock serving the

Tenant's Store Building, Tenant's customer entrances or Tenant's employee entrances on Westminster Boulevard or the on North side of the Tenant's Store Building.

Any modifications which are required to the emergency exits for the Tenant's Store Building which are required as a result of improvements constructed near or adjacent to the Tenant's Store Building will be performed by Landlord at its sole cost and expense and will occupy space outside of the Tenant's Store Building, so as not to impede the Floor Area of Tenant's Store Building.

#### **Section 6.3 On-Site Improvements.**

A. Each party shall at all times take or cause to be taken any and all safety measures reasonably required to protect all other Occupants and Permittees from injury or damage caused by or resulting from the performance of the construction work for which it is responsible in or about the Tenant's Parcel, the Common Facilities, and Adjacent Property. The party responsible for such construction shall erect or cause to be erected adequate and attractively painted construction barricades at least eight feet in height substantially enclosing the area of such construction, such barricades to remain in place until such construction shall have been substantially completed (to the extent necessary to remove any such hazardous condition).

B. Landlord will upon request by Tenant execute or join in the execution of any application to any governmental authority having appropriate jurisdiction thereover for building and other permits, licenses and approvals as may be needed, or which Tenant deems it advisable to obtain, in connection with any work which Tenant is authorized or permitted to perform under the provisions of this lease provided the same shall be without cost or expense to Landlord, and Landlord hereby constitutes and appoints Tenant as Landlord's true and lawful attorney-in-fact in Landlord's name to apply for and secure any such permit, license or approval if Landlord shall fail or refuse to execute or join in the execution of such application promptly upon request of Tenant.

#### **Section 6.4 Construction on Block B-2.**

In the event Landlord or any tenant, permittee, or assignee thereof undertakes construction of improvements on the Tenant Premises Wrap Parcel abutting Tenant's Parcel, Landlord shall inform

Tenant of such proposed construction and regularly (at least monthly) consult with Tenant during the planning for such improvements to insure safety and operational compatibility with Tenant's Premises. Prior to any commencement of such construction, Landlord shall submit final construction drawings for any such improvements on the Tenant Premises Wrap Parcel in a timely manner to Tenant for review and approval as to such safety and operational compatibility issues, which approval will not be unreasonably withheld or delayed. Any such construction will be conducted in a manner to cause the least interference with Tenant's retail operations conducted on the Tenant's Premises.

**Section 6.5 Grant of Construction Easements.**

A. Subject to the provisions of this paragraph, Landlord hereby grants to Tenant an easement to install and maintain at all times during the term of this lease as part of Tenant's Store Building, and Landlord hereby reserves to Landlord an easement to install and maintain at all times during the term of this lease as part of the improvements constructed outside Tenant's Parcel, footings and underground supports and covered entrances, walkways, marquees, canopies, awnings and other overhangs and projections extending beyond the boundary line between Tenant's Parcel and the Tenant Premises Wrap Parcel and Tenant's Parcel and the Common Facilities. The location and extent of all such easements granted by Landlord except for those shown on Exhibit B hereto shall be subject to Landlord's reasonable approval as hereinafter provided, and the location and extent of all such easements reserved by Landlord except for those shown on said exhibit or plan shall be subject to the reasonable approval of Tenant as hereinafter provided. Either party hereto may submit to the other plans and specifications of the improvements with respect to which encroachments of the foregoing types are planned and which show such encroachments together with a specific request for approval of the location and extent of the encroachments so shown. The granting of such approval by Landlord or Tenant shall constitute a designation by such party of the land which is to be subject to the easement permitting such encroachments. Any such approval required hereunder shall not be unreasonably conditioned, withheld or delayed provided that the granting or reserving of the easement in question does not result in a

significant increase in the cost of constructing buildings on the land comprising the servient tenement within areas shown on Exhibit B hereto as being reserved for the construction or expansion of buildings.

B. During any period of construction, alteration, expansion, repair or reconstruction of buildings or improvements on that part of the Tenant Premises Wrap Parcel or Common Facilities which lies outside Tenant's Parcel, as permitted or required by this lease, Tenant will grant Landlord or its designee a temporary license allowing the grantee and its architects, contractors, subcontractors, materialmen and others engaged in the project to use such portion or portions of Tenant's Parcel as may reasonably be needed for the purpose of performing such work, but only (i) at reasonable times, (ii) for the period of performance of the construction, (iii) in accordance with and subject to good construction practice, and (iv) so as not to interfere with the construction or operation of any building on Tenant's Parcel or the operation of any business being conducted thereon except to the extent absolutely necessary. During any period of construction, alteration, expansion, repair, or reconstruction of any building or other improvement on Tenant's Parcel, Landlord will grant on property owned by Landlord or use commercially reasonable efforts to cause to be granted to Tenant a temporary license allowing it and its architects, contractors, subcontractors, materialmen and others engaged in the project to use such portion or portions of the Tenant Premises Wrap Parcel or Common Facilities situated outside Tenant's Parcel as may reasonably be needed for the purpose of performing such work, but only (i) at reasonable times, (ii) for the period of performance of the construction, (iii) in accordance with and subject to good construction practice, and (iv) so as not to interfere with the construction or operation of any buildings on such portion or portions of the Tenant Premises Wrap Parcel or Common Facilities or the operation of any business being conducted thereon except to the extent absolutely necessary.

C. Each of the parties hereto and anyone else while engaged in constructing any building or other improvement within the Tenant's Parcel, Tenant Premises Wrap Parcel or Common Facilities permitted or required by the terms of this lease shall have the right during such construction, and during any total or partial reconstruction of such building or improvement or permitted expansion thereof, to use all necessary or appropriate means of access, ingress and egress to and from the site of said improvement

over and across any part of the Tenant's Premises, Tenant Premises Wrap Parcel and Common Facilities not occupied by building structures, but such use shall not unreasonably interfere with the performance of other construction work being lawfully undertaken within the Tenant's Premises, Tenant Premises Wrap Parcel or Common Facilities or with the orderly flow of traffic or access to any building thereon; provided, however, that parking areas (but not roadways) which shall have received a finishing layer of paving shall not be used for such purpose.

**Section 6.6 Intentionally Omitted.**

**Section 6.7 Intentionally Omitted.**

**Section 6.8 Certification of Floor Area.**

A. Promptly following the close of each Lease Year, Tenant shall furnish Landlord, if there shall have been any change during such year in the Floor Area of the improvements on Tenant's Parcel, a new certificate of Tenant's architect containing current Floor Area figures, as applicable. If Tenant's Parcel is included in any tax schedule with other property, then promptly following the close of each Lease Year, Landlord shall furnish Tenant, if there shall have been any change during such year in the Floor Area of the improvements on such property included with Tenant's Parcel on a tax schedule, a new certificate of such Landlord's architect containing current Floor Area figures.

B. If the party receiving such certification shall dispute any of the information thereon, such party shall endeavor through consultation with the other party hereunder to resolve the matter or matters in dispute and if they are unable to do so the unresolved matter or matters shall be settled by arbitration in accordance with the provisions, of the Section hereof captioned "Arbitration".

**ARTICLE VII**

**COVENANTS OF LANDLORD**

**Section 7.1 Intentionally Omitted.**

**Section 7.2 Landlord's Covenants.**

Landlord covenants with Tenant that during the term of this lease, Tenant's officers, directors, employees, agents, partners, contractors, customers, visitors, and invitees shall have vehicular and pedestrian access to each of Westminster Boulevard and Eaton Street at all times during the term of this lease except during periods of temporary road or utility maintenance and repair (in which case one of Westminster Boulevard or Eaton Street will remain open from 88<sup>th</sup> Avenue to 89<sup>th</sup> Avenue at all times), so long as other access reasonably acceptable to Tenant is available to Tenant. Tenant shall have access to its dock from Westminster Boulevard at all times, except during periods of emergency road or utility maintenance and repair.

Landlord also covenants with Tenant that Landlord will use commercially reasonable efforts to enforce the terms of the Development Agreement(s) affecting the Adjacent Property.

## **ARTICLE VIII**

### **USE OF TENANT'S PREMISES**

#### **Section 8.1 Operating Covenant of Tenant.**

A. Tenant covenants and agrees that it will for a period expiring on the earlier to occur of: (x) the completion by Tenant of the Tenant's Premises Expenditure Improvements and the opening of a Sephora Inside JC Penney in the Tenant's Premises and (y) ten (10) years after the Effective Date, continually operate or cause to be continually operated in the Tenant's Store Building a retail department store under a name consisting of, or in which there appears, the word "Penney" or "JCPenney" or under the name under which a majority of Penney's retail department stores are then being operated (the "Operating Covenant").

B. Anything herein to the contrary notwithstanding, the Operating Covenant may be terminated by Tenant on 30 days prior written notice to Landlord if the signage required on 88<sup>th</sup> Street at Westminster Boulevard and Eaton Street (the same signage described in Section 10.5C(i)) or customer access is not provided or maintained by Landlord, unless Landlord cures any failure to maintain such signage or access during the 30 day period following Tenant's notice to Landlord.

C. A temporary cessation of business by Tenant or by any tenant shall not be deemed a cessation of business for purposes of this article if such cessation: (1) 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 (2) is caused by Unavoidable Delay.

D. It is not intended that the foregoing operating covenant of Tenant should in any way serve to regulate the manner or hours of operation of business in the premises occupied by Tenant, nor prohibit Tenant from leasing or subleasing portions of the Tenant's Premises, licensing departments or granting concessions to other parties.

### **Section 8.2 Use of Premises.**

Tenant's Premises shall not, during the term of this lease, be used for any unlawful purpose or for any Prohibited Use.

## **ARTICLE IX**

### **SUBLEASES, ASSIGNMENTS AND MORTGAGES**

#### **Section 9.1 Subletting and Assigning by Tenant; Right of Landlord to Purchase**

##### **Tenant's Premises.**

A. Following the expiration or earlier termination of the Operating Covenant, Tenant shall have:

- (a) the right to discontinue the use of Tenant's Premises for the operation of a retail store business conducted by Penney at any time; and
- (b) the right at any time and from time to time during the term hereof to assign this lease or sublet Tenant's Premises or any part thereof.

The right described in item (a) above and the right described in item (b) above are and shall be separate and independent rights, and either of said rights may be exercised by Tenant whether or not it exercises the other of said rights, subject to the terms of this Section.

At any time that Tenant elects to discontinue the use of Tenant's Premises for the operation of a retail store business conducted by Penney (for reasons other than a casualty or Condemnation (in which

case the applicable provisions of the Lease shall apply), an Unavoidable Delay for the length of the Unavoidable Delay, or for a temporary cessation of business not to exceed 180 days), or in the event an assignee or subtenant vacates Tenant's Premises, Tenant, assignee or subtenant, as applicable, will give Landlord prior written notice of such discontinuance (the "**Notice of Discontinuance**"), and Landlord will have the right, exercisable by written notice to Tenant within one hundred twenty (120) days of the date of such Notice of Discontinuance to purchase the Leasehold Estate ("**Notice to Repurchase**") for a purchase price (the "**Purchase Price**") (defined below) of the Leasehold Estate. If, after the issuance of a Notice of Discontinuance, Tenant presents Landlord with a signed letter of interest from a prospective subtenant or assignee, such one hundred twenty day period will be reduced to ninety days. In order to evidence Tenant's delivery of a Notice of Discontinuance, Landlord may record it in the real estate records of Jefferson County, Colorado at any time after Landlord notifies Tenant that Landlord is exercising its rights to purchase the Leasehold Estate.

In the event Tenant seeks to assign this lease or sublet Tenant's Premises or any part thereof other than as permitted in Section 9.1C below, Tenant will give Landlord prior written notice of such assignment (the "**Notice of Assignment**"), and Landlord will have the one-time right for each Notice of Assignment, exercisable by written notice to Tenant within ninety (90) days of the date of the Notice of Assignment, to give notice of its intent to purchase the Leasehold Estate (also a "**Notice to Repurchase**") for the Purchase Price of the Leasehold Estate.

The right of the Landlord to purchase the Leasehold Estate upon each Notice of Discontinuance and each Notice of Assignment shall be a one-time right only, and if Landlord shall not exercise its right to purchase within the period of time specified herein following each Notice of Discontinuance, Landlord shall have no further or subsequent right to purchase the Leasehold Estate, Landlord shall waive and release any option to purchase the Leasehold Estate reserved or granted in this Section 9.1 for each assignment, and at the request of Tenant, shall execute a written release in recordable form evidencing such fact, and Tenant may proceed with its proposed assignment or subletting.

In addition, the rights granted Landlord to purchase the Leasehold Estate pursuant to the provisions of this Section shall be and are hereby subordinated to the lien of any Financing Sublease or Leasehold Mortgage that may be placed and recorded by Tenant against the Leasehold Estate (including, but not by way of limitation, any blanket Mortgage which may cover any other property or properties of the Tenant, whether owned in fee or as a leasehold) to the end that (a) a purchaser or purchasers in any foreclosure proceedings commenced prior to the date on which Tenant delivers a Notice of Discontinuance to Landlord, or (b) a purchaser or purchasers pursuant to any exercise of power of sale commenced prior to the date on which Tenant delivers a Notice of Discontinuance to Landlord, or (c) any grantee under a deed in lieu of foreclosure which is recorded in the real estate records of Jefferson County, Colorado prior to the date on which a Notice of Discontinuance is delivered to Landlord, or (d) any person or entity that may acquire possession of the Leasehold Estate prior to the date on which Tenant delivers a Notice of Discontinuance to Landlord by reason of the Tenant's failure to comply with the terms of a Financing Sublease, and all successors to or through any such purchaser or purchasers, or to or through any such grantee, person or entity shall take free and clear of any rights granted to Landlord pursuant to the provisions of this Article. Landlord agrees to execute and deliver to Tenant, upon request therefor, such instruments, in recordable form, as shall at any time and from time to time be reasonably required in order to confirm or effect any such subordination as referred to herein.

**“Purchase Price”** shall mean, as of the Effective Date, \$3,830,000.00 (Three Million Eight Hundred Thirty Thousand and no/100 Dollars), such amount to be adjusted (i) upward with the then-current Consumer Price Index published by the US Bureau of Labor Statistics, and (ii) decreased by 3.33% for expired each Lease Year (such that, in Lease Year 29, such amount would be decreased by 96.67%). The formula for such calcuation will be: Purchase Price = \$3,830,000.00 x (30 – y)/30 x CPI adjustment; where y is equal to the number of years which have expired after the Effective Date.

Within ten business days after Landlord's election to purchase the Leasehold Estate, Landlord will open a closing escrow with the Title Company. The provisions of this Section 9.1 shall constitute the purchase and sale agreement between the parties with Tenant being deemed the seller and Landlord being

deemed the buyer. Landlord is hereby authorized to deliver a copy of this lease to the Title Company. On or before thirty days after the opening of the closing escrow, Tenant agrees (i) to deliver into escrow a good and sufficient Quit Claim Deed duly executed and acknowledged conveying Tenant's interest in the Leasehold Estate to Landlord or Landlord's nominee; and (ii) to deliver into escrow duly executed state and federal statutory closing documents required and prepared by the Title Company such as a FIRPTA Certificate, Information with Respect to a Coveyance of Property and DR 1083; and (iii) to cause to be delivered into escrow for each Mortgage created by Tenant and encumbering all or any portion of the Leasehold Estate (aa) a payoff letter from the Mortgagee as may be required by the Title Company; and (bb) a Request for Release on the indemnity form, if the Mortgagee is qualified, or a Request for Release together with the original instrument of indebtedness and original or certified copy of the deed of trust or mortgage if the Mortgagee is not qualified to use the indemnity form, together with all release fees payable to the public trustee; and (iv) to deliver into escrow a duly executed counterpart of a Termination Agreement in form and substance satisfactory to counsel for Tenant and Landlord whereby this lease will be terminated and Landlord and Tenant shall be relieved of all obligations thereunder arising on or after such termination date; and (v) to deliver into escrow a duly executed counterpart of the standard form of escrow instructions and settlement statement prepared and supplied by the Title Company escrow officer; provided, however, in the event of a conflict in the escrow instructions and the terms of this Section of the lease, the terms of this Section of the lease shall control; and (vi) to deliver to the Title Company escrow officer its wire instructions for payment of the Purchase Price.

On or before thirty days after the opening of the closing escrow, Landlord hereby agrees to deliver into escrow a duly executed counterpart of the Termination Agreement; a duly executed counterpart of the standard form of escrow instructions supplied by the escrow title officer; the Purchase Price subject to credit on account of prorations in Good Funds under Colorado law; the Title Company closing escrow fee; a Colorado Real Estate Transfer Declaration and any other state and federal statutory closing documents required and prepared by the Title Company; the premium for an owner's title insurance policy; and the fees for any tax certificate and recording fees for the Quit Claim Deed and

Termination Agreement. Upon receipt of all of the foregoing, the title officer at First American Heritage Title Company is hereby directed to record the Quit Claim Deed and Termination Agreement and to pay the Purchase Price and refund of any prepayment of rent, first as directed by any Mortgagee's payoff letter, with any remainder to Tenant. If the Purchase Price is insufficient to fully pay all amounts due under the Mortgage(s) created by Tenant encumbering the Leasehold Estate or recorded liens encumbering the Leasehold Estate created by Tenant or parties claiming under Tenant, then Tenant agrees to deposit any shortfall in Good Funds into the closing escrow within three business days after request by the title escrow officer. There will be no closing prorations other than Real Estate Taxes for Leasehold Estate, rent, and water and sewer utility charges. Any credit to Landlord for Real Estate Taxes for Leasehold Estate or rent due from Tenant or unpaid water and sewer utility charges shall reduce the Purchase Price. Any prepayment of rent or water and sewer utility charges by Tenant will be repaid by Landlord to Tenant as part of the escrow closing. The closing prorations shall be as of the date of the opening of the closing escrow. Tenant acknowledges that Landlord does not hold a security deposit. Landlord acknowledges that Tenant has not agreed to make any indemnities to the Title Company in order to issue extended title coverage. Tenant acknowledges that Landlord will not be assuming any construction contracts, service contracts, maintenance and repair contracts or contracts with concessionaires or other licensees under Section 9.1C(a) related to the Leasehold Estate or its operation and entered into by Tenant or parties claiming under Tenant; Tenant will be obligated to terminate all such contracts and to pay all amounts due under such contracts. Landlord will pay any transfer taxes in connection with the conveyance. Each party will pay its own attorney's fees arising out of the transaction. Any default by a party under this Section 9.1 shall be deemed a default under this lease.

B. If this lease is assigned or the whole or any part of Tenant's Premises is sublet and if, following delivery of a Notice of Discontinuance, Landlord has not exercised its option to purchase the Tenant's Leasehold Estate as set out in paragraph A above, Penney Properties, then the Tenant herein named, shall remain liable and responsible under this lease; provided, however, that

- (a) if this lease is assigned to Penney or to a Successor Corporation of Penney (or if this lease, having been assigned to Penney, is thereafter assigned by Penney to a Successor Corporation of Penney) and Penney or such Successor Corporation of Penney, as the case may be, by written instrument duly executed, acknowledged and delivered to Landlord, assumes and covenants and agrees with Landlord to pay the rent to be paid by Tenant hereunder and to carry out and perform all the terms, covenants and conditions of this lease which by the terms hereof are to be carried out and performed by Tenant, then and in such case Penney Properties (and Penney if Penney shall have acquired this lease by assignment and thereafter assigned it to a Successor Corporation of Penney which shall have duly executed, acknowledged and delivered such an instrument to Landlord) shall be released and relieved of and from all further liability under this lease; and
- (b) if this lease shall continue in effect after the last day of the Initial Term hereof and an assignee of Tenant's interest herein by written instrument duly executed, acknowledged and delivered to Landlord shall assume, or shall have assumed, the performance of the covenants and obligations of Tenant hereunder, including but not limited to payment of the rent, then and in such case Penney Properties (and Penney if Penney shall have acquired this lease by assignment and thereafter assigned it to a third party who shall have duly executed, acknowledged and delivered such an instrument to Landlord) shall be released and relieved of and from all further liability arising or accruing under this lease in respect of any period after the last day of such Initial Term or the date of delivery to Landlord of such written instrument, whichever shall be the later date.

C. Anything in this lease to the contrary notwithstanding, it is expressly understood and agreed as follows:

- (a) at any time during the term of this lease Tenant may lease or license departments or grant concessions giving other persons, firms, or corporations the right to sell goods, wares, merchandise and services in Tenant's Premises which is otherwise being operated as a retail department store under a name consisting of, or in which there appears, the word "Penney" or "JCPenney" or under the name under which a majority of Penney's retail department stores in the Denver, Colorado market are then being operated, it being understood that such leasing or licensing of departments or granting of concessions shall not be considered a subletting within the provisions of this lease;
- (b) at any time during the term of this lease following the expiration or earlier termination of the Operating Covenant, or at any time during the term of this lease if Tenant shall continue to operate in Tenant's Store Building a retail department store under a name consisting of, or in which there appears, the word "Penney" or "JCPenney" or under the name under which a majority of Penney's retail department stores are then being operated, Tenant shall have the right to assign this lease or sublet all of Tenant's Premises to a Related Corporation of Penney Properties or to a Successor Corporation of Penney Properties or of Penney, it being agreed that the rent payable by any such corporation shall be the same as if Penney were operating a retail store in Tenant's Premises. Any assignment under this subsection (b) does not terminate Landlord's right to purchase the Leasehold Estate in the event of a future assignment of this lease or in the event of a future discontinuance of the operation of a retail department store in Tenant's Store Building under a name consisting of, or in which there appears, the word "Penney" or "JCPenney" or under the name under which a majority of Penney's retail department stores are then being operated.
- (c) Intentionally Deleted.

## **Section 9.2 Rights of Leasehold Mortgagees and Subtenants.**

A. For the purpose of and as used in this article the following terms shall have the meanings hereinafter specified:

- (a) “**Leasehold Estate**” shall mean Tenant’s estate and right, title and interest in and to Tenant’s Premises during the term of this lease, including options to extend the term of this lease.
- (b) “**Subleasehold Estate**” shall mean an estate in Tenant’s Premises created by a Financing Sublease as hereinafter defined.
- (c) “**Leasehold Mortgage**” shall mean a mortgage or deed of trust granted to or for the benefit of an Institutional Lender constituting a lien on or security interest in Tenant’s Leasehold Estate or a lien on or security interest in a Subleasehold Estate.
- (d) “**Leasehold Mortgagee**” shall mean the mortgagee under or holder of a Leasehold Mortgage.
- (e) “**Financing Sublease**” shall mean a demise and letting by Tenant to an Institutional Lender of all of Tenant’s Premises for the purpose of securing a debt, entered into following the expiration or earlier termination of the Operating Covenant.
- (f) “**Subtenant**” shall mean any subtenant under a Financing Sublease.

B. Tenant and any Subtenant may from time to time without further consent of Landlord execute and deliver a Leasehold Mortgage as security for payment of an indebtedness and may from time to time cause such mortgage to be renewed, modified, consolidated, replaced or extended. Any such Leasehold Mortgage shall be a lien only upon the Leasehold or Subleasehold Estate so mortgaged and shall not be a lien upon Landlord’s reversionary interest in Tenant’s Parcel. Any such Leasehold Mortgage may be enforced by the Leasehold Mortgagee who holds such mortgage, and any such Leasehold Mortgagee may acquire title to the Leasehold or Subleasehold Estate so mortgaged in any

lawful way, and pending foreclosure of such mortgage may take possession of and rent the premises comprising such estate, and upon foreclosure of such mortgage may without further consent of Landlord sell and assign the Leasehold or Subleasehold Estate so mortgaged. Any person or entity acquiring the Leasehold Estate by or after such foreclosure of a Leasehold Mortgage thereon shall be liable to perform the obligations imposed on Tenant by this lease only during the period such person has ownership of said Leasehold Estate or possession of Tenant's Premises subject thereto. Landlord hereby acknowledges the existence of the Leasehold Mortgage known as that certain Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing by Tenant in favor of Goldman Sachs Bank USA, recorded on July 15, 2013, at Reception No. 2013085525 in the County of Jefferson, State of Colorado.

C. Tenant or any Leasehold Mortgagee or any Subtenant may give notice to Landlord in the manner provided in the Section hereof captioned "Notices" of the existence of any Leasehold Mortgage or any Financing Sublease together with the name and address to which notices are to be sent to such Leasehold Mortgagee or Subtenant thereunder. The following provisions of this section are for the benefit of, and may be enforced by, any such Leasehold Mortgagee or Subtenant with respect to whose Leasehold Mortgage or Financing Sublease such a notice has been given to Landlord, but may not be availed of in the absence of such notice.

D. When giving notice to Tenant with respect to any default hereunder or when giving any other notice to Tenant hereunder, Landlord shall also serve a copy of each such notice upon each such Leasehold Mortgagee and Subtenant who shall have given Landlord a written notice specifying the name and address of such Leasehold Mortgagee and/or Subtenant, and no notice from Landlord to Tenant shall be effective unless a copy thereof is so served upon each such Leasehold Mortgagee and Subtenant. All notices to be given by Landlord to each such Leasehold Mortgagee and Subtenant pursuant to this section shall be sent using a method which confirms delivery (or refusal of delivery) by either the United States Postal Service or a recognized national courier service (such as, but not limited to, Federal Express or United Parcel Service), postage prepaid, addressed to such Leasehold Mortgagee or Subtenant at the address last specified by Tenant or such Leasehold Mortgagee or Subtenant in a notice to Landlord given

in the manner provided in the Section hereof captioned "Notices", and any such notice shall be deemed to have been given and "served" when so mailed.

E. In case Tenant shall default in the performance of any of the terms, covenants, agreements and conditions of this lease on Tenant's part to be performed, each such Leasehold Mortgagee and Subtenant shall have the right within the grace period available to Tenant for curing such default to cure or make good such default or to cause the same to be cured or made good whether the same consists of the failure to pay rent or other sums or the failure to perform any other matter or thing, and Landlord shall accept such performance on the part of any such Leasehold Mortgagee or Subtenant as though the same had been done or performed by Tenant. In case of a default by Tenant in the payment of money, Landlord will take no action to effect a termination of the term of this lease by reason thereof unless such default has continued beyond 30 days after Landlord shall have served a copy of such notice upon each such Leasehold Mortgagee and Subtenant, it being the intent hereof and understanding of the parties that each such Leasehold Mortgagee and Subtenant shall be allowed up to but not in excess of 30 days after the service of such notice to cure any default of Tenant in the payment of rent or in the making of any other payment required under the terms of this lease. In case of any other default by Tenant, Landlord will take no action to effect a termination of the term of this lease by reason thereof unless such default has continued beyond the grace period available to Tenant for curing said default, and then only after Landlord shall have done the following:

- (a) given each such Leasehold Mortgagee a reasonable time, but no longer than 180 days after the expiration of Tenant's grace period, for curing such default within which to either (i) obtain possession of the Leasehold or Subleasehold Estate on which the Leasehold Mortgage held by such Leasehold Mortgagee is a lien (including possession by a receiver) and cure such default in the case of a default which is susceptible of being cured when such mortgagee has obtained possession thereof, or (ii) institute foreclosure proceedings and complete such foreclosure or otherwise acquire such Leasehold or Subleasehold Estate with

reasonable and continuous diligence in the case of a default which is not so susceptible of being cured by such mortgagee; provided, however, that any such mortgagee shall not be required to continue such possession or such foreclosure proceedings if the default which was the reason for serving such a notice has been cured; and

- (b) given each such Subtenant a reasonable time after the expiration of Tenant's grace period, but no longer than 180 days, for curing such default within which to obtain possession of Tenant's Premises from anyone who may then be occupying them under such Subtenant and cure such default in the case of a default which is susceptible of being cured when such Subtenant has obtained possession of Tenant's Premises; provided, however, that any such Subtenant shall not be required to continue such possession or any proceedings to obtain possession if the default which was the reason for serving such a notice has been cured.

F. The time available to any such Leasehold Mortgagee to initiate proceedings to obtain possession and/or to foreclose as aforesaid and to any such Subtenant to initiate proceedings to obtain possession as aforesaid shall be deemed extended by the number of days of delay occasioned by judicial restriction against such initiation or occasioned by other circumstances beyond such Leasehold Mortgagee's or Subtenant's control, not to exceed a total of 180 days after the expiration of Tenant's grace period. Any such Leasehold Mortgagee and/or purchaser at a mortgage foreclosure sale, following the acquisition of such Leasehold or Subleasehold Estate by such mortgagee or purchaser (or a designee thereof), either as a result of foreclosure or acceptance of an assignment in lieu of foreclosure, and any such Subtenant, following the acquisition of possession of Tenant's Premises by such Subtenant (or a designee thereof), shall as promptly as possible cause all defaults hereunder to be cured and all unperformed covenants of Tenant to be performed, except such defaults and covenants which cannot, in the exercise of reasonable diligence, be cured or performed by such mortgagee or purchaser or such

Subtenant (or a designee thereof), whereupon Landlord's right to effect a termination of this lease based on the default in question shall be deemed waived, and such mortgagee or purchaser and such Subtenant, and their successors and assigns, shall be immune from any liability by reason if such default, but such immunity shall not extend to Tenant or to anyone other than such mortgagee or purchaser and such Subtenant, and their successors and assigns. Nothing herein shall preclude Landlord from exercising any of Landlord's rights or remedies with respect to any other default by Tenant during any period of forbearance required of Landlord hereunder subject to the rights of each such Leasehold Mortgagee and Subtenant as herein provided.

G. Intentionally Deleted.

H. In order to facilitate any financing or refinancing by Tenant which involves a Leasehold Mortgagee, Tenant shall have the option to have included in this lease any or all of the following provisions:

- (a) a provision to the effect that this lease may not, without the written consent of each such Leasehold Mortgagee and Subtenant, be surrendered, cancelled, terminated, modified or amended by voluntary agreement of Landlord and Tenant;
- (b) a provision to the effect that Tenant shall not have the right without such consent to exercise any option which Tenant may have to cancel or terminate this lease;
- (c) a provision to the effect that any voluntary agreement purporting to surrender, cancel, terminate, modify or amend this lease, or any attempted exercise of any such voluntary agreement, not so consented to shall be ineffective, null and void; and
- (d) a provision granting to any such Leasehold Mortgagee or Subtenant the right to act for Tenant in enforcing any of Tenant's rights or remedies under this lease.
- (e) notwithstanding (a) – (d) above, no new provision shall limit Landlord's existing rights under this lease to terminate or cancel this lease without the consent of any

Leasehold Mortgagee being required or to purchase the Leasehold Estate without the consent of any Leasehold Mortgagee being required.

If Tenant elects to exercise such option, it shall do so by giving Landlord notice of such election and of each of the aforesaid provisions which it so elects to have included in this Lease, and upon such notice being given the provision or provisions referred to in such notice which Tenant thereby elects to have included in this lease shall automatically be deemed to be included within and to be a part of this lease from and after the giving of such notice. Landlord will, if requested so to do by Tenant, enter into an amendment to this lease in recordable form confirming the inclusion in this lease of the provision or provisions which Tenant shall have so elected to have included herein, and at Tenant's election an additional clause making such changes in the provisions of this lease which relate to the application of Tenant's portion of any insurance proceeds or condemnation awards as may reasonably be required by any such Leasehold Mortgagee or Subtenant.

**Section 9.3 Intentionally Deleted.**

**ARTICLE X**

**OPERATION OF COMMON FACILITIES**

**Section 10.1 Maintenance of Common Facilities.**

A. Except as otherwise expressly provided in this lease, Landlord will throughout the term of this lease:

(a) keep and maintain the Common Facilities in a good and safe state of repair and in a clean and orderly condition, it being agreed that such obligation shall include, without limitation, the following specific items of maintenance and upkeep:

- (1) keeping and maintaining the Common Facilities in a good, safe, clean and sanitary condition;
- (2) causing such of the Common Facilities as are exposed to the elements to be properly drained and kept free, to the extent reasonably practicable, of snow, ice, surface water and debris;

- (3) keeping all directional signs in the Common Facilities distinct and legible;
  - (4) repairing, replacing and renewing lighting in the Common Facilities as may be necessary;
  - (5) maintaining in an attractive and healthy condition and replanting as needed all landscaped and planted areas; and
  - (6) maintaining and repairing, as necessary, any utility and sewer lines and systems traversing such area, except lines and systems serving exclusively the Tenant's Premises which shall be maintained and repaired as necessary by Tenant.
- (b) during all hours of darkness when Tenant's Store Building is open for business and during a period of approximately 30 minutes after Tenant's Store Building shall have closed for business, provide night time illumination for the Common Facilities, such illumination measured at grade to have a minimum maintained intensity of one foot candle at all points within open pedestrian walking areas; and five foot candles at all points where pedestrian walking areas are located beneath a deck, roof or ceiling. During all hours of darkness when Tenant's Store Building is open for business and during a period of approximately 30 minutes after Tenant's Store Building shall have closed for business, provide night time illumination for the Temporary Parking Area, such illumination measured at grade to have a minimum maintained intensity in a manner which meet or exceed the City of Westminster Street Lighting, Standards and Specifications dated as of April 2, 2015, attached hereto as Exhibit H and made a part hereof. The illumination of the Common Facilities and Temporary Parking Area shall meet the lighting standards for public parking set forth in Exhibit H.

B. Any dispute as to whether Landlord is properly performing its maintenance obligations under the provisions of this section shall be determined by arbitration in accordance with the provisions of the Section hereof captioned "Arbitration".

C. The services to be rendered by Landlord in operating and maintaining the Common Facilities shall be furnished in as economical a manner as is reasonably possible consistent with the proper performance of Landlord's obligations hereunder.

D. Following the completion of construction and opening for business of the C-2 Parking Deck and Sky Bridge, Landlord reserves the right at any time and from time to time to transfer all of its right title and interest to all or any portion of the Common Facilities to the City of Westminster (the "City") or other public entity created for that purpose. The transfer documentation will provide that the City or other public entity specifically agrees to accept the transfer and maintain and operate the Common Facilities in good condition, in compliance with applicable codes, the Americans with Disabilities Act, as the same may be amended from time to time, and any other applicable laws and regulations. Effective the date of any such transfer, Landlord will thereafter be relieved from all obligations, covenants, and duties arising out of this lease related to the Common Facilities so transferred to the City or other public entity.

The Public Improvements are open to the public and are now, or will be upon completion of construction of such Public Improvements, owned by the City. The Public Improvements will be maintained, repaired, and operated by the City in the same manner as all other City-owned public improvements in compliance with applicable codes, the Americans with Disabilities Act, as the same may be amended from time to time, and any other applicable laws and regulations.

### **Section 10.2 Operation of Common Facilities.**

A. At all times during the term of this lease, Landlord will, subject to the provisions of Articles and hereof, captioned, respectively, "DAMAGE AND RESTORATION" AND "CONDEMNATION":

- (a) maintain or cause to be maintained within the Temporary Parking Area, and thereafter, within the C-2 Parking Deck, non-exclusive parking facilities,

notwithstanding the erection of new structures or the enlargement of an existing structure, not less than the sum of (i) 3.0 parking spaces for each 1000 square feet of Floor Area within Tenant's Premises and all retail in B-2 and C-2, and (ii) 120 parking spaces for Tenant's employees.

- (b) subject to temporary closures for maintenance and repair not to exceed the period of time reasonably necessary to effectuate such maintenance and repair work in an expeditious manner, cause the Common Facilities to be maintained and operated as such during the term of this lease, and the Temporary Parking Area to be maintained and operated as such during the period of temporary parking, it being agreed that such facilities (i) shall not be fenced or otherwise obstructed, (ii) shall be kept open at all times; and (iii) shall not be used for the display or sale of merchandise or for any other purpose not contemplated by this lease.

B. Intentionally Deleted.

C. If it should become necessary or advisable for a parking lot attendant or attendants to be employed in connection with the operation of the parking areas within the Temporary Parking Area or C-2 Parking Deck, Landlord shall furnish the services of such attendant or attendants at Landlord's sole cost and expense, and Tenant shall not be under any duty or obligation whatsoever to contribute toward such cost or expense or toward any other costs and expenses connected with the operation and maintenance of the said parking areas except as may be expressly provided for in this lease.

### **Section 10.3 Parking.**

A. Landlord will initially provide surface parking to satisfy the parking requirements set out in Section 10.2A(a) hereof for Tenant's customers and employees on Blocks C-1, C-2 (until the commencement of construction of the C-2 Parking Deck), B-1, B-2 and A-1 as well as on-street parking on 89<sup>th</sup> Avenue and Westminster Boulevard (the "**Temporary Parking Area**"), until the completion and opening of the parking deck to be located on Block C-2 (the "**C-2 Parking Deck**"). Tenant may continue to use the surface parking on Blocks C-1, B-1, B-2 and A-1 after January 2, 2017 until Landlord gives

Tenant notice that surface parking rights on a specified Block will terminate, provided that Landlord continues to satisfy the parking requirements set out in Section 10.2A(a) on the remaining Blocks in the Temporary Parking Area or in the C-2 Parking Deck. Landlord or City will cause the C-2 Parking Deck to be constructed and to provide parking for Tenant in satisfaction of Section 10.2(A)(a) above. In addition, until the completion and opening of the C-2 Parking Deck, Westminster Boulevard will be closed to through traffic at the locations set out in Exhibit F hereto. No later than the date of re-opening Westminster Boulevard to through traffic, Landlord will install a pedestrian crosswalk from Block A-1 across Westminster Boulevard at a location across from Tenant's Store Building. In addition, Tenant, its customers and employees will have the right to use any public parking in Downtown Westminster. In no event will Tenant, its customers, employees or invitees be charged for the Temporary Parking Area surface parking described herein.

B. When developed, the residential uses on Block C-2 will be using up to 120 parking spaces in the C-2 Parking Deck, so long as the C-2 Parking Deck includes at least 760 parking spaces. If the C-2 Parking Deck includes less than 760 parking spaces, then for every parking space less than 760, the number of residential parking spaces shall be reduced by at least 1.25 spaces. The employees, customers and invitees of the commercial users will be permitted to park in the C-2 Parking Deck. Residential parking will be designated as assigned parking spaces on each level of the C-2 Parking Deck which has residential use.

C. Concurrently with the completion of the C-2 Parking Deck, Landlord will construct and maintain as Common Facilities a sky bridge from the C-2 Parking Deck to the Tenant's Store Building (the "**Sky Bridge**"), including constructing the opening into the Tenant's Store Building. The C-2 Parking Deck will include wayfinding signage for the Sky Bridge. Tenant will construct the necessary modifications to the Tenant's Store Building to accommodate such new opening; the cost of such improvements will be reimbursed by Landlord to Tenant within thirty days of the completion of such work by Tenant and Tenant's demand therefor, accompanied by reasonable backup, not to exceed the

amount as agreed to by Landlord and Tenant in advance of the start of Landlord's construction of the Sky Bridge and Tenant's construction of such new opening.

#### **Section 10.4 Ordinances.**

A. Landlord 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 Common Facilities owned by Landlord, and the cleanliness, safety, use and occupation thereof, and Landlord shall also be responsible for such compliance as respects construction work which Landlord performs or causes to be performed on Tenant's Parcel.

B. Tenant 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 Tenant's Parcel, the improvements thereon, 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 Common Facilities; provided, however, that Tenant shall not be responsible for such compliance as respects construction work which Landlord performs or causes to be performed on Tenant's Parcel.

C. Notwithstanding the foregoing, either 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 party hereto from penalties or other expenditures arising from or as a result of such non-compliance, (ii) 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 (iii) neither Tenant's Premises nor the Common Facilities 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 10.5 Signs.**

A. Tenant shall have the right, subject to the provisions of paragraph C(iv) of this section, to place and maintain on any building on Tenant's Parcel, signs or other advertising devices, electrical or non-electrical, either parallel to said building or at any angle thereto, at or on either the front, back or sides thereof. Tenant agrees to comply with any applicable laws or ordinances, including the Downtown Plan, in erecting any of the foregoing signs.

B. Tenant as respects any building on Tenant's Parcel, and Landlord as respects the buildings on the Adjacent Property, agree that no sign shall be installed on the roof of any such building or which will project above the top of any parapet wall or above the roof line if it is to be affixed to the side of a building not having a parapet wall; provided, however, that if a building element extends above any such wall a sign or signs not projecting above the roof line of such building element may be installed on any side thereof.

C. Landlord shall, at Landlord's sole cost, install and maintain in good condition the following signage which must conform to applicable laws or ordinances, including without limitation the Downtown Plan:

(i) for ten years (at Tenant's election) beginning on or before January 2, 2017, temporary JC Penney signage facing 88<sup>th</sup> Avenue at both Westminster Boulevard and Eaton Street, upon the expiration of such ten year period, such signage may remain in place if permitted by applicable law and as agreed by Landlord and Tenant;

(ii) directional signage in the C-2 Parking Deck to Tenant's Store Building;

(iii) a full size (at least 3 feet by 16.5 feet) JC Penney sign on the exterior of the C-2 Parking Deck to be constructed facing Highway 36 substantially as shown on Exhibit G attached hereto, with any departures therefrom to be approved in advance by Tenant.

(iv) JC Penney signage over the building entrances to the Tenant's Store Building facing both Westminster Boulevard and 89<sup>th</sup> Avenue, both signs to be as large as practicable, but not to exceed 5 feet by 27.65 feet;

(v) no later than one (1) month prior to commencing any construction in connection with the development of the Adjacent Property or Block A-1 and continuing throughout such construction, temporary banners on Tenant's Store Building advertising that Tenant remains open for business; and

(vi) no later than one (1) month prior to commencing any construction in connection with the development of the Adjacent Property or Block A-1 and continuing throughout such construction, temporary wayfinding signage exclusively for Tenant's benefit.

(vii) upon construction of the Wrap Project, construct and install the Tenant signage shown on Exhibit D.

D. If Landlord should install streetscape and wayfinding signage for other businesses in the vicinity of the Tenant's Premises, Landlord, at Landlord's sole cost, shall also install and maintain in good condition similar signage identifying Tenant in connection with the redevelopment, as set forth in the Downtown Plan in the same size and visibility as for other businesses in the vicinity of Tenant's Premises.

Tenant shall have the right to approve in advance the size, design, specifications and location of all such banners and signage described in this paragraph, such approval not to be unreasonably conditioned, withheld or delayed.

#### **Section 10.6 Repairs.**

Subject to the provisions of the Articles hereof captioned, respectively, "DAMAGE AND RESTORATION" and "CONDEMNATION", (i) Landlord shall without expense to Tenant keep or cause to be kept in good order, condition and repair and sightly in appearance the exterior portions of all buildings and other improvements located on the Common Facilities, and (ii) Tenant shall keep the

exterior portions of any building and other improvements located on Tenant's Parcel in good order, condition and repair and sightly in appearance.

#### **Section 10.7 Alterations; Installation and Removal of Equipment.**

A. Tenant shall have the right and privilege at all times during the term of this lease to make, at its own expense, such alterations, changes, improvements and additions ("Improvements") to the Tenant's Store Building (but not the Common Facilities, whether located on or off Tenant's Parcel) as Tenant may desire, provided that Tenant may not expand Tenant's Store Building nor reduce the size of Tenant's Store Building below the size thereof as of the date of this lease. All construction work for Improvements shall be performed in a good and workmanlike manner, and in a manner reasonably minimizing inconvenience to neighboring uses. Any liens resulting therefrom will be satisfied or bonded by Tenant within thirty days of the date thereof.

B. Anything contained in the preceding paragraph (A) to the contrary notwithstanding, it is agreed that (i) Tenant's rights and obligations hereunder shall be subject to the provisions of Article VII and Article VIII of this lease, and (ii) Tenant may make minor changes and alterations to Tenant's Store Building within the Tenant's Premises, including but not limited to the extension, reduction, or removal of canopies, truck docks, penthouses and the like without regard to the limitations provided in the preceding paragraph.

C. Intentionally Deleted.

D. Any and all trade fixtures and equipment, signs, appliances, furniture and other personal property of any nature installed in Tenant's Premises at any time by Tenant shall not become part of the realty and may be removed from Tenant's Premises by Tenant at any time during the term of this lease or within 30 days thereafter. Tenant need not remove such items of personal property from Tenant's Premises at the end of the term of this lease, but if it does not do so within 30 days after the termination of the term hereof all unremoved items shall be deemed to have been abandoned by Tenant and shall become the property of Landlord.

E. Tenant may convert to Tenant's own use all old materials removed by Tenant when making alterations, changes, improvements, and/or additions to Tenant's Premises and in performing any term, provision, covenant or condition of this lease which Landlord is obligated, but fails, to perform.

### **Section 10.8 Mechanics' Liens.**

A. If any mechanic's, materialman's, or other similar lien shall at any time be filed against Tenant's Premises 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 Tenant or anyone holding or occupying Tenant's Premises through or under Tenant, Tenant shall, without cost or expense to Landlord, forthwith cause the same to be either (i) discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise, or (ii) contested, in which event any judgment or other process issued in such contest shall be paid or discharged before execution thereof.

B. If any mechanic's, materialman's or other similar lien shall at any time be filed against any part of the Common Facilities for any reason whatsoever or be filed against any part of Tenant's Premises 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 Landlord, Landlord shall, without cost or expense to Tenant, forthwith cause the same to be either (i) discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise, or (ii) contested, in which event any judgment or other process issued in such contest shall be paid or discharged before execution thereof.

## **ARTICLE XI**

### **INSURANCE AND INDEMNIFICATION**

#### **Section 11.1 Fire and Extended Coverage Insurance.**

A. Tenant shall during the term of this lease keep any building and other structures within Tenant's Parcel and all additions thereto insured in responsible insurance companies against damage or destruction by fire and the perils commonly covered under an extended coverage endorsement in an

amount sufficient to prevent any of the insured from being or becoming a co-insurer within the terms of the policy or policies providing such insurance and in no event for less than 90% of the full replacement value of such improvements exclusive of the cost of foundations, excavations and footings below the lowest basement floor, without any deduction being made for depreciation. All insurance policies evidencing the foregoing insurance shall include Landlord as an additional insured, as its interest may appear, and may, at the option of Tenant, include any other insurable interests in the property so insured, as such other interests may appear.

B. Landlord shall during the term of this lease keep, or cause to be kept, the buildings and other structures within that part of the Common Facilities which lies outside Tenant's Parcel insured in responsible insurance companies against damage or destruction by fire and the perils commonly covered under an extended coverage endorsement in an amount sufficient to prevent any of the insured from being or becoming a co-insurer within the terms of the policy or policies providing such insurance and in no event for less than 90% of the full replacement value of such improvements exclusive of the cost of foundations, excavations, and footings below the lowest basement floor, without any deduction being made for depreciation. All insurance policies evidencing the foregoing insurance may, at the option of the owner of the insured property or its designee, include any other insurable interests in the property so insured, as such other interests may appear.

### **Section 11.2 Waiver of Right of Recovery.**

Anything in this lease to the contrary notwithstanding, neither party shall be liable to the other party or to any insurance company insuring the other party for any loss or damage to any improvement located within Tenant's Parcel or within the Common Facilities, as the case may be, which was or could have been covered by fire and extended coverage or boiler and machinery insurance even though such loss or damage might have been occasioned by the negligence of such party, its agent or employees.

### **Section 11.3 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 XII hereof captioned "DAMAGE AND RESTORATION".

B. Any loss covered by the insurance required to be maintained under the foregoing provisions of this article 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 lease, 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.

D. If as a result of the damage or destruction Tenant elects to terminate the term of this lease pursuant to Section 12.1 hereof, there shall be released and paid over to Landlord such portion of the insurance proceeds payable on account of such damage or destruction as Landlord is entitled to receive under the provisions of said section and the remainder of such proceeds shall be paid over to Tenant.

E. If there shall be a loss respecting improvements on the Common Facilities from a casualty against which Landlord is required by the terms of this lease to cause insurance to be maintained and such insurance shall be maintained by the owner or lessee of the damaged or destroyed improvements under a separate agreement with Landlord, Landlord shall use its best efforts, including, without limitation, the institution of suit, to enforce the provisions of such agreement relating to the manner in which the insurance proceeds are to be applied in payment of the cost of repairing or restoring the damaged or destroyed property.

#### **Section 11.4 Liability Insurance.**

Each party hereto shall maintain a policy of comprehensive public liability insurance, naming itself as the insured, against claims on account of bodily injury, death or property damage incurred in the

case of Tenant's policy upon Tenant's Parcel and in the case of Landlord's policy upon the Common Facilities. Such insurance shall have limits of not less than \$2,000,000 per occurrence in respect to bodily injury or death and not less than \$2,000,000 per occurrence in respect to property damage.

#### **Section 11.5 Self Insurance; Blanket and Umbrella Insurance.**

Any insurance required to be maintained under the provisions of this article may be carried in whole or in part (a) under any plan of self-insurance or self-assumption of risks which the party hereto responsible for the maintenance of such insurance may from time to time have in force and effect so long as such party (or any guarantor of performance of the obligations hereunder of such party) shall have a net worth of \$200,000,000 or more, (b) under a "blanket" policy or policies covering other properties of such party or of such party and any Related Corporation thereof, so long as such blanket policy is endorsed to specifically evidence coverage of Tenant's Parcel or the Common Facilities, respectively, or (c) under an "umbrella" (excess coverage) policy, provided that such "umbrella" policy together with the basic policy which it supplements shall provide coverage in the aggregate meeting the requirements of this article and so long as such umbrella policy is endorsed to specifically evidence coverage of Tenant's Parcel or the Common Facilities, respectively; or (d) in the case of WEDA or the City, following any transfer of all or any portion of the Common Facilities, by Colorado Intergovernmental Risk Sharing Agency (CIRSA). Any party electing to self-insure or to self-assume risks as herein provided shall furnish to the other on request evidence of the adequacy of its or its guarantor's net worth. The annual report of Penney shall be sufficient evidence of its net worth.

#### **Section 11.6 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 cancelled unless thirty days prior written notice shall have been given by the insurer to the other party. To the extent that Tenant is providing self-insurance as permitted hereunder, a letter to the effect that Tenant is so providing shall be deemed to be a certificate of insurance for the purposes of this Section.

### **Section 11.7 Indemnification.**

Tenant covenants to defend, indemnify and hold harmless Landlord 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 on Tenant's Parcel during the term of this lease or (b) any alleged act or omission whatsoever or alleged negligence of Tenant or of any subtenant, concessionaire, licensee or departmental lessee of Tenant or of the agents, contractors, servants or employees of Tenant or of any such subtenant, concessionaire, licensee or departmental lessee of Tenant; excepting, however, in each case, claims, accidents, injuries, loss or damages arising from or as a result of any alleged act or omission whatsoever or alleged negligence of Landlord or its agents, contractors, servants or employees. Landlord has advised Tenant that the original landlord under this Lease, WEDA, as a public entity does not have authority under the Colorado Constitution to indemnify third parties. However, in the event that Landlord is permitted by law to undertake such indemnification or Landlord assigns this lease in the future to a party who is not a public entity, then following the date of such assignment, Landlord covenants to defend, indemnify and hold harmless Tenant 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 the property of any person, alleged to have occurred in or about the Common Facilities during the term of this lease or (b) any alleged act or omission whatsoever or alleged negligence of Landlord or the agents, contractors, servants or employees of Landlord; excepting, however, in each case, claims, accidents, injuries, loss, or damages arising from or as a result of any alleged act or omission whatsoever or alleged negligence of Tenant or any subtenant, concessionaire, licensee or departmental lessee of Tenant or of the agents, contractors, servants or employees of Tenant or of any such subtenant, concessionaire, licensee or departmental lessee of Tenant. Each party hereto 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 XII**

### **DAMAGE AND RESTORATION**

#### **Section 12.1 Damage to Improvements on Tenant's Parcel.**

A. If the whole or any part of any building or other improvement located upon Tenant's Parcel shall, during the term hereof, be damaged or destroyed by fire or other casualty against which Tenant is required by the terms of this lease to maintain insurance, Tenant shall, subject to Unavoidable Delays, forthwith remove any resulting debris and repair, restore or rebuild the damaged or destroyed improvements substantially in accordance with the plan or plans pursuant to which they were constructed and to a condition whereby they will have a value not less than their value just prior to said loss, it being agreed that Tenant shall not be obligated to restore or rebuild any building or other improvement located upon Tenant's Parcel which shall have been damaged or destroyed by a casualty not required to be insured against by the terms of this lease.

B. Anything herein to the contrary notwithstanding, it is understood and agreed that if the whole or any part of any building or other improvement located upon Tenant's Parcel shall, during the term hereof, be damaged or destroyed by fire or other casualty and

(a) the cause of such damage or destruction shall have been a casualty against which Tenant is not required to insure by the terms of this lease and Tenant's Store Building shall have been damaged or destroyed to such an extent that the cost of restoration thereof would exceed 15% of the amount it would have cost to

replace said building in its entirety at the time such damage or destruction occurred; or

- (b) such damage or destruction shall have taken place at a time when the term of this lease is scheduled to expire within a period of five years thereafter and the extent of such damage or destruction is such that the cost of restoration would exceed 50% of the amount it would have cost to replace the improvements on Tenant's Parcel in their entirety at the time such damage or destruction took place, then and in any such event Tenant shall have the right and option to terminate the term of this lease, by giving Landlord notice of such election within six months after such damage or destruction shall have taken place. If Tenant shall give such notice, the term of this lease shall terminate as of the last day of the month immediately following the month during which such notice shall have been given and Tenant shall not be required to restore or rebuild any such damaged or destroyed building or other improvement located upon Tenant's Parcel. However, Tenant shall (i) raze the portions thereof which are not to be restored or rebuilt, (ii) remove all debris, and (iii) take all other action required by good construction practice in order to give the area previously occupied by such razed improvements an attractive appearance and so as to enable such area to be maintained in a good, clean, and orderly condition. If Tenant shall terminate the term hereof by reason of the existence of the conditions described in item (b) above of this paragraph B, then Tenant may subtract from all insurance proceeds payable on account of such damage or destruction all of its third party expenses incurred under subsections (i), (ii) and (iii) above, and from the balance of such insurance proceeds, there shall be paid to Landlord that portion of all insurance proceeds payable on account of such damage or destruction which is determined by multiplying the amount of such proceeds by a fraction, the numerator of

which is the number of years for which the term of this lease shall have run at the time when such damage or destruction took place and the denominator of which is the number of years in the Initial Term of this lease plus the number of years for which such term could be extended by means of Tenant's exercising all of the options granted Tenant in the Section hereof captioned "Options to Extend"; the remainder of such insurance proceeds shall be paid to Tenant.

C. Intentionally Deleted.

**Section 12.2 Damage to Improvements Outside Tenant's Parcel.**

A. If during the term hereof any of the Common Facilities shall be damaged or destroyed, either in whole or in part, by fire or other casualty against which Landlord is required by the terms of this lease to maintain insurance, then Landlord shall, subject to Unavoidable Delays, forthwith remove, or cause to be removed, any resulting debris and repair, restore or rebuild, or cause to be repaired, restored or rebuilt, the damaged or destroyed improvements substantially in accordance with the plan or plans pursuant to which they were constructed and to a condition whereby they will have a value not less than their value just prior to said loss.

B. If during the term hereof any of the buildings or other improvements located on any part of the Adjacent Property shall be damaged or destroyed, and if Landlord is a party to an agreement with the owner or lessee of the damaged or destroyed improvements which obligates such owner or lessee to repair or rebuild the same or cause them to be repaired or rebuilt, Landlord shall use its best efforts to enforce such obligation including, without limitation, the institution of suit.

C. If the Common Facilities situated outside Tenant's Parcel shall suffer damage or be destroyed, then until such time as they are repaired, restored and/or rebuilt a just and equitable portion of rent payable hereunder and the CAM Reimbursement, payable by Tenant hereunder according to the nature and extent of the damage sustained shall be abated.

D. If any of the following shall occur:

- (a) the repair or restoration work for which Landlord is responsible under the provisions of paragraph A of this section for any reason whatsoever is not commenced within 90 days from the date when such damage or destruction occurred or is not diligently prosecuted to completion,
- (b) Landlord, not being responsible under the provisions of said paragraph A for having the damaged or destroyed Common Facilities repaired or rebuilt, does not voluntarily assume such responsibility and commence, or cause to be commenced, such restoration work within said period of 90 days and thereafter diligently prosecute such work to completion, or cause such work to be diligently prosecuted to completion, or
- (c) any required repair or restoration under paragraph B of this section of any damaged or destroyed buildings or other improvements located on the Adjacent Property is not commenced within 180 days from the date when such damage or destruction occurred or is not diligently prosecuted to completion, Tenant shall have the right and option to terminate the term of this lease, by giving Landlord notice of such election at any time prior to the completion of such repair or restoration work provided such work is not then being actively undertaken, and upon such notice being given the term of this lease shall terminate as of the date 30 days after the giving of such notice.

E. If during the term hereof any of the Common Facilities shall be damaged or destroyed, either in whole or in part, and Landlord is not responsible under the provisions of paragraph A of this section for having the damaged or destroyed improvements repaired or rebuilt and does not voluntarily assume such responsibility, then and in any such case Landlord shall (i) raze, or cause to be razed, the portions thereof which are not to be restored or rebuilt, (ii) remove, or cause to be removed, all debris and (iii) take, or cause to be taken, all other action required by good construction practice in order to give the area previously occupied by such razed improvements an attractive appearance and so as to enable

such area to be maintained in a good, clean, and orderly condition; provided, however, that nothing herein contained shall prevent a parking area or other Common Facilities from being constructed thereon.

**Section 12.3 Restoration Covenants Mutually Dependent.**

Anything herein to the contrary notwithstanding, neither party hereto shall be required to perform, or cause to be performed, restoration work under the provisions of either of the foregoing sections of this article if the other party hereto shall be obligated to perform, or cause to be performed, restoration work under one of said sections, but such work is not being diligently undertaken and prosecuted to completion.

**ARTICLE XIII**

**CONDEMNATION**

**Section 13.1 Condemnation of Tenant's Premises.**

A. If all or any portion of Tenant's Store Building shall be taken by Condemnation and in Tenant's judgment reasonably exercised it shall not be feasible to restore or replace the same to a complete architectural unit capable of being operated in an economical manner as a retail department store, Tenant shall have the right and option to terminate the term of this lease, by giving Landlord notice of such election within six months after Tenant shall have been deprived of possession of the property so taken, and if such notice is given, said covenant and all such restrictions, or the term of this lease, as the case may be, shall terminate as of the date 30 days after the giving of such notice. Unless such option shall be given to Tenant by reason of such a Condemnation and Tenant shall exercise it, Tenant shall restore said building to a complete retail department store unit which may contain the same or more or less Floor Area than said building contained when originally constructed and have the same or a lesser or greater value than the value of said building immediately prior to such taking.

B. In the event of any such taking of all or part of Tenant's Premises, any unearned rent shall be refunded to Tenant, and if the taking be partial, the fixed rent payable hereunder for any period subsequent to such taking shall be reduced in the same proportion that the area of Tenant's Parcel is reduced by or as a consequence of such taking. If an annual contingent rent based on Tenant's annual

Retail Sales shall be payable hereunder, the annual sales volume or volumes appearing on the Rent Rider hereto to be used in computing the contingent rent payable hereunder for any period subsequent to such taking shall likewise be proportionally decreased on the basis of the reduction in the area of Tenant's Parcel. Any alternative rent that may be payable under the provisions of the Rent Rider hereto shall be adjusted as follows:

- (a) If the provisions of paragraph C of the Rent Rider relating to the payment of such rent are not then operative but later become operative, then for the purpose of calculating such alternative rent when such provisions become operative, the total of the contingent rent paid or Tenant's Store Building shall have been opened to the public for business and the date of taking of possession of the condemned property (as the same may theretofore have been reduced pursuant to the provisions of this paragraph) shall be reduced by the percentage of reduction in the area of Tenant's Parcel caused by such taking.
- (b) If the provisions of paragraph C of the Rent Rider relating to the payment of such rent are then operative, the alternative rent payable from and after the date of taking of possession of the condemned property shall be reduced by the percentage of reduction in the area of Tenant's Parcel caused by such taking.

C. In any Condemnation proceeding the award made for, or the portion of the award equitably attributable to, the taking of any building or other improvement located on Tenant's Parcel or the taking of Tenant's fixtures, equipment, signs or other personal property shall belong to Tenant, and any award or so much of any award as is granted as compensation for the taking of land within Tenant's Parcel, shall be divided between Landlord and Tenant in accordance with the values of their respective interests in such land. In any such proceeding whereby all or part of Tenant's Premises is taken, whether or not Tenant elects to terminate the term of this lease, each party shall have the right to make claim against the condemning authority for the amount of the actual provable damage done to each of them by such proceeding. If the condemning authority or the court having jurisdiction shall refuse to permit separate claims to be made, then and in that event Landlord shall prosecute with counsel satisfactory to

Tenant the claims of both Landlord and Tenant, and the proceeds of the award, after deducting all reasonably legal fees and other expenses incurred in connection with prosecuting such claims, shall be paid over to Landlord and Tenant, respectively, as hereinbefore provided.

### **Section 13.2 Condemnation of Premises Outside Tenant's Parcel.**

A. If all or any portion of the Common Facilities or the C-2 Parking Deck shall be taken by Condemnation or if any portion of the Temporary Parking Area shall be taken by Condemnation prior to the date on which the C-2 Parking Deck is opened for business, and as a consequence thereof one or more of the following shall occur:

- (i) the parking facilities within the Common Facilities and the Temporary Parking Area shall contain less than 75% of the number of parking spaces required in order for such facilities to comply with the foregoing parking ratio as applied to the Tenant's Premises, or
- (ii) the means of access to Tenant's Store Premises from any public street abutting the Tenant's Premises shall be adversely affected,

Landlord shall furnish Tenant a plot plan showing the Common Facilities or Temporary Parking Area that have been taken and the substitute Common Facilities or Temporary Parking Area which Landlord intends to construct in Downtown Westminster to take the place of the condemned property. If Landlord shall fail to furnish Tenant such information within 60 days after the date upon which the condemned Common Facilities or Temporary Parking Area shall have become unavailable for the use of Tenant's customers, or if the information so submitted shows that it is not the intention of Landlord to construct substitute Common Facilities or Temporary Parking Area which will (i) cause each of the areas described in items (a) and (b) above (as such areas may be expanded by the use of contiguous land for parking purposes) to have at least 75% of the number of parking spaces required in order for such facilities to comply with the parking ratio therein referred to, and (ii) in Tenant's judgment reasonably exercised provide adequate access to Tenant's Store Premises from the public streets abutting the Tenant's Premises, Tenant shall have the right and option to terminate the term of this lease, by giving

Landlord notice of such election within six months after the date upon which the condemned Common Facilities or Temporary Parking Area shall have become unavailable for the use of Tenant's customers. If the information so furnished Tenant by Landlord shows that it is the intention of Landlord to construct substitute Common Facilities or Temporary Parking Area meeting the aforesaid criteria, but there shall be a failure to begin the work of constructing such facilities with reasonable promptness or to diligently prosecute such work to completion, Tenant may exercise said option within six months after a panel of arbitrators selected and acting in accordance with the procedures provided for in the Section hereof captioned "Arbitration" shall have found that there was such a failure.

### **Section 13.3 Other Provisions Relating to a Permanent Taking.**

A. If all or part of the Common Facilities shall be taken by Condemnation and if the term of this lease shall not have been terminated by reason of such taking, the following shall be applicable. The proceeds of any reward for, or equitably attributable to, the taking of such property within Tenant's Parcel shall be used by Tenant, and the proceeds of any award for, or equitably attributable to, the taking of such property outside of Tenant's Parcel shall be used by Landlord, to provide alternative, and insofar as practicable equivalent, facilities to those taken complying with the requirements of this lease to the extent that such award will pay the cost thereof and to the extent that it is physically possible and legally permissible to construct such facilities.

B. Substitute parking facilities provided by Landlord 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 Landlord shall provide substitute parking facilities, they shall be located on the Adjacent Property or on land contiguous to the Adjacent Property. The provisions of paragraph A of the Section hereof captioned "Plans for Future Construction" shall be applicable as respects the construction of substitute Common Facilities. Anything herein to the contrary notwithstanding, Landlord shall not be required to replace Temporary Parking Area parking spaces lost through Condemnation if the remaining spaces thereon comprise 90% or more of the original number of

spaces or if the C-2 Parking Deck has been opened to the public and continues to contain at least 684\_ parking spaces.

C. Intentionally Deleted.

D. If the term of this lease shall be terminated under the provisions of this article, rent payable hereunder for the period during which such termination occurs shall be pro-rated and any unearned rent shall be refunded to Tenant.

#### **Section 13.4 Award for Temporary Taking.**

If by reason of any proceeding involving an exercise of the power of Condemnation Tenant shall be temporarily deprived in whole or in part of the use of any portion of Tenant's Premises, the entire award made as compensation therefor shall be paid over to Tenant, and there shall be no abatement of rent payable hereunder.

#### **Section 13.5 Manner of Applying Awards Applicable to Certain Adjacent Property.**

If a Condemnation award in excess of \$250,000 shall be made to the owner or lessee of property located on that part of the Adjacent Property which lies outside of both Landlord's and Tenant's Parcels, and (ii) if Landlord is a party to an agreement with such owner or lessee which prescribes the manner in which such proceeds are to be applied to pay the cost of restoring or replacing any partially or fully condemned structure, Landlord shall use its best efforts to enforce the terms of such agreement including, without limitation, the institution of suit.

#### **Section 13.6 Disputes Relating to Condemnation.**

If Landlord or Tenant cannot agree upon the division to be made between them of an award made for, or equitably attributable to, the taking of all or part of Tenant's Premises by Condemnation and such matter shall not have been determined by the court before whom the proceeding for the Condemnation of such property was brought pursuant to CRS 38-1-105, then and in any such event the division shall be settled by arbitration in accordance with the provisions of the article hereof captioned "ARBITRATION".

#### **Section 13.7 Certification of Elimination of Blight.**

Effective as of the Effective Date, Landlord agrees and certifies to Tenant and to any competent court or administrative body who may be concerned, that (i) any condition(s) of blight related to the Tenant's Parcel and Block C-2 have been eliminated and are no longer present; and (ii) Landlord agrees that it will not take any position contrary to this statement in any judicial or administrative position during the remaining term of this lease.

## **ARTICLE XIV**

### **DEFAULT**

#### **Section 14.1 Default Clause.**

A. If the rent or other sums due under this lease (including without limitation sums due under paragraph C below) herein provided for or any part thereof shall be unpaid on the date when due and remain so for a period of 30 days after Landlord shall have given to Tenant notice of such default, then and in such case it shall and may be lawful for Landlord, at Landlord's option, after final non-summary adjudication of Tenant's default, take action to terminate the term of this lease and to enter into Tenant's Premises or any part thereof and expel Tenant or any person or persons occupying Tenant's Premises, and so to repossess and enjoy the property hereby demised to Tenant as in Landlord's former estate. Should the term of this lease at any time be terminated under the terms and conditions hereof after final non-summary adjudication, or in any other way, Tenant hereby covenants and agrees to surrender and deliver up Tenant's Premises peaceably to Landlord immediately upon the termination of the term hereof. Landlord agrees that in no event shall the non-payment of rent be the basis of a forfeiture of this lease or otherwise result in the eviction of Tenant or the termination of the term of this lease unless notice of such non-payment shall have been served on Tenant as hereinbefore provided and Tenant shall have failed to cure such default within said 30-day period after the service of said notice and after final non-summary adjudication of Tenant's default.

B. Intentionally Deleted

C. If Tenant shall be in default in performing any of the terms or provisions of this lease other than the provision requiring the payment of rent or other sums due under this lease, then Landlord shall give to Tenant notice of such default, and if Tenant shall fail to cure such default within 90 days after service of such notice, or if the default is of such character as reasonably to require more than 90 days to cure and Tenant shall fail to commence to cure the same within such period or shall fail to use reasonable diligence in curing such default after service of such notice; or if the failure of Tenant relates to a matter which in Landlord's judgment reasonably exercised is of an emergency nature and such failure shall remain uncured for a period of 48 hours after Landlord shall have served upon Tenant notice of such failure, then and in any such event Landlord may cure such default for the account of and at the cost and expense of, Tenant (if the default is of a nature capable of being cured by Landlord), and the full amount so expended by Landlord shall immediately be owing by Tenant to Landlord with interest thereon at the rate of 15% per annum or the maximum legal rate, whichever is lower. Landlord agrees that in no event shall such non-monetary default which is cured by Landlord in accordance with this paragraph C be the basis of a forfeiture of this lease or otherwise result in the eviction of Tenant or the termination of the term of this lease.

D. If Tenant shall be in default in performing any of the terms or provisions of this lease other than the provisions requiring the payment of rent or other sums due under this lease and other than a default which may be cured by Landlord in accordance with paragraph C above, and if Landlord shall give to Tenant notice of such default, and if Tenant shall fail to cure such default within 90 days after service of such notice, or if the default is of such character as reasonably to require more than 90 days to cure and Tenant shall fail to commence to cure the same within such period or shall fail to use reasonable diligence in curing such default after service of such notice, then and in such case it shall and may be lawful for Landlord, at Landlord's option, after final non-summary adjudication of Tenant's default, take action to terminate the term of this lease and to enter into Tenant's Premises or any part thereof and expel Tenant or any person or persons occupying Tenant's Premises, and so to repossess and enjoy the property hereby demised to Tenant as in Landlord's former estate. As examples, but not by way of limitation,

Tenant's failure or refusal to submit Tenant's Premises to the GID in accordance with Section 4.3B or Tenant's failure or refusal to complete construction of the Tenant's Premises Expenditure Improvements in accordance with Section 2.4 or Tenant's default under Section 9.1 would be defaults which are incapable of being cured by Landlord, and which, if not performed by Tenant, may be the basis for a termination or forfeiture of this lease under this paragraph D, after final non-summary adjudication of Tenant's default.

**Section 14.2 Unperformed Covenants of Landlord May be Performed by Tenant.**

A. If Landlord shall fail to perform any of the terms, provisions, covenants or conditions to be performed or complied with by Landlord pursuant to this lease, or if Landlord should fail to make any payment which Landlord agrees to make and Landlord shall fail to cure such default within 60 days after Tenant shall have served upon Landlord notice of such failure (or if the default is of such character as reasonably to require more than 60 days to cure and Landlord shall fail to commence to cure the same within such period or shall fail to use reasonable diligence in curing such default thereafter); or if the failure of Landlord relates to a matter which in Tenant's judgment reasonably exercised is of an emergency nature and such failure shall remain uncured for a period of 48 hours after Tenant shall have served upon Landlord notice of such failure; then in any such event Tenant may cure such default for the account of and at the cost and expense of, Landlord (if the default is of a nature capable of being cured by Tenant), and the full amount so expended by Tenant shall immediately be owing by Landlord to Tenant with interest thereon at the rate of 15% per annum or the maximum legal rate, whichever is lower. If such repayment shall not be made within 10 days after such demand is made, Tenant shall have the right to deduct the amount thereof, together with interest as aforesaid, without liability of forfeiture, from rents or any other sums then due or thereafter becoming due from Tenant to Landlord hereunder, and irrespective of who may own or have an interest in Tenant's Premises at the time such deductions are made.

B. Any deduction pursuant to the provisions of this section from any rent or other sums due or payable hereunder shall not constitute a default in the payment thereof under Section 14.1A unless

Tenant shall fail to pay the amount of such deduction to Landlord within 30 days after final adjudication that such amount is owing to Landlord. The option given in this section is for the sole protection of Tenant, and its existence shall not release Landlord from the obligation to perform the terms, provisions, covenants and conditions herein provided to be performed by Landlord or deprive Tenant of any legal rights which it may have by reason of any such default by Landlord.

C. Landlord hereby grants to Tenant non-exclusive rights of entry and non-exclusive easements for and during the term of this lease in, over and under any and all parts of the Common Facilities situated outside Tenant's Parcel (excluding the right to enter premises demised to or owned by others) for all purposes reasonably necessary to enable Tenant (acting directly or through agents, contractors, or subcontractors) so to perform any of the terms, provisions, covenants or conditions of this lease which Landlord shall have failed to perform.

## **ARTICLE XV**

### **MISCELLANEOUS PROVISIONS**

#### **Section 15.1 Notices.**

Any notice, demand, consent, approval, request, statement, document or other communication required or permitted to be given to or served upon either party hereto pursuant to this lease or applicable law shall be in writing and shall be sent using a method which confirms delivery (or refusal of delivery) by either the United States Postal Service or overnight service by a recognized national courier service (such as, but not limited to, Federal Express or United Parcel Service), postage prepaid, addressed:

(a) if to Landlord:

Westminster Economic Development Authority  
4800 West 92<sup>nd</sup> Ave.  
Westminster, CO 80031

(b) if to Tenant:

(if by regular mail)  
J.C. Penney Corporation, Inc.  
P.O. Box 10001  
Dallas, Texas 75301-1104  
Attn: Real Estate Counsel

(if by overnight mail)  
J.C. Penney Corporation, Inc.  
6501 Legacy Drive M/S 1104  
Plano, Texas 75024-3698  
Attn: Real Estate Counsel

With a duplicate copy to:  
J.C. Penney Corporation, Inc.  
P.O. Box 10001  
Dallas, Texas 75301-2104  
Attn: Property Manager for Store #2160 (Westminster, CO)

with a duplicate copy to the Tenant's Premises, marked for the attention of "Store Manager"; provided, however, that Tenant may give Landlord notice of the need for emergency repairs in the manner provided for in the Section hereof captioned "Unperformed Covenants of Landlord May be Performed by Tenant". All such communications mailed or transmitted in accordance with the foregoing provisions shall be deemed to have been given or served as of the third business day after such mailing or one business day after transmittal by overnight delivery by national courier. Either Landlord or Tenant may, by 10 days prior notice to the other as aforesaid, designate a different address or different addresses within the United States to which communications intended for it are to be sent.

### **Section 15.2 Transfer of Landlord's Interest.**

A. Landlord shall promptly notify Tenant in the event of any transfer or conveyance of title to Tenant's Parcel, giving the name and address of the transferee (or of each transferee if more than one) and instructions regarding the manner in which rent is to be paid and notices are to be served on the transferee(s). In such event Landlord herein named (or the then grantor if Landlord herein named shall have previously made such a transfer or conveyance) shall be automatically released of all liability as respects the performance of any and all obligations on the part of Landlord thereafter to be performed hereunder when and only when all of the following shall have been done:

- (a) Tenant shall have been furnished the information called for in the first sentence of this paragraph together with proof, in form satisfactory to Tenant, that the aforesaid transfer or conveyance has been made; and

(b) Tenant shall have been furnished a recordable instrument, in form satisfactory to Tenant, under which the transferee, or each transferee if more than one, assumes performance of all obligations of Landlord under this lease to be performed from and after the date of such transfer or conveyance.

B. In the event of any change in ownership of Tenant's Parcel or an assignment of Landlord's interest in this lease Tenant shall not be obligated to pay rents thereafter accruing until the conditions set forth in item (c) of the immediately preceding paragraph of this section shall have been complied with, and the withholding of rents in the meantime shall not be deemed a default upon the part of Tenant.

C. If during the term hereof Landlord's interest in this lease shall be acquired by more than one person, firm, corporation, or other entity, whether by conveyance, operation of law or otherwise, Landlord shall by notice to Tenant signed by all of the then lessors hereunder appoint one such lessor to whom rent may be paid by Tenant and upon whom all notices which Tenant may give hereunder may be served. Until such appointment shall be made, Tenant shall be authorized from time to time to select any one of such lessors and to pay all rent coming due hereunder to, and serve all notices upon, the lessor so selected until such time as such appointment shall have been made as aforesaid. The service of any notice upon and the payment of any rent to the appointed or selected lessor as herein provided shall constitute service of notice upon, and payment of rent to, Landlord.

### **Section 15.3 Estopel Certificate.**

Each of the parties hereto agrees, at any time and from time to time upon not less than 30 days' prior request by the other party, to execute and deliver to the party making such request a written certificate stating (a) whether this lease is in full force and effect; (b) whether this lease has been modified or amended and, if so, identifying and describing any such modification or amendment; (c) the date to which rent has been paid; and (d) whether to the best knowledge of the party to whom such request is directed any uncured default exists on the part of the other party hereunder, and, if so, specifying the nature of such default.

#### **Section 15.4 Arbitration.**

Whenever any question, matter or dispute is expressly made arbitrable by the terms of this lease, the provisions of this section shall apply thereto. Within 15 days after either of the parties hereto shall have notified the other that it desires arbitration, two arbitrators shall be chosen, one by Landlord and one by Tenant, and within 10 days thereafter a third arbitrator shall be selected by the two thus chosen. If either of the parties hereto shall fail to make such choice within the time herein provided, or the then two arbitrators shall fail to choose a third arbitrator within the time herein provided, then the party not in default in selecting an arbitrator, or either party in the event that the two arbitrators so chosen shall have failed to select a third, may upon five days' notice to the other party request the presiding judge of the District Court of the United States for the district in which the Tenant's Premises are located acting in his private and non-judicial capacity to choose an arbitrator or arbitrators to fill the vacancy or vacancies. Such judge may thereupon appoint an arbitrator or arbitrators, as the case may be, to complete the panel of three arbitrators. If such judge shall fail or refuse to make such appointment, the arbitrator or arbitrators needed to complete the panel shall be named or appointed in accordance with the prevailing laws of the state of Colorado relating to arbitration.

The three arbitrators upon being duly appointed shall investigate the facts and hold hearings at which the parties hereto may present their evidence and arguments. A decision by majority vote of the arbitrators shall be rendered within 60 days after the date upon which the last arbitrator is appointed. Such decision shall be final and binding on the parties hereto. Judgment upon the award rendered in such arbitration may be entered by any court having jurisdiction thereof. No party shall be considered in default hereunder during the pending of arbitration proceedings relating to such default. If the arbitrators shall fail to render a decision within said period of 60 days, then either party shall have the right to institute such action or proceeding in such court as such party shall deem appropriate in the circumstances. The arbitrators shall determine in what proportion the parties hereto shall bear the cost of such arbitration, except that each party thereto shall pay the fees and expenses of the arbitrator appointed by or on behalf of such party and one-half of the fees and expenses of the third arbitrator, if any. In

determining any question, matter or dispute before them, the arbitrators shall apply the provisions of this lease without varying therefrom in any respect and shall be without power to add to, modify or change any of said provisions. In the event that for any reason whatsoever an arbitrator or arbitrators shall not be appointed as in this Article provided, then such arbitrator or arbitrators, shall be named or appointed in accordance with the prevailing provisions of the laws of the State where the Tenant's Premises are located relating to arbitration.

#### **Section 15.5 Attorneys Fees.**

In case suit shall be brought because of the breach of any covenant herein contained on the part of either party to be kept or performed, the unsuccessful party shall reimburse the party ultimately prevailing in such action for such party's reasonable, attorneys' fees incurred in connection with such proceeding.

#### **Section 15.6 Waiver of Performance by Either Party.**

One or more waivers of any covenant, term or condition of this lease by either party shall not be construed as a waiver of a subsequent breach of the same or any other covenant, term or condition; nor shall any delay or omission by either party to seek a remedy for any breach of this lease or to exercise a right accruing to such party by reason of such breach be deemed a waiver by such party of its remedies or rights with respect to such breach. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any similar act. Any waiver of a covenant, term, or condition contained in this lease or any waiver of default must be in writing and signed by both parties.

#### **Section 15.7 Remedies Cumulative.**

Except as otherwise expressly provided herein, all rights, privileges and remedies afforded either of the parties hereto by this lease or by law shall be deemed cumulative and the exercise of any one of such rights, privileges and remedies shall not be deemed to be a waiver of any other right, privilege or remedy provided for herein or granted by law.

#### **Section 15.8 No Partnership.**

Nothing in this lease shall be construed as making the parties hereto partners or joint venturers or members of a joint enterprise or, except as otherwise specifically provided herein, as rendering either of said parties liable for the debts or obligations of the other party.

**Section 15.9 Partial Invalidity.**

If any covenant, term or condition of this lease or any application thereof shall be invalid or unenforceable, the remainder of this lease and any other application of such covenant, term or condition shall not be affected thereby.

**Section 15.10 Governing Law.**

This lease shall be construed according to, and be governed by, the law of the State of Colorado.

**Section 15.11 Lease Not To Be Recorded.**

The parties hereto have agreed to execute and deliver a memorandum of this lease for recording purposes with the expectation that such memorandum is in recordable form. If in the opinion of Tenant's counsel such memorandum will not afford Tenant the protection of the recording statutes, the parties hereto agree to take whatever action may in the opinion of Tenant's counsel be necessary to obtain such protection for Tenant. Landlord agrees that Landlord will not record this lease unless Tenant shall have consented to Landlord's so doing.

**Section 15.12 Counterparts.**

This lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

**Section 15.13 Easements and Covenants Running With the Land.**

A. Each of the easements granted by this lease shall constitute a servitude on the property of the grantor and an appurtenance to the property of the grantee, shall survive the total or partial destruction of the subject matter of the easement and/or the servient tenement of such grant, and shall run with the land. The grantee of any such easement may extend the benefits thereof to each of its Permittees. An

estate for whose benefit an easement is reserved hereunder shall for the purposes of this section be deemed to be the grantee of such easement.

B. It is intended that each and all of the covenants and agreements in this lease to be performed by or on the part of Landlord and Tenant, whether to be performed on or in Tenant's Premises or on or in any other portion of Downtown Westminster, and whether affirmative or negative in nature, shall be construed as covenants and not as conditions and that to the fullest extent legally possible all such covenants by Landlord and Tenant shall run with the land.

C. Notwithstanding any other provision of this lease to the contrary, all easements and covenants created by this lease will terminate effective upon the expiration of the term of this lease (including any options to extend that are exercised by Tenant) or upon the date of any earlier termination of this lease. Upon request of Landlord (and at Landlord's recording cost), Tenant agrees to execute a memorandum in recordable form confirming the expiration or termination date of this lease.

#### **Section 15.14 Lease Binding on Successors; Etc.**

All covenants, agreements, provisions and conditions of this lease shall be binding upon and inure to the benefit of the parties hereto and their heirs, devisees, executors, administrators, successors in interest and assigns and grantees of Landlord and Tenant, subject to the limitations on assignment and subletting contained in this lease. This lease shall not be binding upon Tenant until a fully executed copy thereof shall have been delivered by Tenant to Landlord or to Landlord's duly authorized agent or representative. No modification of this lease shall be binding unless evidenced by an agreement in writing signed by Landlord and signed in Tenant's name by one of Tenant's duly authorized officers.

IN WITNESS WHEREOF, Landlord and Tenant have caused this lease to be duly executed and sealed as of the day and year first above written.

<b>WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY</b>	<b>J. C. PENNEY PROPERTIES, INC.</b>
BY: _____ Donald Tripp Executive Director	By: _____ President
Attest:  _____ Secretary	Attest:  _____ Assistant Secretary
APPROVED AS TO LEGAL FORM	
By: _____ Authority Attorney	

STATE OF COLORADO

ss.:

COUNTY OF JEFFERSON

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2016 by  
Donald Tripp as Executive Director of the Westminster Economic Development Authority.

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

My Commission Expires:

---

Notary Public

STATE OF TEXAS

ss.:

COUNTY OF COLLIN

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by  
\_\_\_\_\_, a \_\_\_\_\_ of J. C. PENNEY PROPERTIES, INC., a Delaware corporation, on  
behalf of said corporation.

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

My Commission Expires:

---

Notary Public, State of Texas

## **RENT RIDER**

A. For the period commencing on the Commencement Date and continuing during the remainder of the term of this lease, Tenant shall pay Landlord an annual fixed rent at the rate of:

(i) One and 00/100 Dollars (\$1.00), payable on each anniversary of the date hereof for each of the first fifteen (15) Lease Years; and

(ii) Five Hundred Thousand Dollars (\$500,000.00), payable on each anniversary of the date hereof for the sixteenth (16<sup>th</sup>) Lease Year through the thirtieth (30<sup>th</sup>) Lease Year.

B. (i) For as long as Tenant's Premises shall be used for the operation of a retail store business conducted by Penney or until the expiration of the term hereof if Tenant's Premises shall be used for such purpose throughout such term, Tenant, in addition to paying Landlord the aforesaid fixed rent, shall pay Landlord as contingent rent an amount for each full Lease Year equal to three percent (3%) of the Retail Sales made upon Tenant's Premises during each Lease Year in excess of the Breakpoints set forth below:

(x) \$15,000,000.00 for the first fifteen (15) Lease Years; and

(y) \$16,667,000.00 for the sixteenth (16<sup>th</sup>) through thirtieth (30<sup>th</sup>) Lease Years.

All such sums shall be paid within two months following the end of the Lease Year for which payable.

(ii) For the first Lease Year if longer than 365 days and for any fractional Lease Year of less than 365 days the foregoing annual sales volume(s) used in computing the contingent rent herein provided for shall be proportionally increased or reduced, as the case may be, by multiplying the same by a fraction having as its numerator the number of days in such first Lease Year or such fractional Lease Year and having as its denominator the number "365". If the Lease Year or fractional Lease Year for which such contingent rent is being computed includes the date "February 29", the number "365" wherever appearing in this subparagraph shall for the purpose of making such computation be changed to "366".

(iii) The term “Retail Sales” as used in this lease is hereby defined to mean the amount of retail sales made upon the Tenant’s Premises as reflected in the sales tax returns submitted to the City of Westminster.

(iv) Intentionally deleted.

(v) Intentionally deleted.

(vii) This agreement shall not be construed as giving Landlord any partnership or other interest in Penney’s business.

(viii) It is understood and agreed by Landlord that there has been no representation of any kind whatsoever made by Tenant as to the minimum or maximum amount of Retail Sales which may or shall be made in Tenant’s Premises during any Lease Year of the term of this lease.

(ix) Intentionally deleted.

C. If any Related or Successor Corporation of Penney shall use Tenant’s Premises for the operation of a retail store business, the reference in this Rent Rider to “Penney” shall as respects the period of such use be deemed to include and refer to such corporation.

D. Until it receives other instructions from Landlord, Tenant shall pay all rents and other sums due Landlord under this lease by check payable to the order of the Westminster Economic Development Authority and addressed to Landlord’s address set out in the Notice section of this lease.



EXHIBIT A  
JC PENNEY BUILDING PARCEL

LAND DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF BLOCK B-2, DOWNTOWN WESTMINSTER AND A PORTION OF THE 20 FOOT ALLEY ADJACENT TO SAID BLOCK B-2, RECORDED SEPTEMBER 09, 2015 AT RECEPTION NO. 2015096340, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK B-2 THENCE ALONG THE EASTERLY LINE OF SAID BLOCK B2, S00°42'00"W A DISTANCE OF 73.24 FEET; THENCE N89°18'00"W A DISTANCE OF 9.93 FEET TO THE POINT OF BEGINNING;  
THENCE S00°40'34"W A DISTANCE OF 244.10 FEET;  
THENCE N89°19'01"W A DISTANCE OF 298.97 FEET;  
THENCE S00°44'04"W A DISTANCE OF 52.93 FEET;  
THENCE N89°20'01"W A DISTANCE OF 82.77 FEET;  
THENCE N00°37'42"E A DISTANCE OF 95.47 FEET;  
THENCE S89°22'18"E A DISTANCE OF 20.00 FEET;  
THENCE N00°39'55"E A DISTANCE OF 201.50 FEET;  
THENCE S89°19'37"E A DISTANCE OF 361.91 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 2.148 ACRES OR 93,559 SQUARE FEET MORE OR LESS.

BASIS OF BEARINGS

BEARINGS ARE BASED ON THE CITY OF WESTMINSTER GIS HORIZONTAL CONTROL NETWORK WITH A BEARING OF N00°14'22"E ALONG THE WESTERLY LINE OF THE SOUTHEAST QUARTER OF SECTION 24, BEING MONUMENTED BY A FOUND 3-1/4" ALUMINUM CAP IN RANGE BOX PLS #36580 AT THE CENTER QUARTER CORNER AND A FOUND 3-1/4" ALUMINUM CAP IN RANGE BOX PLS #17488 AT THE SOUTH QUARTER CORNER.

PREPARED BY ADAM S. FORD  
REVIEWED BY RICHARD A. NOBBE, PLS  
FOR AND ON BEHALF OF  
MARTIN/MARTIN, INC.  
12499 WEST COLFAX AVENUE,  
LAKEWOOD, CO. 80215  
September 30, 2015  
Rev. January 13, 2016



# EXHIBIT A

## JC PENNEY BUILDING PARCEL

FENTON WAY

REMAINDER OF BLOCK B-2,  
DOWNTOWN  
WESTMINSTER

POINT OF  
COMMENCEMENT  
P.O.B. —

S89°19'37"E 361.91'

JC PENNEY  
BUILDING PARCEL  
(2.148 ACRES OR  
93,559 SQ. FT.±)

-S00°42'00" W  
73.24'

-N89°18'00" W  
9.93'

BLOCK C-2,  
DOWNTOWN  
WESTMINSTER

S89°22'18''E  
20.00'  
N00°3

N00°37'42"E  
| 95.47'  
BLDG. IS 0.8'  
SOUTH OF P/L

N89°19'01" W 298.97'  
REMAINDER OF BLOCK B-2,  
DOWNTOWN  
WESTMINSTER

500°40'34" W 244.10'

BLOCK A-1,  
DOWNTOWN  
WESTMINSTER

*TRACT E,  
DOWNTOWN  
WESTMINSTER*

*TRACT F,  
DOWNTOWN WESTMINSTER*

*BLOCK C-1,  
DOWNTOWN WESTMINSTER*

*TRACT G,  
DOWNTOWN WESTMINSTER*



REV. JANUARY 13, 2016  
SEPTEMBER 30, 2015

12499 WEST COLFAX AVENUE, LAKWOOD, COLORADO 80215  
MAIN 303.431.6100 MARTINMARTIN.COM

MARTIN/MARTIN, INC., 4251 Kipling, Wheat Ridge, Colorado 80034-4001  
Downtown Westminster  
JCPENNEY

No	Bearing	Chord	Radius	M Arc	C Arc	Delta
001	S00-40-34W	244.100				
002	N89-19-01W	298.970				
003	S00-44-04W	52.930				
004	N89-20-01W	82.770				
005	N00-37-42E	95.470				
006	S89-22-18E	20.000				
007	N00-39-55E	201.500				
008	S89-19-37E	361.910				

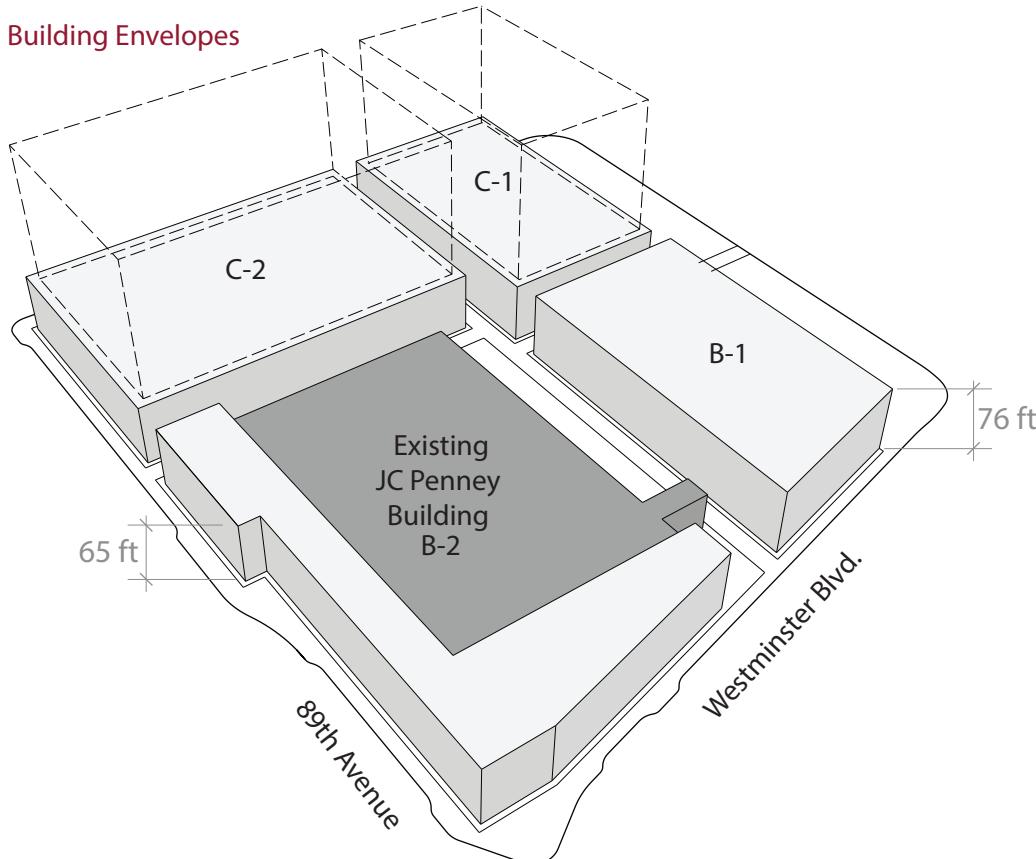
CLOSURE = 0.002 N41-43-27E

PERIMETER = 1357.650 PRECISION = 1: 556257

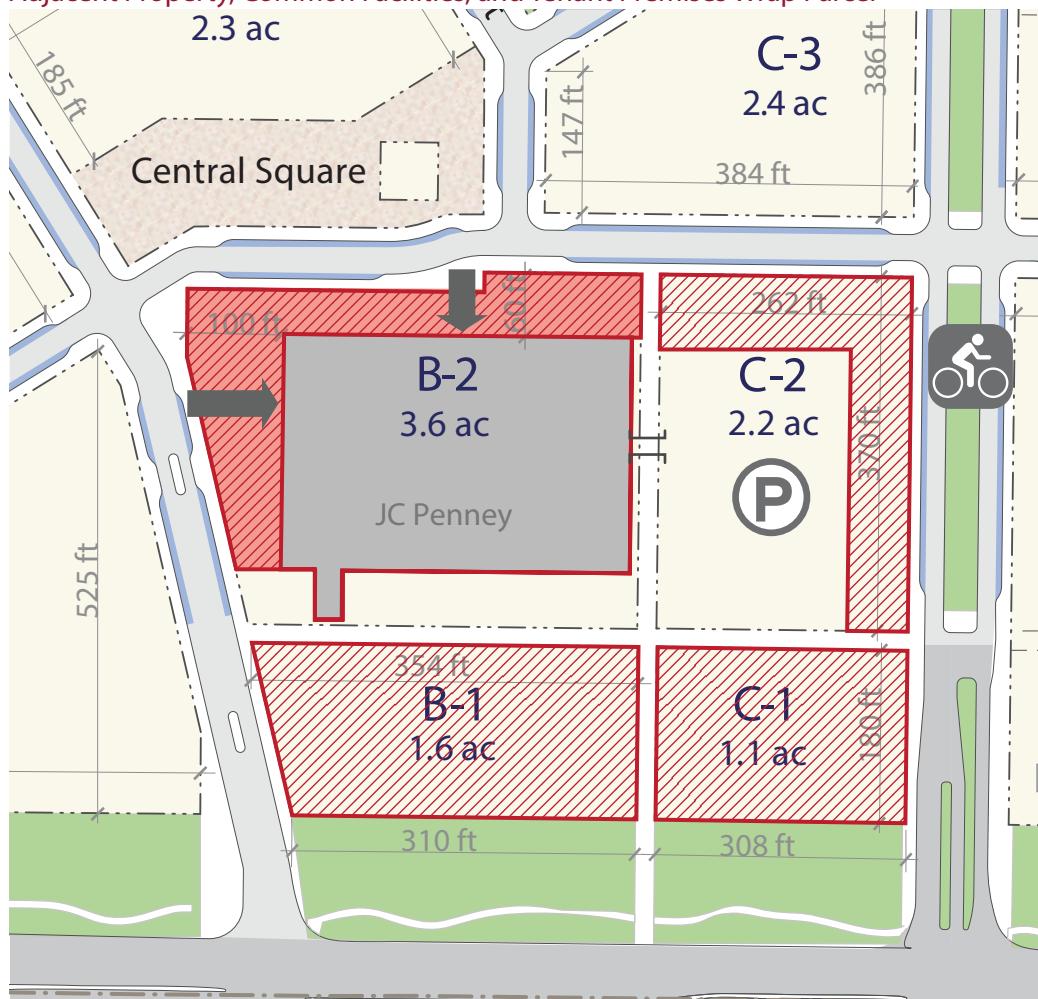
AREA = 93559.43 SQ. FEET OR 2.147829 ACRES

## EXHIBIT B

### Building Envelopes



### Adjacent Property, Common Facilities, and Tenant Premises Wrap Parcel



### Building Wrap Requirements

The building wrap for B-2 (envelope shown to left) is required to provide ground floor retail with an active frontage facing onto the Central Square/89th Avenue and Westminster Blvd. The wrap must maintain a 90% building frontage along these streets. Permitted frontage types for this retail frontage include Storefront, Storefront Cafe, and Urban Frontage. (See Exhibit C.)

The minimum height of the building wrap (building liner) is 35 feet, as described in Exhibit C. Maximum building heights relate to building type as described in Exhibit C. As shown to the left, maximum allowable building height based on allowable building type by block is as follows:

- B-1 = 76 feet
- B-2 = 65 feet
- C-1 and C-2, no maximum.

**Adjacent Property**  
(includes Tenant Premises Wrap)

**Tenant Premises Wrap Parcel** (43,750 sqft)

**Common Facilities**  
Store Entries  
Sky Bridge

\*Signed store entries will be provided at the ground level and may be enclosed. Space allocated toward entries is included in wrap footprint.

## EXHIBIT D

### Sign Renderings



### Illustrative Renderings of Signage at Entryways

Signage for JC Penney will be located at the building facade of the Tenant Premises Wrap Parcel at both Common Facility entryways at Westminster Boulevard and 89th Avenue (highlighted in red above). Signage and building design shown in the above rendering is for illustrative purposes only. Tenant will have final design approval of signage at these Common Facility entryways.

Signage shall be consistent with the Downtown Specific Plan and Westminster Municipal Code signage standards. Signage may project from the building facade as a blade sign or may be affixed to the building.

## **EXHIBIT E**

### **PROHIBITED USES**

- (a) Entertainment or recreational purposes, including without limitation, bowling alley, skating rink, athletic or health club, studio or gym, billiard room, game arcade or amusement center;
- (b) Bar, nightclub or tavern;
- (c) Restaurant or other food vendor without a seating area;
- (d) Hair or nail salon;
- (e) Any bankruptcy sale, unless pursuant to a court order, or auction house operation;
- (f) Any amusement or video arcade, pool or billiard hall, tattoo parlor;
- (g) Any business or use which creates strong, unusual or offensive odors, fumes, dust or vapors; emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness or which otherwise constitute a public or private nuisance;
- (h) Sexually oriented business;
- (i) Head shop or other shop selling drug paraphernalia;
- (j) Funeral home, mortuary or crematorium;
- (k) Auto mechanic or metal working shop, car sales or leasing operation or car wash;
- (l) Junk yard or other dumping facility, stock yard or labor camp;
- (m) Mobile home or RV park;
- (n) Gambling or off-track betting facility;
- (o) on-site dry cleaning operations;
- (p) thrift shop over 3000 square feet;
- (q) assembly hall or event center (including private functions, such as weddings, receptions, conferences and meetings);
- (r) brewery/distillery (unless part of a brewhouse, restaurant, or tasting room);
- (s) any dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and if handled in a reasonably clean and sanitary manner;
- (t) any unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks); and

- (u) any warehouse operation (except a warehouse operation incidental to an operation otherwise permitted hereunder), or any assembling, manufacturing, distilling, refining, smelting, industrial, agriculture, drilling or mining operation.
- (v) First run movie theatre

## LEGEND

- NEW ASPHALT (3")
- SEAL COAT
- NO DRIVE AREA (STRIPED)
- ASPHALT REMOVAL
- PARKING STALL COUNT

CONSTRUCTION PLANS FOR:  
**JCPENNEY PARKING LOT STRIPING**  
5453 W 88TH AVE  
WESTMINSTER, COLORADO 80031

## GENERAL NOTES

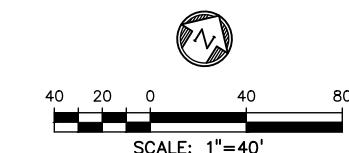
- ALL MATERIALS SHALL COMPLY WITH THE LATEST REVISION OF THE CITY OF WESTMINSTER STANDARDS AND SPECIFICATIONS.
- ALL SIGNAGE AND STRIPING TO BE INSTALLED PER CITY OF WESTMINSTER STANDARDS AND SPECIFICATIONS, AND MUTCD.
- ALL PARKING STALL AND NO PARKING AREAS TO BE STRIPED WITH 4" YELLOW PAINT.

## PARKING PROVIDED

- ON-STREET PARKING  
TOTAL SPACES - 163  
- CENTRAL AVE TO 88TH: 24  
- HARLAN WAY TO EATON ST: 66  
- CENTRAL AVE TO 89TH AVE: 24  
- PARK PL TO 88TH: 49
- OFF-STREET PARKING  
TOTAL SPACES - 500  
- PARK PL: 24  
- WEST OF WESTMINSTER BLVD: 425(6 ADA)  
- WEST SIDE OF JCPENNEY: 28 (ADA - 12)  
- SOUTH SIDE OF JCPENNEY: 22

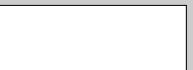
TOTAL SPACES PROVED - 662

ISSUE DATE  
FOR REVIEW 12/15/15

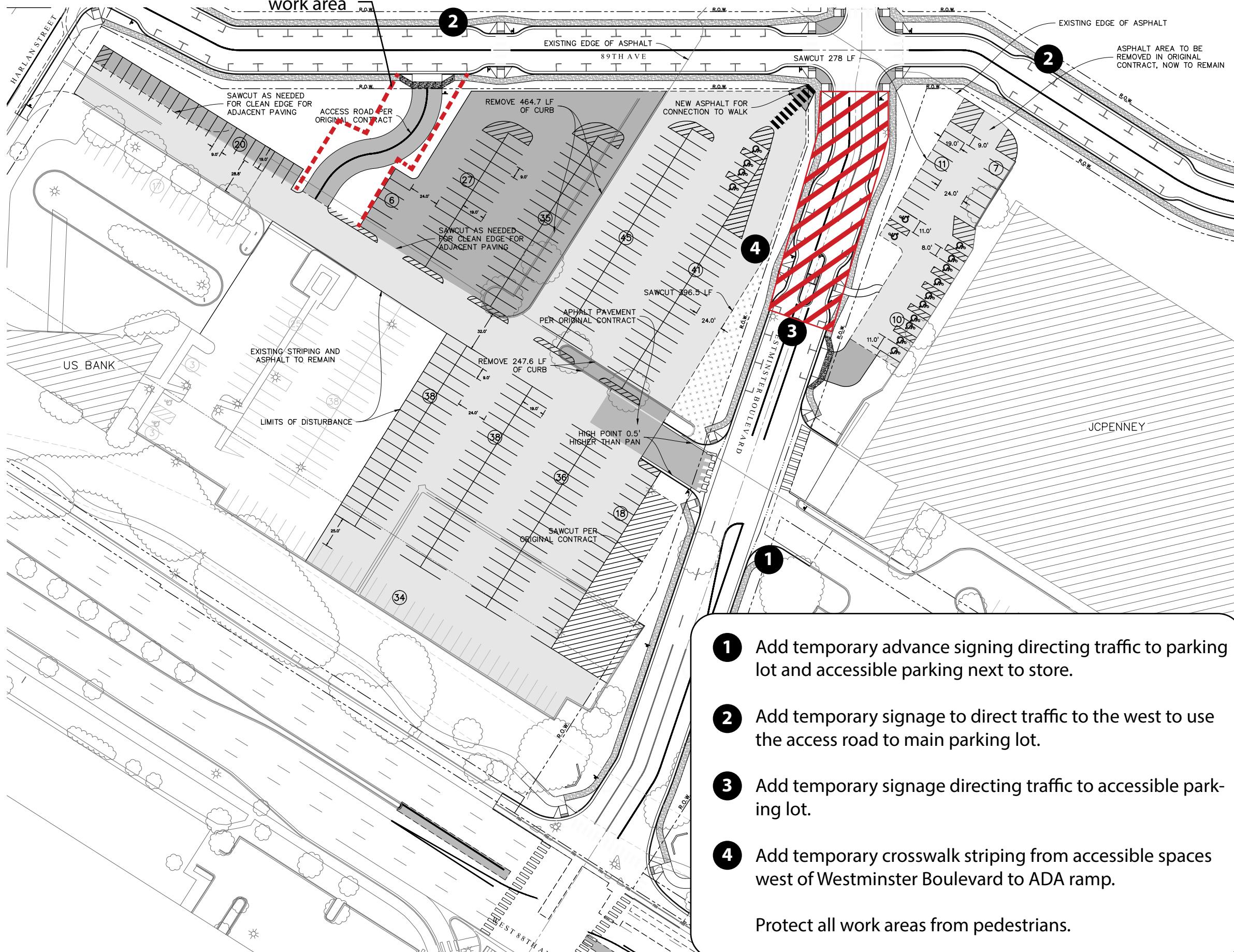
DESIGNED BY: CAM  
DRAWN BY: CAM  
CHECKED BY: GJL  
FILE NAME: JCPENNEY PARKING\_PLAN


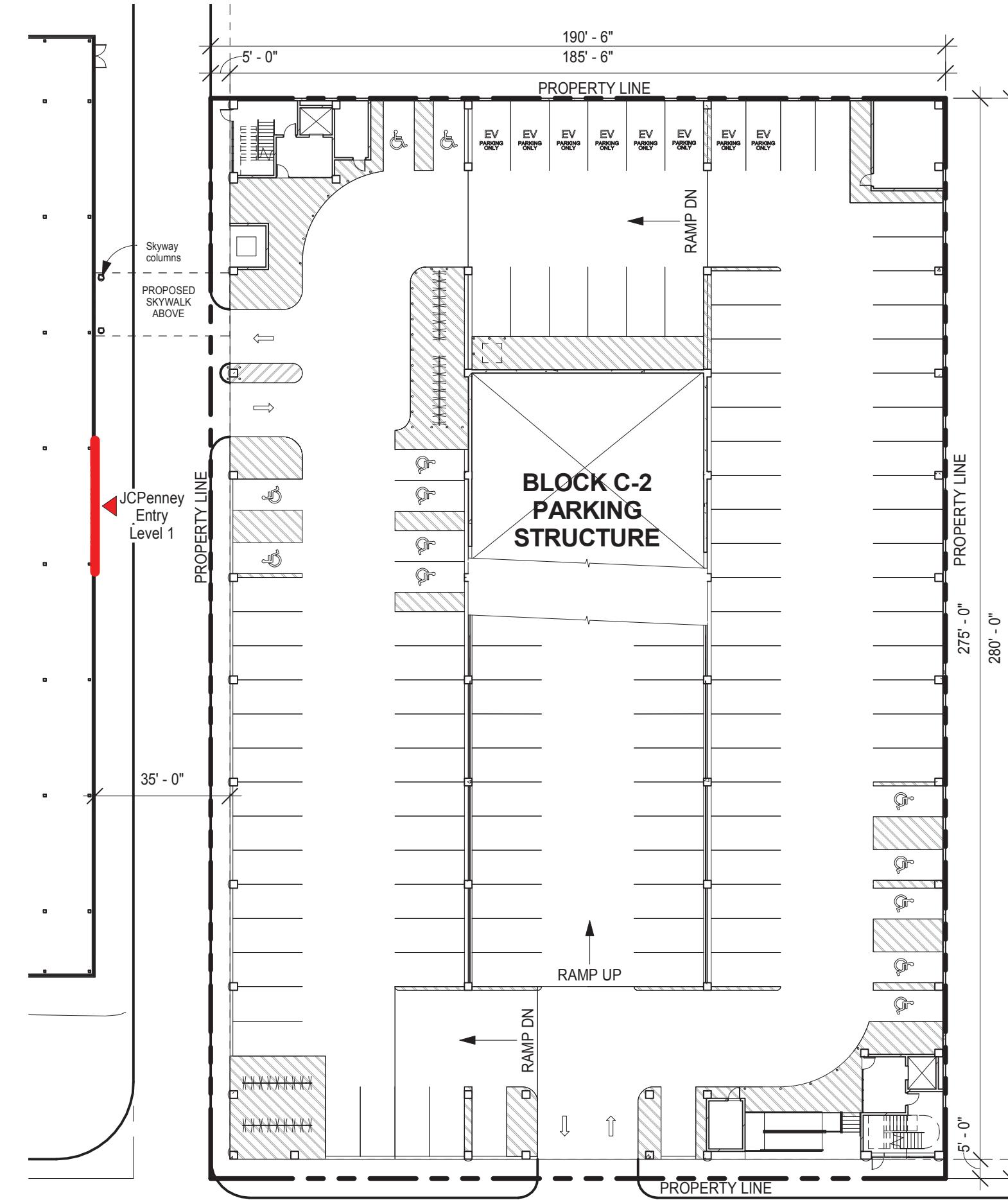
DRAWING SCALE:  
HORIZONTAL: 1" = 40'  
VERTICAL: N.A.

## STRIPING PLAN

PROJECT:20681-02BLTR  
DRAWING NO.


## Barricade from work area

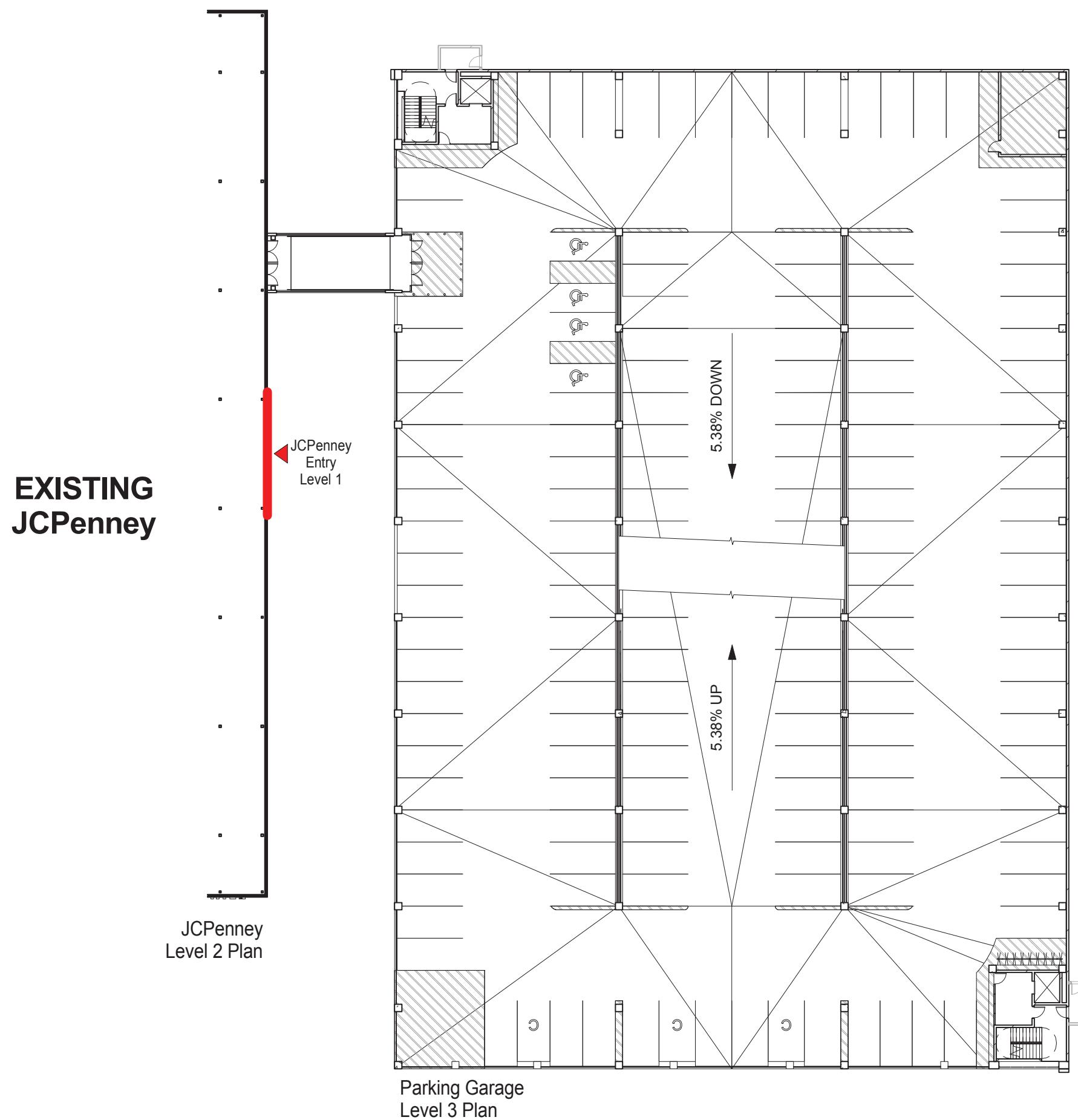
Exhibit F  
Parking and Road Closure Designations

**EATON STREET****BLOCK C-2  
FUTURE DEVELOPMENT**

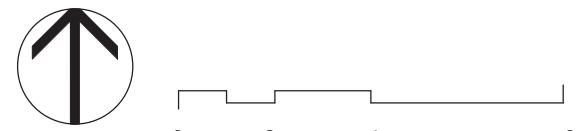
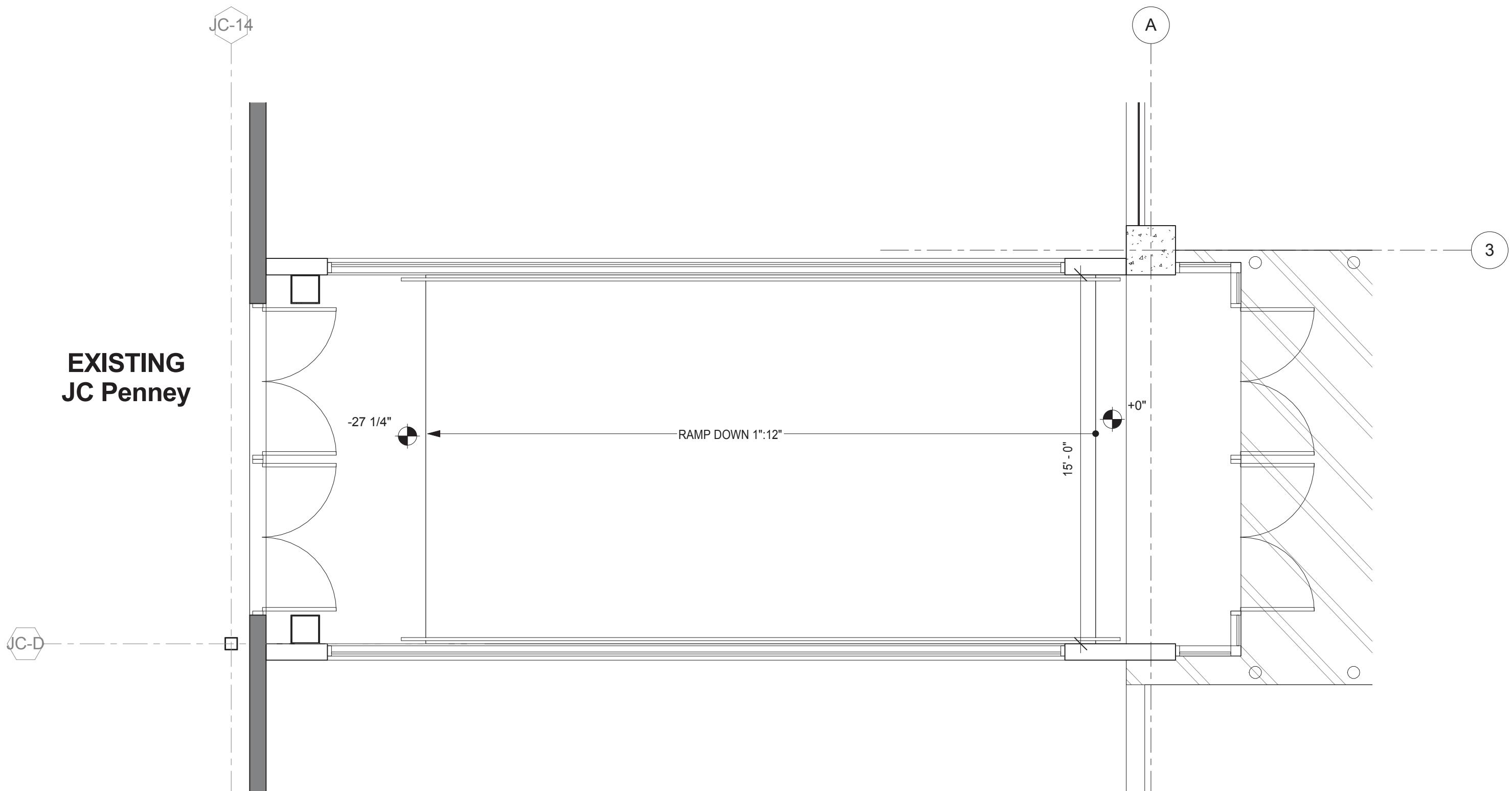
Westminster Parking Garage - Block C-2

Westminster, CO

**EXISTING  
JCPenney**

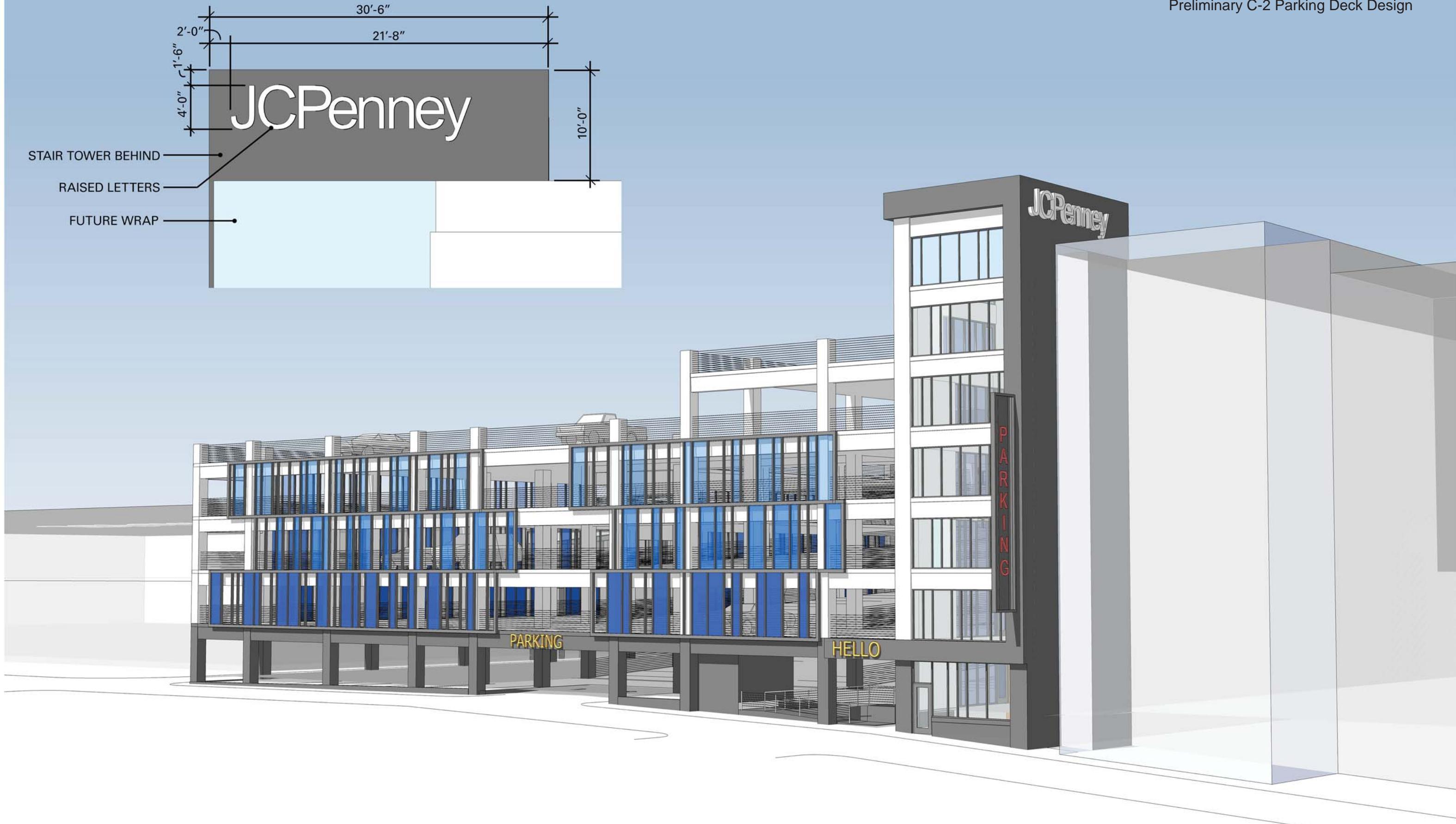


30967100



Skyway Enlarged Plan

3.23.2017



30867

WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION NO. **168**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2016

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**2016 WESTMINSTER ECONOMIC DEVELOPMENT AUTHORITY  
BUDGET SUPPLEMENTAL APPROPRIATION**

WHEREAS, the Westminster Economic Development Authority (WEDA) initially adopted the 2016 budget on October 13, 2014; and

WHEREAS, proper notice for this amendment was published on March 24, 2016, pursuant to the requirements of Section 29-1-106 Colorado Revised Statutes; and

WHEREAS, a public hearing for this amendment was held on March 28, 2016, pursuant to the requirements of Section 29-1-108 Colorado Revised Statutes; and

WHEREAS, as necessary a resolution to make adjustments to the budget is presented to the Board; and

WHEREAS, there are adjustments to be made to the 2016 budget; and

WHEREAS, the revenue adjustment consists of an increase of \$2,500,000; and

WHEREAS, the expense adjustment consists of an increase of \$2,500,000.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Westminster Economic Development Authority:

Section 1. The \$2,500,000 increase shall be allocated to WEDA Revenue and Expenditure accounts as described below:

REVENUES

Description	Account Number	Current Budget	Amendment	Revised Budget
TRF Gen Capital Improv	6800.45000.0750	\$0	\$2,500,000	\$2,500,000
Total Change to Revenues			\$2,500,000	

EXPENDITURES

Description	Account Number	Current Budget	Amendment	Revised Budget
Appropriation Holding-WURP City Participation	80968005952.80400.8888	\$13,467,526	\$2,500,000	\$15,967,526
Total Change to Expenses			\$2,500,000	

Section 2. The resolution shall be in full force and effect upon its passage and approval.

PASSED AND ADOPTED 28<sup>th</sup> day of March, 2016.

ATTEST:

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Secretary