

99085317

99 OCT 18 AM 8:43

SUBORDINATION, NON-DISTURBANCE AND ATTORNTMENT  
AGREEMENT WITH MORTGAGEE  
RECORDER

THIS AGREEMENT, made as of this 7th day of July, 1999, between J. C. PENNEY COMPANY, INC., a Delaware corporation, having a mailing address of P. O. Box 10001, Dallas, Texas 75301-2105 ("Tenant"), and SUNAMERICA LIFE INSURANCE COMPANY, an Arizona corporation, having an address of 1 SunAmerica Center, Century City, Los Angeles, California 90067-6022, Attention: Director-Mortgage Lending and Real Estate ("Mortgagee");

WITNESSETH:

WHEREAS, by Lease, dated as of January 27, 1997, between RD MERRILLVILLE ASSOCIATES, L.P. predecessor-in-interest to ACADIA MERRILLVILLE REALTY, L.P. ("Landlord") and Tenant, a Memorandum of which, dated as of January 27, 1997, was recorded on March 6, 1997, in the Office of the Recorder, Lake County, Indiana, as Document No. 97014213 (said lease as amended by Letter dated October 6, 1997, and Term Agreement dated as of June 1, 1998, hereinafter referred to as the "Penney Lease"), there was leased to Tenant a parcel of land containing approximately 50,000 square feet, in the City of Merrillville, County of Lake, State of Indiana which parcel forms a part of the Merrillville Plaza Shopping Center described on Exhibit "A" to said Memorandum ("Entire Premises") and on Exhibit "A" attached hereto; and

WHEREAS, Mortgagee proposes to make a loan to Landlord secured by Landlord's promissory note and a first mortgage, deed of trust, or deed to secure debt on all or a portion of the Entire Premises (the "Mortgage"); and

WHEREAS, Tenant is willing to subordinate the Penney Lease to the lien of the Mortgage, provided it obtains assurance from Mortgagee that its possession of the Demised Premises and its right to use the "Common Facilities", as defined in the Penney Lease, will not be disturbed by reason of or in the event of foreclosure of the Mortgage; and

WHEREAS, Mortgagee is willing to give such assurance.

NOW, THEREFORE, for and in consideration of the sum of One Dollar (\$1.00) paid by each party to the other, receipt whereof is hereby acknowledged, the mutual agreements herein contained and other good and valuable consideration, the parties hereto do hereby mutually covenant and agree as follows:

1. Tenant hereby subordinates the Penney Lease to the lien of the Mortgage and to all renewals, modifications, replacements, consolidations and extensions of same.
2. So long as no event of default on the part of Tenant under the Penney Lease shall exist which would entitle Landlord to terminate the Penney Lease, or if such an event of default shall exist, so long as Tenant's time to cure same shall not have expired, (a) Mortgagee will not at any time join Tenant as a party defendant in any action or proceeding to foreclose the Mortgage or any extension, renewal, consolidation or replacement of same unless required by law to do so, and (b) the term of the Penney Lease shall not be terminated or modified in any respect whatsoever, and Tenant's right of possession to the demised premises and its rights in and to the "Common Facilities" in the remainder of the mortgaged premises and its other rights arising out of the Penney Lease will all be fully recognized and protected by Mortgagee and shall not be disturbed, canceled, terminated or otherwise affected by reason of the Mortgage or any action or proceeding instituted by Mortgagee to foreclose the Mortgage, or any extension, renewal, consolidation or replacement of same.
3. In the event that Mortgagee takes possession of the Entire Premises, either as the result of foreclosure of the Mortgage or accepting a deed to the Entire Premises in lieu of

17.00  
0713959

foreclosure, or otherwise, or the Entire Premises shall be purchased at such a foreclosure by a third party and Mortgagee or such third party shall furnish Tenant reasonably satisfactory evidence that it has acquired title to the Entire Premises, Tenant shall attorn to Mortgagee or such third party and recognize Mortgagee or such third party as its landlord under the Penney Lease and Mortgagee or such third party will recognize and accept Tenant as its tenant thereunder, whereupon, the Penney Lease shall continue in full force and effect as a direct lease between Mortgagee or such third party and Tenant for the full term thereof, together with all extensions and renewals thereof, and Mortgagee or such third party shall thereafter assume and perform all of Landlord's obligations, as landlord under the Penney Lease, with the same force and effect as if Mortgagee or such third party were originally named therein as Landlord, except that Mortgagee shall not be (i) liable for any act, omission, or default of Landlord, or any prior Landlord, except such acts, omissions, and defaults which are of a continuing nature, and of which Mortgagee received written notice within a reasonable time after the occurrence of same, (ii) bound by any prepayment of more than one month's rent reserved under the Penney Lease and (iii) bound by any amendment or modification of the Penney Lease made without the express written consent of Mortgagee, but the foregoing (i), (ii) and (iii) shall in no way be deemed to affect or curtail any of Tenant's rights, whether accrued or not, under the article of the Penney Lease, captioned "UNPERFORMED COVENANTS OF LANDLORD MAY BE PERFORMED BY TENANT". However, if conflicting claims should be made to the rent payable under the Penney Lease, Tenant shall have the right to institute an interpleader suit for the purpose of determining who is entitled to payment of such rent, and to pay the rent in accordance with the judicial determination rendered in such suit.

4. Landlord and Tenant may, from time to time, modify or amend the Penney Lease without Mortgagee's consent, provided such modifications or amendments do not result in the reduction of the rent payable thereunder or make Landlord's obligations thereunder more onerous; any such modifications having such result and made without Mortgagee's written consent shall be void and of no force and effect as between Mortgagee and Tenant, provided that notwithstanding any such modification or amendment as between Mortgagee and Tenant paragraph 3 (iii) shall apply. The foregoing shall not be deemed to affect any obligations of Landlord under the terms of the Mortgage, but in the event of any conflict between the terms of the Mortgage and the terms of this Agreement, as between Tenant and Mortgagee, the terms of this Agreement shall control.

5. If Landlord shall be in default of any provision under the Penney Lease which would permit Tenant to cancel the Penney Lease or terminate the term thereof, or to spend a sum of \$10,000 or more on behalf of Landlord and to withhold same from rent, Tenant agrees:

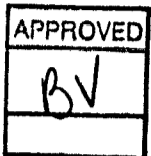
- (a) simultaneously with the service upon Landlord of notice of such default, a copy of such notice shall be served upon Mortgagee by certified or registered mail, return receipt requested, at the address for Mortgagee set forth at the head of this Agreement, or if no address is set forth, at such address as Mortgagee shall notify Tenant in writing as the address to which such notices are to be sent; and
- (b) performance by Mortgagee of Landlord's obligations under the Penney Lease within the applicable period of time set forth in the Penney Lease shall be accepted as if performance had been made by Landlord.

6. If Tenant has not received one original, fully executed copy of this Agreement, together with one copy of the recorded Agreement indicating that the Agreement has been recorded in the appropriate Recorder's Office, by August 30, 1999, the execution thereof by J. C. Penney Company, Inc. shall be deemed null and void. Furthermore, if any changes, additions or deletions are made to this Agreement without first obtaining Tenant's written approval thereof, the execution hereof by J. C. Penney Company, Inc. shall be deemed null and void.

7. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns and all subsequent owners of the Entire Premises acquiring title thereto from or through Mortgagee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their proper corporate officers the day and year first above written.

ATTEST:



J. C. PENNEY COMPANY, INC.

Alfred O. Guelker  
Assistant Secretary

By: Michael Jacobson  
Vice President

ATTEST:

SUNAMERICA LIFE INSURANCE COMPANY

Secretary

By: William M. Petak  
Name: WILLIAM M. PETAK  
Title: AUTHORIZED AGENT

This Document is the property of  
the Lake County Recorder!

STOP



STATE OF TEXAS )  
 )SS.:  
COUNTY OF COLLIN )

This instrument was acknowledged before me on the 15<sup>th</sup> day of July, 1999 by Michael Lowenkron, a Vice President of J. C. PENNEY COMPANY, INC., a Delaware corporation, on behalf of said corporation.

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

My Commission Expires:

03-25-2001

Brandy Vowels  
Notary Public, State of Texas

STATE OF CALIFORNIA )  
 )SS.:  
COUNTY OF LOS ANGELES )



On this the 8<sup>th</sup> day of SEPTEMBER, 1999, before me a Notary Public, duly authorized in and for the said County and in the State aforesaid to take acknowledgments, personally appeared WILLIAM M. PETAK, to me known and known to me to be the AUTHORIZED AGENT of SUNAMERICA LIFE INSURANCE COMPANY, one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

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

My Commission Expires:

JAN 25, 2002

Michelle D. Campion  
Notary Public



EXHIBIT "A"

The tract of land which, with the improvements erected and to be erected thereon, comprises the Entire Premises is situated in the City of Merrillville, County of Lake and State of Indiana, and is more particularly described as follows:

PARCEL 1: PART OF THE NORTH HALF OF SECTION 23, TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE SECOND PRINCIPAL MERIDIAN, IN LAKE COUNTY, INDIANA, LYING SOUTHWESTERLY OF THE 100 FOOT RIGHT OF WAY OF THE CHESAPEAKE AND OHIO RAILROAD AND NORTH OF THE 200 FOOT RIGHT OF WAY OF U. S. HIGHWAY NO. 30, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 23; THENCE SOUTH 02 DEGREES 42 MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF SAID SECTION 23 A DISTANCE OF 1,258.66 FEET TO THE POINT OF BEGINNING OF THIS DESCRIBED PARCEL; THENCE NORTH 87 DEGREES 18 MINUTES 00 SECONDS EAST, 721.33 FEET, MORE OR LESS, TO THE SOUTH LINE OF SAID 100 FOOT WIDE CHESAPEAKE AND OHIO RAILROAD RIGHT OF WAY; THENCE SOUTH 62 DEGREES 42 MINUTES 00 SECONDS EAST ALONG SAID SOUTH RIGHT OF WAY, 819.41 FEET TO A POINT 1,652.33 FEET, SOUTH 62 DEGREES 42 MINUTES 00 SECONDS EAST, FROM THE WEST LINE OF SAID SECTION 23 AND MEASURED ALONG THE SOUTH LINE OF SAID RAILROAD RIGHT OF WAY; THENCE SOUTH 27 DEGREES 18 MINUTES 00 SECONDS WEST, 354.33 FEET; THENCE NORTH 62 DEGREES 42 MINUTES 00 SECONDS WEST, 36.92 FEET; THENCE SOUTH 27 DEGREES 18 MINUTES 00 SECONDS WEST, 614.54 FEET, MORE OR LESS, TO THE NORTHERLY RIGHT OF WAY LINE OF U. S. HIGHWAY NO. 30; THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID HIGHWAY, 44.97 FEET; THENCE NORTH 01 DEGREES 35 MINUTES 00 SECONDS WEST, 43.06 FEET; THENCE NORTH 88 DEGREES 25 MINUTES 00 SECONDS EAST, 17.0 FEET; THENCE NORTH 01 DEGREES 35 MINUTES 00 SECONDS WEST, 150 FEET; THENCE SOUTH 88 DEGREES 25 MINUTES 00 SECONDS WEST, 326.65 FEET; THENCE SOUTH 01 DEGREES 35 MINUTES 00 SECONDS EAST, 193.56 FEET TO THE NORTHERLY RIGHT OF WAY OF U. S. HIGHWAY NO. 30; THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID HIGHWAY, 210 FEET TO THE EAST LINE OF THE AMERICAN OIL PROPERTY DESCRIBED IN DEED RECORDED ON APRIL 12, 1965, IN DEED RECORD 1288, PAGE 199; THENCE NORTH 02 DEGREES 42 MINUTES 00 SECONDS WEST, 191.812 FEET ALONG SAID EAST LINE; THENCE SOUTH 87 DEGREES 18 MINUTES 00 SECONDS WEST, 350 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 23, THAT IS 2,287.90 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SECTION 23; THENCE NORTH 02 DEGREES 42 MINUTES 00 SECONDS WEST, 1,029.24 FEET TO THE POINT OF BEGINNING.

PARCEL 2: NON-EXCLUSIVE RIGHT TO USE FOR INGRESS AND EGRESS THE EXISTING ACCESS ALONG AND ADJACENT TO THE SOUTHEAST CORNER OF PARCEL 1 ABOVE, TO AND FROM U. S. 30, AS CREATED IN THE DECLARATION OF EASEMENTS, COVENANTS AND CONDITIONS RECORDED JANUARY 30, 1979, AS DOCUMENT NO. 513561, UPON THE TERMS AND PROVISIONS THEREIN PROVIDED.

\*\*\*\*\*

Attached to and forming part of Subordination, Non-Disturbance and Attornment Agreement with Mortgagee, dated as of July, 1999 by and between J. C. PENNEY COMPANY, INC., as Tenant, and SUNAMERICA LIFE INSURANCE COMPANY, as Mortgagee, covering premises at Merrillville Plaza, Merrillville, Indiana.

Initialed for  
identification  
for Tenant:

By BV

Initialed for  
identification  
for Mortgagee:

By [Signature]