

II hereof which shall continue to be binding on the Developer or Penney, as the case may be, then, at such time as such conditions, agreements and obligations are satisfied, performed or waived, Penney or the Developer, as the case may be, shall execute and deliver to the Developer or Penney, as the case may be, a certificate stating such satisfaction, performance or waiver. The failure of Penney or the Developer to deliver the certificate contemplated hereunder on or before thirty (30) days after the date of request therefor shall be deemed to be the delivery of a certificate which states that all conditions, agreements and obligations of the Developer or Penney, as the case may be, under the provisions of Article II hereof have been satisfied and performed.

Section 10.12. Liability of Penney Properties and Penney Company. The liability of Penney Properties and Penney Company under this Agreement shall be joint and several and all obligations of Penney Properties hereunder shall also be obligations of Penney Company; provided, however, that so long as the Penney Company shall hold a leasehold estate in and to the entire Penney Site, the obligations of Penney under this Agreement shall be those of the Penney Company alone and the Developer shall look solely to the Penney Company for the performance thereof.

Section 10.13. Term of this Agreement. Unless terminated pursuant to the terms hereof, this Agreement shall continue and the obligations hereunder shall remain binding and the easements in the Common Facilities shall remain effective from the date hereof until the Opening Date and thereafter for a period of fifty-five (55) years; provided, however, that, notwithstanding the foregoing, in the event the Operating Agreement is terminated or the Penney Site or the Developer Site is excluded from the operation and effect of the Operating Agreement, this Agreement shall terminate as of such date.