

Section 6.06. Opening of the Penney and the Developer Facilities. Notwithstanding anything contained in the Operating Agreement to the contrary, Penney shall not be required to open its Facilities for business in the event that (i) one of the other Department Stores shall not be open for business or be ready to open for business and (ii) tenants occupying not less than sixty percent (60%) of the total Floor Area of the store buildings located on the Developer Site shall not be open for business or obligated to open for business.

For purposes of this Agreement, the Developer shall be deemed to have opened its Facilities for business with the public at such time as (i) the Mall shall have been opened to the general public and (ii) tenants occupying at least sixty percent (60%) of the total Floor Area of the store buildings located on the Developer Site shall be open for business or obligated to open for business.

Notwithstanding anything contained herein or in the Operating Agreement to the contrary, the obligation of Penney to open its Facilities for business shall be extended by the number of days Penney is delayed in completing or opening its Facilities by reason of the failure of the Developer to meet any of the completion dates specified in Sections 2.09, 2.10, 2.11 or 2.12 hereof.

Section 6.07. Modification of Operating Covenants of the Other Department Stores. Provided Penney shall not be in default under its operating covenant set forth in Section 6.01 hereof, Developer agrees that, without first obtaining the written consent of Penney, it shall not voluntarily, by formal written agreement, modify or amend the operating covenant of any Department Store such that the obligations of any Department Store to operate a department store are materially diminished. It is understood and agreed that (i) any amendment or modification made to any