

damaged or destroyed by a casualty, the obligations of Penney or the Developer, as the case may be, with respect thereto shall be as set forth in Section 5.04 of the Operating Agreement.

ARTICLE VI

COVENANTS TO OPERATE

Section 6.01. Operating Covenant of Penney. Penney covenants and agrees with the Developer that (A) in the event there are three (3) Department Stores, including Penney, in the Shopping Center, that, subject to (i) one of the other Department Stores, which is a conventional department store such as Rich's, Thalhimers, Belk or Macy, not being in default under its operating covenant with the Developer, (ii) the Developer Facilities identified in Section 1.03(f)(i) of the Operating Agreement, for a continuous period of one (1) year not falling below an occupancy rate of sixty percent (60%) of the Floor Area therefor, and, Penney shall have given the Developer notice of said occupancy rate failure and one hundred and eighty (180) days in which to cure said failure and (iii) Unavoidable Delays; or (B) in the event there are four (4) Department Stores, including Penney, in the Shopping Center, that, subject to (i) two of the other Department Stores, one of which is a conventional department store such as Rich's, Thalhimers, Belk or Macy not being in default under its operating covenant with the Developer, (ii) the covenant to operate of the Fourth Department Store expiring by its terms on a date which is not earlier than the expiration of the operating covenant of Penney, (iii) the Developer Facilities identified in Section 1.03(f)(i) of the Operating Agreement, for a continuous period of one (1) year not falling below an occupancy rate of sixty percent (60%) of the Floor Area therefor and Penney shall have given the Developer notice of