



MISC 2017015485



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Fee amount: 58.00  
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COMP: MJ

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
02/28/2017 10:34:46.00



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**THIS PAGE INCLUDED  
FOR INDEXING**

PREPARED BY AND RECORDING  
REQUESTED BY AND  
WHEN RECORDED RETURN TO:  
SUSAN L. BEAUMONT, ESQ.  
THE TJX COMPANIES, INC.  
770 COCHITUATE ROAD  
FRAMINGHAM, MA 01701

## MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, made and entered into as of this 30<sup>th</sup> day of December, 2016, by and between Maple Joint Venture II LLC, a Nebraska limited liability company (the "Landlord"), and The TJX Companies, Inc., a Delaware corporation (the "Tenant"), provides:

1. Lease. The provisions set forth in a written lease between the parties hereto dated December 30, 2016 (the "Lease") are hereby incorporated by reference in this Memorandum.

2. Demised Premises. The Demised Premises are more particularly described as follows:

The Demised Premises consist of a portion of a one-story building, to be renovated by Landlord as provided in the Lease, and contain forty-two thousand one hundred eighty-nine (42,189) square feet of floor area having a frontage and width of one hundred eighty-four feet (184') and other dimensions as shown and labeled Area A upon the plan attached to the Lease. The Demised Premises are a portion of the Shopping Center land more particularly described in Schedule A attached hereto as a part hereof. In addition, the Tenant shall have the exclusive right to use certain service areas adjacent to the Demised Premises which contain an exterior loading dock and trash storage area.

3. Term and Option to Extend Term. The original term of the Lease shall be the period of ten (10) years and a fraction of month commencing on the Commencement Date (as described below) and terminating on the last day of the month during which the tenth (10th) anniversary of the Commencement Date shall occur, except, however, that if the Commencement Date shall be a first day of a calendar month then the original term of this lease shall be the period of ten (10) years commencing on the Commencement Date and terminating on the day prior to the tenth (10th) anniversary thereof.

Tenant shall have the right, at its election, to extend the term of the Lease for four (4) extension periods of five (5) years each, each commencing upon the expiration of the original term, or the original term as thus previously extended. In addition, Tenant shall have the right, at its election, to extend the original term, or the original term as it may have been previously extended as aforesaid, for an extension period of a fraction of a year ending upon the January 31st next following the expiration of the original term, or the original term as previously extended, as the case may be. Such extensions shall be granted upon the terms and conditions set forth in the Lease.

4. Commencement Date. The "Commencement Date" shall be the first Opening Day (defined in the Lease) after the later to occur of the following dates:

(1) the sixtieth (60<sup>th</sup>) day after the completion of Landlord's Construction Work and receipt by Tenant of notice of such completion from Landlord; and

(2) the tenth (10<sup>th</sup>) day after the Opening Inducement Condition (defined in Schedule G of the Lease) has been satisfied and satisfactory evidence of all of the foregoing shall have been delivered to Tenant; and

(3) the tenth (10<sup>th</sup>) day after Landlord shall have delivered to Tenant all of the fully executed and acknowledged instruments referred to in Paragraph 8 of Schedule B of the Lease; and

(4) the tenth (10<sup>th</sup>) day after Landlord shall have delivered to Tenant a current certificate of occupancy (or its equivalent depending on the jurisdiction) for the Demised Premises, if the same shall be issuable in accordance with local law or custom; and

(5) the tenth (10<sup>th</sup>) day after Landlord shall have renovated the Pylon Signs with a space for Tenant's identification panels thereon all as required by Paragraph 3 of Schedule B of the Lease; and

(6) the tenth (10<sup>th</sup>) day after Tenant's receipt of the necessary governmental permits and approvals for Tenant's exterior signs, as well as Tenant's individual letters on the Pylon Signs, all as provided in Section 9.2 and Paragraph 3 of Schedule B of the Lease (Tenant agrees to promptly apply for and diligently pursue receipt of any and all necessary permits relating to Tenant's signage); and

(7) the tenth (10<sup>th</sup>) day after the Parking Areas (defined in Paragraph 2 of Schedule B of the Lease) have been restriped; and

(8) September 27, 2017.

Notwithstanding anything in the Lease contained to the contrary, if the Demised Premises shall be opened for business with customers prior to the Commencement Date determined as above provided, such date of opening shall be the Commencement Date.

5. Duplicate originals of the Lease are in the possession of the Landlord and Tenant and reference should be made thereto with respect to any questions arising in connection therewith. The addresses for Landlord and Tenant are as follows:

Landlord: c/o PDM, Inc.  
1111 N. 102<sup>nd</sup> Court, #325  
Omaha, Nebraska 68114

Tenant: The TJX Companies, Inc.  
770 Cochituate Road  
Framingham, Massachusetts 01701  
Attn: Vice President-Real Estate

6. The Lease contains certain restrictions upon the remainder of the Shopping Center property described in Schedule A, as set forth in Schedule B of the Lease, including without limitation, the following:

"Landlord agrees that the Landlord's Parcel and Adjacent Owner agrees that the balance of the Shopping Center shall not be used for any prohibited use set forth on Schedule F attached hereto (the "Prohibited Uses"). No restaurants or establishments selling food prepared on premises for consumption on or off premises shall be located on Landlord's Parcel except a small coffee shop or sandwich shop such as Starbucks or Subway may be located within a larger retail store as an incidental use.

(B) Landlord and Adjacent Owner agree that, from the date hereof until expiration of the term of this lease, no other premises in the Shopping Center or on Landlord's Parcel shall at any time contain more than (i) fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of apparel and related accessories on an "Off-Price" basis (defined below), and/or (ii) fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of furnishings for the home including the following categories of items: linens and domestics, window treatments, floor coverings, bathroom items, bedding, furniture, wall décor, housewares, table top goods, glassware, flatware, cookware, kitchen utensils, giftware and/or closet, shelving and storage items and home accessories (all of the foregoing hereinafter referred to as the "Exclusive Use" and the merchandise referred to therein as the "Protected Merchandise"). As used herein, "Off-Price" basis shall mean the retail sale

of a variety of brand name and designer apparel on an everyday basis at prices reduced from prices charged by full price department and specialty stores (as opposed to the retail sale of regularly priced apparel with traditional sales, clearances, discounts or promotions). As of the date hereof, examples of Off-Price stores include, but are not limited to, stores operated under the tradenames Ross, Nordstrom Rack, Saks Off 5<sup>th</sup>, Bloomingdale's Outlet, Last Call Studio, Burlington Coat Factory and Steinmart. Note that while Burlington Coat Factory is an Off-Price store, it is allowed in the Shopping Center as an Existing Agreement in Paragraph 4(D) of this Schedule B. Tenant acknowledges and agrees that, without limiting the other provisions of the lease or this Paragraph 4, the exclusive contained in this Paragraph 4(B) shall not apply to: (i) apparel retailers selling exclusively private label apparel and accessories such as The Gap, Old Navy, Lane Bryant, Maurice's, Versona, Ann Taylor, J. Crew and the like, or (ii) any parent, subsidiary and/or affiliate of Tenant, including without limitation, Sierra Trading Post, Marshalls and HomeGoods, or (iii) any home improvement store such as, by way of example, Home Depot, Menards and Lowes, or (iv) any discount department store over sixty thousand (60,000) square feet of floor area such as, by way of example, Wal-Mart, Target and Shopko but it is understood that a smaller Walmart Neighborhood Market is not precluded by this exclusive so long as the same is primarily a grocery store. The computation of such floor area shall include one half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of the Protected Merchandise ...

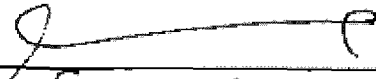
(D) The provisions of this Paragraph 4 and the Prohibited Uses listed in Schedule F shall not apply with respect to rights previously granted to tenants or occupants (and their permitted assignees and/or subtenants) under leases or agreements existing as of the date hereof (collectively "Existing Agreements") for only so long as such Existing Agreements continue in full force and effect and only to the extent such Existing Agreements permit or do not prohibit such Prohibited Uses or the Exclusive Use (Landlord agrees not to amend any Existing Agreements to permit the Prohibited Uses or the Exclusive Use and Landlord and Adjacent Owner warrants and represents that all of the Existing Agreements are listed on Schedule J attached hereto)."

7. It is understood and agreed that the only purpose of this Memorandum of Lease is to give notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between Landlord and Tenant with respect to the Demised Premises. The Lease contains additional rights, terms and conditions not enumerated in this instrument. This instrument is not intended to vary the terms of the Lease, including such rights, terms and conditions and in the event of any inconsistency between the provisions of this Memorandum of Lease and the Lease, the provisions of the Lease shall control.

[This page ends here.]

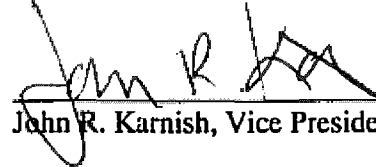
IN WITNESS WHEREOF, the parties hereto have executed this Memorandum pursuant to due authorization.

**WITNESSES AS TO BOTH:**

  
\_\_\_\_\_  
SALVADORE CARTA

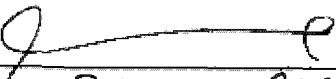
**MAPLE JOINT VENTURE II LLC,**  
a Nebraska limited liability company


By: Venture-50, Inc.,  
a Nebraska corporation  
Member

By:   
\_\_\_\_\_  
John R. Karnish, Vice President

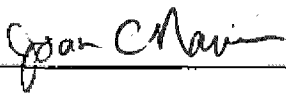
and

By: Lerner Maple Partnership,  
a Nebraska general partnership  
Member


  
\_\_\_\_\_  
SALVADORE CARTA

By:   
\_\_\_\_\_  
Name: JAY R. LERNER  
Its: PARTNER


**WITNESSES AS TO BOTH:**

  
\_\_\_\_\_

**THE TJX COMPANIES, INC.,**  
a Delaware corporation


By:   
\_\_\_\_\_  
Ann McCauley  
Executive Vice President, General  
Counsel and Secretary

  
\_\_\_\_\_

By:   
\_\_\_\_\_  
Mary B. Reynolds  
Senior Vice President, Corporate Treasurer

Owner of Lot 2 (shown on the Lease Plan which constitutes the balance of the Shopping Center) hereby joins in this Memorandum solely for the purpose of consenting to the restrictions set forth in Paragraphs 1, 2, 3 and 4 of Schedule B of the Lease being applicable to Lot 2 during the term of the Lease and for no other purpose.

**MAPLE JOINT VENTURE**

By:   
\_\_\_\_\_  
Name: John R. Karnish  
Its: Authorized Representative

**LANDLORD'S ACKNOWLEDGMENT**

STATE OF NEBRASKA )  
 ) SS.  
 COUNTY OF DOUGLAS )

On this 30<sup>th</sup> day of December, in the year 2016, before me, the undersigned notary public, personally appeared John Karush And Jay R. Leaver, as Vice President & Partner for Venture-50, Inc. & Leaver Maple Partners<sup>LLP</sup>, respectively, personally known to me/or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he/she/they executed same in his/her/their authorized capacity(ies).

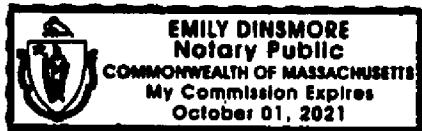


Dee Muesel  
 Notary Public  
 My Commission Expires: 7/30/17

**TENANT'S ACKNOWLEDGMENT**

COMMONWEALTH OF MASSACHUSETTS )  
 ) SS.  
 COUNTY OF MIDDLESEX )

On this 23 day of Dec., 2016, before me, the undersigned notary public, personally appeared Ann McCauley as Executive Vice President, General Counsel and Secretary and Mary B. Reynolds as Senior Vice President, Corporate Treasurer, respectively, of The TJX Companies, Inc. on behalf of the corporation, proved to me through satisfactory evidence of identification, which is personal knowledge of the identity of both, to be the people whose names are signed on the preceding document and who acknowledged that they signed it voluntarily and executed same in their authorized capacities for its stated purpose.

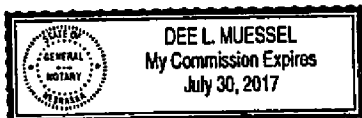


Emily Dinsmore  
 Notary Public  
 My Commission Expires:

**OWNER OF LOT 2 ACKNOWLEDGMENT**

STATE OF NEBRASKA )  
 ) SS.  
 COUNTY OF DOUGLAS )

On this 30<sup>th</sup> day of December, in the year 2016, before me, the undersigned notary public, personally appeared John R. Karush, as Authorized Representative for Maple Joint Venture, a Nebraska General Partnership, personally known to me/or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he/she/they executed same in his/her/their authorized capacity(ies).



Dee Muesel  
 Notary Public  
 My Commission Expires: 7/30/17

## SCHEDULE A

### DESCRIPTION OF SHOPPING CENTER AND DEMISED PREMISES

The "Demised Premises" consist of a portion of a one-story building, to be renovated by Landlord as herein provided, and contain approximately forty-two thousand one hundred eighty-nine (42,189) square feet of ground floor area having a frontage and width of approximately one hundred eighty-four feet (184') and such other dimensions as shown upon the plan attached hereto (the "Lease Plan"), and are a portion of the premises located on Landlord's Parcel within the Shopping Center referred to hereinbelow labeled AREA A on the Lease Plan. The Lease Plan shall not be modified in any way without Tenant's consent, which may be withheld at Tenant's sole and absolute discretion. In addition, Tenant shall have the non-exclusive right to use certain service areas within Landlord's Parcel and the exclusive right to use an exterior loading area and trash storage area (both adjacent to the Demised Premises) for Tenant's delivery and removal activities and for Tenant's compactor, dumpster and/or trash receptacles. It is expressly understood and agreed that said service areas shall not be included in computing minimum rent pursuant to Section 5.1 of the lease or Tenant's Fraction or Tenant's Portion (defined in Section 6.1) for purposes of Article VI and Paragraph 10 of Schedule B or for purposes of calculating other charges due under this lease. For purposes of this lease, floor area shall be measured from the outside face of exterior walls and the center of interior partition walls. If after completion of Landlord's Construction Work the Demised Premises shall contain less than forty-one thousand (41,000) square feet of floor area, then, in addition to all other remedies of Tenant, as a result thereof, the rent payable by Tenant pursuant to the lease shall be reduced proportionately and if the Demised Premises contains less than forty thousand (40,000) square feet of ground floor area, Tenant may terminate this lease by giving notice to Landlord; provided, however, in the event Landlord completes all work necessary to cause the Demised Premises to contain thirty nine thousand five hundred (39,500) square feet of ground floor area within thirty (30) days after receipt of Tenant's termination notice hereunder, then Tenant's termination notice shall be null and void and this lease shall remain in full force and effect. Notwithstanding anything to the contrary contained in this lease, in no event shall minimum rent, additional rent or other charges due under this lease be based on the Demised Premises containing more than the Rental Floor Area (defined in Section 5.3 of this lease). Landlord agrees that the name of the Shopping Center shall not contain the trade name of any business operated in the Shopping Center.

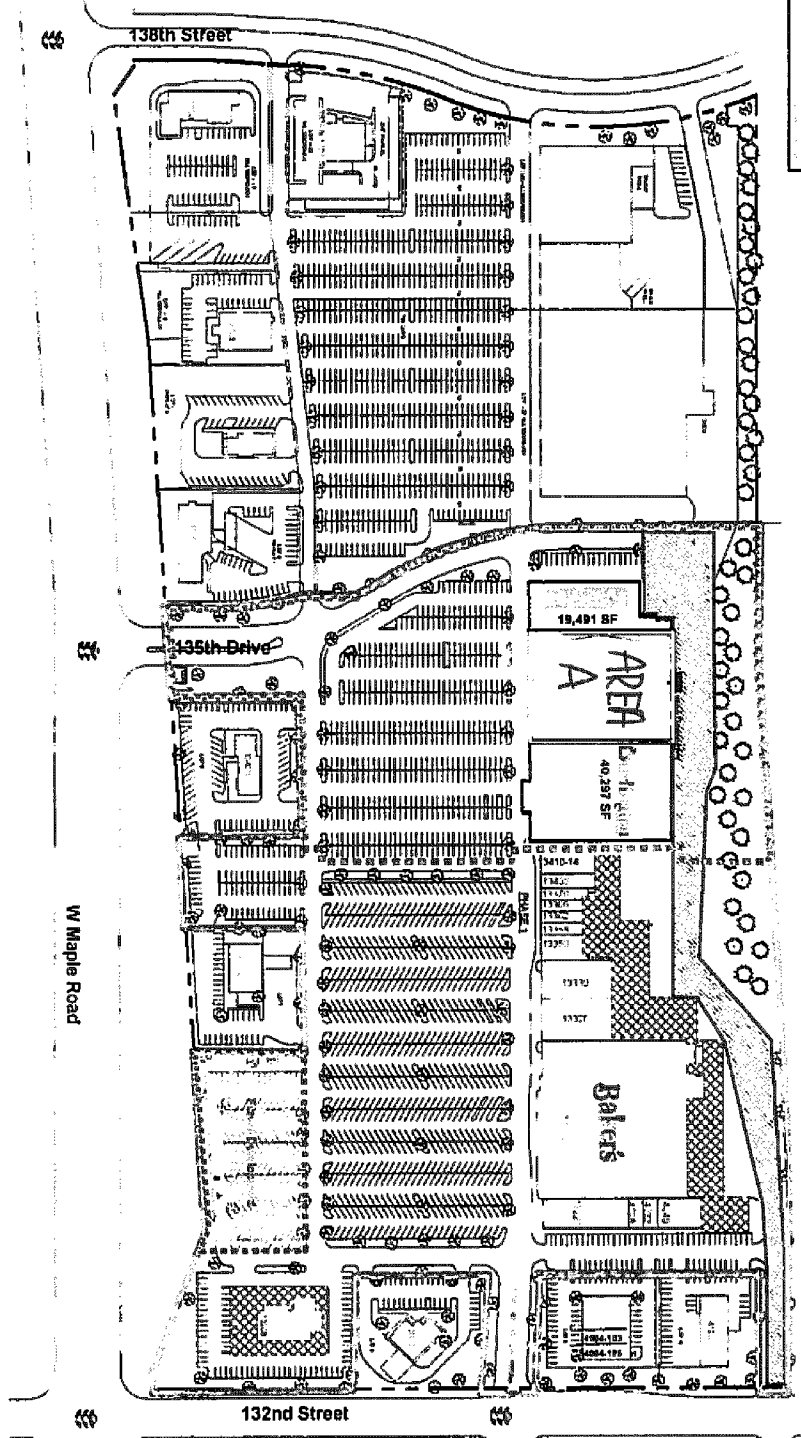
The Demised Premises are situated within the so-called Eagle Run Shopping Center, located at the corner of the intersection of West Maple Road and 132<sup>nd</sup> Street (herein collectively referred to as the "Main Streets") in Omaha, County of Douglas, Nebraska. The Landlord's Parcel is a portion of the Shopping Center known as Lot 1, Hillsborough Replat 11. The Shopping Center is the land, together with the buildings and other structures from time to time thereon, shown on the Lease Plan, and is more particularly described as Lots 1 and 2, Hillsborough Replat 11.

TJ/HG

# Lease Plan (p. 1 of 2)

Landlord's Parcel (Lot 1)	-----
Shopping Center - Lots 1 and 2	-----
Permitted Building Area	-----
Future Development	-----
Landlord's Parcel 1 or 13501 1st Maple Rd	-----
Owner's Parcel 355	-----
Service Areas	-----
Location of 2' Contour	-----
Leasing Space	-----

*Tenant's Critical Area and Area X on next page*



**EAGLE RUN SHOPPING CENTER**  
 132nd & W Maple Rd - Omaha, NE  
 December 2016

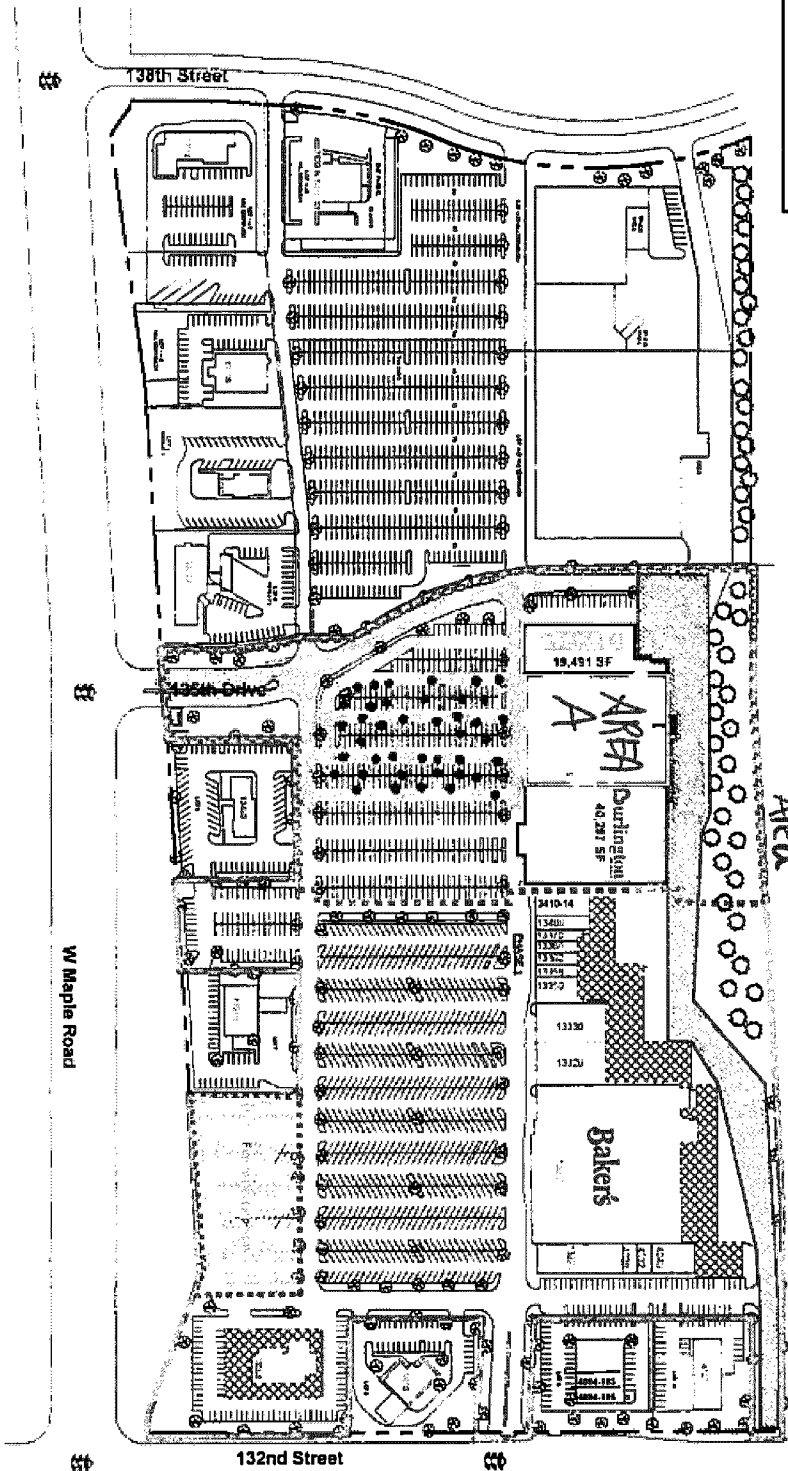




TJ/HG

# Lease Plan (p.2 of 2)

Landlord's Parcel (Lot 1)  
 Shopping Center (Lots 1 and 2)  
 Permitted Building Area  
 Future Development  
 Landlord's Parcel (Lot 2)  
 132nd & W Maple Rd  
 Dem. and Prem. Uses  
 Service Areas  
 Location of 2 Car Cams  
 Loading Spaces



**Remant's Critical Area**



**EAGLE RUN SHOPPING CENTER**  
 132nd & W Maple Rd - Omaha, NE  
 December 2016

