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Register of Deeds, Douglas County, NE
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2017016116

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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 30th day of December, 2016, by and between **Maple Joint Venture II LLC**, a Nebraska limited liability company (the "Landlord"), and **Sierra Trading Post, Inc.**, a Wyoming corporation (the "Tenant"), provides:

1. **Lease.** The provisions set forth in a written lease between the parties hereto dated as of 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 nineteen thousand five hundred thirty-two (19,532) square feet of floor area having a frontage and width of ninety-eight feet (98') 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 the 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 (60th) day after the completion of Landlord's Construction Work and receipt by Tenant of notice of such completion from Landlord; and

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

(8) March 1, 2018.

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. 102nd 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 outdoor and non-team sports apparel and related accessories (including, without limitation, outdoor and sporting apparel and specialized rain, wind insulated outerwear of the type typically sold in outdoor clothing and gear stores), and/or (ii) seven thousand five hundred (7,500) square feet of floor area therein used or occupied for, or devoted to the sale or display of outdoor and/or athletic shoes, footwear and related accessories and/or (iii) fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of sporting goods, including the following categories of items: camping, backpacking, hiking, fishing, hunting, bicycles and bicycling equipment, climbing equipment and clothing, skiing equipment and clothing (including downhill, cross country, telemark, back county and snowboard equipment and related clothing), canoes, kayaks and related

equipment, and swimming equipment, apparel and accessories (all of the foregoing hereinafter referred to as the "Exclusive Use" and the merchandise referred to therein as the "Protected Merchandise"). 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, (but this exception does not cover sports apparel retailers such as EMS or REI which retailers would violate the Exclusive Use) or (ii) any parent, subsidiary and/or affiliate of Tenant, including without limitation, Sierra Trading Post, Marshalls and HomeGoods. 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:



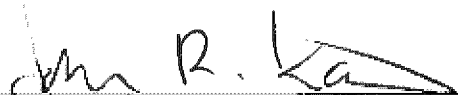
SALVADORE CARTA



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

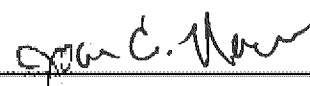
and

By: Lerner Maple Partnership,
a Nebraska general partnership
Member

By: 

Name: JAY R LERNER
Its: PARTNER

WITNESSES AS TO BOTH:

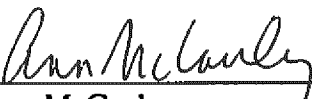


Ann McCauley




Mary B. Reynolds

SIERRA TRADING POST, INC.,
a Wyoming corporation

By: 

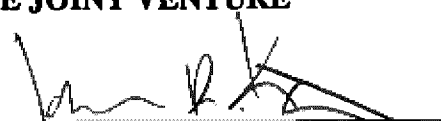
Ann McCauley
Secretary

By: 

Mary B. Reynolds
Vice President/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 30th day of December, in the year 2016, before me, the undersigned notary public, personally appeared John R. Karnish and Jay R. Eberick, as Vice President and Partner for Venture 50, Inc. & Leasing Maple Road, 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).

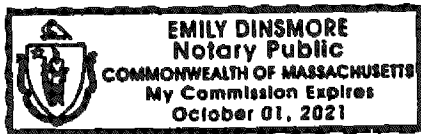


Dee Muesel
Notary Public
My Commission Expires: 7/30/17

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 Secretary and Mary B. Reynolds as Vice President/Treasurer, respectively, of Sierra Trading Post, 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.

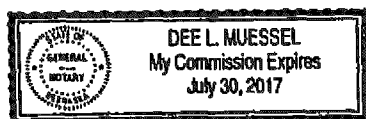


Emily Dinsmore
Notary Public
My Commission Expires:

OWNER OF LOT 2 ACKNOWLEDGMENT

STATE OF NEBRASKA)
) SS.
COUNTY OF Douglas)

On this 30th day of December, in the year 2016, before me, the undersigned notary public, personally appeared John R. Karnish, 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 nineteen thousand five hundred thirty-two (19,532) square feet of ground floor area having a frontage and width of approximately ninety-eight feet (98’) 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 the lease. For purposes of the 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 nineteen thousand five hundred thirty-two (19,532) 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 eighteen thousand (18,000) square feet of ground floor area, Tenant may terminate the lease by giving notice to Landlord; provided, however, in the event Landlord completes all work necessary to cause the Demised Premises to contain eighteen thousand (18,000) 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 the lease shall remain in full force and effect. Notwithstanding anything to the contrary contained in the lease, in no event shall minimum rent, additional rent or other charges due under the lease be based on the Demised Premises containing more than the Rental Floor Area (defined in Section 5.3 of the 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 132nd Street (herein collectively referred to as the “**Main Streets**”) in Omaha, County of Douglas, Nebraska.

LEGAL DESCRIPTION

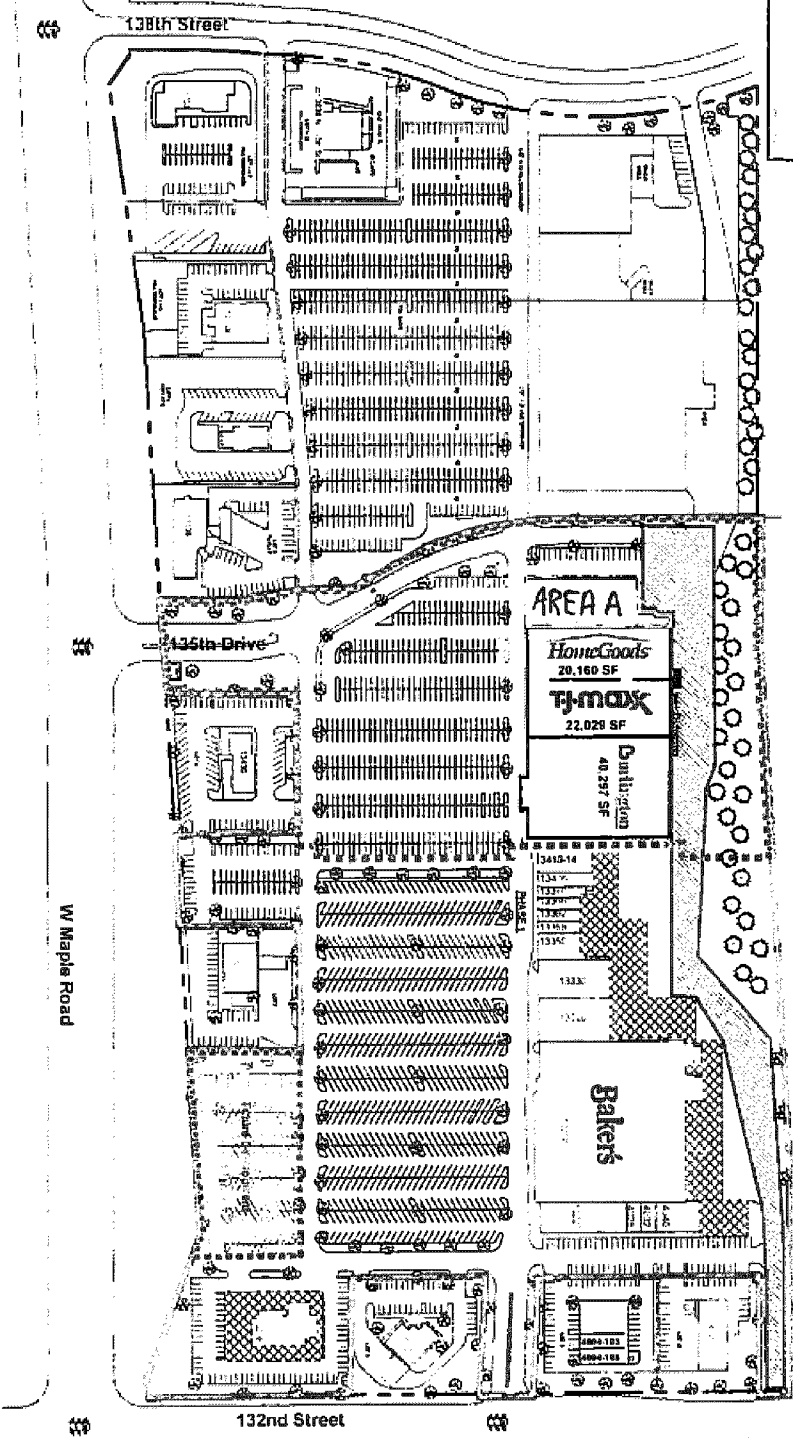
The Landlord’s Parcel is a portion of the Shopping Center known as Lot 1, Hillsborough Replat 11. The **Shopping Center** is the land, together with the buildings and other structures from time to time thereon, shown on the Lease Plan, and is more particularly described as Lots 1 and 2, Hillsborough Replat 11.

STP

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 Plots (735th & W Maple Rd)
- Demised Premises **AREA A**
- Proposed Parking Area
- Service Areas
- Location of 2 Car Cams
- Loading Spaces

Tenant's Critical Area and Area X on next page



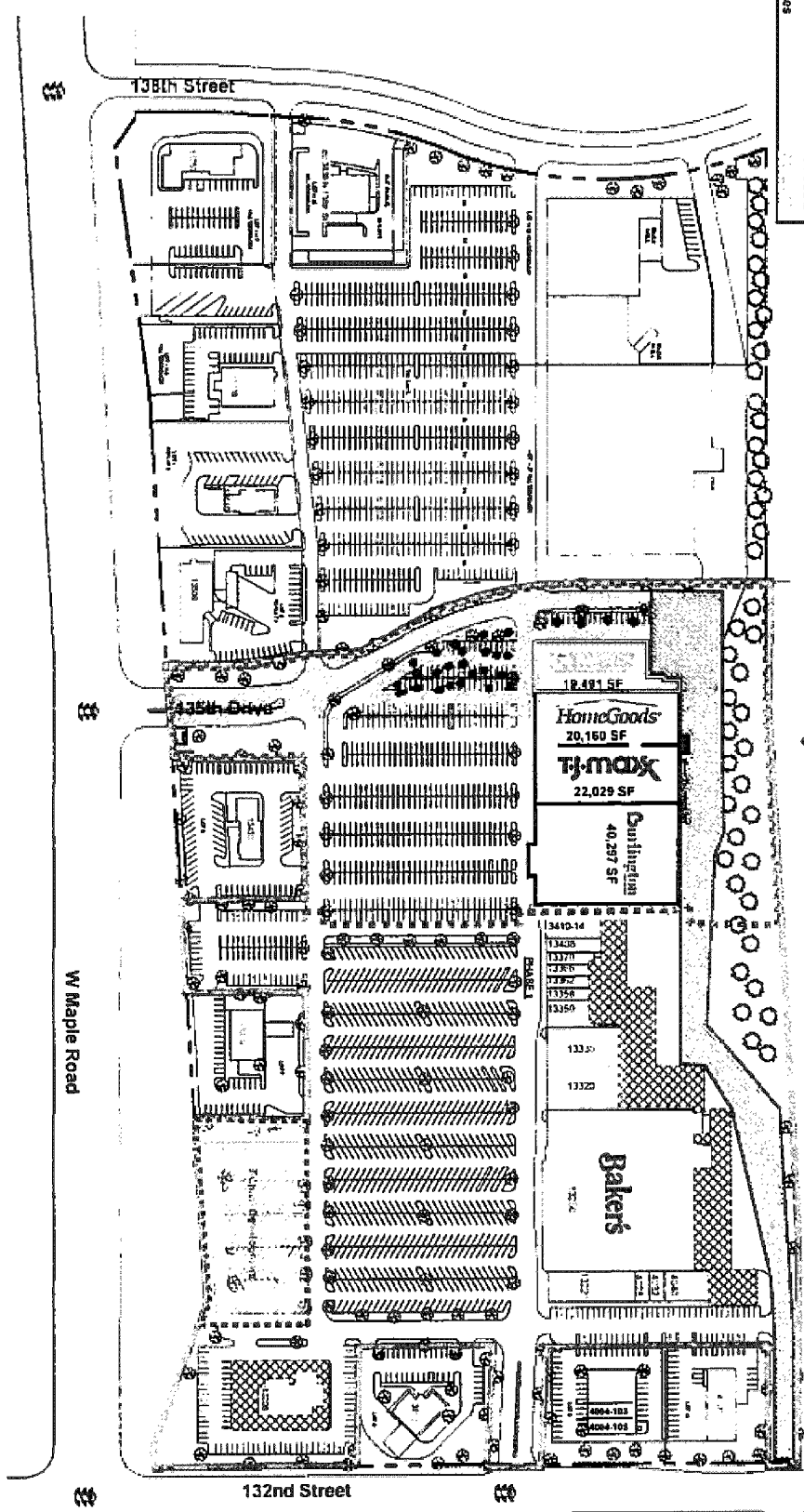
EAGLE RUN SHOPPING CENTER
 132nd & W Maple Rd - Omaha, NE
 December 2015



Lease Plan (p. 2 of 2)

STP

- Landlord's Parcel (Lot 1)
- Shopping Center (Lots 1 and 2)
- Permitted Building Area
- Future Development
- Landlord's Parcel Pylon / 132nd & W Maple Rd
- Demised Premises
- Protected Parking Area
- Service Areas
- Location of 2 Car Corral
- Loading Spaces



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

