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*Glenn J. Darling*  
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**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

**CARA A. AHOLA, 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 12th day of June, 2006, by and between **370, 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 as of June 12, 2006 (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 one-story building, to be constructed by Landlord as provided in the Lease, and contain thirty two thousand six hundred fifty two (32,652) square feet of floor area having a frontage of one hundred seventy five (175) feet 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



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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.

**Commencement Date.** An "Opening Day" shall be any Monday through Friday (except for legal holidays) between March 1 and the following May 15, and between August 1 and the following September 30. The "Commencement Date" shall be the first Opening Day after the later to occur of the following dates:

(1) the sixtieth (60th) day after both the completion of Landlord's Construction Work and the receipt by Tenant of notice thereof from Landlord; and

(2) the day after the Inducement Conditions (as defined in Section 4.7 of the Lease) shall be satisfied; and

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

(4) the tenth (10th) day after completion of construction of or necessary repairs to the Common Areas (defined in Paragraph 2 of Schedule B attached to the Lease), of which Tenant shall have provided Landlord notice not later than thirty (30) days after completion of Landlord's Construction Work; and

(5) Intentionally Omitted; and

(6) March 15, 2007.

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 of the 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:**

**370, LLC  
6263 North Scottsdale Road, Suite 330  
Scottsdale, AZ 85250  
Attn: Director of Development, Legal**

**Tenant:**

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



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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:

“(A) Landlord agrees that the Shopping Center shall not be used for any prohibited use set forth on Schedule F attached hereto. The provisions of this Paragraph 4(A) shall not apply with respect to rights previously granted to tenants or occupants of the Shopping Center under leases or other occupancy agreements (including, without limitation, purchase contracts) existing as of the date of this Lease for only so long as such leases or other agreements continue in full force and effect and only to the extent such leases do not prohibit such prohibited uses. Landlord agrees not to amend any existing leases or other agreements to permit the foregoing prohibited uses, nor shall Landlord consent to any of the foregoing prohibited uses if Landlord’s consent is required therefor.

(B) Landlord agrees that, from the “Trigger Date” (as defined below)(if such Trigger Date shall ever occur during the term of this Lease), until expiration of the term of this Lease, no other single premises in the Shopping Center shall at any time contain more than fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of a variety of brand name men’s and women’s and/or children’s apparel at off prices or discount prices (the foregoing hereinafter referred to as a “Competing Use” and the merchandise referred to therein as the “Protected Merchandise”). 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.

For purposes of this Lease, the term “Trigger Date” shall mean the date, if any, on which any tenant or occupant who is granted an “Unconditional Exclusive” (as defined below) by Landlord opens for business in the Shopping Center for the use protected by such Unconditional Exclusive. The term “Unconditional Exclusive” shall mean a provision in any lease or other occupancy agreement granting the tenant/occupant thereunder the exclusive right to sell a particular product or products in the Shopping Center, and which is effective upon the execution of such lease or occupancy agreement irrespective of the occurrence of any condition subsequent (i.e., is not conditioned upon the granting of an Unconditional Exclusive in a manner similar to this Section) or any other condition subsequent; PROVIDED, HOWEVER, notwithstanding the foregoing, the term “Unconditional Exclusive” shall expressly exclude the following (each an “Excluded Exclusive”): (1) the Excluded Exclusive set forth on Schedule F below with respect to Lots 3 and 14 shown on the Lease Plan; (2) any provision for exclusive use granted to any tenant or occupant whose premises contain less than 10,000 square feet of Floor Area, or (3) any provision for exclusive restaurant use granted to an occupant of any of the outparcels in the Shopping Center. Tenant hereby acknowledges and agrees that the granting of any Excluded Exclusive by Landlord shall not cause the provisions of this Section to become applicable (i.e., shall not cause a Trigger Date to occur), and a Trigger Date shall only occur upon the opening of any tenant or occupant that is granted an Unconditional Exclusive as hereinabove expressly defined. Additionally, the provisions of this Section shall not apply to any tenant or occupant, or any of such tenants’ or occupants’ successors or assigns



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(or the premises occupied by such tenant or occupant or its respective successors or assigns) that has executed a lease or other occupancy agreement prior to the Trigger Date.”

Within 20 days after Tenant’s receipt of a written request therefor from time to time, Tenant shall provide Landlord and any mortgagee of Landlord having an interest in the Shopping Center (each a “Requesting Party”) with an estoppel letter in the form attached hereto as Schedule B addressed to the Requesting Party and such other parties as the Requesting Party may reasonably request certifying to the Requesting Party and such other parties the following: (i) that to Tenant’s knowledge the Trigger Date has not occurred as of the date of such estoppel letter or, if the Trigger Date has occurred as of such date, that the Trigger Date has occurred and the date on which the Trigger Date occurred; (ii) that the Requesting Party and such other parties shall be entitled to rely on such certification from Tenant and that Tenant shall be estopped from asserting a position contrary to such estoppel letter; and (iii) that the party executing such estoppel letter is duly authorized to execute such estoppel letter on behalf of Tenant. In the event Tenant fails for any reason to provide such estoppel letter to the Requesting Party within such 20-day period, Tenant shall be deemed to have elected to certify to the Requesting Party and such other parties that the Trigger Date has not occurred as of the date that is 20 days after the date of the Requesting Party’s request for such estoppel letter and Tenant shall be bound by such deemed certification.

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.

DOCUMENT CONTINUES ON NEXT PAGE



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

WITNESS:

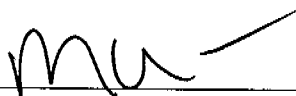
**370 LLC, a Nebraska limited liability company**

**By: RED Papillion, LLC, a Missouri limited liability company, its manager**

**By: E&R Holdings, LLC, managing member**



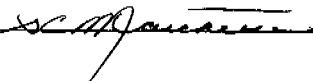
By



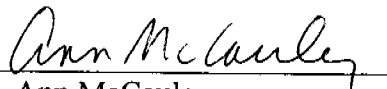
Name: Michael L. Ebert  
Its: Manager

WITNESSES AS TO BOTH:

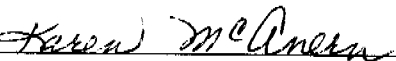
**THE TJX COMPANIES, INC.**  
**a Delaware corporation**



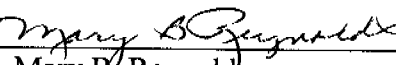
By



Ann McCauley  
Senior Vice President, General Counsel and  
Secretary



By



Mary B. Reynolds  
Vice President - Finance and Treasurer

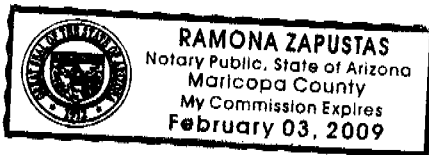



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**LANDLORD'S ACKNOWLEDGMENT**

STATE OF ARIZONA                     )  
  ) SS.  
CITY/COUNTY OF MARICOPA        )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of June 2006 by Michael L. Ebert on behalf of 370, LLC.

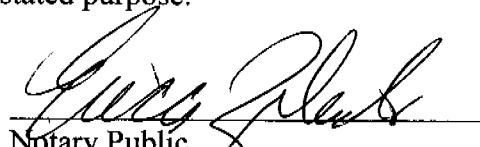


  
Notary Public  
Commission Expires: 2-3-09

**TENANT'S ACKNOWLEDGMENT**

COMMONWEALTH OF MASSACHUSETTS    )  
  ) SS.  
COUNTY OF MIDDLESEX                 )

On this 13<sup>th</sup> day of July, 2006, before me, the undersigned notary public, personally appeared Ann McCauley as Senior Vice President, General Counsel and Secretary and Mary B. Reynolds as Vice President – Finance and 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 for its stated purpose.

  
Notary Public  
Commission Expires:



F

## **SCHEDULE A**

### **DESCRIPTION OF SHOPPING CENTER AND DEMISED PREMISES**

The Demised Premises consist of a one-story building, to be constructed by Landlord as herein provided, and contain approximately thirty two thousand six hundred fifty two (32,652) square feet of floor area having a frontage and width of approximately one hundred seventy five (175) feet and other dimensions approximately as shown upon the plan attached hereto (the "Lease Plan"), and are a portion of the premises within the Shopping Center referred to hereinbelow labeled Area A on the Lease Plan. Those portions of the Lease Plan within "Tenant's Critical Area" shall not be modified in any way without Tenant's consent, which may be withheld at Tenant's sole and absolute discretion. In no event shall any such changes adversely affect the visibility of Tenant's storefront or signs or accessibility of the Demised Premises to and from any other portion of the Shopping Center or the Main Streets. Notwithstanding anything to the contrary in this lease contained, it is specifically understood and agreed that Landlord may modify those areas of the Lease Plan located within the Permitted Building Areas, without obtaining Tenant's consent. In addition, Tenant shall have the exclusive right to use certain service areas adjacent to the Demised Premises which contain an exterior loading dock for Tenant's delivery and removal activities and the non-exclusive right to use the trash storage area adjacent to the Demised Premises 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 (defined in Section 6.1) for purposes of Article VI and Paragraph 10 of Schedule B for purposes of calculating or other charges due under this Lease. If after completion of Landlord's Construction Work the Demised Premises shall contain less than the floor area required above then, in addition to all other remedies of Tenant, as a result thereof, the minimum rent payable by Tenant pursuant to Section 5.1 shall be reduced proportionately (i.e., on a per square foot basis), and if the Demised Premises contain less than thirty thousand (30,000) square feet of floor area, then Tenant may terminate this lease by giving not less than ninety (90) days prior written notice to Landlord, provided that if Landlord, at Landlord's sole cost and expense, within said ninety (90) day period is able to modify the Demised Premises such that it contains at least thirty thousand (30,000) square feet of ground floor area, then Tenant's termination notice shall be deemed null and void and of no further force and effect and this lease shall remain in full force and effect.

The Demised Premises are situated within the so-called Shadow Lake Towne Center Shopping Center, to be constructed by Landlord as herein provided, at the southwest corner of the intersection of Highway 370 and 72nd Street (herein referred to as "the Main Streets") in Papillion, Nebraska. The Shopping Center is the land, together with the buildings and other structures from time to time thereon, shown on the Lease Plan, all as more particularly described as follows:

### **LEGAL DESCRIPTION**

Lot 1, Shadow Lake Towne Center, Replat 1, a subdivision in Sarpy County, Nebraska, according to the recorded plat thereof.



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**SCHEDULE B**

**FORM OF TENANT ESTOPPEL LETTER**

[Instructions to Tenant: Please complete this form by filling in the missing information in the blanks. If the information is not applicable, please write "N/A." Thank you.]

**TENANT ESTOPPEL LETTER**

\_\_\_\_\_, 20\_\_

**370 LLC**

c/o RED Development

263 N. Scottsdale Road, Suite 330

Scottsdale, Arizona 85250

Attn: Director of Development – Legal

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: That certain Lease Agreement dated \_\_\_\_\_, 2006 ("**Lease**"), between **370 LLC**, a Nebraska limited liability company and/or assigns ("**Landlord**"), and **THE TJX COMPANIES, INC.**, a Delaware corporation ("**Tenant**"), for certain premises (the "**Demised Premises**") located within the property known as Shadow Lake Towne Center Shopping Center (the "**Shopping Center**").

To Whom It May Concern:

Tenant presently leases the Demised Premises located in the Shopping Center pursuant to the Lease, and, in connection with the foregoing, Tenant does hereby certify to Landlord and \_\_\_\_\_ (each a "**Requesting Party**") as follows:

(a) To the best of Tenant's knowledge, the "Trigger Date" (as defined in the Lease) has not occurred as of the date of this Tenant Estoppel Letter or, if the Trigger Date has occurred as of the date of this Tenant Estoppel Letter, the Trigger Date occurred on the following date: \_\_\_\_\_; and

(b) The undersigned representative of Tenant is duly authorized and fully qualified to execute this Tenant Estoppel Letter on behalf of Tenant thereby binding Tenant.



2006-24777M

Tenant hereby acknowledges and agrees that each Requesting Party shall be entitled to rely on Tenant's certifications set forth in this Tenant Estoppel Letter, and Tenant shall be estopped from asserting a position contrary to the certifications set forth in this Tenant Estoppel Letter, regardless of whether the Requesting Party is Landlord.

Tenant has executed this Tenant Estoppel Letter this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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

By: \_\_\_\_\_  
Mary B. Reynolds  
Vice President – Finance and Treasurer

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

On \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared Ann McCauley, Senior Vice President, General Counsel and Secretary, and Mary B. Reynolds, Vice President – Finance and Treasurer, of the **TJX COMPANIES, INC.**, an Delaware corporation, known to me and whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

My Commission Expires: \_\_\_\_\_