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MAR 23 2012 15:30 P 10

Fee amount: 50.50
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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
03/23/2012 15:30:52.00



2012028184

THE ABOVE SPACE IS RESERVED FOR THE REGISTER OF DEEDS RECORDING INFORMATION

**THIS PAGE INCLUDED
FOR INDEXING**

RECORDING PREPARED BY
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 21 day of March, 2012, by and between **MONTCLAIR INVESTMENT II CO.**, a Nebraska general partnership (the "Landlord"), and **HOMEGOODS, INC.**, a Delaware corporation (the "Tenant"), provides:

1. Lease. The provisions set forth in a written lease between the parties hereto dated March 21, 2012 (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 renovated by Landlord as herein provided, and contain twenty five thousand six hundred eleven (25,611) square feet of ground floor area having a width of 129' 8" feet (the initial storefront will be 65' 6") and such other dimensions as shown upon the Lease Plan. 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. An "Opening Day" shall be any Monday through Friday (except for legal holidays) between March 1 and the following April 30, and between August 1 and the following October 30. The "Commencement Date" shall be the first Opening Day after the later to occur of the following dates:

(1) the ninetieth (90th) day after the completion of Landlord's Construction Work and receipt by Tenant of notice of such completion from Landlord; and

(2) the sixtieth (60th) day after Landlord shall have delivered to Tenant all of the fully executed and acknowledged instruments referred to in Paragraph 8 of Schedule B to the Lease; and

(3) the tenth (10th) day after Landlord shall have delivered to Tenant a current certificate of occupancy (or its equivalent depending on the jurisdiction) (the "C of O") for the Demised Premises, if the same shall be issuable in accordance with local law or custom. It is understood and agreed that if Landlord is unable to obtain a C of O solely because of construction work then still to be performed by Tenant (and not because of Landlord's failure to properly complete all of Landlord's Construction Work), then (i) the date referred to in this clause (3) shall be deemed the date when Landlord shall have properly completed all of Landlord's Construction Work so as to enable Landlord to obtain a C of O upon the completion of Tenant's Work and (ii) Landlord shall obtain the C of O promptly upon the completion of the work to be performed by Tenant; and

(4) September 1, 2012.

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 Seldin Company
16910 Frances Street
Suite 200
Omaha, Nebraska 68130
Attention: President**

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:

"(A) Landlord agrees that as long as any retail sales activity shall be conducted in the Demised Premises the Shopping Center shall not be used (a) for any non-retail purposes (repairs, alterations and offices incidental to retailing, and banks and small loan offices, not being deemed non-retail), or (b) for any entertainment purposes such as a bowling alley, skating rink, cinema, bar (except as allowed below), nightclub, discotheque, amusement gallery, poolroom, health club, massage parlor (other than a first class operator offering therapeutic massage such as Massage Envy), sporting event, sports or game facility, off-track betting club (c) or for any establishment which sells or displays pornographic materials or (d) for any establishment which sells or displays used merchandise or second hand goods (however a retail store such as GameStop may sell second hand games in up to 10% of its floor area). Notwithstanding the foregoing, offices shall be permitted on the upper level of the building labeled "Permitted Office and Restaurant Area" on the Lease Plan, and an additional three thousand (3,000) square feet of office use in the aggregate shall be permitted in the areas labeled "Shops", "Montclair II" or "Permitted Office and Restaurant Area" on the Lease Plan. Bars and restaurants may only be located in the area labeled "Permitted Office and Restaurant Area" and "Permitted Restaurant Area" on the Lease Plan. For purposes of the immediately preceding sentences, (i) "restaurants" shall include establishments selling food prepared on premises for consumption on or off premises, but shall not include the incidental sale of food within anchor tenants and (ii) "bars" shall include nightclubs or other establishments whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds thirty percent (30%) of its total gross revenues. (Collectively the uses described herein are referred to as the "Prohibited Uses".)

(B) Landlord agrees that, from the date hereof until expiration of the term of this lease, no other 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 furnishings for the home including the following categories of items: linens, window treatments, rugs, bathroom items, bedding, furniture, wall décor, housewares, table top goods, glassware, flatware, cookware, kitchen utensils, closet, shelving and storage items and home accessories (“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 homegoods. The foregoing sale or display of more than fifteen thousand (15,000) square feet of homegoods (the “Protected Merchandise”) is defined herein as a “Competing Use”. Notwithstanding the foregoing, Tenant agrees that the operation of (a) hardware store, (b) flooring store, (c) tile and countertop store, and (d) full line furniture store such as Ashley Furniture or Ethan Allen Furniture shall not constitute Competing Uses and may be allowed in the Shopping Center without violating Tenant’s exclusive.

(C) The provisions of this Paragraph 4 shall not apply with respect to rights previously granted to tenants or occupants under leases or agreements existing as of the date hereof including expansions, amendments of such leases and extensions of terms of such leases (collectively “Existing Leases”) for only so long as such Existing Leases continue in full force and effect and only to the extent such Existing Leases permit such Prohibited Uses or the Competing Uses. Landlord agrees not to amend any Existing Leases to permit the Prohibited Uses or the Competing Uses. Landlord warrants and represents that all of the Existing Leases are listed on Schedule J attached hereto.”

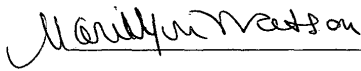
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7. It is understood and agreed that the only purpose of this Memorandum of Lease is to give notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between Landlord and Tenant with respect 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.


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

WITNESS:

**MONTCLAIR INVESTMENT II, CO., a
Nebraska general partnership**





By 
Randall R. Lenhoff, Co-Trustee of the Theodore M.
Seldin and Sarah N.Seldin Children Trust
Its: General Partner

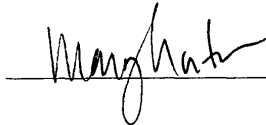


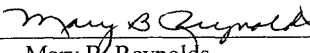
WITNESSES AS TO BOTH:

**HOMEGOODS, INC.,
a Delaware corporation**



By 
Ann McCauley
Secretary

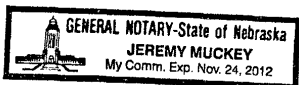


By 
Mary B. Reynolds
Vice President/Treasurer

LANDLORD'S ACKNOWLEDGMENT

STATE OF *Nebraska*)
) SS.
CITY/COUNTY OF *Douglas*)

The foregoing instrument was acknowledged before me this 21 day of March, 2012 by Randall R. Lenhoff, Co-Trustee Theodore M. Seldin and Sarah W. Seldin Children Trust GP on behalf of Montclair Investment, LLC.



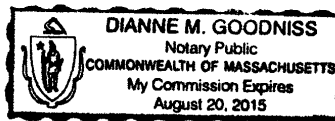
Jeremy Muckey
Notary Public
My Commission Expires: Nov. 24, 2012

TENANT'S ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS)
) SS.
COUNTY OF MIDDLESEX)

On this 15th day of March, 2012, before me, the undersigned notary public, personally appeared Ann McCauley as Secretary and Mary B. Reynolds as Vice President/Treasurer, respectively, of HOMEGOODS, 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 his/her/their authorized capacities for its stated purpose.

Dianne M. Goodniss
Notary Public



SCHEDULE A

The Demised Premises consist of a portion of a one-story building, to be renovated by Landlord as herein provided, and contain twenty five thousand six hundred eleven (25,611) square feet of ground floor area having a width of 129' 8" feet (the initial storefront will be 65' 6") and such other dimensions 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. The area labeled "Tenant's Critical Area" on 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, provided that Tenant may not withhold its consent in bad faith. It is understood and agreed that, for purposes of the immediately preceding sentence, mere repairs to or replacements of existing improvements or landscaping within the Tenant's Critical Area shall not constitute "modifications". In addition, in no event shall any changes outside of the Tenant's Critical Area materially and 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. In addition, Tenant shall have the exclusive right to use certain service areas adjacent to the Demised Premises labeled "Tenant's Exclusive Service Area" on the Lease Plan which contain an exterior loading dock and trash storage area 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. Tenant shall be responsible for maintaining the equipment it uses in such service area. 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 rent payable by Tenant pursuant to the lease shall be reduced proportionately and if the Demised Premises contains less than 24,000 square feet of floor area, Tenant may terminate this lease by giving notice to Landlord. Notwithstanding anything to the contrary contained in this lease, in no event shall additional rent or other charges due under this lease be based on the Demised Premises containing more than twenty six thousand (26,000) square feet of floor area and in no event shall minimum rent be based on more than the Minimum 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 Montclair on Center, located at the southeast corner of the intersection of West Center Road and S.132nd Street (herein collectively referred to as the "Main Streets") in Omaha, County of Douglas, Nebraska. 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 follows:

(LEGAL DESCRIPTION)

LOT 1, BLOCK 1, in WESTWOOD HEIGHTS 15th Addition, an Addition to the City of Omaha, Douglas County, Nebraska, except that part described in Plat and Dedication filed July 10, 1969 in Book 478 at Page 265 of the Miscellaneous Records of Douglas County, Nebraska, together with those parts of vacated 132nd Street frontage road and vacated West Center Road frontage road adjacent to said Lot 1, all except those parcels described as follows:

Commencing at the Southeast corner of said Lot 1, Block 1, said point being on the Northerly right of way line of Augusta Avenue; thence Northwesterly along the Northerly right of way line of said Augusta Avenue on a curve to the left (having a radius of 530.00 feet) for an arc distance of 160.34 feet; thence South 89°54'16" West on the Northerly right of way line of said Augusta Avenue for 675.54 feet; thence continuing on said Northerly right of way line of Augusta Avenue along a curve to the left (having a radius of 240.00 feet) for an arc distance of 107.98 feet to the True Point of Beginning; thence North 30°57'06" West for 46.77 feet; thence North 89°59'16" West for 166.18 feet to the East right of way line of the frontage road; thence South 00°00'44" West along said East right of way line for 15.30 feet; thence continuing on said East right of way

line along a curve to the left (having a radius of 83.50 feet and long chord bearing South 16°48'55" East for 48.34 feet) an arc distance of 49.05 feet; thence continuing on said East right of way line along a curve to the right (having a radius of 116.50 feet and long chord bearing South 20°31'04" East for 52.91 feet) an arc distance of 53.37 feet; thence continuing on said East right of way line South 32°31'47" East for 20.09 feet to the Northerly right of way line of Augusta Avenue; thence Easterly on said Northerly right of way line along a curve to the left (having a radius of 190.00 feet and a long chord bearing North 61°45'39" East for 98.73 feet) an arc distance of 99.88 feet; thence continuing on said Northerly right of way line along a curve to the right (having a radius of 240.00 feet and long chord bearing North 55°24'50" East for 72.71 feet) an arc distance of 72.99 feet to the True Point of Beginning;

and except;

Commencing at the Southeast corner of said Lot 1, Block 1, said point being on the Northerly right-of-way line of Augusta Avenue; thence Northwesterly on the Northerly right-of-way line of Augusta Avenue on a curve to the left (radius being 530.00 feet), 160.34 feet to a point of tangency; thence South 89°54'16" West on the Northerly right-of-way line of said Augusta Avenue, 675.54 feet to a point of curve; thence Southwesterly on the Northerly right-of-way line of said Augusta Avenue on a curve to the left (radius being 240.00 feet), 107.98 feet; thence North 30°57'06" West, 46.77 feet to the True Point of Beginning; thence continuing North 30°57'06" West, 4.64 feet; thence North 89°59'16" West, 163.76 feet to the East right-of-way line of the frontage road; thence South 00°00'44" West along said East right-of-way line for 3.98 feet; thence South 89°59'16" East for 166.18 feet to the Point of Beginning.

and further except;

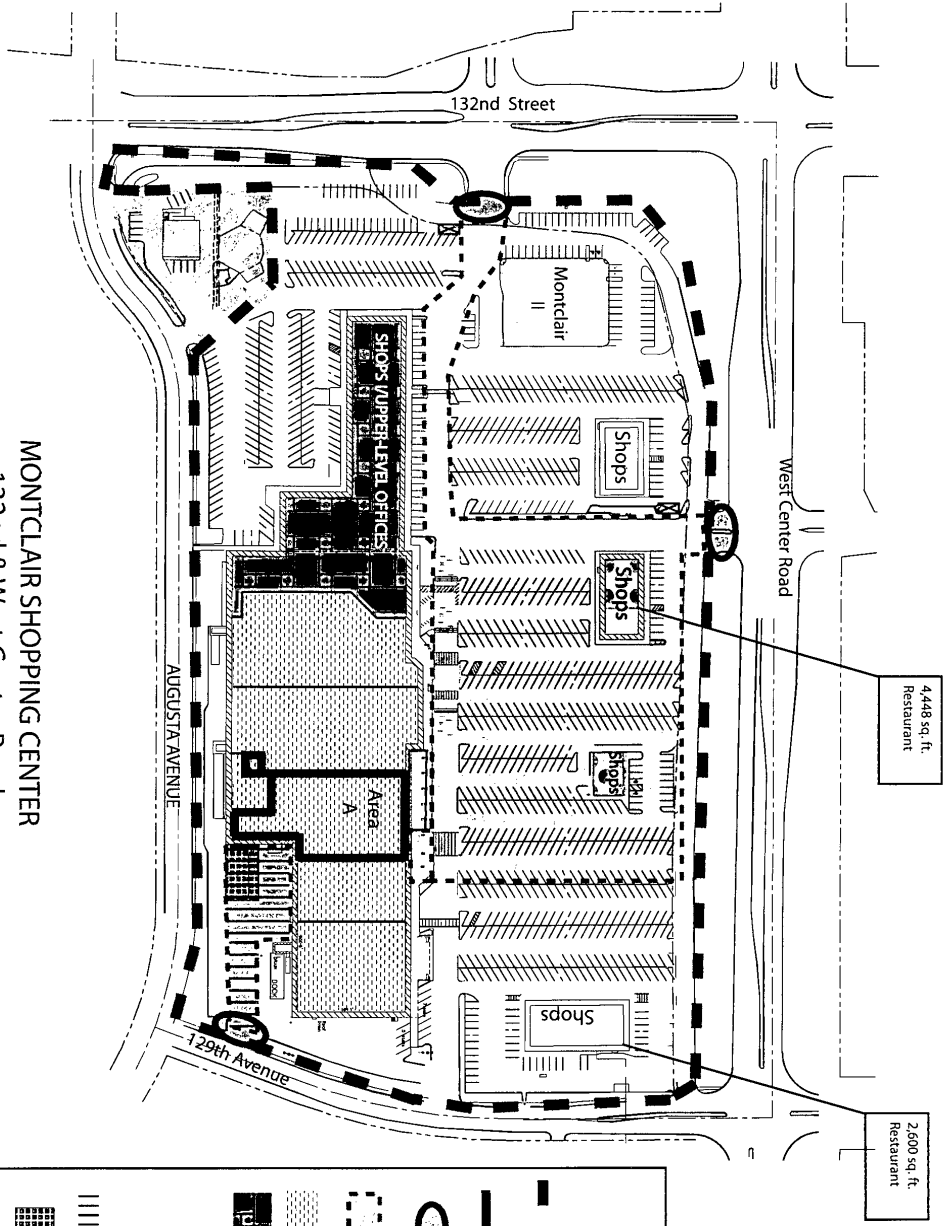
Commencing at the Southeast corner of said Lot 1, Block 1, said point being on the Northerly right of way line of Augusta Avenue; thence Northwesterly on the Northerly right of way line of said Augusta Avenue on a curve to the left (radius being 530.00 feet), 160.34 feet to a point of tangency; thence South 89°54'16" West on the Northerly right of way line of said Augusta Avenue, 675.54 feet to a point of curve; thence Southwesterly on the Northerly right of way line of said Augusta Avenue on a curve to the left (radius being 240.00 feet), 107.98 feet; thence North 30°57'06" West, 54.36 feet to the point of beginning; thence continuing North 30°57'06" West, 82.05 feet; thence North 89°59'16" West, 120.00 feet; thence South 0°0'44" West, 70.36 feet; thence South 89°59'16" East, 162.22 feet to the point of beginning.

and further except;

Commencing at the Southeast corner of said Lot 1, Block 1, said point being on the Northerly R.O.W. line of Augusta Avenue; thence Northwesterly along said Northerly R.O.W. line of Augusta Avenue on a curve to the left (having a radius of 530.00 feet) for an arc distance of 160.34 feet; thence S 89°54'16" W on the Northerly R.O.W. line of said Augusta Avenue for 675.54 feet; thence continuing on said Northerly R.O.W. line of Augusta Avenue along a curve to the left (having a radius of 240.00 feet) for an arc distance of 107.98 feet; thence N 30°57'06" W for 51.41 feet to the true point of beginning; thence N 30°57'06" W for 2.95 feet; thence N 89°59'16" W for 162.22 feet to the East R.O.W. line of the frontage road; thence S 0°00'44" W along said East R.O.W. line for 2.25 feet; thence S 89°59'16" E for 163.76 feet to the true point of beginning.

Lease Plan

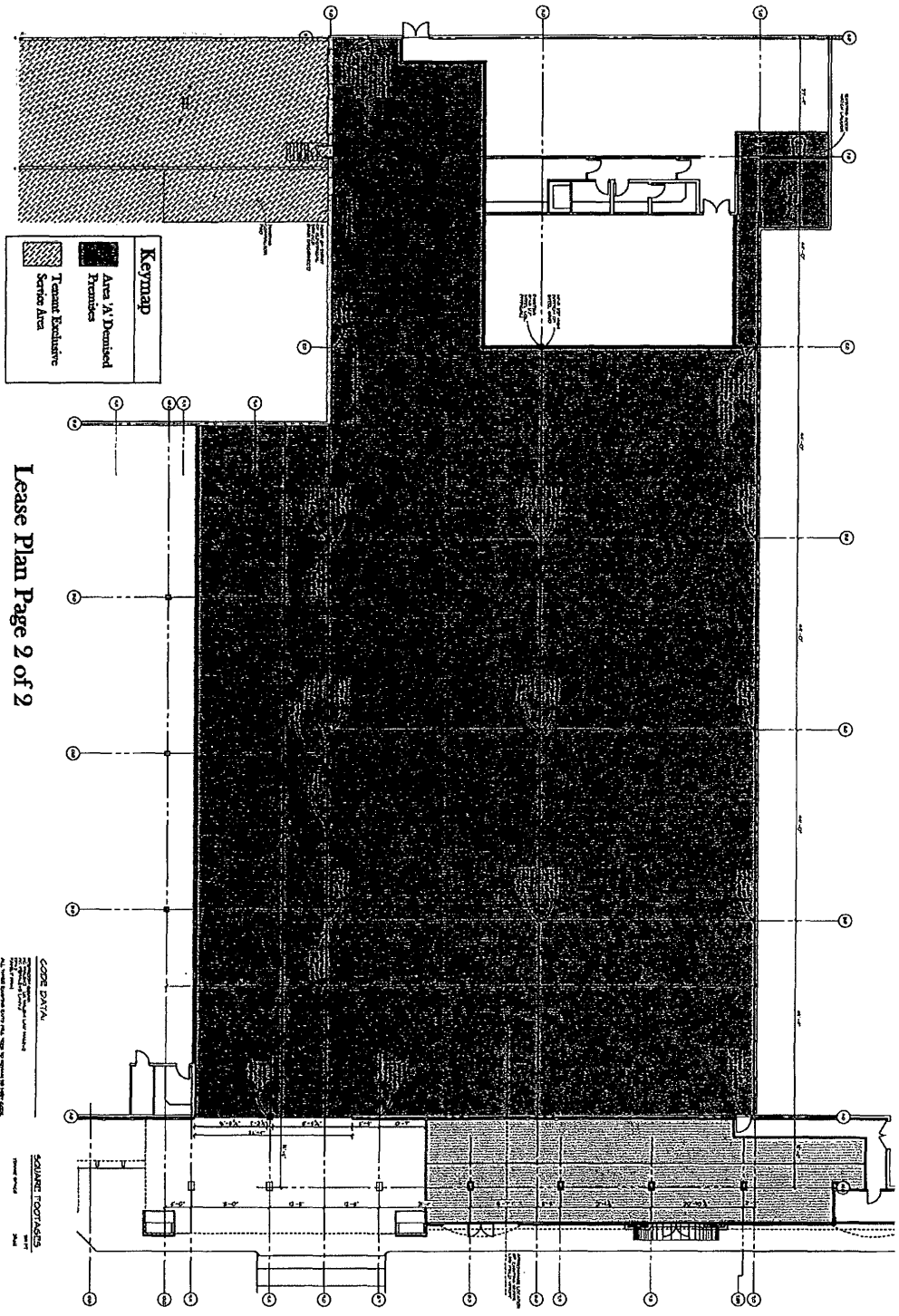
MONTCLAIR SHOPPING CENTER
 132nd & West Center Road
 Omaha, NE



Map Key

- Shopping Center
- Denied Premises (aka Area A - See next page for details)
- Protected (Entrances)
- Tenant's Critical Area (Includes Service)
- Restricted Height Area
- Permitted Office and Restaurant Area
- Integration Parcel
- Permitted Restaurant Area
- Service
- Tenant's Exclusive Service Area (see next page for details)
- Pylon Signs

A-3



Keymap

- Area A, Demitted Pyramids
- Tenant Exclusive Service Area

Lease Plan Page 2 of 2

SCOPE DATA
 SCALE: 3/8" = 1'-0"
 DATE: 11/11/11
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]

SCALE FOOTPRINTS
 SCALE: 3/8" = 1'-0"
 DATE: 11/11/11
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]

NO. 1	DATE	BY	DESCRIPTION
1	11/11/11	[Name]	ISSUED FOR PERMIT
2	11/11/11	[Name]	ISSUED FOR CONSTRUCTION
3	11/11/11	[Name]	ISSUED FOR OCCUPANCY
4	11/11/11	[Name]	ISSUED FOR AS-BUILT



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