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2005121286

MEMORANDUM OF LEASE

Dated June 3, 2005

KDI Omaha, L.P., Landlord
Officemax Incorporated, Tenant

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MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE dated as of this 3rd day of June 2005, by and between **KDI OMAHA, L.P.**, a Nebraska limited partnership, having its principal office at 3333 New Hyde Park Road, Suite 100, New Hyde Park, New York 11042 (the "Landlord"), and **OFFICEMAX INCORPORATED**, a Delaware corporation, having its principal office at 3605 Warrensville Center Road, Shaker Heights, Ohio 44122-5203 ("Tenant").

WITNESSETH:

That in consideration of the rents, covenants, and conditions more particularly set forth in a certain lease between Landlord and Tenant, of even date herewith (the "Lease"), Landlord and Tenant do hereby covenant, promise and agree as follows:

1. **Demised Premises.** Landlord does demise unto Tenant and Tenant does take from Landlord, for the Term (as hereinafter defined), the following property: (a) a portion of a building consisting of approximately 20,000 square feet (the "Demised Premises") located in the shopping center commonly known as Sorensen Park Plaza (the "Shopping Center") located at the southwest corner of 72nd and Sorensen Parkway in Omaha, Nebraska, (b) a nonexclusive easement and right to use all facilities erected or serving the Shopping Center and intended for public or common use, including but not limited to, all entrances, exits, driveways, service drives and parking areas, and (c) the exclusive right to use those portions of the truck dock(s), truck ramp(s) and related facilities located outside of, but adjacent to, the Demised Premises, all as further described in **EXHIBIT "A"**, attached hereto (collectively, the "Property").

The exterior walls and roof of the Demised Premises and the area beneath the Demised Premises are not demised hereunder.

2. **Use.** Subject to the OEA (as defined in the Lease) and the tenant exclusives and prohibited uses listed on Exhibit J to the Lease and the limitations listed in Article 31(h) of the Lease, the Demised Premises may be used for any lawful purpose.

3. **Term.** The Term shall commence upon the earlier of (a) the Date of Occupancy, or (b) the date Tenant shall open for business in the Demised Premises. The Lease shall terminate on the date which is ten (10) years after the last day of the month in which the Commencement Date occurs; provided, that Tenant shall have three (3) successive options to extend the Term of the Lease for an additional period of five (5) years on each such option, each such extended Term to begin, respectively, upon the expiration of the Term of the Lease or of the Lease as extended.

4. **Exclusive Use.** During the Term (including any renewal or extended term) no portion of the Shopping Center of which the Demised Premises is a part shall be used for the purposes set forth on **EXHIBIT "B"** attached hereto and made a part hereof. These Prohibited Uses, Restricted Uses, and the OEA (as defined in the Lease) shall be deemed covenants running with the land and shall bind and burden the Property and shall inure to the benefit of the Demised Premises and Tenant for the term of the Lease (including any renewal or extended term).

5. **Termination Rights.** Under the terms of the Lease, Tenant has the right to terminate the Lease under certain circumstances. Reference should be made to the Lease for these rights and remedies of Tenant and such other rights and remedies as contained in the Lease.

6. **Effect of Memorandum.** The sole purpose of this instrument is to give notice of the Lease and its terms, covenants and conditions to the same extent as if the Lease were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Lease and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease or determine the intent of the parties under the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the day and year first written.

Witnesses:

LANDLORD:

KDI OMAHA, L.P., a Nebraska limited partnership

By: KD Omaha 1103, Inc., a Nebraska corporation,
its General Partner

Joanna Isdale
PRINT NAME JOANNA ISDALE

PRINT NAME _____

By: Daniel O'Leary
Its: EXECUTIVE VICE PRESIDENT

TENANT:

OFFICEMAX INCORPORATED, a Delaware corporation

By: _____
Greg A. Darus, Vice President, Real Estate

PRINT NAME _____

PRINT NAME _____

6. **Effect of Memorandum.** The sole purpose of this instrument is to give notice of the Lease and its terms, covenants and conditions to the same extent as if the Lease were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Lease and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease or determine the intent of the parties under the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the day and year first written.

Witnesses:

LANDLORD:

KDI OMAHA, L.P., a Nebraska limited partnership

By: KD Omaha 1103, Inc., a Nebraska corporation, its General Partner

By: _____
Its: _____

PRINT NAME _____

PRINT NAME _____

TENANT:

OFFICEMAX INCORPORATED, a Delaware corporation

By: Greg A. Darus
Greg A. Darus, Vice President, Real Estate

Mary F Imbler
PRINT NAME MARY F Imbler

Yolonda R. Davis
PRINT NAME Yolonda R. Davis

ACKNOWLEDGMENTS

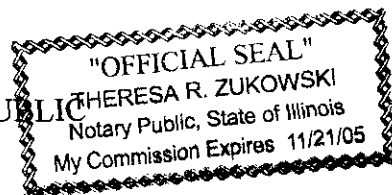
STATE OF Illinois
) SS:
COUNTY OF DuPage

BEFORE ME, a Notary Public in and for said County and State, did personally appear **KDI OMAHA, L.P.**, a Nebraska limited partnership, KD Omaha 1103, Inc., a Nebraska corporation, its General Partner, by Daniel C. Slattery, its Exec V.P., who acknowledged to me that he did sign the foregoing instrument as such officer and that the same is his free act and deed, both individually and as such officer of said limited partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Liste, IL, this 2nd day of June, 2005.

Theresa R. Zukowski

NOTARY PUBLIC



STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, did personally appear **OFFICEMAX INCORPORATED**, a Delaware corporation, by Greg A. Darus, its Vice President, Real Estate, who acknowledged to me that he did sign the foregoing instrument as such officer and that the same is his free act and deed, both individually and as such officer of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand official seal at Cleveland, Ohio, this _____ day of _____, 2005.

NOTARY PUBLIC

**DRAFTED BY, AND WHEN RECORDED,
RETURN TO:**

Amy E. Kellogg, Esq.
Baker & Hostetler LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485
(216) 621-0200

ACKNOWLEDGMENTS

STATE OF _____)
) SS:
COUNTY OF _____)

BEFORE ME, a Notary Public in and for said County and State, did personally appear **KDI OMAHA, L.P.**, a Nebraska limited partnership, KD Omaha 1103, Inc., a Nebraska corporation, its General Partner, by _____, its _____, who acknowledged to me that _____ did sign the foregoing instrument as such _____ and that the same is _____ free act and deed, both individually and as such _____ of said limited partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, _____, this _____ day of _____, 2005.

NOTARY PUBLIC

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, did personally appear **OFFICEMAX INCORPORATED**, a Delaware corporation, by Greg A. Darus, its Vice President, Real Estate, who acknowledged to me that he did sign the foregoing instrument as such officer and that the same is his free act and deed, both individually and as such officer of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand official seal at Cleveland, Ohio, this 3rd day of June, 2005.



NOTARY PUBLIC

**DRAFTED BY, AND WHEN RECORDED,
RETURN TO:**

Amy E. Kellogg, Esq.
Baker & Hostetler LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485
(216) 621-0200



YOLONDA R. DAVIS
Notary Public
State of Ohio
Recorded in Cuyahoga County
My Commission Expires 11-24-2007

EXHIBIT A
Legal Description

The East ½ of the Northeast ¼ of Section 35, Township 16 North, Range 12 East of the 6th P.M., in the City of Omaha, Douglas County, Nebraska, together with the Northeast ¼ of the Southeast ¼ of Section 35, Township 16 North, Range 12 East of the 6th P.M., in the City of Omaha, Douglas County, Nebraska, lying North of County Road 3-E, except those parts described in Warranty Deeds filed December 1, 1955, in Book 983 at Page 605, filed October 15, 1971, in Book 1441 at Page 405, filed March 17, 1978, in Book 1591 at Page 512, and filed April 13, 1998, in Book 2086 at Page 645, and except that part described in Plat and Dedication for Street Widening filed October 10, 1968, in Book 469 at Page 233; ~~to be known~~ as Lots 1 thru 14 inclusive, Outlots A and B, Sorensen Park Plaza, in Douglas County, Nebraska. NKLA

EXHIBIT B

Prohibited Uses and Restricted Uses

During the Initial Term of the Lease or during any renewal period thereunder, no portion of the Shopping Center (excluding the Demised Premises and the Target Parcel) shall be used:

(a) For the purposes of, or which is permitted to be, the primary sale of office, home office, school or business products, office, home office, school or business supplies or equipment; office furniture; or electronics related to office or business uses (including by way of example those businesses operated by Office Depot, Staples, Office Shop Warehouse, Mardel Christian Office and Education Supply Store and Workplace); or for use as a business support center, copy center or "Kinko" type of operation (all of which are hereinafter referred to as the "Prohibited Uses"), except to the extent permitted by subparagraph (b) immediately below; and

(b) For any purpose which would permit more than (i) two thousand five hundred (2,500) square feet of space to be used for any Prohibited Uses, or (ii) ten percent (10%) of such user's floor area to be used for purposes of any Prohibited Uses, whichever is less.

Notwithstanding the foregoing, single retail use occupancy spaces in the Shopping Center in excess of seventy-five thousand (75,000) square feet of floor area shall not be subject to the Prohibited Uses so long as such space is not used as an office supply superstore, and the Shopping Center may be utilized for the following uses (none of which shall be taken in consideration in determining the limitations under subparagraph (b) above): (i) a furniture store so long as the gross sales of office or home office furniture do not exceed thirty percent (30%) of the gross sales from said location; (ii) a Rent a Center or similar business whose primary purpose is rent to own appliances, computers or similar products, so long as the proceeds in the aggregate from the rental of office or home office furniture, and computers, do not exceed thirty percent (30%) of the rental proceeds from said location; (iii) one (1) cellular phone store whose primary purpose is the sale of telecommunications equipment, provided that such store does not occupy more than three thousand (3,000) square feet of floor area (or four thousand (4,000) square feet if such cellular phone store is operated by Verizon, or its successors or assigns) and if such store sells office products other than cellular phones, then the square footage used for the sale of such other items shall be taken into consideration in determining the limitations under subparagraph (b) above; (iv) a consumer electronics superstore such as Circuit City or Best Buy occupying twenty thousand (20,000) square feet or more; (v) an educational toy store or school products store of not more than four thousand (4,000) square feet and if such store sells office products other than educational materials for teachers or students, then the square footage used for the sale of such other items shall be taken into consideration in determining the limitations of subparagraph (b) above; (vi) a typical Radio Shack store occupying not more than two thousand eight hundred (2,800) square feet; (vii) a store of fifteen thousand (15,000) square feet or more whose primary purpose is the sale of computer or computer products and home electronics such as CompUSA, Micro Center, Best Buy, Circuit City, Ultimate Electronics or H. H. Gregg; or (viii) a packaging and shipping store such as a UPS Store or Mail Boxes, Etc. so long as there is no more than one (1) such store in the Shopping Center, and such store occupies no more than four thousand (4,000) square feet and provides no copying services other than a maximum of two (2) self-serve copy machines.

In addition, during the Initial Term of the Lease and during any renewal period thereunder:

(a) No portion of the Shopping Center located within two hundred linear feet (200') of the demising walls of the Demised Premises shall be used as a restaurant (except that restaurants within the "Village Area" in the parking lot in front of the Building and depicted on Exhibit B to the Lease may be permitted), or for office purposes (such as medical or office uses)

(except that an administrative office incidental to a retail operation may be permitted), or for any use that requires parking in excess of five (5) spaces for each one thousand (1,000) square feet of leasable floor area, or for any use prohibited under subparagraphs (c) or (d) immediately below;

(b) No outlet (or any portion thereof) within the Shopping Center shall be used for purposes of any of the Restricted Uses (as hereinafter defined), if such outlet shall have the right to use any of the parking areas located within one hundred feet (100') of the Demised Premises;

(c) No portion of the Shopping Center shall be occupied or used, directly or indirectly, for any use in violation of the uses prohibited in the OEA or for any use prohibited under subparagraph (d) immediately below and no portion of the Shopping located within three hundred linear (300') feet of the demising walls of the Demised Premises shall be occupied or used, directly or indirectly, for a nightclub or other entertainment facility, game room, blood bank, goodwill store, ballroom, day care center or discotheque; and

(d) No portion of the Shopping Center shall be occupied or used in violation of any prohibitions or restrictions on use contained in any document or instrument listed on Exhibit D to the Lease.

The restricted uses set forth in (a)-(d) above are hereinafter referred to collectively as the "Restricted Uses". Landlord shall use commercially reasonable efforts to enforce the OEA and the restrictions on use contained therein and any deed restrictions on use against any party who violates such restrictions.

The restrictions set forth above shall be deemed to be covenants running with the land and shall bind and burden the Shopping Center and shall inure to the benefit of the Demised Premises and Tenant. The Prohibited Uses and Restricted Uses shall not apply to the existing tenants and occupants of the Shopping Center identified on Exhibit K to the Lease, and their successors and assigns so long as their current leases (and extensions) are in effect; provided, however, that to the extent Landlord has the right to approve or consent to any assignment or subletting under any such lease, and to limit or restrict the use in conjunction with such consent, Landlord shall again enforce Tenant's rights set forth above unless (A) such assignment or subletting is for a purpose permitted by such lease, and (B)(1) Landlord is not permitted, pursuant to the terms of such lease, to enforce Tenant's rights hereunder in connection with such assignment or sublease, or (2) the enforcement of such rights would be unreasonable under the terms of any such lease for which Landlord's consent is required to be reasonable with respect to any assignment or sublease.