



MISC 2005121287



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BRUCE RAMIN, ESQ.  
THE TJX COMPANIES, INC.  
770 COCHITUATE ROAD  
FRAMINGHAM, MA 01701

48<sup>00</sup> 67-36401  
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Register of Deeds, Douglas County, NE  
9/28/2005 08:32:22.18



2005121287

MEMORANDUM OF LEASE

**THIS MEMORANDUM OF LEASE**, made and entered into as of this 4<sup>th</sup> day of August, 2005, by and between KDI OMAHA, L.P., (the "Landlord"), and MARSHALLS OF MA, INC., a Massachusetts corporation, (the "Tenant"), provides:

1. Lease. The provisions set forth in a written lease between the parties hereto dated August 4, 2005 (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 herein provided, and contain approximately thirty-three thousand (33,000) square feet of floor area having a frontage and width of one hundred fifty (150) feet and other dimension as shown upon the plan attached hereto ("the Lease Plan"), and are a portion of the premises within the Shopping Center referred to hereinbelow labelled Demised Premises on the Lease Plan. The areas cross-hatched and labelled "Critical Area" and the entrances circled or labelled Protected 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. No change shall be made outside such areas which would adversely affect Tenant's access or visibility, or which would reduce the parking ratio. In addition, 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 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 (defined in Section 6.1) for purposes of Article VI and Paragraph 10 of Schedule B. 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. Landlord agrees that the name of the Shopping Center shall not contain the trade name of any business operated in the Shopping Center.

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 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, 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 September 30. The "Commencement Date" shall be the first Opening Day after the later to occur of the following dates:

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(1) the sixtieth (60<sup>th</sup>) 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 all of the following is satisfied (i) Target shall open for business to customers in the Shopping Center containing not less than one hundred twenty thousand (120,000) square feet ("the Inducement Store"), (ii) Linens N Things shall open for business to customers in the Shopping Center containing not less than twenty-five thousand (25,000) square feet and (iii) at least fifty percent (50%) of the remaining floor area in Phase II of the Shopping Center (excluding the Demised Premises and out parcels) shall be open for retail purposes (retail not including "service retail", theater, restaurant and Village shop space uses) [(i) – (iii)] collectively, is the "Inducement Requirement"] and

(3) the sixtieth (60<sup>th</sup>) day after Landlord shall have completed "shell construction" of at least seventy-nine thousand two hundred (79,200) square feet of building floor area (in addition to the Demised Premises) in the areas shown therefor upon the Lease Plan (as referred to in Paragraph 1 of Schedule B); "shell construction" shall mean the foundation, all exterior walls, roof, and all doors and windows (including glass or aesthetically suitable temporary substitutes for such glass) (Landlord covenants that it will further complete shell construction on an additional seventy-five thousand (75,000) square feet within twelve (12) months thereafter, but such work shall not be performed during November and December and it shall use its best efforts to minimize any interference with Tenant's business and the Common Areas during such work); and

(4) the sixtieth (60<sup>th</sup>) day after Landlord has delivered to Tenant a fully executed Subordination, Non-Disturbance and Attornment Agreement from the holders of any existing liens on the Shopping Center in, the form attached hereto and made a part hereof as Schedule D; and

(5) the tenth (10<sup>th</sup>) 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

(6) INTENTIONALLY DELETED

(7) INTENTIONALLY DELETED

(8) INTENTIONALLY DELETED

(9) INTENTIONALLY DELETED

(10) the tenth (10<sup>th</sup>) day after completion of construction of the Common Areas outlined in red on the Lease Plan (defined in Paragraph 2 of Schedule B); and

(11) April 1, 2006.

Notwithstanding anything in the Lease contained to the contrary, if the Demised Premises shall be formally opened for business with customers prior to the Commencement Date determined as above provided, such date of formal 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:** KIMCO Realty  
3333 New Hyde Park Road  
Suite 300  
P.O. Box 5020  
New Hyde Park, NY 11042-0020

**Tenant:** MARSHALLS OF MA, INC.  
Post Office Box 9123  
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 for any non-retail purposes (repairs, alterations and offices incidental to retailing, and banks and small loan offices, not being deemed non-retail), or for any entertainment purposes such as a bowling alley, skating rink, bar (not including incidental use as part of a restaurant), nightclub, discotheque, amusement gallery, poolroom, health club, (except there may be one health club of up to ten thousand (10,000) square feet provided it is not within two hundred (200) feet of the Demised Premises), massage parlor, sporting event, sports or game facility, off-track betting club or for any establishment for the sale or display of pornographic materials. Except as provided in the last sentence of this section, no restaurants shall be located in the Shopping Center outside of outparcels or the village shops and as provided in the last sentence of this Section. All such restaurants will self-park on each Outparcel (not applicable to in-line or village shops restaurants). In addition, there may be up to four thousand (4,000) square feet of restaurants "in-line" (not counting the cafeteria in Target) provided no such space is within two hundred (200) feet of the Demised Premises.

(B) Excluding Target, Linens 'N Things (or similar store), Old, Navy, Kohl's, and a store primarily selling sporting goods such as Dick's Sporting Goods, Landlord agrees that, during the term of this lease (except that if Tenant has ceased selling soft goods for twelve (12) consecutive months, this restriction shall not apply to occupants who commence selling such soft goods after the expiration of such twelve (12) month period but prior to the time, if any, that Tenant again begins to sell soft goods), no other premises in the Shopping Center (it being understood this does not apply to Target) 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 soft goods (as defined by the trade from time to time), including in the computation of such floor area 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 soft goods (meaning for this purpose, one, more than one, or all of apparel, clothing, domestics, bedding and linens).

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.

**[SIGNATURE PAGE TO FOLLOW]**

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

WITNESSES AS TO BOTH:

Joanna Asdele

\_\_\_\_\_

LANDLORD:

KDI OMAHA, L.P.

By **KD OMAHA 1103, INC.**  
Its: General Partner

By Daniel C. Slattery

**DANIEL C. SLATTERY**  
Executive Vice President

WITNESSES AS TO BOTH:

[Signature]

Karen McAner

**MARSHALLS OF MA, INC,**  
a Massachusetts corporation

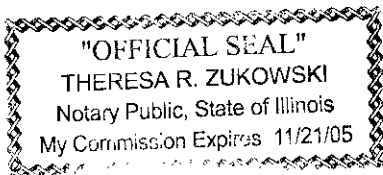
By Ann McCauley  
Ann McCauley  
Secretary/Clerk


By Mary B. Reynolds  
Mary B. Reynolds  
Vice President/Treasurer

**LANDLORD'S ACKNOWLEDGEMENT**

STATE OF ILLINOIS                    )  
  ) ss.  
COUNTY OF DUPAGE                 )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of August, 2005, by DANIEL C. SLATTERY, and \_\_\_\_\_ on behalf of KDI OMAHA, L.P.



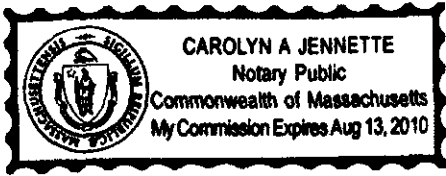
  
\_\_\_\_\_  
**Theresa R. Zukowski**  
Notary Public  
My Commission Expires: 11/21/05

TENANT'S ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS )  
 ) ss.  
COUNTY OF MIDDLESEX )

On this 16th day of September, 2005, before me, the undersigned notary public, personally appeared Ann McCauley as Secretary/Clerk and Mary B. Reynolds as Vice President/Treasurer, respectively, of Marshalls of MA, 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.

Carolyn A. Jenette  
Notary Public



## SCHEDULE A

### DESCRIPTION OF SHOPPING CENTER AND DEMISED PREMISES

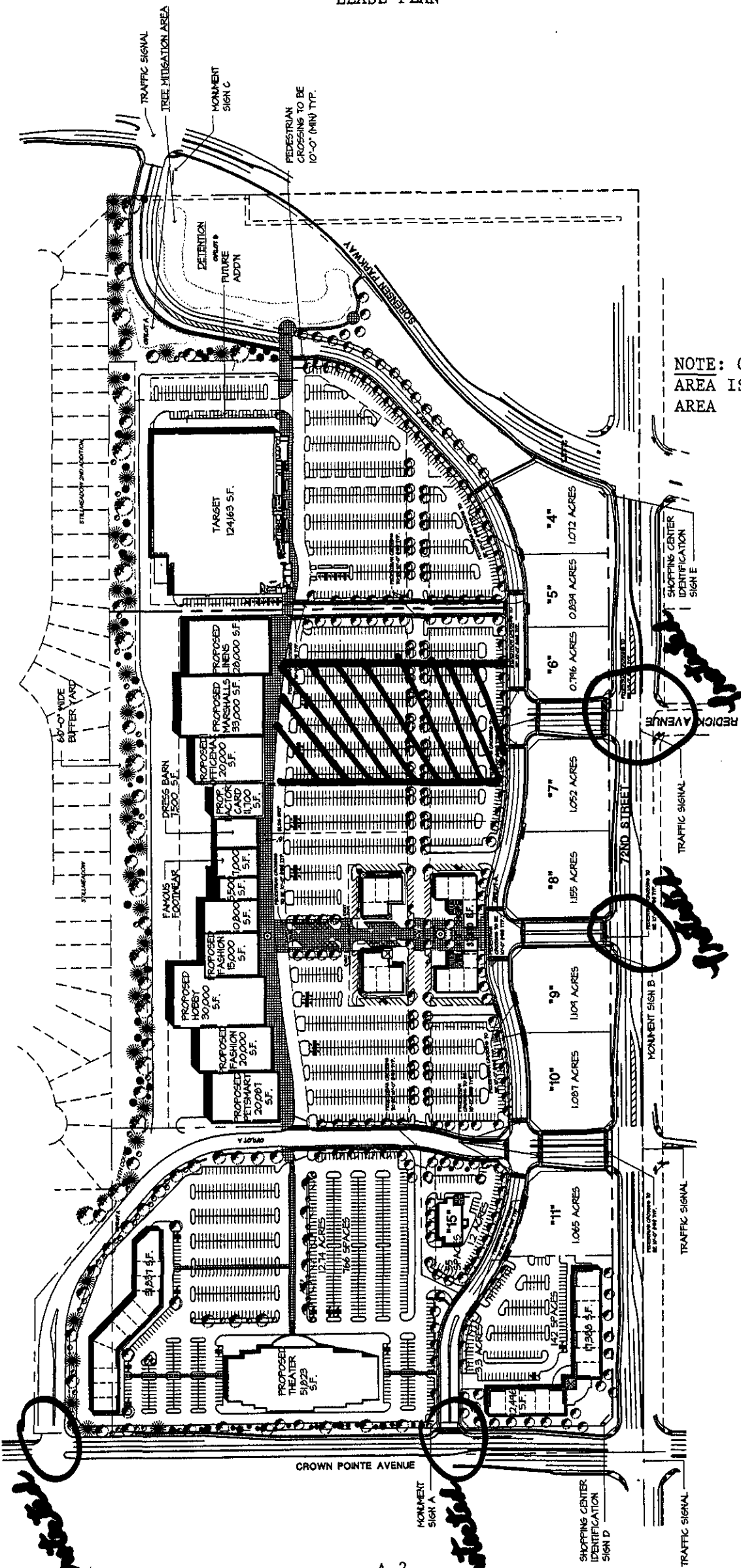
The Demised Premises consist of a one-story building, to be constructed by Landlord as herein provided, and contain approximately thirty-three thousand (33,000) square feet of floor area having a frontage and width of one hundred fifty (150) feet and other dimension as shown upon the plan attached hereto ("the Lease Plan"), and are a portion of the premises within the Shopping Center referred to hereinbelow labelled Demised Premises on the Lease Plan. The areas cross-hatched and labelled "Critical Area" and the entrances circled or labelled Protected 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. No change shall be made outside such areas which would adversely affect Tenant's access or visibility, or which would reduce the parking ratio. In addition, 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 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 (defined in Section 6.1) for purposes of Article VI and Paragraph 10 of Schedule B. 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. 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 Sorensen Park Plaza, to be constructed by Landlord as herein provided, located at the southwest corner of 72<sup>nd</sup> Street and Sorensen Parkway, (herein collectively referred to as "the Main Streets") in Omaha, Nebraska. The Shopping Center is the land, together with the buildings and other structures from time to time thereon, shown on the Lease Plan outlined in red, and is more particularly described as follows:

#### **Legal Description of Shopping Center**

Lots 1-14 and Outlots A and B, Sorensen Park Plaza, an Addition to the City of Omaha, and a platted and recorded subdivision in Douglas County, Nebraska

LEASE PLAN



NOTE: CROSS-HATCHED AREA IS THE CRITICAL AREA

SITE LAYOUT PLAN 06/15/05 SP8

