

# UNOFFICIAL COPY



Doc#: 0927818082 Fee: \$74.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/05/2009 04:10 PM Pg: 1 of 6

RECORDING PREPARED BY  
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 1<sup>st</sup> day of ~~September~~<sup>October</sup>, 2009, by and between METRO COMMONS, L.L.C., an Illinois limited liability company (the "Landlord"), and CONCORD BUYING GROUP, INC., a New Hampshire corporation (the "Tenant"), provides:

1. Lease. The provisions set forth in a written lease between the parties hereto dated as of ~~September~~<sup>October</sup> 1, 2009 (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 twenty three thousand thirty five (23,035) square feet of floor area having a frontage of one hundred sixteen (116) feet and other dimensions as shown and labelled 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 two (2) extension periods of five (5) years each, each commencing upon the expiration of the original term, or the original term as thus previously extended (provided, however, that Tenant's shall have certain rights with respect to a third Extension Period in accordance with the additional provisions of the Lease). 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 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 the completion of Landlord's Construction Work, receipt by Tenant of notice of such completion from Landlord; and

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(2) so long as the store remains open for business to customers in the Shopping Center under the trade name Super Target containing not less than one hundred eighty five thousand (185,000) square feet of floor area (the "Inducement Store"); and

(3) intentionally omitted; and

(4) the tenth (10th) day after Landlord shall have delivered to Tenant a temporary certificate of occupancy for Landlord's Construction Work in the Demised Premises; and

(5) intentionally omitted;

(6) intentionally omitted; and

(7) intentionally omitted.

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:

<u>Landlord:</u>	<del>Metro Commons, LLC Par Development Inc.</del> 1141 East Main Street, Suite 100 East Dundee, Illinois 60118 Attention: Daniel Sheppard
<u>Tenant:</u>	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 neither the Landlord's Parcel nor all or any other portion of the Shopping Center over which Landlord gains possession of or control over during the term of this lease shall be used for any of the prohibited uses listed on Schedule F below. No restaurants or establishments selling food prepared on premises for consumption on or off premises shall be located in the improvements on Landlord's Parcel within the building identified on the Lease Plan as Retail B through Retail E. (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 Landlord's Parcel or any other portion of the Shopping Center over which Landlord gains possession of or control over during the term of this lease shall at any time contain more than (i) fifteen thousand two hundred (15,200) square feet of floor area therein used or occupied for, or devoted to, the sale or display of off-price or discounted apparel and related accessories, and/or (ii) fifteen thousand two hundred (15,200) square feet of floor area therein used or occupied for, or devoted to the sale or display of shoes, footwear and related accessories (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. Notwithstanding the foregoing, Tenant acknowledges that provisions of this Paragraph 4(B) shall not preclude the operation in the Landlord's Parcel of a retail store operated under the tradename Anna's Linens as a majority of such stores are operated on the date hereof.

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(C) In addition to all other remedies available to Tenant at law and in equity for a breach of the covenants contained in Paragraphs (A) and (B) of this Paragraph 4, if an occupant or tenant in the Shopping Center engages in a Competing Use or a Prohibited Use, Tenant shall be entitled to any of the following remedies on a non-exclusive basis: (i) Tenant may pay Alternate Rent (as defined in Section 4.7 of the lease) until such Competing Use or Prohibited Use ceases, except that Landlord shall have three (3) months to attempt cure before Tenant may pay Alternate Rent when Landlord has not consented to the Competing Use, (ii) Tenant may terminate this lease if the Competing Use or Prohibited Use continues for more than one hundred fifty (150) consecutive days by giving thirty (30) days notice to Landlord or (iii) Tenant may seek injunctive relief to enjoin or restrain such occupant or tenant from engaging in a Competing Use or a Prohibited Use. Notwithstanding anything to the contrary contained herein, so long as Landlord is using its best efforts to diligently enforce the restrictions contained in this Paragraph 4 against any tenant or occupant engaged in the Competing Use or a Prohibited Use in violation of its lease, Tenant's termination right under this Paragraph 4(C) shall be stayed.

(D) 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 (collectively "Existing Leases") to use a certain demised premises for a Competing Use for only so long as such Existing Leases continue in full force and effect but only if such Existing Leases do not prohibit such Competing Use, provided that a successor or new tenant or occupant that occupies the same demised premises may continue a Competing Use which is not prohibited under the Existing Leases. Landlord agrees not to amend any Existing Leases to permit the Competing Uses, if such Existing Leases do not currently allow a Competing Use. Landlord warrants and represents that all of the Existing Leases are listed on Schedule J attached hereto."

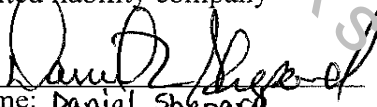
7. It is understood and agreed that the only purpose of this Memorandum of Lease is to give notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between Landlord and Tenant with respect to the Demised Premises. The Lease contains additional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

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

**WITNESS:**

  
\_\_\_\_\_


**METRO COMMONS, I.L.C.**, an Illinois limited liability company

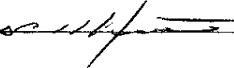
By   
Name: Daniel Shepard  
Title: Exec. VP


**WITNESSES AS TO BOTH:**

**CONCORD BUYING GROUP, INC.**, a New Hampshire corporation

  
\_\_\_\_\_

By   
Ann McCauley  
Secretary

  
\_\_\_\_\_

By   
Mary B Reynolds  
Vice President/Treasurer

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## LANDLORD'S ACKNOWLEDGMENT

STATE OF Illinois )  
 ) SS.  
CITY/COUNTY OF Kane )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of September, 2009 by Daniel L. Shepard on behalf of Metro Commons, LLC

Cynthia L. Romano  
Notary Public  
My Commission Expires:

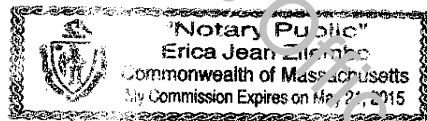


## TENANT'S ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS )  
 ) SS.  
COUNTY OF MIDDLESEX )

On this 2nd day of October, 2009, before me, the undersigned notary public, personally appeared Ann McCauley as Secretary and Mary B. Reynolds as Vice President/Treasurer, respectively, of Concord Buying Group, 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.

Erica Jean Zilber  
Notary Public  
My Commission Expires:



ALS

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## SCHEDULE A

### DESCRIPTION OF SHOPPING CENTER AND DEMISED PREMISES

The Demised Premises consist of a portion of a one-story building, to be constructed by Landlord as herein provided, and contain approximately twenty three thousand thirty five (23,035) square feet of ground floor area having a frontage and width of approximately one hundred sixteen (116) feet 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 portion of the Lease Plan marked as Critical Area shall not be modified in any way without Tenant's consent, which may be withheld at Tenant's sole and absolute discretion. Any changes to the Landlord's Parcel outside of Tenant's Critical Area which adversely affect any entrances or exits from the Shopping Center, traffic flow within the Shopping Center, or which will materially adversely affect the visibility of Tenant's storefront or other signs or the accessibility of the Demised Premises to or from any other portion of the Shopping Center or the Main Streets (as defined below) shall require the prior written consent of Tenant, which may be withheld at Tenant's reasonable discretion. 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 or for purposes of calculating 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 and if the Demised Premises contains less than 22,000 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 minimum rent, additional rent or other charges due under this lease be based on the Demised Premises containing more than twenty three thousand thirty five (23,035) square feet of floor area. Landlord agrees that the name of the Shopping Center shall not contain the trade name of any business operated in the Shopping Center, other than the Inducement Store (Target).

The Demised Premises are situated within the so-called Hillside Town Center Shopping Center, constructed by Landlord near the southwest quadrant of the intersection of Mannheim Road and Harrison Street (herein collectively referred to as "the Main Streets") in Hillside, Illinois. 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

#### Landlord's Parcel

Lots 2,3,5, 7, 8 and 10, inclusive, in Metro Commons, being a subdivision of part of the Southeast ¼ of Section 17, Township 39 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

#### Other Parcels

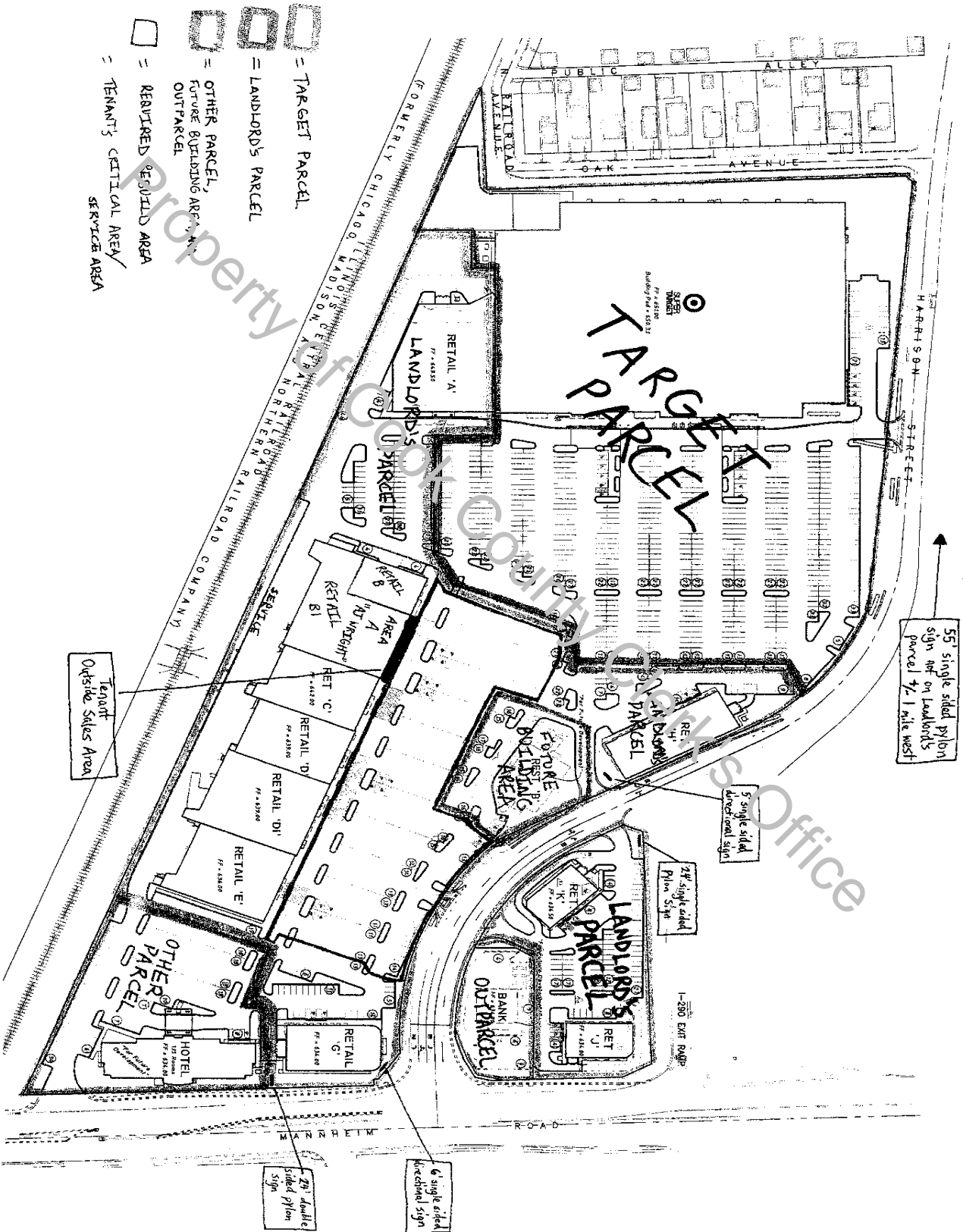
Lots 4, 6 and 9, inclusive, in Metro Commons, being a subdivision of part of the Southeast ¼ of Section 17, Township 39 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

#### Target Parcel

Lot 1 in Metro Commons, being a subdivision of part of the Southeast ¼ of Section 17, Township 39 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

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## LEASE PLAN



- ☐ = TARGET PARCEL
- ☐ = LANDLORD'S PARCEL
- ☐ = OTHER PARCEL, FUTURE BUILDING AREA, AND OUTPARCEL
- ☐ = REQUIRED RESULID AREA
- ☐ = TENANT'S CRITICAL AREA / SERVICE AREA

55' single sided pylon sign on Lookouts parcel 1/2 mile west

5' single sided directional sign

24' single sided Pylon sign

1-280 EXT RAMP

6' single sided directional sign

24' double sided pylon sign

DLS

DLS