

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT**  
**AGREEMENT**

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of January 22, 2020, by and among Morgan Stanley Private Bank, National Association ("Lender"), DKM2, LLC (as to an undivided 8% interest), L-39, LLC (as to an undivided 12% interest), K Falls Center, LLC (as to an undivided 40% interest); and Red Knight LLC (as to an undivided 40% interest) ("Landlord") and The TJX Companies, Inc. ("Tenant"). Deed of Trust recorded 2/26/2020 as #2020-002315

**RECITALS:**

**WHEREAS**, Lender is the holder of a Promissory Note which is secured, inter alia, by a Mortgage and Security Agreement (the "Mortgage") and Assignment of Lease and Rents (the "Lease Assignment") covering certain real property more particularly described in the Mortgage known as Jefferson Square Shopping Center located in Klamath Falls, OR and described further in **Schedule A**, a copy of which is attached hereto (hereinafter referred to as "Property"); and

**WHEREAS**, Landlord and Tenant are the current holders of the interests of landlord and tenant under a Lease dated June 13, 2019 as the same has been amended from time to time (the "Lease"), whereby Landlord demised to Tenant a portion of the Property (the "Demised Premises"). All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Lease. Lease recorded 6/13/2019 as #2019-006636.

**NOW THEREFORE**, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant, Landlord and Lender, intending to be legally bound hereby, covenant and agree as follows:

1. **SUBORDINATION.** This Lease shall be and is hereby made subordinate to the lien of (but not the terms and conditions of) the Mortgage and to all increases, renewals, modifications, amendments, consolidations and extensions thereof.

2. **NON-DISTURBANCE.** Provided that Tenant is not in default under the Lease of such a nature as would permit Landlord to terminate the Lease pursuant to default provisions of the Lease, Lender shall not, in the exercise of any right, remedy, or privilege granted by the Mortgage or the Lease Assignment, or otherwise available to Lender at law or in equity:

(i) disturb Tenant's possession, enjoyment, use or occupancy of the Demised Premises and the appurtenant rights thereto under the Lease during the term of the Lease (including any extensions, renewal, or modification thereof); or

(ii) join or name Tenant as a party to any foreclosure or other proceeding instituted by Lender to enforce the terms of the Mortgage or the Lease Assignment against Landlord.

NCS-992147-OR1

In the event Lender comes into possession of or acquires title to all or any portion of the Property as a result of any enforcement of the Mortgage, or any other means, Tenant shall peaceably and quietly have, hold and enjoy the Demised Premises and the rights of Tenant appurtenant thereto for the term of the Lease as the same may be extended, subject to the terms, covenants, conditions, provisions and agreements thereof.

3. ATTORNMEN. In the event Lender comes into possession of or acquires title to all or any portion of the Property as a result of foreclosure or other enforcement of the Mortgage, or as a result of any other means, Lender agrees to recognize Tenant's possession of the Demised Premises and Tenant agrees to attorn to and accept Lender as landlord under the Lease for the balance then remaining of the term of the Lease, subject to all of the terms and conditions of the Lease.

Upon any attornment under this Paragraph 3, the Lease shall continue in full force and effect as a direct lease between Tenant and Lender and Lender will assume and perform all of Landlord's obligations under the Lease except that Lender shall not be:

(i) liable for any damages for any breach, act or omission of any prior landlord under the Lease except for acts or omissions of a continuing nature which continue after such time as Lender comes into possession of or acquires title to all or any portion of the Property; or

(ii) subject to any offsets, claims or defenses which Tenant might have against any prior landlord including Landlord except to the extent such right of offset or defense is specifically set forth in the Lease, or unless Lender was previously notified of the act or event giving rise to such offset or defense; or

(iii) bound by any rent or additional rent or other payment in lieu of rent which Tenant might have paid to any prior landlord more than 30 days in advance of its due date under the Lease, unless such prepayment is required pursuant to the terms of the Lease; or

(iv) bound by any amendment or modification to the Lease which has the effect of decreasing the rent payable under the Lease, or decreasing the term of the Lease made without Lender's written consent which consent shall not be unreasonably withheld, conditioned or delayed; or

(v) be liable for any security deposit unless actually received by Lender.

4. RENTS. Landlord hereby advises Tenant that the Lease Assignment provides for the direct payment to Lender of all rents and other monies due and to become due to Landlord under the Lease upon the occurrence of certain conditions as set forth in the Lease Assignment without Lender's taking possession of the Demised Premises or otherwise assuming Landlord's position or any of Landlord's obligations under the Lease. After written notice is given to Tenant by Lender in form reasonably acceptable to Tenant, that Landlord has defaulted under the Mortgage and that the rentals under the Lease should be paid to Lender, Tenant shall pay to Lender, or in accordance with the direction of Lender all rentals and

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other monies due and to become due to the Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments as directed by Lender and hereby releases and discharges Tenant of, and from any liability to Landlord on account of any such payments. Tenant shall have no responsibility to ascertain whether such demand by Lender is permitted under the Mortgage or the Lease Assignment. Furthermore, in connection with the aforesaid, and notwithstanding anything to the contrary contained elsewhere, Landlord, its successor and/or assigns hereby agree to indemnify and hold harmless Tenant against any expenses, claims, losses, or damages incurred by Tenant resulting from or arising out of claims by Landlord, its successors or assigns that such rental payments should not have been, or cannot be, made to Lender or the like.

5. DEFAULT NOTICES TO LENDER. So long as the Mortgage is in force and effect, Tenant agrees not to terminate the Lease by reason of default by Landlord under the Lease without giving prior written notice thereof to Lender and Lender shall have the right (but not the obligation until Lender comes into possession of or acquires title to all or any part of the Property) to cure any of Landlord's defaults under the Lease within the same time period as is available to Landlord for the curing thereof under the Lease after receipt of such notice except Tenant shall have the right to exercise its enumerated termination rights set forth in the Lease without giving Lender notice or the opportunity to cure.

6. NOTICES. All notices and other communications pursuant to the provisions of this Agreement shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by a reputable commercial overnight carrier that provides a receipt, such as Federal Express or Airborne Express, and shall be deemed given when received and addressed as noted below, or to such other address or addresses as shall from time to time be designated by notice by any party to the others as herein provided.

If to Tenant:                   c/o The TJX Companies, Inc.  
770 Cochituate Road  
Framingham, MA 01701  
Attn: Vice President - Real Estate

If to Lender:                   Morgan Stanley Private Bank, National Association  
2000 Westchester Avenue  
Purchase, NY 10577  
Attention:

If to Landlord:               DKM2, LLC (as to an undivided 8% interest),  
L-39, LLC (as to an undivided 12% interest),  
KFalls Center, LLC (as to an undivided 40%  
interest); and  
Red Knight LLC (as to an undivided 40% interest)  
c/o Dickerhoof Properties, LLC  
777 NE Second Street, Suite 200  
Corvallis, OR 97330

Any party may change the place that notices are to be sent by written notice delivered in accordance with this Agreement.

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7. SUCCESSORS AND ASSIGNS. As used in this Agreement, the term "Tenant" shall mean Tenant and any subsequent holder or holders of an interest of the lessee under the Lease, and the term "Lender" shall mean Lender or any other subsequent holder or holders of the Mortgage or any party becoming a mortgagee in possession or acquiring title to the Property or the Demised Premises by purchase at a foreclosure sale, deed in lieu of foreclosure, other enforcement of the Mortgage, by deed of the Lender, or otherwise. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. The terms Lease, Mortgage and Lease Assignment shall include any and all amendments, modifications, replacements, substitutions, extensions, renewals and supplements thereto. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceable shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

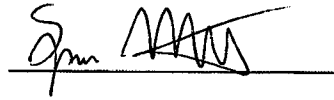
8. RECORDATION. Mortgagee agrees to record this agreement promptly upon full execution of the same. Upon recorded satisfaction of the Mortgage, this Agreement shall become null and void and be of no further effect.

This page ends here.

9. AUTHORITY. The individuals executing this Agreement hereby represent and warrant that they are empowered and duly authorized to so execute this agreement on behalf of the parties they represent.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

WITNESS:



LENDER:

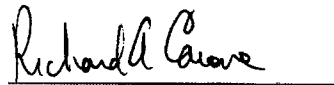
Morgan Stanley Private Bank,  
National Association

By: 

Name:

Its:

WITNESS:



LANDLORD:

DKM2, LLC (as to an undivided 8%  
interest) 10

By: 

Name: DARREN DICKERT

Its: MANAGER

WITNESS:



L-39, LLC (as to an undivided 12%  
interest) 30

By: 

Name:

Its:

WITNESS:

\_\_\_\_\_

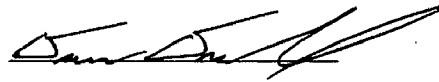
KFalls Center, LLC (as to an  
undivided 40% interest) 25

By: \_\_\_\_\_

Name:

Its:

WITNESS:



Red Knight LLC (as to an undivided  
40% interest) 25

By: 

Name: RICHARD A. CARONE

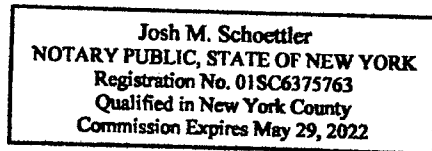
Its: member

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**LENDER'S ACKNOWLEDGEMENT**

STATE OF New York )  
 ) SS.  
COUNTY OF New York )

The foregoing instrument was acknowledged before me this 12  
day of February, 2020 by Andrew Crocco and  
\_\_\_\_\_ on behalf of MSPBNA.



Josh M. Schoettler  
Notary Public  
My Commission Expires: 5/29/20

**LANDLORD'S ACKNOWLEDGMENT**

STATE OF OREGON )  
 ) SS.  
CITY/COUNTY OF BENTON )

The foregoing instrument was acknowledged before me this 3RD  
day of FEBRUARY, 2020 by DARREN DICKERHOFF and  
\_\_\_\_\_ on behalf of DKM2, LLC.



Darin F. Cole  
Notary Public  
My Commission Expires:  
September 21, 2021

9. AUTHORITY. The individuals executing this Agreement hereby represent and warrant that they are empowered and duly authorized to so execute this agreement on behalf of the parties they represent.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

**WITNESS:**

**LENDER:**

Morgan Stanley Private Bank,  
National Association

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Its:

**WITNESS:**

**LANDLORD:**

DKM2, LLC(as to an undivided ~~8%~~  
interest) 20

Richard A Carone

By: [Signature]  
Name: DARREN DICKERHOOF  
Its: MANAGER

**WITNESS:**

L-39, LLC (as to an undivided ~~12%~~  
interest) 30

[Signature]

By: [Signature]  
Name:  
Its:

**WITNESS:**

KFalls Center, LLC (as to an  
undivided ~~40%~~ interest)  
25

\_\_\_\_\_

By: see attached  
Name:  
Its:

**WITNESS:**

Red Knight LLC (as to an undivided  
~~40%~~ interest)  
25

[Signature]

By: Richard A Carone  
Name: RICHARD A CARONE  
Its: member

**WITNESS:**

Susan Iska

**TENANT:**  
The TJX Companies, Inc.

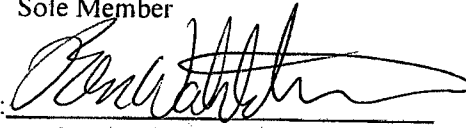
By: Joan Brassil  
Joan Brassil  
Authorized Signatory

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LANDLORD:

KFALLS CENTER, LLC, an  
Oregon limited liability company

By: BEN WAHLSTROM REVOCABLE TRUST, its  
Sole Member

By:   
Name: Ben Wahlstrom  
Title: Trustee

STATE OF Oregon )  
COUNTY OF Deschutes ) ss.

I, Angela Rose Ballou, a Notary Public in and for the said County in the State aforesaid, do hereby certify that **BEN WAHLSTROM**, known to me to be the same person whose name is subscribed to the foregoing instrument as the trustee of the **BEN WAHLSTROM REVOCABLE TRUST** the sole member of **KFALLS CENTER, LLC**, an Oregon limited liability company, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said limited liability company, on behalf of the limited liability company, and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3RD day of February, 2020.

Angela Rose Ballou  
NOTARY PUBLIC, STATE OF Oregon

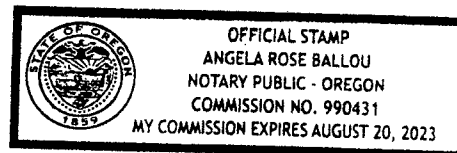
(Name of Notary Public, Print, Stamp or  
Type as Commissioned)

☐ Personally known to me, or

☒ Produced Identification

Driver License

(Type of Identification Produced)



[SIGNATURE APPEARS ON FOLLOWING PAGE]

**LENDER'S ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

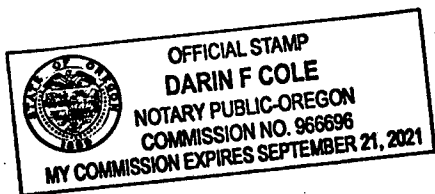
The foregoing instrument was acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2020 by \_\_\_\_\_ and  
\_\_\_\_\_ on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**LANDLORD'S ACKNOWLEDGMENT**

STATE OF OREGON )  
 ) SS.  
CITY/COUNTY OF BENTON )

The foregoing instrument was acknowledged before me this 3rd  
day of February, 2020 by DARREN DICKERHOOF and  
\_\_\_\_\_ on behalf of DISM2, LLC.



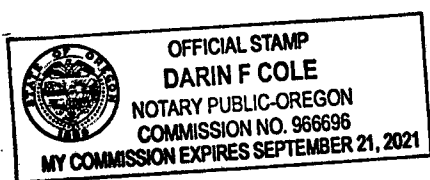
Darin F. Cole  
Notary Public  
My Commission Expires:  
September 21, 2021

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## LANDLORD'S ACKNOWLEDGMENT

STATE OF OREGON )  
 ) SS.  
CITY/COUNTY OF BENTON )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of FEBRUARY, 2020 by MATTHEW DICKERHOOF and \_\_\_\_\_ on behalf of L-39, LLC.



Ann E. Cole  
Notary Public  
My Commission Expires: SEPTEMBER 21, 2021

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## LANDLORD'S ACKNOWLEDGMENT

STATE OF OREGON )  
 ) SS.  
CITY/COUNTY OF BENTON )

The foregoing instrument was acknowledged before me this 3<sup>RD</sup> day of FEBRUARY, 2020 by RICHARD CARONE and \_\_\_\_\_ on behalf of RED KNIGHT, LLC.

Ann F. Cell

Notary Public

My Commission Expires:

September 21, 2021

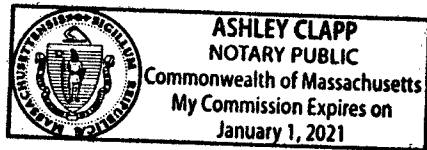



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## TENANT'S ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS )  
 ) SS.  
COUNTY OF MIDDLESEX )

On this 22nd day of January, 2020, before me, the undersigned notary public, personally appeared Joan Brassil as Authorized Signatory of The TJX Companies, Inc. on behalf of the corporation, proved to me through satisfactory evidence of identification, which is personal knowledge of her identity, to be the person whose name is signed on the preceding document and who acknowledged that she signed it voluntarily and executed same in her authorized capacity for its stated purpose.



  
 \_\_\_\_\_  
 Notary Public  
 My Commission Expires: 01/01/2021

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## SCHEDULE A

### DESCRIPTION OF SHOPPING CENTER, THE PROJECT AND DEMISED PREMISES

The "**Demised Premises**" consist of a portion of a one-story building, to be renovated by Landlord as herein provided, and contain twenty one thousand three hundred eighty six (21,386) square feet of ground floor area having a frontage and width of one hundred six feet (106'), a depth of two hundred feet (200'), 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 labelled AREA A on the Lease Plan. 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. In addition, Tenant shall have the shared right (with the space used by Natural Grocers) 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. For purposes of this lease, floor area shall be measured from the outside face of exterior walls and the center of interior partition walls. If after completion of Landlord's Construction Work the Demised Premises shall contain less than the ground 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 twenty thousand eight hundred eighty six (20,886) square feet of ground 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 one thousand three hundred eighty six (21,386) square feet of ground 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.

The Demised Premises are situated within the so-called Jefferson Square Shopping Center, located at the southeasterly corner of the intersection of Sixth Street and Washburn Way (herein collectively referred to as the "**Main Streets**") in Klamath Falls, County of Jefferson, Oregon. 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 FOR SHOPPING CENTER)

PARCEL 1 OF LAND PARTITION NO. 48-05, A REPLAT OF A PORTION OF LOTS 35 AND 44 OF ENTERPRISE TRACTS LOCATED IN THE WEST 1/2 OF NW 1/4 OF SECTION 3, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLIAMETTE MERIDIAN, KLAMATH COUNTY, OREGON.

LESS AND EXCEPT THAT PORTION DEEDED TO THE CITY OF KLAMATH FALLS AND ITS SUCCESSORS AND ASSIGNS ON JULY 15, 2008 IN 2008 10156, RECORDS OF KLAMATH COUNTY, OREGON.

#### (EASEMENT PARCEL)

TOGETHER WITH RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT AS DISCLOSED BY DOCUMENT RECORDED DECEMBER 8, 1995 IN VOLUME M95 PAGE 33582, RECORDS OF KLAMATH COUNTY, OREGON.

ALSO TOGETHER WITH NONEXCLUSIVE EASEMENTS FOR COMMON PARKING AND REASONABLE PEDESTRIAN AND VEHICULAR ACCESS, INGRESS AND EGRESS OVER ALL PAVED DRIVEWAYS, ROADWAYS AND WALKWAYS AS PRESENTLY OR HEREAFTER CONSTRUCTED AND CONSTITUTING A PART OF THE COMMON AREA, AND FOR MAINTENANCE AS GRANTED IN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED DECEMBER 21, 2005 AS DOCUMENT M05 71541, RECORDS OF KLAMATH COUNTY, OREGON.