

# UNOFFICIAL COPY



Doc#: 0409203032  
Eugene "Gene" Moore Fee: \$40.00  
Cook County Recorder of Deeds  
Date: 04/01/2004 11:42 AM Pg: 1 of 9

**THIS INSTRUMENT WAS  
PREPARED BY AND AFTER  
RECORDING RETURN TO:**

Gerald J. Smoller  
Kovitz Shifrin Nesbit  
750 Lake Cook Road, #350  
Buffalo Grove, IL 60089

*This space reserved for Recorder's use only*

Tenant Name: **THE GYMBOREE STORES, INC.**  
Address: **1843 N. Clybourn, Chicago, IL 60614**  
Square Footage: **1,650**

## SUBORDINATION AND NON-DISTURBANCE AGREEMENT

**THIS AGREEMENT**, made as of the 17<sup>th</sup> day of Feb, 2004, by and between **CitiGroup Global Markets Realty Corp.** (hereinafter referred to as the "Lender"), its successors and assigns, having an address at 388 Greenwich Street, New York, New York 10013, and **The Gymboree Stores, Inc.**, a California corporation, having an address at 700 Airport Boulevard, Suite 200, Burlingame, California 94010-1912, (hereinafter referred to as the "Tenant");

### WITNESSETH:

**WHEREAS**, the Tenant has entered into a certain Lease, dated August 27, 2003, with **1845 NORTH CLYBOURN L.L.C.**, an Illinois limited liability company (hereinafter referred to as the "Landlord"), which Lease covers retail store space known as 1843 N. Clybourn, Chicago, Illinois 60614 (the "Demised Premises") located at the real property at 1835-1857 N. Clybourn, Chicago, Illinois 60614, being more particularly described on Exhibit A attached hereto (hereinafter referred to as the "Property"); and

**WHEREAS**, the Lender is making a permanent loan to Landlord (the "Loan") to be secured by a certain Mortgage, Assignment of Rents, and Security

TICOR TITLE INSURANCE

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Agreement executed or to be executed by Landlord, covering the Property (hereinafter referred to as the "Instrument"); and

**WHEREAS**, the Lender has consummated the Loan transaction to be secured by the Instrument provided that the Lease is subordinated to the lien of the Instrument; and

**WHEREAS**, the Tenant desires to be assured of continued occupancy of the Demised Premises under the terms of said Lease and subject to the terms of the Instrument; and

**NOW, THEREFORE**, in consideration of the premises and other valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. **SUBORDINATION:**

The Lease, as the same may heretofore and hereafter be modified, amended or extended, and all rights, options, liens and charges created thereby or existing thereunder (including, without limitation, any option or rights contained in the Lease, or otherwise existing, to acquire any or all of the Demised Premises or the Property, or any superior leasehold interest therein), are and shall be subject, subordinate and inferior to the lien of the Instrument and to any renewals, modifications, consolidations, replacements and extensions thereof and to each and every advance made or hereafter made under the Loan. Tenant acknowledges and agrees that it has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Demised Premises or the Property, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same (a) is hereby acknowledged to be subject and subordinate to the Instrument and to any renewals, modifications, consolidations, replacements and extensions thereof and to each and every advance made or hereafter made under the Loan, and (b) is hereby waived and released as against Lender.

2. **NON-DISTURBANCE:**

Lender agrees that so long as Tenant is not in default in the payment of rent or in the performance of any of the other terms of the Lease or of this Agreement, beyond any applicable grace or cure period, Tenant's occupancy of the Demised Premises will not be disturbed by Lender in the event of a foreclosure of such lien.

3. **ATTORNMEN:**

Without limitation of any of the provisions of the Lease, in the event that, by reason of any default on the part of the Landlord, Lender shall succeed to the interest of the Landlord, then, subject to the provisions of this Agreement, the

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Lease shall nevertheless continue in full force and effect and the Tenant shall attorn to Lender and shall recognize Lender as its landlord. Upon request of Lender, the Tenant shall execute and deliver to Lender a separate agreement of attornment so long as such documents do not reduce Tenant's rights hereunder or under the Lease or increase any of Tenant's obligations hereunder or under the Lease (other than a requirement to give notices of Landlord's defaults to Mortgagee and affording such party an opportunity to cure, or to deliver rent to such party in accordance with a direction to do so) nor reduce Landlord's obligations hereunder. Nothing herein contained shall be construed, however, to obligate Lender to cure any default by the Landlord under the Lease occurring prior to any date on which Lender shall succeed to the rights of the Landlord, it being expressly agreed that under no circumstances shall Lender be obligated to remedy any such default, subject to clause (ii) of Paragraph 4 hereof.

#### 4. **LIMITATION OF LIABILITY:**

(a) The Tenant understands and acknowledges that (i) Landlord shall execute or has executed a conditional assignment of the Lease and other leases in favor of the Lender as part of the security for the Loan; (ii) notwithstanding said assignment, all rental, additional rental and other payments due under the Lease shall continue to be paid in accordance with the terms of the Lease until and unless Tenant is notified to the contrary in writing by Lender; and (iii) the interest of the Landlord in the Lease shall be or has been assigned to Lender solely as additional security for the Loan and Lender assumes no duty, liability or obligation under the Lease, either by virtue of said assignment, the exercise thereof or by any subsequent receipt or collection of rental, additional rental or any other sums due thereunder. In the event of a notice from Lender pursuant to clause (ii) hereinabove, Tenant agrees that, upon receipt of such notice and a demand by Lender for direct payment to Lender of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to Lender. In such event, Tenant shall be entitled to rely solely upon such notice, shall have no duty to inquire as to the validity or appropriateness of Lender's notice and Tenant shall be entitled to full credit under the Lease for any rents paid to Lender in accordance with the provisions hereof. Any dispute between Lender (or any other purchaser) and Landlord as to the existence of a default by Landlord under the provisions of the Mortgage, shall be dealt with and adjusted solely between Lender (or any other purchaser) and Landlord, and Tenant shall not be made a party thereto, unless Tenant is a necessary party under applicable law.

(b) If Lender shall succeed to the interest of the Landlord, Lender shall have no personal liability as successor to the Landlord, and the Tenant shall look only to the estate and property of Lender in the Property or the proceeds thereof for the satisfaction of the Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by

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Lender as landlord under the Lease. No other property or assets of Lender shall be subject to levy, execution or other enforcement procedure for the satisfaction of the Tenant's remedies under or with respect to the Lease, the relationship of the landlord and the tenant thereunder or the Tenant's use or occupancy of the Demised Premises. The term "estate and property of the Lender in the Property" shall include (i) Lender's equity interest therein (i.e. such interest which is over and above the unpaid amount of any encumbrance in favor of Lender), (ii) the rents, issues, profits and income from the land and buildings comprising the Property, (iii) the proceeds from the sale or other disposition of all or any portion of such interest, and (iv) insurance proceeds or condemnation awards previously received by Lender, which are required, by the terms of this Lease, to be applied to the restoration of the Demised Premises or the Property.

The limitation of this Section shall not apply to or limit (a) any reasonable attorney's fees and litigation costs for which the Lender may be liable under the Lease or at law, (b) any injunctive or other equitable, declaratory or other forms of relief to which Tenant may be entitled (notwithstanding that such actions are *in personam* in nature), or (c) any other remedy or action against Lender which does not involve the personal liability of Lender for monetary damages from property other than Lender's right, title and interest in the Property as aforesaid.

(c) No prepayment of rent or additional rent due under the Lease of more than one (1) month in advance of its due date under the Lease shall be binding upon Lender, as holder of the Instrument or as landlord under the Lease if Lender succeeds to that position, unless consented to in writing by Lender, and no material amendment or modification of the Lease shall be binding upon Lender, as holder of the Instrument or as landlord under the Lease if Lender succeeds to that position, unless such amendment or modification is consented to in writing by Lender. Further, Lender shall not be bound by any consensual or negotiated surrender, cancellation or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Landlord or Tenant pursuant to a specific provision in the Lease.

In addition, Lender, as holder of the Instrument or as landlord under the Lease if it succeeds to that position, shall in no event (i) be liable to the Tenant for any act or omission of any prior landlord, (including Landlord) provided that Lender shall be liable for prior landlords' (including Landlord's) defaults as of the date of attornment and that, from and after the date of attornment, continue to violate new owner's obligations as landlord under the Lease; as well as any act or omission of Lender, as landlord, under the Lease occurring after the date Lender takes title to the Property (ii) be subject to any offset or defense which the Tenant might have against any prior landlord (including Landlord) unless Tenant shall have provided Lender with (A) notice of the Landlord's default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Paragraph

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5 hereof; (iii) be liable to the Tenant for any liability or obligation of any prior landlord occurring prior to the date that Lender takes title to the Property or any subsequent owner acquire title to the Property, but only for any liability or obligations caused by Lender's br each of the Lease after the date Lender takes title to the Property or (iv) be liable to the Tenant for any security or other deposits given to secure the performance of the Tenant's oblig ations under the Lease, except to the extent that Lender shall have acknowledged actual receipt of such security or other deposits in writing.

## 5. NOTICES:

The Tenant shall give Lender copies of all notices and other communications given by the Tenant to the Landlord relating to (a) defaults on the part of the Landlord or the Tenant under the Lease, (b) any violations of any ordinances, statutes, laws, rules, codes, regulations or requirements of any governmental agency concerning the Demised Premises or the Property, and (c) any assignment or subletting of all or any portion of the Demised Premises. In the event of any act or omission by the Landlord which would give the Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, or to claim a partial or total eviction, the Tenant will not exercise any such right (i) until it has sent written notice of such act or omission to Lender as provided herein, and (ii) unless Lender shall have failed within thirty (30) days after receipt of such notice to cure such default and the expiration of Landlord cure period if any, or if such default by its nature cannot reasonably be cured within such period, Lender shall not have commenced within such thirty (30) days and thereafter diligently pursued any action necessary to cure such default. All notices and other communications by Tenant to Lender shall be sent by certified or registered mail to Lender at the address set forth above, or to such other address or person as may be specified in a notice sent by Lender to Tenant at the address set forth in the Lease in accordance with the provisions of this Section 5, and shall be deemed received upon the date of actual receipt or the date which delivery was attempted because the party to whom the notice was directed was not present to accept delivery thereof.

## 6. SUCCESSORS AND ASSIGNS:

This Agreement shall apply to, bind and inure to the benefit of the Lender and the Tenant and their respective successors and assigns. As used herein, the term "Tenant" shall mean and include the present tenant under the Lease, any permitted subtenant under the Lease, any permitted assignee of Tenant under the Lease and any successor of any of them. The term "Lender" as used herein shall include the current holder of the Instrument, CitiGroup Global Markets Realty Corp., the successors and assigns of Lender, and any person, party or entity which shall become the owner of (a) the Property by reason of a foreclosure of the Instrument

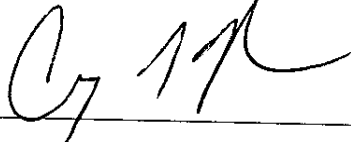
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or the acceptance of a deed or assignment in lieu of foreclosure or otherwise and/or (b) the Loan and Instrument; provided, however, that except as otherwise provided herein, any party listed herein as included in the definition of "Lender" shall only be liable for any acts, omissions, liabilities or obligations of that particular party and not for any such matters of any other party included in the definition of "Lender". The term "Landlord" as used herein shall mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease.

EXECUTED AS OF <sup>February</sup> JANUARY 18, 2004.

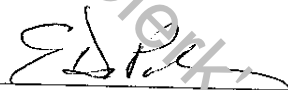
**TENANT:**

THE GYMBOREE STORES, INC.,  
a California corporation

By:   
Title: Craig T. Nomura  
VP Retail Development

**LENDER:**

CITI GROUP GLOBAL MARKETS REALTY  
CORP., a New York corporation

By:   
Title: EUSA DeFuria  
Authorized Agent

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## EXHIBIT A

### Legal Description of Real Estate

**1845 N. Clybourn, Chicago, Illinois**

Lots 11 through 23 all in Clark and Thomas' Subdivision of Lot 4 in Block 9 in Sheffields addition to Chicago, in Cook County, Illinois situated in the South East ¼ of Section 32, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

**PIN:** 14-32-416-011-0000  
14-32-416-012-0000  
14-32-416-013-0000  
14-32-416-014-0000  
14-32-416-015-0000  
14-32-416-016-0000  
14-32-416-017-0000  
14-32-416-018-0000

thru 14-32-416-023

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## CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

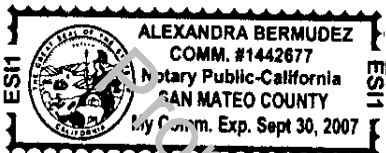
State of CALIFORNIA

County of SAN MATEO

On JANUARY 16TH, 2004 before me, ALEXANDRA BERMUDEZ, NOTARY PUBLIC  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared CRAIG T. NOMURA  
Name(s) of Signer(s)

personally known to me -OR-  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Alexandra Bermudez  
Signature of Notary Public

### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: SNDA

Document Date: N/A Number of Pages: 1 PAGES

Signer(s) Other Than Named Above: N/A

### Capacity(ies) Claimed by Signer(s)

Signer's Name: CRAIG T. NOMURA

- Individual
- Corporate Officer
- Titles(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other:

RIGHT THUMBPRINT OF SIGNER  
Top of Thumb here

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer
- Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other:

RIGHT THUMBPRINT OF SIGNER  
Top of Thumb here

Signer Is Representing:  
THE GYMBOREE STORES, INC.

Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_



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STATE OF New York )  
COUNTY OF New York ) SS:

On the 18th day of February, in the year 2004, before me, the undersigned, personally appeared Elsa Defalma, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature(s) on the instrument, the individual(s) or the person(s) upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
NOTARY PUBLIC

[Seal]

**ELSA CASTALDO**  
Notary Public, State of New York  
No. 01CA6026466  
Qualified in Queens County  
Commission Expires June 14, 2007

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