

UNOFFICIAL COPY

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

Old Navy, LLC
c/o The Gap, Inc.
Real Estate Law
2 Folsom Street
San Francisco, CA 94105
Attn: Sally Piotrowski; Old Navy Store #3120



Doc#: 1216549000 Fee: \$84.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/13/2012 09:01 AM Pg: 1 of 8

NON-DISTURBANCE AND ATTORNMEN AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMEN AGREEMENT (this "Agreement") is made and entered into as of this 11th day of October, 2010, by and among BANK OF AMERICA, N.A., a national banking association, as administrative agent, and its successors and assigns ("Mortgagee"), OLD NAVY, LLC, a Delaware limited liability company ("Tenant") and RANDHURST SHOPPING CENTER LLC, a Delaware limited liability company ("Landlord").

RECITALS

- A. Mortgagee is the holder of a certain note (the "Note") and Mortgagee under a mortgage (the "Mortgage") dated July 14, 2010, in which Landlord is named as the mortgagor, which Mortgage was recorded on July 16, 2010 in the Official Records of Cook County, State of Illinois, as Document No. 1019731096. The Mortgage covers certain real property together with all appurtenances thereto and improvements thereon (the "Property") all as more particularly described in **Exhibit A** attached hereto and made a part hereof and which property is commonly known as Randhurst Village, in the Village of Mount Prospect, County of Cook, State of Illinois.
- B. Landlord is the owner in fee simple of the Property and is the current obligor under the Note.
- C. By Lease dated August 17, 2010 (the "Lease"), Landlord leased to Tenant those certain premises (the "Premises") which constitutes or forms a portion of the Property covered by the Mortgage all as more particularly described in said Lease. Other documents affecting or amending the Lease include the following:
NONE.
- D. The Lease is or may become (subject to this Agreement) subordinate in priority to the Mortgage.
- E. Tenant wishes to obtain from Mortgagee certain assurances that Tenant's possession of the Premises will not (subject to this Agreement) be disturbed by reason of the enforcement of the Mortgage covering the Premises or a foreclosure of the lien thereunder.
- F. Mortgagee is willing to provide such assurances to Tenant upon and subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above, the reciprocal promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do mutually agree as follows:

- 1. Ratification.** The Lease now is or shall become upon the mutual execution of this Agreement subordinate in all respects to the Mortgage and to all renewals, modifications and extensions thereof, subject to the terms and conditions of this Agreement. Tenant hereby affirms that the Lease is in full force and effect and that the Lease has not been modified or amended. Mortgagee acknowledges receipt of a copy of the Lease and hereby approves the same.
- 2. Landlord's Default.** From and after the date Tenant receives a fully executed copy of this Agreement, Tenant will not seek to terminate the Lease by reason of any act or omission that constitutes (or would over time constitute) a default of Landlord until Tenant shall have given written notice of such act or omission to Mortgagee (at Mortgagee's last address furnished to Tenant) and until a period of thirty (30) days shall have

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elapsed, Mortgagee shall have the right, but not the obligation, to remedy such act or omission, provided however that if the act or omission does not involve the payment of money from Landlord to Tenant and (i) is of such a nature that it could not be reasonably remedied within the thirty (30) day period aforesaid, or (ii) the nature of the act or omission or the requirements of local law require Mortgagee to appoint a receiver or to foreclose on or commence legal proceedings to recover possession of the Property in order to effect such remedy and such legal proceedings and consequent remedy cannot reasonably be achieved within said thirty (30) days, then Mortgagee shall have such further time as is reasonable under the circumstances to effect such remedy provided that Mortgagee shall notify Tenant, within ten (10) days after receipt of Tenant's notice, of Mortgagee's intention to effect such remedy and provided further that Mortgagee institutes immediate legal proceedings to appoint a receiver for the Property or to foreclose on or recover possession of the Property within said thirty (30) day period and thereafter prosecutes said proceedings and remedy with due diligence and continuity to completion. Notwithstanding the foregoing, Mortgagee shall have no rights under this Section 2 if Mortgagee is an entity that controls, is controlled by, or is under common control with Landlord.

3. Non-Disturbance and Attornment. So long as Tenant is not in default under the Lease (beyond any period given Tenant to cure such default) as would entitle Landlord to terminate the Lease or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant thereunder, Mortgagee will not disturb the peaceful and quiet possession or right of possession of the Premises by Tenant nor shall the Lease or its appurtenances be extinguished by reason of any Foreclosure (as hereinafter defined) or otherwise, nor in Tenant as a party in any action or proceeding brought pursuant to the Mortgage.

In the event that Mortgagee or its successors or assigns, as defined in Paragraph 7 hereof ("Successor Landlord") acquires the interest of Landlord or comes into the possession of or acquires title to the Premises (the "Succession") by reason of the foreclosure (judicial or non-judicial) or enforcement of the Mortgage (including a private power of sale) or the Note or obligations secured thereby or by a conveyance in lieu thereof or other conveyance or as a result of any other means (any or all of the foregoing hereinafter referred to as a "Foreclosure"), then the Lease and all appurtenances thereon shall remain in full force and effect and Tenant shall be bound to Successor Landlord under all of the provisions of the Lease for the balance of the term thereof (including any extensions or renewals thereof which may be effected in accordance with any options contained in the Lease) with the same force and effect as if Successor Landlord were Landlord under the Lease, and Tenant shall attorn to Successor Landlord as its landlord, such attornment to be effective and self operative, without the execution of any further instruments on the part of either of the parties hereto immediately upon the Succession; and further, in such event, Successor Landlord shall be bound to Tenant under all of the provisions of the Lease, and Tenant shall, from and after such Succession, have the same remedies against Successor Landlord for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Landlord thereunder, provided, however, that if Successor Landlord is not an entity that controls, is controlled by, or is under common control with Landlord, then Successor Landlord shall not be:

- (a) liable for any act or omission of any prior landlord (including Landlord) unless Tenant shall have given notice (pursuant to Paragraph 2 hereof) of such act or omission to the party who was the then holder of the Mortgage (whether or not such holder elected to cure or remedy such act or omission); or
- (b) subject to any offsets (except those expressly permitted under the Lease) or defenses which Tenant might have against any prior landlord (including Landlord) unless Tenant shall have given notice (pursuant to Paragraph 2 hereof) of the state of facts or circumstances under which such offset or defense arose to the party who was the then holder of the Mortgage (whether or not such holder elected to cure or remedy such condition); or
- (c) bound by any rent or additional rent which Tenant might have paid to any prior landlord (including Landlord) more than thirty (30) days in advance of the due date under the Lease; or
- (d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is available to the party who was the holder of the Mortgage at the time of a Foreclosure.

Tenant shall be under no obligation to pay rent to Mortgagee or Successor Landlord until Tenant receives written notice from Mortgagee or Successor Landlord stating that Mortgagee or Successor Landlord is entitled to receive the rents under the Lease directly from Tenant. Landlord, by its execution hereof, hereby authorizes Tenant to accept such direction from Mortgagee or Successor Landlord and to pay the rents directly to Mortgagee or Successor Landlord and waives all claims against Tenant for any sums so paid at Mortgagee's or Successor Landlord's direction. Tenant may conclusively rely upon any written notice Tenant receives from Mortgagee or Successor Landlord notwithstanding any claims by Landlord contesting the validity of any term or condition of such notice, including any default claimed by Mortgagee or Successor Landlord, and Tenant shall have no duty to inquire into the validity or appropriateness of any such notice.

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4. **Exculpation of Successor Landlord.**

In the event that any Successor Landlord shall acquire title to the Property, Mortgagee or such Successor Landlord shall have no obligation, nor incur any liability, beyond Mortgagee's or Successor Landlord's then equity interest, if any, in the Property, and Tenant shall look exclusively to such equity interest of Mortgagee or Successor Landlord, if any, for the payment and discharge of any obligations imposed upon Mortgagee or Successor Landlord hereunder or under the Lease or for recovery of any judgment from Mortgagee or Successor Landlord, and in no event shall Mortgagee, Successor Landlord, nor any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for such judgment.

5. **Agreement to Release Proceeds or Awards.**

(a) **Destruction.** In the event of a casualty at the Premises, Mortgagee shall release its interest in any insurance proceeds applicable to the nonstructural improvements installed by Tenant. Mortgagee acknowledges that it has no interest and waives any interest in Tenant's personal property, Tenant's signs, the satellite dish, and any safety systems (such as, without limitation, fire and security monitoring and alarm systems) installed at or about the Premises, or any insurance proceeds are payable with respect thereto under either Landlord's or Tenant's policies.

(b) **Eminent Domain.** In the event of a public taking or act of eminent domain, Mortgagee shall release its interest in that portion of the award to which Tenant is entitled pursuant to the Lease, as well as its interest in so much of the award applicable to the improvements installed by Tenant as shall be necessary for the purposes of restoration, consistent with Landlord's and Tenant's rights and obligations under the Lease.

6. **Construction Obligations.** Notwithstanding anything to the contrary in the Lease or the Mortgage, neither Mortgagee nor any Successor Landlord shall be liable for any Construction-Related Obligation under the Lease. As used herein, a "Construction-Related Obligation" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at the Property, including the Premises, but the term shall not be deemed to include any reconstruction obligations under the Lease following damage, destruction or condemnation, nor shall it include any regular maintenance, repair or replacement obligations under the Lease. Notwithstanding the foregoing, to the extent that any portion of the "Construction Allowance" (as defined in the Lease) has not been previously advanced by Mortgagee to Tenant (or received by Tenant via Landlord), Mortgagee or any Successor Landlord shall pay to Tenant any outstanding portion of the Construction Allowance in accordance with the terms and conditions set forth in the Lease up to an amount not to exceed Fifty and No/100 Dollars (\$50.00) per square foot of GLA (as defined in the Lease).

7. **Notices.** In order to be effective, any notice to be given under this Agreement must be in writing and either (1) served personally at the following applicable notice address, provided that proof of delivery thereof can be produced; or (2) sent by registered or certified U.S. mail, Federal Express or a similar reputable express courier to the following applicable notice address, provided that proof of delivery thereof can be produced, or (3) if the notice is not a notice of default, sent by fax at the applicable fax number listed under the following applicable notice address, provided that proof of delivery thereof can be produced, and provided further that a copy of the notice is also promptly sent by U.S. mail, Federal Express or a similar reputable express courier to the following applicable notice address.

To Mortgagee:	Bank of America, N.A. 901 Main Street, 14 th Floor Mail Code: TX1-492-14-14 Dallas, Texas 75202 Attn: Michelle Huff, Officer/CSR II Telephone: (214) 209-0590 Fax: (214) 290-9423
To Tenant:	Old Navy, LLC c/o The Gap, Inc. 2 Folsom Street San Francisco, CA 94105 Attention: Real Estate Law, Store #3120 Telephone: (415) 427-0225 Fax: (415) 427-0188

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To Landlord: Randhurst Shopping Center LLC
c/o Casto Southeast Realty Services LLC
401 N. Cattlemen Road, Suite 108
Sarasota, Florida 34232
Attn: Legal Dept.

Fax: (941) 925-9562
Telephone: (941) 552-2700

With a Copy to: Randhurst Shopping Center LLC
c/o Casto
191 West Nationwide Boulevard, Suite 200
Columbus, Ohio 43215-2568
Attn: Legal Dept./Leasing

Fax: (614) 469-8376
Telephone: (614) 228-5331

No notice of default shall be sent by fax. No notice to Tenant shall be effective unless it is addressed to the attention of Real Estate Law (for all notices, including notices of default, other than invoices) and as otherwise set forth above. No notice delivered to the Premises shall be effective. The telephone numbers identified above are for informational purposes only and not for purposes of giving notice under this Agreement. Any party may change the address or fax number by written notice to the other parties clearly stating such party's intent to change the address or fax number for all purposes of this Agreement, which new address or fax number shall be effective one (1) month after receipt. Except as hereinafter provided, notice shall be deemed given when received or when receipt is refused. Notice from Tenant of its election to exercise any right to extend the Term or terminate this Lease shall be deemed effective as of the earliest to occur of (1) the date on which the notice is served personally; or (2) the date on which the notice is sent by fax; or (3) the postmark date for U.S. mail; or (4) the date on which Federal Express or a similar reputable express courier accepts receipt of the notice.

8. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective personal representatives, successors and assigns it being understood that the obligations herein of Mortgagee shall extend to it in its capacity as mortgagee under the Mortgage and to its successors and assigns, including anyone who shall have succeeded to its interest or to Landlord's interest in the Premises or acquired possession thereof by Foreclosure or otherwise.

9. **Effectiveness of Agreement.** If, within four (4) weeks of Tenant's execution of this Agreement, Tenant has not received two (2) fully executed agreements at the notice address listed above, this Agreement shall, at Tenant's option, be null and void.

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

MORTGAGEE

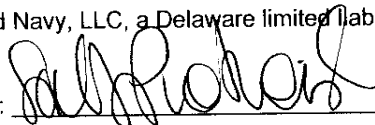
Bank of America, N.A. a national banking association,
as administrative agent

By: _____
Theodore Becchetti

Its: _____

TENANT

Old Navy, LLC, a Delaware limited liability company

By:  _____

Its: _____
Sally Piotrowski
Senior Corporate Counsel

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To Attention: Randhurst Shopping Center LLC
c/o Casto Southeast Realty Services LLC
401 N. Cattlemen Road, Suite 108
Sarasota, Florida 34232
Attn: Legal Dept.

Fax: (941) 925-9562
Telephone: (941) 552-2700

With a Copy to: Randhurst Shopping Center LLC
c/o Casto
191 West Nationwide Boulevard, Suite 200
Columbus, Ohio 43215-2568
Attn: Legal Dept./Leasing

Fax: (614) 469-8376
Telephone: (614) 228-5331

No notice of default shall be sent by fax. No notice to Tenant shall be effective unless it is addressed to the attention of Real Estate Law (for all notices, including notices of default, other than invoices) and as otherwise set forth above. No notice delivered to the Premises shall be effective. The telephone numbers identified above are for informational purposes only and not for purposes of giving notice under this Agreement. Any party may change the address or fax number by written notice to the other parties clearly stating such party's intent to change the address or fax number for all purposes of this Agreement, which new address or fax number shall be effective one (1) month after receipt. Except as hereinafter provided, notice shall be deemed given when received or when receipt is refused. Notice from Tenant of its election to exercise any right to extend the Term or terminate this Lease shall be deemed effective as of the earliest to occur of (1) the date on which the notice is served personally; or (2) the date on which the notice is sent by fax; or (3) the postmark date for U.S. mail; or (4) the date on which Federal Express or a similar reputable express courier accepts receipt of the notice.

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MORTGAGEE

Bank of America, N.A. a national banking association,
as administrative agent

By: *Theodore Becchetti*
Theodore Becchetti
Its: _____

TENANT

Old Navy, LLC, a Delaware limited liability company

By: *Sally Piotrowski*
Sally Piotrowski
Senior Corporate Counsel
Its: _____

193068.1
20586.3

Old Navy #3120, Mount Prospect, Illinois
Randhurst Village

4

LANDLORD

Randhurst Shopping Center LLC, a Delaware limited liability company

By: CLP/SPF Randhurst Trust, a Maryland real estate investment trust
Its: *Trustee*

By: *[Signature]*
Its: *vie President*

Property of Cook County Clerk's Office

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

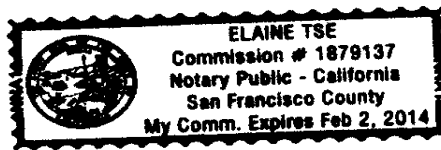
State of California)

County of San Francisco)

On September 28, 2010, before me, Elaine Tse, Notary Public, personally appeared Sally Piotrowski, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Elaine Tse (Seal)

STATE OF _____)
) ss:
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____ 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.

Notary Public Signature (SEAL)

STATE OF _____)
) ss:
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____ 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.

Notary Public Signature (SEAL)

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California)
County of San Francisco)

On September 28, 2010, before me, Elaine Tse, Notary Public, personally appeared Sally Piotrowski, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Elaine Tse (Seal)

STATE OF IL)
COUNTY OF COOK) ss:

On October 7, 2010 before me, Tina Noel, Notary Public, personally appeared Debbie Decker, 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.



Tina Noel (SEAL)
Notary Public Signature

STATE OF _____)
COUNTY OF _____) ss:

On _____, before me, _____, Notary Public, personally appeared _____, 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.

Notary Public Signature (SEAL)

193068.1
20586.3

Old Navy #3120, Mount Prospect, Illinois
Randhurst Village

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California)
County of San Francisco)

On September 28, 2010, before me, Elaine Tse, Notary Public, personally appeared Sally Piotrowski, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Elaine Tse (Seal)

STATE OF _____)
COUNTY OF _____) ss:

On _____, before me, _____, Notary Public, personally appeared _____, 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.

Notary Public Signature (SEAL)

STATE OF ILLINOIS)
COUNTY OF COOK) ss:

On 10/2/10 before me, Allison Schenk, Notary Public, personally appeared MARK IRANEZ, 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.

Allison Schenk (SEAL)
Notary Public Signature



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EXHIBIT A

Legal Description

PARCEL 1: LOTS 1 AND 2 (EXCEPTING FROM SAID LOT ONE THAT PART TAKEN BY DEPARTMENT OF TRANSPORTATION STATE OF ILLINOIS IN CASE NO. 87L51078 AND ALSO EXCEPTING FROM SAID LOT ONE THAT PART CONVEYED TO THE PEOPLE OF THE STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION PURSUANT TO THAT CERTAIN QUIT CLAIM DEED RECORDED SEPTEMBER 29, 1995 AS DOCUMENT NO. 95664230) IN RANDHURST CENTER RESUBDIVISION - NO. 1, BEING A RESUBDIVISION OF LOT ONE IN RANDHURST CENTER, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SAID RANDHURST CENTER RESUBDIVISION - NO. 1 RECORDED JULY 24, 1987 IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS AS DOCUMENT NO. 87408581 AND REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF SAID COUNTY AS DOCUMENT NO. LP3637429.

Lot 1 = 92.1039 acres and Lot 2 = 4.0237 acres Totaling: 96.1276

PARCEL 3: NORTH 70 FEET OF THE WEST 70 FEET OF THE SOUTH 120 FEET OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Total acreage = .1125 acres

PIN # 03-27-401-391-0000