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Cook County Recorder of Deeds
Date: 09/12/2012 02:16 PM Pg: 1 of 11

Old Navy, LLC
c/o The Gap, Inc.
Real Estate Law
2 Folsom Street
San Francisco, CA 94105
Attn: Real Estate Law, Old Navy #5789

8887718 0-1 JK

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of this 26th day of July, 2012, by and among WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association ("Mortgagee"), OLD NAVY, LLC, a Delaware limited liability company ("Tenant") and STATE STREET OWNERS LLC, a Delaware limited liability company ("Landlord").

RECITALS

A. Mortgagee is the holder of a certain note (the "Note") and mortgagee under a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage") dated September 11, 2012 in which Landlord is named as the mortgagor, which Mortgage is intended to be recorded simultaneously herewith, in the Official Records of Cook County, State of Illinois. 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 35 State Street at Washington, in the City of Chicago, 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 May 8, 1996 (the "Lease"), Landlord's predecessor-in-interest, American National Bank of Chicago, leased to Tenant's predecessor-in-interest, The Gap, Inc. those certain premises (the "Premises") which constitutes or forms a portion of the Property covered by the Mortgage and commonly known as 35 State Street at Washington, all as more particularly described in said Lease. Other documents affecting or amending the Lease include the following: Non-Disturbance and Attornment Agreement (Mortgagee SNDAA) dated May 8, 1996; Non-Disturbance and Attornment Agreement (Master Lessor SNDAA) dated May 8, 1996; Notice re: Completion of Abatement Work dated November 15, 1996; Notice of Confirmation of Rent Payment Address received December 31, 1996; Letter Agreement re: Confirmation of the Charges Commencement Date/Minimum Rent Commencement Date/Expiration Date of the Original Term dated January 2, 1997; Assignment and Assumption of Lease and Notice of Assignment and Assumption of Lease both dated February 1, 1998; Affidavit of Successor Trustee dated November 29, 2001; Assignment and Assumption of Lease dated December 19, 2001; Notice of Assignment of Rents and Leases dated December 27, 2001; Notice of Conversion dated January 30, 2004; Exercise of Option Notice dated December 22, 2005; Notice re: Change of Landlord's Notice Address dated January 12, 2010; Exercise of Option/Change of Address Notice dated January 24, 2011; and Notice re: Change of Ownership/Legal Notice Address/Rent Payment Address dated February 24, 2011.

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:

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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 elapsed beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord, 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 join 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 thereto 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 was 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 and an opportunity to cure (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 and an opportunity to cure (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; or

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(e) bound by any amendment or modification of the Lease which (i) decreases the rent or shortens the term of the Lease, (ii) modifies or amends the default provisions of the Lease and Landlord's remedies due to an event of default by Tenant, (iii) increase Landlord's obligations (monetary or otherwise) under the Lease or (iv) modifies or amends any offsets under the Lease which amendment or modification is made without the prior written consent of Mortgagee (not to be unreasonably withheld),; or

(f) liable for 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 Tenant pursuant to the express terms of the Lease.

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.

4. Intentionally Deleted.

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 that 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. 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: Wells Fargo Bank, National Association
375 Park Avenue, 9th Floor
New York, New York 10152
Attention: Connor Atkinson
Telephone: (212) 214-5127
Fax: (212) 214-8910

and

Riemer & Braunstein LLP
Three Center Plaza
Boston, Massachusetts 02108
Attention: Ronald N. Braunstein, Esquire
Telephone: (617) 880-3505
Fax: (617) 880-3456

To Tenant: Old Navy, LLC
c/o The Gap, Inc.
2 Folsom Street

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San Francisco, CA 94105
 Attention: Real Estate Law, Old Navy #5789
 Telephone: (415) 427-0225
 Fax: (415) 427-0227

To Landlord: State Street Owners LLC
 c/oThe Georgetown Company
 667 Madison Avenue
 New York, New York 10065
 Attention: Robin Rasamny
 Telephone: (212) 409-9408
 Fax: (____) ____-_____

and

Skadden, Arps, Slate, Meagher & Flom LLP
 Four Times Square
 New York, New York 10036
 Attention: Benjamin F. Needell, Esquire
 Telephone: (212) 735-2600

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.

7. 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.

8. 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.

9. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in the Property from time to time ("Successor Landlord's Interest"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors or assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

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

MORTGAGEE

WELLS FARGO BANK, NATIONAL ASSOCIATION,
a national banking association

By: 
Name: Michael F. Kaczynski
Title: Senior Vice President

TENANT

OLD NAVY, LLC,
a Delaware limited liability company

By: _____
Its: _____

LANDLORD

STATE STREET OWNERS LLC,
a Delaware limited liability company

By: _____
Name: Adam Flatto
Title: Authorized Officer

Property of Cook County Clerk's Office

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MORTGAGEE

WELLS FARGO BANK, NATIONAL ASSOCIATION,
a national banking association

By: _____
Name: Michael F. Kaczynski
Title: Senior Vice President

TENANT

OLD NAVY, LLC,
a Delaware limited liability company

By: *Alice Chuang*
Its: **Alice C. Chuang**
Corporate Counsel

LANDLORD

STATE STREET OWNERS LLC,
a Delaware limited liability company

By: _____
Name: Adam Flatto
Title: Authorized Officer

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MORTGAGEE

WELLS FARGO BANK, NATIONAL ASSOCIATION,
a national banking association

By: _____
Name: Michael F. Kaczynski
Title: Senior Vice President

TENANT

OLD NAVY, LLC,
a Delaware limited liability company

By: _____
Its: _____

LANDLORD

STATE STREET OWNERS LLC,
a Delaware limited liability company

By: _____
Name: Adani Flatto
Title: Authorized Officer

Property of Cook County Clerk's Office

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

S STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On July 26, 2012, before me, Octavia Cruz, Notary Public, personally appeared Alice C. Chuang, 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.

 (SEAL)
Notary Public Signature

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this ____ day of July, 2012 by Adam Flatto, an Authorized Officer of State Street Owners LLC, a Delaware limited liability company.

Notary Public

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this ____ day of July, 2012 by Michael F. Kaczynski, a Senior Vice President of Wells Fargo Bank, National Association, a national banking association.

Notary Public

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On July _____, 2012, before me, _____, Notary Public, personally appeared _____, who proved to me on basis of satisfactory evidence to be the person whose name is/are subscribed to the within instrument and acknowledged to me that she executed the same in his/her/their 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.

Notary Public Signature (SEAL)

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this 24th day of July, 2012 by Adam Flatto, an Authorized Officer of State Street Owners LLC, a Delaware limited liability company.

Jeanette Rivera Garcia
Notary Public

JEANETTE RIVERA GARCIA
Notary Public, State of New York
No. 01R16117943
Qualified in New York County
Commission Expires November 01, 2012

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this _____ day of July, 2012 by Michael F. Kaczynski, a Senior Vice President of Wells Fargo Bank, National Association, a national banking association

Notary Public

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On July _____, 2012, before me, _____, Notary Public, personally appeared _____, who proved to me on basis of satisfactory evidence to be the person whose name is/are subscribed to the within instrument and acknowledged to me that she executed the same in his/her/their 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.

Notary Public Signature (SEAL)

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this _____ day of July, 2012 by Adam Fiatto, an Authorized Officer of State Street Owners LLC, a Delaware limited liability company.

Notary Public

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before me this 26 day of July, 2012 by Michael F. Kaczynski, a Senior Vice President of Wells Fargo Bank, National Association, a national banking association.

Orival B. Goncalves
Notary Public

ORIVAL BENTO GONCALVES
NOTARY PUBLIC STATE OF NEW YORK
NEW YORK COUNTY
No. 01GO6242568
COMM. EXP. 06/06/2015

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EXHIBIT A

Legal Description

All that certain real property located in the County of Cook, State of Illinois, described as follows:

PARCEL 1:

LOTS 1 TO 5, BOTH INCLUSIVE, IN ELISHA S. WADSWORTH'S SUBDIVISION OF LOTS 13 AND 14 AND THE NORTH 1/2 OF LOT 12 IN BLOCK 14 IN FORT DEARBORN ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF LOTS 7 AND 8 AND THE ALLEY WEST OF AND ADJOINING SAID LOT 7, LYING NORTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF THE SOUTH 1.0 FOOT OF LOT 5, ALL IN ELISHA S. WADSWORTH'S SUBDIVISION OF LOTS 13 AND 14 AND THE NORTH 1/2 OF LOT 12 IN BLOCK 14 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THAT PART OF THE VACATED NORTH HOLDEN COURT, LYING EAST OF THE EAST LINE OF LOT 8; LYING WEST OF A LINE 6.25 FEET EAST OF AND PARALLEL TO THE EAST LINE OF LOT 8; LYING SOUTH OF THE EASTWARDLY EXTENSION OF THE NORTH LINE OF LOT 8; AND LYING NORTH OF THE EASTWARDLY EXTENSION OF THE NORTH LINE OF THE SOUTH 1.0 FOOT OF LOT 5, ALL IN ELISHA S. WADSWORTH'S SUBDIVISION OF LOTS 13 AND 14 AND THE NORTH 1/2 OF LOT 12 IN BLOCK 14 IN FORT DEARBORN ADDITION TO CHICAGO, IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.