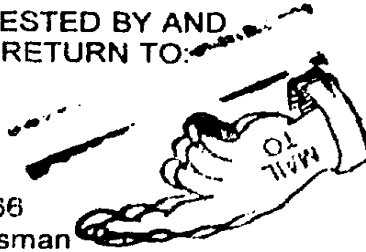


# UNOFFICIAL COPY

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

The Gap, Inc.  
900 Cherry Avenue  
San Bruno, CA 94066  
Attn: J. Michael Whisman



95238499

## NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT is made and entered into as of this 7<sup>th</sup> day of March, 1995, by and between The First National Bank of Boston, a national banking association as mortgagee (or beneficiary) under a mortgage or deed of trust (hereinafter called "Mortgagee") and The Gap, Inc., a Delaware corporation (hereinafter called "Tenant").

DEPT-01 RECORDING \$35.50  
T87277 TRAN 9125 04/10/95 15:28:00  
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COOK COUNTY RECORDER

### WITNESSETH

WHEREAS, Mortgagee is the holder of a certain note (the "Note") and the mortgagee under a mortgage (or beneficiary under a deed of trust) (hereinafter referred to as the "Mortgage") in which Tucker Operating Limited Partnership ("TOLP"), a Delaware limited partnership is named as the mortgagor. Said 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 Chicago Ridge Commons ("Shopping Center"), in the City of Chicago Ridge, County of Cook, State of Illinois; and

WHEREAS, TOLP is the owner in fee simple of the Premises and is the current mortgagor and obligor under the Note; and

WHEREAS, by a lease (hereinafter referred to as the "Lease"), dated January 3, 1995, TOLP as landlord (the "Landlord") leased to Tenant that certain premises, (the "Premises") commonly known as 280 Commons Drive in the City of Chicago Ridge, County of Cook, State of Illinois, which constitutes or forms a portion of the property covered by the Mortgage, all as more particularly described in said Lease; and

WHEREAS, the Lease is or may become (subject to this Agreement) subordinate in priority to the Mortgage; and

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WHEREAS, Tenant wishes to obtain from Mortgagee certain assurances that Tenant's possession of the Premises will not, subject to the terms and conditions of this Agreement, be disturbed by reason of the enforcement of the Mortgage covering the Premises or a foreclosure of the lien thereunder; and

WHEREAS, Mortgagee is willing to provide such assurances to Tenant upon and subject to the terms and conditions of this Agreement.

ON #5616  
Chicago Ridge Commons  
i veChi-ndg exc  
March 7, 1995

-1-

Exhibit C

35-50

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10/1/2014

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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.** Tenant hereby ratifies the Lease and confirms that the Lease now is or shall become upon the mutual execution of this Agreement subject and 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.** Tenant agrees with Mortgagee that, 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 of the Landlord until Tenant shall have given written notice of such act or omission to the holder of the Mortgage (at such holder's last address furnished to Tenant) and until a period of thirty days shall have elapsed such holder of the Mortgage 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 the holder of the Mortgage 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 such holder of the Mortgage shall have such further time as is reasonable under the circumstances to effect such remedy provided that such holder shall notify Tenant within ten (10) days after receipt of Tenant's notice of such holder's intention to effect such remedy and provided further that such holder 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.

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 agrees with Tenant that 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, (herein called "Successor Landlord") acquires the interest of Landlord or comes into the possession of or acquires title to the Premises 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

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effected in accordance with any options contained in the Lease) with the same force and effect as if Successor Landlord was the Landlord under the Lease, and Tenant hereby agrees to 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 by Successor Landlord to the interest of Landlord in the Premises; and further, in such event, Successor Landlord shall be bound to the Tenant under all of the provisions of the Lease, and Tenant shall, from and after such event, have the same remedies against Successor Landlord for the breach of any agreement contained in the Lease that the Tenant might have had under the Lease against Landlord thereunder provided, however, that 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);

(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; or

(e) bound by any amendment or modification of the Lease made without the consent of the party who was the holder of the Mortgage at the time of such amendment or modification, unless such amendment or modification was subsequently affirmed by an intervening holder.

Tenant shall be under no obligation to pay rent to Successor Landlord until Tenant receives written notice from Successor Landlord stating that Successor Landlord is entitled to receive the rents under the Lease directly from Tenant and Successor Landlord hereby agrees to indemnify Tenant and hold Tenant harmless from all liability, costs, and expenses, including reasonable attorney's fees, arising out of any claims made by Landlord with respect to any rents paid by Tenant to Successor Landlord at the direction of Successor Landlord.

**4. Notices of Default/Tenant's Right to Cure.** Mortgagee hereby agrees to give to Tenant a copy of each notice of a failure on the part of the mortgagor or obligor under the Mortgage to perform or observe any of the covenants, conditions or agreements of such Mortgage at the same time as whenever any such notice shall be given to the said mortgagor or obligor, such copy to be sent by registered or certified mail, return receipt requested, addressed as provided in Paragraph 6 herein. Further, Mortgagee shall accept the cure by Tenant of any default, which cure shall be made within ten (10) days in the case of monetary defaults of the Landlord and within thirty (30) days in the case of non-monetary defaults following Tenant's receipt of such notice provided however that (i) if the failure of performance does not involve the

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payment of money from Landlord to Tenant, and (ii) is of such a nature that it could not be reasonably remedied within the thirty (30) day period aforesaid, then Tenant shall have such further time as is reasonable under the circumstances to effect such remedy provided that Tenant shall notify Mortgagee, within ten (10) days after receipt of Mortgagee's notice, of Tenant's intention to effect such remedy and provided further that Tenant institutes steps to effect such remedy within said thirty (30) day period and thereafter prosecutes said remedy with due diligence and continuity to completion. Mortgagee agrees that it will accept such performance by Tenant of any covenant, condition or agreement to be performed by mortgagor or obligor under the Mortgage or Note with the same force and effect as though performed by such mortgagor or obligor. The provisions of this Paragraph 4 are intended to confer additional rights upon Tenant and shall not be construed as obligating Tenant to cure any default of any such mortgagor or obligor.

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

**(a) Destruction.** In the event of a casualty at the Premises and:

- (i) in the further event the Lease is not terminated by reason thereof, and said casualty has also damaged the Building (defined in the Lease) of which the Premises are a part, then so long as Mortgagee releases its interest in any insurance proceeds to rebuild the Basic Improvements (defined in the Lease) of the damaged Building, then Mortgagee agrees to release its interest in any insurance proceeds applicable to Basic Improvements (as defined in the Lease) and payable under either Landlord's or Tenant's insurance policies for the purpose of restoration, consistent with the parties' rights and obligations under the Lease;
- (ii) whether or not the Lease is terminated by reason thereof, Mortgagee shall release its interest in any insurance proceeds applicable to Additional Tenant Improvements (as defined in the Lease) and payable under either Landlord's or Tenant's insurance policies, consistent with Tenant's rights under the Lease;
- (iii) whether or not the Lease is terminated by reason thereof, Mortgagee acknowledges that it has no interest in any other property of Tenant located on the Premises and if any insurance proceeds are payable with respect to such other property under either Landlord's or Tenant's policies, Mortgagee hereby waives and releases any interest it may have to the same.

**(b) Eminent Domain.** In the event of a Taking (as defined in the Lease) and:

- (i) in the further event the Lease is not terminated by reason thereof, and said Taking has also resulted in the Taking of the Building of which the Premises are a part, and provided Landlord and Tenant and any other tenant of the Building that is similarly affected has notified Mortgagee that they shall undertake to restore the Premises (or such other tenant's premises, as provided in said other tenant's lease) as provided in the Lease, then so long as Mortgagee releases its interest in any awards to rebuild the Basic Improvements of the Building, then Mortgagee agrees to release its interest in so much of the award applicable to Basic

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Improvements of the Building of which the Premises are a part and Additional Tenant Improvements if any, (as these terms are defined in the Lease) as shall be necessary for the purposes of restoration, consistent with Landlord's and Tenant's rights and obligations under the Lease;

- (ii) whether or not the Lease is terminated by reason thereof, Mortgagee releases its interest in that portion of the award to which Tenant is entitled pursuant to the Lease.

6. **Notices.** All notices, demands, or requests, and responses thereto, required or permitted to be given pursuant to this Agreement shall be in writing and shall be sent postage prepaid by certified or registered mail return receipt requested, addressed as follows:

To Mortgagee: First National Bank of Boston  
100 Federal Street  
Boston, MA 02110  
Attn: Real Estate Credit Officer

with a copy to:

First National Bank of Boston  
400 Perimeter Center Terrace, Suite 745  
Atlanta, GA 30346  
Attn: Real Estate Department

To Tenant: The Gap, Inc.  
900 Cherry Avenue  
San Bruno, CA 94066  
Attention: Real Estate Law Department

or to such other address as Mortgagee or Tenant may designate in writing. All such notices shall be deemed delivered when actually received or refused by the other party.

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, purchase at a foreclosure sale or otherwise.

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

## MORTGAGEE

WITNESS OR ATTEST:

The First National Bank of Boston, a  
National Banking Association

By Allyson J. Barrett  
Its One President

[Signature]

## TENANT

WITNESS OR ATTEST:

THE GAP, INC.

By J. M. Whisman  
Its J. M. Whisman,  
Vice President

[Signature]

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STATE OF Georgia )  
 ) ss:  
COUNTY OF DeKalb )

On this 15<sup>th</sup> day of March, in the year 1995, before me, a Notary Public in and for said County and State, personally appeared Mark and personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as the President and Secretary on behalf of the corporation therein named and acknowledged to me that the corporation executed the same.

Notary Public, State of Georgia  
My Comm. Expires July 27, 1998

Lyndee Davis

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

On March 7, 1995, before me, Michelle Gieseke, Notary Public, personally appeared J. M. Whisman, personally known to me to 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/har/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.

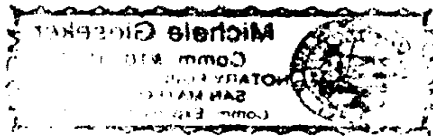
Michelle Gieseke (SEAL)  
Notary Public Signature



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## LEGAL DESCRIPTION

THE TUCKER COMPANIES, INC.  
THE COMMONS OF CHICAGO RIDGE

EXHIBIT "A"  
LEGAL DESCRIPTION

### PARCEL I

The south 107 feet of the North 140 feet of the Northeast Quarter of the Southeast Quarter of Section 7, lying East of the Easterly line of the West 350 feet thereof, Township 37 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, containing 2.2898 acres, more or less.

### PARCEL II

That part of the East Half of the Southeast quarter of Section 7, Township 37 North, Range 13, East of the Third Principal Meridian, described as follows: Beginning at the intersection of the South line of the North 140 feet of said Southeast Quarter and the West line of Ridgeland Avenue as dedicated, said line being 50 feet West of and parallel with the East line of said Southeast Quarter; thence South 0 08'09" East 539.67 feet; thence south 50 19'46" West 495.93 feet; thence South 39 40'14" East 199.25 feet to the Northwesterly line of the Southwest Highway, as dedicated; thence South 50 19'46" West 434.86 feet along last said Northwesterly line to the Northeasterly line of the Baltimore and Ohio Chicago Transfer Railroad Company's right-of-way; thence North 52 33'47" West 731.58 feet along last said Northeasterly line; thence South 63 32'44" East 183.60 feet; thence North 50 19'44" East 96.38 feet to a line 350 feet East of and parallel to the West line of said East Half of the Southeast Quarter; thence North 0 01'46" West 860.04 feet along last said East line to the South line of the North 140 feet of said Southeast Quarter; thence North 89 49'54" East 930.75 feet to the place of beginning, all in Cook County, Illinois.  
Containing 21.5295 acres, more or less.

EXHIBIT A

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