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RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

2018/0086 93 001 Page 1 of 9
1998-09-29 11:24:40
Cook County Recorder 38.00

The Gap, Inc
900 Cherry Ave
San Bruno, CA 94066
Attn: Audrey R. Ogawa

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT is made and entered into as of this 17th day of December, 1997, by and among USG ANNUITY & LIFE COMPANY, an Oklahoma Corporation ("Lender"), THE GAP, INC., a Delaware corporation ("Tenant") and Cole Taylor Bank, as Trustee of Trust No. 96-4164 ("Landlord").

RECITALS

WHEREAS, Lender is the holder of a certain note (the "Note") and Lender under a mortgage (or beneficiary under a deed of trust) (the "Mortgage") dated December 17, 1997, in which Landlord is named as the mortgagor. 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 The Shops of Downtown Oak Park in the City of Oak Park, County of Cook, State of Illinois; and

WHEREAS, Landlord is the owner in fee simple of the Property and is the current obligor under the Note; and

WHEREAS, by Lease dated June 18, 1997 (the "Lease"), Landlord leased to Tenant those certain premises (the "Premises") which constitutes or forms a portion of the Property covered by the Mortgage and commonly known as The Shops of Downtown Oak Park, 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

WHEREAS, Lender will not make the loan secured by the Mortgage unless Tenant subordinates the Lease and Tenant's rights thereunder to the lien and provisions of the Mortgage; and

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98870827 Page 2 of 9

WHEREAS, Tenant wishes to obtain from Lender 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; and

WHEREAS, Lender 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 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. Lender acknowledges receipt of a copy of the Lease and hereby approves the same.

2. **Landlord's Default.** Tenant agrees with Lender 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 Landlord until Tenant shall have given written notice of such act or omission to Lender (at Lender's last address furnished to Tenant) and until a period of thirty (30) days shall have elapsed, Lender 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 Lender 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 Lender 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, Lender agrees with Tenant that Lender 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.

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98870827 Page 3 of 9

In the event that Lender 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 (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 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; 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 event, 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 Successor Landlord shall not be:

- (a) liable for any act or omission of any prior landlord (including Landlord); 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; 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 Lender or Successor Landlord until Tenant receives written notice from Lender or Successor Landlord stating that Lender 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 Lender or Successor Landlord and to pay the rents directly to Lender or Successor Landlord and waives all claims against Tenant for any sums so paid at Lender's or Successor Landlord's direction. Tenant may conclusively rely upon any written notice Tenant receives from Lender or Successor Landlord notwithstanding any claims by Landlord contesting the validity of any term or condition of such notice, including any default claimed by Lender 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. Agreement to Release Proceeds or Awards.

(a) **Destruction.** In the event of a casualty at the Premises, Lender shall release its interest in any insurance proceeds applicable to the nonstructural Improvements (as defined in Article 6 of the Lease) installed by Tenant. Lender acknowledges that it has no interest and waives any interest in Tenant's Personal Property (as defined in Article 6 of the Lease), Tenant's signs, the Dish (as defined in Section 1.3 of the Lease), 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 Taking (as defined in Article 9 of the Lease), Lender shall release its interest in that portion of the award to which Tenant is entitled pursuant to Article 9 of 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 Article 9.

5. **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, or may be forwarded by United States Express Mail Service, or by Federal Express or other private overnight delivery service or by telex or telegram (but not facsimile) provided that a receipt or proof of delivery thereof can be produced, addressed as follows:

To Lender: USG Annuity & Life Company
c/o Equitable Investment Services, Inc.
604 Locust Street
Des Moines, IA 50309

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

To Landlord: c/o THE TAXMAN CORPORATION
9933 N. Lawler Ave, Suite 516
Skokie, Illinois 60077

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

6. **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 Lender shall extend to it in its capacity as Lender 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.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 5 of 9 date first above written.

LENDER

WITNESS OR ATTEST:

USG ANNUITY & LIFE COMPANY,
an Oklahoma corporation

By: Susan Feltman

By: [Signature]

Its: _____

TENANT

WITNESS OR ATTEST:

THE GAP, INC.,
a Delaware corporation

By: Brenda Glantz

By: J. Michael Whisman
J. Michael Whisman

Its: Vice President

LANDLORD

WITNESS OR ATTEST:

Cole Taylor Bank, not personally, but solely as Trustee u/t/a dated 12/6/96, Trust #96-4164

By: [Signature]
Its: TRUST OFFICER

By: [Signature]
Its: Vice-President

This agreement is signed by COLE TAYLOR BANK not individually but solely as Trustee under a certain Trust Agreement dated 12/6/96, Trust #96-4164. The undersigned is a duly authorized officer of COLE TAYLOR BANK and is signing this agreement on behalf of COLE TAYLOR BANK. The undersigned is not signing this agreement as an individual and is not personally liable for the performance of this agreement. COLE TAYLOR BANK is a corporation organized under the laws of the State of Oklahoma and its principal office is located at 1000 North Broadway, Oklahoma City, Oklahoma 73102. COLE TAYLOR BANK is a member of the Federal Reserve System and is a member of the National Automated Clearing House Association. COLE TAYLOR BANK is a member of the National Credit Union Administration and is a member of the National Automated Clearing House Association. COLE TAYLOR BANK is a member of the National Automated Clearing House Association. COLE TAYLOR BANK is a member of the National Automated Clearing House Association.

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98870827 Page 7 of 9

STATE OF Illinois
COUNTY OF Cook

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared
KENNETH E. PLEXT Vice-President, JACKIE TRUST OFFICER of COLE TAYLOR BANK AS
the _____ and _____ the _____ of
TRUSTEE UNDER TRUST NUMBER 96-4164, and acknowledged the execution of the foregoing

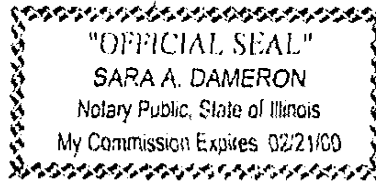
Agreement for and on behalf of said bank and said trust.

Given under my hand and seal of office this 1st day of DECEMBER, 1997.

Sara A. Dameron
Notary Public for State of Illinois

My Commission Expires:

02/21/00



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LEGAL DESCRIPTION

THE SHOPS OF DOWNTOWN OAK PARK

PARCEL 1: LOTS 1 THROUGH 7 AND PARTS OF LOTS 8, 9 AND 10 (EXCEPT THE NORTH 18.5 FEET OF LOTS 1 AND 10) IN TIMMES' SUBDIVISION OF BLOCKS 3, 4, 5 AND (EXCEPT THE SOUTHWEST 1/4) 6 IN KETTLESTRING'S ADDITION TO HARLEM, A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOT 11 (EXCEPT THE NORTH 18.5 FEET THEREOF TAKEN FOR STREET) IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3: LOT 10 (EXCEPT THE NORTH 18.5 FEET THEREOF TAKEN FOR STREET) IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4: THE NORTH 71.84 FEET OF LOT 1 AND THE NORTH 71.84 FEET OF THE WEST 1/2 OF LOT 2 IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF LAND IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5: THE EAST HALF OF LOT 2 (EXCEPT THE SOUTH 18.5 FEET) IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, LYING EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 6: LOT 1 EXCEPT THE NORTH 71.84 FEET OF LOT 1 (EXCEPT THE SOUTH 18.5 FEET AND THE WEST HALF OF LOT 2 EXCEPT THE NORTH 71.84 FEET OF LOT 2 (EXCEPT THE SOUTH 18.5 FEET) IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, LYING EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 7: LOTS 3, 4, AND WEST HALF OF LOT 5 (EXCEPT THE SOUTH 18.5 FEET OF SAID LOTS CONVEYED TO THE VILLAGE OF OAK PARK FOR STREET PURPOSES BY DEED RECORDED AS DOCUMENT 11015875) IN BLOCK 1 IN WHAPLE'S SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13, LYING EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 8: WEST 225 FEET OF WESTGATE STREET LYING ADJACENT AND BETWEEN FORESAID PARCELS OF LAND, ALL IN COOK COUNTY, ILLINOIS.

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98870827 Page 9 of 9

P.I.N. :

- 16-07-124-002
- 16-07-124-003
- 16-07-124-004
- 16-07-124-032
- 16-07-124-033
- 16-07-125-001
- 16-07-125-002
- 16-07-125-003
- 16-07-125-004
- 16-07-125-027
- 16-07-125-028

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