



200605170006
Skagit County Auditor

5/17/2006 Page

1 of

7 8:56AM

WHEN RECORDED RETURN TO:

John Nicholas Suhr, Jr.
Kilpatrick-Stockton LLP
Hearst Tower, Suite 2500
214 North Tryon Street
Charlotte, North Carolina 28202-2381

LAND TITLE OF SKAGIT COUNTY

120006

DOCUMENT TITLE(S):

Subordination, Non-Disturbance and Attornment Agreement

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

N/A

200604190074

200509130149

GRANTOR(S):

Old Navy, LLC, a Delaware limited liability company
Stratford Hall, Inc., a New York corporation

GRANTEE(S):

Wachovia Bank, National Association, a national banking association

ABBREVIATED LEGAL DESCRIPTION:

Lots 2-9, inclusive, and Lots 13 and 14, inclusive, City of Burlington Binding Site Plan No. Burl-01-04, recorded March 15, 2004 under Skagit County Auditor's File No. 200403150156.

TAX PARCEL NUMBER(S):

8048-000-002-0000/P121437, 8048-000-003-0000/P121438, 8048-000-004-0000/P121439, 8048-000-005-0000/P121440, 8048-000-006-0000/P121441, 8048-000-007-0000/P121442, 8048-000-008-0000/P121443, 8048-000-009-0000/P121444, 8048-000-013-0000/P121448, 8048-000-014-0000/P121449

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

Old Navy, LLC
c/o The Gap, Inc.
Real Estate Law
901 Cherry Avenue
San Bruno, CA 94066
Attn: Property Management Store #3837

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT is made and entered into as of this 5th day of April, 2006, by and among Wachovia Bank, National Association, a national banking association ("Mortgagee"), Old Navy, LLC, a Delaware limited liability company ("Tenant") and Stratford Hall, Inc., a New York corporation ("Landlord").

RECITALS

A. Mortgagee is, or shall be, the holder of a certain note (the "Note") and Mortgagee under a mortgage (the "Mortgage") dated April 18, 2006, in which Landlord is named as the mortgagor, which Mortgage was, or shall be, recorded on April 19, 2006, in the Official Records of Skagit County, State of Washington, as Document No. 200604190074. 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 Burlington Crossings, in the City of Burlington, County of Skagit, State of Washington.

B. Landlord will be the owner in fee simple of the Property and is the current obligor under the Note.

C. By Lease dated May 3, 2004 (the "Lease"), Landlord's predecessor in interest, Newman Development Group of Burlington, LLC, 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 Burlington Crossings, all as more particularly described in said Lease. Other documents affecting or amending the Lease include the following: Subordination, Non-Disturbance and Attornment Agreement dated May 3, 2004; Area Certificate dated November 19, 2004; and Amendment No. 1 dated December 22, 2004. Recorded under Auditors #200509130149

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 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.** 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, 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 (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 actually delivered to Successor Landlord.

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. 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 or Note to perform or observe any of the covenants, conditions or agreements of such Mortgage or Note at the same time as whenever any such notice shall be given to the said mortgagor or obligor, such copy to be sent 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 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 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, 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 any insurance proceeds are payable 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 Lease 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 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 the following applicable notice address.

To Mortgagee: Wachovia Bank, National Association
Commercial Real Estate Services
8739 Research Drive URP-4, NC 1075
Charlotte, NC 28262
Attn: Portfolio Manager
Telephone: _____
Fax: _____

With a copy to: Kilpatrick Stockton LLP
Hearst Tower, Suite 2500
214 North Tryon Street
Charlotte, NC 28202
Attn: John Nicholas Suhr, Jr., Esq.

To Tenant: Old Navy, LLC
c/o The Gap, Inc.
901 Cherry Avenue
San Bruno, CA 94066
Attention: Real Estate Law, Store #3837
Fax: 650/874-7818
Telephone: 650/874-4101

To Landlord: Stratford Hall, Inc.
c/o Schwartz Kates Accountancy Corp.
6310 San Viente Blvd., Suite 250
Los Angeles, CA 90048
Phone: _____



Fax: _____

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.

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 (a) a copy of the deed showing that Stratford Hall, Inc. has the fee interest in the Property and Premises and (b) two (2) fully executed agreements at the notice address listed above, this Agreement shall be null and void.

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

MORTGAGEE

Wachovia Bank, National Association,
a national banking association

By: _____

David Pike

Its: _____

Vice President

TENANT

Old Navy, LLC,
a Delaware limited liability company

By: _____

MARIA GAVRILOVICH

Title: _____

CORPORATE COUNSEL

LANDLORD

Stratford Hall, Inc.,
a New York corporation

By: _____

FRANK LEE

Its: _____

VP



200605170006

Skagit County Auditor

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)

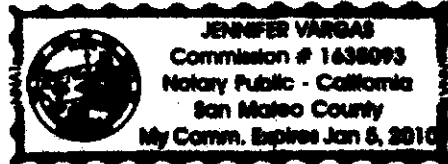
) Ss:

COUNTY OF SAN MATEO)

On March 17, 2006, before me, Jennifer Vargas, Notary Public, personally appeared Metta Brokenberger 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/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.

Jennifer Vargas (SEAL)
Notary Public Signature



STATE OF North Carolina

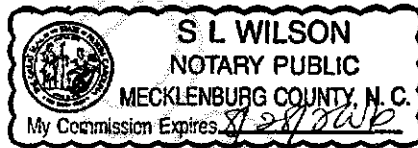
) Ss:

COUNTY OF Mecklenburg

On April 28th, 2006, before me, S L Wilson, Notary Public, personally appeared David Price 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/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.

S L Wilson (SEAL)
Notary Public Signature



STATE OF California

) Ss:

COUNTY OF Los Angeles

On Apr. 12, 2006, before me, Connie S. Werner, Notary Public, personally appeared Frank Lee 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/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.

Connie S. Werner (SEAL)
Notary Public Signature



Exhibit A

Legal Description of the Property

Lots 2-9, inclusive, and Lots 13 and 14, inclusive, City of Burlington Binding Site Plan No. Burl-01-04, entitled Newman Development of Burlington, LLC, Retail/Commercial Center, approved March 8, 2004 and recorded March 15, 2004 under Skagit County Auditor's File No. 200403150156, and being a portion of Government Lot 8 and the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, Section 7, Township 34 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

1166918.1

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