



201603140140

Skagit County Auditor

\$134.00

3/14/2016 Page

1 of

12

2:45PM

Document Title:

Subordination Agt

Reference Number:

110654-8 PRECORT 201603140134

Grantor(s):☐ additional grantor names on page ____

1. Old Navy

2.

Grantee(s):☐ additional grantee names on page ____

1. German American Capital Corp

2.

Abbreviated legal description:☐ full legal on page(s) ____Lots 2-9, inclusive & Lots 13 & 14 City of Burlington
BSP-01-04Assessor Parcel / Tax ID Number:☐ additional tax parcel number(s) on page ____

P 121437

I, Dawn Olson, am hereby requesting an emergency non-standard recording for an additional fee provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document. Recording fee is \$73.00 for the first page, \$1.00 per page thereafter per document. In addition to the standard fee, an emergency recording fee of \$50.00 is assessed. This statement is to become part of the recorded document.

Signed

Dawn Olson

Dated

3/14/2016

AFTER RECORDING MAIL TO:

Name Frost Brown Todd LLC - any Dreisbach
Address 400 West Market St. 32nd Floor
City/State Louisville, KY 40202-3363

Document Title(s):

1. Subordination, Non-Disturbance and Attornment Agreement

Reference Number(s) of Documents Assigned or released:

Grantor(s):

1. Old Navy, LLC
- 2.

GUARDIAN NORTHWEST TITLE CO.

110654-8

[] Additional information on page of document

Grantee(s):

1. German American Capital Corporation
- 2.

[] Additional information on page of document

Abbreviated Legal Description:

LOTS 2 - 9, INCLUSIVE, AND LOTS 13 AND 14 CITY OF BURLINGTON BSP NO. BURL-01-04

Tax Parcel Number(s):

P121437, P121438, P121439, P121440, P121441, P121442, P121443, P121444, P121448 and P121449

[X] Complete legal description is listed under Exhibit "A"

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

Frost Brown Todd LLC
400 West Market Street
Suite 3200
Louisville, Kentucky 40202
Attention: Joh W. Gragg, Esq.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of this 11th day of MARCH, 2016, by and among GERMAN AMERICAN CAPITAL CORPORATION, a Maryland corporation ("Mortgagee"), OLD NAVY, LLC, a Delaware limited liability company ("Tenant") and SHI OWNER, 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 MARCH 11, 2015, in which Landlord is named as the mortgagor, which Mortgage was recorded on MARCH 11, 2015, in the Official Records of Skagit County, State of Washington, as Document No. 201603140134. 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 is 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: Non-Disturbance and Attornment Agreement dated May 3, 2004; Area Certificate dated November 19, 2004; Amendment No.1 dated December 22, 2004; Subordination, Non-Disturbance and Attornment Agreement dated April 18, 2006; Notice re: Change of Ownership/Address dated April 18, 2006; Notice re: Change of Management Company Address dated January 10, 2007; Notice re: Change of Property Management Company dated March 1, 2007; Notice re: Change of Rent Payment Address dated June 5, 2007; Second Amendment to Lease dated September 23, 2009; Notice re: Change of Rent Payment Address/Legal Notice Address dated September 16, 2010; Third Amendment to Lease and Settlement Agreement dated November 29, 2010; Notice re: Change of Property Management/ Rent Payment Address dated January 9, 2012; Notice re: Change of Legal Notice Address dated January 20, 2012; and Exercise of Option/Change of Address Notice dated April 2, 2014.

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 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 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.

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 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: German American Capital Corporation
60 Wall Street, 10th Floor
New York, NY 10005
Attention: Attn: Robert W. Pettinato, Jr.
Telephone: () -
Fax: () -

with a copy to: Frost Brown Todd LLC
400 West Market Street, Suite 3200
Louisville, KY 40202
Attention: John W. Gragg, Esq.
Telephone: () -
Fax: () -

To Tenant:

Old Navy, LLC
c/o The Gap, Inc.
2 Folsom Street
San Francisco, CA 94105
Attention: Real Estate Law, Old Navy #3837
Telephone: (415) 427-0225
Fax: (415) 427-0188

To Landlord:

Stratford Hall, Inc.
c/o Colliers International
601 Union St, Suite 5300
Seattle, WA 98101
Telephone: (206) 388-3032
Fax: (206) 388-3001

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. All such notices 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.

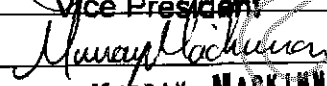
8. **Effectiveness of Agreement.** If, within four (4) weeks of Tenant's execution of this Agreement, Tenant has not received one (1) fully executed agreements at the notice address listed above, this Agreement shall, at Tenant's option, be null and void.

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

MORTGAGEE

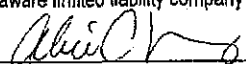
GERMAN AMERICAN CAPITAL CORPORATION,
a Maryland corporation

By: 
Name: Jon Hill
Title: Vice President

By: 
Name: MURRAY MACKINNON
Title: VICE PRESIDENT

TENANT

OLD NAVY, LLC,
a Delaware limited liability company

By: 
Name: Alice Naranjo
Title: Senior Counsel

To Tenant:

Old Navy, LLC
c/o The Gap, Inc.
2 Folsom Street
San Francisco, CA 94105
Attention: Real Estate Law, Old Navy #3837
Telephone: (415) 427-0225
Fax: (415) 427-0188

To Landlord:

Stratford Hall, Inc.
c/o Colliers International
601 Union St, Suite 5300
Seattle, WA 98101
Telephone: (206) 388-3032
Fax: (206) 388-3001

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

MORTGAGEE

GERMAN AMERICAN CAPITAL CORPORATION,
a Maryland corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

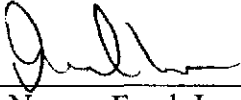
TENANT

OLD NAVY, LLC,
a Delaware limited liability company

By: Alice Naranjo
Name: Alice Naranjo
Title: Senior Counsel

SHI OWNER, LLC, a Delaware limited liability company

By: **STRATFORD HALL, INC.**, a Delaware
corporation, its Sole Member and Manager

By: 
Name: Frank Lee
Title: Authorized Signatory

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

On March 10, 2016 before me, Julia Sima Levine, Notary public, personally appeared Frank Lee, 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 he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

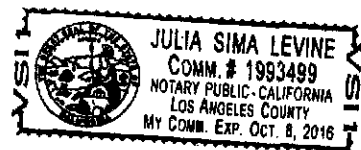
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Julia Sima Levine

(Seal)



TENANT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

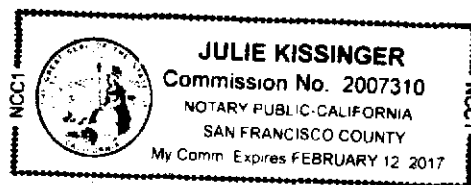
STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

On March 2, 2016, before me, Julie Kissinger, Notary Public, personally appeared Alice Naranjo 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 Julie Kissinger (Seal)



LANDLORD

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)

MORTGAGEE

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)

TENANT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)

) SS:

COUNTY OF SAN FRANCISCO)

On March 2, 2016, before me, Julie Kissinger, Notary Public, personally appeared Alice Naranjo 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 Julie Kissinger (Seal)



LANDLORD

STATE OF New York)

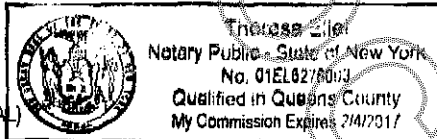
) SS:

COUNTY OF New York)

On Nov. 9, 2016 before me, Theresa Ellel, Notary Public, personally appeared Murray Mackinnon 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



MORTGAGEE

STATE OF New York)

) SS:

COUNTY OF New York)

On Mar. 9, 2016 before me, Theresa Ellel, Notary Public, personally appeared Tori Hill 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

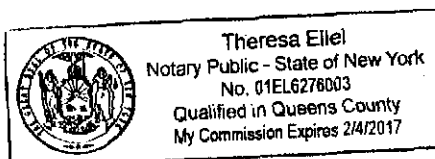


EXHIBIT A

Legal Description

EXHIBIT "A"

LEGAL DESCRIPTION:

Lots 2 – 11, inclusive, and Lots 13 – 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 ¼ of the Northeast ¼, Section 7, Township 34 North, Range 4 East, W.M.