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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
12/01/2014 15:47:19.00



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THE ABOVE SPACE IS RESERVED FOR THE REGISTER OF DEEDS RECORDING INFORMATION

**THIS PAGE INCLUDED
FOR INDEXING**

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

Banana Republic, LLC
c/o The Gap, Inc.
Real Estate Law
2 Folsom Street
San Francisco, CA 94105
Attn: Real Estate Law, Banana Republic #3187

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT (this "Agreement") is made and entered into as of this 1st day of December, 2014, by and among ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, a Minnesota corporation ("Mortgagee"), BANANA REPUBLIC, LLC, a Delaware limited liability company ("Tenant") and 168th AND DODGE, L.P., a Nebraska limited partnership ("Landlord").

RECITALS

A. Mortgagee is, or shall be, the holder of a certain note (the "Note") and mortgagee under a mortgage (the "Mortgage") dated December 1, 2014, in which Landlord is named as the mortgagor, which Mortgage was, or shall be, recorded in the Official Records of Douglas County, State of Nebraska. 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 Village Pointe Shopping Center, in the City of Omaha, County of Douglas, State of Nebraska.

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

C. By lease dated March 4, 2005 (as amended, 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 Village Pointe Shopping Center, all as more particularly described in said Lease. Other documents affecting or amending the Lease include the following: Non-Disturbance and Attornment Agreement dated March 15, 2005; Term Commencement Agreement dated February 7, 2006; Exercise of Option/Change of Legal Notice Address dated May 21, 2010; Notice re: Change of Landlord's Legal Notice Address dated July 19, 2010; Notice re: Change of Rent Payment Address received on November 11, 2010; Notice re: Change of Legal Notice Address dated March 6, 2013; Settlement and Release Agreement dated June 18, 2013; Letter Agreement re: Sales Reporting dated May 30, 2014; and Exercise of Option Notice Dated August 21, 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 unless required by law.

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. 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, if any, in any insurance proceeds applicable to the nonstructural improvements installed and owned 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 and owned 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:	Allianz Life Insurance Company of North America c/o Allianz Real Estate of America LLC 60 East 42 nd Street, Suite 3710 New York, New York 10165 Attention: Servicing Department Telephone: () - Fax: () -
To Tenant:	Banana Republic, LLC c/o The Gap, Inc. 2 Folsom Street San Francisco, CA 94105 Attention: Real Estate Law, Banana Republic #3187 Telephone: (415) 427-0225 Fax: (415) 427-0227
To Landlord:	168 th & Dodge, LP c/o Red Development, LLC One East Washington Street, Suite 300 Phoenix, Arizona 85004-2513 Attention: Lease Legal Notices Telephone: () - Fax: () -
with a copy to:	RED Development 7500 College Boulevard, Suite 750 Overland Park, KS 66210-4035 Attn: Legal Notices

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.

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

MORTGAGEE

ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA,
a Minnesota corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

TENANT

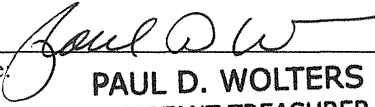
BANANA REPUBLIC, LLC,
a Delaware limited liability company

By: Tim Elliott
Name: Tim Elliott
Its: Corporate Counsel

LENDER:

ALLIANZ LIFE INSURANCE COMPANY OF
NORTH AMERICA, a Minnesota corporation

By: 
Name: **ERIC J. BERGWALL**
Title: **ASSISTANT TREASURER**

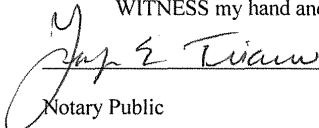
By: 
Name: **PAUL D. WOLTERS**
Title: **ASSISTANT TREASURER**

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On November 18, 2014, before me, Jennifer E. Triano,
Notary Public, personally appeared Eric J. Bergwall and
Paul D. Wolters, who proved to me on the basis of satisfactory evidence to be the persons
whose names are subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacities, and that by his/her/their signatures on the instrument the persons,
or the entity upon behalf of which the persons acted, executed the instrument.

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

WITNESS my hand and official seal.


Notary Public

(Seal)

JENNIFER EILEEN TRIANO
Notary Public- State of New York
No. 01TR6294309
Qualified in New York County
My Commission Expires December 16, 2017

[Signature Page to Subordination, Non-Disturbance and Attornment Agreement – Banana Republic]

LANDLORD

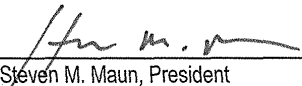
168TH AND DODGE, L.P.,
a Nebraska limited partnership

By: RED Development of West Dodge, L.L.C., General
Partner

By: RED Development of West Dodge, L.L.C.,
Its: General Partner

By: RED Village Pointe, LLC,
a Missouri limited liability company
Its: Manager

By: RED Condoliated Holdings, LLC,
an Arizona limited liability company
Its: Managing Member

By: 
Steven M. Maun, President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

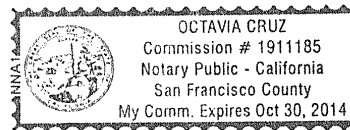
STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On October 7, 2014, before me, Octavia Cruz, Notary Public, personally appeared Tim Elliott, 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.

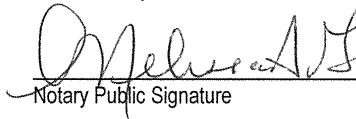
 (SEAL)
Notary Public Signature



STATE OF Kansas)
) ss:
COUNTY OF Johnson)

On Nov 18, 2014, before me, Melissa A Goodson, Notary Public, personally appeared Steven M. Mann 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.

 (SEAL)
Notary Public Signature



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)

EXHIBIT A

Legal Description

**EXHIBIT A
TO
SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

The Property described in the referenced instrument is located in Douglas County, Omaha, and is legally described as follows:

68-40328

Lots 2, 4, 5, 8 and Outlots A and B, Village Pointe, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, except that part of Lot 2, Village Pointe as described in Plat and Dedication for Street Purposes filed September 12, 2008 at Instrument No. 2008090053, records of Douglas County, Nebraska.

AND

68-40329

Lots 1, 2 and 3, Village Pointe Replat One, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

AND

68-40344

Lot 3, Village Pointe Replat Two, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.