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EXHIBITS

CASE NO. _____

DATE: _____

CASE TYPE: _____

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CASE NOTE

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

THE GAP, INC., ATHLETA LLC, BANANA
REPUBLIC, LLC, JANIE & JACK LLC, and OLD
NAVY, LLC,

9796891

Plaintiffs,

v.

Case No. 2020CH04984

BROOKFIELD PROPERTIES RETAIL INC., et al.,

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY AND OTHER RELIEF

Plaintiffs The Gap, Inc., (“Gap”), Athleta LLC (“Athleta”), Banana Republic, LLC (“Banana Republic”), Janie & Jack LLC (“Janie & Jack”), Old Navy, LLC (“Old Navy”) (collectively, “Tenants”) bring this action against Defendants Brookfield Properties Retail Inc., Brookfield Property REIT Inc., and each of the parties listed in Paragraph 9 below (referred to collectively as (“Landlords”)), as set forth herein.

INTRODUCTION

1. The COVID-19 pandemic has presented unique and unprecedented circumstances that were unforeseeable—indeed, unimaginable—at the time the leases between Tenants and Landlords were executed. The disease is highly contagious and its spread has been rapid. State and local governments’ reactions have been profound, varied, and constantly evolving, and prevented Tenants from opening their doors for months. To protect the health and safety of their employees, customers, and the surrounding communities, and comply with applicable law, Tenants have been required to close their stores and keep them closed for extended periods of time. And like innumerable other companies, they were required to make the difficult decision to furlough

FILED DATE: 7/16/2020 8:26 PM 2020CH04984

tens of thousands of store employees for closed stores across the country to preserve their finances while revenue from the stores dropped to zero overnight.

2. Even now, as government restrictions ease for some activities and types of businesses but not others, the disease remains virulent, and extensive guidelines are required to be followed that may provide some measure of protection, but will radically change the shopping experience for a long time to come. Indeed, shopping for apparel in physical stores will look nothing like what was contemplated by the leases when they were executed. In a world of unforeseeable events, the circumstances the subject stores have faced are at the extreme end of unforeseeability. These circumstances not only impose a severe and irreparable hardship on Tenants, they frustrated the express purpose of these leases and made their principal object illegal, impossible, and impracticable, all for a period of time that remains unknown and unknowable. Thus, the subject leases and applicable law nullified any obligation to pay rent beginning in March 2020, entitle Tenants to a refund of rent and expenses paid in advance for March 2020, and require that the Leases be modified and reformed, or rescinded, canceled, or terminated as a matter of law.

3. Accordingly, Tenants seek a determination of their rights and obligations under their leases, including a determination that Tenants owe no additional money to their landlords, that the landlords owe money to Tenants, that Tenants are entitled to reformation of their Leases, and that Tenants are entitled to attorney fees and expenses incurred in connection with this action.

THE PARTIES AND JURISDICTION

4. Gap is a Delaware corporation qualified to do business in Illinois. At all relevant times, Gap has operated Gap, Gap Kids, and Baby Gap retail stores throughout the United States, including in Illinois through the stores identified on Exhibit A.

5. Athleta is a Delaware limited liability company qualified to do business in Illinois.

At all relevant times, Athleta has operated Athleta retail stores throughout the United States, including in Illinois, through the stores identified on Exhibit A.

6. Banana Republic is a Delaware limited liability company qualified to do business in Illinois. At all relevant times, Banana Republic has operated Banana Republic retail stores throughout the United States, including in Illinois, through the stores identified on Exhibit A.

7. Janie & Jack LLC is a California limited liability company qualified to do business in Illinois. At all relevant times, Janie & Jack has operated Janie & Jack retail stores throughout the United States, including in Illinois, through the stores identified on Exhibit A.

8. Old Navy, LLC is a Delaware limited liability company qualified to do business in Illinois. At all relevant times, Old Navy has operated Old Navy retail stores throughout the United States, including in Illinois, through the stores identified on Exhibit A.

9. At all relevant times, Plaintiffs have been parties to the leases identified on Exhibit "A" with Defendants Altamonte Mall, LLC, Anchor Acquisition Mayfair Mall, LLC, Bay Shore Mall, LP, Beachwood Place Mall, LLC, Bellis Fair Mall, LLC, Boise Mall, LLC, Boise Towne Plaza L.L.C, Brass Mill Center Mall, LLC, BSREP II Cypress MT, LLC, Champaign Market Place L.L.C., Christiana Mall LLC, Coastland Center, LLC, Columbiana Centre, LLC, Coral Ridge Mall, LLC, Crocker Downtown Development Associates, Eatontown Monmouth Mall LLC, Fallen Timbers Ohio LLC, Fashion Place, LLC, Fashion Show Mall, LLC, Fox River Shopping Center, LLC, GGP Ala Moana L.L.C., GGP Jordan Creek L.L.C., GGP Northridge Fashion Center, LP, GGP Staten Island Mall, LLC, GGP-Grandville L.L.C., GGP-Maine Mall L.L.C., GGP-Providence Place LLC, GGP-Tuscon Mall L.L.C., Glendale I Mall Associates, LP, Governor's Square Mall, LLC, Grand Canal Shops II, LLC, Grand Teton Mall, LLC, Grand Traverse Mall, LLC, Greenwood Mall L.L.C., Hocker Oxmoor, LLC, Hoover Mall Limited,

L.L.C., Jordan Creek Town Center, LLC, Kalamazoo Mall L.L.C., Kenwood Mall L.L.C., Lynnhaven Mall L.L.C., Mayfair Mall, LLC, Merrick Park, LLC, Natick Mall, LLC, Oakbrook Shopping Center, LLC, Oaks Mall, LLC, Oakwood Hills Mall, LLC, Oakwood Shopping Center, LLC, Oglethorpe Mall L.L.C., Paramus Park Shopping Center Limited Partnership, Park Mall L.L.C. , Park Meadows Mall, LLC, Pecanland Mall, LLC, Pembroke Lakes Mall LTD, Perimeter Mall , LLC, Pinnacle Hills, LLC, Pioneer Place, LLC, Plaza Frontenac Acquisition, LLC, Prince Kuhio Plaza, LLC, Rancho Mall, LLC , Ridgedale Anchor Acquisition LLC, Ridgedale Center, LLC, RPI Chesterfield LLC, RPI Fig Garden, LP, RPI Shasta Mall, LP, Saint Louis Galleria L.L.C., Short Pump Town Center, LLC, Sooner Fashion Mall L.L.C., Southpoint Mall, LLC, Southwest Plaza L.L.C, Spokane Mall L.L.C., Stonestown Shopping Center, L.P., Temecula Town Center Associates L.P., The Mall in Columbia Business Trust, Tiago Holdings, LLC, Towson TC, LLC, TUP 430, LLC, Tyler Mall Limited Partnership, Valley Plaza Mall, LP, Visalia Mall, L.P., Water Tower LLC, Westcoast Estates, Westroads Mall L.L.C., Willowbrook Mall, LLC (collectively, the “Owners”) for stores in the shopping centers identified on Exhibit “A” (the “Shopping Centers”).

10. Plaintiffs are informed and believe and thereon allege that Defendant Brookfield Properties Retail Inc. operates, manages and controls, and is a managing agent of the Owners for, the Shopping Centers including by creating or implementing policies for the operation of the Shopping Centers and the advertisement of the Shopping Centers through websites, including reduced operating hours, and restrictions on the operation of the Shopping Centers such as limitations on the number of entrances to the Shopping Centers, restrictions on and closures of common areas and amenities, and the creation and implementation of a Curbside Pickup Program intended to eliminate foot traffic in the Shopping Centers. Plaintiffs are further informed and

believe and thereon allege that Brookfield Properties Retail Inc. controls the leasing of the Shopping Centers' premises. Brookfield Properties Retail Inc.'s principal place of business is located in Illinois at 350 N. Orleans St., Suite 300, Chicago, IL, 60654.

11. Plaintiff is informed and believes and thereon alleges that Defendant Brookfield Property REIT Inc. is an affiliate of Brookfield Properties Retail Inc., and an indirect owner of, and a recipient of a financial benefit from the leasing and operation of, the Shopping Centers, and has operated, managed, and indirectly owned the Shopping Centers from Illinois.

12. Plaintiff is informed and believes and thereon alleges that, through their conduct, Defendants Brookfield Property REIT Inc. and Brookfield Properties Retail Inc. have so thoroughly dominated and controlled the operation of the Owners that they are in fact the business conduit and alter ego of the Owners and must be treated as their alter ego and the veil of their corporation pierced to avoid an inequitable result.

13. Jurisdiction is proper in Illinois as the claims arise from the making or performance of contracts that are substantially connected with Illinois, and many of the Shopping Centers listed on Exhibit "A" are located in Illinois.

THE LEASES

14. Plaintiffs and the Owners are parties to leases for Premises in the Shopping Centers (the "Leases") under which Plaintiffs have operated Gap, Athleta, Banana Republic, Janie & Jack and Old Navy brand stores, all as shown on Exhibit A, which is incorporated herein by this reference.

15. The express purpose of the Leases was to provide Tenants with commercial retail space suitable for the operation of retail stores selling apparel. The Leases state in substantially identical language that the leased premises shall be used and occupied only for the purpose of the

sale of wearing apparel for men and/or women and, at Tenant's option, Tenant may sell wearing apparel for infants, toddlers and children, and the sale of related accessories, gifts, and goods, and for no other use or purpose whatsoever that was not also carried on in Plaintiffs' other stores. At the time the Leases were entered into, this purpose of the Leases was understood and intended by both Tenants and Defendants (or their predecessors).

16. But for the ability to operate a store at the Premises for the sale of apparel, Tenants would not have entered into the Leases. Indeed, Tenants' ability to operate a retail store at the Premises was the sole consideration Tenants received in exchange for entering into the Leases, all other nominal benefits of the Leases being a part of, and subordinate and ancillary to that consideration. Without the ability to operate store at the Premises, the transactions between Tenants and Landlords that were embodied in the Leases make no sense.

17. For example, the Leases are for fixed terms. At the time of contracting, Tenants and Landlords (or their predecessors) negotiated an exchange of rent and other consideration that Tenants would pay based on the contemplated term of the Leases. If the parties had known at the time they negotiated and entered into the Leases that Tenants would not be permitted to operate a retail store for the entire duration of the Leases, the parties would not have agreed on the same amount of rent and other consideration.

18. From the inception of the Leases until March 2020, Tenants maintained and operated stores at the Premises pursuant to the Leases.

19. Following the outbreak of COVID-19 in the United States, Tenants were forced to suspend all retail operations at the Premises to comply with applicable governmental orders and guidelines and to protect the health and safety of their employees, customers, and the surrounding communities, including state and local orders that required the closure of non-essential businesses

and the imposition of other restrictions on such businesses. Moreover, Tenants decided to close all of their stores in the United States effective on March 19, 2020 due to the COVID-19 pandemic.

20. As a result of the foregoing circumstances and orders, and other applicable governmental orders and guidelines, all of which were unforeseeable at the time the Leases were entered into, and which resulted from no act of either party, the parties' intended use of the Premises was frustrated, became impossible, illegal, and impracticable. Specifically, Tenants were forced to suspend all retail operations at the Premises. Tenants' purpose in entering into the Leases was frustrated. Tenants' performance under the Leases became impossible and impracticable. And Tenants were deprived of the consideration they received in exchange for entering into the Leases.

21. Indeed, though the Leases specifically contemplated that Tenants would benefit from their use for a fixed term, as a result of the unforeseeable COVID-19 crisis, Tenants have been deprived of their use of the Premises for the full term that Tenants were promised under the Leases. Such a result is inequitable and damages Tenants, in part because the term of the Leases, and the expectation that Tenants would be able to use them for their entire term, was the basis for the parties' negotiations and calculations at the time of contracting concerning Tenants' obligation to pay rent and other consideration under the Leases. Thus, for the additional fact and reason that the Premises were not usable for the entire term of the Leases, it is impossible and impracticable for the Landlord and Tenants to continue performing their obligations under the Leases, the parties' mutual purpose for entering into the Leases has been frustrated, and the consideration Tenants were to receive under the Leases has failed.

22. None of these events were foreseeable at the time the Leases were entered into. Indeed, this is the first time in our history that all 50 U.S. states are under a federal major disaster declaration at the same time.

23. And this crisis is far from over. Even after restrictions limiting operations at the Premises are lifted, the conditions under which retailers are expected to operate, and the environment in which they will have to operate, are nothing like what was contemplated and promised at the time the Leases were entered into. Tenants were promised retail space in vibrant shopping centers that would be attractive to consumers. However, retailers are now expected to downgrade services in the interest of health and safety, and consumers are still too concerned about the risk of entering a store to return to the shopping centers *en masse*. Landlords themselves have imposed restrictions on consumer behavior that will deter consumers from visiting the Shopping Centers and Tenants' store.

24. Nevertheless, Landlords have wrongfully demanded that Tenants pay rent for the period of time that Tenants were forced to close. Landlords have also disputed Tenants' right to keep their stores closed and modify the Leases due to this radical change in circumstances.

25. Because the parties cannot agree on their rights and obligations under the Leases, Tenants bring the following claims for breach of contract, unjust enrichment, declaratory relief, other equitable relief, and attorney fees and costs.

COUNT I
BREACH OF CONTRACT
(By All Plaintiffs Against All Defendants)

26. Plaintiffs incorporate by reference each of the preceding paragraphs of the Complaint as if fully set forth herein.

27. The Leases constitute binding, enforceable contracts.

28. Landlords breached the Leases by, among other things: demanding Tenants pay rent and other expenses that were not owed under the Leases; demanding, collecting and subsequently failing to reimburse Tenants for excess charges paid under the Leases before the

COVID-19 crisis began; and failing to reimburse Tenants for the prorated amount of the rent, charges and other expenses attributable to the period that Tenants have been deprived of their use of the Premises.

29. Landlords have further breached the Leases by demanding Tenants pay rent for the time that they were deprived of their right to operate retail stores at the Premises, in violation of the express terms of the Leases.

30. Except to the extent excused, waived, rendered impossible or impracticable, or prevented by Defendants' performance, Tenants have duly performed all of the terms of the Leases required to be performed by them.

31. Tenants are entitled to judgment against Landlords in an amount to be proven at trial.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor and against Defendants awarding:

- A. Compensatory damages in an amount to be proven at trial;
- B. Prejudgment interest;
- C. Costs and expenses, including attorney fees; and
- D. Such other and further relief as this Court deems just and proper.

COUNT II
DECLARATORY RELIEF
(No Rent or Expenses Owed)
(By All Plaintiffs Against All Defendants)

32. Plaintiffs incorporate by reference each of the preceding paragraphs of the Complaint as if fully set forth herein, and assert this count in the alternative.

33. Tenants' ability to operate retail stores at the Premises was the parties' mutual purpose and intent in entering into the Leases and in Tenants agreeing to pay the rent and other consideration agreed to be paid under the Leases related to these Plaintiffs and these Defendants as set forth on Exhibit "A" and, as the parties understood at the time of contracting, but for their right to operate such retail stores for the full term of the Leases Tenants would not have entered into the Leases. Indeed, without Tenants' ability to use the Premises, the transactions between the parties that resulted in the Leases make no sense.

34. When Tenants were forced to suspend all retail operations at the Premises, the purpose and object of the Leases were frustrated and impossible to effectuate due to no fault of the Tenants, the Leases' object and purpose became impossible, illegal and impracticable, and Tenants were deprived of the consideration they were to receive in exchange for entering into the Leases.

35. The sudden suspension of retail operations at the Premises and the long-term impact on these Tenants' Premises and the locations in which they are situated were unforeseeable, were not and could not have been contemplated by the parties at the time the Leases were executed, and were not caused by Tenants.

36. Except to the extent excused waived, rendered impossible or impracticable, or prevented by Defendants' performance, Tenants have duly performed all of the terms of the Leases required to be performed by them.

37. An actual controversy exists between Tenants and Landlords concerning their respective rights under the Leases, and Tenants have no adequate remedy at law. Specifically, the parties dispute:

- a. Whether the obligation to pay rent and expenses abated from and after March 19, 2020;

- b. Alternatively, for what period from and after March 19, 2020 the obligation to pay rent and expenses abated if the abatement was not permanent despite the interruption or impairment of Tenants' use of the Premises and the likelihood of future disruptions and shutdowns;
 - c. Whether there was a frustration of purpose of the Leases, and for what period of time;
 - d. Whether the continued operation of the Leases was illegal, impossible, or impracticable, and for what period of time;
 - e. Whether there was a failure of consideration under the Leases, and for what period of time;
 - f. Whether a casualty occurred that rendered the Premises unusable, and for what period of time.
38. Therefore, Tenants seek a judgment declaring the following:
- a. That Tenants had no further obligation to pay rent or other charges under the Leases beginning on the date that Tenants were forced to suspend retail operations and at all times thereafter, and through a reasonable time after the resumption of full operating capacity of the Premises, the exact duration of which will be shown by proof at the time of trial.
 - b. If the abatement of rent and expenses was not permanent despite the interruption or impairment of Tenants' use of the Premises and the likelihood of future disruptions and shutdowns, that the rent and expenses abated for a period in the discretion of the Court from and after March 19, 2020;

- c. That there was a frustration of purpose of the Leases, and the period of that frustration,
- d. That the continued operation of the Leases was illegal, impossible, or impracticable, and the period of that illegality, impossibility, or impracticability;
- e. That there was a failure of consideration under the Leases, and the period of that failure of consideration;
- f. That a casualty occurred that rendered the Premises unusable, and the period of that casualty; and
- g. The effects of the foregoing on the Leases' Term and expiration.

WHEREFORE, the Plaintiffs request that this Court enter judgment in their favor and against Defendants:

- A. That Tenants had no further obligation to pay rent or other charges under the Leases beginning on the date that Tenants were forced to suspend retail operations and at all times thereafter, and through a reasonable time after the resumption of full operating capacity of the Premises, the exact duration of which will be shown by proof at the time of trial.
- B. That the rent and expenses abated for a period in the discretion of the Court from and after March 19, 2020;
- C. That there was a frustration of purpose of the Leases, and the period of that frustration,
- D. That the continued operation of the Leases was illegal, impossible, or impracticable, and the period of that illegality, impossibility, or impracticability;

- E. That there was a failure of consideration under the Leases, and the period of that failure of consideration;
- F. That a casualty occurred that rendered the Premises unusable, and the period of that casualty; and
- G. The effects of the foregoing on the Leases' Term and expiration.
- H. Costs and expenses, including attorney fees; and
- I. Such other and further relief as this Court deems just and proper.

**COUNT III
UNJUST ENRICHMENT**

(By All Plaintiffs Against All Defendants)

39. Plaintiffs incorporate by reference each of the preceding paragraphs of the Complaint as if fully set forth herein and assert this count in the alternative.

40. Tenants' ability to operate retail stores at the Premises was the parties' mutual purpose and intent in entering into the Leases and in Tenants agreeing to pay the rent and other consideration agreed to be paid under the Leases related to these Plaintiffs and these Defendants as set forth on Exhibit "A" and, as the parties understood at the time of contracting, but for their right to operate such retail stores for the full term of the Leases Tenants would not have entered into the Leases. Indeed, without Tenants' ability to use the Premises, the transactions between the parties that resulted in the Leases make no sense.

41. When Tenants were forced to suspend all retail operations at the Premises, the purpose and object of the Leases were frustrated and impossible to effectuate due to no fault of the Tenants, the Leases' object and purpose became impossible, illegal and impracticable, and Tenants were deprived of the consideration they were to receive in exchange for entering into the Leases.

42. The sudden suspension of retail operations at the Premises and the long-term impact

on these Tenants' Premises and the locations in which they are situated were unforeseeable, were not and could not have been contemplated by the parties at the time the Leases were executed, and were not caused by Tenants.

43. Except to the extent excused waived, rendered impossible or impracticable, or prevented by Defendants' performance, Tenants have duly performed all of the terms of the Leases required to be performed by them.

44. Tenants have previously paid rent and other consideration to Landlords, in amounts to be proven at trial, for part of the period of time that Tenant was unable to operate a retail store at the Premises.

45. Landlords were unjustly enriched as a result of these payments at Tenant's expense.

46. Under principles of good conscience, Landlords should not be allowed to retain the rent and other consideration paid for the period of time that Tenants were unable to operate retail stores at the Premises as originally contemplated by the Leases.

47. Tenants are entitled to restitution of the sums that Tenants have previously overpaid as rent and as other consideration to Landlords, in amounts to be proven at trial, for the period of time that Tenants were unable to operate retail stores at the Premises as originally contemplated by the Leases.

WHEREFORE, the Plaintiffs request that this Court enter judgment in their favor and against Defendants:

- A. Ordering Landlords to reimburse Tenants for the payments of rent and other expenses paid for the period that Tenants were deprived of their use of the Premises as originally contemplated by the Leases;
- B. Costs and expenses, including attorney fees; and

C. Such other and further relief as this Court deems just and proper.

COUNT IV
DECLARATORY RELIEF

(Rescission, Cancellation, and Termination)

**(By Plaintiffs The Gap, INC., Athleta LLC, Banana Republic, LLC, and Janie & Jack LLC
Against**

Defendants Altamonte Mall, LLC, Beachwood Place Mall, LLC, Bellis Fair Mall, LLC, Champaign Market Place L.L.C., Christiana Mall LLC, Columbiana Centre, LLC, Fallen Timbers Ohio LLC, Fashion Place, LLC, Fashion Show Mall, LLC, GGP Ala Moana L.L.C., GGP Staten Island Mall, LLC, GGP-Grandville L.L.C., GGP-Maine Mall L.L.C., GGP-Providence Place LLC, Glendale I Mall Associates, LP, Governor's Square Mall, LLC, Grand Canal Shops II, LLC, Grand Traverse Mall, LLC, Jordan Creek Town Center, LLC, Kalamazoo Mall L.L.C., Kenwood Mall L.L.C., Mayfair Mall, LLC, Natick Mall, LLC, Oaks Mall, LLC, Park Mall L.L.C. , Park Meadows Mall, LLC, Pembroke Lakes Mall LTD, Perimeter Mall , LLC, Pinnacle Hills, LLC, Pioneer Place, LLC, Rancho Mall, LLC , Ridgedale Anchor Acquisition LLC, Ridgedale Center, LLC, Saint Louis Galleria L.L.C, Short Pump Town Center, LLC, Southwest Plaza L.L.C, Stonestown Shopping Center, L.P., The Mall in Columbia Business Trust, Towson TC, LLC, Water Tower LLC, Westcoast Estates)

48. Plaintiffs incorporate by reference each of the preceding paragraphs of the Complaint as if fully set forth herein and assert this count in the alternative.

49. Tenants' ability to operate retail stores at the Premises was the parties' mutual purpose and intent in entering into the Leases and in Tenants agreeing to pay the rent and other consideration agreed to be paid under the Leases related to these Plaintiffs and these Defendants as set forth on Exhibit "A", and as the parties understood at the time of contracting, and but for their right to operate such retail stores for the full term of the Leases, Tenant would not have entered into the Leases. Indeed, without Tenants' ability to use the Premises, the transactions between the parties that resulted in the Leases make no sense.

50. When Tenants were forced to suspend all retail operations at the Premises, the purpose and object of the Leases were frustrated and impossible to effectuate due to no fault of the Tenants, the Leases' object and purpose became impossible, illegal and impracticable, and Tenants

were deprived of the consideration they were to receive in exchange for entering into the Leases.

51. The sudden suspension of retail operations at the Premises and the long-term impact on these Tenants' Premises and the locations in which they are situated were unforeseeable and could not have been contemplated by the parties at the time the Leases were executed.

52. Except to the extent excused, waived, rendered impossible or impracticable, or prevented by Defendants' performance, Tenants have duly performed all of the terms of the Leases required to be performed by them.

53. An actual controversy exists between these of the Tenants and Landlords concerning their respective rights under their Leases and these Tenants have no other adequate remedy at law. Specifically, the parties dispute, in addition to, and/or in the alternative to, these of the Tenants' claim for declaratory relief regarding the absence of any obligation under the Leases to pay rent and expenses for the period beginning March 19, 2020,

- a. Whether Tenants are entitled to judicial rescission, cancellation, and termination of the subject leases, as a result of the frustration of purpose of the subject leases, the illegality, impossibility and impracticability of the subject leases, and/or the failure of consideration, effective on such date as the Court determines based on the evidence presented at trial.
- b. When, on or after March 19, 2020, the Leases should be deemed rescinded, canceled, and terminated pursuant to the Leases and applicable law.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor and against Defendants:

- A. Declaring these Tenants' leases rescinded, canceled, and terminated as of a date according to proof and in the discretion of the court;

- B. Costs and expenses, including attorney fees; and,
- C. Such other and further relief as this Court deems just and proper.

COUNT V
DECLARATORY RELIEF
(Reformation)

(By All Plaintiffs Against All Defendants)

54. Plaintiffs incorporate by reference each of the preceding paragraphs of the Complaint as if fully set forth herein and assert this count in the alternative.

55. Tenants' ability to operate retail stores at the Premises was the parties' mutual purpose and intent in entering into the Leases and in Tenants agreeing to pay the rent and other consideration agreed to be paid under the Leases related to these Plaintiffs and these Defendants as set forth on Exhibit "A" and, as the parties understood at the time of contracting, but for their right to operate such retail stores for the full term of the Leases Tenants would not have entered into the Leases, and would not have agreed to pay the rent and other expenses specified in the Leases. Indeed, without Tenants' ability to use the Premises in the manner originally contemplated or for the Premises and the shopping center in which they are located to continue to be the destination location contemplated, the transaction between the parties that resulted in the Leases would have made no sense.

56. The parties were mutually mistaken as to the basic assumption that Tenants would not be forced to suspend their operation of retail stores on the Premises and that Landlords would be paid rent and expenses by Tenants for their uninterrupted use of the Premises pursuant to the Leases.

57. The parties' mutual mistake has a material effect on the parties' agreed exchange of performances under the Lease because Tenants were forced to suspend all retail operations at the Premises.

58. When Tenants were forced to suspend all retail operations at the Premises, the purpose and object of the Leases were frustrated and impossible to effectuate due to no fault of the Tenants, the Leases' object and purpose became impossible, illegal and impracticable, and Tenants were deprived of the consideration they were to receive in exchange for entering into the Leases.

59. The sudden suspension of retail operations at the Premises and the long-term impact on these Tenants' Premises and the locations in which they are situated were unforeseeable, were not and could not have been contemplated by the parties at the time the Leases were executed, and were not caused by Tenants.

60. Except to the extent excused, waived, rendered impossible or impracticable, or prevented by Defendants' performance, Tenants have duly performed all of the terms of the Leases required to be performed by them.

61. An actual controversy exists between Tenants and Landlords concerning their respective rights under the Leases, and Tenants have no adequate remedy at law. Specifically, the parties dispute:

- a. Whether and upon what terms the Leases should be judicially reformed to reflect the parties' ongoing and future obligations for the payment of rent and expenses based upon all of the following:
 - i. The interruption or impairment of Tenants' use of the Premises and the likelihood of future disruptions and shutdowns;
 - ii. Whether there was a frustration of purpose of the Leases, and for what period of time;
 - iii. Whether the continued operation of the Leases was illegal, impossible, or impracticable, and for what period of time;

- iv. Whether there was a failure of consideration under the Leases, and for what period of time;
- v. Whether a casualty occurred that rendered the Premises partially or entirely unusable, and for what period of time.

62. Therefore, Tenants seek (in the alternative to rescission, cancellation and termination as to those plaintiffs included in the preceding cause of action), a judgment declaring the following:

- a. The terms upon which the Leases should be judicially reformed to reflect the parties' ongoing and future obligations for the payment of rent and expenses based upon all of the following:
 - a. The interruption or impairment of Tenants' use of the Premises and the likelihood of future disruptions and shutdowns;
 - b. The frustration of purpose of the Leases;
 - c. That the continued operation of the Leases was illegal, impossible, or impracticable;
 - d. A failure of consideration under the Leases;
 - e. A casualty occurring that renders the Premises partially or entirely unusable.

WHEREFORE, the Plaintiffs request that this Court enter judgment in their favor and against Defendants:

- A. Reforming the Leases on terms that are just and proper, according to proof and in the discretion of the court.
- B. Costs and expenses, including attorney fees; and

C. Such other and further relief as this Court deems just and proper.

Dated: July 16, 2020

**THE GAP, INC., ATHLETA LLC,
BANANA REPUBLIC, LLC, JANIE &
JACK LLC, and OLD NAVY, LLC**

/s/ Charles A. Valente

By: _____

Charles A. Valente
Isaiah A. Fishman
Kaplan Saunders Valente & Beninati, LLP
500 N. Dearborn Street – 2d Floor
Chicago, Illinois 60654
(312) 755-5700

***Attorneys for Plaintiffs THE GAP, INC.
ATHLETA LLC, BANANA REPUBLIC,
LLC, JANIE & JACK LLC, and OLD
NAVY, LLC***

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury of all matters so triable.

Dated: July 16, 2020

**THE GAP, INC., ATHLETA LLC,
BANANA REPUBLIC, LLC, JANIE &
JACK LLC, and OLD NAVY, LLC**

/s/ Charles A. Valente

By: _____

Charles A. Valente
Isaiah A. Fishman
Kaplan Saunders Valente & Beninati, LLP
500 N. Dearborn Street – 2d Floor
Chicago, Illinois 60654
(312) 755-5700

***Attorneys for Plaintiffs THE GAP, INC.
ATHLETA LLC, BANANA REPUBLIC,
LLC, JANIE & JACK LLC, and OLD
NAVY, LLC***