

Goody's #165

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (this "Agreement") made as of the 24th day of April, 2003, by and among the party described as Lender on the signature page hereto (together with its successors and assigns, the "Lender"), Goody's Family Clothing, Inc. ("Tenant") and Developers Diversified of Alabama, Inc. ("Landlord").

WITNESSETH:

WHEREAS, Lender is the mortgagee or beneficiary under a mortgage or deed of trust (the "Mortgage") dated as of the date hereof made by Landlord to Lender or its predecessor-in-interest, encumbering all of Landlord's right, title and interest in and to the real property described on Exhibit A attached hereto (the "Property"), which Mortgage secures all amounts payable by Landlord to Lender under that certain Loan Agreement, dated as of the date hereof, between Lender and Landlord (the "Loan Agreement"); and

WHEREAS, by a lease dated as of August 9, 1993 (which lease, as the same may have been or may be amended and supplemented, is hereinafter called the "Lease"), Landlord or its predecessor-in-interest leased to Tenant or its predecessor-in-interest certain space located in the Property (the "Premises"); and

WHEREAS, the parties hereto desire to make the Lease subject and subordinate to the Mortgage and the Loan Agreement;

NOW, THEREFORE, the parties hereto, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. The Lease, as the same may hereafter be modified, amended or extended, and all of Tenant's right, title and interest in and to the Premises and all rights, remedies and options of Tenant under the Lease, are and shall be unconditionally subject and subordinate to the Mortgage and the lien thereof, to all of the terms, conditions and provisions of the Mortgage and the Loan Agreement, to each and every advance made or hereafter made under the Loan Agreement, and to all renewals, modifications, consolidations, replacements, substitutions and extensions of the Mortgage and/or the Loan Agreement, so that at all times the Mortgage shall be and remain a lien on the Property prior and superior to the Lease for all purposes; provided, however, and Lender agrees, that so long as (A) no Event of Default (as defined by the Lease) has occurred and is continuing under the Lease and no conditions exist which would entitle Landlord to terminate the Lease or would cause, without further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant from the Premises, (B) the term of the Lease has commenced and Tenant is in possession of the Premises, (C) the Lease shall be in full force and effect and shall not have been otherwise modified or supplemented in any material way without Lender's prior written consent, (D) Tenant shall duly confirm its

and quiet enjoyment and the Common Areas (as defined by the Lease)
attornment to Lender or its successor or assign by written instrument as set forth in Paragraph 3 hereof, (E) neither Lender nor its successors or assigns shall be liable under any warranty of construction contained in the Lease or any implied warranty of construction, and (F) all representations and warranties made herein by Tenant shall be true and correct as of the date of such attornment, then Tenant's leasehold estate under the Lease shall not be terminated, Tenant's possession of the Premises shall not be disturbed by Lender, Tenant shall not be named or joined as a party defendant in connection with any foreclosure of the Mortgage unless required by law (provided that such naming or joinder shall not result in the termination of the Lease or disturb the possession of the Premises by Tenant) and Lender will accept the attornment of Tenant (provided that the foregoing shall not in any way be deemed to prohibit Lender, following its acceding to the interests of Landlord under the Lease, from exercising any remedies that it might have thereunder should an event occur or have occurred or a condition exist or have existed which would entitle Landlord to terminate the Lease, or which would cause, without further action of Landlord, the termination of the Lease, or which would entitle Landlord to dispossess Tenant from the Premises).

2. Notwithstanding anything to the contrary contained in the Lease, Tenant hereby agrees that in the event of any act, omission or default by Landlord or Landlord's agents, employees, contractors, licensees or invitees which would give Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, or to claim a partial or total eviction, or to reduce the rent payable thereunder or credit or offset any amounts against future rents payable thereunder, Tenant will not exercise any such right (i) until it has given written notice of such act, omission or default to Lender by delivering notice of such act, omission or default, in accordance with Paragraph 8 hereof, and (ii) until a period of not less than thirty (30) days for remedying such act, omission or default shall have elapsed following the giving of such notice. Notwithstanding the foregoing, in the case of any default of Landlord which cannot be cured within such thirty (30) day period, if Lender shall within such period proceed promptly to cure the same ~~(including such time as may be necessary to acquire possession of the Premises if possession is necessary to effect such cure)~~ and thereafter shall prosecute the curing of such default with diligence, then the time within which such default may be cured by Lender shall be extended for such period as may be necessary to complete the curing of the same with diligence. Lender's cure of Landlord's default shall not be considered an assumption by Lender of Landlord's other obligations under the Lease. Unless Lender otherwise agrees in writing, Landlord shall remain solely liable to perform Landlord's obligations under the Lease (but only to the extent required by and subject to all limitations included within the Lease), both before and after Lender's exercise of any right or remedy under this Agreement. ~~If Lender or any successor or assign becomes obligated to perform as Landlord under the Lease, such person or entity will be released from those obligations when such person or entity assigns, sells or otherwise transfers its interest in the Premises or the Property.~~

3. Without limitation of any of the provisions of the Lease, in the event that Lender succeeds to the interest of Landlord or any successor to Landlord, then subject to the provisions of this Agreement including, without limitation, Paragraph 1 above, the Lease shall nevertheless continue in full force and effect and Tenant shall and does hereby agree to attorn to and accept Lender and to recognize Lender as its landlord under the Lease for the then remaining balance of the term thereof, and upon request of Lender, Tenant shall execute and deliver to Lender an agreement of attornment reasonably satisfactory to Lender and Tenant.

the written

4. If Lender succeeds to the interest of Landlord or any successor to Landlord, in no event shall Lender have any liability for any act or omission of any prior landlord under the Lease which shall have occurred prior to the date Lender succeeds to the rights of Landlord under the Lease, nor any liability for claims, offsets or defenses which Tenant might have had against Landlord, except as set forth in the Lease. In no event shall Lender have any personal liability as successor to Landlord and Tenant shall look only to the estate and property of Lender in the Property for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender as Landlord under the Lease, and no other property or assets of Lender shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease.

5. Tenant agrees that no prepayment of rent or additional rent due under the Lease of more than one month in advance, and no amendment, modification, surrender or cancellation of the Lease, and no waiver or consent by Landlord under the terms of the Lease or payment of rent or additional rent due under the Lease of more than one month in advance, shall be binding upon or as against Lender, as holder of the Mortgage, and as Landlord under the Lease if it succeeds to that position, unless consented to in writing by Lender. In addition, and notwithstanding anything to the contrary set forth in this Agreement, Tenant agrees that Lender, as holder of the Mortgage, and as Landlord under the Lease if it succeeds to that position, shall in no event be bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to the Landlord's interest under the Lease. Tenant further agrees with Lender that Tenant will not voluntarily subordinate the Lease to any lien or encumbrance without Lender's prior written consent.

6. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.

7. All remedies which Lender may have against Landlord provided herein, if any, are cumulative and shall be in addition to any and all other rights and remedies provided by law and/or by other agreements between Lender and Landlord or others. If any party consists of multiple individuals or entities, each of same shall be jointly and severally liable for the obligations of such party hereunder.

8. All notices to be given under this Agreement shall be in writing and shall be deemed served upon receipt by the addressee (a) if served personally or, (b) if mailed, upon the first to occur of receipt or the refusal of delivery as shown on a return receipt, after deposit in the United States Postal Service certified mail, postage prepaid, addressed to the address of Landlord, Lender or Tenant appearing below, or (c) if sent by telegram, when delivered by or refused upon attempted delivery by the telegraph office. Such addresses may be changed by notice given in the same manner. If any party consists of multiple individuals or entities, then notice to any one of same shall be deemed notice to such party.

(except for any monetary or equitable claim which arose out of a default by Landlord for which default Lender was granted the same notice and right to cure as provided to Landlord under the Lease)

Lender's Address:

Goldman Sachs Mortgage Company
85 Broad Street
New York, New York 10004
Attention: J. Theodore Borter

with a copy to:

Cleary, Gottlieb, Steen & Hamilton
One Liberty Plaza
New York, New York 10006
Attention: Michael Weinberger, Esq.

Tenant's Address:

GOODY'S FAMILY CLOTHING, INC.

400 Goody's Lane

Knoxville, TN 37933

Attention: Director of Real Estate

Landlord's Address:

Developers Diversified Realty Corporation
3300 Enterprise Parkway
Beachwood, Ohio 44122
Attention: General Counsel

9. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state in which the Property is located.

10. This Agreement shall apply to, bind and inure to the benefit of the parties hereto and their respective successors and assigns. As used herein "Lender" shall include any subsequent holder or holders of the Mortgage.

11. Tenant acknowledges that Landlord has assigned to Lender its right, title and interest in the Lease, in the Property and to the rents, issues and profits of the Property pursuant to the Mortgage, and that Landlord has been granted the license to collect such rents provided no Event of Default has occurred under, and as defined in, the Mortgage. Tenant agrees to pay all rents and other amounts due under the Lease directly to Lender upon receipt of written demand by Lender, and Landlord hereby consents thereto. The assignment of the Lease to Lender, or the collection of rents by Lender pursuant to such assignment, shall not obligate Lender to perform Landlord's obligations under the Lease unless Lender succeeds to the interest of Landlord under the Lease.

[Remainder of page intentionally left blank; Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first written above.

LENDER:

Archon Financial, L.P.

By: Joseph M. Osborne
Name:
Title:

Joseph M. Osborne
General Counsel
Chief Operating Officer

Witnesses:

Kristi England

Printed Name: Kristi England

Kelly Wilson

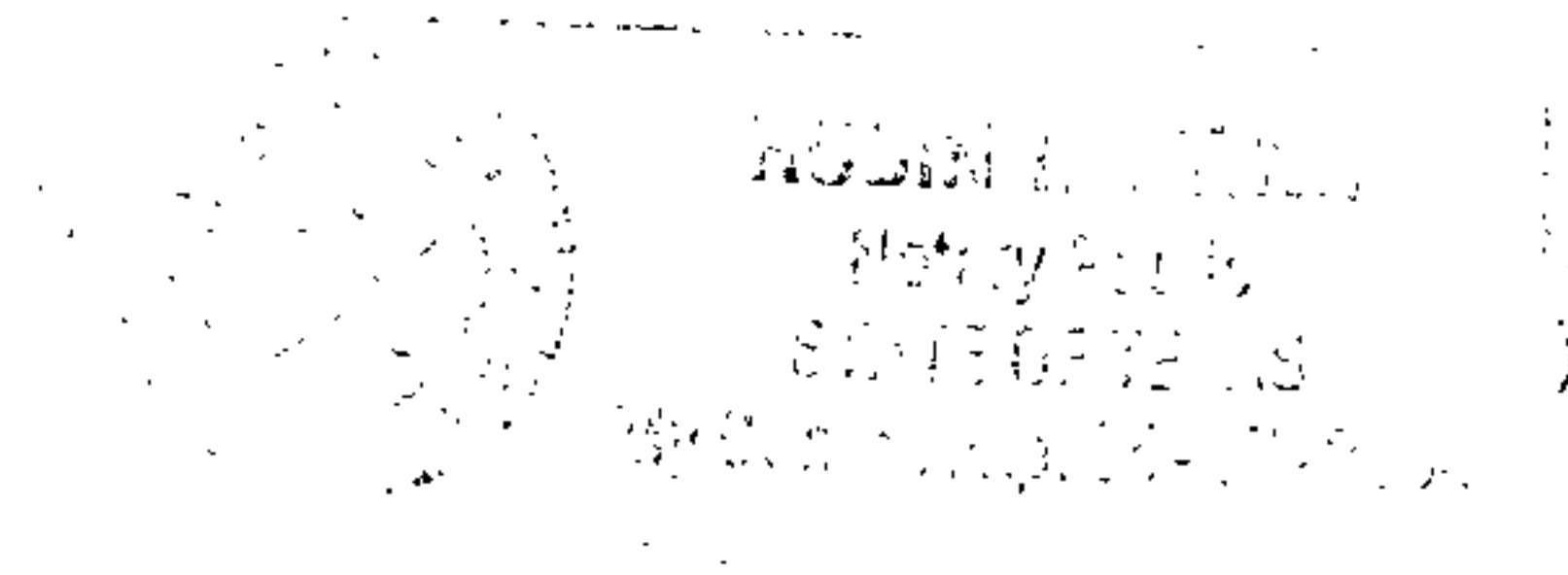
Printed Name: KELLY WILSON

State of Texas)
County of Dallas) ss.:

On the 24th day of March in the year 2003 before me, the undersigned, personally appeared Joseph Osborne personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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 capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

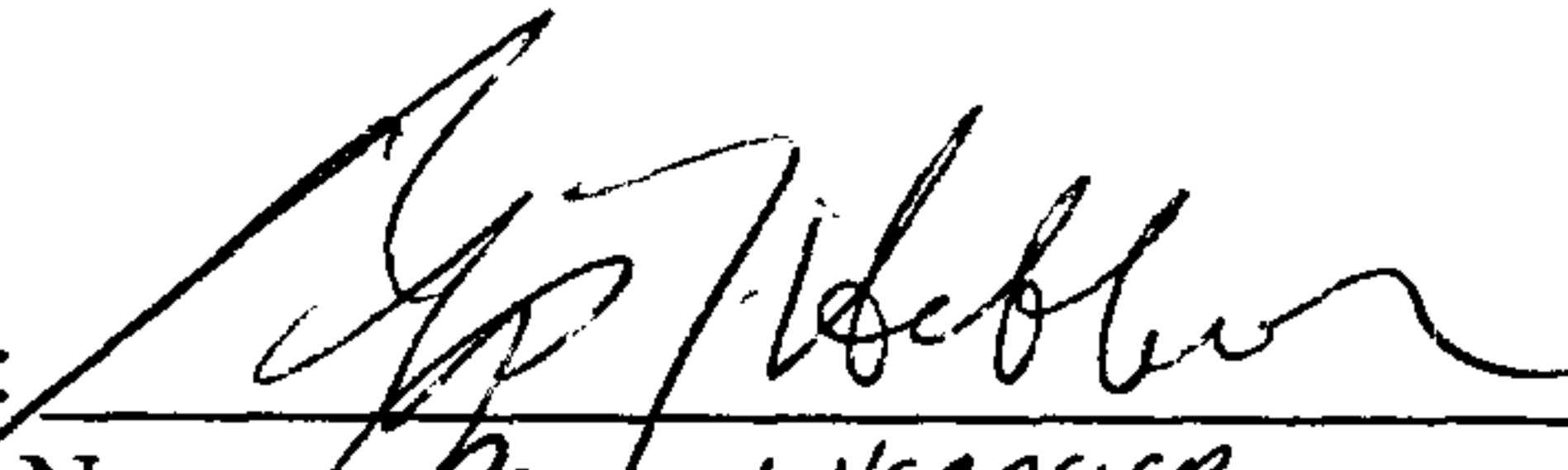
Robin L. Hill

Signature and Office of individual
taking acknowledgment



TENANT:

Goody's Family Clothing, Inc.

By: 
Name: REGIS J. HEBBELER
Title: VICE PRESIDENT

Witnesses:



Printed Name: CINDY PONZURICK



Printed Name: NICHELLE O'QUINN

State of TENNESSEE)
County of KNOX) ss.:

On the 21st day of February in the year 2003 before me, the undersigned, personally appeared REGIS J. HEBBERER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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 capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Signature and Office of individual
taking acknowledgment

My Commission Expires 8-5-03

LANDLORD:

Developers Diversified of Alabama, Inc.,
an Alabama corporation

By: 
Joan U. Allgood, Vice President

Witnesses:



Printed Name: KATHLEEN MICHEL



Printed Name: PAULA JONES

STATE OF OHIO)
)SS:
COUNTY OF CUYAHOGA)

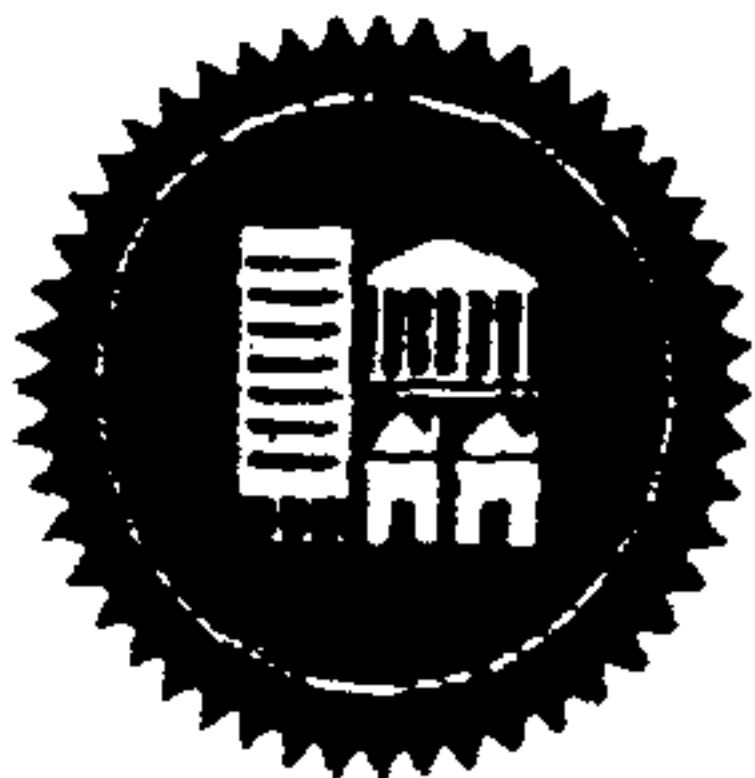
BEFORE ME, a Notary Public in and for said County and State, personally appeared Joan U. Allgood, known to me to be the Vice President of Developers Diversified of Alabama, Inc., the corporation which executed the foregoing instrument, who acknowledged that she did sign and seal the foregoing instrument for and on behalf of said corporation being thereunto duly authorized by its Board of Directors that the same is her free act and deed as such officer and the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Beachwood, Ohio this 2nd day of April, 2003.



Notary Public

PAUL JONES, Notary Public
State of Ohio, Cuyahoga County
My Commission Expires Jan. 11, 2006



**Fidelity National Title Insurance Company
of New York**

EXHIBIT A
(page 1 of 3)

EXHIBIT "A" (PHASE 1)

The Land referred to in this Commitment is described as follows:

PARCEL 1

LOTS 1, 1A, 2, 2A, ACCORDING TO THE BROOK HIGHLAND PLAZA RESURVEY, AS RECORD IN MAP BOOK 18M PAGE 99 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA, BEING SITUATED IN SHELBY COUNTY, ALABAMA.

TOGETHER WITH ALL FO THE BENEFICIAL RIGHTS AND INTERESTS IN THE EASEMENT UNDER THE FOLLOWING INSTRUMENTS:

1). DECLARATION OF EASEMENTS AND RESTRICTIONS CONVENATS (BROOK HIGHLAND DEVELOPMENT-1.35 ACRES OUT PARCEL) BY AMSOUTH BANK N.A. AS ANCILLARY TRUSTEE FOR NBNC NATIONAL BANK OF NORTH CAROLINA, AS TRUSTEE FOR THE PUBLIC EMPLOYEES RETIREMENT SYSTEM OF OHIO, DATED AUGUST 29, 1990, AND RECORDED IN REAL 307, PAGE 985, IN SAID PROBATE OFFICE.

2.) EASEMENT AGREEMENT DATED OCTOBER 12, 1993, BY AN BETWEEN AMSOUTH BANK N.A., AS ANCILLARY TRUSTEE FOR NATIONSBANK OF NORTH CAROLINA, N.A. AS TRUSTEE FOR THE PUBLIC EMPLOYEES RETIREMENT SYSTEM OF OHIO, AND BROOK HIGHLAND LIMITED PARTNERSHIP, A GEORGIA LIMITED PARTNERSHIP RECORDED AS INSTRUMENT # 1993-32515 IN SAID PROBATE OFFICE.

PARCEL 2

ALL BENEFICIAL RIGHTS IN EASEMENTS GRANTED TO DEVELOPERS DIVERSIFIED OF ALABAMA CORP., BY THE EASEMENT AGREEMENT DATED DECEMBER 30, 1994, BY AND BETWEEN BROOK HIGHLAND LIMITED PARTNERSHIP AND DEVELOPERS DIVERSIFIED OF ALABAMA., AS RECORDED AS RECORDED AS INSTRUMENT NO. 1994-37773 IN PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

ALL BEING SITUATED IN SHELBY COUNTY, ALABAMA.



**Fidelity National Title Insurance Company
of New York**

EXHIBIT "A" (Phase II)
(page 2 of 3)

The Land referred to in this Commitment is described as follows:

**ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN SECTION 31 ,
TOWNSHIP 18 SOUTH RANGE 1 WEST, SHELBY COUNTY, ALABAMA BEING
MORE PARTICULARLY DESCRIBED AS FOLLOWS;**

**BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER
OF SECTION 31, TOWNSHIP 18 SOUTH, RANGE 1 WEST, SHELBY COUNTY,
ALABAMA BEING SOUTH 89° 31'51" WEST A DISTANCE OF 848.96 FEET FROM
THE NORTHEAST CORNER OF LOT 1, BROOK HIGHLAND PLAZA RESURVEY
(MAP BOOK 18, PAGE 99);**

**THENCE RUN SOUTH 89°31'51" WEST A DISTANCE OF 50.00 FEET TO A POINT.
THENCE RUN SOUTH 00°38'38" EAST A DISTANCE OF 300.00 FEET TO A POINT;
THENCE RUN NORTH 89° 37'51" EAST A DISTANCE OF 20.00 FEET TO A POINT;
THENCE RUN SOUTH 01° 36'53" EAST A DISTANCE OF 295.07 FEET TO A POINT;
THENCE RUN SOUTH 89°31'51" WEST A DISTANCE OF 225.00 FEET TO A POINT;
THENCE RUN SOUTH 00°38'38" EAST A DISTANCE OF 145.41 FEET TO A POINT;
THENCE RUN SOUTH 88°24'44" WEST A DISTANCE OF 150.94 FEET TO A POINT;
THENCE RUN ALONG THE ARC OF A CURVE AN ARC DISTANCE OF 325.14 FEET
(SAID CURVE HAVING A RADIUS OF 910.27 FEET A CHORD BEARING OF NORTH
81°24'44" WEST A CHORD DISTANCE OF 323.42 FEET) TO A POINT;
THENCE RUN NORTH 71°10'44" WEST A DISTANCE OF 90.62 FEET TO A POINT;
THENCE RUN NORTH 64° 18'36" WEST A DISTANCE OF 37.79 FEET TO A POINT;
THENCE RUN NORTH 73°31'00" WEST A DISTANCE OF 110.98 FEET TO A POINT;
THENCE RUN NORTH 56 °07'21" WEST A DISTANCE OF 73.40 FEET TO A POINT;
LOCATED ON THE TO A POINT LOCATED ON THE EASTERLY RIGHT OF WAY
LINE OF BROOK-HIGHLAND PARKWAY (RIGHT OF WAY VARIES);
THENCE RUN ALONG AND COINCIDENT WITH THE EASTERLY RIGHT OF WAY
LINE OF BROOK HIGHLAND PARKWAY NORTH 16°29'00" EAST A DISTANCE OF
206.74 FEET TO A POINT;
THENCE RUN ALONG THE COINCIDENT WITH THE EASTERLY RIGHT OF WAY
LINE FO BROOK HIGHLAND PARKWAY NORTH 73°31'00" WEST A DISTANCE OF
12.00 FEET TO A POINT; THENCE RUN ALONG AND COINCIDENT WITH THE
EASTERLY RIGHT OF WAY LINE OF BROOK HIGHLAND PARKWAY, ALONG**



**Fidelity National Title Insurance Company
of New York**

THE ARC OF A CURVE AN ARC DISTANCE OF 254.68 FEET (SAID CURVE HAVING A RADIUS OF 310.47 FEET, A CHORD BEARING OF NORTH 39°59'00" EAST, AND A CHORD DISTANCE OF 247.60 FEET) TO A POINT; THENCE RUN ALONG AND COINCIDENT WITH THE EASTERLY RIGHT OF WAY LINE OF BROOK HIGHLAND PARKWAY NORTH 26°31'00" WEST A DISTANCE OF 12.00 FEET TO A POINT; THENCE RUN ALONG AND COINCIDENT WITH THE EASTERLY RIGHT OF WAY LINE OF BROOK HIGHLAND PARKWAY NORTH 63°29'00" A DISTANCE OF 518.37 FEET TO A POINT; THENCE RUN ALONG AND COINCIDENT WITH THE EASTERLY RIGHT OF WAY LINE OF BROOK HIGHLAND PARKWAY 29°31'00" WEST A DISTANCE OF 20.00 FEET TO A POINT; THENCE RUN ALONG AND COINCIDENT WITH THE EASTERLY RIGHT OF WAY LINE OF BROOK HIGHLAND PARKWAY, ALONG THE ARC OF A CURVE AN ARC DISTANCE OF 501.28 FEET (SAID CURVE HAVING A RADIUS OF 635.12 FEET, A CHORD BEARING OF NORTH 40°52'21" EAST, A CHORD DISTANCE OF 488.37 FEET) TO A POINT; THENCE LEAVING THE RIGHT OF WAY LINE OF BROOK HIGHLAND PARKWAY RUN SOUTH 89°50'48" EAST, A DISTANCE OF 85.21 FEET TO A POINT; THENCE RUN SOUTH 00°38'38" EAST, A DISTANCE OF 355.06 FEET TO A POINT; SAID POINT BEING THE POINT OF BEGINNING.

SAID TRACT BEING DESIGNATED AS PROPOSED "PHASE II" ON THAT CERTAIN SURVEY FOR A.B. SHOPPING CENTERS PROPERTIES, PREPARED BY CARR & ASSOCIATES ENGINEERS, INC., BEARING THE SEAL AND CERTIFICATION OF BARTON F. CARR, REGISTERED PROFESSIONAL LAND SURVEYOR NO 16685, DATED NOVEMBER 25, 1994, LAST REVISED DECEMBER 21, 1994.