

## **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**"), is made as of the 11<sup>th</sup> day of December, 2006, by and among **GS II BROOK HIGHLAND LLC**, a Delaware limited liability company, having a mailing address at c/o Developers Diversified Realty Corporation 3300, Enterprise Parkway, Beachwood, Ohio 44122, as landlord ("**Landlord**"), Wells Fargo Bank, N.A., not individually but solely as Trustee for the Certificate Holders of GMAC Commercial Mortgage Securities, Inc. Commercial Mortgage Pass-Through Certificates, Series 2003-C2 under that certain Pooling and Servicing Agreement dated as of August 1, 2003 ("**Lender**"), by and through GMAC Commercial Mortgage Corporation, its Master Servicer under said Pooling and Servicing Agreement, and **DICK'S SPORTING GOODS, INC.**, a Delaware corporation, having a mailing address at 300 Industry Drive, Pittsburgh, Pennsylvania 15275 ("**Tenant**"). Landlord, Lender and Tenant are sometimes hereinafter referred to as the "**Party(ies)**".

### **RECITALS:**

Lender is the holder of a mortgage (said mortgage, together with all amendments, substitutions, replacements and renewals thereto from time to time, collectively the "**Mortgage**") covering a parcel of land owned by Landlord together with the improvements erected thereon (said parcel of land and improvements thereon being hereinafter referred to as the "**Shopping Center**" and being more particularly described on **Exhibit A** attached hereto and made a part hereof);

Landlord and Tenant entered into that certain lease dated March 23, 2006 (said lease, together with all amendments, substitutions, replacements and renewals thereto from time to time, collectively the "**Lease**"), pursuant to which Landlord leased to Tenant a portion of the Shopping Center more particularly described in the Lease (the "**Demised Premises**");

Lender received a copy of the Lease and hereby acknowledges such receipt;

Article XV of the Lease provides that the Lease shall become subject and subordinate to a mortgage encumbering the fee interest of Landlord in and to the Shopping Center if and when a non-disturbance agreement is entered into with respect to such mortgage; and

The Parties desire to effect the subordination of the Lease to the Mortgage and to provide for the non-disturbance of Tenant.

### **AGREEMENTS:**

In consideration of the foregoing Recitals, the mutual covenants, agreements and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **SUBORDINATION.** Tenant agrees that, subject to the terms of this Agreement, the Lease is made, and shall continue hereafter, to be subordinate to the lien of the Mortgage; provided, however, no amendment or modification of the Mortgage shall diminish Tenant's rights or increase Tenant's obligations under the Lease or this Agreement. The subordination of the Lease shall be conditioned and contingent upon Section 3 of this Agreement.

2. **NON-DISTURBANCE.** Lender agrees that so long as (i) the term of the Lease has commenced, (ii) Tenant is in possession of the premises demised pursuant to the Lease and (iii) the Lease shall be in full force and effect, and so long as Tenant shall not be in default under the Lease beyond any applicable notice and cure period:

- a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage, the bond, note or other obligation secured thereby, except to the extent required by applicable law;
- b) The possession by Tenant of the Demised Premises or the Shopping Center and Tenant's rights thereto shall not be disturbed, affected or impaired, nor will the Lease or the term thereof, including any extensions or renewals thereof if Tenant elects or has elected to exercise its options to extend the term ("**Lease Term**") be terminated or otherwise affected in any manner, including, without limitation, by:
  - i. any suit, action or proceeding brought upon the Mortgage, bond, note or other obligation secured thereby, or for the foreclosure of the Mortgage or the exercise or enforcement of any rights of Lender under the Mortgage, any other documents or as a matter of law or equity, including, without limitation, bankruptcy law, or by any judicial sale, execution, or other sale or conveyance of the Demised Premises or the Shopping Center by Landlord or its successor in interest or title after foreclosure, or any deed given to Lender, whether in lieu of foreclosure or otherwise, (all of the foregoing collectively, "**Sale or Proceeding**") or
  - ii. **any default under the Mortgage, bond, note or other obligation secured thereby.**
- c) All condemnation awards and insurance proceeds paid or payable with respect to the Demised Premises or any other part of the Shopping Center shall be applied and paid in the manner set forth in the Lease.

3. **ATTORNMEN**T. If Lender shall become the mortgagee in possession, or if Lender or any purchaser or transferee shall succeed to the interests of Landlord under the Lease or become the owner of or acquire the right to possession of the Demised Premises or the Shopping Center by reason of any Sale or Proceeding (either party the "**Successor Owner**"), then in any such event, the Lease shall continue in full force and effect, without the necessity of executing any new lease, as a direct lease between Tenant and the then owner, successor in interest or title of the Demised Premises or the Shopping Center, or Lease, as "**landlord**", upon

all of the same terms and conditions contained in the Lease and this Agreement, and in such event:

- a) Tenant shall be bound to Lender under all of the terms and conditions of the Lease for the remainder of the Lease Term and Tenant hereby agrees to attorn and to recognize Lender as "landlord" under the Lease, such attornment to be effective and self-operative without the execution of any further instrument. Notwithstanding the foregoing, Tenant agrees to execute and deliver to Lender or Successor Owner such further instruments as Lender or Successor Owner may reasonably request to confirm this Agreement;
- b) Notwithstanding anything to the contrary contained herein, Tenant will be under no obligation to pay Rent to Lender until Tenant receives written notice from Lender that Lender has succeeded to the interest of "landlord" under the Lease;
- c) The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the Lease Term, shall be the same as now set forth therein, it being the intention of the Parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein; and
- d) Lender shall be bound to Tenant under all of the terms and conditions of the Lease for the remainder of the Lease Term, which Lender hereby agrees to assume and perform and Tenant shall, from and after the date Lender succeeds to the interest of "landlord" under the Lease, have the same remedies against Lender for the breach of any terms and conditions contained in the Lease that Tenant might have had under the Lease against Landlord if Lender had not succeeded to the interest of "landlord"; provided, however, that Lender shall not be:
  - i. liable for any act or omission of any prior landlord (including Landlord) unless such act or omission continues from and after the date upon which Lender succeeds to the interest of Landlord or during a period of time, which Lender is receiving Rent from Tenant;
  - ii. subject to any defenses which Tenant may have against any prior landlord (including Landlord) unless resulting from any default or breach by such prior landlord or Landlord which continues from and after the date upon which Lender succeeds to the interest of Landlord or during a period of time which Lender is receiving Rent from Tenant;
  - iii. subject to any offsets which Tenant may have against any prior landlord (including Landlord), except to the extent that (i) such offsets are expressly provided for under the Lease and Lender has received notice thereof as provided in Section 6 below, whether or not Lender elected to cure or remedy the act or omission or (ii) such offsets were deducted by Tenant prior to the date which Lender succeeds to the interest of Landlord;

- iv. bound by any Rent which Tenant might have paid for more than one month in advance of its due date under the Lease to any prior landlord (including Landlord), (A) except for credits due Tenant pursuant to any monthly payments paid in advance (such as, for example, CAM, insurance or real estate taxes), or (B) unless such Rent is paid in accordance with the applicable provisions of the Lease; or
- v. bound by any previous amendment or modification of the Lease made without its consent to the extent such amendment or modification materially decreases the rent payable by Tenant or materially increases Landlord's obligations; provided, however, notwithstanding the foregoing, no consent of Lender shall be required for any amendment or modification that relates to an amendment or modification specifically provided for in the Lease (such as an amendment to the Lease confirming the measurement of the Demised Premises); or
  - vi. liable for the return of any security deposit paid by Tenant under the Lease, except to the extent such amounts were actually received by Lender; or
  - vii. liable or bound by any right of first refusal or option to purchase all or any portion of the Property; or
  - viii. liable for construction or completion of any improvements to the Property or as required under the Lease for Tenant's use and occupancy (whenever arising).
- e) Tenant's obligations hereunder shall be effective only so long as Lender is bound to Lender's obligations hereunder.

4. **ASSIGNMENT OF RENTS.** If Lender enforces any assignment of rents clause contained in the Mortgage or in any other instrument securing the loan, Landlord hereby irrevocably authorizes Tenant to make Rent and any other payments due under the Lease to Lender upon demand of and notice to Tenant and without any duty of inquiry and Tenant shall be credited and discharged under the Lease for any such payments. Lender and Landlord will indemnify and hold Tenant harmless from any claims arising out of Tenant's paying Rent due under the Lease, to Lender or by complying with the assignment of rents clause or similar right.

5. **DEFAULT NOTICE TO LENDER.** Tenant will notify Lender simultaneously with notice to Landlord of any default by Landlord, which would give Tenant the right to terminate the Lease or to abate or reduce Rent payable thereunder. However, failure to give notice to Lender shall in no way whatsoever alter or affect Tenant's rights and remedies for any defaults by Landlord and shall not subject Tenant to any claims by Lender. Tenant agrees that Lender shall have the right (but not the obligation) to cure Landlord's default. Tenant further agrees that if Lender elects to cure a Landlord default and timely cures such default, Tenant shall accept such cure by Lender as though that of Landlord under the Lease and will not exercise any right or remedy for that particular Landlord default under the lease. Notwithstanding anything

herein to the contrary, Lender shall have no greater period of time than that given to Landlord under the Lease to cure such default.

6. **TENANT'S PROPERTY.** Neither the Mortgage nor any other security instrument executed in connection therewith shall encumber or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time owned by Tenant or its lenders, subtenants or licensees at the Demised Premises or the Shopping Center regardless of the manner or mode of attachment thereof.

7. **NOTICES.** Any notices of communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, or by Federal Express, Airborne or other overnight courier service, addressed as follows, or such other address or persons as any Party may designate by notice in the manner set forth herein:

- a. if to Lender, at the address of Lender as hereinabove set forth with duplicate copies to  
\_\_\_\_\_;
- b. if to Landlord, at the address of Landlord as hereinabove set forth with duplicate copies to c/o Developers Diversified Real Estate Corporation, 3300 Enterprise Parkway, Beachwood, Ohio 44122, Attention: General Counsel,
- c. if to Tenant, at the address of Tenant as hereinabove set forth, with a duplicate copy to Legal Department, Dick's Sporting Goods, Inc., 300 Industry Drive, RIDC Park West, Pittsburgh, PA 15275.

All notices given in accordance with the provisions of this Section shall be effective upon receipt (or refusal of receipt) at the address of the addressee.

8. **BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding upon and enforceable by the Parties hereto, any sublessees, licensees and any purchaser of the Demised Premises and/or of the Shopping Center and any of their respective heirs, executors, personal representatives, successors and assigns. The term "**Lender**" as used herein shall be deemed to include Lender, any holders of the Mortgage, including but not limited to any person or entity who shall succeed to Landlord's or Lender's title or interest by any Sale or Proceeding, and any of their respective heirs, executors, representatives, successors and assigns.

9. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the Parties superseding any prior agreements and representations of the Parties with respect to the subject matter herein, and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the Party against whom enforcement of such modification, change, waiver or cancellation is sought.

10. **EFFECTIVE DATE.** The effective date of this Agreement will be the date of execution by the last Party to sign this Agreement provided an executed copy of this Agreement is thereafter delivered to all other Parties to this Agreement.

11. **RECORDING.** This Agreement shall be recorded in the public records of the county(ies) in which the Demised Premises and the Shopping Center are located. This Agreement, the Lease and all the terms, covenants, conditions and restrictions herein contained are intended to run and shall run with and bind all lands, the Demised Premises and the Shopping Center (including the improvements thereon) affected hereby.

12. **SEVERABILITY.** In the event any term or provision of this Agreement shall be declared invalid, void or unenforceable it shall not affect the validity of any other term and provision hereof, all which shall remain valid, binding and enforceable.

13. **COUNTERPARTS.** This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

14. **INTERPRETATION.** Captions and headings of sections shall not be deemed to affect the meaning of any provisions of this Agreement. Capitalized terms used herein and not defined herein shall have the meaning set forth in the Lease.

15. **LIMITATION OF LENDER'S LIABILITY.** Notwithstanding anything to the contrary in this Agreement or the Lease, Lender's obligations and liability under the Lease shall never extend beyond Lender's interest, if any, in the Shopping Center from time to time, including insurance and condemnation proceeds, security deposits, escrows, Lender's interest in the Lease, and the proceeds from any sale, lease or other disposition of the Shopping Center (or any portion thereof ) by Lender (collectively, the "**Successor Landlord's Interests**"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Lender under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Lender with respect to the Lease or the relationship between Lender and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Lender.

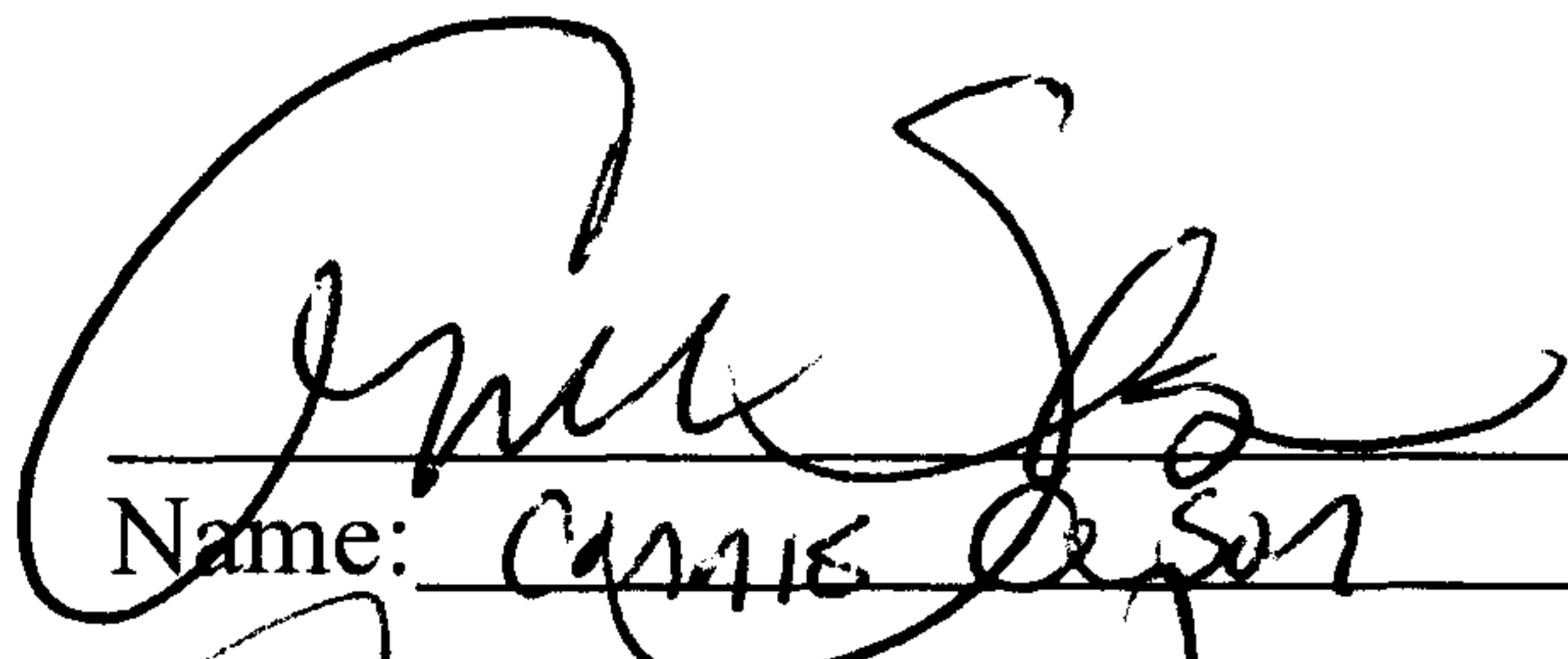
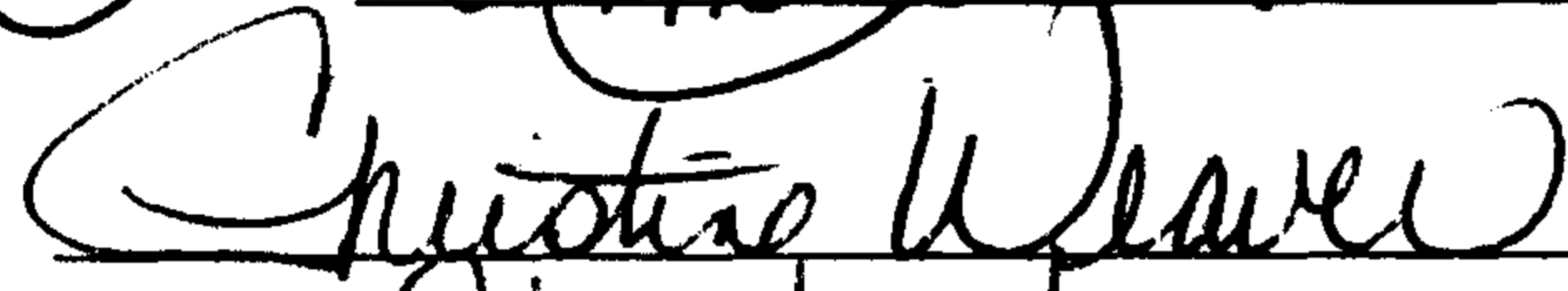
17. **WAIVER OF JURY TRIAL.** THE PARTIES, AS AN INDUCEMENT FOR EACH OTHER TO PROVIDE THIS AGREEMENT AND THE ACCOMODATIONS TO EACH OTHER OFFERED HEREBY, HEREBY WAIVE THEIR RIGHTS, TO THE FULL EXTENT PERMITTED BY LAW, AND AGREE NOT TO ELECT A TRIAL BY JURY WITH REGARD TO ANY ISSUE ARISING OUT OF THIS AGREEMENT.

**[SIGNATURES ON FOLLOWING PAGE]**

  
20061221000621890 6/12 \$44.00  
Shelby Cnty Judge of Probate, AL  
12/21/2006 12:56:18PM FILED/CERT

IN WITNESS WHEREOF, the Parties have executed this Subordination, Non-Disturbance and Attornment Agreement as of the date set forth above.

WITNESSES:

  
Name: CARRIE OLSON  
  
Name: Christine Weaver

LANDLORD:

\* SEE ATTACHED PAGES

, a

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESSES:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

LENDER:

Wells Fargo Bank, N.A. Trustee

By: Capmark Finance Inc., its Master Servicer

By: 

Name: \_\_\_\_\_

**Christie M. Robbins**

Title: \_\_\_\_\_

**Vice President**

WITNESSES:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

TENANT:

**DICK'S SPORTING GOODS, INC.**

a Delaware corporation


By: 

Douglas W. Walrod

Senior Vice President

Real Estate and Development

*Ang*

  
20061221000621890 7/12 \$44.00  
Shelby Cnty Judge of Probate, AL  
12/21/2006 12:56:18PM FILED/CERT


LANDLORD:

**\*GS II BROOK HIGHLAND LLC**

a Delaware limited liability company

By Developers Diversified of Alabama, Inc.

Its Managing Member

By:   
Robin Walker-Gibbons, Executive Vice President



20061221000621890 8/12 \$44.00  
Shelby Cnty Judge of Probate, AL  
12/21/2006 12:56:18PM FILED/CERT

[Revise/Conform Notary Blocks to Reflect State Specific Requirements]

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

On this 1<sup>st</sup> day of December, 2006, before me personally came ROBIN WALKER GIBSON, to me personally known, who, being by me duly sworn, did depose and say that (s)he resides in \_\_\_\_\_, that (s)he is EXECUTIVE VP of GS II BROOK HIGHLAND LLC, A DELAWARE LLC and that executed the within instrument, and (s)he acknowledged to me that having been duly authorized to do so, (s)he executed the same on behalf of and in the name of said



Witness my hand and Notarial Seal this 1<sup>st</sup> day of December, 2006.

Notary Public, State of Ohio  
My Commission Expires  
December 5, 2009

Notary Public

Camie Carson  
(Printed Name)

My Commission Expires: 12/5/09  
My County of Residence: CUYAHOGA

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF MONTGOMERY )

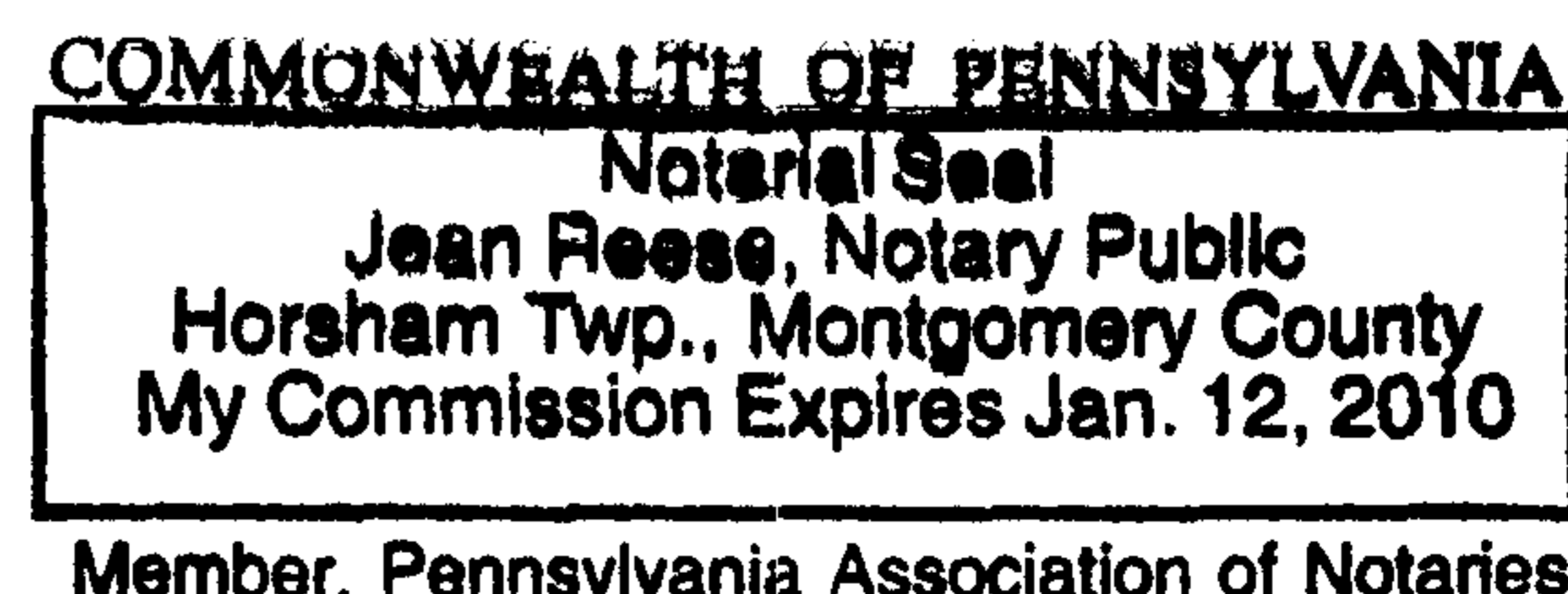
On this 27<sup>th</sup> day of November, 2006, before me personally came CHRISTIE M. ROBBINS, to me personally known, who, being by me duly sworn, did depose and say that (s)he resides in \_\_\_\_\_, that (s)he is VICE PRESIDENT of CAPMARK FINANCE the CORPORATION described in and that executed the within instrument, and (s)he acknowledged to me that having been duly authorized to do so, (s)he executed the same on behalf of and in the name of said CORPORATION.

Witness my hand and Notarial Seal this 27<sup>th</sup> day of November, 2006.

Notary Public

JEAN REESE  
(Printed Name)

My Commission Expires: 1-12-2010  
My County of Residence: \_\_\_\_\_



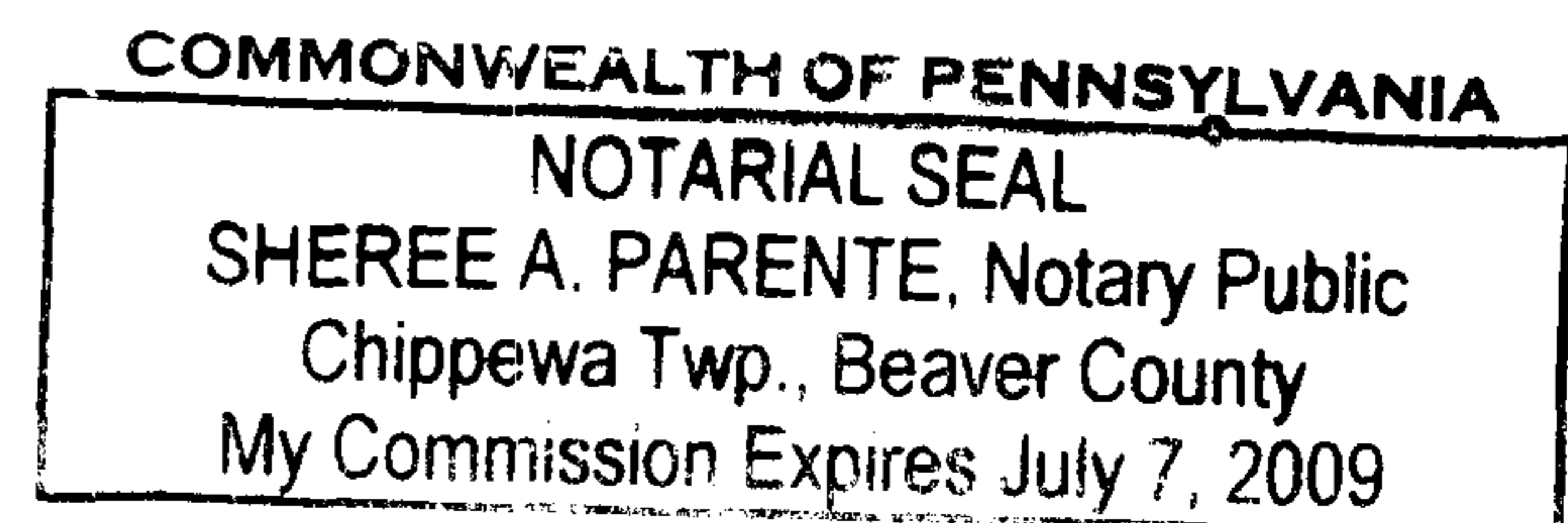
COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF ALLEGHENY )

On this 11<sup>th</sup> day of December, 2006, before me personally came Douglas W. Walrod, Senior Vice President, Real Estate and Development, to me personally known, who, being by me duly sworn, did depose and say that (s)he resides in Pittsburgh, Pennsylvania that (s)he is the Senior Vice President, Real Estate and Development of Dick's Sporting Goods, Inc., the corporation described in and that executed the within instrument, and (s)he acknowledged to me that having been duly authorized to do so, (s)he executed the same on behalf of and in the name of said corporation.

Witness my hand and Notarial Seal this 11<sup>th</sup> day of December, 2006

Sherree A Parente  
Notary Public  
Sherree A Parente  
(Printed Name)

My Commission Expires: July 7, 2009  
My County of Residence: Beaver

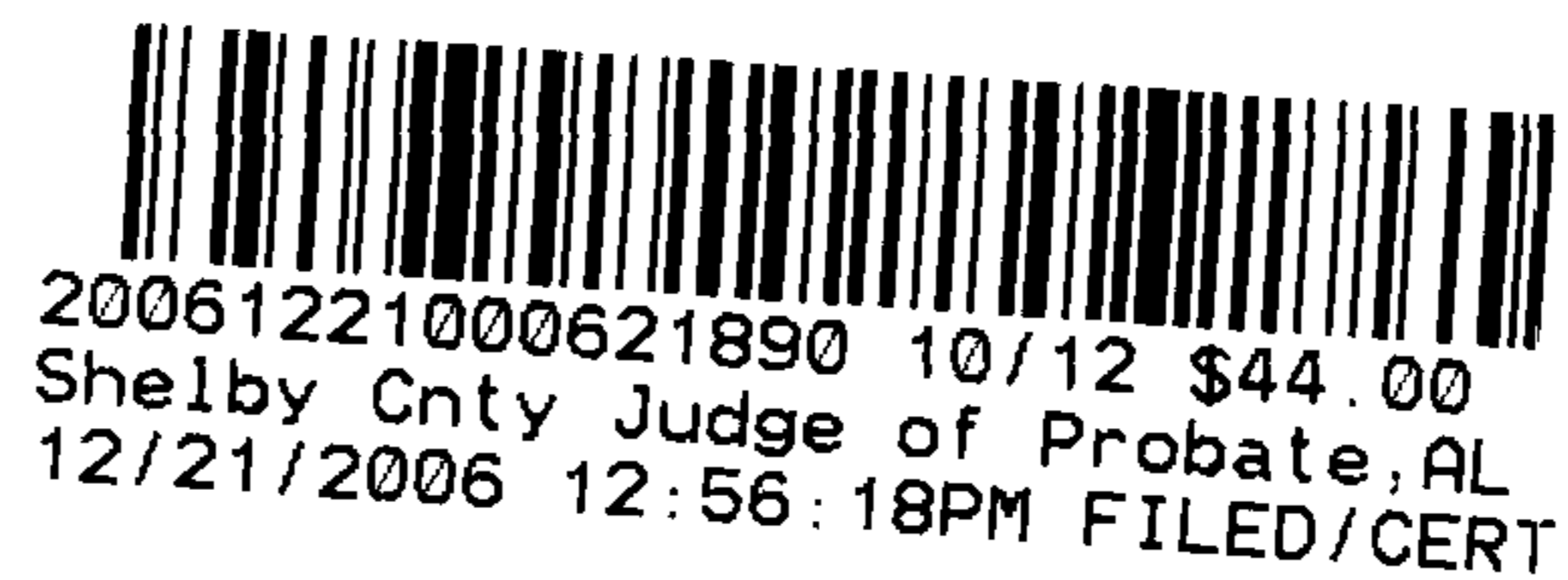


This instrument prepared by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

After recording, return to:

Attn: Legal Department  
Dick's Sporting Goods, Inc.  
300 Industry Drive  
RIDC Park West  
Pittsburgh, PA 15275



# EXHIBIT A-1



20061221000621890 11/12 \$44.00  
Shelby Cnty Judge of Probate, AL  
12/21/2006 12:56:18PM FILED/CERT

BROOK HIGHLAND  
Phase I less Phase II

Land lying and being in Shelby County, Alabama, and being more particularly described as that certain tract of land containing 65.88 acres, more or less, and being designated as Lots 1, 1A, 2 and 2A on that certain map entitled "Brook Highland Plaza Resurvey" recorded in Map Book 18, Page 99, in the Probate Office for Shelby County, Alabama.

## LESS AND EXCEPT:


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  $89^{\circ} 31' 51''$  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  $89^{\circ} 31' 51''$  west a distance of 50.00 feet to a point; thence run south  $00^{\circ} 38' 38''$  east a distance of 300.00 feet to a point; thence run north  $89^{\circ} 37' 51''$  east a distance of 20.00 feet to a point; thence run south  $01^{\circ} 36' 53''$  east a distance of 295.07 feet to a point; thence run south  $89^{\circ} 31' 51''$  west a distance of 225.00 feet to a point; thence run south  $00^{\circ} 38' 38''$  east a distance of 145.41 feet to a point; thence run south  $88^{\circ} 21' 20''$  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  $81^{\circ} 24' 44''$  west a chord distance of 323.42 feet) to a point; thence run north  $71^{\circ} 10' 44''$  west a distance of 90.62 feet to a point; thence run north  $64^{\circ} 18' 36''$  west a distance of 37.79 feet to a point; thence run north  $73^{\circ} 31' 00''$  west a distance of 110.98 feet to a point; thence run north  $56^{\circ} 07' 21''$  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  $16^{\circ} 29' 00''$  east a distance of 206.74 feet to a point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north  $73^{\circ} 31' 00''$  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 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  $39^{\circ} 59' 00''$  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  $26^{\circ} 31' 00''$  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  $63^{\circ} 29' 00''$  a distance of 518.37 feet to point; thence run along and coincident with the easterly right-of-way line of Brook Highland Parkway north  $26^{\circ} 31' 00''$  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  $40^{\circ} 52' 21''$  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 26, 1994.

12/29/94 07:50 PM

  
20061221000621890 12/12 \$44.00  
Shelby Cnty Judge of Probate, AL  
12/21/2006 12:56:18PM FILED/CERT