

This Instrument was prepared by  
Catherine B. Ibold, Attorney-at-Law  
whose address is P. O. Box B  
Jacksonville, Florida 32203

(Reserved for Clerk)

**SUBORDINATION, NONDISTURBANCE,  
AND ATTORNMENT AGREEMENT**

WINN-DIXIE STORE #514  
Valleydale Marketplace  
Birmingham, Alabama

**THIS SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT** (this "Agreement"), made this July \_\_\_\_, 2007, between **REGIONS BANK** whose address is 1900 Fifth Avenue North, 15<sup>th</sup> Floor, Birmingham, Alabama 35203 (together with its successors, assigns, and transferees "Lender") and **WINN-DIXIE MONTGOMERY LEASING, LLC.**, a Florida limited liability company ("WD") successor-in-interest to Winn-Dixie Montgomery, Inc., whose address is 5050 Edgewood Court, Jacksonville, Florida 32254, Attention: General Counsel, (together with its successors and assigns, "Winn-Dixie");

**RECITALS:**

1. Lender has made or is about to make a loan to **MIDLAND VALLEYDALE, LLC**, an Ohio limited liability company ("Purchaser"), secured by a mortgage, deed of trust, security deed, or other financing instrument recorded or to be recorded in the Official Records of Shelby County, Alabama (together with any modifications, consolidations, extensions, replacements, or renewals thereof, the "Mortgage"), encumbering the real estate known as Valleydale Marketplace Shopping Center located at the southwestern corner of the intersection of Valleydale Road and Caldwell Road, Shelby County, Alabama, and more particularly described in the Mortgage and on Exhibit "A" attached hereto and incorporated herein (the "Shopping Center"); and

2. By Lease dated January 13, 1995 (as amended by (a) Short Form Lease dated January 13, 1995, recorded as Instrument # 1995-10844 in the Office of the Judge of Probate for Shelby County, Alabama; (b) Amendment to Lease dated April 2, 1998; (c) Supplemental Lease Agreement dated August 21, 1998; (d) Letter Agreement dated August 29, 2006; and (e) Notice of Transfer of Tenant's Interest in Leases dated November 21, 2006, and as otherwise to be amended from time to time, the "Lease"), Landlord did lease unto Winn-Dixie, as tenant, those certain premises which constitute a portion of the Shopping Center and are more particularly described in the Lease (the "Premises"); and

3. Lender and Winn-Dixie desire that the Lease shall not terminate but rather shall remain in full force and effect in accordance with its terms if the Mortgage is foreclosed or any transfer of the Premises is made in lieu thereof.

**NOW THEREFORE**, for valuable consideration the receipt and sufficiency of which are hereby acknowledged, Lender and Winn-Dixie agree as follows:

1. Provided Winn-Dixie is not in material default under the terms of the Lease, then in the course of or following any exercise of any remedy under the Mortgage, any foreclosure sale of the Shopping Center or the Premises, or any transfer of the Shopping Center or the Premises thereafter or in lieu of foreclosure (together with any similar events, a "Foreclosure Event"):

(a) The right of possession of Winn-Dixie to the Premises and Winn-Dixie's rights arising out of the Lease shall not be affected or disturbed by Lender.

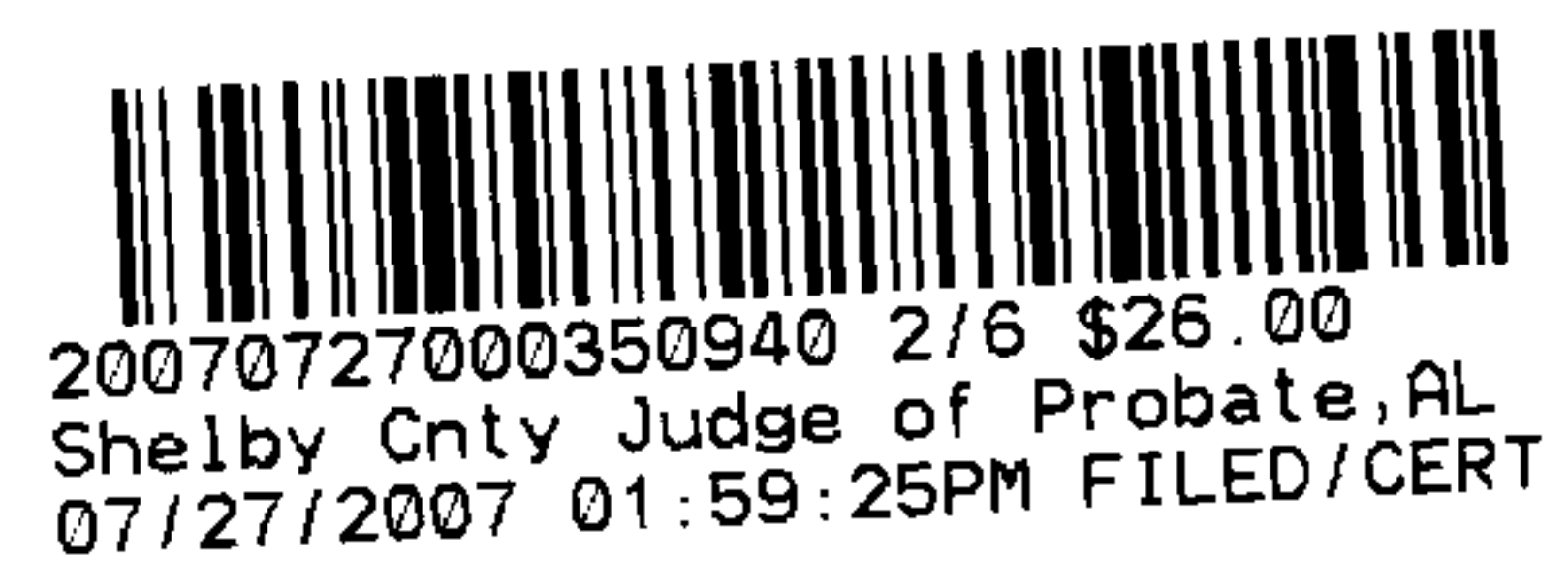
(b) Winn-Dixie shall not be named as a party defendant unless required by law.

(c) The Lease shall not be terminated or affected by any Foreclosure Event.

2. Following a Foreclosure Event, Winn-Dixie shall attorn to Lender as its new landlord and the Lease shall continue in full force and effect as a direct lease between Winn-Dixie and Lender. Notwithstanding the foregoing, Lender shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), unless such action was taken at the direction of or with the approval of Lender; or

(b) subject to any offsets or defenses which Winn-Dixie might have against any prior landlord (including Landlord) except those which arose out of such landlord's default under the Lease and accrued after





Winn-Dixie has notified Lender and given Lender an opportunity to cure as provided in the Lease; or

(c) bound by any rent Winn-Dixie paid for more than the then current month to any prior landlord (including Landlord); or

(d) bound by any modification of the Lease made after the date hereof without Lender's consent.

3. Following a Foreclosure Event, Lender promptly shall give notice thereof to Winn-Dixie, stating its current address and providing evidence of Lender's title to the Premises.


4. The Lease is subject and subordinate to the lien of the Mortgage and to all advances made or to be made thereunder as though the Mortgage had been executed and recorded prior in point of time to the execution of the Lease. Notwithstanding the foregoing, subordination of the Lease to the Mortgage should not be construed to constitute Winn-Dixie's consent or agreement to any term, condition, or provision of the Mortgage or any related loan document which is inconsistent with or purports to modify, alter, or amend the Lease.

5. The foregoing provisions shall be self-operative and effective without the execution of any further instrument on the part of either party hereto. However, Winn-Dixie agrees to execute and deliver to Lender such other instrument as Lender shall reasonably request to evidence such provisions.

6. Winn-Dixie agrees it will not, without the prior written consent of Lender (i) modify the Lease or any extensions or renewals thereof in such a way as to reduce rent, accelerate rent payment, shorten the original term, or change any renewal option; (ii) terminate the Lease, except as provided by its terms; (iii) tender or accept a surrender of the Lease or make a prepayment in excess of one (1) month of any rent thereunder; or (iv) subordinate or knowingly permit subordination of the Lease to any lien subordinate to the Mortgage, except for those liens that are superior to the Mortgage by law, if any. Any such purported action without such consent shall be void as against Lender.

7. Winn-Dixie will give notices to Lender in accordance with paragraph 24 of the Lease at the address set forth in the first paragraph of this Agreement or at such other address as Lender may advise from time to time. Lender shall be entitled to the cure periods provided in paragraph 24 under the Lease.

8. If Lender, or its assignee, obtains Landlord's interest in the Shopping Center or enforces its right to collect rent under this Lease, Lender agrees to promptly provide or cause to be provided to Tenant (a) a copy of a current marked title commitment or title policy or certificate of title showing lender or new ownership entity as the owner thereof, (b)

  
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a W-9 form or its equivalent setting forth the name and tax identification number of the party collecting rent, signed by an authorized person, (c) a letter of instruction on the letterhead of Landlord (or new landlord in the case of a sale or other transfer) stating (i) the name, address, phone number, and contact person of the entity collecting rent under the Lease, and (ii) the names, addresses, and telecopy numbers of all persons to be provided notices from Tenant under the Lease, (collectively, the "Transfer Requirements") and/or (d) such other information as Tenant may reasonably require. Following receipt of the foregoing, as of the date of any such transfer, the transferring landlord shall be released from any obligations accruing after the date of the transfer except as otherwise expressly provided in the Lease. The Transfer Requirements must be met to ensure that Tenant is paying rent to the proper, entitled party and Tenant shall have the right to temporarily withhold rent in trust pending receipt of Transfer Requirements.

9. If Lender notifies Winn-Dixie in writing that it should pay the rent and other payments due from Winn-Dixie under the Lease to Lender, Winn-Dixie shall thereafter pay such payments as and when they become due and payable to Lender or as Lender directs without further investigation or any liability to Landlord.

IN WITNESS WHEREOF, Lender and Winn-Dixie have executed this Agreement the day and year first above written.

Witnesses:

WINN-DIXIE MONTGOMERY LEASING, LLC.,  
a Florida limited liability company

Margaret P. Goddard

Print name: Margaret P. Goddard By: [Signature]

Susan Macaddino

Print name: SUSAN MACADDINO

Its: President

Date: 7/23/07

REGIONS BANK

Gabe T. Arvors II

Print name: GABRIEL T. ARVORS II

[Signature]

Print name: Devin Jackson

By: William G. Lippert

Its: VP

Date: 7/25/07

LEGAL APPROVED

ATTY: [Signature]

DATE: 7/25/07



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STATE OF FLORIDA                   )  
  )  
COUNTY OF DUVAL                )

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Philip Pichulo, whose name as President of **WINN-DIXIE STORES LEASING, LLC**, a Florida limited liability company, and who is known to me, acknowledged before me on this date that, being informed of the contents of the conveyance, he/she executed the same voluntarily and with full authority for and as the act of said President, on the day same bears date.

GIVEN under my hand and seal on this the 23<sup>rd</sup> day of July, 2007

Rebecca L. Sawyer  
Notary Public  
My Commission Expires:

[SEAL]



REBECCA L. SAWYER  
Notary Public, State of Florida  
My Comm. Expires June 28, 2010  
Comm. No: BB 58955n

STATE OF Kentucky                   )  
  )  
COUNTY OF Jefferson            )

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that William D. Dutton whose name as Vice President of **REGIONS BANK**, an Alabama Banking Corp and who is known to me, acknowledged before me on this date that, being informed of the contents of the conveyance, he/she executed the same voluntarily and with full authority for and as the act of said Vice President, on the day same bears date. CORPORATION

GIVEN under my hand and seal on this the 25 day of July, 2007.

Bonera J. Dutton  
Notary Public  
My Commission Expires:  
7-13-2011

[SEAL]

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## EXHIBIT A

### OVERALL DESCRIPTION

A parcel of land situated in the southeast one-quarter of the northwest one-quarter and the southwest one-quarter of the northwest one-quarter of Section 15, Township 19 South, Range 2 West, more particularly described as follows:

Commence at the southwest corner of the north one-half of the southeast one-quarter of the northwest one-quarter of said Section and run south 89 degrees 10 minutes 56 seconds east along the north line of the north one-half of southeast one-quarter of the northwest one-quarter of said section for a distance of 345.00 feet to the point of beginning of herein described property; thence run south 8 degrees 37 minutes 32 seconds west for a distance of 100.93 feet; thence run north 89 degrees 10 minutes 56 seconds west for a distance of 91.29 feet; thence run south 85 degrees 22 minutes 23 seconds west for a distance of 105.48 feet; thence run south 86 degrees 46 minutes 24 seconds west for a distance of 99.25 feet; thence run north 85 degrees 51 minutes 01 seconds west for a distance of 34.57 feet; thence run north 0 degrees 04 minutes 46 seconds east for a distance of 15.00 feet; thence run north 89 degrees 10 minutes 56 seconds west for a distance of 120.11 feet; thence run north 44 degrees 19 minutes 31 seconds west for a distance of 74.56 feet to the point of commencement of a curve to the left, said curve having a central angle of 22 degrees 43 minutes 08 seconds and, a chord bearing of north 12 degrees 10 minutes 38 seconds east and a radius of 231.50 feet; thence travel in a northerly direction along the arc of said curve for a distance of 91.79 feet; thence run north 0 degrees 49 minutes 04 seconds east for a distance of 40.00 feet to the point of commencement of a curve to the left, said curve having a central angle of 41 degrees 40 minutes 00 seconds, and a chord bearing of north 20 degrees 00 minutes 56 seconds west and a radius of 254.91 feet; thence run in a northwesterly direction along the arc of said curve for a distance of 185.38 feet; thence run north 40 degrees 50 minutes 56 seconds west for a distance of 113.48 feet to a point on the southerly right-of-way line of Valleydale Road, said point also being the point of commencement of a curve to the left having a central angle of 3 degrees 19 minutes 18 seconds, and a chord bearing of north 52 degrees 29 minutes 59 seconds east and a radius of 2913.72 feet; thence run in a northeasterly direction along the arc of said curve for a distance of 168.92 feet; thence run north 50 degrees 50 minutes 23 seconds east for a distance of 199.55 feet; thence run south 0 degrees 00 minutes 32 seconds east for a distance of 92.74 feet; thence run south 32 degrees 50 minutes 13 seconds east for a distance of 200.63 feet; thence run north 53 degrees 20 minutes 43 seconds east for a distance of 130.22 feet to a point on the southwest right-of-way line of Caldwell Mill Road; thence run south 36 degrees 39 minutes 17 seconds east for a distance of 672.21 feet; thence run north 89 degrees 10 minutes 56 seconds west for a distance of 359.33 feet to the point of beginning. Said parcel contains 9.1584 acres.



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