


This Instrument was prepared by and
should be returned to:
Hava V. Binkley, Attorney-at-Law
Legal Department
Winn-Dixie Stores, Inc.
P. O. Box B
Jacksonville, Florida 32203


20120910000343110 1/7 \$30.00
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(Reserved for Clerk)

LOAN NO.: _____

**SUBORDINATION, NONDISTURBANCE,
AND ATTORNMENT AGREEMENT**

Winn-Dixie Store #0514
2653 Valleydale Road, Birmingham, Alabama

THIS SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT
(this "Agreement") is made this 26 day of June, 2012, between:

MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS, LLC, a New York limited liability company, whose address is 1585 Broadway, New York, New York 10036 (together with its successors, assigns, and transferees "Lender"); and

WINN-DIXIE MONTGOMERY LEASING, LLC, a Florida limited liability company, whose address is 5050 Edgewood Court, Jacksonville, Florida 32254 Attention: Legal Department (together with its successors and assigns, "Winn-Dixie").

RECITALS:

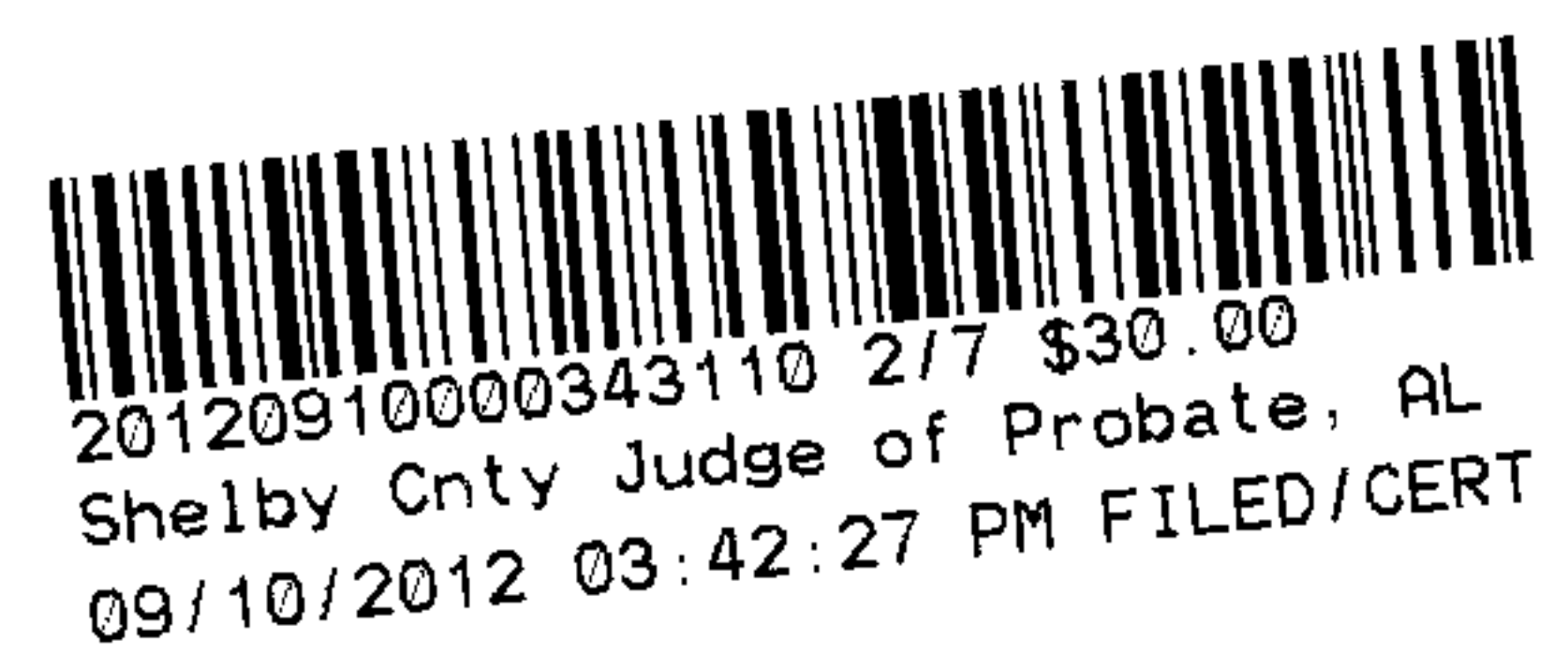
- A. Lender has made or is about to make a loan to Midland Valleydale, LLC, an Ohio limited liability company, ("Landlord"), secured by a mortgage, deed of trust, security deed, or other financing instrument recorded or to be recorded in the public records of Shelby County, Alabama, under Official Records Book _____, page _____ (together with any modifications, consolidations, extensions, replacements, or renewals thereof, the "Mortgage"), encumbering Landlord's interest in that certain real property known as Valleydale Marketplace located at 2653 Valleydale Road, Birmingham, Alabama, as
* instrument #20120705000237250

more particularly described on Exhibit "A" attached hereto and incorporated herein (the "Shopping Center").

- B. By Lease dated January 13, 1995, between Landlord, as landlord, and Winn-Dixie, as tenant, as evidenced by Short Form Lease dated January 13, 1985, as Instrument #1995-10844 in the Office of the Judge of Probate, Shelby County, Alabama (as amended from time to time, the "Lease"), Winn-Dixie possesses a leasehold interest in those certain premises which constitute a portion of the Shopping Center and are more particularly described in the Lease (the "Premises").
- C. In the event that Lender exercises its remedies under the Mortgage, including, without limitation, appointment of a receiver, foreclosure of the Mortgage or transfer of the Premises in lieu of foreclosure, it is the intent of Lender and Winn-Dixie that the Lease, and Winn-Dixie's possession of the Premises thereunder, shall not terminate, but shall remain in full force and effect in accordance with the terms thereof and hereof.

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

1. Nondisturbance. 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"), and provided that Winn-Dixie is not in material default under the terms of the Lease:
 - (a) Winn-Dixie's right of possession in the Premises and 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; and
 - (c) the Lease shall not be terminated or affected by any Foreclosure Event.
2. Attornment. 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, provided that contemporaneously therewith Lender shall promptly give notice thereof to Winn-Dixie, stating its current address and providing evidence of Lender's title to or interest in the Premises.
3. Subordination. Winn-Dixie acknowledges and confirms that 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; provided, however, that subordination of the Lease to the Mortgage should not be construed to constitute Tenant's consent or agreement to any



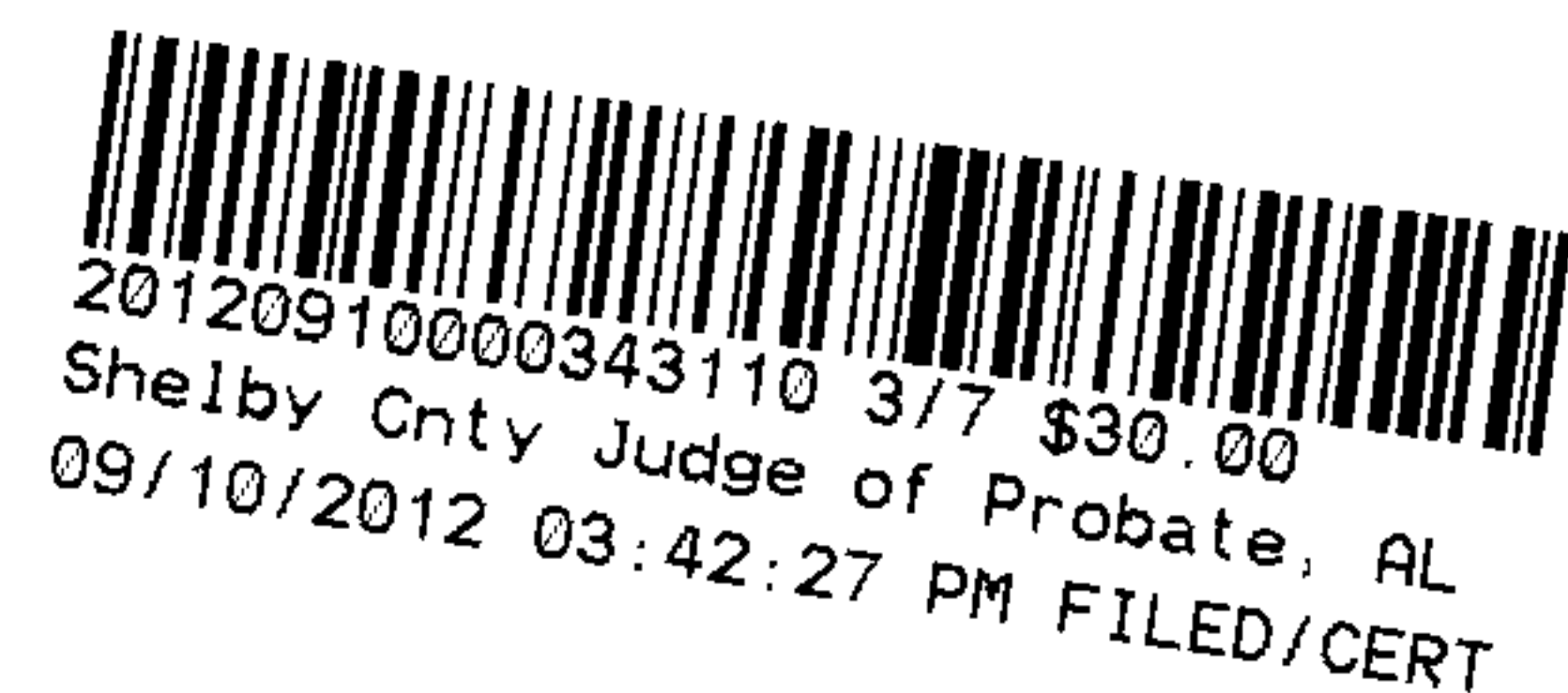
term, condition, or provision of the Mortgage or any related loan document which is inconsistent with or purports to modify, alter, or amend the Lease.

4. Self-Operative Effect. 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.
5. Lease Modifications. Winn-Dixie agrees that 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 or shorten the original term; (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. Lender shall not be: (i) liable for any act or omissions of any prior landlord (including Landlord) unless such action was taken at the direction of or with the approval of Lender or was notified of such action, or (ii) 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.
6. Notices under Lease. Winn-Dixie agrees that, contemporaneously with any notice given by Winn-Dixie to Landlord thereunder, it shall deliver a copy of such notice to Lender in accordance with 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. In the event of a default by Landlord under the Lease as to which such notice by Winn-Dixie is given, Lender shall be entitled to the cure periods provided in the Lease, running contemporaneously with Landlord's cure periods thereunder. All notices required or permitted under this Agreement shall be in writing and shall be delivered by hand, or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Lender:
Morgan Stanley Mortgage Capital Holdings, LLC
1585 Broadway
New York, New York 10036

As to Winn-Dixie

Winn-Dixie Stores, Inc.
Attn: Real Estate Legal Department



5050 Edgewood Court
Jacksonville, Florida 32254

7. Transfer Requirements. Following a Foreclosure Event, if Lender, or its assignee, obtains Landlord's interest in the Shopping Center or the Premises or enforces its right to collect rent under this Lease, then Lender agrees promptly to provide or cause to be provided to Tenant (a) either a copy of a certificate of title (beyond all permissible redemption periods); or a copy of a deed in lieu of foreclosure; or a copy of a current marked title commitment or title policy showing any new landlord as the owner thereof, (b) 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.
8. Tax Data. Following a Foreclosure Event, if Lender enforces any right under the Mortgage to collect rent under the Lease, without obtaining title to the Premises, then Lender shall provide to Winn-Dixie a W-9 form or its equivalent setting forth its proper name and tax identification number, signed by an authorized person, and/or such other information as Winn-Dixie may reasonably require (collectively, the "Tax Data"). The Tax Data must be obtained by Winn-Dixie to ensure that Winn-Dixie is paying rent to the proper entitled party and Winn-Dixie shall have the right to temporarily withhold rent in trust pending receipt of the Tax Data.
9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
10. Limitation of Liability. In no event shall Lender have any personal liability for the obligations of Landlord under the Lease and Winn-Dixie shall look only to the estate and interest of Lender in the Property for satisfaction of any obligations or Tenant remedies under the Lease.
11. Miscellaneous. This Agreement may be executed in several counterparts, each of which shall be deemed an original instrument and all of which shall constitute a single agreement.

10. THIS INSTRUMENT **MUST** BE RECORDED IN CONNECTION WITH THE RECORDED MORTGAGE LOAN DOCUMENTS IN THE COUNTY OF SHELBY, STATE OF ALABAMA AND RETURNED TO TENANT'S COUNSEL AT THE FOREGOING ADDRESS.

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

WINN-DIXIE:

LENDER:

WINN-DIXIE MONTGOMERY LEASING, LLC , a Florida limited liability company By: <u>[Signature]</u> Name: <u>Brian P. Carney</u> Its: <u>Vice President</u> Date: <u>6-26-12</u>	MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS, LLC , a New York limited liability company By: <u>[Signature]</u> Name: _____ Its: _____ Date: _____
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LEGAL APPROVED
ATTY: [Signature]
DATE: 6/26/12


**ACKNOWLEDGMENT
(WINN-DIXIE)**

**STATE OF FLORIDA
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me this June 26, 2012, by Brian P. Carney, as Vice President of Winn-Dixie Montgomery Leasing, LLC, a Florida limited liability company on behalf of the limited liability company, who is personally known to me.

[Signature]
NOTARY PUBLIC:

My commission expires June 28, 2014
Notary Public, State of Florida
My Comm. Expires June 28, 2014
NOTARY SEAL Commission No. DD 984109


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**ACKNOWLEDGMENT
(LENDER)**

STATE OF NEW YORK
COUNTY OF NEW YORK

The foregoing instrument was acknowledged before me this 28th day of AUGUST, 2012, by CYNTHIA ECKES, AUTHORIZED SIGNATORY of **MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS, LLC**, a New York limited liability company, on behalf of the company, [PLEASE CHECK ONE] ☒ who is personally known to me or ☐ who has produced _____ as identification.

Leslie Russo
NOTARY PUBLIC: LESLIE RUSSO

My commission expires: 12-6-2014
Notary ID No.: 01RU6232298
NOTARY SEAL


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LESLIE RUSSO
Notary Public, State of New York
No. 01RU6232298
Qualified in New York County
Commission Expires Dec. 6, 2014

Exhibit "A"

Legal Description

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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