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SUBAGREM 1/10

This Instrument was prepared by and
should be returned to:
James M. Craig, II, Attorney-at-Law
Legal Department
BI-LO Holding, LLC
5050 Edgewood Court
Jacksonville, Florida 32254

(Reserved for Clerk)

LOAN NO.: 1012198

**SUBORDINATION, NONDISTURBANCE,
AND ATTORNMENT AGREEMENT**

**Winn-Dixie Store #445
Inverness Corners Shopping Center, Hoover, Alabama**

THIS SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT
(this "Agreement") is made this 12th day of August, 2014, between:

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association,
whose address is 3100 West End Avenue, 9th Floor, Suite 900, Nashville, Tennessee 37203-1320,
together with its successors, assigns, and transferees (**the "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 **INV CORNERS LLC**, a Delaware limited liability company, successor by assignment to I & G Inverness Retail, LLC (**the "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 Instrument No. 20140820000251320, together with any modifications, consolidations, extensions, replacements, or renewals thereof (**the "Mortgage"**), encumbering Landlord's interest in that certain real property known as Inverness Corners Shopping Center located at 500 Inverness Corner in Hoover, Alabama, as more particularly described on **Exhibit "A"** attached hereto and incorporated herein (**the "Shopping Center"**).
- B. By Lease dated February 14, 2013, between I & G Inverness Retail, LLC, a Delaware limited liability company, as landlord, and Winn-Dixie, as tenant, as evidenced by Short Form Lease dated February 14, 2013, and recorded in the Office of the Judge of Probate of Shelby County, Alabama, under Instrument No. 20130319000112840, 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. **Non-disturbance.** 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 (**each 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 Winn-Dixie's receipt of notice of a Foreclosure Event, Winn-Dixie shall attorn to and recognize 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 the lien of 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 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.
4. **Lender Not Bound , Etc.** Winn-Dixie agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:
 - a. **Liable for Landlord Acts, Omissions.** Liable for any act or omission of any prior Landlord (including, without limitation, the then-defaulting Landlord) prior to the date Lender took title, except for those acts or omissions which Lender had written notice of prior to Lender's acquisition of Landlord's interest under the Lease and for which Lender was afforded the opportunity to cure as provided for in Paragraph 7 below. In no event shall the Lender be relieved from liability for continuing defaults (i.e., an event of default that commences prior to Lender's acquisition of Landlord's interest under the Lease and continues after such date);

3/10

- b. Subject to Defenses. Subject to any defense or offsets which Winn-Dixie may have against any prior Landlord (including, without limitation, the then-defaulting Landlord) prior to the date Lender took title, except for those defenses or offsets which Lender had written notice of prior to Lender's acquisition of Landlord's interest under the Lease and for which Lender was afforded the opportunity to cure as provided for in Paragraph 7 below;
- c. Bound by Advance Payments. Bound by any payment of Basic Rent which Winn-Dixie might have paid for more than one month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the then-defaulting Landlord) prior to the date Lender took title, except to the extent such monies actually have been received by Lender, or except for those payments which Lender had written notice of prior to Lender's acquisition of Landlord's interest under the Lease and which do not violate Winn-Dixie's agreement contained in Paragraph 6(iii) below; or
- d. Bound by Prior Payment Obligations. Bound by any obligation of any prior Landlord to make any payment to Winn-Dixie which was required to be made, or arose from any circumstance which occurred, prior to the time Lender succeeded to any such prior Landlord's interest.
5. 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.
6. 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 or cancel 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. Notices under Lease; Opportunity to Cure Landlord Defaults. Winn-Dixie agrees that it shall use reasonable efforts, to contemporaneously with any notice given by Winn-Dixie to Landlord provide a copy of such notice to Lender 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. Notwithstanding the foregoing, in no event shall the failure by Winn-Dixie to provide such notice to Lender affect the validity of any notice provided to Landlord by Winn-Dixie. 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 as 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:

Wells Fargo Bank, National Association
Commercial Real Estate Group
3100 West End Avenue

20141001000308380 10/01/2014 04:16:56 PM SUBAGREM 4/10

9th Floor, Suite 900, MAC: W1021-090
Nashville, TN 37203-1320
Attn: Office Manager
Loan No. 1012198

With a copy to:

Wells Fargo Bank, National Association
Minneapolis Loan Center
608 – 2nd Avenue, South
11th Floor, MAC: N9303-110
Minneapolis, MN 55402-1916
Attn: Disbursement Administrator

As to Winn-Dixie:

Winn-Dixie Montgomery Leasing, LLC
c/o BI-LO Holding, LLC
Attn: Real Estate Legal Department
5050 Edgewood Court
Jacksonville, Florida 32254

As to Landlord:

c/o Bayer Properties, L.L.C.
2222 Arlington Avenue
Birmingham, AL 35205
Attn: General Counsel

8. 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 Winn-Dixie (a) 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, (b) 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 Winn-Dixie under the Lease, (collectively, **the "Transfer Requirements"**) and/or (c) such other information as Winn-Dixie 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 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 Transfer Requirements.
9. 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.
10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

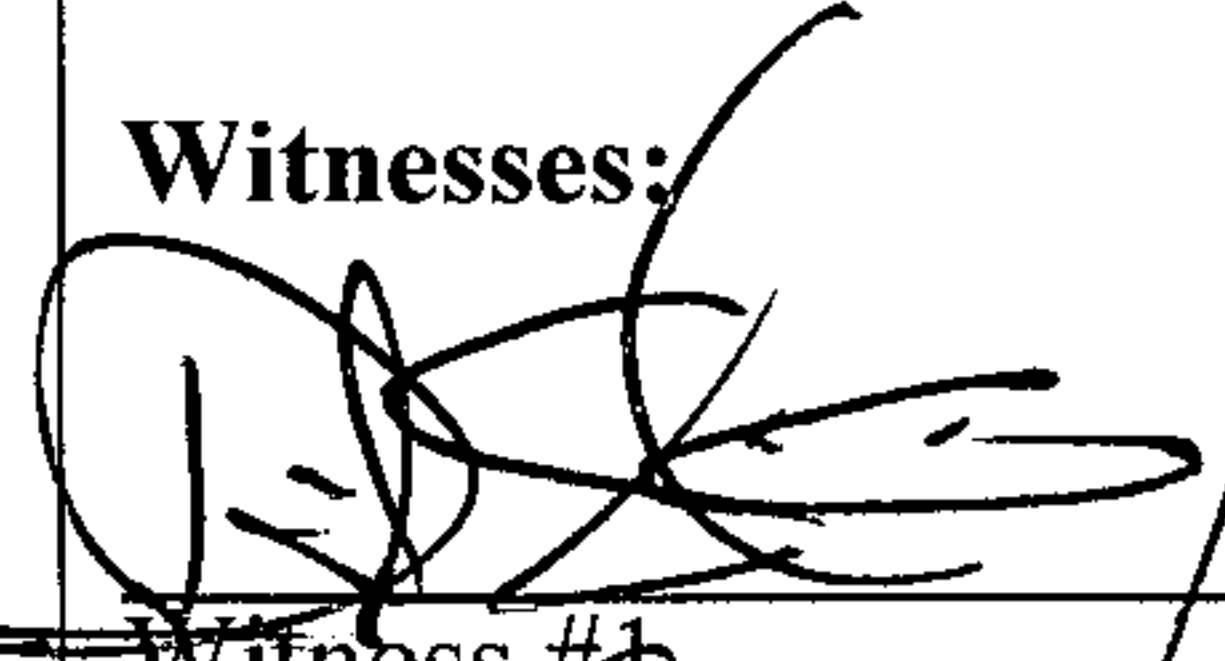
11. Miscellaneous. This Agreement contains the entire agreement between Winn-Dixie and Lender with respect to the matters addressed herein. This Agreement shall be construed under and governed by the laws of the State of Alabama. This Agreement may be executed in several counterparts, each of which shall be deemed an original instrument and all of which shall constitute a single agreement.

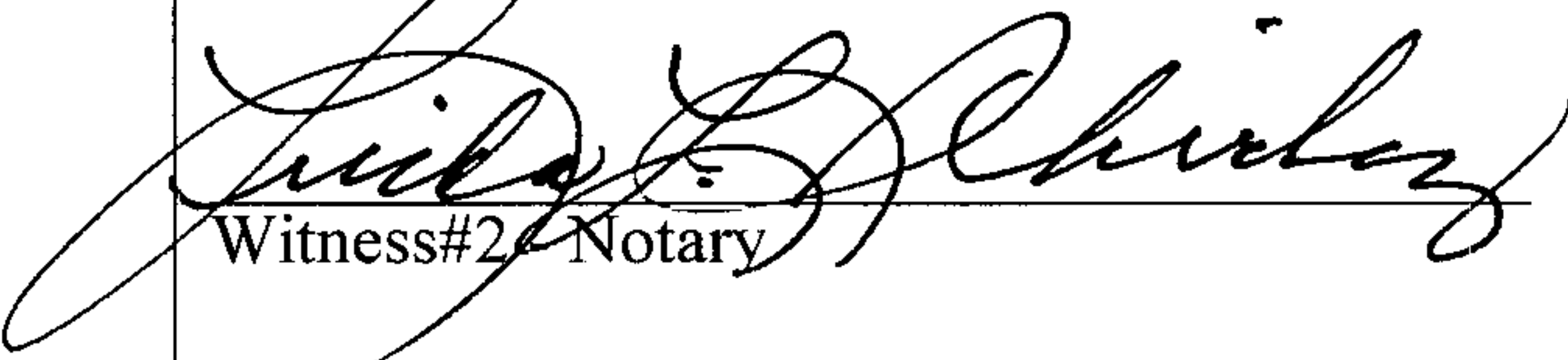
THIS INSTRUMENT **MUST** BE EXECUTED IN CONNECTION WITH THE RECORDED MORTGAGE LOAN DOCUMENTS IN THE COUNTY OF SHELBY, STATE OF ALABAMA AND RETURNED TO WINN-DIXIE'S COUNSEL AT THE FOREGOING ADDRESS.

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

TENANT:

Witnesses:

 David Slivinski
Witness #1

 Linda L. Shirley
Witness #2 - Notary

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

By:

Name: Brian P. Carney

Its: Executive Vice President

Date: September 25, 2014

ACKNOWLEDGMENT
(WINN-DIXIE)

LEGAL APPROVED

ATTY:

DATE: 9/23/2014

STATE OF FLORIDA
COUNTY OF DUVAL

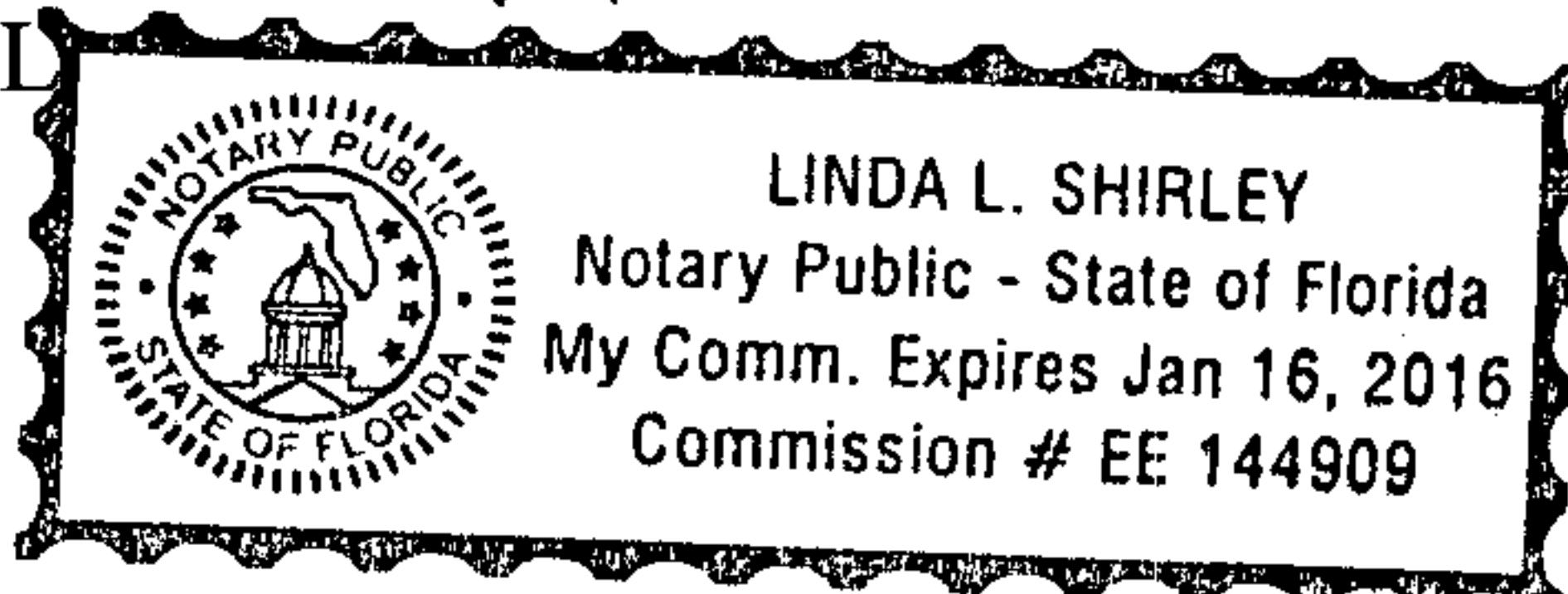
The foregoing instrument was acknowledged before me this Sept 25, 2014, by Brian P. Carney, as Executive Vice President of Winn-Dixie Montgomery Leasing, LLC, a Florida limited liability company on behalf of the limited liability company, who is personally known to me.

 NOTARY PUBLIC.

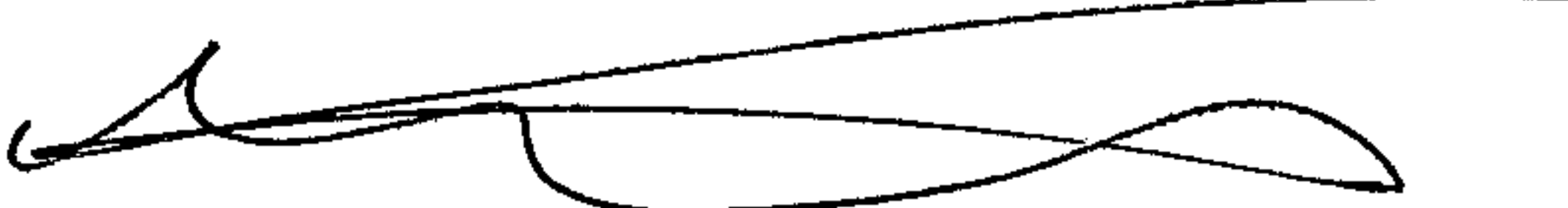

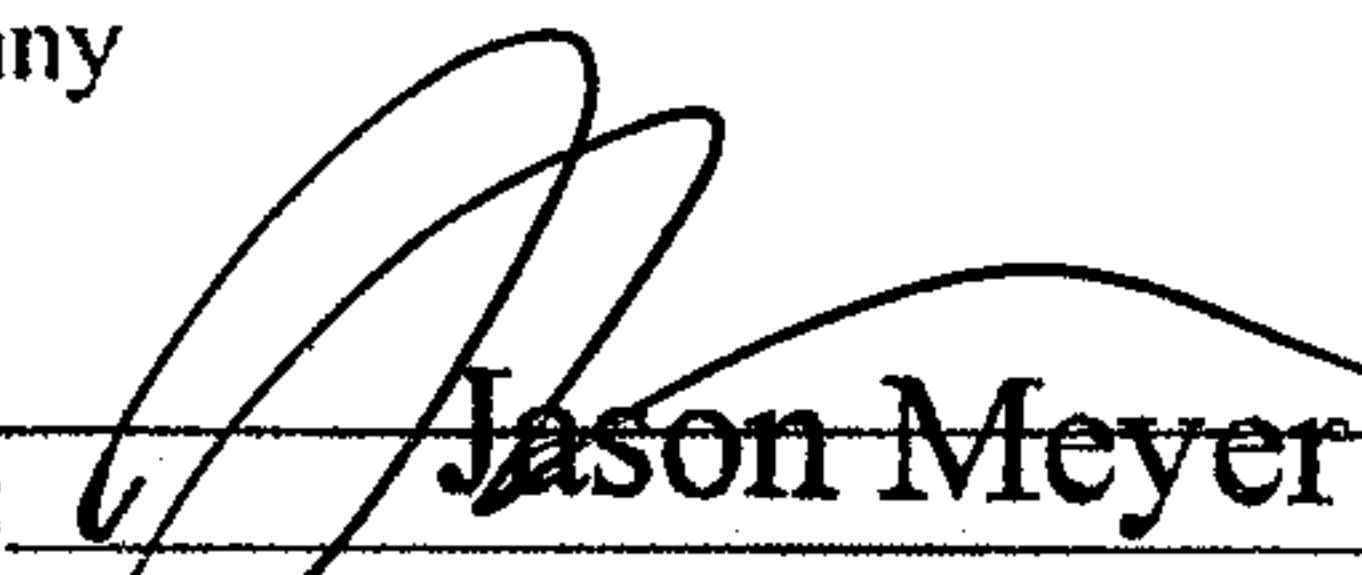
My commission expires: 1-16-2016

Notary ID No.: EE 144909

NOTARY SEAL



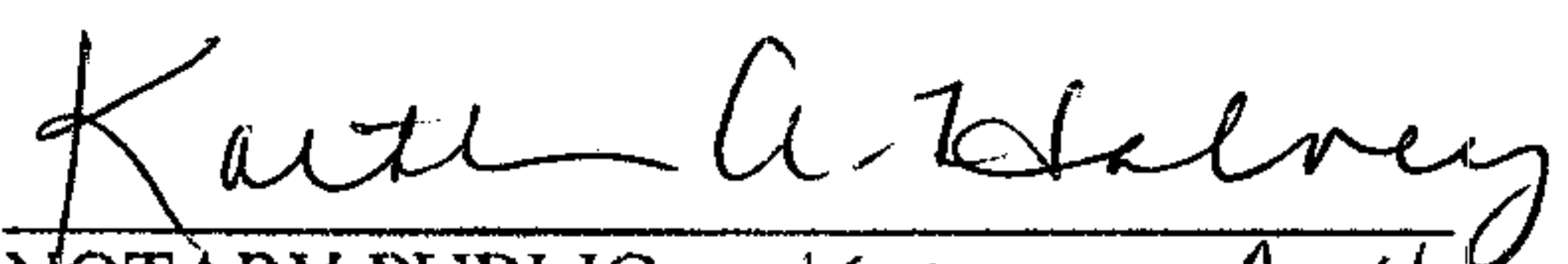
LANDLORD:

Witnesses:  _____ Witness #1  _____ Witness#2 - Notary	INV CORNERS LLC , a Delaware limited liability company By:  Name: <u>Jason Meyer</u> Its: <u>Authorized Signatory</u> Date: _____
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ACKNOWLEDGMENT
(LANDLORD)

STATE OF New York
COUNTY OF New York

The foregoing instrument was acknowledged before me this 8th day of August, 2014, by Jason Meyer, Authorized Signatory of Inv Corners LLC, a Delaware limited liability company, on behalf of the company, [PLEASE CHECK ONE] ☒ who is personally known to me or _____ who has produced _____ as identification.


NOTARY PUBLIC: Kathleen A. Halvey

My commission expires: 1/6/16
Notary ID No.: 01HA6179532
NOTARY SEAL

KATHLEEN A. HALVEY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01HA6179532
Qualified In New York County
My Commission Expires January 06, 2016

20141001000308380 10/01/2014 04:16:56 PM SUBAGREM 7/10

LENDER:

Witnesses: <u>Linda Hulsey</u> Witness #1 <u>Jaci L. Carrell</u> Witness#2 - Notary	WELLS FARGO BANK, NATIONAL ASSOCIATION , a national banking association By: <u>Sam Burroughs</u> Name: <u>SAMUEL L. Burroughs</u> Its: <u>SVP</u> Date: <u>8-8-2014</u>
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**ACKNOWLEDGMENT
(LENDER)**

STATE OF Tennessee
COUNTY OF DAVIDSON

The foregoing instrument was acknowledged before me this 8 day of August, 2014, by SAMUEL L. Burroughs, Linda Hulsey of Wells Fargo Bank, National Association, a national banking association, on behalf of the banking association, [PLEASE CHECK ONE] ☒ who is personally known to me or ☐ who has produced TN. DRIVERS License as identification.

Jaci L. Carrell
NOTARY PUBLIC: Jaci L. Carrell

My commission expires: 7-2-18
Notary ID No.: _____
NOTARY SEAL

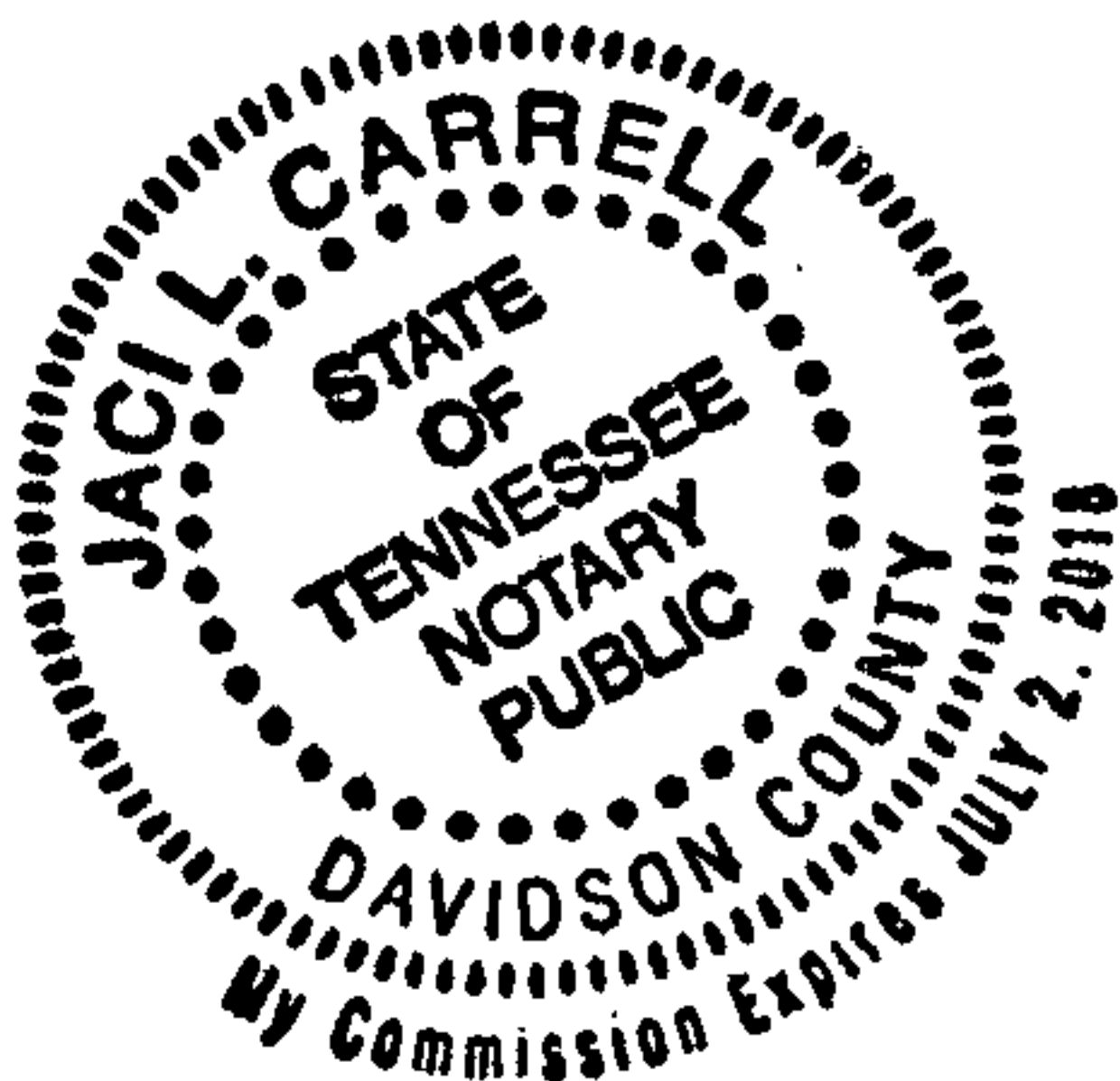


Exhibit "A"

Legal Description

20141001000308380 10/01/2014 04:16:56 PM SUBAGREM 8/10

Inverness Corners

All that piece, parcel or tract of land and being at the southeastern intersection of the U.S. Highway 280 and County Road 17 known as Valleydale Road in Shelby County, Alabama, and being more particularly described as follows:

Beginning at a point on the southern edge of Valleydale Road (Route 17 Shelby County) and running with Valleydale Road fourteen (14) calls, to-wit: N 33°47'02"E for a distance of 212.20 feet to a point; thence North 30°13'44"E for a distance of 146.44 feet to a point; thence with a curve to the right with a chord bearing and distance of N33°33'44"E, 253.25 feet (R=1482.42 feet; AL=253.56 feet) to a point; thence a curve to the right with a chord bearing and distance of N42°28'26"E, 127.10 feet (R=1057.56 feet, AL=127.18 feet) to a point; thence with a curve to the right with a chord bearing and distance of N49°13'27"E, 220.45 feet (R=1527.67 feet; AL=220.65 feet) to a point; thence a curve to the right with a chord bearing and distance of N55°39'08"E, 147.90 feet (R=1968.19 feet; AL=147.93 feet) to a point; thence a curve to the left with a chord bearing and distance of N54°54'30"E, 173.97 feet (R=1326.78 feet; AL=174.10 feet) to a point; thence a curve to the left with a chord bearing and distance of N48°42'29"E, 157.02 feet (R=1554.42 feet; AL=157.08 feet) to a point; thence with a curve to the left with a chord bearing and distance of N42°39'05"E, 271.82 feet (R=1482.42 feet; AL=272.20 feet) to a point; thence with a curve to the left with a chord bearing and distance of N33°56'25"E, 54.11 feet (R=1482.42 feet; AL=54.12 feet) to a point; thence S57°06'20"E for a distance of 5.00 feet to a point; thence N31°40'47"E for a distance of 63.06 feet to a point; thence North 29°21'44"E for a distance of 36.77 feet to a point; thence N29°01'23"E for a distance of 200.22 feet to a point at the intersection of Valleydale Road and U.S. Highway 280; thence running with U.S. Highway 280 for two (2) courses, to-wit: S64°07'08"E for a distance of 69.95 feet to a point; thence S60°56'53"E for a distance of 172.15 feet to a point; thence leaving U.S. Highway 280 and running with property of Schlotsky's Realty for eight (8) courses to-wit: S29°00'44"W for a distance of 225.82 feet to an iron pin; thence running S74°00'05"W for a distance of 21.45 feet to a point; thence running N60°54'51"W for a distance of 11.83 feet to an iron pin; thence running S30°26'19"W 5.61 feet to a point; thence running a curve to the left with a chord bearing and distance of S39°06'56"E, 92.82 feet (R=50.00 feet; AL=118.95 feet) to a point; thence running N72°43'57"E for a distance of 23.89 feet to an iron pin; thence running with a curve to the right with a chord bearing and distance of S88°16'49"E 143.89 feet (R=220.50 feet; AL=146.58 feet) to an iron pin; thence North 29°01'47"E for a distance of 197.77 feet to a point on the southern margin of U.S. Highway 280; thence running with U.S. Highway 280 for two (2) calls, to-wit: S60°56'53"E for a distance of 234.60 feet to an iron pin; thence S61°19'38"E for a distance of 77.00 feet to an iron pin; thence leaving U.S. Highway 280 and running with Pier One Imports for six (6) courses, to-wit: S28°42'18"W for a distance of 110.80 feet to a point; thence running with a curve to the left with a chord bearing and distance of S17°53'25"W, 37.07 feet (R=99.92 feet; AL=37.29 feet) to a point; thence running S61°16'32"E for a distance of 191.05 feet to a point; thence with a curve to the right with a chord bearing and distance of S16°17'42"E, 42.43 feet (R=30.00 feet; AL=47.12 feet) to a point; thence running S28°42'18"W for a distance of 74.30 feet to a point; thence running N89°45'04"E for a distance of 17.14 feet to an iron pin; thence running S31°51'47"W for a distance of 46.24 feet to an iron pin; thence S16°23'44"E for a distance of 22.63 feet to an iron pin; thence S72°09'04"W for a distance of 33.85 feet to an iron pin; thence running with First National Bank of Shelby County for twelve (12)

courses, to-wit: a curve to the left with a bearing and distance of N34°22'07"W, 91.27 feet (R=160.50 feet; AL=92.55 feet) to a point; thence S53°07'30"E for a distance of 9.55 feet to a point; thence running a curve to the left with a chord bearing and distance of N79°48'56"W, 31.44 feet (R=35.00 feet; AL=32.61 feet) to a point; thence running S73°35'14"W for a distance of 2.93 feet to a point; thence running a curve to the left with a chord bearing and distance of S66°53'41"W, 32.18 feet (R=140.00'; AL=32.25') to a point; thence run South 60°17'44"W for a distance of 10.54 feet to a point; thence running a curve to the right with a chord bearing and distance of S67°20'21"W, 24.52 (R=100.00 feet; AL=24.59 feet) to a point; thence running S74°28'33"W for a distance of 4.21 feet to a point; thence running with a curve to the left with a chord bearing and distance of S58°05'08"W, 30.31 feet (R=54.00 feet; AL=30.72 feet) to a point; thence running S41°52'54"W for a distance of 65.95 feet to a point; thence running with a curve to the left with a bearing and distance of S66°39'35"W, 57.35 feet (R=112.00 feet AL=57.99 feet) to a point; thence running S09°29'50"E for a distance of 163.23 feet to an iron pin; thence running with Parcel 36 for three (3) courses, to-wit: S83°45'52"W for a distance of 158.30 feet to an iron pin; thence running S18°47'15"W for a distance of 349.69 feet to an iron pin; thence running with property now or formerly of Investments Associates (formerly Met Life Insurance Company) for ten (10) courses, to-wit: S02°05'56"W for a distance of 237.37 feet to an iron pin; thence running N87°53'19"W for a distance of 590.29 feet to a point; thence running S00°21'07"E for a distance of 4.08 feet; thence running S85°52'52"W for a distance of 126.86 feet to a point; thence running S82°35'48"W for a distance of 122.74 feet to a point; thence running S84°24'44"W for a distance of 336.12 feet to a point; thence running S30°29'58"W for a distance of 6.13 feet to a point; thence running with a curve to the right with a chord bearing and distance of N80°13'35"W, 118.64 feet (R=201.26 feet; AL=120.43 feet) to an iron pin; thence running N63°00'24"W for a distance of 115.34 feet to a point; thence running with a curve to the left with a bearing and distance of S73°22'00"W, 110.36 feet (R=80.00 feet; AL=121.78 feet) to an iron pin; thence N60°07'50"W for a distance of 12.00 feet to the Point or Place of Beginning.



Filed and Recorded
Official Public Records
Judge James W. Fuhrmeister, Probate Judge,
County Clerk
Shelby County, AL
10/01/2014 04:16:56 PM
\$41.00 CHERRY
20141001000308380

A handwritten signature in black ink, appearing to be "James W. Fuhrmeister", is written over the printed name and title of the County Clerk.