

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Carl H. Bivens, Esquire  
Troutman Sanders LLP  
1001 Haxall Point  
Richmond, VA 23219

SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMENT AGREEMENT ("SNDA")

THIS AGREEMENT is made as of September 9, 2014, between **Wal-Mart Stores East, LP**, a Delaware limited partnership, 702 S.W. 8<sup>th</sup> Street, Bentonville, Arkansas 72712, with offices at 2001 S. E. 10th Street, Attn: Realty Management Dept. #44-9384, Bentonville, Arkansas 72716-0550, its sublessees or assigns, (hereinafter referred to as "Lessee"), and **U.S. Bank National Association, as Trustee for Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 2012-C5**, with an address of c/o KeyBank National Association, 11501 Outlook, Ste. 300, Overland Park, Kansas 66211, Mail Location KS-01-11-0501 ("Mortgagee").

WITNESSETH:

WHEREAS, Mortgagee is the holder of a certain **Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing** dated June 29, 2012, and recorded as Instrument No. 20120705000237260, and as subsequently assigned pursuant to that certain **Assignment of Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing** dated July 30, 2012, and recorded as Instrument No. 20120813000298890, both in the Office of the Judge of Probate, Shelby County, Alabama ("Mortgage"), covering the Shopping Center and/or Leased Premises situated in the County of Shelby, State of Alabama as more fully described on Exhibit A (hereinafter referred to as the "Premises"), which secure a loan from Mortgagee to "Lessor" (defined below) in the original principal amount of \$39,500,000.00 (the "Loan"); and

WHEREAS, Lessee leased from Midland Valleydale, LLC, a Delaware limited liability company ("Lessor") an approximately 47,653 square foot building located on the Premises pursuant to that certain Building Lease Agreement dated July 1, 2014, ("Lease"), between Lessor and Lessee; and

WHEREAS, Lessee desires that the Lease shall not terminate, but rather shall remain in full force and effect in accordance with its terms in the event the Mortgage is foreclosed or any foreclosure sale of the mortgaged Premises is made or any transfer therein in lieu of foreclosure



is made and Mortgagee desires that Lessee subordinate its interest in the Lease to the lien of the Mortgage.

WHEREAS, Lessor will deliver a copy of the Lease and any amendments to Mortgagee, the receipt of which is hereby acknowledged,

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration in hand paid, the parties hereto agree as follows:

1. Mortgagee hereby consents and approves the Lease, amendments and the terms thereof, including the options to extend the term as set forth in the Lease, and covenants and agrees that the exercise by Lessee of rights, remedies and options therein contained shall not constitute a default under the Mortgage. Notwithstanding the preceding sentence, and notwithstanding anything in the Lease or the "ECR" (as defined in the Lease) to the contrary, if Lessee desires to expand the floor area of the demised premises by constructing an addition or additions thereto in accordance with the Lease or the ECR, or to make alterations to the demised premises (excluding roof repairs or replacements) that would affect the structural integrity of the demised premises, Lessee agrees that Mortgagee's prior approval shall be required in connection with any such work (a) that may have a "Material Adverse Effect" (as defined below), (b) the cost of which is reasonably anticipated to exceed \$230,000.00, or (c) that are structural in nature, which approval may be granted or withheld in Mortgagee's sole discretion. The foregoing requirement of Mortgagee approval is in addition to the approval rights of Lessor, if any, with respect to such addition or additions or alterations as set forth in the Lease and ECR. Notwithstanding anything in this Section 1 to the contrary, however, Mortgagee's approval shall not be required for Lessee's initial improvements to the demised premises (i.e the "Lessee Work" as defined in the Lease).

"Material Adverse Effect" shall mean a material adverse effect on (i) the Premises, the demised premises under the Lease, or any other property securing the Loan, (ii) the business, profits, prospects, management, use, operations or condition (financial or otherwise) of Lessor, John I. Silverman, Jeffrey M. Vittert, T. Aaron Boyle (individually and collectively, "Guarantor"), the Premises, the demised premises under the Lease, or any other property securing the Loan, (iii) the enforceability, validity, perfection or priority of the lien of the Mortgage or the other loan documents related to the Mortgage, (iv) the ability of Borrower to perform its obligations under the Mortgage or the other loan documents, or (v) the ability of Guarantor to perform its obligations under the Guaranty of Recourse Obligations of Borrower executed by Guarantor in connection with the Loan.

2. The Lease is, and shall remain, subject and subordinate to the lien of the Mortgage and to any extensions, modifications, consolidations or renewals thereof; provided that as to any such extensions, modifications, consolidations or renewals thereof, a non-disturbance agreement in the form of this agreement is executed and delivered by the holder of the Mortgage as so extended, modified, consolidated or renewed.

3. So long as Lessee is not in default in the performance of any terms, covenants and conditions to be performed on its part under the Lease beyond any applicable cure period, then in such event:

(a) Lessee shall not be joined as a party defendant in any foreclosure proceeding which may be instituted by Mortgagee;



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(b) Lessee's leasehold estate under the Lease shall not be terminated, barred, cut off, or otherwise disturbed by reason of any default under the Mortgage or any foreclosure proceeding instituted by Mortgagee.

4. If Mortgagee (which term, for purposes of this Section, includes a nominee or affiliated entity of Mortgagee) shall succeed to the interest of Lessor in and to the Lease, whether through possession, foreclosure proceeding, or delivery of a deed in lieu of foreclosure (any such event a "Succession"), Lessee shall attorn to and recognize Mortgagee or any other purchaser at a foreclosure sale as Lessee's landlord under the Lease, and shall promptly execute and deliver an attornment agreement in the form of this agreement to evidence such attornment. Upon and after such attornment, the Lease shall continue in full force and effect as a direct lease between Mortgagee or such purchaser and Lessee upon all of the terms, conditions and covenants as are set forth in the Lease, except that Mortgagee or such purchaser shall after such attornment:

(a) Not be liable for any previous act or omission of any previous landlord except, with respect to any pre-existing Lessor default under the Lease which remains uncured as of the Succession, if Mortgagee has received, following the Succession, appropriate notice of such default as required under the Lease, and has failed to cure the same within any applicable cure period provided in the Lease (and in any event Mortgagee's liability shall be subject to Section 35 of the Lease); provided, however, that in no event will Mortgagee be liable for (i) the payment of any brokerage or lease commissions due with respect to the Lease, including but not limited to any payment due "Broker" (as defined in the Lease) (collectively, "Leasing Commissions"), or (ii) the completion of the "Center Upgrade Work" (as defined in the Lease) or the payment of any costs or expenses relating to the same ("Center Upgrade Work");

(b) Be subject to any offset or abatement which Lessee might be entitled to assert against any previous landlord, including deductions from rent arising pursuant to the Lease; provided, Mortgagee has received appropriate notice of such default, and has an opportunity to cure (having no obligation to so cure) same, all pursuant to the terms and conditions of the Lease and further provided that Lessee has, prior to the Succession, exercised any self-help or cure rights under the Lease and incurred the costs and expenses which it seeks to offset, abate or deduct pursuant to the Lease; provided, however, that in no event will Mortgagee be subject to offset, abatement or deduction with respect to a previous landlord's failure to pay Leasing Commissions or complete and pay for the Center Upgrade Work;

(c) Not be bound by any previous prepayment of more than one month's fixed rent, unless such prepayment shall have been expressly approved in writing by Mortgagee;

(d) Not be bound by any modification of the Lease made after the date of this agreement without its written consent;

(e) Not be liable for the return of any security deposit unless the security deposit has been paid to Mortgagee.

5. At any time before the rights of the Lessor shall have been forfeited or adversely affected because of any default on its part, or within the time permitted the Lessor to cure any default under the Lease as there provided, Mortgagee may, at its option, pay any taxes and assessments, make any repairs and improvements, make any deposits or do any other act or thing required of the Lessor by the terms of the Lease, and all payments so made and all things so done and performed by Mortgagee shall be as effective to prevent the rights of the Lessor



from being forfeited or adversely affected because of any default under this Lease as the same would have been if done and performed by the Lessor.

6. Any required notices to Mortgagee, shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, at the address of Mortgagee as hereinabove set forth or at such other address as Mortgagee may designate by notice.

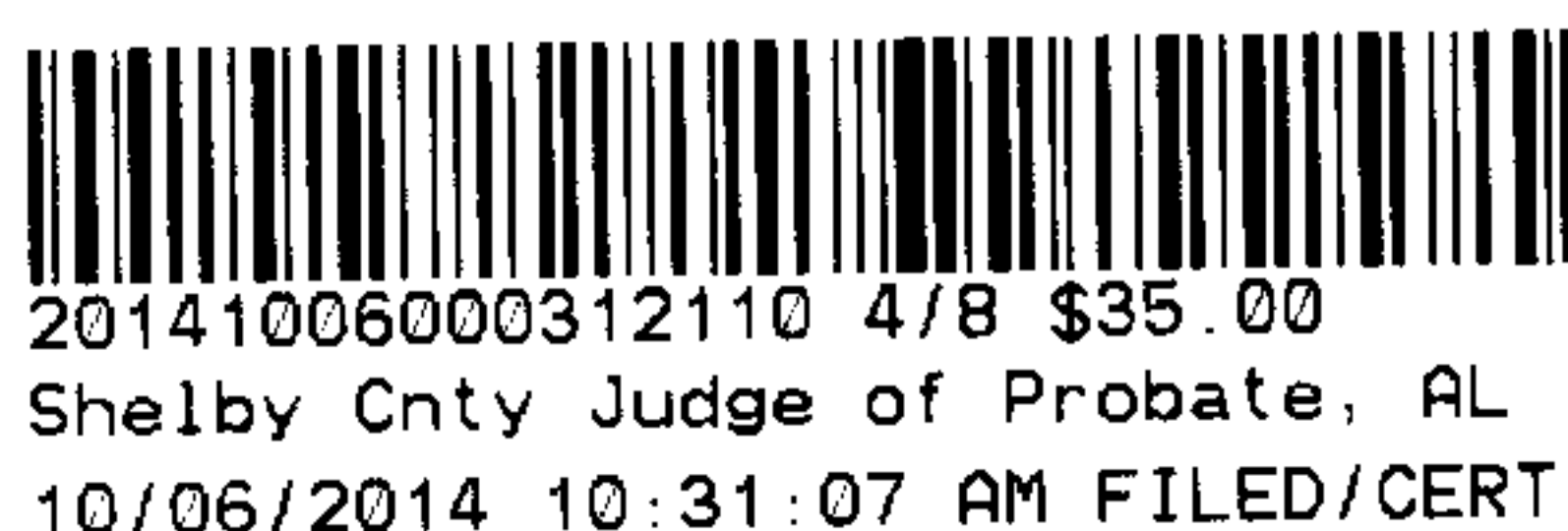
7. Any notices or communications given to Lessee under this agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, at the address of Lessee hereinabove set forth, also to the attention of Realty Management Dept. 9384 at 2001 S.E. 10<sup>th</sup> Street, Bentonville, Arkansas, 72716-0550 or at such other address as Lessee may designate by notice. During the period of any postal strike or other interference with the mail, personal delivery shall be substituted for registered or certified mail. No default notice given by Lessee under the Lease shall be effective as against Mortgagee unless a duplicate copy thereof has been given to Mortgagee.

8. This agreement shall bind and inure to the benefit of and be binding upon and enforceable by the parties hereto and their respective successors and assigns.

9. This agreement contains the entire agreement between the parties 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.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto.

*[Signatures Follow]*



Signed, sealed and delivered  
in the presence of:

Amanda Molt  
Unofficial Witness

MORTGAGEE:  
(Name):

**U.S. Bank National Association, as  
Trustee for Morgan Stanley Capital I  
Inc., Commercial Mortgage Pass-  
Through Certificates, Series 2012-C5**

By: KeyBank National Association, as  
authorized agent

By: [Signature]

Print Name: KURT TUTHILL  
VICE PRESIDENT

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

Date: 9/9/14

STATE OF KANSAS

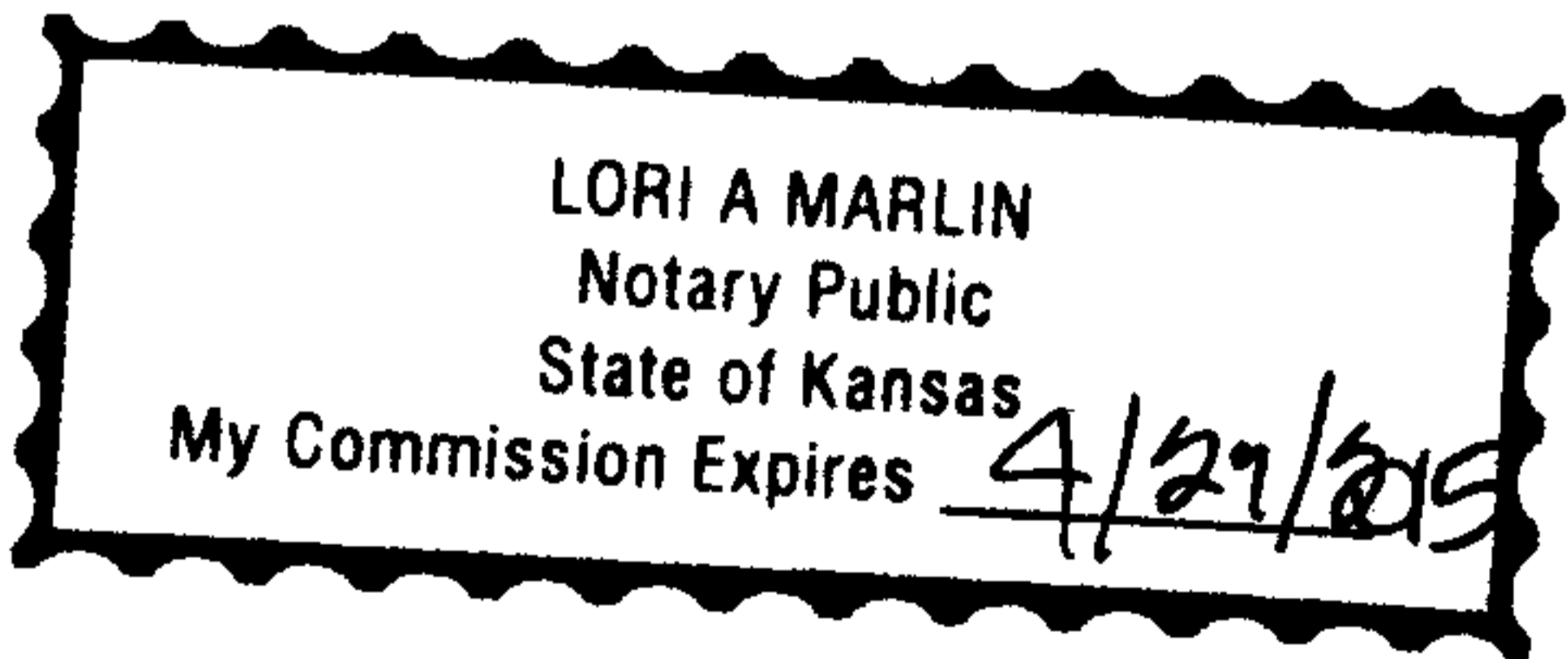
COUNTY OF Johnson

The foregoing instrument was acknowledged before me this 9th day of September, 2014, by Kurt Tuthill, as Vice President of KeyBank National Association, a national banking association, as authorized agent on behalf of **U.S. Bank National Association, as Trustee for Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 2012-C5**, on behalf of the Trustee.

(Seal and Expiration Date)

Lori A. Marlin  
Notary Public

My commission expires: 4/27/2015



[SIGNATURES CONTINUED ON NEXT PAGE]

Signed, sealed and delivered  
in the presence of:

[Signature]  
Unofficial Witness

WAL-MART:

**WAL-MART STORES EAST, LP,**  
a Delaware limited partnership

By: WSE MANAGEMENT, LLC,  
a Delaware limited liability company  
and general partner

By: [Signature]  
Mary Rottler, Vice President

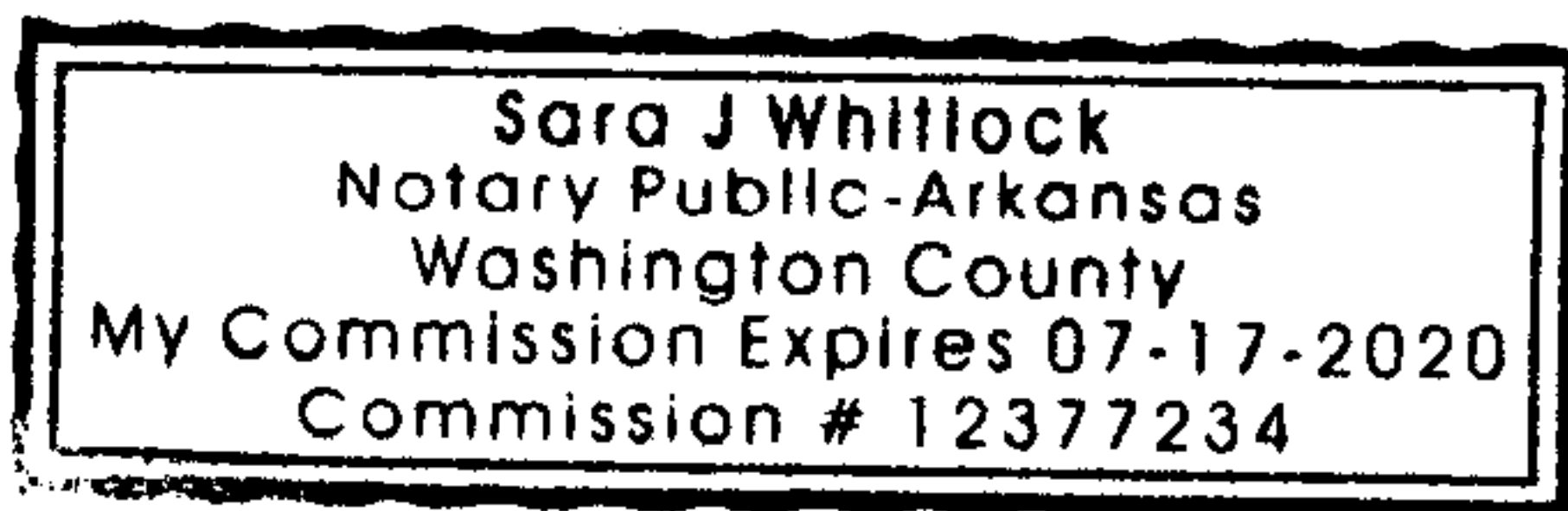
Date: 9/10/14

**STATE OF ARKANSAS**

**COUNTY OF BENTON**

I, Sara J Whitlock, a notary public in and for said  
County, in said State, hereby certify that Mary Rottler, whose name as Vice President of Real  
Estate of WSE Management, LLC, a Delaware limited liability company and general partner of  
**WAL-MART STORES EAST, LP**, a Delaware limited partnership, is signed to the foregoing  
instrument, and who is known to me, acknowledged before me on this day, that being informed  
of the contents of said instrument, she, as such officer, and with full authority, executed the  
same voluntarily for and as the act of said limited liability company, acting in its capacity as the  
general partner of **WAL-MART STORES EAST, LP**.

Given under my hand this the 10<sup>th</sup> day of September, 2014.



[Signature]  
Notary Public

[ NOTARIAL SEAL ] My Commission Expires: 7/17/20

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## EXHIBIT A TO SNDA

### Legal Description of Mortgaged Premises

Lot 2, according to the Survey of Valleydale Market Place, as recorded in Map Book 16, page 117 in the Probate Office of Shelby County, Alabama.

#### SLOPE EASEMENT NUMBER 1:

Commence at the northwest corner of the south 1/2 of the southeast 1/4 of the northwest 1/4 of Section 15, Township 19 South, Range 2 West; thence run South 0 degrees 04 minutes 46 seconds West, along the west line of the southeast 1/4 of the northwest 1/4 of said Section 15, for a distance of 100 feet to the point of beginning; thence run North 89 degrees 10 minutes 56 seconds West, for a distance of 120.11 feet; thence run South 34 degrees 39 minutes 01 seconds East, for a distance of 30.71 feet; thence run South 78 degrees 48 minutes 57 seconds East, for a distance of 83.36 feet; thence run North 88 degrees 44 minutes 07 seconds East, for a distance of 20.81 feet; thence run North 0 degrees 04 minutes 46 seconds East, along the west line of the southeast 1/4 of the northwest 1/4 of said Section 15, for a distance of 39.26 feet to the point of beginning.

Being recorded in Instrument 1992-09484 in the Probate Office of Shelby County, Alabama.

#### SLOPE EASEMENT NUMBER 3:

Commence at the northwest corner of the south 1/2 of the southeast 1/4 of the northwest 1/4 of Section 15, Township 19 South, Range 2 West; thence run South 0 degrees 04 minutes 46 seconds West, along the west line of the southeast 1/4 of the northwest 1/4 of said Section 15, for a distance of 100 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; thence run North 16 degrees 58 minutes 37 seconds East, for a distance of 52.89 feet to the point of beginning. From the point of beginning thus obtained, thence run North 9 degrees 02 minutes 51 seconds West, for a distance of 155.91 feet; thence run North 19 degrees 02 minutes 51 seconds West, for a distance of 75.39 feet; thence run North 55 degrees 12 minutes 48 seconds West, for a distance of 84.65 feet; thence run North 78 degrees 30 minutes 34 seconds West, for a distance of 79.54 feet to a point on the southeasterly right of way line of Valleydale Road, said right of way being situated in the curve, said curve curving to the left in a Northeasterly direction having a central angle of 1 degree 33 minutes 12 seconds, and a radius of 2913.72 feet, and a chord bearing of North 54 degrees 56 minutes 14 seconds East, and a chord distance of 78.99 feet; thence run along arc of said curve in a Northeasterly direction along the southeasterly right of way line of Valleydale Road, for a distance of 79.00 feet; thence run South 40 degrees 50 minutes 56 seconds East, for a distance of 113.48 feet to a point of commencement of a curve to the right, said curve having a central angle of 41 degrees 40 minutes, and a radius of 254.91 feet; thence run along the arc of said curve in a Southeasterly direction, for a distance of 185.38 feet to the end of said curve; thence run South 0 degrees 49 minutes 04 seconds West, for a distance of 40.00 feet to a point of commencement of a curve to the right, said curve having a central angle of 9 degrees 35



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minutes 56 seconds, and a radius of 231.50 feet; thence run along the arc of said curve to the right in a Southwesterly direction, for a distance of 38.78 feet to the point of beginning.


Being recorded in Instrument 1992-09484 in the Probate Office of Shelby County, Alabama.

ALSO, TOGETHER WITH those certain beneficial cross-access easement rights granted to the Property pursuant to the Declaration of Covenants Regarding Ingress and Egress Easements recorded in Instrument No. 1992- 09745.

Parcel ID# 10-5-15-0-001-052.002

The above property being the same property as shown on the survey entitled "Valleydale Shopping Center" prepared by Freeland-Clinkscales & Associates of NC, Inc. dated June 4, 2012 and last revised June 25, 2012 under drawing number H32123.

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