

21-10 72932125

**Instrument Prepared by and Return to:**

Debora L. Horn  
Butler, Snow, O'Mara, Stevens & Cannada, PLLC  
1020 Highland Colony Parkway, Suite 1400  
Ridgeland, MS 39157  
(601) 948-5711

Shelby County, AL 07/23/2013  
State of Alabama  
Deed Tax: \$3198.00

20130723000300250 1/10 \$3237.00  
Shelby Cnty Judge of Probate, AL  
07/23/2013 02:58:25 PM FILED/CERT

**MEMORANDUM OF LEASE**

This Memorandum of Lease (the "Memorandum") is made as of this 20<sup>th</sup> day of August, 2012 between **K&H HELENA, LLC**, a Delaware limited liability company whose mailing address is 2626 Hanover Street, Palo Alto, California 94304 ("Lessor"), and **WAL-MART STORES EAST, LP**, a Delaware limited partnership, whose mailing address is 2001 Southeast 10<sup>th</sup> Street, Bentonville, Arkansas 72716-0550 ("Lessee").

This Memorandum is made under the following circumstances:

A. Lessor is the owner of the shopping center commonly known as "Helena Marketplace" located in the City of Helena, Shelby County, Alabama more fully described in **Exhibit A**, attached hereto and incorporated herein (the "**Shopping Center**").

B. Lessor and Lessee have entered into a Building Lease Agreement (the "**Lease**") pursuant to which Lessor has leased to Lessee a portion of the Shopping Center more fully described in **Exhibit B** attached hereto and incorporated herein (the "**Premises**").

C. The Effective Date of the Lease is August 20, 2012.

D. Lessor and Lessee have agreed to make and record this Memorandum to give record notice of the Lease and terms and provisions thereof, each of which are deemed incorporated herein and made a part of this Memorandum.

NOW, THEREFORE, the parties hereby memorialize the following provisions of the Lease, subject to the further terms and conditions expressly provided for therein:

1. The initial term of this Lease ("**Initial Term**") shall commence on the Effective Date, and shall terminate on the day before the fifteenth (15<sup>th</sup>) anniversary of the Rent Commencement Date, unless sooner terminated or extended. Lessee may extend this Lease for sixteen (16) additional consecutive periods of five (5) years apiece (each an "**Extension Term**"). The word "Term" as used herein shall refer to the Initial Term and any Extension Terms that occur.

2. Lessor agrees that, as of the Effective Date and through the expiration or termination of the Term hereof, none of the Remaining Shopping Center shall be used for, or leased to a tenant for, any of the following uses ("**Prohibited Uses**"): (i) any unlawful purpose, or

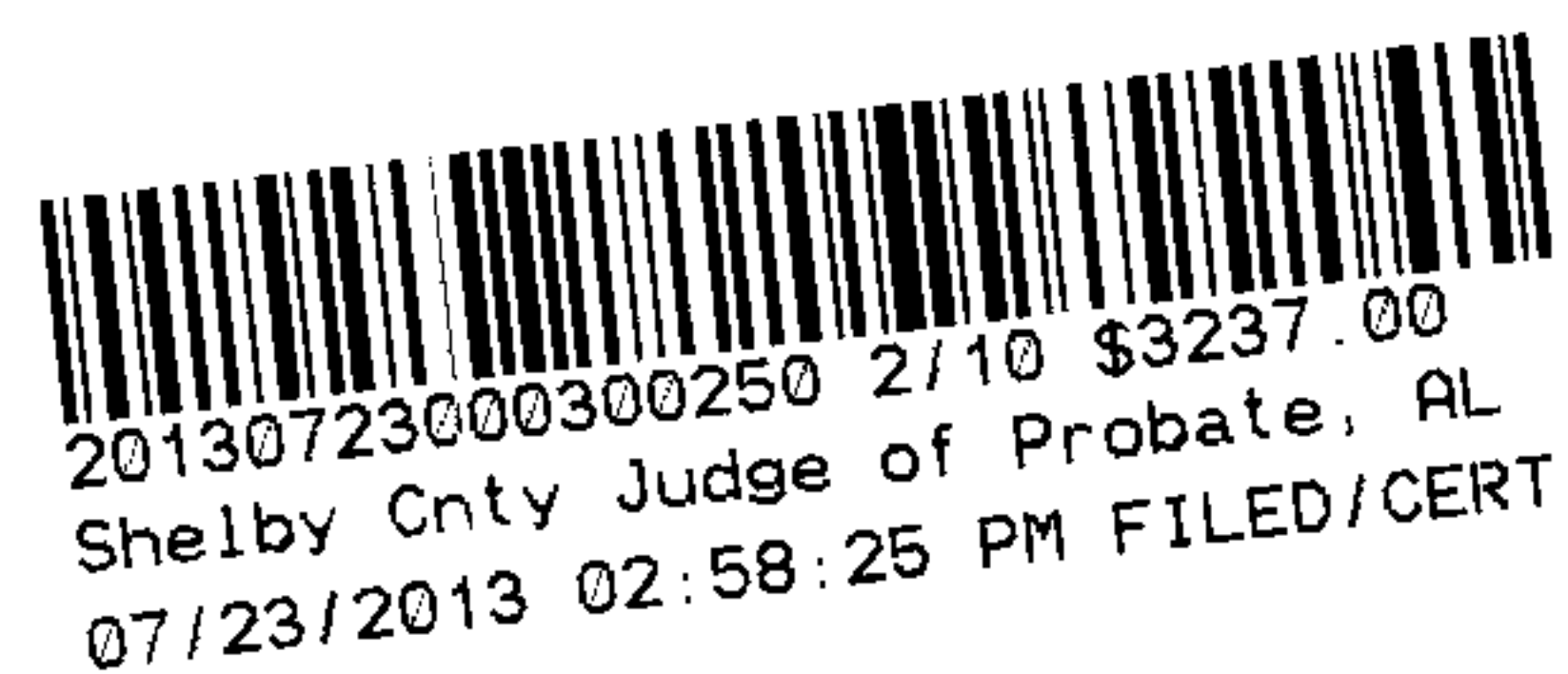


in any way which would constitute a legal nuisance to any Shopping Center tenants; (ii) a dry cleaning plant (except as otherwise provided in the Lease); (iii) storage or use of Hazardous Materials other than as may be contained in common cleaning supplies, bottled oil and similar products commonly carried or utilized in retail supermarkets or grocery stores in compliance with all applicable Environmental Laws; (iv) cinema or theater, skating rink, bowling alley, discotheque, dance hall, nightclub, amusement gallery, or pool room; (v) adult entertainment facility or adult book store; and (vi) funeral parlor, flea market, bingo parlor, or game of chance business (excluding the sale of lottery tickets), and (vi) any business or facility used in growing, delivering, transferring, supplying, dispensing, dispersing, distributing or selling marijuana, whether by prescription, medical recommendation or otherwise, and whether consisting of live plants, seeds, seedlings or processed or harvested portions of the marijuana plant, without the prior written consent of Lessor, which Lessor may withhold in its sole and absolute discretion.

3. Lessor agrees that, as of the Effective Date and through the expiration or termination of the Term hereof, Lessor agrees that none of the Remaining Shopping Center will be used for, or leased to a tenant for, any of the following uses ("**Remaining Shopping Center Prohibited Uses**"): (i) any unlawful purpose, or in any way which would constitute a legal nuisance to any Shopping Center tenants; (ii) a dry cleaning plant; provided that a store which only receives and returns clothing and does not perform dry cleaning work on premises shall be permitted; (iii) storage or use of Hazardous Materials (as hereinafter defined) other than as may be contained in common cleaning supplies, bottled oil and similar products commonly carried or utilized in retail supermarkets or grocery stores in compliance with all applicable Environmental Laws; (iv) cinema or theater, skating rink, bowling alley, discotheque, dance hall, nightclub, amusement gallery, or pool room; (v) adult entertainment facility or adult book store; (vi) funeral parlor, flea market, bingo parlor, or game of chance business (excluding the sale of lottery tickets), and (vii) cafeteria, unless containing no more than 4,800 square feet and located not less than eighty feet (80') from the west wall of the Premises; (viii) restaurant, unless located not less than eighty feet (80') from the west wall of the Premises; and (ix) any business or facility used in growing, delivering, transferring, supplying, dispensing, dispersing, distributing or selling marijuana, whether by prescription, medical recommendation or otherwise, and whether consisting of live plants, seeds, seedlings or processed or harvested portions of the marijuana plant, without the prior written consent of Lessee, which Lessee may withhold in its sole and absolute discretion.

4. Lessor further agrees that, as of the Effective Date and through the expiration or termination of the Term hereof, none of the Remaining Shopping Center will be used for, or leased to a tenant for, any of the following uses ("**Lessee's Exclusives**"): (i) operation of a grocery store or supermarket used for selling food for preparation and consumption off-premises; (ii) sales of wine, beer or liquor (provided that and so long as applicable law permits the sale of liquor from the Premises) for consumption off premises; or (iii) a variety, general or "dollar" store, provided that Lessee's existing lease with Kambiz Adeli d/b/a Dollar Plus shall not violate this provision and Lessor shall have the right to renew such lease in its existing location but it expressly prohibited from increasing the size of such leased premises to more than 1,200 square feet; or (iv) a pharmacy requiring the presence of a licensed pharmacist for the dispensing of drugs and regulated medicines.

5. Lessee shall have the right at any time during the Term, to sublet the Premises or any part thereof, or to assign this Lease, and the assignee or subtenant may use the Premises for any lawful use except for the Premises Prohibited Uses. No subletting or assignment shall relieve Lessee of any of its obligations hereunder.



6. If at any time during the Term Lessor shall elect to sell all or any portion of the Premises, Lessee (or its successors or assigns) is hereby given the right of first refusal (the **"Right of First Refusal"**) to purchase the same (the **"Purchase Property"**) in accordance with the procedures and on the terms and conditions set forth in the Lease.


7. If at any time during the Term Lessor desires to sell all or any portion of the Shopping Center, Lessee (or its successors or assigns) is hereby given the right of first offer (the **"Right of First Offer"**) to purchase such property (the **"Offered Property"**) in accordance with the procedures and on the terms and conditions set forth in the Lease.

8. All terms and conditions of the Lease are hereby incorporated herein by reference as if fully set forth herein. This Memorandum has been entered into for the sole purpose of placing the Lease of record and shall not be deemed to amend, modify, supplement, or change any of the terms and conditions of the Lease in any respect whatsoever. To the extent of any conflict between this Memorandum and the Lease, the terms of the Lease shall govern and control.

9. Any capitalized terms used, but not defined, herein shall have the meanings ascribed to them in the Lease.

10. This Memorandum may be executed in counterparts, each of which shall constitute an original and together shall constitute one and the same instrument.

**[SIGNATURE PAGES FOLLOW]**

  
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Shelby Cnty Judge of Probate, AL  
07/23/2013 02:58:25 PM FILED/CERT



Signed, sealed and delivered  
in the presence of:

  
Unofficial Witness

**LESSOR:**

K&H HELENA, LLC,  
a Delaware limited liability company

By: 

Name: Christian E. Hansen

Title: manager

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

**LESSEE:**

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

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Vice President – Real Estate



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Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

**LESSOR:**

K&H HELENA, LLC,  
a Delaware limited liability company

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

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

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

Signed, sealed and delivered  
in the presence of:


Lisa M. Garcia  
Unofficial Witness

**LESSEE:**

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

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

By: [Signature]  
Name: Daniel Mallory  
Vice President – Real Estate

  
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Shelby Cnty Judge of Probate, AL  
07/23/2013 02:58:25 PM FILED/CERT

STATE OF California  
COUNTY OF Santa Clara

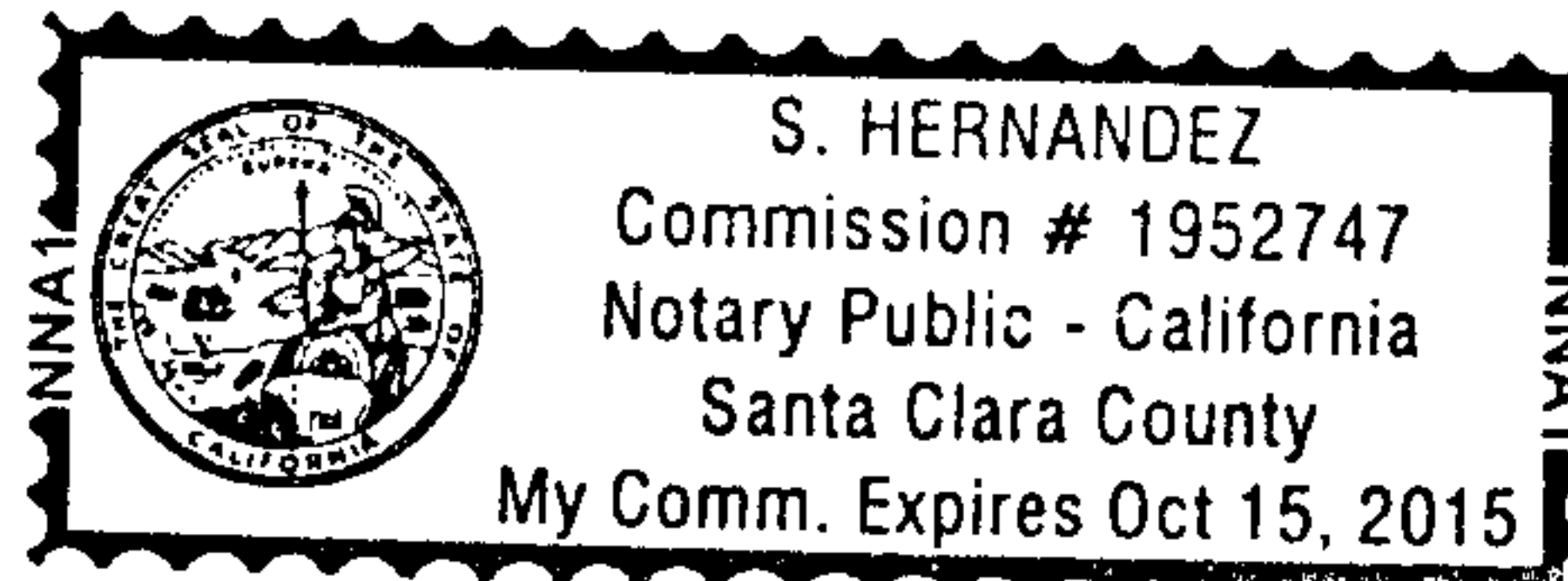
I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Christiane E. Hansen whose name as Manager, of **K&H HELENA, LLC**, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents therein, he/she, in his said capacity as Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company on behalf of said limited partnership, on the day the same bears date.

Given under my hand and seal this 1<sup>st</sup> day of July, 2012<sup>13 SH</sup>.

[Signature]  
Notary Public

My Commission Expires:

Oct. 15, 2015  
[NOTARIAL SEAL]



STATE OF ARKANSAS

COUNTY OF BENTON

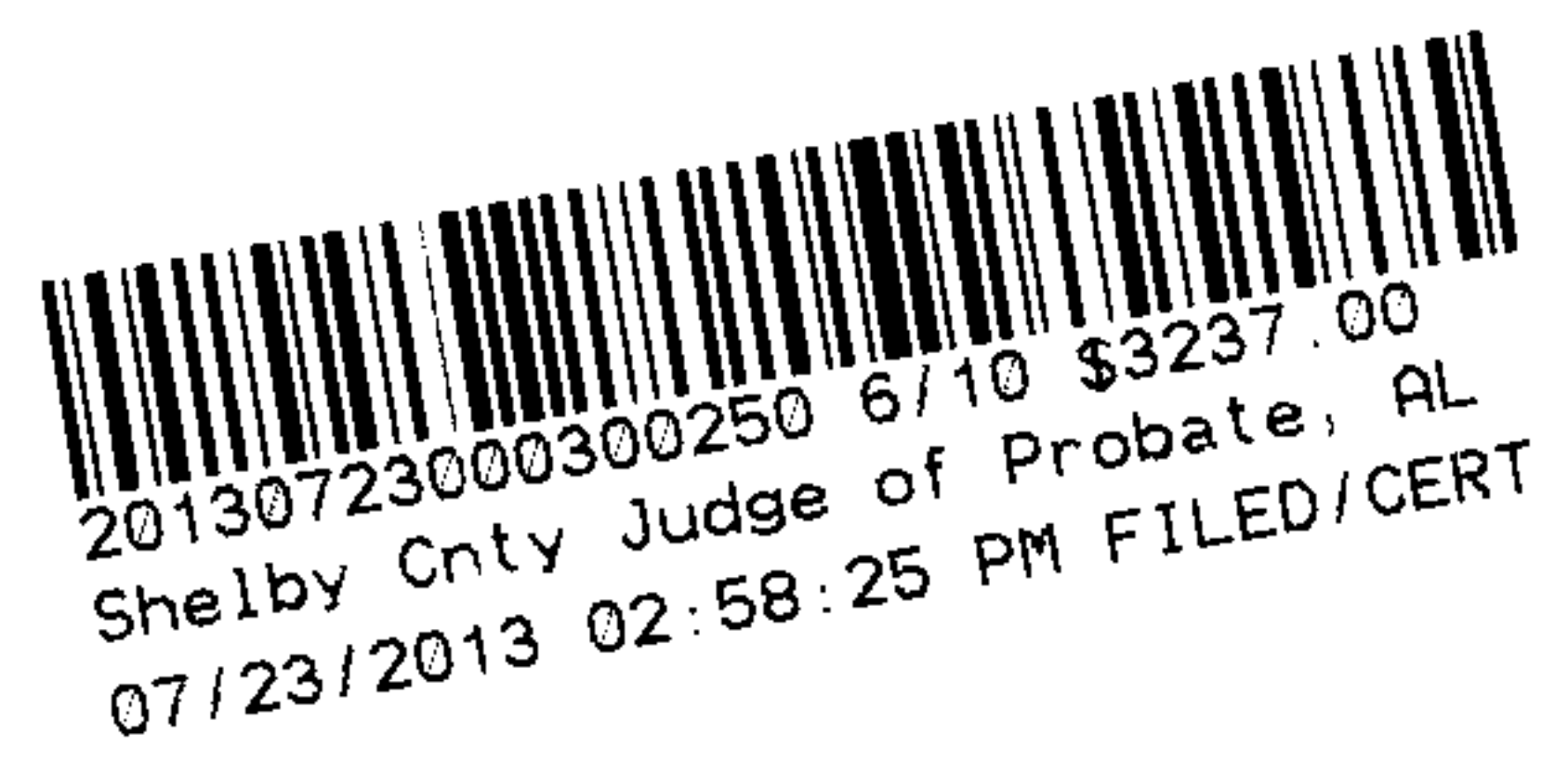
I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_ whose name as Vice President, Real Estate, of **WSE MANAGEMENT, LLC**, a Delaware limited liability company and the General Partner of Wal-Mart Stores East, LP, a Delaware limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents therein, he, in his said capacity as Vice President, Real Estate and with full authority, executed the same voluntarily for and as the act of said limited liability company on behalf of said limited partnership, on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
[NOTARIAL SEAL]





# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Santa Clara

On July 1, 2013

Date

before me,

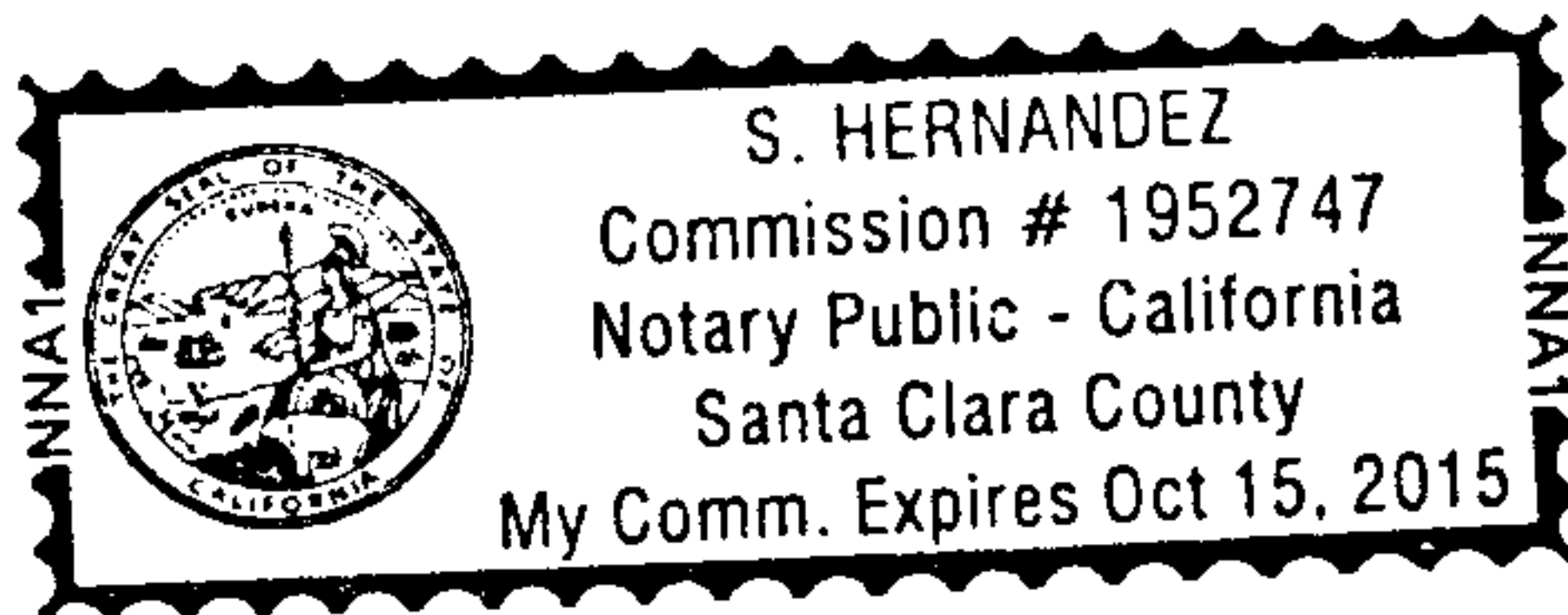
S. Hernandez, Notary Public

Here Insert Name and Title of the Officer

personally appeared

Christian E. Hansen

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:

Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, the undersigned authority, a Notary Public in and for said County, in said State, herby certify that \_\_\_\_\_ whose name as \_\_\_\_\_, of **K&H HELENA, LLC**, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents therein, he/she, in his said capacity as \_\_\_\_\_ and with full authority, executed the same voluntarily for and as the act of said limited liability company on behalf of said limited partnership, on the day the same bears date.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
[NOTARIAL SEAL]

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STATE OF ARKANSAS

COUNTY OF BENTON

I, the undersigned authority, a Notary Public in and for said County, in said State, herby certify that Daniel Mallory whose name as Vice President, Real Estate, of **WSE MANAGEMENT, LLC**, a Delaware limited liability company and the 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 therein, he, in his said capacity as Vice President, Real Estate and with full authority, executed the same voluntarily for and as the act of said limited liability company on behalf of said limited partnership, on the day the same bears date.

Given under my hand and seal this 20<sup>th</sup> day of August, 2012.

[Signature]  
Notary Public

My Commission Expires:

May 27, 2020  
[NOTARIAL SEAL]

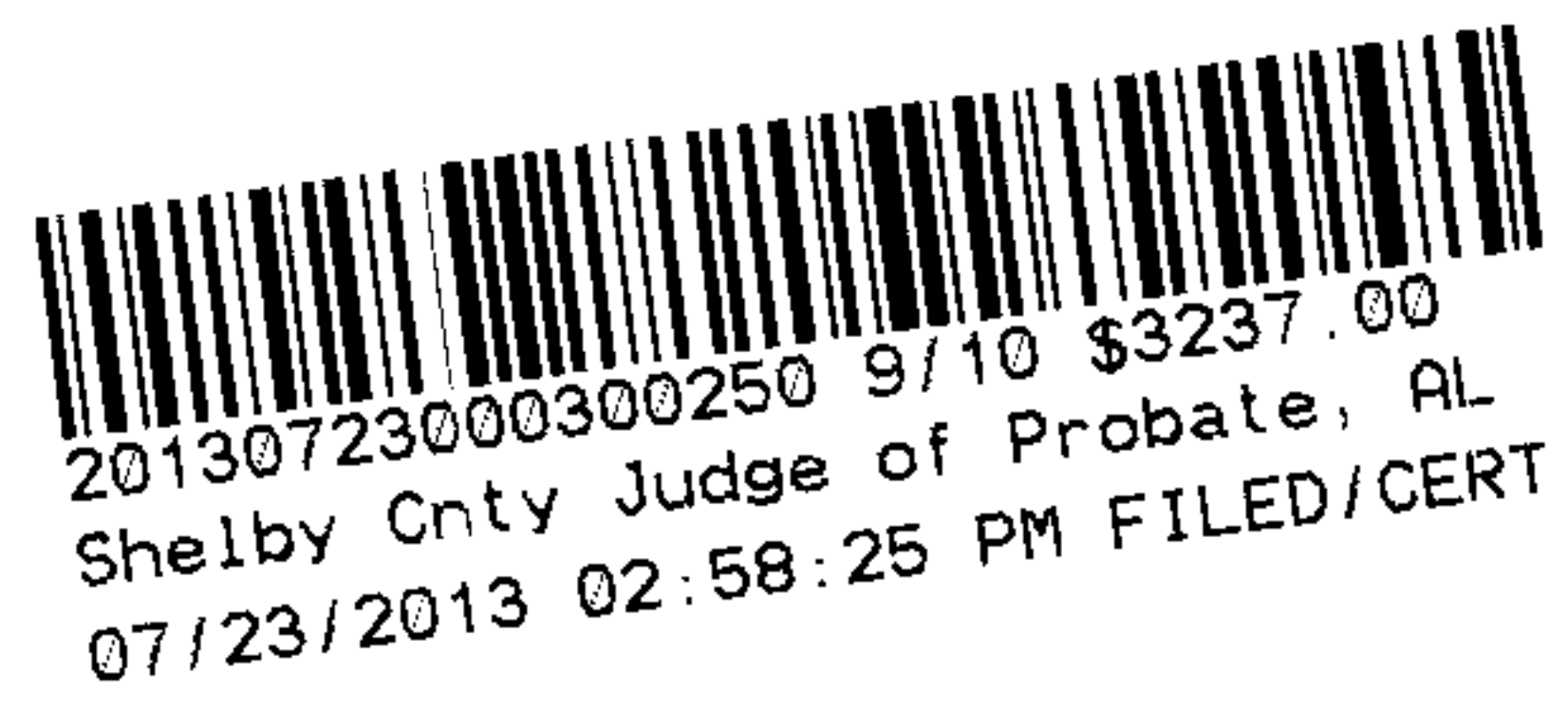
OFFICIAL SEAL  
SHERI FIEL  
WASHINGTON COUNTY  
NOTARY PUBLIC - ARKANSAS  
MY COMMISSION EXP. MAY 27, 2020  
COMMISSION# 12377216



## EXHIBIT A TO MEMORANDUM OF LEASE AGREEMENT

### LEGAL DESCRIPTION OF SHOPPING CENTER

*Commence at the Northeast corner of the NE ¼ of the SE ¼ of said Section 21; thence run West along the quarter line 595.95 feet; thence left 90°00', 360.00 feet to the south line of Brookline Parkway and the Point of Beginning of the property described herein; thence continue southerly along the same course 483.08 feet; thence right 87° 17'50" Westerly 661.68 feet to a point on the easterly right-of-way of Shelby County Highway No. 17; thence right 89° 58'14" Northerly 323.00 feet; thence right 90° 00'26" Easterly 202.30 feet; thence left 90° 00'38" Northerly 182.79 feet to the South line of Brookline Parkway; thence right 92° 48'04" Easterly 482.99 feet to the Point of Beginning.*




**EXHIBIT B TO MEMORANDUM OF LEASE AGREEMENT  
LEGAL DESCRIPTION OF THE PREMISES**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SHELBY, STATE OF ALABAMA, AND IS DESCRIBED AS FOLLOWS:

A portion of Lot 1, Helena Marketplace, as per plat recorded in Map Book 24, Page 141 of the records in the Probate Office of Shelby County, Alabama, said portion being more particularly described as follows: Commence at the Northeast corner of said Lot 1, said point also being on the Southernmost right of way line of Wyndham Parkway (60' R.O.W.); thence run North 88 degrees 38 minutes 50 seconds West along the North line of said Lot 1 and along said Southernmost right of way line for a distance of 82.28 feet to the POINT OF BEGINNING; thence leaving said North line and said Southernmost right of way line; run South 00 degrees 30 minutes 06 seconds East for a distance of 146.46 feet; thence run South 00 degrees 30 minutes 06 seconds East for a distance of 146.46 feet; thence run South 19 degrees 52 minutes 41 seconds East for a distance of 16.56 feet to a point on a curve turning to the left, said curve having a radius of 138.49 feet, a central angle of 13 degrees 22 minutes 05 seconds, a chord bearing of South 22 degrees 14 minutes 02 seconds East, and a chord distance of 32.24 feet; thence run along the arc of said curve for a distance of 32.31 feet to a point on a reverse curve turning to the right, said curve having a radius of 134.79 feet, a central angle of 27 degrees 18 minutes 52 seconds, a chord bearing of South 15 degrees 15 minutes 39 seconds East, and a chord distance of 63.65 feet; thence run along the arc of said curve for a distance of 64.26 feet; thence run North 88 degrees 23 minutes 49 seconds East for a distance of 40.92 feet to the East line of said Lot 1; thence run South 01 degrees 15 minutes 19 seconds West along said East line for a distance of 232.84 feet to the Southeast corner of said Lot 1; thence leaving said East line, run South 88 degrees 35 minutes 12 seconds West along the South line of said Lot 1 for a distance of 661.65 feet to the West line of said Lot 1, said point also being on the Easternmost right of way line of Shelby County Road #17 (80' R.O.W.); thence leaving said South line of said Lot 1, run North 01 degrees 26 minutes 34 seconds West along said West line and along said Easternmost right of way line for a distance of 322.99 feet to the Southwest corner of Lot 1-A of said Helena Marketplace; thence leaving said Easternmost right of way line, run North 88 degrees 33 minutes 29 seconds East along the South line of said Lot 1-A for a distance of 202.27 feet to the Southeast corner of said Lot 1-A; thence leaving said South line, run North 89 degrees 33 minutes 23 seconds East for a distance of 151.03 feet; thence run South 02 degrees 14 minutes 28 seconds East for a distance of 52.07 feet; thence run North 89 degrees 49 minutes 56 seconds East for a distance of 8.03 feet; thence run North 88 degrees 35 minutes 00 seconds East for a distance of 82.99 feet; thence run North 01 degrees 20 minutes 19 seconds West for a distance of 71.78 feet; thence run North 88 degrees 10 minutes 00 seconds East for a distance of 130.72 feet; thence run North 01 degrees 11 minutes 13 seconds West for a distance of 146.73 feet to a point on said North line of said Lot 1, said point also being on said Southernmost right of way line of said Wyndham Parkway; thence run South 88 degrees 38 minutes 50 seconds East along said North line and along said Southernmost right of way line for a distance of 25.73 feet to the POINT OF BEGINNING. Said parcel contains 212,587 square feet or 4.88 acres, more or less.

Together with beneficial rights of that certain Declaration of Covenants and Easements recorded in Instrument #1997111300371510, as amended in Instrument #20010403000123310 and Declaration of Easements recorded in Instrument #19981215004993.

ButlerSnow 10147522v1

  
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