

HS

Space Above Line For Official Use Only

**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

**SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMEN T AGREEMENT ("SNDA")**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT is made as of the 27<sup>th</sup> day of September, 2012, 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 DBD OTLP LLC, a Delaware limited liability company, with offices at One Market Plaza, Spear Tower, 42nd Floor, San Francisco, CA 94105, Attention: Rick Noble ("Mortgagee").

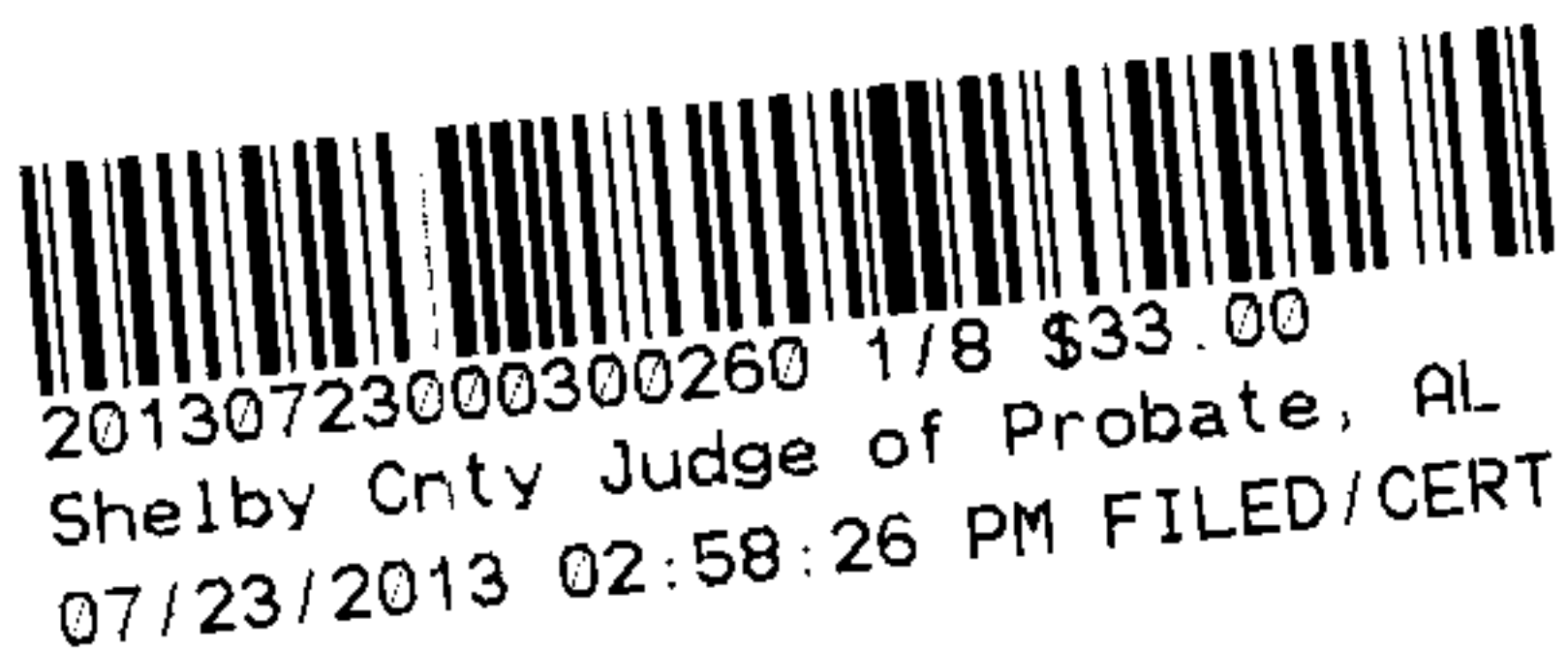
**WITNESSETH:**

**WHEREAS**, Mortgagee is the holder of a certain Mortgage, Assignment of Leases and Rents and Security Agreement, dated May 9, 2007, and recorded as document number 20070510000219820, in the Official Records of Shelby County, Alabama ("Mortgage"), covering the Shopping Center and/or Leased Premises situated in the City of Helena, County of Shelby, State of Alabama, as more particularly defined on Exhibit A hereto (hereinafter referred to as the "Premises"); and

**WHEREAS**, Lessee leased from K&H Helena, LLC, a Delaware limited liability company ("Lessor") 47,756 square feet in the Premises pursuant to that certain lease dated August 20, 2012 (as amended from time to time, the "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; and

**WHEREAS**, Lessor will deliver a copy of the Lease 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 original Lease and the terms thereof, including, but not limited to: (a) the obligation of Mortgagee to provide all casualty and/or condemnation proceeds received by Mortgagee which relate to damage to the Premises to Lessor for the payment of the cost of repairing or restoring the Premises as provided in Sections 12 and 16 of the Lease, subject to the terms and conditions contained therein (provided, however, in the event of Total Destruction of the Premises during the last three (3) Lease Years of the Initial Term or any Extension Term, Mortgagee shall not be obligated to provide any casualty proceeds unless Lessee does not terminate the Lease and elects to exercise an Extension Term); and (b) Lessee's options to extend the term as set forth in the Lease. Mortgagee covenants and agrees that the exercise by Lessee of rights, remedies and options therein contained shall not constitute a default under the Mortgage.

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 without the need to execute any additional documents or instruments.

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; and

(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 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, Lessee shall attorn to and recognize Mortgagee or any other purchaser at a foreclosure sale (its successors and assigns) as Lessee's landlord under the Lease. In the event Mortgagee, its successors and/or assigns acquire the Premises or the Shopping Center through foreclosure proceedings, deed-in-lieu of foreclosure, or otherwise, such event shall not activate the Right of First Refusal (as such term is defined in the Lease) and/or the Right of First Offer (as such term is defined in the Lease). There shall be no merger of the Lease or the leasehold estate created thereby with any other estate in the Premises, including without limitation the fee estate, by reason of the same person or entity acquiring or holding, directly or indirectly, the Lease and said leasehold estate and such other estate. Upon and after such attornment, the Lease shall continue in full force and effect as a direct lease between Mortgagee or such purchaser (its successors and assigns) 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 arising directly from such landlord's responsibilities and duties pursuant to the Lease, except that Mortgagee or such purchaser shall be liable for acts or omissions that are of a continuing nature (and Mortgagee or such purchaser received prior written knowledge thereof) following the date of



any such possession, foreclosure or deed; provided, however, that except as provided in Section 4(b) below, neither the Mortgagee or any such purchaser shall be liable for any damages incurred by Lessee that accrue prior to the date of possession, foreclosure or deed

(b) Be subject to any offset of rent under Section 7.A(i)(c) of the Lease, provided that Mortgagee has received appropriate written notice of such default, and has a reasonable opportunity (but having no obligation) to so cure same, all pursuant to the terms and conditions of the Lease;

(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) Be bound by any modification of the Lease unless excepted in subparagraph (e) below;

(e) Not be bound by any modification of the Lease made after the date of this Agreement without its written consent which would (i) reduce fixed annual rent, or (ii) materially reduce any other monetary obligation of Lessee under the Lease;

(f) Not be bound by any sums due Lessee under the Lease related to the costs of preparing, furnishing or moving into the Premises (for example, a construction or tenant improvement allowance;

(g) Not be obligated or liable to deliver the Cash Deposit, except as expressly set forth in the Tri-Party Agreement;

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. Lessee hereby agrees that if Lessee has the right to terminate the Lease or to claim a partial or total eviction, or to abate or reduce rent due to a Lessor default under the lease, Lessee will not exercise such right until it has given written notice to Mortgagee, and Mortgagee has failed within thirty (30) days after both receipt of such notice and the date when it shall have become entitled to remedy the same, to commence to cure such default and thereafter diligently prosecute such cure to completion within ninety (90) days of Mortgagee's commencement to cure such default.

6. Any required notices to Mortgagee 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 Mortgagee as hereinabove set forth, with mandatory copies to Karen Hering, Fortress Investment Group, LLC who maintains a place of business at 5221 N O'Connor Blvd, Suite 700, Irving, Texas 75039; and Kessler & Collins, P.C., 2100 Ross Avenue, Suite 750, Dallas, Texas 75201, Attention: Anthony J. Barbieri or at such other address(es) as Mortgagee may designate by notice.

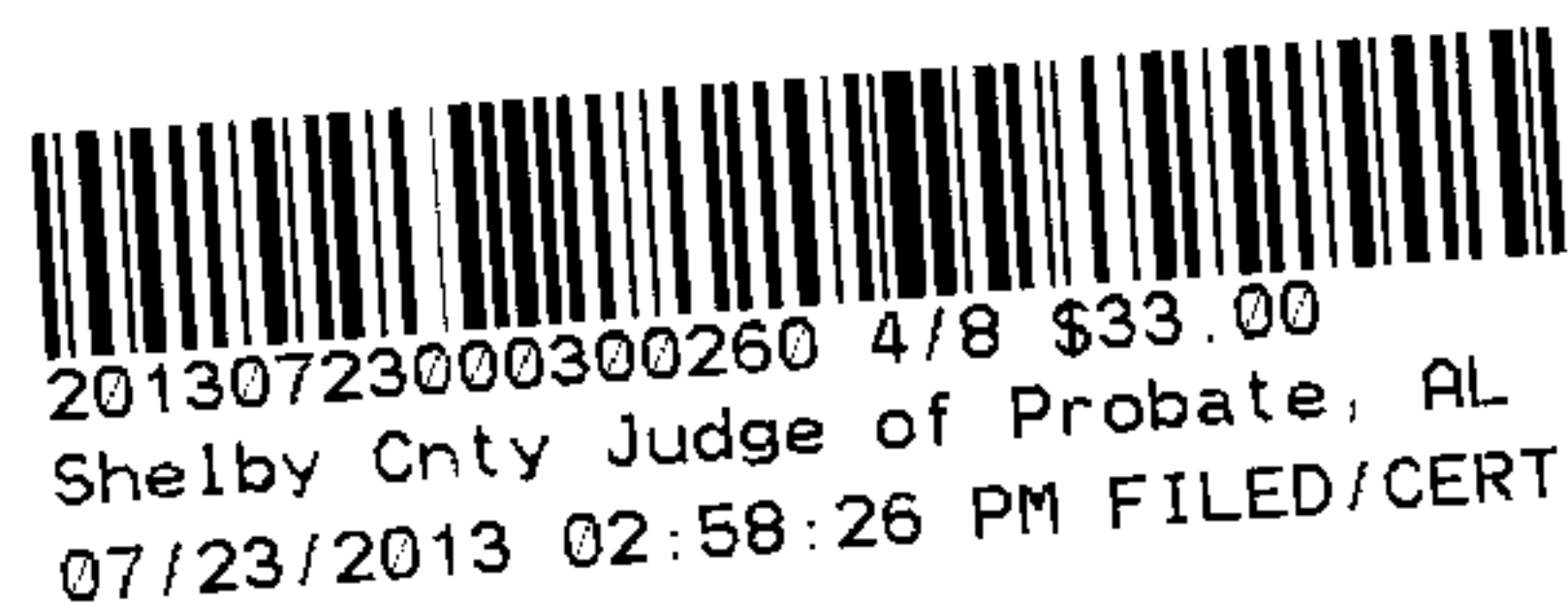
7. Any notices or communications given to Lessee under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage pre-paid, at the address of Lessee hereinabove set forth, also to the attention of Realty Management Dept. 9384 at 2001 S.E. 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. Mortgagee may assign this SNDA and its rights and obligations hereunder to an assignee of the Mortgage and the loan described in the Mortgage, provided such assignee agrees to be bound by the terms hereof. Any capitalized terms used, but not defined, herein shall have the meanings ascribed to them in the Lease.

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.

10. This Agreement may be executed in two or more counterparts (or a facsimile thereof), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by one or more parties using an electronic signature, which the parties agree shall be binding for all purposes and shall constitute an original signature.

**[SIGNATURE PAGES FOLLOW]**





IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereto this 27<sup>th</sup> day of September, 2012.

Signed, sealed and delivered  
in the presence of:

Michelle Butler  
Print Name: Michelle Butler

Diana Milligan  
Print Name: Diana Milligan

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

By: WSE MANAGEMENT, LLC,  
a Delaware limited liability  
company, General Partner

By: [Signature]  
Vice President, Real Estate

Signed, sealed and delivered  
in the presence of:

Robyn Cernant  
Print Name: Robyn Cernant


Colete Soble  
Print Name: Colete Soble

**MORTGAGEE:**  
**DBD OTLP LLC**  
a Delaware limited liability company

By: Drawbridge Special Opportunities  
Fund, LP, its sole member

By: Drawbridge Special Opportunities  
GP, LLC, its general partner

By: [Signature]  
Name: CONSTANTINE M. DAKOLIAS  
PRESIDENT  
Title: \_\_\_\_\_

  
20130723000300260 5/8 \$33.00  
Shelby Cnty Judge of Probate, AL  
07/23/2013 02:58:26 PM FILED/CERT

IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereto this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Signed, sealed and delivered  
in the presence of:

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

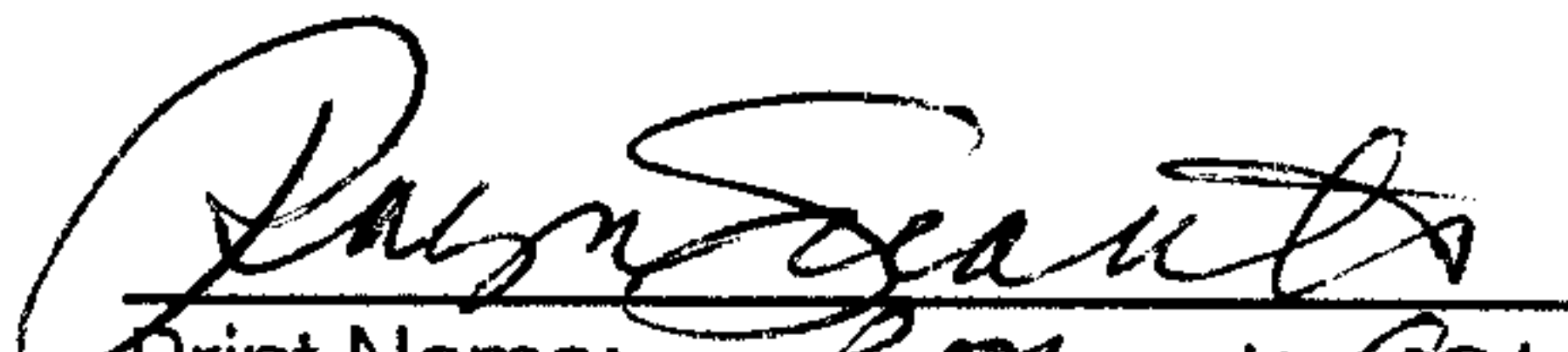
\_\_\_\_\_  
Print Name: \_\_\_\_\_


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

By: WSE MANAGEMENT, LLC,  
a Delaware limited liability  
company, General Partner

By: \_\_\_\_\_  
Vice President, Real Estate

Signed, sealed and delivered  
in the presence of:

  
Print Name: Robyn Cernant


  
Print Name: Colete Sible

**MORTGAGEE:**  
**DBD OTLP LLC**  
a Delaware limited liability company

By: Drawbridge Special Opportunities  
Fund, LP, its sole member

By: Drawbridge Special Opportunities  
GP, LLC, its general partner

By: \_\_\_\_\_  
Name: CONSTANTINE M. DAKOLIAS  
PRESIDENT  
Title: \_\_\_\_\_

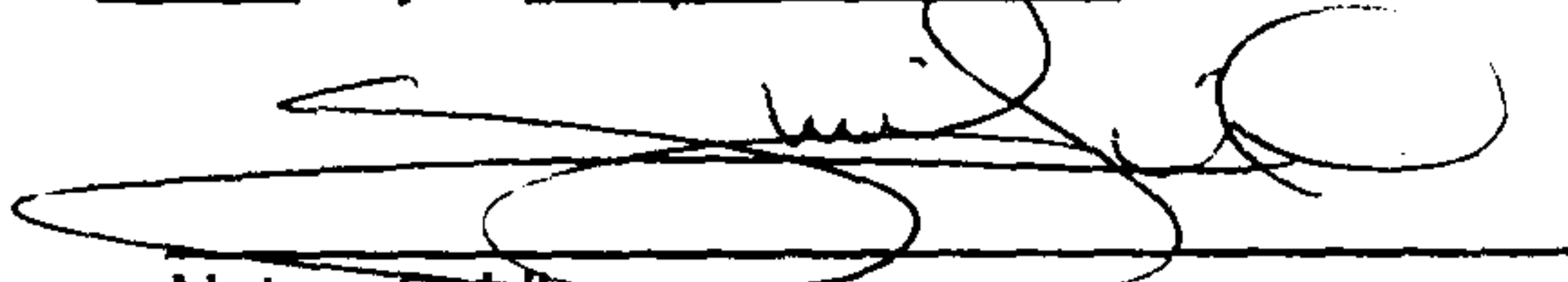
  
20130723000300260 6/8 \$33.00  
Shelby Cnty Judge of Probate, AL  
07/23/2013 02:58:26 PM FILED/CERT

STATE OF ARKANSAS

COUNTY OF BENTON

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby 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 27<sup>th</sup> day of September, 2012.

  
Notary Public

My Commission Expires:

May 27, 2020  
[NOTARIAL SEAL]



CORPORATE ACKNOWLEDGMENT

STATE OF New York

COUNTY OF New York

Be it remembered that on this 18 day of September, 2012, before me a notary public in and for the county and state aforesaid, came Constantine M. Belokas, President of Drawbridge Special Opportunities Fund GP, LLC, the general partner of Drawbridge Special Opportunities Fund LP, the sole member of DBD OTLP LLC, a Delaware limited liability company, who is personally known to me to be the person who executed as such officer the within instrument of writing on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of the foregoing entities.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.

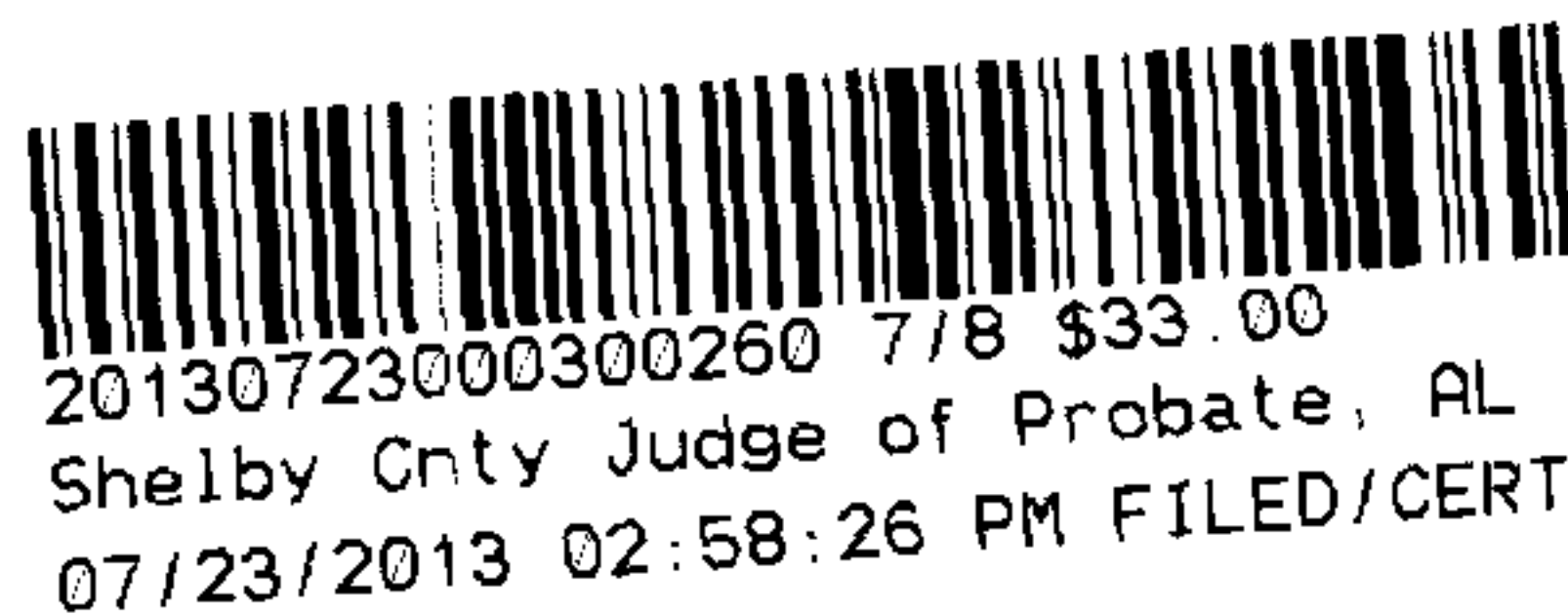
  
Notary Public

THOMAS SANTORA  
Notary Public, State of New York  
Qualified in New York County  
No. 01SA6191079  
My Commission Expires Aug. 4, 2016

(SEAL)

My Commission Expires:

Helena, AL - Wal-Mart Store #4189  
Building Lease Agreement - August 10, 2012  
Jackson 7208335v16





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]

CORPORATE ACKNOWLEDGMENT

STATE OF New York

COUNTY OF New York

Be it remembered that on this 18 day of September, 2012, before me a notary public in and for the county and state aforesaid, came Constantine M. Antolias, President of Drawbridge Special Opportunities Fund GP, LLC, the general partner of Drawbridge Special Opportunities Fund LP, the sole member of DBD OTLP LLC, a Delaware limited liability company, who is personally known to me to be the person who executed as such officer the within instrument of writing on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of the foregoing entities.

In testimony whereof, I have hereunto set my hand and affixed my notary seal the day and year last above written.

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

THOMAS SANTORA

(SEAL)

Notary Public, State of New York  
Qualified in New York County

No. 01SA6191079

My Commission Expires Aug. 4, 2016

Helena, AL – Wal-Mart Store #4189  
Building Lease Agreement – August 10, 2012  
Jackson 7208335v16

20130723000300260 8/8 \$33.00  
Shelby Cnty Judge of Probate, AL  
07/23/2013 02:58:26 PM FILED/CERT