

When recorded return to:
Gust Rosenfeld P.L.C.
One East Washington, Suite 1600
Phoenix, AZ 85004-2327
Attention: Laura Sever Blanco

Alamogordo, NM Store #5726-00

**COVENANTS AND RESTRICTIONS AFFECTING
LAND ("CR")**

THIS AGREEMENT is made as of the 16th day of October, 2015, between **WAL-MART STORES EAST, LP**, a Delaware limited partnership, of 2001 S.E. 10th Street, Bentonville, Arkansas 72716-0550 ("**Wal-Mart**"), **PATTILLO PROPERTIES, LLC**, a New Mexico limited liability company, of 11 La Mesa, Alamogordo, New Mexico 88310 ("**Pattillo**"), and **SOPHIE, LLC**, a New Mexico limited liability company, of 2301 Indian Wells Road, Suite A, Alamogordo, New Mexico 88310 ("**Sophie**").

WITNESSETH:

WHEREAS, Wal-Mart is the owner of the Wal-Mart Tract (the "**Wal-Mart Tract**") as shown on the plan attached hereto as Exhibit A-1 hereof, said tract being more particularly described in Exhibit B attached hereto;

WHEREAS, Pattillo is the owner of the Pattillo Tract (the "**Pattillo Tract**") shown on the plan attached hereto as Exhibit A-1 hereof, the same being more particularly described in Exhibit C hereof; and

WHEREAS, Sophie is the owner of the Sophie Tract (the "**Sophie Tract**") shown on the plan attached hereto as Exhibit A-1 hereof, the same being more particularly described in Exhibit D hereof; and

WHEREAS, Wal-Mart, Pattillo and Sophie desire that the Pattillo Tract and the Sophie Tract be subject to the covenants, conditions and restrictions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart, Pattillo and Sophie do hereby agree as follows:

1. Use. Buildings in the Pattillo Tract and the Sophie Tract shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices and retail stores. No night club, day care facility, child care facility, preschool or children's nursery, any business serving alcoholic beverages (to the extent that alcohol sales exceed 50% of gross revenue), any business or facility used in growing and dispensing 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, shall occupy space within the Pattillo Tract and the Sophie without the prior written consent of Wal-Mart, which Walmart may withhold in its sole and absolute discretion. Pattillo and Sophie recognize that said businesses may inconvenience Wal-Mart's customers and adversely affect Wal-Mart's business. Notwithstanding anything to the contrary contained herein it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Wal-Mart on the Wal-Mart Tract. Pattillo and Sophie recognize and agree that Wal-Mart may, at Wal-Mart's sole discretion and at any time during the term of this Agreement, cease the operation of its business on the Wal-Mart Tract; and Pattillo and Sophie hereby waive any legal action for damages or for equitable relief which might be available to Pattillo and Sophie because of such cessation of business activity by Wal-Mart.

2. Competing Business. Pattillo and Sophie covenant that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of the Wal-Mart Tract, either as owner or lessee, no space in or portion of the Pattillo Tract and the Sophie Tract, shall be leased or occupied by or conveyed to any other party for use as a retail facility dispensing gasoline or fuel from pumps, a membership warehouse club, a pharmacy, as a grocery store, as a discount store, as a dollar store or as any combination of the foregoing uses. In the event of a breach of this covenant, Wal-Mart shall have the right to terminate this Agreement and to seek any and all remedies afforded by either law or equity.

3. Rights And Obligations Of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon the tract of either party hereto, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such tract. Except as set forth in the preceding sentence, however, any holder of a first lien on the Wal-Mart Tract or the Pattillo Tract or the Sophie Tract, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

4. Release from Liability. Any person acquiring fee or leasehold title to the Wal-Mart Tract or the Pattillo Tract or the Sophie Tract, or any portion thereof, shall be bound by this Agreement only as to the tract or portion of the tract acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such tract or portion of the tract, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this

Agreement shall continue to be benefits to and servitudes upon said tracts running with the land.

5. Breach. In the event of breach or threatened breach of this Agreement, only all record owners of the Wal-Mart Tract as a group, or all record owners of the Pattillo Tract or the Sophie Tract as a group, or Wal-Mart so long as it or any affiliate has an interest as owner or lessee of the Wal-Mart Tract or Pattillo or Sophie so long as it or any affiliate has an interest as owner or lessee of the Pattillo Tract or the Sophie Tract, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed.

6. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

7. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by Pattillo, Sophie and Wal-Mart there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of (a) Wal-Mart as long as it or its affiliate has any interest as either owner or lessee of the Wal-Mart Tract, or its successors in interest, (b) Pattillo, as long as it or its affiliate has any interest as either owner or lessor of the Pattillo Tract, or its successors in interest, and (c) Sophie, as long as it or its affiliate has any interest as either owner or lessor of the Sophie Tract, or its successors in interest.

8. Non-Merger. So long as Wal-Mart or its affiliate is owner or lessee of the Wal-Mart Tract, this Agreement shall not be subject to the doctrine of merger.

9. Duration. Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

10. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

11. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall

not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

[SIGNATURE AND NOTARY PAGES FOLLOW]

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

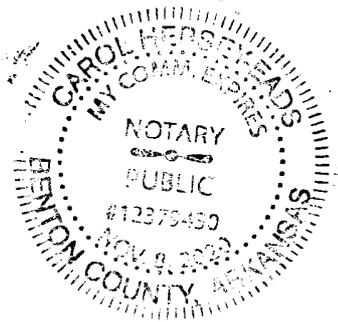
By: [Signature]
Name: Robert Stoker
Title: Senior Director of Real Estate

State of Arkansas

County of Benton

The foregoing instrument was acknowledged before me this 12th day of October, 2015, by Robert Stoker, a Senior Director of Real Estate of Wal-Mart Stores East, LP, a Delaware limited partnership, on behalf of the partnership.

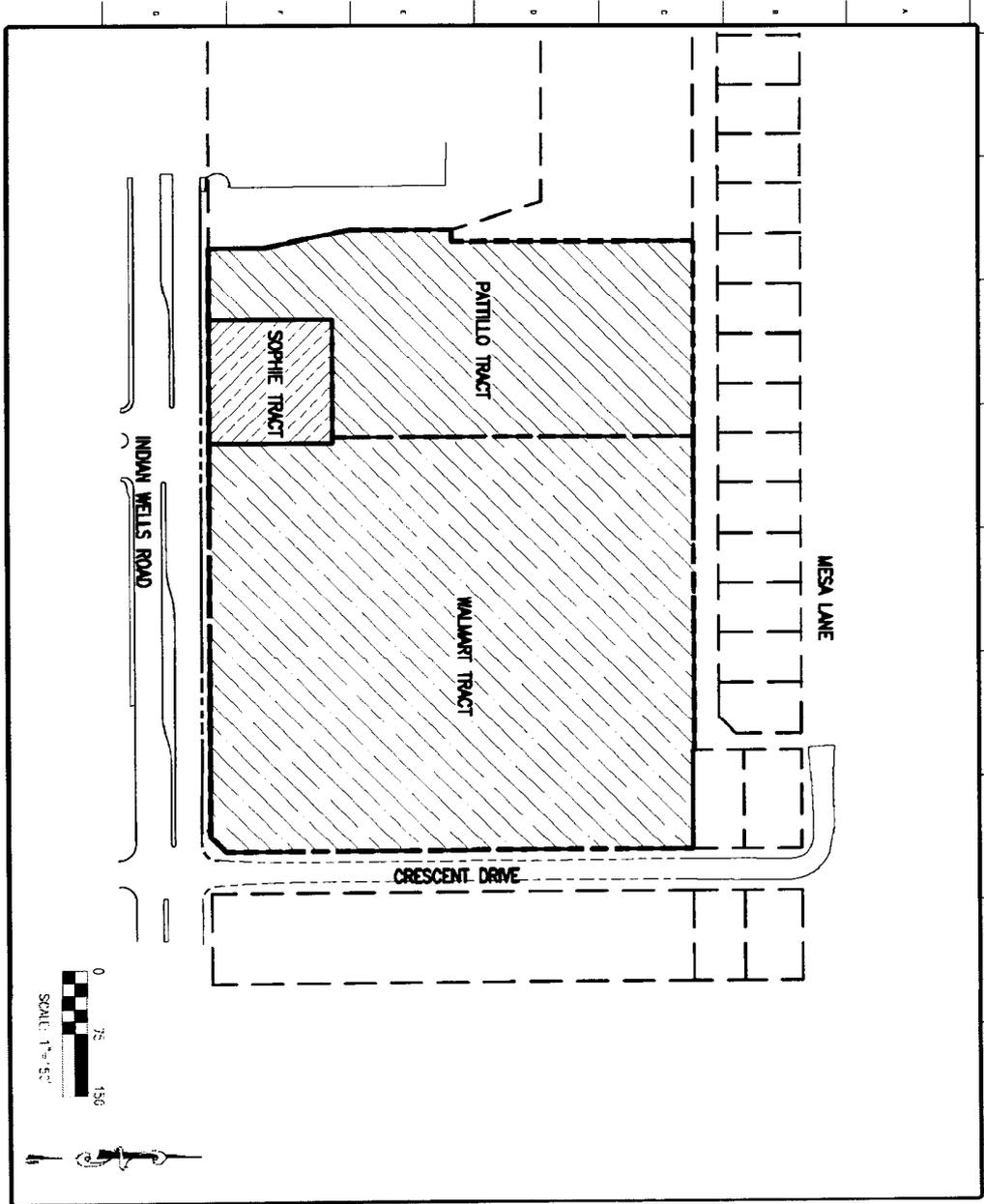
(Seal and Expiration Date)



[Signature]
Notary Public

EXHIBIT A-1

(Site plan showing Wal-Mart Tract, Pattillo Tract and Sophie Tract)



DATE: 10/29/15
DRAWN BY: AMG
CHECKED BY: [blank]
REVISIONS:
NO. DESCRIPTION
DATE
A-1

SITE PLAN STORE #87440-00
ALAMOGORDO, NEW MEXICO
OTERO COUNTY



EXHIBIT B

(Wal-Mart Tract legal description)

Lot One (1), Replat E, Tays Heights Addition, Unit 15-A, Alamogordo, Otero County, New Mexico.

EXHIBIT C

(Pattillo Tract legal description)

Lot Two (2), Replat E, Tays Heights Addition, Unit 15-A, Alamogordo, Otero County, New Mexico.

EXHIBIT D

(Sophie Tract legal description)

A tract of land located in Block 15, Tays Heights Addition, Unit A to the City of Alamogordo, according to the plat thereof on file in the office of the County Clerk of Otero County, New Mexico, in Book 13, pages 3 and 4, having been filed on the 18th day of December 1968, and said tract of land being more particularly described as follows to wit:

Beginning at the Southwest corner of said Block 15 thence easterly along South line of said Block 15 a distance of 818.2 feet for a point of beginning; Thence northerly, parallel to the West line of said Block 15, a distance of 150.00 feet; Thence easterly, parallel to the South line of said Block 15, a distance of 150.00 feet; Thence, southerly, parallel to the West line of said Block 15, a distance of 150.00 feet; Thence westerly, along South line of said Block 15, a distance of 150.0 feet to the point and place of beginning.

REC DATE: 10/29/15 REC TIME: 3:51:36 PM INSTR#: 201508122 CLK 
OTERO COUNTY, DENISE GUERRA COUNTY CLERK PAGE 12 OF 12

