

This document prepared by:

WAL-MART REAL ESTATE BUSINESS TRUST  
Sam M. Walton Development Complex  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, AR 72716-5535

Return recorded document to:

Lawyers Title  
4131 N. Central Expressway, Ste 450  
Dallas, TX 75204  
Attn: Denise Bell

1978015793V

Chicago Title 19038

**DECLARATION OF RESTRICTIONS AND MAINTENANCE COVENANTS**

This **DECLARATION OF RESTRICTIONS AND MAINTENANCE COVENANTS** ("Declaration") is made as of the 30 day of May, 2019, by **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust, with an address of 2001 S.E. 10th Street, Bentonville, AR 72716 (hereinafter "Wal-Mart").

**WITNESSETH**

**WHEREAS**, Wal-Mart is the owner of that certain tract or parcel of land situated in the City of Omaha, County of Douglas, State of Nebraska, identified as the "Property" on the attached Exhibit "A", and as legally described on the attached Exhibit "B"; and

**WHEREAS**, Wal-Mart is also the owner of land adjacent to the Property legally described on the attached Exhibit "C" (the "Wal-Mart Property"); and

**WHEREAS**, Wal-Mart desires to declare the following maintenance covenants on the Property;

**NOW THEREFORE**, in consideration of one dollar (\$1.00) and other good and valuable consideration, Wal-Mart hereby declares the following maintenance covenants on the Property:

1. Maintenance. The Property shall be kept neat, orderly, planted in grass and trimmed until improvements are constructed thereupon. Following completion of construction of

improvements on the Property, the Property shall be maintained such that the improvements and common areas remain in good condition and repair. This maintenance is to include, without limitation, the following as reasonably necessary:

(a) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;

(d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities;

(e) Maintaining and repainting when necessary all perimeter and exterior building walls, including but not limited to maintaining all retaining walls in a good condition and state of repair;

(f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; and

(g) Maintaining elements of the storm drainage system;

(h) In the event that a sanitary sewer line easement is necessary, then said easement shall be conveyed subject to the following conditions: i) the maintenance of the current property owner's sewer line on the Property and extending to Wal-Mart's existing sewer line system shall be the sole cost and responsibility of the current property owner; ii) in the event of restaurant use, then the current property owner shall be solely responsible for the installation and proper maintenance of an adequate grease interceptor, which must meet or exceed discharge requirements according to local governmental regulations; iii) if it shall become necessary for current property owner to make any repairs, or if the current property owner shall fail to adequately maintain the sanitary sewer line easement area as provided in the easement agreement, then Wal-Mart, at its sole option, but not obligation, may proceed forthwith to have the repairs made and pay the cost thereof, and to receive reimbursement from the current property owner within thirty (30) days after a written request for cost of said repairs or other cost associated therein. In such instances, Wal-Mart shall provide the current property owner with oral notification of its intention to make such repairs or the occurrence of such repairs at the earliest practicable time given the nature and extent of the repairs; and

(i) If the current property owner is in default of this Declaration, then Wal-Mart shall (i) demand, by written notice, that the current owner of the Property maintain the Property in accordance with this Declaration; and (ii) if thirty (30) days after receipt of the written notice contemplated in section (i)(i) the current property owner remains in default of this Declaration, then Wal-Mart may perform the needed maintenance to cure the current property owner's default and invoice the current property owner the costs of the repairs along with a ten (10) percent management fee. The current property owner shall promptly pay Wal-Mart under this section

(i)(ii) within thirty (30) days after receipt of invoice for such expenses. Wal-Mart shall have the right to file, enforce and collect on, a lien for all costs and expenses incurred by Wal-Mart in performing any obligations of the current owner hereunder.

2. Restrictions. The following restrictions shall remain in effect on the Property for a period of the earlier of: (i) fifty (50) years from the recording of this Declaration; or (ii) the date that is twenty-four (24) months after Walmart Inc. no longer has an operating format within a five (5) mile radius of the Wal-Mart Property.

- (a) The Property shall only be used by single tenant users for purposes of the kind typically found in shopping centers, including, but not limited to, offices, restaurants, and retail shops; no building with multiple tenants shall be permitted on the Property;
- (b) The Property shall not be used for or in support of the following: (i) adult book store, adult video store (an adult video store is a video store that sells or rents videos that are rated NC-17, X, XX, XXX, or of a rating assigned to works containing material more sexually explicit than XXX, by the film rating board of the Classification and Rating Administration), "adult" business activities, including without limitation any massage parlor, escort service, facility with nude (or partially nude, bathing suit-clad or lingerie-clad) models or dancers or any establishment selling or exhibiting sexually explicit materials; (ii) pawn shop, bar, night club, gaming activities (including but not limited to gambling, electronic gaming machines, slot machines and other devices similar to the aforementioned), billiard parlor, any place of recreation/amusement, or any business whose principal revenues are from the sale of alcoholic beverages for on or off premises consumption; (iii) any business that cashes checks or makes short-term or "payday advance" type loans; (iv) any business or facility used in growing, delivering, transferring, supplying, dispensing, dispersing, distributing or selling marijuana or any synthetic substance containing tetrahydrocannabinol, any psychoactive metabolite thereof, or any substance chemically similar to any of the foregoing, whether by prescription, medical recommendation or otherwise, and whether consisting of live plants, seeds, seedlings or processed or harvested portions of the marijuana plant; (v) any self-storage facility; (vi) a variety, general, "dollar" type store; (vii) movie theater or bowling alley; or (viii) health spa/fitness center greater than three thousand (3,000) square feet. Notwithstanding, the foregoing, shall not exclude the regular business of any bank or financial institution insured by the F.D.I.C. or mortgage brokerage firm or other similar business providing long-term, mortgage type loans;
- (c) Only one (1) one-story building may be erected on the Property, which building, so long as the applicable parking ratio required herein is met, shall not exceed three thousand (3,000) square feet in floor size or twenty-two (22) feet in height, as measured from the finished floor elevation of the Property (provided that architectural features such as sign parapets and similar decorative facilities may be used as long as they do not exceed twenty-eight (28) feet in height above finished floor elevation and shall not exceed in the aggregate twenty percent (20%) in area of any building facade);

- (d) Unless otherwise approved by Wal-Mart as part of the Development Plan (defined below), there shall be not less than five (5) parking spaces for every one thousand (1,000) square feet of floor building area thereon, and thirteen (13) parking spaces for every one thousand (1,000) square feet of floor building area used for restaurants exceeding two thousand (2,000) square feet; in the event the Property is used for a free-standing restaurant, there shall be not less than fifteen (15) parking spaces on the Property for every one thousand (1,000) square feet of floor building area thereon; there shall be maintained a parking ratio of eight (8) parking spaces for every one thousand (1,000) square feet of floor building area used for a health spa/fitness center three thousand (3,000) square feet or less; for all other uses permitted hereunder there shall be not less than five (5) parking spaces per one thousand (1,000) square feet of floor building area on the Property;
- (e) Only signs advertising business located on the Property may be erected thereon; signs located on the Property shall not contain images or words that are offensive to the ordinary reasonable person (whether cloaked in images, words, or phrases carrying double meanings); the exterior of any building constructed on the Property shall not be constructed of metal; and trash enclosure shall be constructed of masonry materials;
- (f) Wal-Mart reserves the right to approve, prior to commencement of any construction of any buildings or improvements on the Property: (i) site plans including setbacks from lot lines, location and dimensions of parking areas and spaces, driveways and service areas, placement of building(s) and other improvements including square footage of building(s), location of masonry trash enclosure, stop signs and bars at all curb cuts, and the location of existing Wal-Mart signage (if any) on the Property; (ii) utility plans including all utility connections (including electric and telephone); (iii) grading plans including storm water management and detailed elevations; (iv) erosion and sediment control plans including rock construction entrances (to be in place prior to any construction), silt fence (to be in place prior to any construction) and other erosion controls required on the Property; (v) exterior elevations of the front, back, and both sides of the building(s), including height; (vi) exterior signage plans indicating the dimensions of exterior pylon or monument signage and the design of the sign panel(s) to be placed onto the sign structure; (vii) landscaping and irrigation plan, including landscaping on the Property and to be installed on that area adjacent to the Property (collectively the "Development Plan"). Said Development Plan is to be prepared by certified/licensed architects and/or engineers and shall conform to the restrictions set forth above. Property owner shall deliver full-sized plans of the said Development Plan to Wal-Mart for its approval. Wal-Mart shall have thirty (30) days after receipt of the Development Plan from Property owner to approve or disapprove the Development Plan in writing, provided, however, that Property owner shall have exclusive control over the means and methods of implementing such plans and specifications and by its right of approval Wal-Mart shall not have nor assume any operational control over such plans and specifications for purposes of compliance with any Storm Water Requirements. If the Development Plan is disapproved, Wal-Mart shall give the reasons for such disapproval, and the Property owner shall resubmit to Wal-Mart a

revised Development Plan incorporating Wal-Mart's suggested revisions within thirty (30) days from the date of Property owner's receipt of Wal-Mart's disapproval, and the same time schedule as mentioned above shall be repeated until the Development Plan is approved.

3. Public Grant. Nothing contained herein shall be used or construed as a grant of any rights to any public or governmental authority or agency.

4. Successors, Modification. Except as provided herein, the agreements contained herein and the rights granted hereby shall run with the title to the Property and shall bind and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns. This Declaration may be modified in writing.

5. Change of Ownership. In the event of a change of ownership, Wal-Mart shall be notified thereof within thirty (30) days thereafter. Wal-Mart shall be provided the name and address of such transferee.

6. Effective Date. This instrument shall become effective on the date of the full execution by Wal-Mart.

7. Headings. The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the agreements contained herein or the rights granted hereby.

8. Counterparts. This document, and any modifications, may be executed in one or more counterparts, including by facsimile, all parties need not be signatories to the same documents, and all counterpart signed documents shall be deemed to be an original and one (1) instrument.

[Signature pages follow]

28<sup>th</sup> **IN WITNESS WHEREOF**, Wal-Mart hereto has executed this instrument the  
day of May, 2019.

(Wal-Mart)

**WAL-MART REAL ESTATE BUSINESS TRUST,**  
a Delaware statutory trust

By: *Carole J Baker*

Name: CAROLE J BAKER  
Title: Senior Director

**ACKNOWLEDGMENT**

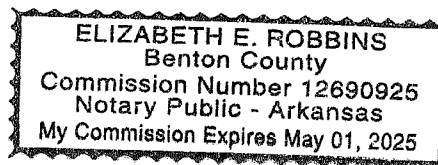
STATE OF ARKANSAS     )  
  ) §§  
COUNTY OF BENTON     )

In the State of Arkansas, County of Benton, on this May 28<sup>th</sup>, 2019, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Carole J Baker to me personally known, who being by me duly sworn did say that she is Senior Director of the Grantor in the foregoing instrument and that said instrument was signed, sealed and delivered by her on behalf of said trust by authority of its Managing Trustee and said Senior Director acknowledged said instrument to be the free act and deed of said trust.

WITNESS MY HAND and notarial seal subscribed and affixed in said County and State, the day and year in this certificate above written.

By: *Elizabeth E Robbins*  
Notary Public

My Commission Expires: 5/1/2025



# EXHIBIT "A"

(Site Plan Showing the Property)

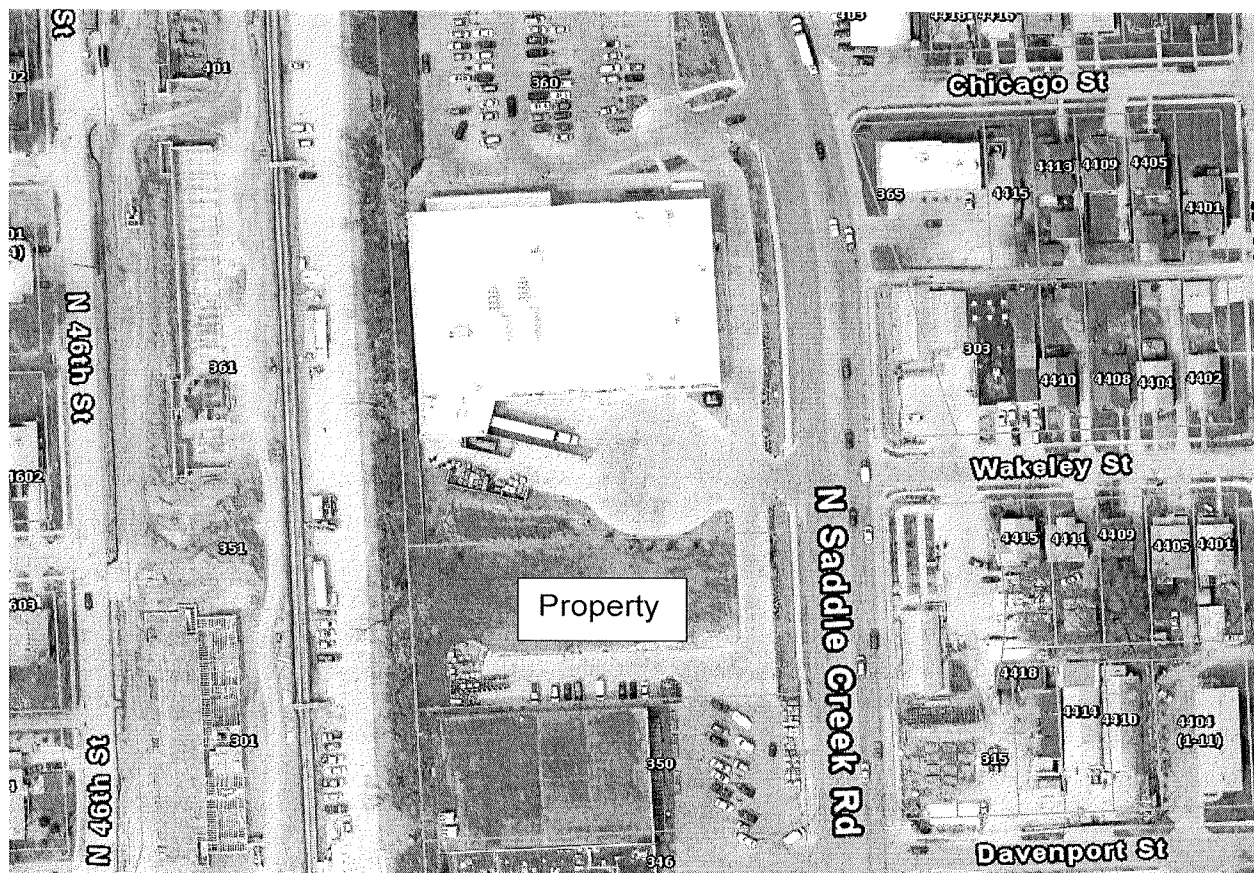


EXHIBIT "B"

(Legal description of the Property)

Lot 2, Poppleton Park Replat One, City of Omaha, Douglas County, Nebraska.



EXHIBIT "C"

(Legal description of the Wal-Mart Property)

Lot 1, Poppleton Park Replat One, City of Omaha, Douglas County, Nebraska.