

restaurant), or any business selling or serving packaged or takeout alcoholic beverages shall occupy space within the Shopping Center without the prior written consent of Wal-Mart. 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 Property. Falkner recognizes and agrees 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 Wal-Mart Property; and Falkner hereby waives any legal action for damages or for equitable relief which might be available to Falkner because of such cessation of business activity by Wal-Mart.

2. **Competing Business.** Falkner covenants that as long as Wal-Mart or any affiliate of Wal-Mart is the user of Wal-Mart Property, as owner, no space in or portion of Seller's Property shall be leased or occupied by or conveyed to any other party for use as (i) a grocery store or supermarket, as hereinafter defined below, (ii) a wholesale club operation similar to that of a Sam's Club, (iii) a discount department store or other discount store, as hereinafter defined, (iv) pharmacy, or (v) a retail gas station. 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, including, without limitation, the rights to injunctive relief. "Grocery store" and "supermarket", as those terms are used herein, shall mean a food store or a food department containing more than ten thousand (10,000) square feet of gross leasable area, other than the Wal-Mart store for the purpose of selling food for consumption off the premises, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments. "Discount department store" and/or discount store", as those terms are used herein, shall mean a discount department store or discount store containing more than thirty-five thousand (35,000) square feet of gross leasable area, other than the Wal-Mart store for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, pharmacy, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that of Wal-Mart.

3. **Buildings.**

- a. **Design and Construction.** The buildings within the Shopping Center (excluding the Wal-Mart Store) shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one Tract onto another Tract. The design and construction shall be of high quality. No building shall exceed thirty-five feet (35') in height above finished grade.
- b. **Fire Protection.** Any building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other buildings in the Shopping Center.
- c. **Outparcel(s) Development.** Seller's Property shall be developed only under the following guidelines:
  - (1) The buildings constructed on the Seller's Property shall not exceed thirty-five (35) feet in height, as measured from the mean finished elevation of the parking area of the Shopping Center;