

# UNOFFICIAL COPY

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

SUPERVALU Inc.  
11840 Valley View Road  
Eden Prairie, MN 55344-3691  
Attention: Legal Department

This Instrument Was Jointly Prepared By:

Thomas A. Votner  
Baker & Daniels LLP  
300 N. Meridian Street; Suite 2700  
Indianapolis, Indiana 46204

Jama M. Kriz  
Region Counsel  
SUPERVALU INC.  
11840 Valley View Road  
Eden Prairie, MN 55344

(Oak Forest IL 3163/6823)



1131345038

Doc#: 1131345038 Fee: \$58.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 11/09/2011 02:15 PM Pg: 1 of 12

(Space Above This Line For Recorder's Use)

## PURCHASE AND USE RESTRICTION AGREEMENT

THIS PURCHASE AND USE RESTRICTION AGREEMENT ("Agreement") is made as of November 8, 2011 by and between JETCO PROPERTIES, INC. a Delaware corporation ("Purchaser"), and RDK Ventures LLC, a Delaware limited liability company ("Owner"); individually, a "Party", or, collectively, the "Parties".

### RECITALS

A. Concurrently with the execution and delivery of this Agreement, Purchaser is selling and conveying to Owner title to the real property described on Exhibit A attached hereto and incorporated herein by this reference, together with the improvements and certain personal property located thereon (collectively, the "Property").

B. As a material part of the consideration for such sale and conveyance of the Property, Owner and Purchaser, as the owner of that certain adjacent property described on Exhibit B attached hereto and incorporated herein by this reference ("Adjacent Property"), desire to enter into certain agreements with respect to Owner's use of the Property, Purchaser's use of the Adjacent Property, and Purchaser's repurchase of the Property, all on the terms and conditions set forth in this Agreement.

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NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1. Recitals

The foregoing Recitals are hereby incorporated herein in their entirety.

## 2. Definition of Force Majeure

As used in this Agreement, "Force Majeure" shall mean causes, other than financial, beyond the applicable Party's reasonable control, including strikes, lockouts, fire or other casualty, inclement weather or acts of God.

## 3. Restrictions on the Property

3.1 The Property shall not be used as a drug store, or for the sale or offer for sale of any pharmaceutical products requiring the services of a registered pharmacist. This use restriction shall burden the Property, Owner, its successors and assigns, and shall inure to the benefit of the Adjacent Property, Purchaser, its successors and assigns, unless and until Grocery Store Business Operations completely cease to be conducted at the Adjacent Property for 180 consecutive days, excluding any periods during which no Grocery Store Business Operations are conducted due to casualty, repair, remodeling, Force Majeure or other reasons not within the reasonable control of the operator of the Adjacent Property. For purposes of this Agreement, "Grocery Store Business Operations" shall be defined as a retail food supermarket, which sells such items as retail food, meat, fish, poultry, produce, dairy products, baked goods and beverages, for off premises consumption.

3.2 Owner shall not place on the Property, including without limitation on pumps, canopy, price sign and/or marquee, any materials that are visible outside the structure on the Property that advertise a "Competitive Program". This restriction shall continue until such time as Grocery Store Business Operations by Purchaser or its affiliate at the Adjacent Property have completely ceased for 180 consecutive days, excluding any periods during which no Grocery Store Business Operations are conducted due to casualty, repair, remodeling, Force Majeure or other reasons not within the reasonable control of Purchaser or its affiliate. This restriction shall apply even if Purchaser and/or its affiliate have elected not to participate in a similar program with Owner. For purposes of this Agreement a "Competitive Program" shall be defined as a program wherein a gasoline retailer issues credits based on its customers' purchases with a grocery, mass merchandise or pharmacy retailer other than Purchaser that are redeemed at Owner's locations as a reduction of the purchase price of motor fuel.

## 4. Restrictions on Adjacent Property

The Adjacent Property and any other property owned or controlled by Purchaser or any affiliate of Purchaser within 1,000 feet of the Property shall not be used as (a) a fuel center or for the retail sale of gasoline, diesel or other motor fuel, or other non packaged petroleum products, (b) as a convenience store, or (c) as a car wash. This restriction shall

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continue until such time as Fuel Center Business Operations have completely ceased for 180 consecutive days, excluding any periods during which no Fuel Center Business Operations are conducted due to casualty, repair, remodeling, Force Majeure or other reasons not within the reasonable control of Owner. For purposes of this Agreement "Fuel Center Business Operations" shall be defined as a retail fuel center and related retail convenience store or kiosk selling food, beverages, grocery items, tobacco, gasoline, motor fuel and other non-packaged petroleum products.

## 5. Purchase Right in Response to Property Going "Dark"

If the Property goes Dark at any time during the period of twenty (20) years commencing on the date of this Agreement and expiring on the twentieth (20<sup>th</sup>) anniversary of the date of this Agreement ("Go Dark Term"), Purchaser shall have a one-time right (the "Going Dark Purchase Right") to purchase the Property, in its then "as-is" condition, for a purchase price equal to the "Fair Market Value" (as defined below) and otherwise in the manner set forth in this Agreement. The Going Dark Purchase Right shall burden the Property, Owner, its successors and assigns, and shall inure to the benefit of the Adjacent Property, Purchaser, its successors and assigns, unless and until Grocery Store Business Operations completely cease to be conducted at the Adjacent Property for 180 consecutive days, excluding any periods during which no Grocery Store Business Operations are conducted due to casualty, repair, remodeling, Force Majeure or other reasons not within the reasonable control of the operator of the Adjacent Property. For purposes of this Agreement, the Property shall be deemed to be "Dark" if no business with the public has been conducted at the Property for 180 consecutive days, excluding any periods during which Owner, its successors or assigns, is not conducting business due to casualty, repair, remodeling, Force Majeure or other reasons not within the reasonable control of Owner. Upon Going Dark, Owner shall promptly provide notice to Purchaser of such Dark event, which notice shall specify the date of the Dark event. To exercise the Going Dark Purchase Right, Purchaser shall give written notice ("Going Dark Purchase Notice") thereof to Owner at any time during the one hundred twenty (120) day period after the Dark event. The Going Dark Purchase Notice shall be effective on the date Owner receives the Going Dark Purchase Notice. Failure to exercise such right in a timely manner shall constitute waiver of the right. If bona fide business operations on the Property have not commenced within thirty (30) days after the effective date of the Going Dark Purchase Notice, the "Fair Market Value" of the Property shall be determined as set forth in Section 6 below. Notwithstanding the foregoing, if within thirty (30) days after the effective date of the Going Dark Purchase Notice, Owner re-commences bona fide business operations at the Property and continues the same for six (6) months after commencement, Purchaser's Going Dark Purchase Right shall be null and void with respect to the Dark event for which the Going Dark Purchase Notice was provided, but shall be applicable to the subsequent Dark event, if any.

## 6. Purchase Right in Response to Change in Use of the Property

If at any time Owner wishes to use the Property, or to sell the Property to a third party to be used, for any purpose other than Fuel Center Business Operations ("Change in Use"),

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Purchaser shall have the right (the "Use Change Purchase Right") to purchase the Property, in its then "as-is" condition, for a purchase price equal to the price at which Owner has agreed to sell the Property to a third party or at the "Fair Market Value" if there is no third party buyer and otherwise as set forth in this Agreement. The Use Change Purchase Right shall burden the Property, Owner, its successors and assigns, and inure to the benefit of the Adjacent Property, Purchaser, its successors and assigns, unless and until Grocery Store Business Operations completely cease to be conducted at the Adjacent Property for 180 consecutive days, excluding any periods during which no Grocery Store Business Operations are conducted due to casualty, repair, remodeling, Force Majeure or other reasons not within the reasonable control of the operator of the Adjacent Property. Upon a Change in Use, Owner shall give Purchaser written notice ("Owner's Use Change Notice") of the anticipated Change in Use, which notice shall include the details of the Change in Use, including without limitation, the proposed use Owner anticipates, if any, and the purchase price offered by a third party buyer. To exercise the Use Change Purchase Right, within one hundred twenty (120) days after Purchaser's receipt of Owner's Use Change Notice or determination of Fair Market Value if there is no third party buyer, Purchaser shall give written notice ("Use Change Purchase Notice") thereof to Owner. Failure to exercise such right in a timely manner shall constitute waiver of the right. The Use Change Purchase Notice shall be effective on the date Owner receives, if any, the Use Change Purchase Notice.

## 7. Fair Market Value

"Fair Market Value" means the value of the Property, which shall include the fee, leasehold or subleasehold interest, any improvements thereon and any equipment owned by Owner and used in the operation of the retail fuel center at the Property. Upon Owner's receipt of Purchaser's Going Dark Notice, Owner and Purchaser shall meet and confer in good faith for the purpose of agreeing on Fair Market Value. If within ten (10) days after first meeting the Parties are unable to agree on Fair Market Value, each Party shall, within five (5) business days after the last meeting of the Parties, at its expense, select and retain an M.A.I. Certified Appraiser who conducts his or her business in the trade area where the Property is located and has had at least five (5) years experience in the appraisal of owner/lessee-occupied retail properties (an "Appraiser"). Within thirty (30) days after the last meeting of the Parties, each Appraiser shall conduct an appraisal of the Property using the Cost Approach, Sales Comparison Approach and the Income Capitalization Approach, and shall arrive at a value of the Property, as operated as a retail fuel center, with any associated convenience store/kiosk. If the values of the Property determined by the Appraisers are within ten percent (10%) of each other, then the Fair Market Value shall be determined to be the average of the values determined by the Appraisers. If the values determined by the Appraisers are not within ten percent (10%) of each other, then the Appraisers shall select a third Appraiser, who shall determine within ten (10) days after appointment which of the values as determined by the first two Appraisers shall be the Fair Market Value. The cost of such third Appraiser shall be split equally by Owner and Purchaser. Within ten (10) days after determination of Fair Market Value, Purchaser may elect to withdraw its Go Dark Purchase Notice or Use Change Purchase Notice by giving Owner written notice thereof.

## 8. Closing

The closing of the purchase of the Property pursuant to this Agreement ("Closing") shall take place (if at all) through an escrow with the local office of First American Title Insurance

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Company, or another title insurance company mutually acceptable to the Parties ("Escrow"), within sixty (60) days after delivery of the Going Dark Purchase Notice or the Use Change Purchase Notice, as the case may be. At the Closing, Owner and Purchaser shall execute and deliver all documents necessary or reasonably desirable to convey the Property to Purchaser, including without limitation, a bill of sale for equipment and a special warranty deed to the Property. Title to the Property shall be conveyed at Closing subject only to (i) those matters of record as of the conveyance of the Property to Owner and the recordation of this Agreement, (ii) takings or grants in lieu of such takings in connection with the exercise of powers of condemnation or eminent domain by governmental authorities; and (iii) any other matters of record to which Purchaser has expressly subordinated this Agreement in writing; provided, however, Purchaser shall not unreasonably withhold its agreement to subordinate this Agreement; provided, further, in all events title to the Property shall be free of all monetary liens (which Owner shall be obligated to satisfy or remove prior to Closing) other than taxes not yet due and payable. Real estate taxes, water and sewer fees, and any common area maintenance charges and rentals shall be apportioned pro rata on a per diem basis as of the date of Closing. Utility charges shall be apportioned as of the date of Closing based upon a meter reading. Any items which are not adjusted upon the basis of actual amounts (including items which the Parties adjust based upon actual amounts but which are revised or adjusted promptly after Closing by the entity which imposes such tax, fee, charge or rental) shall be readjusted immediately upon receipt of the actual bills therefor, and within fifteen (15) days of receipt of such bills, Owner shall pay Purchaser, or Purchaser shall pay Owner, as the case may be, any amount due as a result of such readjustment. Purchaser shall pay all recording charges, transfer taxes and fees, title costs and other Closing costs applicable to the purchase of the Property.

## 9. Notice

All notices given under this Agreement shall be in writing and shall be sent postage prepaid by either (a) United States certified mail, return receipt requested, or (b) for delivery on the next business day with a nationally-recognized express courier. All such notices shall be sent to the following addresses, until such addresses are changed by 30 days' notice:

To Purchaser: Jetco Properties, Inc.  
c/o SUPERVALU Inc.  
Attn: Legal Department  
11840 Valley View Road  
Eden Prairie, MN 55344-3691

To Owner: RDK Ventures LLC  
c/o Mac's Convenience Stores LLC  
Attn: Real Estate Director  
P.O. Box 347  
4080 West Jonathan Moore Pike  
Columbus, Indiana 47201

Notices shall be deemed given as of the date such notice is postmarked, if sent by certified mail, or is placed with an express courier, if sent by express courier. If the last day for giving any notice or taking any action required or permitted under this Sublease would otherwise fall on a Saturday, Sunday or legal holiday, that last day shall be postponed until the next legal business day.

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## 10. Miscellaneous


- 10.1 Entire Agreement; Enforceability. This Agreement, including without limitation any Recitals hereto and any attached Exhibits, all of which are incorporated herein and made a part of this Agreement, contains the entire agreement of the Parties concerning the subject matter. This Agreement should be read carefully because only those terms in writing in this Agreement are enforceable. No other terms or oral promises which are not in this Agreement may be legally enforced, and no promises, projections, inducements or representations made before the execution and delivery of this Agreement will change the terms of this Agreement or be binding effect on any Party. No promises or other terms shall be implied in this Agreement.
- 10.2 Remedies; Attorneys' Fees. In the event of a breach of or default under this Agreement, the Parties declare it to be their intent that this Agreement may be specifically enforced, and the non-defaulting Party may seek specific performance of this Agreement or other injunctive relief, in addition to recovering all damages incurred by the non-defaulting Party, and pursue all other remedies provided by law or equity, it being the intent of the Parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the non-defaulting Party. The prevailing Party in any legal action or proceeding in any way connected with this Agreement (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal).
- 10.3 Amendments. No amendment of this Agreement shall be binding unless it is in writing and signed by the Party against whom enforcement is sought.
- 10.4 Binding Effect; No Third Party Beneficiaries. This Agreement shall both bind and benefit the Parties and their respective heirs, personal representatives, successors and permitted assigns. The parties do not intend that there be any third party or other beneficiaries of this Agreement. The covenants, agreements, conditions, terms, obligations, limitations and undertakings in this Agreement shall be construed as covenants running with the land.
- 10.5 Time of the Essence. Time is of the essence with respect to all matters provided in this Agreement.
- 10.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state where the Property is located.
- 10.7 Severability. The invalidity or unenforceability of one provision of this Agreement will not affect the validity or enforceability of the other provisions.
- 10.8 Captions. The section numbers and captions are inserted only as a matter of convenience, and do not in any way define, limit or describe the scope or intent of this Agreement.
- 10.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

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Purchaser and Owner have signed this Agreement below as of the date first written above.

PURCHASER:

JETCO PROPERTIES, INC.

By:   
Todd N. Sheldon  
Its: President

OWNER:

RDK VENTURES LLC  
By: Mac's Convenience Stores LLC,  
Its Manager

By: \_\_\_\_\_  
Bruce Landini  
Its: Vice President Operations,  
Midwest Region

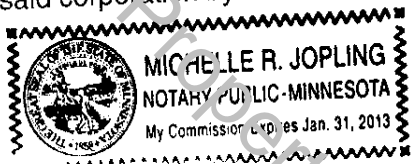
Property of Cook County Clerk's Office

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## ACKNOWLEDGMENTS

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

This instrument was acknowledged before me on November 3, 2011, by Todd N. Sheldon, the President of Jetco Properties, Inc., a Delaware corporation, who acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporation by the authority of its Board of Directors.



Michelle R Jopling  
Notary Public

My Commission Expires: Jan 31, 2013

STATE OF INDIANA    )  
  ) ss.  
COUNTY OF BARTHOLOMEW    )

This instrument was acknowledged before me on \_\_\_\_\_, 2011, by Bruce Landini, the Vice President Operations, Midwest Region, of Mac's Convenience Stores LLC, a Delaware limited liability company, Manager of RDK Ventures LLC, a Delaware limited liability company, on behalf of said limited liability company.

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

My Commission Expires:

[Notary Seal]



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Purchaser and Owner have signed this Agreement below as of the date first written above.

PURCHASER:

JETCO PROPERTIES, INC.

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

Todd N. Sheldon


Its: President

OWNER:

RDK VENTURES LLC

By: Mac's Convenience Stores LLC,  
Its Manager

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



Bruce Landini

Its: Vice President Operations,  
Midwest Region

Property of Cook County Clerk's Office

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## ACKNOWLEDGMENTS

STATE OF MINNESOTA     )  
   ) ss.  
 COUNTY OF HENNEPIN    )

This instrument was acknowledged before me on \_\_\_\_\_, 2011, by Todd N. Sheldon, the President of Jetco Properties, Inc., a Delaware corporation, who acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporation by the authority of its Board of Directors.

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

My Commission Expires:

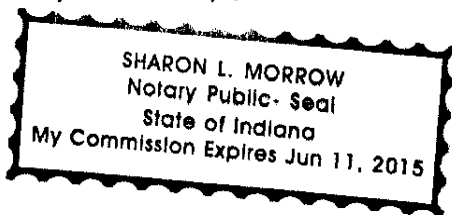
STATE OF INDIANA     )  
   ) ss.  
 COUNTY OF BARTHOLOMEW    )

This instrument was acknowledged before me on November 4, 2011, by Bruce Landini, the Vice President Operations, Midwest Region, of Mac's Convenience Stores LLC, a Delaware limited liability company, Manager of RDK Ventures LLC, a Delaware limited liability company, on behalf of said limited liability company.

*Sharon L. Morrow*  
 \_\_\_\_\_  
 Notary Public

My Commission Expires: 6/11/15

[Notary Seal]



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EXHIBIT A

Property

(legal description sale property)

Lot 2 of Final Plat of Jewel 3163 Subdivision, being a Subdivision of part of the Southeast 1/4 of Section 17, Township 36 North, Range 13, East of the Third Principal Meridian, according to the plat thereof recorded October 21, 2011, as Document 1129429043, in Cook County, Illinois.

Common Address: 5600 West 159<sup>th</sup> Street, Oak Forest, IL (#3163/6823)

Real Estate Index Number: 28-17-402-015-0000 (subdivision pending)

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## EXHIBIT B

Adjacent Property

(legal description)

Lot 1 of Final Plat of Jewel 3163 Subdivision, being a Subdivision of part of the Southeast 1/4 of Section 17, Township 36 North, Range 13, East of the Third Principal Meridian, according to the plat thereof recorded October 21, 2011, as Document 1129429043, in Cook County, Illinois.

Common Address: 5616 West 159<sup>th</sup> Street, Oak Forest, IL (#3163)

Real Estate Index Number: 28-17-402-015-0000 (subdivision pending)