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Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 11/13/2015 09:14 AM Pg: 1 of 12

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TO:**

Jetco Properties, Inc.  
c/o Albertson's, LLC  
250 Parkcenter Blvd.  
Boise, Idaho 83726  
Attention: Legal Department  
#3170 (Pulaski & 55<sup>th</sup> Street)

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CT/15003136NS  
NSC Dec 1, 2015

## FIRST AMENDMENT TO DECLARATION OF EASEMENTS

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS (the "First Amendment") is made this 29 day of October, 2015, by and between JETCO PROPERTIES, INC, a Delaware corporation ("JETCO"), and RDK VENTURES LLC, a Delaware limited liability company ("RDK"), collectively, the "Parties" and, individually, a "Party".

### Factual Background

A. JETCO entered into that certain Declaration of Easements dated November 8, 2011, which was recorded in Official Records of the County Recorder for Cook County, Illinois on November 9, 2011 as document 1131345035 ("Declaration"). All capitalized terms in this First Amendment shall have the meanings ascribed thereto in the Declaration unless otherwise defined herein.

B. Parcel II was conveyed by JETCO to RDK pursuant to that certain Special Warranty Deed, dated November 8, 2011, which was recorded in Official Records of the County Recorder for Cook County, Illinois on November 9, 2011 as document number 1131345033, and RDK is now the fee owner of Parcel II.

C. In anticipation of the sale of Parcel II, JETCO, as the fee owner of Parcel I, and RDK, as the fee owner of Parcel II, hereby enter into this written instrument to amend the Declaration as more specifically set forth hereinafter (Parcel I and Parcel II are sometimes hereinafter referred to collectively as "Parcels" and individually as "Parcel").

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**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this First Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by execution, the parties agree as follows:

1. Recitals Incorporated by Reference. The provisions of the aforestated factual background are, by this reference, herein incorporated as if they had been set forth in the text of this First Amendment. This First Amendment is intended to modify the Declaration as hereinafter provided. In the case of any conflict or inconsistency between the terms of this First Amendment and the Declaration, the terms of this First Amendment shall control. Otherwise, except for such amended terms of the Declaration, the terms of the Declaration shall remain in full force and effect.

2. Food Restriction. Notwithstanding anything to the contrary contained in the Declaration, Parcel II shall not be used or occupied, in whole or in part: (a) as a supermarket, which shall be defined as any store or department containing more than 500 square feet of floor space, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption, provided that this clause shall not prohibit the retail sale of prepared or otherwise ready to eat prepared food for on-premises or take-out off-premises consumption by an otherwise permitted restaurant; (b) as a bakery (including, but not limited to, Dunkin' Donuts, Krispy Kreme, Yum Yum Donuts and Lamar Donuts, and any restaurant that sells bread by the loaf for off-premises consumption (such as is currently offered for sale by Panera and Corner Bakery, by way of example), but not including fast food sandwich shops, similar to Subway and Five Guys as each is currently operated, and coffee shops similar to Starbucks as it currently operates, whose primary business on Parcel II is the sale of prepared coffee beverages and premium quality coffee beans and ground coffee, and the incidental sale of prepared food items packaged primarily in single serving portions, but not the sale of food items for preparation at home, and/or a delicatessen; (c) as a cigarette or smoke shop or any other store the primary business of which is to sell tobacco products and/or accessories; (d) for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption, provided that this clause shall not prohibit the sale from an otherwise permitted restaurant of fresh raw fish that is intended to be consumed without further preparation (i.e., sushi or sashimi), but not the sale of fresh fish or other food items for preparation at home, nor shall this clause prohibit the sale from an otherwise permitted restaurant of prepared or otherwise ready to eat food items for take-out off-premises consumption; (e) for the sale of alcoholic beverages for off-premises consumption, except for the sale from a restaurant permitted hereunder of single-portion alcoholic beverages in conjunction with the sale of permissible food items; (f) as a dollar store (which shall be defined as any store primarily devoted to the deep-discount retail sale of general merchandise and/or food for off-premises consumption including, without limitation, single price point retailers such as "All-a-Dollar," "99 Cents Only," "Family Dollar," "Greenbacks," "Dollar General" and "Big Lots"); (g) for the sale or offer for sale of any pharmaceutical products requiring the services of a registered pharmacist; (h) for the sale vitamins and health supplements; (i) as a for a "Convenience Store," as hereinafter

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defined; (j) for the sale of pet food; or (k) for the parking of motor vehicles in connection with the sale or storage of any of the uses identified in (a) through (j) above. A "Convenience Store" is herein defined as a self-contained area or building primarily devoted to the sale of any or all of the following items: food (for off-premises consumption), beverages (for off-premises consumption), grocery items, tobacco and/or carwashes, as they may be operated from time to time; provided, however, that the sale from an otherwise permitted restaurant of prepared or otherwise ready to eat food items or single-serving beverages shall not be deemed to constitute a Convenience Store. By way of example only, stores such as "7-Eleven" and "Circle K" are considered to be "Convenience Stores" under the foregoing definition.

3. Uses on Parcel II. In respect to Parcel II, there shall at all times sufficient ground level parking area and parking spaces on Parcel II (without reliance on parking spaces that may be available on Parcel I) in order to comply with all applicable legal requirements pertaining to parking for the then current uses of Parcel II. Subject to the terms of the Declaration, as modified by this First Amendment, Parcel II may be used as a restaurant, provided that in no event shall the use(s) on Parcel II include (a) any restaurant, such as, without limitation, "Hooters", "Twin Peaks", "Tilted Kilt Pub & Eatery" and so forth, that promotes sexual themes as a significant part of its image, or (b) any establishment offering gaming or gambling, including gaming/video machines (such as a Dotty's/Stella's/Sandy's), or video arcade (which shall be defined as any store containing more than four [4] electronic games, provided that no gaming or gambling video machines are permitted).

4. General Restrictions. Notwithstanding anything to the contrary contained in the Declaration, no part of Parcel II shall be used for any purpose other than for retail sales, restaurants and/or retail services (including, without limitation, those retail sales, restaurants and/or retail service uses specifically permitted herein), which retail services may include offices for financial services (such as tax preparation services, insurance sales offices and financial institutions), veterinary clinic/offices such as is commonly found in first class shopping centers in the Chicago, Illinois metropolitan area, provided such clinic/offices shall not include an animal kennel or boarding facility, and for real estate agents and/or brokers. Without limiting the foregoing, no part of Parcel II shall be used for an automotive maintenance or repair facility, a second hand or surplus store, for any entertainment or recreational facility or training or educational facility, or for any unlawful use or uses that are a public or private nuisance. For the purpose of the Declaration, the phrase "entertainment or recreational facility" shall include, without limitation, a theater, bowling alley, skating rink, gym, health spa or studio, dance hall, billiard or pool hall, massage parlor, game parlor, any establishment offering gaming or gambling or video arcade (which shall be defined as any store containing electronic games); provided, however, that the incidental on-site demonstration of electronic games that are offered for sale from a use otherwise permitted under the Declaration as modified by this First Amendment shall not be deemed to be a video arcade. The phrase "training or educational facility" shall include, without limitation, a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees as opposed to customers; provided, however, this prohibition is not applicable to

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on-site employee training incidental to the conduct of an otherwise permitted business on Parcel II. No part of Parcel II shall be used as a bar, tavern, cocktail lounge, adult book or adult video store, hotel, motel, warehouse, animal kennel or breeding operation, veterinary clinic, veterinary office or veterinary hospital, or pet grooming or boarding facility, or medical or dental offices, mobile home park or trailer court; for the renting, leasing or selling of or displaying for the purpose of renting, leasing or selling of any boat, motor vehicle or trailer; or for industrial purposes; or for any bankruptcy sales or going out of business sales. No restaurant nor bar/tavern shall be permitted on Parcel II that includes gaming/video machines (such as a Dotty's/Stella's/Sandy's). No part of Parcel II shall be used as a car wash. No vehicular driveup or drive through customer service facilities shall be located on Parcel II unless JETCO has first given its written approval to the location, parking and drive lanes of such facility. It is the intent of the Parties that uses that are not prohibited or restricted (including by a requirement for consent and/or approval of the Owner of Parcel I) pursuant to this First Amendment shall be permitted on Parcel II without further consent of the Owner of Parcel I, and that the use and occupancy restrictions set forth in this First Amendment shall replace the use and/or occupancy restrictions set forth in the Declaration.

5. Consent to Use of Parcel II as Chipotle Mexican Grill Restaurant. Subject to JETCO's prior written approval of the site plan depicting the proposed associated improvements and the elevations for the Chipotle Mexican Grill Restaurant (hereinafter defined), which approval shall not to be unreasonably withheld, delayed or denied, a "Chipotle" restaurant serving specialty burritos and tacos, and other items generally served in a "Chipotle" restaurant including, at Tenant's option, alcoholic beverages to the public in accordance with applicable law (the "Chipotle Mexican Grill Restaurant") may be located on Parcel II. At such time as a Chipotle Mexican Grill Restaurant permitted pursuant to this Section 5 ceases to operate on Parcel II, any lawful use otherwise permitted pursuant to the Declaration, as modified by this First Amendment, may be located within such premises without the consent or approval JETCO, provided that changes to the exterior improvements (including color scheme) or elevations on Parcel II shall require the prior written consent of JETCO, which consent shall not be unreasonably withheld, delayed or denied if such changes are architecturally and aesthetically compatible and harmonious with the building(s) and other improvements on Parcel I. Notwithstanding the foregoing, the approval set forth in this Section 5 shall not be construed to create any limitations on the use of Parcel II.

6. Removal of UST Facility. In conjunction with the sale of Parcel II the operation of the fuel center presently located thereon will cease. Within a commercially reasonable period of time (but in no event more than 45 days) following cessation of the operation of such fuel center and the sale of Parcel II, the RDK shall, at its sole cost and expense, (i) remove all equipment, above ground and underground storage tanks, and other facilities installed or used for the transportation, storage or sale of gasoline or other fuel(s) (collectively, the "UST Facility"), and (ii) provide to the Owner of Parcel I written confirmation by a licensed professional engineer, reasonably satisfactory to the Owner of Parcel I, that the UST Facility has been removed by excavation, closed, decommissioned, and disposed of in accordance with all applicable law. RDK shall



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promptly perform, at its sole cost and expense, all remediation (including but not limited to evaluation, testing, analysis, clean-up, removal, disposal, monitoring, and maintenance) required by applicable federal, state, and local statutes, regulations, rules, permit terms, codes, and ordinances now or hereafter in effect, as the same maybe amended from time to time, and applicable decisional law (collectively, "**Environmental Law**") of any and all substances, emissions, pollutants, materials, or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials, or any other similar term in or under Environmental Law, including fuels, petroleum, petroleum-derived products, that is associated with the UST Facility, and if applicable in connection with such remediation, secure a "No Further Action" letter, or its equivalent, from the appropriate governmental agency.

7. Common Area Maintenance. Each Owner shall maintain, repair, replace and insure all of those areas on its Parcel which are not from time to time covered by a building or other commercial structure, except for the maintenance, repair, replacement and insurance of the following items which cannot be practicably segregated or allocated between the Parcels ("**Nonsegregable Items**"): the shared access drives, the shared utilities, the drainage facilities, and any other items which the Owner of Parcel I agrees in writing after the date of this First Amendment cannot be practicably segregated or allocated between the Parcels. The Owner of Parcel I shall be responsible for performing and paying for the maintenance, repair, replacement and insurance of all Nonsegregable Items, and the Owner of Parcel II shall commencing with an initial payment concurrently with the execution and delivery of this First Amendment and continuing thereafter on or before each anniversary of the date of this First Amendment, pay to the Owner of Parcel I for the immediately succeeding year the sum of Five Thousand Dollars (\$5,000.00), increased on the fifth anniversary of the date of this First Amendment and every five (5) years thereafter on the anniversary of the date of this First Amendment (and such increase shall be applicable to the payment due from the Owner of Parcel II on or before such date) by five percent (5%), as the entire required contribution from the Owner of Parcel II to the maintenance, repair, replacement and insurance of all Nonsegregable Items ("**Nonsegregable Contribution**"). The Nonsegregable Contribution shall accrue interest from the date due at the lesser of (i) the highest applicable rate allowed by law or (ii) fifteen percent (15%) per annum. Except for the specific Nonsegregable Items enumerated above, each Owner shall maintain, repair and replace all of those areas on its Parcel which are not from time to time covered by a building or other commercial structure at its sole cost and expense, and in a manner and at a level of quality at least comparable to other similar retail shopping centers in the geographic area where the Parcels are located. The Owner of Parcel I shall have a lien on Parcel II for the failure to timely pay the Nonsegregable Contribution, plus interest thereon as provided above. A lien provided in this Section 7 shall only be effective when filed of record in the real estate records of Cook County, Illinois, signed and verified, which shall contain at least: (i) an itemized statement of all amounts due and payable pursuant hereto; (ii) a description sufficient for identification of that portion of the real property which is the subject of the lien; (iii) the name of the Owner or reputed Owner of Parcel II; and (iv) the name and address of the Owner of Parcel I. The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien

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or claim which may be or has been acquired or attached to such real property after the time of filing the lien, but not before. The lien shall be for the use and benefit of the Owner of Parcel I and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

8. Buildings and Improvements on Parcel II. All buildings and other structures located on Parcel II, now and in the future, shall be (a) of first quality construction and architecturally designed so that the exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with the buildings on Parcel I, and (b) single story and not exceed twenty-five feet in height (including mechanical fixtures and equipment and screening for the same).

9. Exterior Building Maintenance. Each Owner shall maintain the exterior of any building located on such Owner's Parcel in a quality and condition comparable to that of first class shopping centers of comparable size and nature located in the same geographic area where the Parcels are located.

10. Deletion of Portions of Section 10 of Declaration. Subsections a, b and c of Section 10 of the Declaration are hereby deleted in their entirety.

11. Estoppel Certificates. Each Owner shall reasonably cooperate in responding to requests by the other Owner from time to time for estoppel certificates as to the performance of obligations pursuant to the Declaration, as amended.

12. Binding Effect. The provisions of the Declaration and this First Amendment shall constitute covenants running with and be binding upon Parcel I and Parcel II, and shall inure to the benefit of and be binding upon the Owners of the respective Parcels (or part thereof), and their heirs, administrators, legal representatives, successors, devisees and assigns in title, and any other party acquiring all or any portion of the Parcels or any interest therein whether by operation of law or other means. All of the provisions of the Declaration and this First Amendment shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law.

13. Counterparts. This First Amendment may be executed in any number of counterparts and by each of the parties hereto in separate counterparts, all such counterparts together constituting but one and the same instrument.

14. Standards for Future Development. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or other improvements located on Parcel I or Parcel II shall be effected as expeditiously as possible and performed in such a manner as to minimize the impact of said construction, maintenance, repair, replacement, alteration or expansion on the businesses located on the other Parcel and the Party performing such construction, maintenance, repair, replacement or expansion shall take commercially reasonable steps

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to prevent dust, noise and vibrations arising from said construction, maintenance, repair, replacement, alteration or expansion activities from disrupting the businesses on the other Parcel, including without limitation, erecting temporary partitions, dust barriers, and any other commercially reasonable measures intended to prevent or assist with minimizing the impact of construction, maintenance, repair, replacement, alteration or expansion activities.

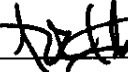
**[Remainder of page intentionally left blank. Signature pages to follow]**

Property of Cook County Clerk's Office

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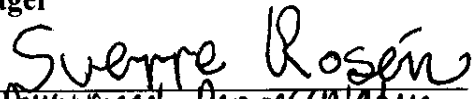
The parties hereto have executed this First Amendment as of the day and year first above written.

**JETCO PROPERTIES, INC.**, a Delaware corporation

By:  **Joel Guth**  
Its: Authorized Signatory

**RDK Ventures LLC**

By: **Mac's Convenience Stores LLC, Its Manager**

By:   
Its: Authorized Representative

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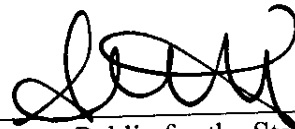
STATE OF Idaho )  
 ) ss.  
County of Ada )

On this 29<sup>th</sup> day of October, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Joel Guth, known to me to be an Authorized Signatory of Jetco Properties, Inc., the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

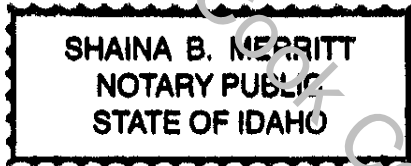
WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

8/20/21



Notary Public for the State of Idaho  
Residing at Meridian, ID



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STATE OF IL )  
County of DuPage ) ss.

On this 9<sup>th</sup> day of October, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Sierre Rosen, known to me to be a Authorized Rep of Mats Convenience Stores he is that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:  
03-04-2018

Maureen Guinto  
Notary Public for the State of IL  
Residing at DuPage



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## EXHIBIT A

### Legal Description of Property

Lot 2 in the Final Plat of Jewel 3170 Resubdivision, being a Resubdivision of part of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 10, Township 38 North, Range 13, East of the Third Principal Meridian, according to the plat thereof recorded April 13, 2011, as Document No. 1110318014 and corrected by Document No. 1129429042, recorded October 21, 2011, in Cook County, Illinois.

Common Address: 5316 S. Pulaski, Chicago, Illinois

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## EXHIBIT B

### Legal Description of Adjacent Property

Lot 1 in the Final Plat of Jewel 3170 Resubdivision, being a Resubdivision of part of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 10, Township 38 North, Range 13, East of the Third Principal Meridian, according to the plat thereof recorded April 13, 2011, as Document No. 1110318014 and corrected by Document No. 1129429042, recorded October 21, 2011, in Cook County, Illinois.

Common Address: 5320 S. Pulaski, Chicago, Illinois

Property of Cook County Clerk's Office