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Cook County Recorder

Recording Requested By, And When Recorded, Return To:

Jetco Properties, Inc. c/o Albertson's, Inc. 250 Parkcenter Boulevard Boise, ID 83726

Attn.: Vice President, Real Estate Law (Re: #01-1919)



LIMITED EXCEPTION TO DEED RESTRICTION, AND RIGHT OF FIRST REFUSAL AGREEMENT

(Former Jewel #01-1919)

This Limited Exception to Deed Restriction, and Right of First Refusal Agreement ("Agreement") is made as of the 4th day of October, 1999, by and between Jetco Properties, Inc., a Delawa'e corporation ("Jetco"), American National Bank and Trust Company, a National Banking Association, under Trust Agreement dated June 17, 1998, and known as Trust Number 124218-06 ("Owner"), and Donald C.V. Tierney d/b/a Ridge Pharmacy ("Ridge Pharmacy"). Jetco, Owner, and l'idge Pharmacy may be referred to herein from time to time individually as a "Party" or collectively, as "Parties".

RECITALS

- Jetco is the former owner of certain real esize located at 1919 Lake Avenue, Wilmette, A. Illinois, and known as PIN 05 33 102 009 and 05 33 102 010 ("Property"), which is legally described in Exhibit "A" attached hereto and incorporated herein by reference.
- Jetco conveyed the Property to Optima Wilmette West Limited Partnership, an Illinois B. limited partnership ("Optima"), pursuant to that certain Special Warranty Deed ("Deed"), dated September 8, 1998, and recorded in the Official Records of Cook County, Illinois, on September 14, 1998, as Document No. 98818349.
- Exhibit "B" to the Deed includes an express prohibition against the Property being used C. as a drug store or pharmacy, among other things, for a period of ten (10) years. Paragraph 4 of Exhibit "B" to the Deed states, "The Property may not be used for the purposes of a grocery store, food store, convenience store, liquor store, drug store or pharmacy for a period of ten years commencing September 9, 1998." ("Pharmacy Prohibition").
- Optima conveyed the Property to Owner pursuant to that certain Deed In Trust Quit D. Claim, dated September 9, 1998, and recorded in the Official Records of Cook County, Illinois, on September 14, 1998, as Document No. 98918350.

- E. Owner now intends to sell or lease an approximately one thousand seven hundred nine (1,709) square foot portion of the Property, marked "Ridge Pharmacy" on <u>Exhibit "B"</u> attached hereto and incorporated herein by reference ("Ridge Pharmacy Premises"), to Ridge Pharmacy for use as a pharmacy / drug store.
- F. Jetco now desires to grant a limited exception to the Pharmacy Prohibition so as to allow Ridge Pharmacy to operate a pharmacy /drug store within the Ridge Pharmacy Premises only, and Ridge Pharmacy now desires to grant to Jetco a right of first refusal in the event that Ridge Pharmacy ever desires to sell its script files, sell all or a portion of the Ridge Pharmacy Premises, assign its lease for the Ridge Pharmacy Premises, or sublet the Ridge Pharmacy Premises (collectively, "Transfer").

NOW, 1F'EREFORE, in consideration of the above Recitals and other good and valuable consideration, the recent and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. <u>Limited Exception to Deca Restriction</u>. Notwithstanding anything contained in the Deed to the contrary, Ridge Pharmacy sha'l be allowed to operate a pharmacy / drug store within the Ridge Pharmacy Premises only, subject to each of the following conditions:
 - (a) The pharmacy / drug store on the Ridge Pharmacy. Premises shall occupy no more than approximately one thousand seven hundred nine (1,709) square feet;
 - (b) Ridge Pharmacy, its successors, and assigns, shall strictly comply with the terms of this Agreement, including but not limited to, Section 2.
 - (c) In the event that Ridge Pharmacy does not open a pharmacy / drug store on the Ridge Pharmacy Premises by December 31, 2000, this Agreement shall become of no force or effect, and the Parties hereto agree to execute and record a notice or such other documentation as may be necessary to evidence the non-effectiveness of this Agreement.
 - (d) Except as expressly provided for herein, the Pharmacy Prohibition and Paragraph 4 of Exhibit "B" to the Deed shall remain in full-force and effect.

2. Right of First Refusal.

2.1 If, at any time, Ridge Pharmacy determines to sell its script files, or Transfer the Ridge Pharmacy Premises, or receives an acceptable bona fide offer ("Offer") for such sale of script files or Transfer of the Ridge Pharmacy Premises, prior to entering into any binding agreement, Ridge Pharmacy shall provide Jetco with a written notice ("Offer Notice"), given to the address and in the manner provided for in this Agreement, stating Ridge Pharmacy's desire to sell its script files, or Transfer the Ridge Pharmacy Premises, and the amount, terms, and conditions of the Offer. Jetco shall have the exclusive right

for sixty (60) days following receipt of the Offer Notice, to purchase Ridge Pharmacy's script files or accept a Transfer of the Ridge Pharmacy Premises, at the amount and upon the terms of the Offer. In the event the amount of the Offer is not in the form of cash only, but includes any other valuable consideration, Jetco may exercise its right to purchase Ridge Pharmacy's script files or accept a Transfer of the Ridge Pharmacy Premises by tendering the reasonable cash value of the other valuable consideration of the Offer, and in the event the Offer contemplates a "Section 1031" tax-free exchange, Jetco may offer comparable property in exchange, or at Jetco's election, pay to Ridge Pharmacy in addition to the purchase price, an amount equal to the tax cost to Ridge Pharmacy resulting from the lack of a "Section 1031" tax-free exchange of the property.

- 2.2 If Jetco fails to exercise its right of first refusal contained herein, and Ridge Pharmacy se'ls its script files or Transfers the Ridge Pharmacy Premises to a third party, such sale or Garsfer shall nevertheless be made subject to this Agreement, and the right of first refusal herein granted shall be applicable to any and all subsequent Offers to sell the script files of Ridge Pharmacy and its successors, or for Transfers of the Ridge Pharmacy Premises, received by Ridge Pharmacy's successors, assigns, and grantees. However, Jetco's right of first refusal shall not apply to sales of script files or Transfers among wholly-owned affiliates of Ridge Pharmacy, members of the immediate family of Mr. Donald C.V. Tierney, or in rusts benefitting exclusively members of the immediate family of Mr. Donald C.V. Tierney
- 2.3 In the event that Jetco is acquired or merged into another entity, the rights of Jetco under this Agreement shall be deemed held and exercisable by the surviving entity. The right of first offer contained herein shall survive expiration of the Pharmacy Prohibition.
- Notices. All Offers, notices, requests, demands, and other communications hereunder shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner:

To Jetco:

Jetco Properties, Inc.

c/o American Stores Properties, Inc.

1955 West North Avenue Melrose Park, IL 60160-1181

Attn: Real Estate Department (Re: #01-1919)

Fax No. 708-786-3039

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With a copy to:

Jetco Properties, Inc.

c/o Albertson's, Inc.

P.O. Box 20

250 Parkcenter Boulevard

Boise, ID 83726

Attn: Vice President, Real Estate Law (Re: #01-1919)

Fax No. 208-395-6575

To Ridge Pharmacy: Donald C.V. Tierney

Ridge Pharmacy 1919 Lake Avenue Wilmette, IL 60091 Fax No. 847-251-0377

With a Copy

Edward M. Grabill, Esq.

Olson, Grabill & Hoffman

707 Skokie Boulevard, Suite 420

Nor nbrook, IL 60062 Fax Nc. 847-564-8886

To Owner:

American National Bank and Trust Company, a National Banking

Association, un fer Trust Agreement dated June 17, 1998, and

known as Trust Number 124218-06

33 North LaSalle Street

Chicago, IL 60603 Fax No. 312-661-5373

Communications may also be given by fax, provided the communication is concurrently given by one of the above methods. Notices are effective upon receipt or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery.

Successors. All of the rights and obligations of the Parties to this Agreement shall bind 4. and inure to the benefit of the respective heirs, personal representatives, successors, grantees and assigns of the Parties.

THE SUBMISSION OF THIS AGREEMENT FOR EXAMINATION OR THE NEGOTIATION OF THE TRANSACTION DESCRIBED HEREIN DOES NOT CONSTITUTE AN OFFER BY JETCO, AND THE EXECUTION OF THIS AGREEMENT BY OWNER AND RIDGE PHARMACY DOES NOT CONSTITUTE A BINDING AGREEMENT UNTIL SUCH TIME AS THIS AGREEMENT HAS BEEN APPROVED BY THE GOVERNING REAL ESTATE COMMITTEE OF JETCO, WHICH APPROVAL SHALL BE EVIDENCED BY THE EXECUTION OF THIS

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. It is further understood and agreed that the Trustee merely holds title to the property herein described and has no agents, employees or control over the management of the property and no knowledge of other factual matters except as represented to it by the beneficiary(ies) of the Trust. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any varranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument, all such liability being expressly waived by every person now or hereafter claiming any right or security hereunder; and the owner of any indebtedness or cause of accent for breach of any warranty, indemnity, representation, covenant, undertaking or agreement accruing hereunder shall look solely to the Trust estate for the payment thereof.

IN WITNESS WHEREOF, American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesaid, has caused these presents to be signed by one of its Officers the day and year first above written.

> AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO as Trustee, as afor said, and not personally,

Ву		hud Low
	, M	aria Bora-Trust Officer
STATE OF ILLINOIS)	6.0
COUNTY OF LAKE)	\cup_{κ}

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, do 1. an officer of American National Bank and Maria Bora Trust Company of Chicago personally known to me to be the same person whose names is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that said officer said of said association signed and delivered this instrument as a free and voluntary act, for the uses and purposes therein set forth. GIVEN under my hand and seal this (date) 24th day of September 1999

NOTARY PUBLIC

OFFICIAL SEAL* Shairn E. Weeks Notary Public, State of Illinois My Commission Expires 10/07/2002

AGREEMENT BY OFFICERS OF JETCO, AND DELIVERY TO OWNER AND RIDGE PHARMACY.

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

	AMERICAN NATIONAL BANK AND TRUST COMPANY, a National Banking Association, under Trust Agreement dated June 17, 1988, and known as Trust Number 124218-06
ATTEST:	By:
By:	Its:
Its:	
94	"OWNER"
	DONALD C.V. TIERNEY, D/B/A KINGE PHARMACY
"OFFICIAL SEAL" Diane L. Rojas Notary Public, State of Illinois My Commission Exp. 05/25/2003 Whate T.	Donald C.V. Tierney "RIDGE PHARMACY"
A TTEST.	JETCO PROPERTIES, INC., a Delaware corporation
By Johnso Bull	By: William H. Arnold
Its: ASSISTANT SECRETARY	Its: VICE PRESIDENT "JETCO"

APPROVED AS TO FOILL ASPI LEGAL

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	STATE OF UTAN ACT)	•
	Ado : S. S. COUNTY OF SALT LAKE)	
	on October 4, 1999, before me Tina M. WYANT a notary public in and for such County and State, personally appeared William H. Ar	مامن
Vic	or personally known to proved to me on the basis of satisfactory evidence to be the person(s) whose	
	name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the some in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or entity upon behalf of which the person(s) acted, executed the	1
	instrument.	е
	Witness my hand and official seal.	
	WYANA (I)	
	PARY * OHOLUS Notary Public	
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Lots 1 and 2 in Golbach's Addition to Gross Point in the Northeast 1/4 of the Northwest 1/4 of Section 33, Township 42 North, Range 13, East of the Third Principal Meridian, according to the Plat of cent is

Cook County Clark's Office thereof recorded April 18, 1922 in Book 173 of Plats Page 25, as Document Number 7615477, in Cook County, Illinois.

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ЕХІПВІТ В



