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2012-001952

Klamath County, Oregon



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02/22/2012 03:46:11 PM

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**RECORDING COVER SHEET**

THIS COVER SHEET HAS BEEN PREPARED BY THE PERSON REPRESENTING THE ATTACHED INSTRUMENT FOR RECORDING. ANY ERRORS IN THIS COVER SHEET DO NOT AFFECT THE TRANSACTION(S) CONTAINED IN THE INSTRUMENT ITSELF.

**After Recording Return To:**

**Supervalu Inc.  
11840 Valley View Road  
Eden Prairie, MN 55344-3691**

**Attn: Legal Department**

**1. Title(s) of the Transaction(s) ORS 205.234(a):**

**Contracts and Agreements**

**2. Direct Party/Grantor(s) and address ORS 205.125(1)(b) and ORS 205.160:**

**New Albertson's Inc., an Ohio corporation  
PO Box 20  
250 Parkcenter Boulevard  
Boise, ID 83726  
Attn: Joel Guth**

**3. Indirect Party/Grantee(s) and address ORS 205.125(1)(a) and ORS 205.160:**

**Tesoro Refining and Marketing Company  
19100 Ridgewood Parkway  
San Antonio, TX 78259  
Attn: General Counsel**

**4. Send Tax Statements To:**

**n/a**

**5. True and Actual Consideration:**

**n/a**

X

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:  
SUPERVALU Inc.  
11840 Valley View Road  
Eden Prairie, MN 55344-3691  
Attention: Legal Department

NCS-494203

(Space Above This Line for Recorder's Use)

## **MEMORANDUM OF PURCHASE AND USE RESTRICTION AGREEMENT**

THIS MEMORANDUM OF PURCHASE AND USE RESTRICTION AGREEMENT ("Memorandum") is made as of January 20, 2012, by and between NEW ALBERTSON'S, INC., an Ohio corporation ("New Albertson's") and TESORO REFINING AND MARKETING COMPANY, a Delaware corporation ("Tesoro"), individually, a "Party", or collectively, the "Parties".

Concurrently with the execution, delivery and recordation of this Memorandum, New Albertson's is selling and conveying to Tesoro title to the real property described on Exhibit A attached hereto and incorporated herein by this reference (collectively, the "Property") and the Parties are entering into a Purchase and Use Restriction Agreement ("Agreement") which, among other matters, provides the following:

### **1. Restriction on Use of and Certain Advertising on the Property**

The Property shall not be used as a drug store or pharmacy unless and until the adjacent property described on Exhibit B attached hereto and incorporated herein by this reference ("Adjacent Property") completely ceases (for the period prescribed in the Agreement) to be operated as a business which sells retail food, meat, fish, poultry, produce, dairy products, baked goods and beverages for off premises consumption. No materials that advertise a "Competitive Program" (as defined in the Agreement) similar to the "GAS REWARDS™" program currently operated by SUPERVALU, Inc. shall be placed on the Property, including without limitation on pumps, canopy, price sign and/or marquee, until the earlier to occur between (i) such time as the Adjacent Property ceases to be operated by SUPERVALU, Inc. or its affiliate, and (ii) such time as the Adjacent Property completely ceases (for the period prescribed in the Agreement) to be operated as a business which sells retail food, meat, fish, poultry, produce, dairy products, baked goods and beverages for off premises consumption.

### **2. Restriction on Use of the Adjacent Property for a Fuel Center**

The Adjacent Property shall not be used as a fuel center selling or dispensing gasoline, motor fuel and/or other non-packaged petroleum products unless and until the Property completely ceases (for the period prescribed in the Agreement) to be used as a business which sells gasoline, motor fuel and/or other non-packaged petroleum products.

### **3. Purchase Right in Response to Property Going "Dark" or Changing Use**

At any time during the period of fifteen (15) years commencing on the date of the Agreement, if the Property goes "Dark" (as defined in the Agreement), or is used for any

purpose other than selling gasoline, motor fuel and/or other non-packaged petroleum products (may include a related retail convenience store or kiosk selling food, beverages, grocery items, and/or tobacco), the record holder of fee simple title to the Adjacent Property shall have the right to purchase the Property on the terms set forth in the Agreement; provided, however, that such right shall terminate prior to the expiration of such fifteen (15) year period if the Adjacent Property completely ceases (for the period prescribed in the Agreement) to be operated as a business which sells retail food, meat, fish, poultry, produce, dairy products, baked goods and beverages for off premises consumption.

**4. Put Right if Grocery Store Business Operations Cease on Adjacent Property**

If at any time during the period of five (5) years commencing on the date of the Agreement the Adjacent Property ceases to be used as a business which sells retail food, meat, fish, poultry, produce, dairy products, baked goods and beverages for off premises consumption and such cessation impacts fuel sales from the Property as provided in the Agreement, the record holder of fee simple title to the Property shall have the right to require the record holder of fee simple title to the Adjacent Property to purchase the Property on the terms set forth in the Agreement; provided, however, that such right shall terminate prior to the expiration of such five (5) year period if the Property completely ceases (for the period prescribed in the Agreement) to be used as a business which sells gasoline, motor fuel and/or other non-packaged petroleum products (may include a related retail convenience store or kiosk selling food, beverages, grocery items, and/or tobacco).

**5. Inquiries**

The terms of this Memorandum are intended to provide notice of, and not to modify, the terms of the Agreement. Inquiries concerning the precise terms of the Agreement may be made to:

To New Albertson's:                      c/o SUPERVALU Inc.  
Attn: Legal Department  
11840 Valley View Road  
Eden Prairie, MN 55344-3691

To Tesoro:                                      Tesoro Refining and Marketing Company  
19100 Ridgewood Parkway  
San Antonio, TX 78259  
Attn: General Counsel

**6. Memorandum**

This Memorandum is being executed and recorded in order to give notice of the existence of the Agreement and the rights and other matters described above. The Agreement is the full agreement between the Parties. The provisions of this Memorandum are subject in all respects to the provisions of the Agreement. In the event of any conflict between the provisions of this Memorandum and the provisions of the Agreement, the provisions of the Agreement shall control, it being the intent of the Parties that this Memorandum shall not modify or vary the terms and conditions of the Agreement.

New Albertson's and Tesoro have signed this Memorandum below as of the date first written above.

**NEW ALBERTSON'S:**

**NEW ALBERTSON'S, INC., an Ohio corporation**

By: [Signature]  
Printed Name: Joel Guth  
Title: Region Counsel

*LWS/CL*

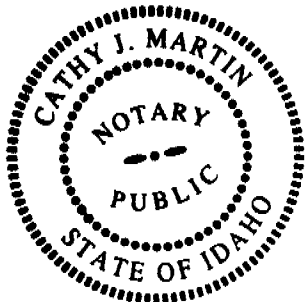
STATE OF IDAHO     )  
                                  ): ss.  
County of Ada        )

On this 5 day of January, 2012, before me, the undersigned Notary Public in and for said State, personally appeared Joel Guth, known to me to be Region Counsel of New Albertson's, 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 certificate expires:  
1/19/2017

[Signature]  
Notary Public for Idaho  
Residing at Bare, Idaho



**TESORO:**

**TESORO REFINING AND MARKETING COMPANY,  
a Delaware corporation**

By: 

Printed Name: Mark D. Wilson  
Title: Authorized Signatory

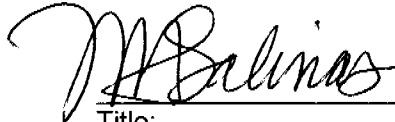


STATE OF TEXAS )

COUNTY OF BEXAR )

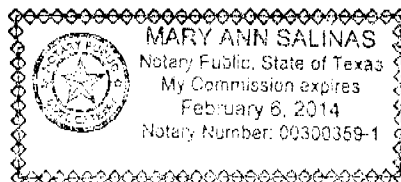
ss:

This instrument was acknowledged before me on January 5, 2012, by Mark D. Wilson, the authorized signatory of Tesoro Refining and Marketing Company, a Delaware corporation, on behalf of said corporation.



Title:

My commission expires: 2-6-2014



## **EXHIBIT A**

### **Property**

Real Property located in the County of Klamath, State of Oregon, described as follows:

#### **PARCEL 1:**

PARCEL 1 OF LAND PARTITION 24-98, FILED DECEMBER 14, 1998 IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON, SITUATED IN LOTS 1 THROUGH 8 OF BLOCK 1 AND LOTS 1, 2, 3, 8 AND 9 OF BLOCK 2 OF "BAILEY TRACTS NO. 2" AND THE NE 1/4 SE 1/4 OF SECTION 2, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON.

#### **PARCEL 2:**

LOT 9 IN BLOCK 1 OF BAILEY TRACTS NO. 2 ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK, OF KLAMATH COUNTY, OREGON. EXCEPTING THEREFROM THAT PORTION CONVEYED TO KLAMATH COUNTY, A POLITICAL SUBDIVISION, BY DEED RECORDED APRIL 2, 1981 IN VOLUME M81 PAGE 5824, RECORDS OF KLAMATH COUNTY, OREGON.

## **EXHIBIT B**

### **Adjacent Property**

Parcel 1 of Land Partition 15-99 being Parcel 2 of Land Partition 24-98 situated in Lots 1 through 8 of Block 1 and Lots 1, 2, 3, 8 and 9 of Block 2 of Bailey Tracts No 2, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, being in the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 2 Township 39 South Range 9 East of the Willamette Meridian, Klamath County, Oregon.