

Return by Mail to:

KEMP, SMITH, DUNCAN & HAMMOND, P.C.  
Attn: Mr. Chris A. Paul  
2000 State National Bank  
El Paso, Texas 79901  
(915) 533-4424

**AMENDED AND RESTATED MEMORANDUM OF LEASE  
AND NOTICE OF NON-DISTURBANCE**

Inst # 1994-12491

04/15/1994-12491  
02:46 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
009 NCD 28.50

Store Number 2554

Shelby, Alabama  
(County, State)

**THIS AMENDED AND RESTATED MEMORANDUM OF LEASE AND NOTICE OF NON-DISTURBANCE** is by and among The Provident Bank, an Ohio corporation ("Landlord"), whose principal place of business is One East 4th Street, Cincinnati, Ohio 45202, as Trustee under a Trust Agreement dated as of April 30, 1984, for the benefit of Store Properties Company, an Ohio corporation ("Store Properties") and UtoteM, Inc., a Delaware corporation (formerly known as Fairmont Foods Company), Monterre Properties, Inc., a Delaware corporation, UtoteM Markets of Arizona, Inc., an Arizona corporation, U-TOTE'M of Alabama, Inc., an Alabama corporation, U-TOTE'M of Colorado, Inc., a Colorado corporation, U-TOTE'M of Miami, Inc., a Florida corporation, The Circle K Corporation, a Texas corporation, Circle K Convenience Stores, Inc., a Texas corporation, Circle K General, Inc., a Texas corporation, and Shop & Go, Inc., a Florida corporation (collectively the "Tenant"), each of whose mailing address is 1601 North Seventh Street, Phoenix, Arizona 85006, to supersede and replace that certain Warranty Deed, Bill of Sale, Memorandum of Lease and Option to Purchase (the "Prior Memorandum"), and recorded as set forth in Schedule I attached hereto and made a part hereof, describing the tenancy created by that certain Leaseback Lease dated April 30, 1984, as amended by Amendment of Leaseback Lease dated August 29, 1986, by Second Amendment of Leaseback Lease dated March 1, 1989, and by Third Amendment to Leaseback Lease dated June 1, 1990 (collectively, the "Lease") applicable to the real property described on Exhibit "B-49" appended hereto (the "Demised Premises"); the understanding and agreement being that upon the execution, delivery, and recordation hereof, the Prior Memorandum shall be null and void and of no further force and effect.

By Amended and Restated Leaseback Lease (the "Amended Lease") dated October 1, 1992, Landlord, Store Properties and Tenant agreed to amend, replace, and supersede the Lease in its entirety by the Amended Lease, as of October 1, 1992.

Pursuant to the terms of the Amended Lease, Landlord has granted, demised and leased the Demised Premises to Tenant upon the following terms:

Date of Lease: October 1, 1992

Description of Demised Premises: See attached Exhibit "B-49"

Date of Commencement: October 1, 1992

Expiration of Primary Term: September 30, 2007

Option to Purchase: Pursuant to the terms of the Amended Lease, Tenant is granted the option to purchase the Demised Premises upon the terms and conditions therein stated; which provisions provide for the purchase by Tenant of all of the real properties subject to the Amended Lease, including without limitation the Demised Premises, in exchange for cancellation of the indebtedness then due and owing under that certain Third Restated Deferred Interest and Non-Recourse Note dated April 30, 1984, in the original principal amount of \$23,600,000, as restated as of October 1, 1992, signed by Store Properties and payable to The Circle K Corporation, and which further provide under certain circumstances for the extension of the term of the Amended Lease for a period of fifteen (15) years from the date of expiration of the Primary Term.

Limited Right of Sale: Pursuant to the terms of the Amended Lease, Tenant is granted the right to offer for sale and sell certain of the real properties subject to the Amended Lease, including without limitation the Demised Premises, in accordance with the terms thereof.

Leasehold Mortgage: Pursuant to the terms of the Amended Lease, Tenant is granted the right to mortgage the Demised Premises on the terms set forth therein.

Non-Disturbance: The Amended Lease is subject and subordinate to the liens now held by Continental Bank, N.A. ("Bank") to secure the Continental Loan (as defined in the Amended Lease, and subject to the limitations set forth in the Amended Lease with respect to increases thereof and additional indebtedness which may be incurred and secured by liens against the Demised Premises) pursuant to the terms of that certain Amendment to Assignment of Lease, Subordination, Non-Disturbance and Attornment Agreement; and Estoppel Certificate by and among Bank, Landlord, Store Properties, and Tenant (the "Subordination Agreement"); which Subordination Agreement confers certain rights of non-disturbance in favor of Tenant.

The purpose of this Amended and Restated Memorandum of Lease and Notice of Non-Disturbance is to give record notice of the Amended Lease and the Subordination Agreement and the rights created thereby, all of which are hereby confirmed.

A copy of the Amended Lease and Subordination Agreement are being held by Tenant at its address stated above.

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Memorandum of Lease and Notice of Non-Disturbance as of the date set forth in their respective acknowledgements to be effective as of October 1, 1992.

**LANDLORD:**

ATTEST:

THE PROVIDENT BANK, an Ohio corporation, Trustee

By: [Signature]  
Name: BRAND W. HAMP  
Title: TRUST OFFICER

By: [Signature]  
Name: D. Taylor Wood  
Title: ASSISTANT VICE PRESIDENT  
AND TRUST OFFICER

(SEAL)

WITNESSES:

[Signature]  
[Signature]

WITNESSES:

STORE PROPERTIES COMPANY

[Signature]  
[Signature]

By: [Signature]  
Name: KEITH E. LINDNER  
Title: GENERAL PARTNER

(SEAL)



**TENANT:**

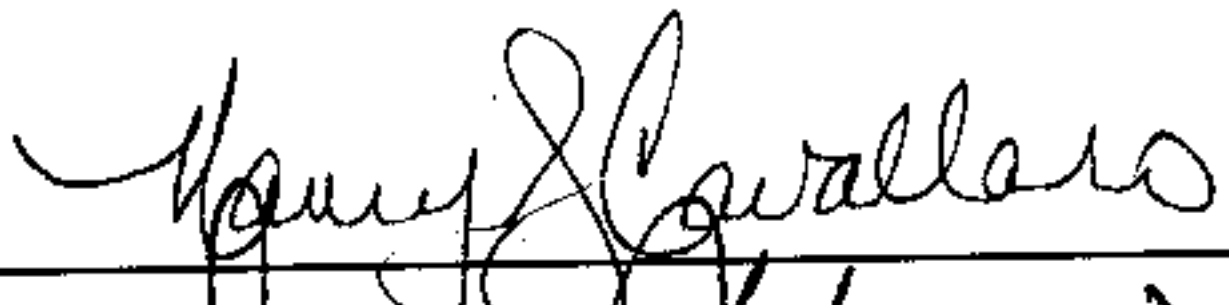
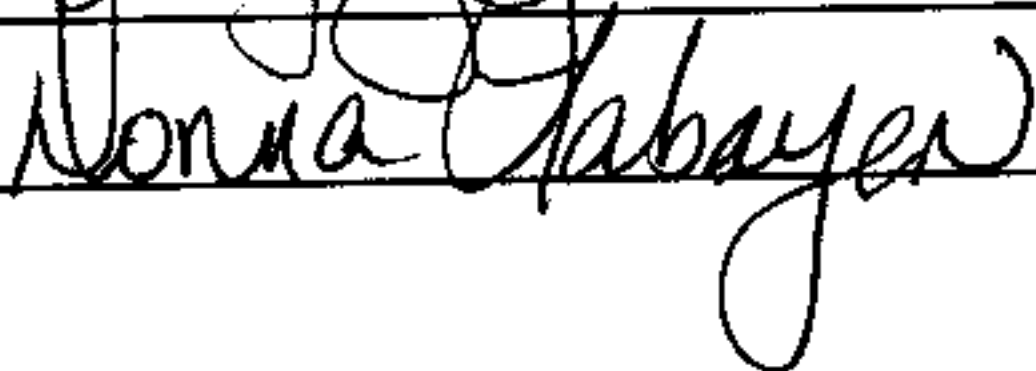
UTOTEM, INC., MONTERRE PROPERTIES, INC., UTOTEM MARKETS OF ARIZONA, INC., U-TOTE'M OF ALABAMA, INC., U-TOTE'M OF COLORADO, INC., U-TOTE'M OF MIAMI, INC., THE CIRCLE K CORPORATION, CIRCLE K CONVENIENCE STORES, INC., CIRCLE K GENERAL, INC., SHOP & GO, INC.

**ATTEST:**

By:   
Name: CORTLAND J. SILVER  
Title: Assistant Secretary

By:   
Name: JANET E. JACKIM  
Title: Vice President - Real Estate

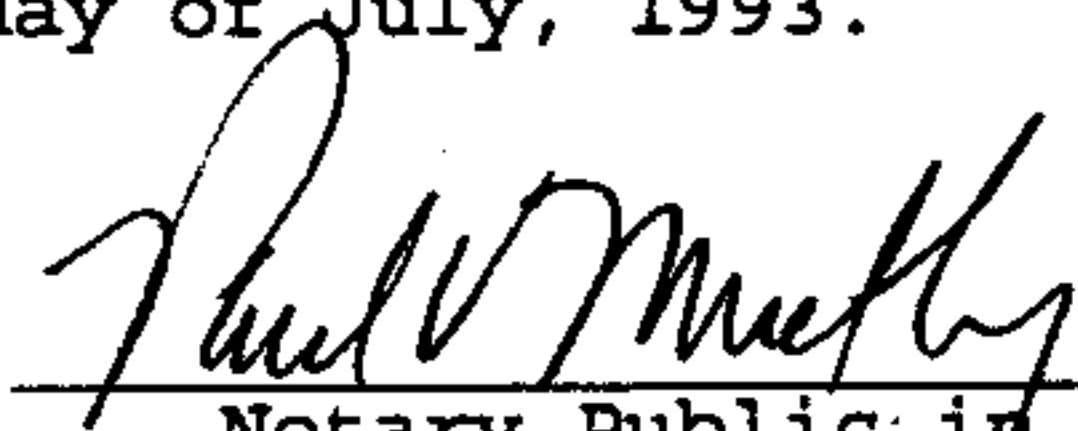
**WITNESSES:**

STATE OF OHIO                                 )  
  : SS:  
COUNTY OF HAMILTON                         )

I, PAUL V. MUETHING, a Notary Public in and for said County and State, hereby certify that Keith E. Lindner, whose name as General Partner of Store Properties Company, an Ohio general partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such general partner and with full authority, executed the same voluntarily for and as the act of said partnership.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Notarial Seal this 6th day of July, 1993.

  
\_\_\_\_\_  
Notary Public in and for  
Hamilton County, Ohio

My Commission Expires:

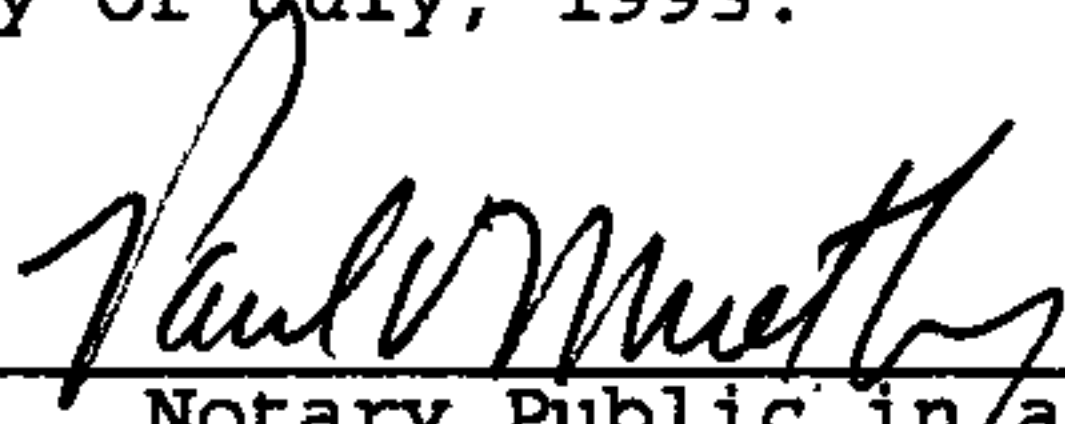
\_\_\_\_\_

PAUL V. MUETHING, Attorney at Law  
Notary Public, State of Ohio  
My Commission has no expiration date  
Section 147.03 O. R. C.

STATE OF OHIO                    )  
                                      : SS:  
COUNTY OF HAMILTON            )

I, PAUL V. MUETHING, a Notary Public in and for said County and State, hereby certify that D. Taylor Wood, whose name as Assistant Vice President of The Provident Bank, an Ohio banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Notarial Seal this 6th day of July, 1993.

  
\_\_\_\_\_  
Notary Public in and for  
Hamilton County, Ohio

My Commission Expires:

\_\_\_\_\_

PAUL V. MUETHING, Attorney at Law  
Notary Public, State of Ohio  
My Commission has no expiration date  
Section 147.03 O. R. C.

STATE OF Missouri

COUNTY OF Jackson

I, Karen J. Bowser, a Notary Public in and for said County in said State, hereby certify that JANET E. JACKIM, whose name as Vice President - Real Estate of UTOTEM, INC., a Delaware corporation, MONTERRE PROPERTIES, INC., a Delaware corporation, UTOTEM MARKETS OF ARIZONA, INC., an Arizona corporation, U'TOTE'M OF ALABAMA, INC., an Alabama corporation, U'TOTE'M OF COLORADO, INC., a Colorado corporation, U'TOTE'M OF MIAMI, INC., a Florida corporation, THE CIRCLE K CORPORATION, a Texas corporation, CIRCLE K CONVENIENCE STORES, INC., a Texas corporation, CIRCLE K GENERAL, INC., a Texas corporation and SHOP & GO, INC., a Florida corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of the corporations.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 30th day of June, 1993.

Karen J. Bowser  
NOTARY PUBLIC IN AND FOR  
COUNTY, \_\_\_\_\_

My Commission Expires:

KAREN J. BOWSER  
Notary Public-State of Missouri  
Commissioned in Jackson County  
My Commission Expires Nov. 8, 1994

Exhibit B-49  
Store No. 2554  
Shelby County, Alabama

A parcel of land situated in the Southwest Quarter of Section 11, Township 21 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows: Commence at the Northwest corner of the Southwest Quarter of said Section 11 and run East along the North line of Quarter Section for 1,235.17 feet; thence turn an angle to the right of 90 degrees, 00 minutes and run Southerly for 466.53 feet; thence turn an angle to the left of 90 degrees 57 minutes 47 seconds and run Easterly for 773.61 feet to the point of beginning. From the point of beginning thus obtained thence continue along the last described course for 210.00 feet; thence turn an angle to the right of 98 degrees 47 minutes 27 seconds to the tangent of a curve to the right, having a central angle of 4 degrees 09 minutes 53 seconds and a radius of 2,841.09 feet; thence run in a southwesterly direction along the arc of said curve for 206.51 feet to the point of commencement of a curve to the right having a central angle of 91 degrees 07 minutes 08 seconds and a radius of 25.00 feet; thence run in a southwesterly and westerly direction along the arc of said curve for 39.76 feet; thence run in a northwesterly direction along the tangent of said curve if extended for 189.46 feet; thence turn an angle to the right of 89 degrees 45 minutes 26 seconds and run northeasterly for 180.56 feet to the point of beginning.

Situated in Shelby County, Alabama.



**SCHEDULE I**  
(Recording Information)

Store No. 2554

Book 357, Page 722, Shelby County, Alabama

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