

(w/o Spreader)  
Shelby County, Alabama

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

CHARLES E. STAHL  
WINSTON & STRAWN  
35 W. Wacker Dr.  
Chicago, IL 60601-1614

04/15/1994-12492  
02:46 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
\$6.00

Inst # 1994-12492

----- SPACE ABOVE THIS LINE FOR RECORDER'S USE -----

AMENDMENT TO ASSIGNMENT OF LEASE;  
SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMENMENT AGREEMENT; AND  
ESTOPPEL CERTIFICATE

This Amendment to Assignment of Lease; Subordination, Non-Disturbance and Attornment Agreement and Estoppel Certificate ("Amendment"), made and entered into as of the 30th day of April, 1993, by and among The Provident Bank, an Ohio banking corporation ("Assignor" herein), as Trustee Under Trust Agreement dated as of April 30, 1984 (the "Trust Agreement") for the benefit of Store Properties Company, an Ohio general partnership ("Borrower" herein); Borrower; UtoteM, Inc., a Delaware corporation (formerly 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, Circle K General, Inc., a Texas corporation, Shop & Go, Inc., a Florida corporation, The Circle K Corporation, a Texas corporation, and Circle K Convenience Stores, Inc., a Texas corporation (collectively, "Tenant" herein), and Continental Bank N.A., f/k/a Continental Illinois National Bank and Trust Company of Chicago, a national banking association ("Assignee" herein), and is made and entered into with reference to the following:

A. Borrower has executed that certain Second Amended and Restated Non-Recourse Secured Promissory Note (the "Note") of even date herewith payable to the order of Assignee in the original principal amount of \$47,137,433.69, which Note amends and restates in its entirety that certain Promissory Note (the "Original Note")

*Jefferson Little*

dated June 17, 1986, as amended and restated pursuant to that certain Amended and Restated Non-Recourse Secured Promissory Note dated as of June 17, 1991 (the "First Amended Note").

B. Said Note is secured by, among other things, Deeds of Trust, Assignments of Rents and Security Agreements, and Mortgages, Assignments of Rents and Security Agreements dated as of June 17, 1986, as amended by those certain First Amendments to Deeds of Trust, Assignments of Rents and Security Agreements and First Amendments to Mortgages, Assignments of Rents and Security Agreements dated as of June 17, 1991 (collectively, the "Mortgages") in favor of Assignee. One or more of the Mortgages encumbers Assignor's interest in the real property located in the State of Alabama (the "Governing Jurisdiction") described in Exhibit "A" attached hereto.

C. Assignor heretofore entered into that certain Leaseback Lease dated April 30, 1984, between Assignor, as Landlord, and Tenant, as tenant, which lease has been previously amended and further amended and restated in its entirety pursuant to that certain Amended and Restated Leaseback Lease executed as of October 1, 1992 (the "Amended and Restated Leaseback Lease") covering, among other properties, the real property described in Exhibit A attached hereto. The term "Lease" as used in the Original Agreement and as used herein shall be deemed to mean the Amended and Restated Leaseback Lease, together with any and all guarantees, modifications, extensions and renewals thereof and any other lease(s) of all or any portion(s) of the property from time to time covered thereby hereafter entered into by Assignor. The property from time to time covered thereby in the Governing Jurisdiction is sometimes hereinafter referred to as the "Demised Premises".

D. Borrower, Assignor, and Tenant previously executed those certain Assignment of Lease; Subordination, Non-Disturbance and Attornment Agreement; and Estoppel Certificate documents made and entered into as of June 17, 1986, (the "Original Agreement").

E. Assignee has required, as a condition precedent to the Assignee's consent to the modifications embodied in the Amended and Restated Leaseback Lease, that Assignor, Borrower and Tenant, respectively, ratify and confirm each and every of the representations and warranties made by Assignor, Borrower and Tenant in the Original Agreement (except as amended and restated herein), that the Original Agreement be amended and therefore, that this document be executed.

NOW, THEREFORE, in consideration of the premises, for the purposes aforesaid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, Borrower and Tenant hereby agree as follows:

1. Assignor, Borrower, Tenant and Assignee each reaffirm, confirm and ratify each and every of the representations and warranties, except as amended and restated herein, made by each of Assignor, Borrower, Tenant, and Assignee each as to itself only, in the Original Agreement except as amended and restated herein as of the date above.

2. Assignor, Borrower, Tenant and Assignee each hereby covenant, acknowledge and agree that the Original Agreement except as amended and restated herein and the Spreader Agreement, as supplemented by the reaffirmation, confirmation and ratification set forth in Paragraph 1 hereinabove, are hereby reaffirmed, confirmed and ratified, except as expressly amended hereby, and, except as expressly amended hereby, all sections of the Original Agreement shall remain in full force and effect.

3. Assignor, Borrower, Tenant and Assignee agree that the following provisions from Paragraph 11 of that certain Assignment of Lease; Subordination, Non-Disturbance and Attornment Agreement; and Estoppel Certificates made and entered into as of June 17, 1986 is hereby deleted:

"provided, however, that unless Tenant shall have acquired the Note and the Mortgage from Assignee, Section 3.4 of the Lease shall be deemed stricken therefrom, and of no further force or effect, as of the date of any such foreclosure."

4. Assignee acknowledges and consents to the execution of the Amended and Restated Leaseback Lease and the rights of the Tenant under Article 12 thereof to purchase the Demised Premises and to cause the sale of certain of the Class A Stores and all of the Class B Stores as provided for therein.

5. Section 13 of the Original Agreement is hereby amended and restated in its entirety as follows:

13. Tenant hereby agrees and represents and warrants to Assignee and Borrower as follows:



(a) The Lease is in full force and effect and has not been modified, supplemented, altered or superseded in any way; Tenant has not assigned any of its tenancy rights under the Lease;

(b) To the best knowledge of Tenant, Assignor is not in default in any respect under any of the provisions of the Lease;

(c) Tenant has not prepaid any rent to Assignor under the Lease in excess of one (1) month's rent, and Tenant has not deposited any security deposit with Assignor;

(d) Tenant acknowledges that it has waived and hereby waives for the express benefit of Assignee and any title insurer insuring the validity and enforceability of the lien of the Mortgages any vendors lien which Tenant may have under the laws of the Governing Jurisdiction;

(e) Tenant has no knowledge of existing defenses or offsets or credits against rentals which have accrued under the Lease or against the enforcement of the Lease by Assignor; and

(f) Tenant acknowledges that it is Tenant's obligation to insure that the Demised Premises comply with all laws and ordinances and the orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions boards and offices thereof and the orders, rules and regulations of the Board of Fire Underwriters where any portion of the Demised Premises are situated, or any other body now or hereafter constituted exercising similar functions.

(g) The obligations of each entity included in the definition of Tenant under the Lease shall be joint and several obligations; and

(h) If any of the Demised Premises are situated in an area designated as having special flood hazards for purposes of the Flood Disaster Protection Act of 1973, as amended, Tenant shall maintain in full force and effect a policy or policies of flood insurance

covering each of the Demised Premises so situated in such designated area, insuring against such risk in an amount at least equal to the lesser of (i) the full insurable value of such Demised Premises (computed on a replacement cost basis), or (ii) the maximum limit of coverage available for such Demised Premises under the National Flood insurance Act of 1963, as amended.

6. The subordination of the Lease to the Mortgages pursuant to the terms of the Original Agreement, as amended hereby, shall be limited as provided in Article 16 of the Lease.

7. This Amendment and all of the terms, covenants and conditions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

8. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

9. Tenant hereby agrees and represents and warrants that the obligations of Tenant under the Lease shall be joint and several obligations.

10. All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing and shall be served (as an alternative to personal service) by certified or registered mail, postage prepaid, addressed as follows:

If to Assignor:

The Provident Bank  
Three East Fourth Street  
Cincinnati, Ohio 45202  
Attention: Trust Department

If to Borrower:

Store Properties Company  
c/o Joseph A. Pedoto  
JLM Financial, Inc.  
521 Dixie Terminal Bldg.  
49 E. Fourth Street  
Cincinnati, Ohio 45202

with copy to:

Paul V. Muething  
Keating Muething & Klekamp  
1800 Provident Tower  
One E. Fourth Street  
Cincinnati, Ohio 45202

If to Tenant:

The Circle K Corporation  
1601 North Seventh Street  
Phoenix, Arizona 85066

with a copy to:

Janet Jackim  
4343 East Camelback  
Phoenix, Arizona 85018

with a second copy to:

Gehl P. Babinec  
1601 North Seventh Street  
Phoenix, Arizona 85066

If to Assignee:

Continental Bank N.A.  
231 South LaSalle Street  
Chicago, Illinois 60697  
Attention: Patrick B. Canning

with a copy to:

Charles E. Stahl, Esq.  
Winston & Strawn  
35 W. Wacker Drive  
Chicago, IL 60601

Such addresses may be changed from time to time by serving notice as above provided. Service of any such notice or demand shall be deemed complete on the date of actual delivery as shown by the addressee's registry or certification receipt or at the expiration of the second (2nd) business day after the date of mailing, whichever is earlier in time.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first hereinabove set forth.

THE PROVIDENT BANK, an Ohio  
Banking Corporation, as  
Trustee Under Trust Agreement  
dated as of April 30, 1984  
for the benefit of Store  
Properties Company

By Title ASSISTANT VICE PRESIDENT

AND TRUST OFFICER

STORE PROPERTIES COMPANY,  
an Ohio general partnership

By 

Keith E. Lindner,  
Managing Partner

## TENANT:

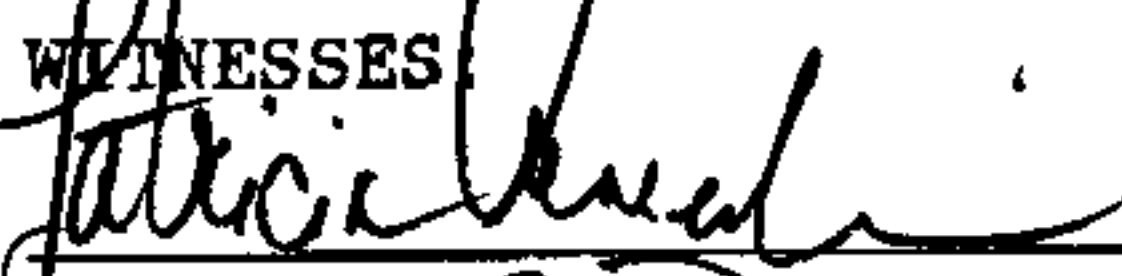
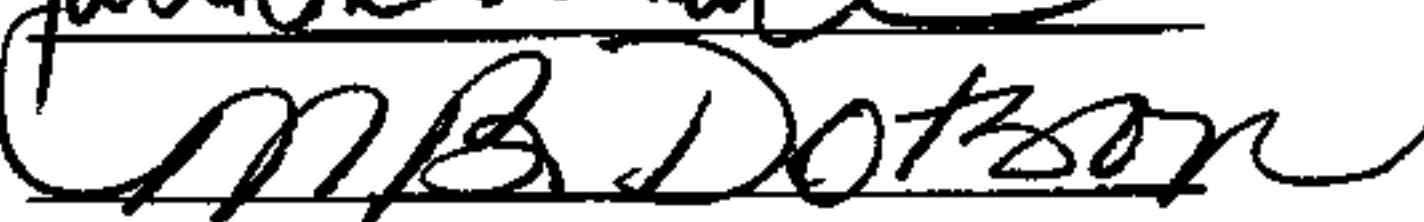
UTOTEM, INC., MONTERRE PROPERTIES,  
INC., UTOTEM MARKETS OF ARIZONA,  
INC., U-TOTE'M OF ALABAMA, INC., U-  
TOTE'M OF COLORADO, INC., U-TOTE'M  
OF MIAMI, INC., THE CIRCLE K  
CORPORATION, CIRCLE K CONVENIENCE  
STORES, INC., CIRCLE K GENERAL,  
INC., SHOP & GO, INC.,

## ATTEST:

By 

Its Assistant Secretary

WITNESSES:

By 

Its Vice President

CONTINENTAL BANK, N.A.,

By 

Its VICE PRESIDENT

STATE OF OHIO                    )  
                                      )       SS:  
COUNTY OF HAMILTON        )

BEFORE ME, the Subscriber, a Notary Public in and for said County and State, personally appeared D. Taylor Wood, Assistant Vice President\* of The Provident Bank, the corporation which executed the foregoing instrument, who acknowledged he did sign said instrument as such officer on behalf of said corporation, and by authority of its Board of Directors, and that the execution of said instrument is his free and voluntary act and deed individually and as such officer, and the free and voluntary act and deed of said corporation.\*\*

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

  
Notary Public

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

\* and Trust Officer

\*\* in its capacity as Trustee Under Trust Agreement dated as of April 30, 1984 for the benefit of Store Properties Company



STATE OF OHIO                    )  
                                      )  
COUNTY OF HAMILTON        )       SS:

BEFORE ME, the Subscriber, a Notary Public in and for said County and State, personally appeared Keith E. Lindner, General Partner of Store Properties Company, an Ohio general partnership which executed the foregoing instrument, who acknowledged he did sign said instrument as such officer on behalf of said corporation, and by authority of its Board of Directors, and that the execution of said instrument is his free and voluntary act and deed individually and as such officer, and the free and voluntary act and deed of said corporation.

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

*Paul V. Muehlenberg*

Notary Public

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

STATE OF ILLINOIS                )  
                                      )  
COUNTY OF COOK                )       SS:

BEFORE ME, the Subscriber, a Notary Public in and for said County and State, personally appeared Patrick B. Conning, Vice President of Continental Bank N.A., the corporation which executed the foregoing instrument, who acknowledged he did sign said instrument as such officer on behalf of said corporation, and by authority of its Board of Directors, and that the execution of said instrument is his free and voluntary act and deed individually and as such officer, and the free and voluntary act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Notarial Seal this 15th day of July, 1993.

*Sandra L. Gottlieb*  
Notary Public

"OFFICIAL SEAL"  
Sandra L. Gottlieb  
Notary Public, State of Illinois  
My Commission Expires 3/11/.

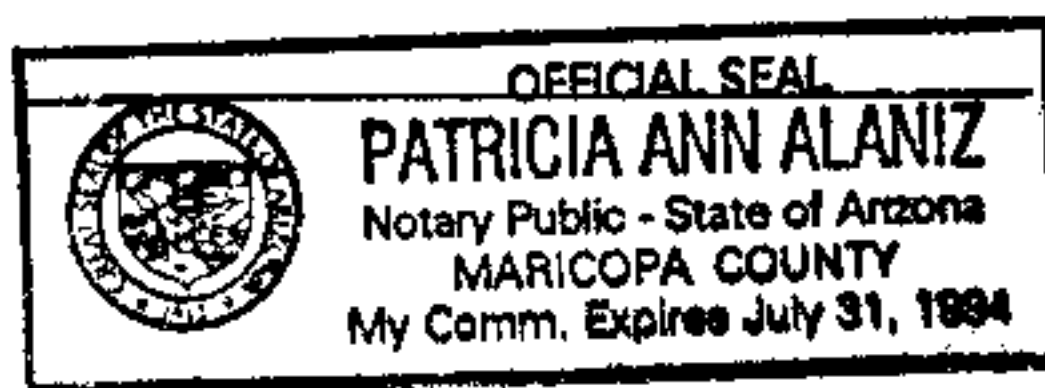
STATE OF ARIZONA )  
COUNTY OF MARICOPA )

I, PATRICIA A. ALANIZ, 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 2nd day of July, 1993.

  
NOTARY PUBLIC IN AND FOR  
COUNTY, \_\_\_\_\_

My Commission Expires:



4

Exhibit "A"-101  
Store No. 2554  
Shelby County, Alabama  
Hwy. 119 & 26th, Alabaster

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.

Exhibit "A"-99  
Store No. 2547  
Shelby County, Alabama  
*2128 Montgomery Hwy., Pelham*

A parcel of land situated in the Northeast Quarter of the Northeast Quarter Section 36; Township 19 South, Range 3 West, Shelby County, Alabama, more particularly described as follows: Commence at the Northeast corner of Section 36, Township 19 South, Range 3 West; Shelby County, Alabama, and run Southerly along the East line of said Section 550.00 feet to a point, said point now being in the right of way of U. S. Highway #31 South and also being the old Southeast corner of the W. N. Campbell property as described in Deed Book 128, Page 333, in the Judge of Probate Office, Shelby County, Alabama; thence turn right 76 degrees 12 minutes 31 seconds as measured and run southwesterly 136.91 feet along the South line of said W. N. Campbell property to the Westerly right of way line of U. S. Highway #31 South, and the point of beginning of the property herein described; thence continue Southwesterly along last stated course 200.00 feet; thence turn 83 degrees 15 minutes left and run Southerly 100.55 feet; thence turn 96 degrees 45 minutes left and run Easterly 200.01 feet to a point on said Westerly right of way line of U. S. Highway #31 South, said point being on a curve having a radius of 2,009.86 feet and subtending a central angle of 2 degrees 52 minutes, thence turn left with an interior angle of 95 degrees 18 minutes 35 seconds to tangent of said curve; thence run Northerly along the arc of said curve and said right of way line of U. S. Highway #31 South 100.56 feet to the point of beginning. Mineral and mining rights excepted.  
Situating in Shelby County, Alabama.

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DOL MCD 3690