

Inst # 1994-24881

08/09/1994-24881
09:55 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 HCD 21.00

This instrument was prepared by Chris A. Paul, Kemp, Smith, Duncan & Hammond, P.C., 1900 State National Plaza, El Paso, Texas 79901.

Store No. 2554

Shelby County, Alabama

MEMORANDUM OF LEASE TERMINATION

THIS MEMORANDUM OF LEASE TERMINATION is made by and among THE PROVIDENT BANK, an Ohio corporation ("Landlord"), whose principal place of business is 1 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 partnership ("Store Properties"), THE CIRCLE K CORPORATION, a Texas corporation (formerly known as CIRCLE K CONVENIENCE STORES, INC., a Texas corporation and the successor by merger to UTOTEM, INC., a Delaware corporation, MONTERRE PROPERTIES, INC., a Delaware corporation, UTOTEM MARKETS OF ARIZONA, INC., an Arizona corporation, UTOTEM OF ALABAMA, INC., an Alabama corporation, UTOTEM OF COLORADO, INC., a Colorado corporation, UTOTEM OF MIAMI, INC., a Florida corporation, SHOP & GO, INC., a Florida corporation and CIRCLE K GENERAL, INC., a Texas corporation) (hereinafter referred to as the "Tenant"), whose mailing address is 3003 North Central, Phoenix, Arizona 85012, and CONTINENTAL BANK N.A., a national banking association (the "Bank"), formerly known as Continental Illinois National Bank and Trust Company of Chicago, whose address is 231 South LaSalle Street, Chicago, Illinois 60697.

W I T N E S S E T H:

WHEREAS, Landlord, as landlord, and Utotem, Inc., a Delaware corporation, Monterre Properties, Inc., a Delaware corporation, Utotem Markets of Arizona, Inc., an Arizona corporation, Utotem of Alabama, Inc., an Alabama corporation, Utotem of Colorado, Inc., a Colorado corporation, Utotem of Miami, Inc., a Florida corporation, Shop & Go, Inc., a Florida corporation, Circle K General, Inc., a Texas corporation, The Circle K Corporation, a Texas corporation and Circle K Convenience Stores, Inc., a Texas corporation (hereinafter collectively referred to as the "Original Tenants") as tenants, entered into that certain Amended and Restated Leaseback Lease dated as of October 1, 1992 (the "Amended and Restated Leaseback Lease"), which amended and restated that certain Leaseback Lease dated April 30, 1984 (the "Original Lease"), as amended by that certain Amendment of Leaseback Lease dated August 29, 1986 (the "First Amendment") and by that certain Second Amendment of Leaseback Lease dated March 1, 1989 (the "Second Amendment"), pursuant to which Landlord did lease and demise unto Original Tenants, and Original Tenants did rent from Landlord, certain real property, including the real

property described as follows which is hereinafter referred to as the "Demised Premises":

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 1235.17 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 2841.09 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.

WHEREAS, the tenancy created by the Original Lease and the Amended and Restated Leaseback Lease is further evidenced by that certain Warranty Deed, Bill of Sale, Memorandum of Lease and Option to Purchase amongst Landlord and Original Tenants of record in Volume 357, Page 713 and Volume 357, Page 722, in the Probate Office of Shelby County, Alabama and that certain Amended and Restated Memorandum of Lease and Notice of Non-Disturbance amongst Landlord and Original Tenants; and

WHEREAS, Landlord, Original Tenants and the Bank entered into that certain Assignment of Lease; Subordination, Non-Disturbance and Attornment Agreement; and Estoppel Certificate (the "Original Assignment of Lease") pursuant to which, among other things, Landlord, as assignor, assigned its interests under the Original Lease, as amended, to Bank, as assignee, as additional security for a loan to Store Properties; and

WHEREAS, Landlord and Original Tenants entered into that certain Amendment to Assignment of Lease; Subordination, Non-Disturbance and Attornment Agreement; and Estoppel Certificate (the "Amendment of Assignment of Lease") in conjunction with the execution and delivery of the Amended and Restated Leaseback Lease; and

WHEREAS, pursuant to the terms of the Amended and Restated Leaseback Lease, Tenant has the right to close certain of the real properties covered by the Amended and Restated Leaseback Lease and offer such real properties for sale on behalf of Landlord and, pursuant thereto, Tenant has offered the Demised Premises for sale and Landlord has accepted the

terms and provisions of that certain Real Estate Purchase Contract between Landlord, as seller, T. Wayne Terry, d/b/a Terry & Son Co., Inc., as purchaser and The Circle K Corporation as tenant, which Contract was assigned to Simple Investments, Inc., as purchaser; and

WHEREAS, Bank has consented to the sale of the Demised Premises and the termination of the Amended and Restated Leaseback Lease with respect to the Demised Premises and has agreed to terminate the Original Assignment of Lease, as amended by the Amendment of Assignment of Lease, with respect to the Demised Premises; and

WHEREAS, in conjunction with the sale of the Demised Premises to the above referenced purchaser, Landlord and Tenant desire to terminate the Amended and Restated Leaseback Lease with respect to the Demised Premises and to terminate the Original Assignment of Lease, as amended by the Amendment of Assignment of Lease, with respect to the Demised Premises.

NOW, THEREFORE, in consideration of the premises and for other good and valuable considerations, the receipt and sufficiency of which are acknowledged and confessed, Landlord, Tenant and Bank stipulate and agree that the Amended and Restated Leaseback Lease, is terminated with respect to the Demised Premises and that the Original Assignment of Lease, as amended by the Amendment of Assignment of Lease, is terminated with respect to the Demised Premises, effective as of the 15th day of April, 1994.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease Termination as of the date set forth in their respective acknowledgements.

LANDLORD:

ATTEST:

THE PROVIDENT BANK, an Ohio corporation, as Trustee

By: 

Name: Eugene A. Kelly

Title: VICE PRESIDENT AND TRUST OFFICER

By: 

Name: D. Taylor Wood

Title: ASSISTANT VICE PRESIDENT

AND TRUST OFFICER

WITNESSES:

Melissa A. Dancy
Katherine M. Speiser

WITNESSES:

[Signature]
[Signature]

ATTEST:

By: [Signature]
Name: CORTLAND J. SILVER
Title: Assistant Secretary

WITNESSES:

[Signature]
[Signature]

ATTEST:

By: [Signature]
Name: DARIA J. CORINS
Title: ACCOUNT ADMIN.

WITNESSES:

[Signature]
[Signature]

STORE PROPERTIES:

STORE PROPERTIES COMPANY, an Ohio
general partnership

By: [Signature]
Name: KEITH E. LINDNER
Title: General Partner

TENANT:

THE CIRCLE K CORPORATION, a Texas
corporation

By: [Signature]
Name: Janet E. Jackim
Title: Vice President - Real Estate

BANK:

CONTINENTAL BANK N.A., a national
banking association

By: [Signature]
Name: CYRON W. STETSON
Title: VICE PRESIDENT

STATE OF OHIO)

COUNTY OF HAMILTON)

I, PAMELA V. MARTINA, a Notary Public in and for said County in said State, hereby certify that D. Taylor Wood, whose name as Asst. Mgr. & Asst. Dir. of THE PROVIDENT BANK, an Ohio banking corporation, as Trustee for 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 officer and with full authority, executed the same voluntarily for and as the act of the corporation, as Trustee for said general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 14 day of April, 1994.

Pamela V. Martina
NOTARY PUBLIC IN AND FOR

My Commission Expires:

PAMELA V. MARTINA

Notary Public, State of Ohio

My Commission Expires Sept. 9, 1996

STATE OF OHIO)

COUNTY OF HAMILTON)

I, PAUL V. MUETHING, a Notary Public in and for said County in said 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, in such capacity and with full authority, executed the same voluntarily for and as the act of the general partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 15th day of April, 1994.

Paul V. Muething
NOTARY PUBLIC IN AND FOR

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 ARIZONA)

COUNTY OF MARICOPA)

I, Kathleen S. Lee, 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 THE CIRCLE K CORPORATION, a Texas 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 corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 14th day of April, 1994.

Kathleen S. Lee
NOTARY PUBLIC IN AND FOR
MARICOPA COUNTY, ARIZONA

My Commission Expires:



NOTARY PUBLIC
STATE OF ARIZONA
COUNTY OF MARICOPA
KATHLEEN S. LEE
My Commission Expires February 18, 1998

STATE OF Illinois)

COUNTY OF COOK)

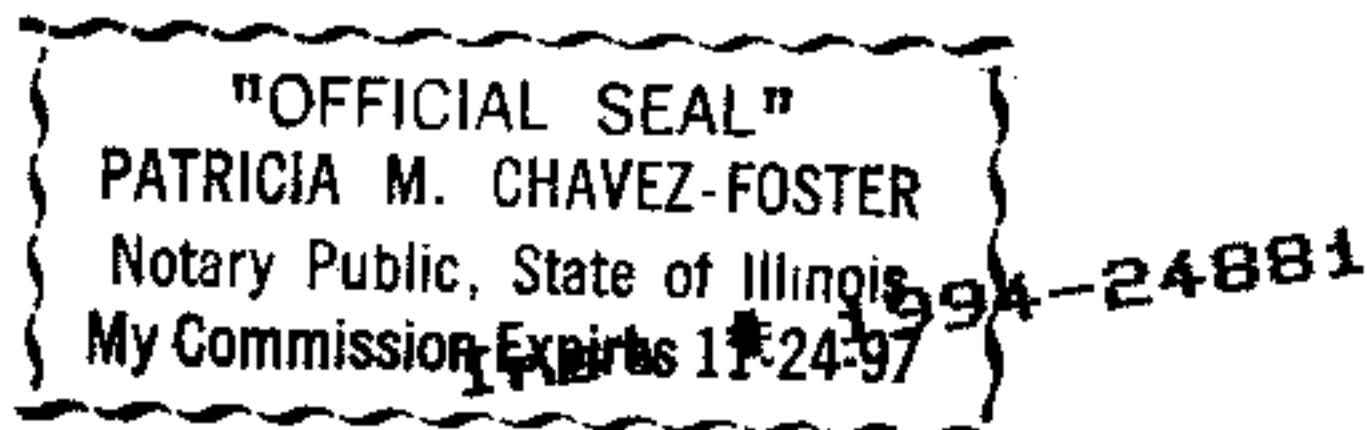
I, Patricia M. Chavez-Foster, a Notary Public in and for said County in said State, hereby certify that Lynn W. Stetson, whose name as Vice President of CONTINENTAL BANK, N.A., a national banking association, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this 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 the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 10 day of MAY, 1994.

Patricia M. Chavez-Foster
NOTARY PUBLIC IN AND FOR
ILLINOIS

My Commission Expires:

11-24-97



08/09/1994-24881
09:55 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MCD 21.00