

Inst # 1994-24884

08/09/1994-24884

09:55 AM CERTIFIED

This instrument was prepared by Chris A. <sup>Shelby County, Alabama</sup> ~~Paul W. Jones~~ <sup>PROBATE</sup> Smith, Duncan & Hammond, P.C., 1900 State National Plaza, El Paso, Texas 79901.

Store No. 2547

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 NE 1/4 of the NE 1/4 Section 36, Township 19 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the NE 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 SE 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 2009.86 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.

**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 15<sup>th</sup> 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:

THE PROVIDENT BANK, an Ohio corporation, as Trustee

ATTEST:

By: [Signature]  
Name: EUGENE A. KELLY  
Title: VICE PRESIDENT AND  
TRUST OFFICER

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

WITNESSES:

Melissa A. Dancy  
Katherine M. Spivey

WITNESSES:

[Signature]  
[Signature]

ATTEST:

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

WITNESSES:

[Signature]  
[Signature]

ATTEST:

By: [Signature]  
Name: DARLA J. COLLINS  
Title: Account Admin.

WITNESSES:

[Signature]  
[Signature]

STORE PROPERTIES:

STORE PROPERTIES COMPANY, an Ohio  
general partnership

By: [Signature]  
Name: KEITH E. LINDVER  
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: LYNN 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. V.P. & Trust Off. 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 18 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. MUEETHING, 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. Mueething  
NOTARY PUBLIC IN AND FOR

My Commission Expires:

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



STATE OF ARIZONA

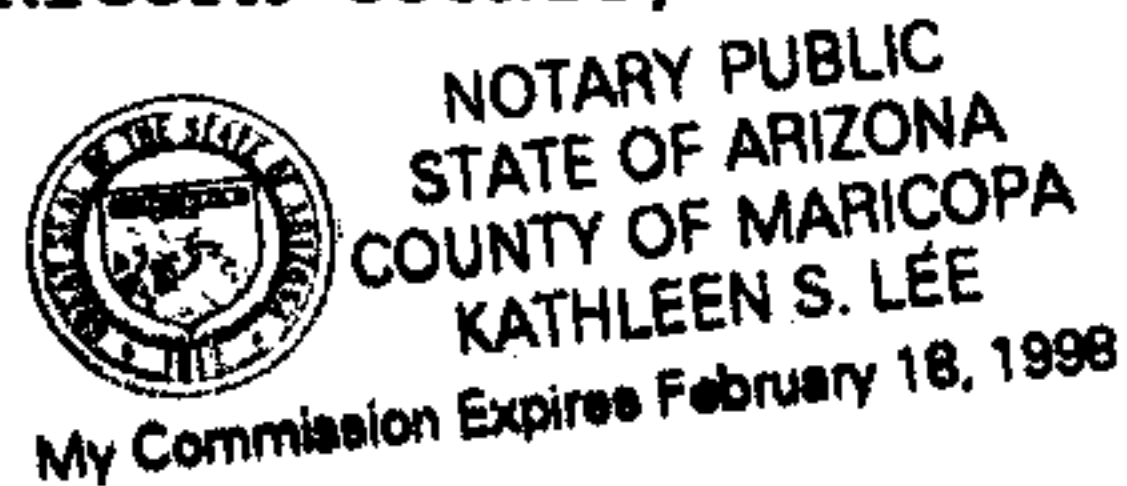
COUNTY OF MARICOPA

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

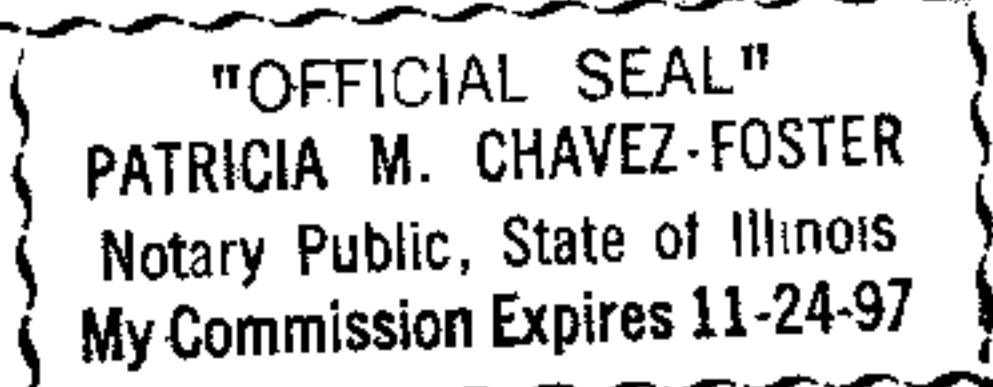
My Commission Expires:



STATE OF Illinois  
COUNTY OF Cook

I, Patricia 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 April, 1994.



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

My Commission Expires:

11-24-97

Inst # 1994-24884

08/09/1994-24884  
09:55 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
6 006 MCD 21.00