

After recording, please return to:

Tacy A. Hartman, Esq  
Van Cott, Bagley, Cornwall & McCarthy  
50 South Main Street, Suite 1600  
Salt Lake City, Utah 84144

E 1993648 B 3558 P 734  
RICHARD T. MAUGHAN, DAVIS CNTY RECORDER  
2004 JUN 10 3:30 PM FEE 25.00 DEP MT  
REC'D FOR UNITED TITLE SERVICES OF UTAH

NE 17 4N-1W

Tax Parcel I.D. Nos 10-028-0002; 10-028-0024  
10-028-0025; 10-028-0067

### ASSIGNMENT OF LEASES, RENTS AND CONTRACTS

FOR VALUE RECEIVED, ANTELOPE COMMERCIAL CENTER, L.L.C., a Utah limited liability company, as assignor (the "Assignor"), hereby grants, transfers and assigns to U.S. BANK NATIONAL ASSOCIATION, as assignee (the "Assignee") under that certain Line of Credit and Term Loan Agreement (the "Loan Agreement") dated even date herewith by and between Assignor, Kevin S. Garn, an individual (together with Assignor, the "Borrower"), and the Assignee, the entire lessor's interest in and to all leases (the "Leases") now existing or hereafter entered into for all or any part of the premises (the "Premises") more particularly described on Exhibit "A" attached hereto, which exhibit is incorporated herein by this reference, together with all rents, income, deposits, issues and profits arising from the Leases, and any renewals and modifications thereof, and together with all rents, income, issues and profits for the use and occupation of the Premises and from any property covered by the Leases, whether real, personal, mixed or intangible. Assignor also hereby grants, transfers and assigns to Assignee all of its right, title and interest in and to all existing and future contracts (the "Contracts") relating to the Premises, including, but not limited to, contracts for management, maintenance, laundry, cleaning and janitorial services, vending machines, landscaping and/or plant care.

Subject to Paragraph 4 hereof, this Assignment is intended to be, and shall be construed as creating, an absolute assignment unto Assignee, and not as an assignment as security, and to such extent shall be unconditional and irrevocable except as hereinafter provided to the contrary. In connection with and as a part of this Assignment, Assignor hereby warrants, represents and agrees, to and with Assignee, as follows:

1. Assignor warrants that there has been no prior assignment of the Leases or the Contracts which are now in effect.
2. Assignor agrees:

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(a) To observe and perform all obligations imposed upon the lessor under the Leases or upon the Assignor under the Contracts;

(b) Without the prior written consent of Assignee, not to collect any rent, income or profits accruing under the Leases or from the Premises more than two months in advance of the time when they shall become due;

(c) Not to execute any other assignment of lessor's interest in the Leases or assignment of rents, accruing under the Leases or from the Premises or any other assignment of Assignor's interest under the Contracts;

(d) Not to do any act which constitutes a breach under any of the Leases or the Contracts or do any other act which would result in the termination of any of the Leases or the Contracts;

(e) To execute and deliver to Assignee such further assurances and assignments of Leases on the Premises or the Contracts as Assignee shall from time to time reasonably require;

(f) Without prior written consent of Assignee, not to enter into any amendments or modifications of Leases or new leases or the Contracts.

3. To secure payment of that certain promissory note given by Borrower to the Assignee in the principal sum of TWO MILLION TWO HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$2,240,000), with interest thereon, and that certain Promissory Note given by Borrower to the Assignee in the principal sum of FOUR HUNDRED NINETY EIGHT THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$498,400), with interest thereon (collectively, the "Notes"), and any and all obligations of Borrower to Assignee under or related to the Loan Agreement and that certain Deed of Trust contemporaneously herewith executed and delivered by Assignor to UNITED TITLE SERVICES, as trustee, in favor of Assignee, as beneficiary, together with any schedules or confirmations thereto.

4. Assignee agrees and Assignor further agrees as follows.

(a) **Unless and until there shall have occurred a default in the performance by Assignor of any of its duties or obligations, including but without limitation the payment of money, arising under the aforesaid Notes or deed of trust,** Assignor may collect, not more than two months in advance of the date provided for payment, all rents, income and profits arising under the Leases and retain the use of and enjoy the same. Upon or at any time after any such default, Assignee may, at its option, without notice and without regard to the adequacy of any security for the payment or performance of any duties and obligations arising under the aforesaid Notes and deed of trust, either in person or by agent, with or without bringing any action or proceeding, or by receiver appointed by a court, take possession of the Premises and hold, manage, let, and operate the same on such terms and for such period of time as Assignee may deem proper and, with or without taking possession of the Premises,

demand, sue for, or otherwise collect all rents, income and profits of the Leases and the Premises, including those past due and unpaid, with full power to make from time to time all such alterations, renovations, repairs and replacement as may seem proper to Assignee, and apply such rents, income and profits to the payment of all expenses of managing, operating and maintaining the Leases and the Premises, all expenses incident to taking and retaining possession of the Premises, and the principal, interest and other indebtedness evidenced and/or secured by the aforesaid Notes and deed of trust, together with all costs and attorneys' fees, in such order of priority as to any of the items mentioned in this paragraph as Assignee in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. Exercise or nonexercise by Assignee of the options granted in this paragraph, or collection and application of rents, income and profits by Assignee or its agent shall not be considered a waiver of any default by Assignor under this Assignment, the aforesaid Notes or the aforesaid deed of trust.

(b) Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises or any part thereof or from any other act or omission of Assignee in managing the Premises, unless such loss is caused by the willful misconduct and bad faith of Assignee. Assignee shall not be obligated to perform or discharge nor does Assignee undertake to perform or discharge any obligation, duty or liability under the Leases or under the Contracts or under or by reason of this Assignment and Assignor agrees to indemnify Assignee for, and to hold Assignee harmless from, any liability, loss or damage which may be incurred under the Leases or under the Contracts or under or by reason of this Assignment and from any claims and demands which may be asserted against Assignee by reason of any alleged obligations or undertakings to perform or discharge any of the terms, covenants or agreements contained in the Leases or the Contracts. Should Assignee incur any such liability under the Leases or the Contracts or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees shall be reimbursed by Assignor to Assignee immediately upon demand, and upon failure of Assignor to make such reimbursement within fifteen (15) days of the date of such demand, the unpaid portion thereof, while still immediately due and payable, shall bear interest at the rate provided in the Notes until paid. This Agreement shall not operate to place responsibility for the control, care, maintenance or repair of the Premises upon Assignee, nor shall it operate to make Assignee responsible or liable for any waste committed on the Premises by any tenants or any other parties, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises.

(c) Upon payment in full of the principal, interest and all other indebtedness evidenced by the aforesaid Notes and deed of trust, this Assignment shall cease, terminate and be of no further effect; provided, however, that the affidavit, certificate, letter or statement of Assignee or any officer, agent or attorney of Assignee showing any part of the principal, interest or other indebtedness being unpaid shall constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. Assignor hereby authorizes and directs each and every lessee named in a Lease or any other or future lessee or occupant of the Premises or any part thereof, upon receipt of written notice from Assignee, to pay to Assignee all rents, income, issues and

profits accruing under the Leases or from the Premises, and to continue to do so until otherwise notified in writing by Assignee.

(d) Subject only to the provisions of part (c) of this Paragraph 4, no action undertaken by Assignee with respect to any of the obligations of Assignor evidenced by the aforesaid Notes and deed of trust, to any security or guarantee given for the payment or performance thereof, or to any other document or instrument evidencing or relating to said obligations shall in any manner affect, impair or prejudice any of Assignee's rights and privileges under this Assignment or discharge, release or modify any of Assignor's duties or obligations hereunder. This Assignment is intended by Assignor and Assignee to create, and shall be construed as creating, an absolute assignment unto Assignee, subject only to the terms and provisions hereof, and not as an assignment as security for the performance of the obligations evidenced by the aforesaid Notes and deed of trust, or any other indebtedness of Assignor.

5. Except for any notice required under applicable law to be given in another manner, any notice or other communication required or permitted to be given hereunder and any approval by any party shall be in writing and shall be personally delivered or delivered by overnight courier in each case with receipt acknowledged, or deposited in an official depository of the United States Postal Service, postage prepaid, by registered or certified mail, return receipt requested, to the other party or parties at the addresses listed below. All notices and other communications shall be deemed to have been duly given on (a) the date of receipt thereof (including all required copies thereof as set forth below) if delivered personally or by overnight courier or (b) five (5) business days after the date of mailing thereof (including all required copies thereof as set forth below) if transmitted by mail. Each party may change its address for receipt of notices by a notice given to the other parties in accordance with this provision. Notices shall be addressed as follows:

To the Assignor:

Antelope Commercial Center, L.L.C.  
1601 North Hillfield Road, Suite 201  
Layton, Utah 84041  
Attn. Kevin S. Garn

To the Assignee:

U.S. Bank National Association  
Commercial Banking  
15 West South Temple, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84101  
Attention: Mr. John White

With a copy to:

Van Cott, Bagley, Cornwall & McCarthy  
Attention: Tacy A. Hartman, Esq.  
50 South Main Street, Suite 1600  
Salt Lake City, Utah 84144  
Post Office Box 45340  
Salt Lake City, Utah 84145

6. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law but, if any provision of this Assignment shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7. This Assignment, together with the agreements and warranties herein contained, shall inure to the benefit of Assignee and its successors and assigns and shall be binding upon Assignor and its respective successors and assigns as to all or any part of the Premises.

IN WITNESS WHEREOF, this Assignment has been executed as of the 9th day of June, 2004.

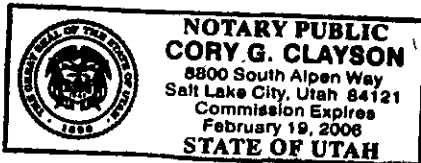
ASSIGNOR:

ANTELOPE COMMERCIAL CENTER, L.L.C.,  
a Utah limited liability company

By [Signature]  
Kevin S. Garn  
Its Managing Member

STATE OF UTAH   )  
   : ss.  
COUNTY OF SALT LAKE                                     )

The foregoing instrument was acknowledged before me this 9th day of June, 2004 by Kevin S. Garn, the Managing Member of ANTELOPE COMMERCIAL CENTER, L.L.C., a Utah limited liability company.



[Signature]  
Notary Signature and Seal

EXHIBIT "A"

## (Legal Description of the Property)

Property located in Davis County, Utah, more particularly described as follows:

## PARCEL 1:

Beginning on the East line of a Highway at a point 241.71 feet South and 49.5 feet, more or less, East of the Northwest corner of the Northeast Quarter of the Northeast Quarter of Section 17, Township 4 North, Range 1 West, Salt Lake Meridian, and running thence East 183.41 feet; thence South 130.0 feet; thence West 183.41 feet to the East line of said highway; thence North 130.0 feet along said highway to the point of beginning.

## PARCEL 2:

Beginning on the South line of a street West 996.59 feet along section line and South 33.0 feet from the Northeast corner of Section 17, Township 4 North, Range 1 West, Salt Lake Meridian; thence West 90 feet along said street; thence South 180 feet, thence East 90 feet; thence North 180 feet to the point of beginning.

## PARCEL 3:

Beginning at a point on the South line of a street; South  $0^{\circ}03'41''$  West 42 feet and South  $89^{\circ}52'30''$  West 878 feet along said South line from the Northeast corner of Section 17, Township 4 North, Range 1 West, Salt Lake Meridian; thence South  $89^{\circ}52'30''$  West 118.59 feet along said South line; thence South 171 feet; thence West 90 feet; thence South 29.7 feet to a point 200.5 feet South of South line of said street; thence North  $89^{\circ}52'30''$  East 208.59 feet parallel to the South line of said street; thence North 200.50 feet to the point of beginning.

## PARCEL 4:

Beginning 1086.59 feet West and 33.0 feet South of the Northeast corner of Section 17, Township 4 North, Range 1 West, Salt Lake Meridian, in the City of Layton, and running thence South 208.71 feet; thence West 183.46 feet, more or less, to the East line of a Highway; thence North 208.71 feet along said Highway; thence East 183.46 feet, more or less, to the point of beginning.

Less and excepting therefrom the following property conveyed to Layton City Corporation:

Beginning at a point which is 1086.59 feet West and 33.0 feet South from the Northeast corner of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian. Running thence South 16.32 feet; thence South  $86^{\circ}43'47''$  West 10.09 feet; thence South  $89^{\circ}52'30''$  West 173.33 feet; thence North 17.27 feet; thence East 183.46 feet to the point of beginning.