

**Official Record**

Recording requested By  
COW COUNTY TITLE COMPANY

**Lincoln County - NV**

**Leslie Boucher - Recorder**

Fee: \$25.00

Page 1 of 12

RPTT:

Recorded By: AE

Book- 258 Page- 0726

**A.P.N.** 03-144-03

**R.P.T.T.** \$0.00

**Escrow No.** 38557

**Recording Requested By:**

Cow County Title Co.

**Mail Tax Statements To:**

Same as below

**When Recorded Mail To:**

First Place Bank

724 Boardman Poland Road

Youngstown, OH 44512



0136557

**ASSIGNMENT OF RENTS AND LEASES**

**COPY**

Loan #568845013

**ASSIGNMENT OF RENTS AND LEASES**

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") dated October 6, 2010, is made and executed by T & N PROPERTIES, L.C., a Utah limited liability company ("Assignor"), whose address is 595 West 885 South, Brigham City, Utah 84302, in favor of FIRST PLACE BANK ("Lender") whose address is 724 Boardman Poland Road, Youngstown, Ohio 44512.

**WITNESSETH:**

Assignor, for good and valuable consideration, receipt of which is hereby acknowledged, hereby presently, absolutely and irrevocably GRANTS, TRANSFERS, ASSIGNS AND CONVEYS A SECURITY INTEREST to Lender in all of Assignor's right, title and interest in and to all Leases (as hereinafter defined) and to all rents, accounts, income, issues and profits (collectively, the "Rents") arising from all leases, subleases, occupancy agreements, licenses, concessions or other agreements (whether written or oral) now existing or hereafter made, demising or granting a right to occupy or use all or any portion of the Premises (as defined below), together with all security and other deposits made in connection therewith, and together with any amendments, extensions, renewals, and replacements of any of the foregoing (the foregoing items hereinafter collectively referred to as the "Leases") covering or relating to all or any portion of certain real property and interests therein located at 105 W. 2<sup>nd</sup> Street, Caliente, Nevada 89008, including, without limitation, all improvements now or hereafter located thereon, which real property is more particularly described in the attached legal description attached hereto and made a part hereof as if fully rewritten herein (such land and improvements being herein collectively referred to as the "Premises"). The foregoing assignment includes and assigns, without limitation, Rents from that Lease Agreement entered into on May 18, 2009 by and between Assignor as landlord and Family Dollar, Inc., a North Carolina corporation, as the tenant.



THIS ASSIGNMENT is made for the purpose of securing: (a) the payment, performance and observance by T & N PROPERTIES, L.C., a Utah limited liability company (the "Borrower") of all covenants and conditions contained in that certain promissory note of even date herewith made by Borrower and payable to the Lender in the original principal amount of Five Hundred and Fifty-Three Thousand Dollars (\$553,000.00) (which, together with any and all replacements, renewals, amendments or extensions thereof or supplements thereto, is hereinafter referred to as the "Note"), and the payment, performance and observance by Borrower of all covenants and conditions contained in all other instruments securing the Note; (b) all future advances and readvances that may subsequently be made to Borrower by Lender evidenced by the aforesaid Note, or any other promissory notes, and all renewals and extensions thereof; provided, however, that nothing contained herein shall create an obligation on the part of Lender to make future advances or readvances to the Borrower; (c) all other indebtedness of Borrower to Lender, now or hereafter existing, whether direct or indirect, plus interest thereon; and (d) all charges and expenses of collection incurred by Lender, including court costs and attorneys' fees (all of the foregoing being collectively referred to as the "Secured Indebtedness").

ARTICLE I

WARRANTIES AND COVENANTS

1.01 Warranties of Assignor. Assignor hereby warrants and represents to Lender that:

- (a) Assignor is the sole owner of landlord's interest under the Leases, is entitled to receive the Rents and has good right to sell, assign, transfer and set over the same and to grant to and confer upon Lender the rights, interests, powers and authorities herein granted and conferred.
- (b) Assignor has neither made nor permitted to be made any assignment other than this Assignment of any of its rights under the Leases to any person or entity.
- (c) Assignor has not done any act nor omitted to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions of this Assignment.
- (d) Assignor has not accepted rent under any of the Leases more than thirty (30) days in advance of its due date.
- (e) To the best of Assignor's knowledge, there is no default by any of the tenants under the terms of any of the Leases.



(f) Assignor is not prohibited under any agreement with any other person or entity or under any judgment or decree from executing and delivering this Assignment, from performing each and every covenant of Assignor hereunder and under the Leases, or from the meeting of each and every condition contained herein or in the Leases.

(g) No action has been brought or threatened which in any way would interfere with the right of Assignor to execute this Assignment and perform all of Assignor's obligations herein contained.

(h) Except as set forth in Exhibit B, the Leases are unmodified and are in full force and effect.

1.02 Covenants of Assignor. Assignor hereby covenants and agrees with Lender as follows:

(a) Assignor will, at its own cost and expense, perform, comply with and discharge all of the obligations of Assignor under any Leases and use its best efforts to enforce or secure the performance of each obligation and undertaking of the respective tenants under any such Leases and will appear in and defend, at its own cost and expense, any action or proceeding arising out of or in any manner connected with Assignor's interest in any Leases pertaining to the Premises. Assignor will not modify, extend, renew, terminate, accept a surrender of, or in any way alter the terms of the Leases, nor borrow against, pledge or assign any rents due under the Leases nor consent to a subordination or assignment of the interest of a tenant thereunder to any party other than Lender, nor anticipate the rents thereunder for more than one (1) month in advance or reduce the amount of rents and other payments thereunder, nor waive, excuse, condone or in any manner release or discharge a tenant of or from any obligations, covenants, conditions and agreements to be performed, nor incur any indebtedness to a tenant, nor agree to any "free rent" period without Lender's consent, nor enter into any additional Leases of all or any part of the Premises without the prior written consent of Lender. Assignor shall notify Lender of a default by any tenant of the Premises.

(b) Assignor shall authorize and direct, and does hereby authorize and direct each and every present and future tenant under the Leases to pay rent directly to Lender upon receipt of written demand from Lender to so pay the same.

(c) Lender shall not be obligated to perform or discharge any obligation of Assignor under any of the Leases.



1.03 Covenants of Lender. Lender, by acceptance hereof, covenants and agrees with Assignor that:

(a) Although this Assignment constitutes a present and absolute assignment of all Rents, so long as there shall exist no Event of Default, as hereinafter defined, Assignor shall have a mere license, revocable as set forth herein, (i) to collect, but not more than thirty (30) days prior to accrual, all Rents and to retain, use and enjoy the same, and (ii) to maintain the security deposits in a separate, identifiable account in a bank acceptable to Lender. Upon the occurrence of any Event of Default, the license granted in this Section 1.03 shall automatically, without further act by Lender, cease and terminate.

(b) Upon the payment in full of the Secured Indebtedness, this Assignment shall automatically become and be void and of no further effect.

## ARTICLE II

### DEFAULT

2.01 Event of Default. The occurrence of any one of the following events shall constitute an "Event of Default" hereunder:

(a) the failure by Assignor to perform or observe any covenant of Assignor contained in this Assignment;

(b) the failure by Assignor to cause to be true and not misleading any warranty of Assignor contained herein;

(c) the failure of the Borrower to comply with all of Borrower's promises, covenants, and or obligation contained in the Note or in any instrument and or document executed in connection with the Note; or

(d) The occurrence of any default by Assignor under any Lease on account of which the tenant under such Lease, either under the terms of the Lease or under applicable law, is or may be authorized to offset rent or terminate the Lease.

2.02 Remedies. Upon the occurrence of any Event of Default, Lender may at its option, with or without notice or demand of any kind, exercise any or all of the following remedies:

(a) Declare any part or all of the Secured Indebtedness to be due and payable, whereupon the same shall become immediately due and payable;

(b) Perform any and all obligations of Assignor under any or all of the Leases or this Assignment and exercise any and all rights of Assignor herein or therein as fully as Assignor itself could do, including, without limiting the generality of the foregoing: enforcing, modifying, extending or terminating any or all of the Leases; collecting, modifying, compromising, waiving or increasing any or all of the rents payable thereunder; and obtaining new tenants and entering into new leases on the Premises on any terms and conditions deemed desirable by Lender; and, to the extent Lender shall incur any costs in connection with the performance of any such obligations of Assignor, including costs of litigation, then all such costs shall become a part of the Secured Indebtedness secured by this Assignment, shall bear interest from the occurrence thereof at the default interest rate specified in the Note, and shall be due and payable on demand;

(c) In Assignor's or Lender's name, institute any legal or equitable action which Lender in its sole discretion deems desirable to collect and receive any or all of the Rents assigned herein;

(d) With or without taking possession of the Premises, notify the tenants under any or all of the Leases to pay and deliver the Rents directly to Lender without further consent or notification of or from Assignor, this Assignment being advance consent by Assignor to any such notice and collection of Rents; and

(e) Collect the Rents and any other sums due with respect to the Premises, and apply the same in such order as Lender in its sole discretion may elect against (i) all costs and expenses, including attorneys' fees, in connection with the operation of the Premises, the performance of Assignor's obligations under the Leases and collection of the Rents thereunder; and (ii) all costs and expenses, including attorneys' fees, in the collection of any or all of the Secured Indebtedness, including all costs, expenses and attorneys' fees incurred in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the Secured Indebtedness. Any amounts remaining after such application shall be applied to the payment of the Secured Indebtedness in such order as Lender may determine, and if Lender elects to apply such amounts to the principal payment due at the maturity of the Secured Indebtedness or to monthly payments thereof, regular monthly payments of said indebtedness shall continue to be due in accordance with the instrument evidencing same and without reduction or interruption.

Upon the occurrence of any Event of Default, Assignor agrees that it will not commingle any checks, drafts, cash or other remittances received by it in payment or on account of rents or revenues due and payable under the Leases with any other funds or other property of Assignor, but will hold them separate and apart therefrom, and upon an express trust for Lender, and will immediately



deliver the same to Lender in the form received, appropriately endorsed or assigned with recourse to Lender's order.

2.03 No Waiver. Entry upon and taking possession of the Premises and the collection of the rents and the application thereof as aforesaid, shall in no way operate to cure or waive any default hereunder or under the Note and or any other of the documents executed in connection the Note, or prohibit the taking of any other action by Lender under the Note and or any other of the documents executed in connection the Note or at law or in equity to enforce the payment of the Secured Indebtedness or to realize on any other security. Lender shall have full right to exercise any or all of the foregoing remedies without regard to the adequacy of security for any or all of the Secured Indebtedness, and with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and shall have full right to enter upon, take possession of, use and operate all or any portion of the Premises which Lender in its sole discretion deems desirable to effectuate any or all of the foregoing remedies. In no event shall Lender be liable to any tenant under any of the Leases for the return of any security deposit in any amount in excess of the amount delivered to Lender by Assignor.

### ARTICLE III

#### GENERAL PROVISIONS

3.01 UCC Financing Statement. The Assignor hereby authorizes Lender to prepare and file and/or pre-file UCC-1 Financing Statements describing all of the Rents and Leases, continuation statements, amendments, etc., in all relevant jurisdictions whether the indebtedness which is described herein now exists or is expected to exist at some future time. Assignor agrees to execute all documents as requested by Lender in order to perfect a security interest in the Rents and Leases, and if perfection may be obtained by "control" as that word is defined in the Uniform Commercial Code in the jurisdiction where the property is located, Assignor will cooperate and take all actions which are necessary for Lender to obtain "control" of the Rents and Leases.

3.02 Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon Assignor and Lender and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Assignment to "Assignor" or "Lender", such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Assignor or Lender.

3.03 Terminology. All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of Articles and sections are for convenience only and neither limit nor amplify the provisions of this Assignment.



3.04 Severability. If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.05 Applicable Law. This Assignment shall be interpreted, construed and enforced according to the laws of the State of Ohio, without regard to the choice of law rules thereof.

3.06 No Third Party Beneficiaries. This Assignment is made solely for the benefit of Lender and its assigns. No tenant under any of the Leases nor any other person shall have standing to bring any action against Lender as the result of this Assignment, or to assume that Lender will exercise any remedies provided herein, and no person other than Lender shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

3.07 No Oral Modifications. Neither this Assignment nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

3.08 Cumulative Remedies. The remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Lender in the Note and or any other of the documents executed in connection the Note or in law or equity, all of which rights and remedies are specifically reserved by Lender. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Lender shall continue and be each and all available to Lender until the Secured Indebtedness shall have been paid in full.

3.09 Cross-Default. An Event of Default by Assignor under this Assignment shall constitute an Event of Default under the Note and or any other of the documents executed in connection the Note.

3.10 Counterparts. This Assignment may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Assignment by signing any such counterpart.

3.11 Further Assurance. At any time and from time to time, upon request by Lender, Assignor will make, execute and deliver, or cause to be made, executed and delivered, to Lender and,





where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Assignor under this Assignment and (b) the security interest created by this Assignment as a first and prior security interest upon the Rents and security deposits from the Premises. Upon any failure by Assignor so to do, Lender may make, execute, record, file, re-record and/or refile any and all such assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Assignor, and Assignor hereby irrevocably appoints Lender the agent and attorney-in-fact of Assignor so to do.

3.12 Notices. Any notice required to be given under this Assignment, including without limitation any notice of default, shall be given in writing, and shall be effective when actually delivered, when actually received by fax or e-mail transmission (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Assignment. Any party may change its address for notices under this Assignment by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Assignor agrees to keep Lender informed at all times of Assignor's current address. Unless otherwise provided or required by law, if there is more than one Assignor, any notice given by Lender to any Assignor is deemed to be notice given to all Assignors.

3.13 Modifications. Assignor hereby consents and agrees that Lender may at any time and from time to time, without notice to or further consent from Assignor, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account, securing the Secured Indebtedness; extend or renew the Note and or any other of the documents executed in connection the Note for any period; grant releases, compromises and indulgences with respect to the Note and or any other of the documents executed in connection the Note to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Note and or any other of the documents executed in connection the Note; or take or fail to take any action of any type whatsoever; and no such action which Lender shall take or fail to take in connection with the Note and or any other of the documents executed in connection the Note, or any of them, or any security for the payment of the Secured Indebtedness or for the performance of any obligations or undertakings of Assignor, nor any course of dealing with Assignor or any other person, shall release Assignor's obligations hereunder, affect this Assignment in any way or afford Assignor any recourse against

Lender. The provisions of this Assignment shall extend and be applicable to all renewals, amendments, extensions, consolidations and modifications of the Note and or any other of the documents executed in connection the Note and the Leases, and any and all references herein to the Note and or any other of the documents executed in connection the Note or the Leases shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.

LENDER, BY ACCEPTANCE OF THIS ASSIGNMENT, AND ASSIGNOR HEREBY MUTUALLY, VOLUNTARILY, IRREVOCABLY AND UNCONDITIONALLY WAIVE FOR THE BENEFIT OF THE OTHER ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THIS ASSIGNMENT OR THE TRANSACTIONS RELATED THERETO OR THE RELATIONSHIP ESTABLISHED THEREBY. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER AND ASSIGNOR TO ENTER INTO THIS TRANSACTION. IT SHALL NOT IN ANY WAY AFFECT, WAIVE, LIMIT, AMEND OR MODIFY LENDER'S ABILITY TO PURSUE ITS REMEDIES INCLUDING, BUT NOT LIMITED TO, ANY CONFESSION OF JUDGMENT OR COGNOVIT PROVISION CONTAINED IN THE NOTE AND OR IN ANY OF THE DOCUMENTS EXECUTED IN CONNECTION WITH THE NOTE.

IN WITNESS WHEREOF, the Assignor has caused this instrument to be signed in its name by its duly authorized official as of October 6, 2010.

Assignor:  
T & N PROPERTIES, L.C., a Utah limited liability company

By: Christian W. Forsyth  
Christian W. Forsyth, Manager

And By: Kurtis Y. Lund  
Kurtis Y. Lund, Manager

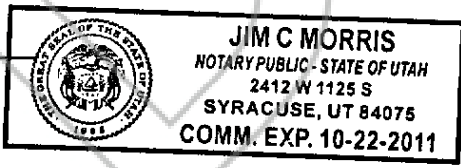


STATE OF UTAH )  
 ) SS:  
COUNTY OF DAVIS )

On October 6, 2010, before me, Jim C Morris, personally appeared **Christian W. Forsyth** and **Kurtis Y. Lund** who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity and by their signature on the instrument, executed the instrument upon behalf of T & N PROPERTIES, L.C., a Utah limited liability company.

WITNESS my hand and official seal.

Jim C Morris  
Signature of Notary



Commission Expiration: 10-22-11

This instrument prepared for FIRST PLACE BANK by its attorney, David A. Fegen, Esquire, 21201 Nottingham Drive, Fairview Park, Ohio 44126.

**LEGAL DESCRIPTION**

Lots one (1) and two (2) and the South 37.42 feet of Lot three (3), in Block D of the WEST END ADDITION to the City of Caliente, Lincoln County, Nevada as shown on the subdivision map thereof recorded October 6, 1926 in the Office of the County Recorder of Lincoln County, Nevada in Book A of Plats, page 44, Lincoln County, Nevada records.

**ASSESSOR'S PARCEL NUMBER FOR 2010-2011: 03-144-03**

**Type of Dwelling: Commercial Building**

