

7522490

**RECORDATION REQUESTED BY:**

BANK ONE, UTAH, NA  
U340  
2200 S STATE, 2ND FLOOR  
SALT LAKE CITY, UT 84115

**WHEN RECORDED MAIL TO:**

Business Banking Servicing  
AZ1-2565  
P. O. Box 4190  
Mesa, AZ 85211-4190

7522490  
11/29/1999 04:23 PM 14.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
ASSOCIATED TITLE  
BY: SBM, DEPUTY - WI 3 P.

**COURTESY RECORDING**

This document is being recorded solely as a courtesy and an accommodation to the parties named therein. Associated Title Company hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY



**MODIFICATION AGREEMENT**

THIS MODIFICATION AGREEMENT ("Agreement") is executed to be effective as of NOVEMBER 29, 1999, by D D & B LIMITED COMPANY, a Utah limited liability company, whose address is 600 WEST 3300 SOUTH, SALT LAKE CITY, UT 84119 (referred to below as "Trustor") and BANK ONE, UTAH, NA (referred to below as "Lender"), whose address is U340, 2200 S STATE, 2ND FLOOR, SALT LAKE CITY, UT 84115.

**WITNESSETH:**

WHEREAS, a loan ("Loan") was made to Trustor in the amount of \$877,000.00, evidenced by a promissory note (as renewed, extended or modified, the "Note") dated July 14, 1999, executed and delivered by Trustor in the principal amount of the Loan (the Note being more fully described in the Deed of Trust); and

WHEREAS, Trustor executed and delivered a deed of trust (as renewed, extended or modified, the "Deed of Trust") dated July 14, 1999, to trustee for the benefit of Lender, which is recorded in the Real Property Records of Salt Lake County, Utah FILED JULY 15, 1999 #7413550, BOOK 8294 PAGE 4736 covering the following real property:

See Exhibit "A" attached hereto and made a part hereof for all purposes intended.

, together with all improvements, appurtenances, other properties (whether real or personal), rights and interests described in and encumbered by the Deed of Trust (collectively, the "Property"), to secure the payment of the Note and performance of the other obligations set forth in the Note, Deed of Trust and all credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust and all other instruments, agreements and documents, whether now or hereinafter existing, executed in connection with the Loan (the Note, Deed of Trust and such other instruments, agreements and documents collectively known herein as the "Related Documents"); and

WHEREAS, Lender is the owner and holder of the Note, Deed of Trust and the other Related Documents; and

WHEREAS, the parties hereto now propose to modify certain of the terms and provisions of the Note, the Deed of Trust and the other Related Documents as provided herein.

NOW THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**Maturity Date.** The maturity date of the Note shall be September 29, 2013 ("Maturity Date"), when the unpaid principal balance of the Note, together with all accrued but unpaid interest thereon, shall be due and payable. Trustor hereby renews and modifies, but does not extinguish, the Note and the liens, security interests and assignments created and evidenced by the Deed of Trust.

**Interest Rate.** As of the effective date hereof, interest on the principal balance of the Note from time to time remaining unpaid prior to maturity shall be payable at the following rate: on the unpaid principal balance from the date advanced until paid in full.

**Payment Terms.** The Note, as modified hereby, shall be payable as follows:

2 consecutive monthly interest payments, beginning December 29, 1999; and 164 consecutive monthly principal and interest payments of \$8,866.57 each, beginning February 29, 2000. Borrower's final payment of \$8,866.57 will be due on September 29, 2013. This estimated final payment is based on the assumption that all payments will be made exactly as scheduled; the actual final payment will be for all principal and accrued interest not yet paid, together with any other unpaid amounts under this Agreement.

Trustor hereby expressly promises to pay to the order of Lender the principal amount of the Note and all accrued but unpaid interest now or hereafter to become due and payable under the Note, as modified hereby.

**Current Note Balance.** As of the effective date hereof, the outstanding principal balance of the Note is 665,536.50.

**Acknowledgment.** Except as otherwise specified herein, the terms and provisions hereof shall in no manner impair, limit, restrict or otherwise affect the obligations of any party to the Related Documents. Trustor hereby acknowledges, agrees and represents that (a) Trustor is indebted to Lender pursuant to the terms of the Note, as modified hereby; (b) the liens, security interests and assignments created and evidenced by the Related Documents are, respectively, valid and subsisting liens, security interests and assignments of the respective dignity and priority recited in the Related Documents; (c) the lien of the Deed of Trust is hereby renewed and/or modified, as the case may be, so as to secure the payment of the Note, as modified hereby; (d) there are no claims or offsets against, or defenses or counterclaims to, the terms or provisions of the Related Documents and the obligations created or evidenced by the Related Documents; (e) there are no claims, offsets, defenses or counterclaims arising from any of Lender's acts or omissions with respect to the Property, the Related Documents or Lender's performance under the Related Documents or with respect to the Property; (f) the representations and warranties contained in the Related Documents are true and correct representations and warranties of Trustor and third parties, as of the date hereof; and (g) Lender is not in default and no event has occurred which, with the passage of time, giving of notice, or both, would constitute a default by Lender of Lender's obligations under the terms and provisions of the Related Documents. For purposes of this Agreement, "Lender" shall include Lender's predecessors, successors, assigns, agents and present and former officers, directors, employees, and representatives and any persons or entities owned or controlled by, owning or controlling, or under common control or otherwise affiliated with, Lender.

**No Waiver of Remedies.** Except as may be expressly set forth herein, nothing contained in this Agreement shall prejudice, act as, or be deemed to be, a waiver of any right, remedy or recourse available to Lender by reason of the occurrence or existence of any fact, circumstance or event constituting a default under the Note or any of the other Related Documents.

**Costs and Expenses.** Contemporaneously with the execution and delivery hereof, Trustor shall pay, or cause to be paid, all costs and expenses incident to the recordation hereof and the consummation of the transaction contemplated hereby, including, but not limited to, recording fees, title insurance policy or endorsement premiums or other charges of any applicable title company, and reasonable fees and expenses, if applicable, of legal counsel to Lender.

**Effectiveness of the Related Documents.** Except as expressly modified by the terms and provisions hereof or provided herein to the contrary, each and every term and provision of the Note, Deed of Trust and other Related Documents are hereby ratified and shall remain in full force and effect and the parties hereto covenant to observe, comply with and perform each of the terms and provisions of the Related Documents, as modified hereby; provided, however, that any reference in any of the Related Documents to the Loan, the amount constituting the Loan, as defined terms, or to any of the other Related Documents shall be deemed, from and after the date hereof, to refer to the Loan, the amount constituting the Loan, the defined terms and to such other Related Documents, as modified hereby. The parties hereto agree that the modification as provided herein shall in no manner vitiate, impair or affect the liens and security interests created and evidenced by the Deed of Trust and the other Related Documents (except as expressly modified, amended, renewed and extended herein) and that such liens and security interests shall not be and are not in any manner released or waived; the purpose of this instrument being simply to modify the Note, Deed of Trust and the other Related Documents as expressly set forth herein.

**Execution and Delivery of Agreement by Lender.** Lender shall not be bound by this Agreement until (i) Lender has executed and delivered this Agreement, (ii) the other party(ies) to this Agreement have performed all of their obligations under this Agreement to be performed

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contemporaneously with the execution and delivery of this Agreement, (iii) if required by Lender, each guarantor of the Loan, if any, has executed and delivered to Lender a consent agreement, in form and substance satisfactory to Lender, and (iv) if required by Lender, the other party(ies) to this Agreement and each guarantor of the Loan, if any, have executed and delivered to Lender an arbitration resolution, an environmental questionnaire, and an environmental certification and indemnity agreement, all in form and substance satisfactory to Lender.

**Binding Agreement.** This Agreement shall be binding upon, and inure to the benefit of, the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

**Additional Documentation.** From time to time, the other party(ies) to this Agreement shall execute or procure and deliver to Lender such other and further documents securing or pertaining to the Loan or the Related Documents as shall be reasonably requested by Lender and to take and cause to be taken all such actions as Lender shall deem necessary or appropriate in connection with, or related to, this Agreement and the transactions contemplated hereby, including, but not limited to, such actions as shall be necessary (a) to record this Agreement and any related instrument, document or agreement, (b) to cause an insurer satisfactory to Lender to issue a mortgagee policy of title insurance with respect to the lien of the Deed of Trust or, at Lender's sole option, an endorsement to any existing mortgagee policy of title insurance, such policy or endorsement to be in form and substance satisfactory to Lender, and (c) to satisfy appraisal and any other legal requirements under applicable law and/or in accordance with Lender's policies and procedures.

**Governing Law.** THE TERMS AND CONDITIONS HEREOF SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH.

**Counterpart Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

**FINAL DRAW DATE.** After January 29, 1999 ("Final Draw Date"), disbursement hereunder will not be allowed.

EACH PARTY HERETO ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH AGREES TO ITS TERMS.

TRUSTOR:

D D & B LIMITED COMPANY, a Utah limited liability company

By: Douglas O. Vilven  
DOUGLAS O. VILVEN, Manager

By: Brad E. Libin  
BRAD E. LIBIN, Manager

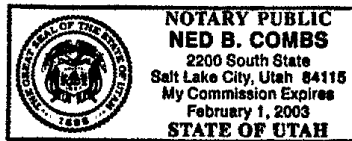
By: Douglas C. Rosecrans  
DOUGLAS C. ROSECRANS, Manager

LENDER:  
BANK ONE, UTAH, NA

By: Ned B. Combs  
Authorized Officer

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Utah )  
COUNTY OF Salt Lake ) SS



On this 29 day of November, 1999, before me, the undersigned Notary Public, personally appeared DOUGLAS O. VILVEN, Member of D D & B LIMITED COMPANY, a Utah limited liability company; BRAD E. LIBIN, Member of D D & B LIMITED COMPANY, a Utah limited liability company; and DOUGLAS C. ROSECRANS, Member of D D & B LIMITED COMPANY, a Utah limited liability company, and known to me to be members or designated agents of D D & B LIMITED COMPANY, a Utah limited liability company that executed the Modification Agreement and acknowledged the Agreement to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute this Agreement and in fact executed the Agreement on behalf of the limited liability company.

By: Ned B. Combs Residing at \_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_ My commission expires \_\_\_\_\_

LENDER ACKNOWLEDGMENT

STATE OF Utah )  
COUNTY OF Salt Lake ) SS



On this 29th day of November, 1999, before me, the undersigned Notary Public, personally appeared Ned B. Combs and known to me to be the UCA President, authorized agent for the Lender that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the said Lender, duly authorized by the Lender through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and that the seal affixed is the corporate seal of said Lender.

By: Shirley A. Besner Residing at \_\_\_\_\_  
Notary Public in and for the State of Utah My commission expires \_\_\_\_\_

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## EXHIBIT A

{Description of Real Property}

That certain real property situated in Salt Lake County, Utah and more particularly described as follows:

COMMENCING at a Salt Lake County Monument at the intersection of 3300 South and 700 West; thence North 87°21'07" East along a monument line for 435.76 feet to a point from which a monument lying North 87°21'07" East 1,152.14 feet at the intersection of 3300 South and 500 West; thence perpendicular to said monument line North 02°38'53" West for 139.32 feet to the point of beginning, said point of beginning being South 1,423.14 feet and East 5,478.63 feet from a found monument marking the East quarter corner of Section 27, Township 1 South, Range 1 West; thence with a non-tangent curve to the right having a radius of 580.00 feet, a central angle of 49°44'36" (chord bearing and distance of North 68°51'46" West 487.88 feet) and for an arc distance of 503.55 feet; thence North 06°23'53" West 280.87 feet; thence North 01°49'23" East 115.94 feet; thence North 01°49'57" East 99.98 feet; thence North 28°53'04" East 94.10 feet; thence North 44°42'58" East 100.32 feet; thence North 47°09'54" East 111.78 feet; thence North 50°51'00" East 103.68 feet; thence North 49°27'58" East 65.10 feet; thence North 00°06'10" West 102.20 feet; thence North 89°53'50" East 203.63 feet; thence North 00°05'58" West 22.50 feet; thence North 89°53'50" East 464.59 feet; thence South 00°07'54" East 236.07 feet; thence South 33°01'17" East 254.35 feet; thence South 49°20'23" East 77.66 feet; thence South 30°20'41" East 160.35 feet; thence South 00°02'40" West 127.74 feet, thence South 89°50'15" East 279.89 feet; thence South 00°09'45" West 317.16 feet; thence South 89°57'20" East 50.39 feet to a point on the West right of way of 500 West; thence South 00°09'45" West along said right of way 68.45 feet; thence South 84°57'08" West 194.61 feet; thence North 86°47'43" West 197.48 feet; thence South 88°18'20" West 75.08 feet; thence North 87°52'27" West 324.29 feet; thence North 83°34'06" West 205.69 feet; thence South 86°15'56" West 130.32 feet to the point of BEGINNING.

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