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 4/11/2005 12:47:00 PM \$24.00  
 Book - 9116 Pg - 4876-4882  
 Gary W. Ott  
 Recorder, Salt Lake County, UT  
 FOUNDERS TITLE  
 BY: eCASH, DEPUTY - EF 7 P.

Recording requested by and  
 when recorded return to:  
 AMRESKO Commercial Finance, LLC  
 Attn: Jacqueline C. Cox  
 412 E. ParkCenter Blvd, Suite 300  
 Boise, Idaho 83706

F63765

Reference: Peachtree 1999-A

Loan No. 1281 (Midvale)

### FIRST MODIFICATION TO DEED OF TRUST AND ASSIGNMENT OF RENTS AND FIXTURE FILING

This First Modification to Deed of Trust and Assignment of Rents and Fixture Filing (this "First Modification") is dated effective as of April ~~8~~ 2005, by and between SLAYMAKER GROUP, INC., a Utah corporation ("Original Borrower"), NEROBE, LLC, a Utah limited liability company ("Successor Borrower"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association, AS INDENTURE TRUSTEE FOR THE REGISTERED HOLDERS OF THE PEACHTREE FRANCHISE LOAN NOTES, SERIES 1999-A ("Lender"), acting by and through its Special Servicer, AMRESKO COMMERCIAL FINANCE, LLC, a Delaware limited liability company ("AMRESKO").

#### RECITALS:

This First Modification is entered into upon the basis of the following facts and understandings of the parties:

A. Original Borrower executed a Deed of Trust and Assignment of Rents and Fixture Filing dated September 23, 1998 (the "Leasehold Deed of Trust"), encumbering Original Borrower's ground leasehold interest in certain real property commonly known as 985 East Ft. Union Boulevard, Midvale, Salt Lake County, Utah, and more particularly described on **Exhibit "B-1"** attached hereto and incorporated herein by this reference (the "Property"), evidencing Lender's lien and security interest in the Property and other obligations of Original Borrower under the Leasehold Deed of Trust.

B. The Leasehold Deed of Trust originally secured indebtedness evidenced by that certain Secured Promissory Note dated October 2, 1998 (the "Original Note"), executed by Original Borrower, as borrower, in the original principal amount of One Million One Hundred Six Thousand Six Hundred Forty and No/100ths Dollars (\$1,106,640.00), made payable to Peachtree Franchise Finance, LLC ("Peachtree").

C. The Leasehold Deed of Trust was recorded October 2, 1998, in the official records of Salt Lake County, Utah, as Instrument No. 7108535 in Book 8115 at Page 1761. The beneficial interest in the Leasehold Deed of Trust was assigned pursuant to that certain Deed of Trust and Assignment of Rents and Fixture Filing dated March 1, 1999 and recorded June 16,

1999, in the official records of Salt Lake County, Utah, as Instrument No. 7387230 in Book 8286 at Page 7064, and was further assigned pursuant to that certain Assignment of Deed of Trust dated June 25, 1999 and recorded July 21, 1999, in the official records of Salt Lake County, Utah, as Instrument No. 7418213 in Book 8295 at Page 7401.

D. Original Borrower desires to sell (the "Sale") its interest in the Property to Successor Borrower. As a condition to Lender's consent to the Sale, Successor Borrower and Lender have agreed to modify certain obligations of Original Borrower which are being assumed by Successor Borrower, including the obligations under the Original Note, pursuant to the terms of that certain Loan Assumption and Modification Agreement dated April 8, 2005, by and among Original Borrower, Slaymaker Management Group II, Scott R. Slaymaker, Eric Slaymaker, Barbara Slaymaker, Don Morehouse, Successor Borrower, Neil Roberts and Lender (the "Loan Assumption and Modification Agreement").

E. Pursuant to the Loan Assumption and Modification Agreement, the obligations in respect of the Original Note and other related obligations of Original Borrower and Slaymaker Management Group II to Lender, which obligations are being assumed by Successor Borrower, have been amended, restated and consolidated into a new promissory note. The modified obligations are now evidenced by a certain Amended, Restated and Consolidated Secured Promissory Note dated April 8, 2005, made by Successor Borrower in the original principal amount of \$4,925,914.00 (the "Amended Note"). The Amended Note is, pursuant to the terms of the Loan Assumption and Modification Agreement, to remain secured by the lien granted in the Leasehold Deed of Trust, and the parties hereto have executed and delivered this First Modification to reflect (i) the assignment by Original Borrower and assumption by Successor Borrower of Original Borrower's obligations under the Original Note and all other loan documents executed and delivered by Original Borrower in connection with the Original Note, and to replace Original Borrower with Successor Borrower as the Borrower on the Leasehold Deed of Trust, (ii) the modification of the Leasehold Deed of Trust to secure the Amended Note as described herein and (iii) the affirmation by Successor Borrower of the continuing grant of a lien securing Borrower's obligations in respect of the Amended Note.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are unconditionally acknowledged, and upon the recitals set forth above which are incorporated herein by this reference, the parties hereto mutually agree as follows:

1. The Leasehold Deed of Trust is hereby modified as follows:
  - a. Borrower. All references to the defined term "Borrower" shall now mean "Nerobe, LLC, a Utah limited liability company, having its principal place of business at 10093 N. Mystic Circle, Highland, Utah 84003 (Utah County), as Trustor."
  - b. Lender. All references to the defined term "Lender" shall now mean "U.S. Bank National Association, a national banking association, as Indenture Trustee for the registered holders of the Peachtree Franchise Loan Notes, Series 1999-A, having an

address at c/o AMRESKO Commercial Finance, LLC, Attn: Servicing Department, 412 E. ParkCenter Blvd., Suite 300, Boise, Idaho 83706, as beneficiary”.

c. Note. All references to the defined term “Note” shall now mean the Amended, Restated and Consolidated Secured Promissory Note dated April 8, 2005, made by Successor Borrower, in the aggregate principal amount of \$4,925,914.00, and any and all extensions, renewals, modifications, substitutions and amendments thereof.

d. Loan Agreement. All references to the term “Loan Agreement” shall now mean the Amended, Restated and Consolidated Loan Agreement dated April 8, 2005, between Successor Borrower and Lender, as may be further amended, modified, restated and supplemented relating to the Amended Note.

e. Loan Documents. All references to the term “Loan Documents” shall now mean, collectively, the Loan Agreement (as amended herein), the Loan Assumption and Modification Agreement (as defined herein), the Note (as defined herein), and any other document or statement which evidences, secures and/or otherwise relates to the loans evidenced by the Note and all amendments and modifications thereof.

f. Amended Legal Description. Exhibit “B-1” to the Leasehold Deed of Trust is hereby deleted in its entirety and replaced with Exhibit “B-1” attached hereto and incorporated herein by this reference.

2. Successor Borrower hereby makes all warranties and representations contained in the Leasehold Deed of Trust as of the effective date of this First Modification and agrees to be bound by all covenants and other terms contained in the Leasehold Deed of Trust.

3. Original Borrower and Successor Borrower shall execute such further documents as may be required to carry out the intent of this First Modification.

4. All terms and conditions of the Leasehold Deed of Trust not expressly modified herein remain in full force and effect, without waiver or amendment. This First Modification and the Leasehold Deed of Trust shall be read together, as one document. The lease of real property described in the Leasehold Deed of Trust shall remain subject to the lien, charge or encumbrance created in the Leasehold Deed of Trust and, except as expressly stated herein, nothing herein contained or done pursuant hereto shall affect or be construed to constitute a novation or affect the liens, charges or encumbrances created in the Leasehold Deed of Trust, or the priority thereof over other liens, charges or encumbrances, or to release or affect the liability of any party or parties who may now or hereafter be liable under or on account of the Leasehold Deed of Trust.

IN WITNESS WHEREOF, the parties hereto have caused this First Modification to be executed as of the day and year first above written.

**ORIGINAL BORROWER:**

**SLAYMAKER GROUP, INC.**, a Utah corporation

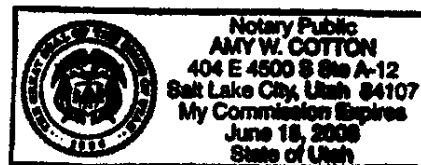
By: *[Signature]*  
Name: Donald P. Morehouse  
Its: PRESIDENT

STATE OF Utah )  
 ) ss.  
COUNTY OF SALT LAKE )

On the 4 day of April, 2005, before me, a Notary Public, personally appeared Donald P. Morehouse to me known to be the person named in and who executed the foregoing instrument, who, being duly sworn, did depose and say that he is the President of **SLAYMAKER GROUP, INC.**, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by authority of the board of directors of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

*[Signature]*  
Notary Public  
My commission expires June 15, 2008



**SUCCESSOR BORROWER:**

**NEROBE, LLC**, a Utah limited liability company

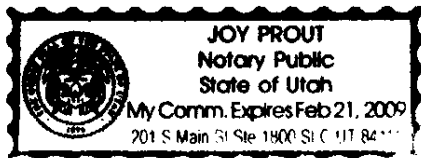
By: *Neil Roberts*  
Neil Roberts, Manager

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF Salt Lake)

On this 24<sup>th</sup> day of March, 2005, before me, a Notary Public, personally appeared Neil Roberts, known or identified to me (or proved to me on the oath of \_\_\_\_\_) to be the Manager of **Nerobe, LLC**, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said liability company, and acknowledged to me that such limited liability company executed the same.

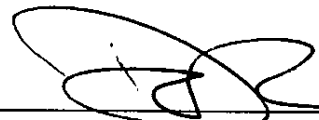
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

*Joy Prout*  
Notary Public  
My commission expires: \_\_\_\_\_



**LENDER:**

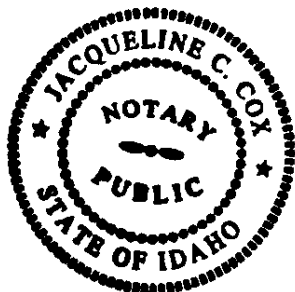
**U.S. BANK NATIONAL ASSOCIATION**, a national banking association, AS **INDENTURE TRUSTEE FOR THE REGISTERED HOLDERS OF THE PEACHTREE FRANCHISE LOAN NOTES, SERIES 1999-A**, acting by and through its Special Servicer, **AMRESKO Commercial Finance, LLC**, a Delaware limited liability company

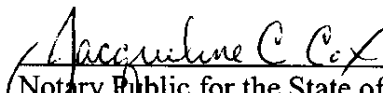
By:   
D. Craig Christensen, Vice President

STATE OF IDAHO )  
  ) ss.  
COUNTY OF ADA )

On this 6<sup>th</sup> day of April, 2005, before me, a Notary Public, personally appeared D. Craig Christensen, known or identified to me ~~(or proved to me on the oath of \_\_\_\_\_)~~ to be the Vice President of **AMRESKO Commercial Finance, LLC**, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said liability company, and acknowledged to me that such limited liability company executed the same, in its capacity as Special Servicer for **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, AS **INDENTURE TRUSTEE FOR THE REGISTERED HOLDERS OF THE PEACHTREE FRANCHISE LOAN NOTES, SERIES 1999-A**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



  
Notary Public for the State of Idaho  
My commission expires: 7-19-2005

**EXHIBIT "B-1"**

**Description of Ground Lease and Ground Leasehold Parcel**

That certain Ground Lease dated June 12, 1987, by and between PDC Community Centers L.L.C., as successor landlord, and Nerobe, LLC, as successor tenant, as said Ground Lease may have been amended and/or assigned, which Ground Lease covers the following real property located in Salt Lake County, State of Utah:

BEGINNING at a point which is South 0° 04' 01" West 137.41 feet along the quarter section line and West 176.00 feet from the North quarter corner of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian, said North quarter corner bearing North 88° 56' 20" East 953.13 feet from a county survey monument in 900 East Street where the monument line bears South 0° 04' 40" West; thence South 0° 04' 01" West 145.00 feet; thence South 77° 30' 00" West 267.24 feet; thence North 202.84 feet; thence East 261.07 feet to the point of beginning.

TOGETHER WITH a non-exclusive right to use the common areas of the shopping center for ingress, egress and parking over and across the following described property:

Beginning at a point South 0° 04' 01" West along the quarter section line 135.30 feet from the North quarter corner of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 89° 52' 20" West 879.98 feet to the East line of State Highway property; thence South 0° 04' 40" West along said East line of Highway property 346.51 feet; thence South 73° 09' East along the prolongation of an old fence line 360.17 feet to the North line of State Highway property at a point on a curve to the left, the center of which bears North 15° 43' 20" West 1076.92 feet from said point; thence Northeasterly along the arc of said curve 430.84 feet to the point of tangency; thence North 51° 21' 20" East 198.29 feet to the quarter section line; thence North 0° 04' 01" East 133.53 feet to the point of beginning.

Except the following described property:

Beginning at a point on the East line of State Highway property, said point being South 375.49 feet and West 880.46 feet from the North quarter corner of Section 29, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 0° 04' 40" West along said East line of highway property 108.28 feet; thence South 73° 09' East along the prolongation of an old fence line 115.04 feet; thence North 35° 45' East 89.75 feet; thence North 55° 25' West 86.23 feet; thence North 77° 45' West 93.53 feet to the point of beginning.

*Tax Parcel No. 22-29-128-007*

985 East Ft. Union Boulevard  
Midvale, Utah

Unit 1281

Record Owner: PDC Community Centers L.L.C.