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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
BY: RDJ, DEPUTY - WI 6 P.

AFTER RECORDING RETURN TO:
WASHINGTON MUTUAL
Residential Builder Services
Mailstop: CSQ0540
1501 4th Ave., 5th Floor
P.O. Box 91141
Seattle, WA 98101

BE ADVISED THAT THE PROMISSORY NOTE SECURED BY THIS DEED OF TRUST PROVIDES FOR A VARIABLE RATE OF INTEREST. ☐ IF THIS BOX IS CHECKED, BE FURTHER ADVISED THAT THIS DEED OF TRUST SECURES A REVOLVING CREDIT FACILITY PURSUANT TO WHICH FUNDS MAY BE REPAID AND RE-BORROWED FROM TIME TO TIME, SUBJECT TO THE LIMITS SET FORTH IN THE NOTE AND THE LOAN AGREEMENT (AS HEREINAFTER DEFINED).



**Washington
Mutual**

**DEED OF TRUST, SECURITY AGREEMENT,
AND FIXTURE FILING
Speculative Construction**

UNITED TITLE SERVICES OF UTAH, INC. Order # 00172901

Loan No.: 01-5720-003511147-5

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made this 1st day of June, 2001 between GOLD MEDALLION CUSTOM HOMES, L.C., a Utah Limited Liability Company

(individually and collectively, if more than one, "Grantor"), whose address is 7300 SOUTH 300 WEST #106, MIDVALE, UT 84047;

UNITED TITLE SERVICES OF UTAH, INC.

the address of which is 4455 SOUTH 700 EAST, SUITE 200, SALT LAKE CITY, UT 84107 and its successors in trust and assigns ("Trustee"); and WASHINGTON MUTUAL BANK, a Washington Corporation, the address of which is 1201 THIRD AVENUE, SEATTLE, WA 98101 ("Beneficiary").

1. Granting Clause. Grantor hereby grants, bargains, sells and conveys to Trustee and its successors in trust and assigns forever, in trust, with power of sale, the following-described property located in SALT LAKE & UTAH County, Utah, (the "Real Estate"), all interest therein which Grantor now has or may hereafter acquire, the easements, rights and appurtenances thereof and the income, rents and profits therefrom:

Lots 319, 320, 321, & 322, OAK VISTA NO. 4 AT SUNCREST, according to the official plat thereof on file and of record in the Salt Lake and Utah County Recorder's Office.

34-16-100-002

TOGETHER WITH all plumbing, water heating, lighting, air conditioning, and heating apparatus and equipment, and all fencing, blinds, drapes, floor coverings, built-in appliances, and other fixtures now or hereafter installed in or used in connection with such property, all of which shall be considered part of the Real Estate. All of the Property described in this Section 1 is sometimes

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collectively referred to herein as the "Property". Grantor grants Beneficiary, as secured party, a security interest in any of the above-described property which is deemed to be personalty together with a security interest in all other personal property of whatsoever nature which is located on or used or to be used in connection with any of the Real Estate, all construction equipment and materials used or procured for use in connection with the construction of the Improvements (as hereinafter defined), and all contracts, agreements, permits, plans, specifications, and performance and payment bonds used or procured for use in connection with construction of the Improvements, all pursuant to the Uniform Commercial Code of the State of Utah (the "UCC") on the terms and conditions contained herein except that where any provision hereof is in conflict with the UCC, the UCC shall control. Beneficiary hereby assigns such security interest to Trustee, in trust, to be dealt with as a portion of the "Property" except as otherwise specified herein. This Deed of Trust shall be deemed to be a security agreement and fixture filing with respect to all property subject to the UCC. Information concerning the security interest can be obtained from Beneficiary at the above address.

2. Obligations Secured. This Deed of Trust is given to secure:

2.1 Performance and Payment. The performance of the obligations contained herein and in that certain commitment and loan agreement dated June 1st, 2001 to which Grantor and Beneficiary are parties (the "Loan Agreement") which Agreement provides for the construction of certain improvements (collectively, the "Improvements") on the Real Estate and/or the acquisition of the real estate, all as more particularly described therein (this Deed of Trust shall constitute a "construction deed of trust" for purposes of applicable state law if the Loan Agreement provides for construction of Improvements), and the payment of ONE HUNDRED FIFTY-ONE THOUSAND ONE HUNDRED FIFTY & 00/100---

DOLLARS (\$ 151,150.00),

with interest thereon, according to the terms of a promissory note of even date herewith, made by GOLD MEDALLION CUSTOM HOMES, L.C., a Utah Limited Liability Company payable to Beneficiary or order, which Note provides for a variable rate of interest, and any and all extensions, renewals, or modifications thereof, whether the same be in greater or lesser amounts (the "Note"); and

2.2 Future Advances. The repayment of any and all sums advanced or expenditures made by Beneficiary for the maintenance or preservation of the Property, the removal of liens, the completion of construction or otherwise advanced or expended by Beneficiary pursuant to any provision of this Deed of Trust or the Loan Agreement; together with interest thereon.

2.3 Other Agreements. Performance of the Grantor's obligations under any environmental indemnity or other agreement that expressly recites by its terms that it is secured by this Deed of Trust, but only if the Agreement so recites.

3. Warranties of Grantor. Grantor warrants and represents that:

3.1 Ownership of Property. Grantor is the owner in fee simple of the Property, which is unencumbered except by easements, reservations and restrictions of record not inconsistent with the intended use thereof and has full power and authority to grant the Property to Trustee.

4. Covenants of Grantor. Grantor covenants and agrees:

4.1 Prohibition Against Waste. To commit or permit no waste of the Property, to keep the Property in good order and repair, and not to move or alter or demolish any of the improvements presently existing on the Property without first obtaining the written approval of Beneficiary.

4.2 Construction. If the Loan Agreement provides for construction of Improvements on the Real Estate, to comply with all provisions of the Loan Agreement relating to construction of the Improvements, and any deadlines for completion of the Improvements set forth therein.

4.3 Inspection; Compliance with Laws. To allow Beneficiary to inspect the Property and any records relating thereto at any reasonable hour, and to comply with all laws, ordinances, regulations, or private restrictions affecting the Property.

4.4 Taxes and Assessments. To pay before delinquent all lawful taxes and assessments on the Property, including taxes measured by this Deed of Trust, the Loan Agreement, the Note or any other obligation secured hereby.

4.5 Legal Actions. To appear in and defend any action or proceeding before any court or administrative body purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and any attorneys fees incurred by Beneficiary or Trustee in any such action or proceeding in which Beneficiary or Trustee may appear and, upon written request of the Beneficiary, to appear and defend the interests of the Beneficiary, with counsel approved by the Beneficiary, in such action or proceeding.

4.6 Preservation of Lien. To preserve and protect the priority of this Deed of Trust as a first lien on the Property.

4.7 Insurance. Unless the Loan Agreement provides for Land Acquisition only, to obtain and deliver to Beneficiary a policy or policies of insurance against fire and extended coverage perils, in "builder's all-risk" or "course of construction" form, as designated by the Loan Agreement (and flood, if the Property is located in a designated flood zone) in the amount of the full insurable value of the Improvements, as completed, or such other amount as Beneficiary may agree to in writing.

All policies required to be maintained pursuant to this Section 4.7 shall be in form and with companies acceptable to Beneficiary, with mortgagee clauses acceptable to Beneficiary. Beneficiary shall be named as first loss payee.

Beneficiary reserves the right to increase the amount of the required coverages or require insurance against additional risks at any time. Grantor shall obtain renewals of any policies which expire and deliver the same to Beneficiary not less than ten (10) days prior to the expiration of the policy being replaced. All policies and renewals thereof shall contain provision for thirty (30) days' prior written notice to Beneficiary before any cancellation thereof.

4.8 Further Assurances. To execute and deliver any and all such instruments of further assurance and other instruments and do any and all such acts or cause the same to be done, as Trustee or Beneficiary deems necessary or advisable to better grant to Trustee the Property or to carry out more effectively the purposes of this Deed of Trust and the Loan Agreement.

4.9 Trust Expenses. To pay all costs, fees and expenses of this Deed of Trust, including reasonable attorneys fees, including all such costs, fees and expenses incident to any default hereunder.

5. Prohibition Against Transfer or Further Encumbrance. Grantor covenants and agrees not to sell, transfer or otherwise convey the Property or any interest therein, create or suffer to exist any assignment, mortgage, security interest, lien, charge or other encumbrance upon the Property or any interest therein, lease or permit anyone to occupy the Property, or agree to do any of the foregoing, without first repaying in full the Note and all other sums secured hereby. Should the Property or any interest therein be sold, transferred, or further encumbered, whether voluntarily or involuntarily, or should the Property be leased or occupied by anyone other than Grantor, or if Grantor is not a natural person and any direct or indirect beneficial interest in Grantor is sold, transferred or further encumbered, whether voluntarily or involuntarily, the Note and all other indebtedness secured hereby shall become immediately due and payable in full, without notice or demand from Beneficiary, and bear interest at the Default Rate specified in the Note from the date of the sale, transfer, encumbrance or other event in violation of this Section 5 until paid in full. Notwithstanding the foregoing, if the Loan Agreement provides for partial releases of collateral, Grantor may sell one or more of the individual lots, residences or condominium units which comprise the Property and obtain partial releases of the lien of this Deed of Trust in connection with such sales, all in accordance with the provisions of the Loan Agreement.

6. Proceeds of Insurance-Condemnation. The proceeds of any insurance coverage on any of the Property and any awards in or payments in lieu of any condemnation shall be paid to Beneficiary, which shall have the option, at its sole discretion, of either applying the same, less expenses of collection, toward reduction of the indebtedness secured hereby, (but only if permitted by applicable law) or if feasible and provided Beneficiary's security will not be impaired, toward restoration of the Improvements to their pre-casualty condition. If Beneficiary's chooses to apply such proceeds towards restoration of the Improvements, Beneficiary shall have no obligation to release the same until Grantor shall have deposited with Beneficiary such additional funds as in Beneficiary's sole judgment are sufficient to restore the Improvements to the pre-casualty condition.

7. Beneficiary's Right to Perform. Should Grantor fail to keep any of the foregoing covenants, Beneficiary may perform them, without waiving any other right or remedy for any such breach, and all expenditures made by Beneficiary in connection therewith shall be secured hereby, bear interest at the Default Rate specified in the Note, and be repayable on demand.

8. Defaults. Any of the following shall constitute an event of default by Grantor hereunder:

(a) Failure of Grantor or any other party liable therefor to make any payment required to be made under the Note, the Loan Agreement, or hereunder;

(b) The breach by Grantor (or any signatory thereto other than Beneficiary) of any of the other terms, covenants, or conditions of the Note, the Loan Agreement, this Deed of Trust; or any environmental indemnity agreement or other agreement executed in connection with the loan secured hereby, regardless of whether such agreement provides that it is secured by this Deed of Trust.

(c) Any warranty or representation made by Grantor or any other party in connection with the Loan secured hereby is determined by Beneficiary to be false or misleading in any material respect;

(d) Grantor or any other party liable on the Note or any Guaranty of the loan secured hereby becomes unable or admits in writing its inability to pay its debts as they mature, or files, or has filed against it, a voluntary or involuntary petition of bankruptcy, or makes a general assignment for the benefit of creditors, or has a receiver appointed for it or any of its assets, or consents to such appointment; or

(e) Any Guarantor of the loan secured hereby purports to revoke its guaranty or any such guaranty becomes invalid or unenforceable for any reason.

9. Remedies. Upon occurrence of any of the events of default specified in Section 8, all sums secured hereby shall become immediately due and payable at the option of Beneficiary, and bear interest at the Default Rate specified in the Note from the date of the original default until paid in full, and Beneficiary shall have no obligation to disburse any further sums under the Loan Agreement. In the event of a default, upon written request of the Beneficiary, Trustee shall sell the Property in accordance with the Deed of Trust Act of the State of Utah (U.C.A. Section 57-1-19 et seq) (and the Uniform Commercial Code, where applicable) at public auction to the highest bidder. Any person except Trustee may bid at the sale. Trustee shall apply the proceeds of sale to the payment of: all sums expended under the terms hereof not then repaid, with accrued interest at the Default Rate of Interest specified in the Note; all other sums then secured hereby; and the remainder, if any, (less the clerk's filing fee) to the Clerk of the District Court of the county in which the sale took place, as provided in U.C.A. Section 57-1-29. Following such sale, Grantor and any Guarantor of the loan secured hereby shall remain liable for any deficiency to the extent permitted by law. The power of sale conferred hereby is not an exclusive remedy, and Beneficiary shall have the option to foreclose this Deed of Trust as a mortgage or sue on the Note or any guaranty of the loan secured hereby in accordance with applicable law. In connection with either a sale by the Trustee hereunder or an action to foreclose this Deed of Trust as a mortgage, Beneficiary shall have the right to secure

appointment of a receiver for the Property and its income, rents and profits, if any, without notice and without bond. Beneficiary shall also have the right, upon the occurrence of any event of default, to realize upon the personal property subject to this Deed of Trust, independent of any action of Trustee, pursuant to the UCC.

10. **Fees and Costs.** Grantor shall pay Beneficiary's reasonable cost of searching records and reasonable attorney fees (including fees and expenses on appeal and in bankruptcy proceedings) in any suit lawfully brought to foreclose this Deed of Trust; or in connection with a sale hereunder by the Trustee, together with Trustee's fees and costs; and in any suit or proceeding which Beneficiary is obliged to prosecute or defend to protect the lien hereof, or to otherwise enforce or interpret this Deed of Trust.

11. **Notices.** Any notice or demand (including notices of default and notices of sale) provided to be given or made or sent pursuant to this Deed of Trust shall be deemed to have been sufficiently made for all purposes when deposited in the United States mails, postage prepaid, registered or certified, to the address of the respective party first stated above, or such other address as such party may from time to time designate in the manner set forth herein to all other parties hereto.

12. **Miscellaneous.** In the event of resignation of the Trustee, or upon the election of Beneficiary, Beneficiary may appoint in writing a successor trustee, who shall be vested with all powers of the original trustee upon recording of notice of such appointment in the appropriate records of any county where this Deed of Trust is recorded. This Deed of Trust shall inure to and bind the heirs, devisees, legatees, administrators, executors, successors, and assigns of the parties hereto. As appropriate the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. The headings to the various sections have been inserted for convenience of reference only and do not define, limit, modify, or expand the terms and conditions of this Deed of Trust. If more than one party signs this Deed of Trust as Grantor, the obligations of all such parties hereunder shall be joint and several. If any provision hereof shall be determined to be invalid under applicable law, the same shall not invalidate any other provision of this Deed of Trust, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and all rights and obligations of the parties shall be construed and enforced accordingly. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Utah.

DATED as of the day and year first above written.

PLEASE BE ADVISED THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER UTAH LAW (SEE U.C.A. SECTION 25-5-4).

GOLD MEDALLION CUSTOM HOMES, L.C.

By: 
QUINN S. MORTENSEN, Member

State of Utah,)
County of _____ } ss: Individual Acknowledgement

The foregoing instrument was acknowledged before me this _____ day of _____, by _____.

My appointment expires _____ Notary Public
Residing at _____

State of Utah,)
County of _____ } ss: Corporation Acknowledgement

The foregoing instrument was acknowledged before me this _____ day of _____, by _____ of _____, a _____ corporation.

My appointment expires _____ Notary Public
Residing at _____

State of Utah,)
County of _____ } ss: Individual Partnership Acknowledgement

The foregoing instrument was acknowledged before me this _____ day of _____, by _____ the _____ and _____, the general partner(s) of _____.

My appointment expires _____ Notary Public
Residing at _____

State of Utah,)
County of _____ } ss: Corporate Partnership Acknowledgement

The foregoing instrument was acknowledged before me this _____ day of _____, by _____ of _____, a _____ corporation, the general partner of _____.

My appointment expires _____ Notary Public
Residing at _____

State of Utah,)
County of Salt Lake } ss: Limited Liability Company Acknowledgement

The foregoing instrument was acknowledged before me this 4th day of June, 2001, by Quinn S. Mortensen, the Manager of GOLD MEDALLION CUSTOM HOMES, L.C., a Utah limited liability company.

My appointment expires 04/07/02 Notary Public
Residing at Salt Lake City, Utah

REQUEST FOR RECONVEYANCE

To: Trustee:

The undersigned is the holder of the note or notes, together with all other indebtedness secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

DATED: _____ WASHINGTON MUTUAL BANK
a corporation,

By _____
GOLD MEDALLION CUSTOM HOMES, L.C., 7300 SOUTH 300 WEST #106, MIDVALE, UT 84047