

AFTER RECORDING MAIL TO:  
UNIVERSITY OF UTAH CREDIT UNION  
ATTN: CENTRAL LOANS  
PO BOX 58025  
SALT LAKE CITY, UT 84158-0025

8342589  
09/05/2002 10:32 AM 16.00  
Book - 8643 Pg - 8983-8986  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
LANDMARK TITLE  
BY: KCC, DEPUTY - WI 4 P.

8342589

LOAN NO. 388463

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NOTICE: THIS DEED OF TRUST CONTAINS A DUE-ON-SALE PROVISION AND SECURES INDEBTEDNESS UNDER A CREDIT AGREEMENT WHICH PROVIDES FOR A REVOLVING LINE OF CREDIT AND A VARIABLE RATE OF INTEREST. THIS DEED OF TRUST MAY SECURE BORROWING MADE BY AN OWNER OF THE PROPERTY EVEN AFTER SUCH OWNER SELLS THE PROPERTY.

**DEED OF TRUST  
(SECURES FUTURE ADVANCES)**

THIS DEED OF TRUST is made this 30th day of August, 2002  
Kenneth C. Miller and Virginia B. Miller, husband and wife, as joint tenants  
(herein "Borrower")

LANDMARK TITLE COMPANY (herein "Trustee")  
and the Beneficiary, University of Utah Credit Union, whose address is 3450 SOUTH HIGHLAND DRIVE, SALT LAKE CITY, UTAH, 84106. (herein Lender)

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in County of Salt Lake, State of Utah.

Lot 24. PLAT B OF THE COVE OF MOUNT OLYMPUS. A Planned Unit Development, according to the official plat thereof, filed in Book "85-9" of Plats at Page 154 of the Official Records of the Salt Lake County Recorder. Sidwell No. 22-11-251-018 and Tax District No. 18

which has the address of 4920 South Mountain Lane, Salt Lake City, Utah 84124 (herein "Property Address");  
[Street] [City] [Zip Code]

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are herein referred to as the "Property";

**THE DEED OF TRUST IS MADE TO SECURE TO LENDER:**

A. The repayment of all indebtedness due or to become due under the terms and conditions of the Real Property Secured Variable Rate Open End Loan Agreement and Disclosure Statement dated the same date as this Deed of Trust; and all modifications and renewals thereof (herein "Credit Agreement"), Borrower and Lender contemplate a series of advances, of a revolving nature, to be made, repaid and remade from time to time under the terms of the Credit Agreement, all such advances to be secured by this Deed of Trust. **The total outstanding principal balance owing at any time under the Credit Agreement shall not exceed \$ 100,000.00** is referred to in the Credit Agreement and herein as the "Credit Limit". The Outstanding principal balance does not include finance charges, late charges, insurance charges, amounts paid by Lender on behalf of borrower, collection costs or attorney's or trustee's fees which may be owing under the Credit Agreement from time to time.

**B. The advances to be made under the terms of this obligation are obligatory.**

C. The payment of all sums advanced in accordance herewith to protect the security of this Deed of Trust, with finance charges thereon at a variable rate of interest as described in the Trust Deed of Note.

D. Borrowers faithful performance of all agreements and covenants previously signed or stated herein. Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

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UNIFORM COVENANTS: Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Finance Charges and Other Charges.** Borrower shall promptly pay when due all amounts borrowed under the Credit Agreement, all finance charges and applicable other charges and collection costs as provided in the Credit Agreement.

**2. Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by lender first in payment of late charges or collection costs including reasonable attorney's fees, if any; then to interest payable on the outstanding principal balance, and then to the principal balance under the Credit Agreement.

**3. Application of Payments.** Borrowers shall pay taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Deed of Trust; provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

**4. Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require. Unless Lender in writing requires otherwise, the policy shall provide insurance on a replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage stipulated in the hazard insurance policy; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Deed of Trust.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid in the manner provided under paragraph 2 hereof or, if not paid in such a manner, by Borrower making payment, when due, directly to the insurance carrier.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in the Credit Agreement or change the amount of such installments. If under Paragraph 22 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

**5. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.**

Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If a condominium or planned unit development rider is executed by Borrower and recorded together with this Deed of Trust, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Deed of Trust as if the rider were a part hereof.

**6. Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law. Borrower shall pay the amount of all mortgage insurance premiums when due in the manner required by Lender.

Any amounts disbursed by Lender pursuant to this paragraph 6, with finance charges thereon, at the rate provided in the Credit Agreement, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 6 shall require Lender to incur any expense or take any action hereunder. Any action taken by Lender under this paragraph shall not cure any breach Borrower may have committed of any covenant or agreement under this Deed of Trust. Borrower agrees that Lender is subrogated to all of the rights and remedies of any prior lienor, to the extent of any payment by Lender to such lienor.

**7. Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

**8. Variable Annual Percentage Rate.** The Credit Agreement secured by this Deed of Trust contains a variable interest rate provision. The Annual Percentage Rate charged on my loan may increase or decrease during the term of the loan according to changes in the index described in the Credit Agreement.

**9. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Deed of Trust such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in the Credit Agreement or change the amount of such installments.

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**10. Borrower Not Released.** Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortizations of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest.

**11. Forebearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

**12. Remedies Cumulative.** All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

**13. Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall insure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 20 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

**14. Co-signers.** Any Borrower who co-signs this Deed of Trust, but does not execute the Credit Agreement, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property to Trustee under the terms of this Deed of Trust, (b) is not personally liable under the Credit Agreement or under this Deed of Trust, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations or amendments with regard to the terms of this Deed of Trust or the Credit Agreement, without that Borrower's consent and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

**15. Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by mailing such notice by certified mail addressed to Borrower at that Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**16. Governing Law; Severability.** This Deed of Trust shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Deed of Trust or the Credit Agreement conflicts with applicable law, such conflicts shall not affect other provisions of this Deed of Trust or the Credit Agreement which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the Credit Agreement are declared to be severable.

**17. Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation thereof.

**18. Prior Mortgage or Deed of Trust.** Borrower shall not enter into any agreement with the holder of any mortgage, deed of trust or other security agreement which as priority over this Deed of Trust by which that agreement is modified, amended, extended, or renewed, without prior written consent of the Lender. Borrower shall neither request nor accept any future advances under a prior mortgage, deed of trust, or other security agreement without the prior written consent of the Lender.

**19. Notice or Transfer of the Property; Advances after Transfer.** Borrower shall give notice to Lender, as provided in paragraph 15 hereof, prior to any sale or transfer of all or part of the Property or any rights in the Property. Any person to whom all or part of the Property or any right in the Property is sold or transferred also shall be obligated to give notice to Lender, as provided in paragraph 15 hereof, promptly after such transfer.

All amounts advanced under the Credit Agreement, including any finance charge or late charges due thereon, are secured by this Deed of Trust, whether advanced before or after sale or transfer of the Property, except any amounts which may be advanced by Lender more than five days after notice to Lender, given in accordance with paragraph 15 hereof, that such sale or transfer has occurred. Even if Borrower transfers the Property, Borrower will continue to be obligated under the Credit Agreement and this Deed of Trust unless Lender releases Borrower in writing. All debt incurred pursuant to the Credit Agreement are due and payable upon sale or transfer of the Property. This debt is NOT assumable by another party.

**20. Consent Required.** The Credit Agreement secured by this Deed of Trust provides further, and Trustor agrees as follows: I agree that in the event of sale, transfer, conveyance, or alienation of the property described in the Deed of Trust securing the Credit Approval, or any part thereof, or any interest therein, whether voluntary or involuntary, the holder of this Credit Approval shall have the right, at its option, to declare this Credit Approval and all sums which I may then owe immediately due and payable. No waiver of this right shall be effective unless in writing. Consent by the holder of this Credit Agreement to any transaction shall not constitute a waiver of the right to require such consent to later transactions.

**21. Acceleration; Remedies.** Except as provided in paragraph 16 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 15 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 35 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the ability to reinstate after acceleration (at the Lender's option) and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of lender's election to cause the Property to be sold and shall cause such notice in the manner prescribed by law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser a Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence on the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

22. **Call Provision.** All amounts due may be declared due and payable at the discretion of the lender. The lender shall give the borrower notice of the exercise of this call in writing at least 60 days before the date the amounts due shall be payable. The lender may refinance the amount due at the then existing terms and conditions for similar credit and in accordance with the then existing law.

23. **Waiver of Homestead Exemptions.** Borrower hereby waives the benefit of the homestead exemption as to all sums secured by this Deed of Trust.

24. **Waiver of Statutes of Limitations.** Borrower hereby waives, to the full extent permitted by law, the statute of limitations as a defense to any demand or obligation secured by this Deed of Trust.

25. **Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or personal legally entitled hereto. Such person or persons shall pay all costs of reconveyance and recordation, if any.

26. **Substitute Trustee.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

27. **Request for Notices.** Borrower and Lender request that copies of the notice of default and notice of sale be sent to the Borrower at the Property Address and to the Lender at this address shown herein.

IN WITNESS WHEREOF, BORROWER has executed this Deed of Trust.

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Kenneth C. Miller*  
\_\_\_\_\_  
Kenneth C. Miller (Seal)  
-Borrower  
  
*Virginia B. Miller*  
\_\_\_\_\_  
Virginia B. Miller (Seal)  
-Borrower  
  
\_\_\_\_\_

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STATE OF UTAH

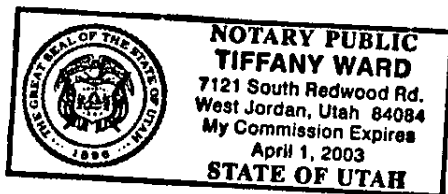
County ss:

The foregoing instrument was subscribed and sworn to and acknowledged before me this 08/30/02 by Kenneth C. Miller and Virginia B. Miller

My Commission Expires:

4-01-2003

*Tiffany Ward*  
\_\_\_\_\_  
Notary Public  
Residing at:  
SLC, UT



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