

When recorded mail to:

FINOVA Capital Corporation  
7272 E. Indian School Road, Suite 410  
Scottsdale, Arizona 85251  
Attn: Penny Pence

Acct #700742263341

**ASSUMPTION AND CONSENT AGREEMENT**

THIS ASSUMPTION AND CONSENT AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by and among FINOVA Capital Corporation, a Delaware corporation ("Lender"), Barbara L. Keller and Joseph F. Dennen ("Borrower"), and Barbara L. Keller ("Purchaser"). TRUSTEE *of Barbara L. Keller Family Trust*

**RECITALS:**

A. Borrower and Harich Tahoe Development ("Developer") entered into that Deed of Trust dated October 15, 1995, executed by Barbara L. Keller and Joseph F. Dennen, and recorded on October 30, 1995, in Douglas County, Nevada in Book 1095, Page 5038, and other related documents (collectively, the "Contract") pursuant to which Borrower is obligated to honor certain promises, including, but not limited to, the promise to pay Developer the amounts described in the Contract. The Contract entitles Borrower to use and enjoy that certain property specified in the Contract (the "Property").

B. Lender is the successor to the rights of Developer in, to and under the Contract, which rights include, without limitation, the right to receive the payments due from Borrower.

C. Borrower wishes to sell to Purchaser, and Purchaser desires to buy from Borrower, the rights and obligations of Borrower under the Contract (the "Purchase"). In conjunction with this Purchase, Borrower and Purchaser desire to modify the Contract as follows:

1. Assumption. Purchaser desires to assume Borrower's existing and ongoing obligations under the Contract, and to take Borrower's interest in the Property subject to the liens and security interests in favor of Lender; and in connection with such assumption rights, desires that Lender consent to the Purchase and waive any rights it may have under the Contract pursuant to any "due on sale" or similar provisions.

D. Lender is willing to consent to the Purchase, waive any "due on sale" and similar provisions contained in the Contract specifically with respect to the Purchase, and accept Purchaser's assumption of the Borrower's obligations under the Contract, in accordance with the terms, conditions and requirements of this Agreement.

THEREFORE, in consideration of these Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Borrower, Purchaser, and Lender agree as follows:

**ARTICLE I - ASSUMPTION**

1.1 Balances Correct. Borrower, Purchaser and Lender acknowledge that the existing balances of principal and accrued interest outstanding under the Contract as set forth in Schedule 1 to this Agreement, are true and correct as of the date of this Agreement; that there are no offsets to the amount due, and that there are no defenses or counterclaims to the obligations of Borrower; and that Developer and Lender (to the extent applicable, if at all) have fully performed all obligations under the Contract which each of them may have had, or now have, to Borrower.

1.2 Assumption. Purchaser absolutely and unconditionally assumes all of the Borrower's Obligations under the Contract, and without limiting the generality of such assumption, covenants, promises and agrees:

- a. \_\_\_\_\_ to pay to Lender the amounts due under the Contract;
- b. \_\_\_\_\_ to perform each and all of the covenants to be performed by Borrower under the Contract; and,
- c. \_\_\_\_\_ to be bound by each and all of the terms and provisions of and to perform each and all of the Obligations of Borrower under the Contract.

Purchaser acknowledges and agrees that this assumption is part of the consideration for the Purchase agreed to by Borrower and Purchaser.

THIS INSTRUMENT IS BEING RECORDED AS AN ACCOMMODATION ONLY. NO LIABILITY, EXPRESSED OR IMPLIED, IS ASSUMED AS TO ITS REGULARITY OR SUFFICIENCY NOR AS TO ITS AFFECT, IF ANY, UPON TITLE TO ANY REAL PROPERTY DESCRIBED THEREIN.

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1.3 Notices: All notices to be provided pursuant to the Contract shall be in accordance with the following:

If to Lender: FINOVA Capital Corporation  
7272 E. Indian School Road, Suite 410  
Scottsdale, Arizona 85251

If to Borrower: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Purchaser: Barbara L. Keller  
524 Aloha Way  
Sun Valley, NV 89433

1.4 Acknowledgment and Ratification. Borrower and Purchaser acknowledge that (a) the Contract represents legal, valid and binding agreements and obligations of Borrower and Purchaser, enforceable in accordance with its terms; (b) they have no defense, offset or counterclaim with respect to their performance under the Contract; (c) as of the effective date of this Agreement, there is no default by Developer or Lender under the Contract; (d) this Agreement does not release, relinquish or affect the liens, security interests and rights created by or arising under the Contract; (e) by accepting delivery of this Agreement, Lender does not waive any existing default or any defaults that occur after the date of this Agreement, or become obligated to waive any condition or obligation described in the Contract; and (f) they are voluntarily entering into this Agreement and the Purchase to which it pertains, they independently have undertaken such due diligence as they deem necessary, and they are not relying on any representations or warranties of Lender other than as expressly described in this Agreement.

**ARTICLE II - CONSENT OF LENDER**

2.1 Consent to Conveyance to Purchaser. Conditioned upon full and complete satisfaction of the Conditions Precedent set forth in Article III of this Agreement, Lender consents to the transfer of Borrower's interest in the Property to Purchaser, and waives any right it may have under the Contract as a result of such transfer to Purchaser. Provided, however, this waiver shall be strictly limited to Lender's rights arising as a result of the transfer to Purchaser, and by entering into this Agreement, Lender shall not be deemed to have waived any rights or remedies it may have with respect to any other transfer.

**ARTICLE III - CONDITIONS PRECEDENT**

This Agreement shall become effective only when each of the following conditions is met:

3.1 Documents Delivered. Borrower and Purchaser shall have executed or caused to be executed, and shall have delivered or caused to be delivered to Lender (a) this Agreement, and (b) a legally binding, effective and recorded transfer document (e.g., deed, assignment) whereby Borrower has conveyed its right, title and interest in and to the Property to Purchaser.

3.2 Assumption Fee and Other Expenses. Borrower shall have paid (or caused to have been paid) to Lender an assumption fee equal to \$ 150.00.

3.3 Outstanding Payments. All amounts currently due and owing under the Contract shall have been paid in full.

**ARTICLE IV - MISCELLANEOUS**

4.1 Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes all prior negotiations, agreements and understandings relating to the subject matter hereof, except as otherwise provided herein.

4.2 No Waiver. No failure to exercise, and no delay in exercising any right, power or remedy hereunder or under the Contract shall impair any right, power or remedy which Lender may have, nor shall any such delay be construed to be a waiver of any of such rights, powers or remedies.

4.3 Extent of Obligations. Borrower's and Purchaser's obligations under the Contract and this Agreement are independent obligations and are absolute and unconditional.

4.4 Incorporation of Recitals. The Recitals and the Schedule attached hereto are an integral part hereof and are fully incorporated herein by this reference.

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first appearing above.

LENDER:

FINOVA Capital Corporation,  
a Delaware corporation

By Cynthia L. Cain  
Cynthia L. Cain, Vice President

BORROWER:

Joseph F. Dennen  
Signature not required due to Recorded Quit Claim  
In file.

Barbara L. Keller  
Barbara L. Keller

PURCHASER:

Barbara L. Keller, Trustee  
Barbara L. Keller

STATE OF ARIZONA

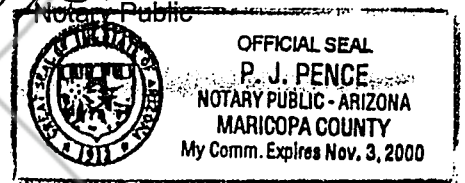
COUNTY OF MARICOPA

Before me, a Notary Public in and for the State and County aforesaid, on this day personally appeared Cynthia L. Cain, known to me to be the person whose name is subscribed to the foregoing instrument and known to me to be the Vice President of FINOVA Capital Corporation, a Delaware corporation, and acknowledged to me that she executed said instrument for the purpose and consideration therein expressed, and as the act of said corporation.

Given under my hand and seal this 7 day of December, 1998.

My commission expires:

P. J. Pence  
Notary Public



STATE OF Nevada

COUNTY OF Washoe

Before me, a Notary Public in and for the State and County aforesaid, on this day personally appeared Barbara L. Keller, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed said instrument for the purpose and consideration therein expressed.

Given under my hand and seal this 10th day of November, 1998.

My commission expires: Feb. 5, 2001

Cherie Graham  
Notary Public



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**Schedule 1**  
**As of October 26, 1998**

Principal Balance:           \$    14,819.94

Accrued Interest:           \$       115.33

Total Principal Balance  
and Accrued Interest       \$    14,935.27

Late Charge:                \$        0.00

Next Due Date:              11/01/98

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UPON TITLE TO ANY REAL PROPERTY DESCRIBED  
THEREIN.

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COPY

REQUESTED BY  
STEWART TITLE OF DOUGLAS COUNTY  
IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

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LINDA SLATER  
RECORDER  
\$10<sup>00</sup> PAID *ka* DEPUTY

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