

Order No. 1

Escrow No. 1999-21234KJP

When Recorded Mail To: NOVASEL & SCHWARTE INVESTMENTS, INC.  
dba Western Highland Mortgage Company  
P.O. Box 11355  
South Lake Tahoe, CA 96155

Space above this line for recorder's use

DEED OF TRUST WITH ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made December 14, 1999 between

FALCON CAPITAL, LLC., a Wyoming Limited Liability Company as to a 88.55% interest and  
WALTER E. HARTMAN AND SALLY J. HARTMAN, husband and wife as to a 11.45% interest, TRUSTOR,  
whose address is 3905 State Street, Suite 7148, Santa Barbara, CA 93105  
(Number and Street) (City) (State)  
FIRST AMERICAN TITLE COMPANY OF NEVADA, a Nevada corporation, TRUSTEE, and  
NOVASEL & SCHWARTE INVESTMENTS, INC., dba WESTERN HIGHLAND MORTGAGE COMPANY, BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, that property in the  
, County of Douglas, State of NEVADA described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

SEE ATTACHED ADDENDUMS <sup>A.P. 07-100-01</sup>

DUE ON SALE CLAUSE:

SHOULD THE REAL PROPERTY DESCRIBED HEREIN, OR ANY PART OF IT, OR ANY INTEREST IN IT BE SOLD,  
OR IF IT IS AGREED THAT IT WILL BE SOLD, CONVEYED, OR ALIENATED BY THE TRUSTOR, ALL OBLIGATIONS  
SECURED BY THIS DEED OF TRUST, WITHOUT REGARD OF THE MATURITY DATES EXPRESSED HEREIN, AT THE  
OPTION OF THE HOLDER SHALL IMMEDIATELY BECOME DUE AND PAYABLE.

SUBSEQUENT DEEDS OF TRUST ARE SUBJECT TO THIS DEED OF TRUST AND ANY RENEWAL OR EXTENSION THEREOF  
WHETHER ORAL OR WRITTEN.

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to  
collect and apply such rents, issues and profits.

For the purpose of securing (1) payment of the sum of \$ 1,706,000.00 with interest thereon according to the terms of a promissory  
note or even date herewith made by Trustor, payable to order of Beneficiary, and all extensions or renewals thereof; and (2) the performance of each agree-  
ment of Trustor incorporated herein by reference or contained herein; (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor,  
or to his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and  
adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the  
terms and provisions set forth in subdivision B of the fictitious Deed of Trust recorded in the office of each County Recorder in the State of Nevada on January 30,  
1968, in the book and at the page thereof, or under the document or file number, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	DOC. NO.	COUNTY	BOOK	PAGE	DOC. No.
Churchill	39 Mortgages	363	115384	Lincoln			45902
Clark	850 Off. Rec.		682747	Lyon	37 Off. Rec.	341	100661
Douglas	57 Off. Rec.	115	40050	Mineral	11 Off. Rec.	129	89073
Elko	92 Off. Rec.	652	35747	Nye	105 Off. Rec.	107	04823
Esméralda	3-X Deeds	195	35922	Ormsby	72 Off. Rec.	537	32867
Eureka	22 Off. Rec.	138	45941	Pershing	11 Off. Rec.	249	66107
Humboldt	28 Off. Rec.	124	131075	Storey	"S" Mortgages	206	31506
Lander	24 Off. Rec.	168	50782	Washoe	300 Off. Rec.	517	107192
				White Pine	295 R. E. Records	258	

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivision A and B,  
(identical in all counties, and printed on the reverse side hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for  
all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor  
does not exceed a reasonable amount.

The undersigned Trustor requests that a copy of any notice of default and any notice of sale hereunder be  
mailed to him at his address above set forth.

STATE OF NEVADA <sup>California</sup>)  
) ss.  
County of Ventura )

Signature of Trustor

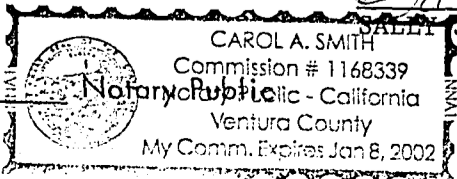
*[Signature]*  
FALCON CAPITAL, LLC.  
GLENN HARTMAN MANAGING MEMBER

On December 20, 1999  
personally appeared before me, a Notary Public,  
Walter E. Hartman and  
Sally J. Hartman

By: *[Signature]*  
WALTER E. HARTMAN  
*[Signature]*  
SALLY J. HARTMAN

who acknowledged that he executed the above  
instrument.

*[Signature]*



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STATE OF NEVADA,

ss.

County of Douglas

On December 22, 1999 personally appeared before me, a notary public, Glenn Hartman  
personally known or proved to me to be the person whose name is subscribed to the above instrument who  
acknowledged that he executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed my official stamp at my office in the  
County of Douglas  
the day and year in this certificate first above written.



Karen Pawloski  
Signature of Notary

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# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Ventura

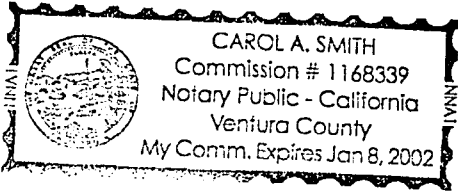
} ss.

On 12/30/99, before me, Carol A Smith, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Walter E. Hartman + Sally J. Hartman  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Carol A Smith  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

<b>RIGHT THUMBPRINT OF SIGNER</b>
Top of thumb here

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EXHIBIT "A"  
DESCRIPTION

All that certain lot, piece or parcel of land situate in the County of Douglas, State of Nevada, described as follows:

Being a portion of Section 22, Township 13 North, Range 18 East, M.D.B. & M.

COMMENCING at the Northeast corner of Lot 16, in Block 3 of OLIVER PARK, as shown on the Map thereof, filed in the office of the County Recorder of Douglas County, Nevada, on February 2, 1959; thence along the Northeasterly line of MICHELE DRIVE the following distances and courses; North  $18^{\circ} 23' 35''$  East, a distance of 111.645 feet; thence on a curve to the right having a radius of 575.00 feet through a central angle of  $10^{\circ} 25' 14''$  for an arc distance of 104.58 feet; thence North  $28^{\circ} 48' 49''$  East, a distance of 257.22 feet to the point of intersection with the Southwesterly line of Kahle Drive extended Northwesterly; thence along the Southwesterly line of said Kahle Drive extended North  $61^{\circ} 11' 11''$  West, a distance of 486.87 feet to the TRUE POINT OF BEGINNING; thence continuing along said line North  $61^{\circ} 11' 11''$  West a distance of 565.63 feet; thence along a curve to the left having a radius of 20.00 feet through a central angle of  $90^{\circ} 00'$ , an arc distance of 31.42 feet; thence South  $28^{\circ} 48' 49''$  West, a distance of 295.29 feet to a point; thence South  $60^{\circ} 40' 41''$  East, a distance of 585.65 feet; thence North  $28^{\circ} 48' 49''$  East, a distance of 320.54 feet to the POINT OF BEGINNING.

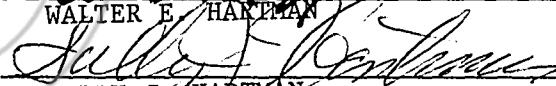
A.P. No. 07-100-01


**ADDENDUM TO DEED OF TRUST**

As and for additional consideration for the loan secured by this Deed of Trust, Trustor hereby covenants and agrees that in the event Trustor causes a petition for relief to be filed under the United States Bankruptcy Code, including, but not limited to; a petition for relief pursuant to Chapters 7, 11 or 13, Trustor shall, upon written request from Beneficiary, stipulate to immediate relief from stay arising from the filing of Trustor's petition under the United States Bankruptcy Code. Trustor further acknowledges that this provision constitutes a material inducement to Beneficiary to lend Trustor the funds secured by the within Deed of Trust. Trustor further acknowledges Beneficiary would not loan said funds to Trustor without Trustor agreeing to immediate relief from stay as aforesaid. In the event Trustor fails to stipulate to immediate relief from stay upon written request from Beneficiary, Trustor hereby stipulates and agrees that the court wherein Trustor's petition is pending shall, upon application by Beneficiary, order relief from stay with respect to all of Beneficiary's rights under the within note and Deed of Trust. Trustor represents that Trustor understands the provisions of this Addendum to Deed of Trust and agrees to the provisions of this Addendum to Deed of Trust freely and voluntarily.

12-22-99  
Date:

  
WALTER E. HARTMAN

  
SALLY J. HARTMAN

  
GLENN HARTMAN MANAGING MEMBER  
FALCON CAPITAL, LLC.

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## ADDENDUM TO DEED OF TRUST AND ASSIGNMENT OF RENTS

This Addendum to Deed of Trust and Assignment of Rents is made and entered into on December 14, 1999, by and between FALCON CAPITAL, LLC, a Wyoming limited liability company ("Falcon"), WALTER E. and SALLY J. HARTMAN ("Hartman") (collectively, Falcon and Hartman are referred to hereinafter as "Borrower") and NOVASEL & SCHWARTE INVESTMENTS, INC., a California corporation, dba WESTERN HIGHLAND MORTGAGE COMPANY ("WHM"),

On December 14, 1999, WHM made three separate loans to Falcon, in the principal amounts of (i) One Million Seven Hundred and Six Thousand Dollars (\$1,706,000.00), (ii) Five Hundred Forty-Five Thousand Dollars (\$545,000.00), and (iii) Three Hundred Ninety-Nine Thousand Dollars (\$399,000.00), respectively. Each loan is evidenced by a separate Promissory Note Secured By Deed of Trust of even date (the "Notes"). Hartman is co-borrower with Falcon under the above-described Notes.

The Notes are each secured by a Deed of Trust and Assignment of Rents of even date on three parcels of real property commonly known as: (i) the West Bourne property (APN 05-230-11) near the intersection of U.S. Highway 50 and Elks Point Road, in Stateline, Nevada, and the future site of the Round Hill Vacation Resort (RHVR) project, owned by Falcon; (2) the Buehler property (APN 07-180-93) at the intersection of Kingsbury Grade and Market Street, in Stateline, Nevada, the future site of the Lake Vista Apartments, owned by Falcon; and (3) the Kahle Property, known as the Lake Park Apartments (APN 07-100-01) located along Kahle Drive, in Stateline, Nevada. Falcon owns 88.55% and Hartman owns 11.45% of the Lake Park Apartments parcel, APN 07-100-01. Collectively, APNs 05-230-11, 07-180-93, and 07-100-01 are referred to hereinafter as the "Land."

The Parties executed a Security Agreement on December 14, 1999, to provide to WHM additional security for the Notes by way of a security interest in the following Collateral, to the extent the Collateral is not real property secured by the deed of trust:

All of Borrower's right, title and interest now owned or later acquired in the following property, now or later affixed to, located on, or at the Land, or used in connection with the operation or development of the Land or the Improvements and all the proceeds of the Property:

- A. All Personal Property, including, but not limited to, Borrower's interest in all furniture, furnishings, equipment, machinery, materials, inventories and supplies, located on the Land, together with all present and future attachments, accessions, replacements, substitutions, and additions to the cash and non-cash proceeds.

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- B. All Fixtures located on the Land or within the Improvements or now or later installed in or used in connection with any of the Improvements, including, but not limited to, any partitions, screens, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, heating, ventilation, air conditioning and air cooling equipment, rooms, gas and electric machinery, appurtenances and equipment, whether permanently affixed to the Land or the Improvements.
- C. All Equipment and supplies used in connection with the operation of any business on the Land, including, but not limited to, all tools, materials, machinery, supplies, computers, computer systems, hardware and software, access codes, access keys, computer programs, file names, typewriters, duplicating machines, word processing equipment, adding machines, calculators, dictating equipment, registers and related equipment.
- D. All development permits for development of the Land, including, but not limited to, the Tahoe Regional Planning Agency permit dated on or about May 29, 1999 (TRPA File No. 980469), and the Douglas County permit, both pertaining to RHVR and Lake Vista Apartments.
- E. All development rights and resources appurtenant to or concerning the Land, including, but not limited to:
- (i) Twenty-eight (28) acre feet of annual water rights ("AFA") purchased by Borrower from Kingsbury General Improvement District ("KGID") for use appurtenant to RHVR, and the Agreement For Sale of Water and thereto Amendment dated November 1, 1999, between KGID and Borrower;
  - (ii) The Water and Sewer Service Agreement between Round Hill General Improvement District and Sunterra Corporation dated January 5, 1999, as assigned to Borrower on December 7, 1999, for the provision of water and sewer service to RHVR;
  - (iii) One hundred eighty-six (186) residential units appurtenant to Lake Park Apartments, which are convertible to tourist accommodation units (TAU's), as defined in Chapter 33 of the Tahoe Regional Planning Agency's Code of Ordinances. For

the purposes of this Agreement, the Lake Park Apartments residential units shall be referred to as TAU's.

- (iv) Twenty-four (24) tourist accommodation units appurtenant to and banked with TRPA on RHVR;
  - (v) Approximately one hundred eighty-six thousand (186,000) square feet of hard land coverage, as defined by the TRPA Code of Ordinances, appurtenant to Lake Park Apartments;
  - (vi) Approximately ninety thousand one hundred sixty-seven (90,167) square feet of hard and soft land coverage, as defined by the TRPA Code of Ordinances, appurtenant to RHVR; and
  - (vii) Twenty-five (25) bonus TAUs assigned to the Round Hill Community Plan and awarded by TRPA to RHVR in accordance with the TRPA permit; and
  - (viii) All tourist accommodation units presently banked on the Land, transferred to the Land, or banked thereon in the future.
- F. All additions to, substitutions for, changes in, or replacements of the whole or any part of the Collateral, and all rights now or later existing in the Collateral; and
- G. All proceeds of all of the Collateral.

Borrower will not, without the prior written consent of WHM, sell, contract to sell, lease, encumber, demolish, or dispose of the Collateral or any interest in it until this Security Agreement and all debts secured by it have been fully satisfied, except as set forth in Paragraphs 1 and 2 below.

Notwithstanding the restrictions set forth in the preceding paragraph, WHM consents to the following:

1. WHM acknowledges that Lake Park Apartment Building No. 5, consisting of 37 TAU's and approximately twenty-five thousand (25,000) sq. ft. of hard land coverage, is unoccupied and consents to the demolition of Building 5 without payment. WHM further consents to Borrower selling, transferring and conveying up to 32 TAU's of the 37 TAU's available in Building No. 5 and up to 25,000 sq. ft. of hard coverage in and around Building No. 5 to third parties for no payment and free of WHM's security interest. However, of the



37 TAU's contained within Building No. 5, five (5) TAU's shall be transferred and banked to RHVR and used as matching TAU's to obtain the 25 bonus TAU's assigned to the Round Hill Community Plan and awarded by the TRPA to RHVR.

2. WHM consents to the phased demolition of Lake Park Apartment Buildings 1, 2, 3, and 4, each containing 37 TAU's except one which has 38 TAU's, upon the occurrence of the following three events:

- (i) Borrower's payment of a principal reduction on each of the first 3 of these 4 buildings demolished equal to \$511,800 (30% of \$1,706,000). Each \$511,800 principal reduction paid by Borrower will be applied first as a principal reduction on the \$1,706,000 loan with the balance, if any, applied at WHM's option as a principal reduction on the \$545,000 loan and/or the \$399,000 loan. Upon the demolition of the 4th or last building, Borrower shall pay off all the remaining amounts owed by Borrower to WHM, including principal, interest, and any other charges, on the \$1,706,000, the \$545,000 and the \$399,000 loans.
- (ii) TAU's that are demolished are transferred to RHVR, up to a maximum 83 TAU's in addition to the 5 TAU's transferred from Building No. 5 and the 25 bonus units awarded by TRPA from the Round Hill Community Plan.
- (iii) All hard land coverage associated with any building(s) demolished shall be transferred to either RHVR and/or the Buehler property, provided the transfer is approved by WHM, which approval shall not be withheld unreasonably.
- (iv) WHM acknowledges Borrower has applied to TRPA for an award of additional bonus TAU's for the RHVR project under TRPA's Environmental Improvement Program (EIP). In the event Borrower is awarded TRPA EIP TAU's for the RHVR project, WHM shall release an equal number of TAU's from the Lake Park Apartments in accordance with Paragraphs 5B(i) and 5B(iii) above for Borrower to sell, transfer and convey to third parties, free of WHM's security interest.
- (v) WHM acknowledges the Lake Vista Apartments have been approved as an affordable housing project by TRPA, and that TRPA does not require the transfer of either residential units or TAU's from the Lake Park Apartments for development. TRPA has awarded affordable

housing development rights therefor.

3. WHM shall sign any documents reasonably required by the TRPA, Douglas County, or any other entity to facilitate the sale and transfer of the hard land coverage and TAU's.

Borrower covenants and agrees to either commence construction upon RHVR on or before July 1, 2001, or obtain an extension of the TRPA and Douglas County development permits. Borrower further agrees to either commence construction upon the Lake Vista Apartments on or before May 1, 2002, or obtain an extension of the TRPA and Douglas County development permits. If Borrower does not comply with these provisions, Borrower shall be in breach of this Deed of Trust, and WHM shall have the right to declare a default under this Deed of Trust.

IN WITNESS WHEREOF, this Addendum to Deed of Trust and Assignment of Rents is executed as of the day and year first above written.

**BORROWER:**

**FALCON CAPITAL, LLC**  
A Wyoming limited liability company

By: [Signature]  
Its: \_\_\_\_\_  
GLENN HARTMAN MANAGING MEMBER

**WHM:**

**NOVASEL & SCHWARTE**  
**INVESTMENTS, INC.,** a California  
corporation, dba **WESTERN**  
**HIGHLAND MORTGAGE**  
**COMPANY**

By: [Signature]  
Its: \_\_\_\_\_  
V.P.  
RICHARD SCHWARTE

**HARTMAN:**

[Signature]  
Walter E. Hartman

[Signature]  
Sally J. Hartman

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REQUESTED BY  
**FIRST AMERICAN TITLE CO.**

IN OFFICIAL RECORDS OF  
DOUGLAS COUNTY, NEVADA

1999 DEC 30 AM 11:27

LINDA SLATER  
RECORDER

\$17<sup>50</sup> PAID *Ko* DEPUTY

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BK 1299PG5454