

Presented by James N. Lyons, Jr., Attorney at Law

Returned to: HUD, 415 N. EDWARDS ST., GREENSBORO, NC 27401

BK1715 P1908

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Project No. 053-35540

AGREEMENT TO SHARE PROCEEDS

THIS AGREEMENT made this 14 day of May, 1991, between the parties, Falcon Pointe Limited Partnership, its successors and assigns ("Owner"), and the SECRETARY OF HOUSING AND URBAN DEVELOPMENT, its successors and assigns ("HUD"), is made and executed to place a restriction upon the property described in the attached Exhibit "A" ("Property"), for the purpose of requiring the Owner to share certain sale or refinancing proceeds with HUD.

WHEREAS, Owner executed a Deed of Trust Note and Deed of Trust in the amount of Four Million Two Hundred Sixty Four Thousand Eight Hundred and no/00 Dollars (\$4,264,800), both documents dated September 18, 1986, in favor of Highland Mortgage Company, said Note and Deed of Trust being insured by HUD, pursuant to HUD regulations, and said Deed of Trust being recorded on September 22, 1986, in Mortgage Record Book 1565, Page 275, as modified in Book 1638 at page 1291 all in the Office of the Recorder of Wake County, North Carolina, which was assigned to the North Carolina Housing Finance Agency ("Mortgagee") by assignment dated April 18, 1988, in Book 1638, Page 1742 of such Registry; and

WHEREAS, pursuant to a default in the payment of said Deed of Trust and Note, Mortgagee as holder thereof, filed a claim for insurance benefits with HUD and proposed to assign said Note and Mortgage to HUD; and

WHEREAS, Owner has requested HUD to pay substantially less than the full amount of the claim, not take the assignment of the defaulted Deed of Trust, consent to a reduction of principal due thereunder and continue mortgage insurance; and

WHEREAS, in connection with such reduced payment and continuation of mortgage insurance Owner has agreed to and has executed a Second Deed of Trust and Second Deed of Trust Note both of even date in favor of HUD in the amount of the partial insurance claim actually paid by HUD; and

WHEREAS, Mortgagee has consented to Owner's request and as of this day the parties have finalized the payment of such reduced amount of insurance benefits from HUD to Mortgagee, to the continuation of mortgage insurance, and the execution of a Second Deed of Trust and Note by Owner in favor of HUD.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the payment of which is hereby acknowledged, the parties agree as follows:

(1) If, within thirty (30) years after the date of the Second Deed of Trust, the Owner sells, assigns, transfers or conveys the Property (collectively a "Sale") or, if the Owner refinances the indebtedness secured by the Property (a "Refinancing"), twenty-nine percent (29%) ("the Percentage") of the Gross Sale or Refinancing proceeds which exceed the total outstanding principal balance of the Second Deed of Trust Note dated May 14, 1991, plus the First Deed of Trust indebtedness as modified May 14, 1991, shall be paid by Owner to HUD or its successors and assigns at the closing of the Sale or Refinancing.

- (2) a) In each Refinancing which occurs between the date hereof and the first arms-length sale of the Property (as determined by HUD), the Percentage shall be applied to the amount of the Gross Refinancing Proceeds remaining after deducting three and one half (3.5%) of the total refinancing amount.
- b) Provided however, that in the event that the net proceeds from a refinancing are used for project purposes, including rehabilitation and/or improvement, no payment to HUD, its successors or assigns shall be required.
- c) In the case of a Sale, the Percentage shall be applied to Gross Sales Proceeds as reduced by (1) the outstanding principal balances of any mortgages upon the property at the date of closing which are, or were, HUD Insured or HUD Held.

(3) "Gross Sale or Refinancing Proceeds" shall mean consideration of any kind directly or indirectly received by the Owner, or its principals, in connection with a Sale or Refinancing.

(4) The Owner shall keep, or cause to be kept, accurate records of account of any Sale or Refinancing. HUD, during normal working hours, shall have the right to enter and have free access to inspect all books and records of the Owner. Upon the written request of HUD, the Owner shall retain an independent certified public accountant who shall prepare an accounting of any Sale or Refinancing.

(5) The Owner agrees that the above provisions regarding the Sale or Refinancing of the Property shall be covenants running with the land until such restrictions have expired by the terms hereof. It is expressly agreed that, upon failure to keep and observe these provisions, HUD shall be entitled to:

- (i) institute legal action to enforce performance and observance of these covenants,
- (ii) enjoin acts which are violative of these covenants, and
- (iii) exercise any other legal or equitable right or remedy with respect to these covenants.

These rights and remedies may be exercised separately or in combination.

(6) Following the Owner's compliance with the obligation set forth in subsection (1) through (5) above, upon written request of Owner, HUD shall execute and provide to the Owner a recordable document acknowledging that these covenants and this Agreement have been terminated and are of no further force and effect.

MORTGAGOR
FALCON POINTE LIMITED
PARTNERSHIP, BY F & W
MANAGEMENT CORPORATION,
GENERAL PARTNER

ATTEST
WITNESS
Donald A. Pinchault
ASST. SECRETARY

By: *Richard S. Whitely*
Vice President
(SEAL)

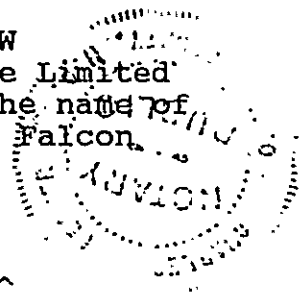
SECRETARY OF HOUSING AND
URBAN DEVELOPMENT

By: *Jefford Z Austin*
Authorized Agent
(SEAL)

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

On this 14th day of May, 1991, before me, the undersigned Notary Public, personally appeared RICHARD S. WHITNEY, JR. to me known, who, being duly sworn, did depose and say that he resides at ROANOKE, VIRGINIA ASS'T, that he is a Vice President of F & W Management Corporation, General Partner of Falcon Pointe Limited Partnership; that he executed the above instrument in the name of and on behalf of said corporation as General Partner of Falcon Pointe Limited Partnership.



Charles G. Bunker

Notary Public

My commission expires: 8/25/91

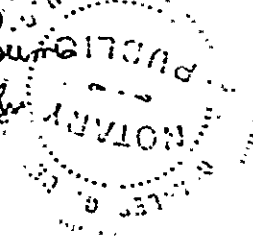
NORTH CAROLINA
ORANGE COUNTY

I, CHARLES G. BUNKER, a Notary Public in and for said County and State do hereby certify that DONALD W. RHINHART personally came before me this day and acknowledged that he is Assistant Secretary of F & W Management Corporation, a Virginia Corporation, which is General Partner of FALCON POINTE LIMITED PARTNERSHIP, a Virginia Limited Partnership, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its Assistant Vice President, signed with its corporate seal and attested by DONALD W. RHINHART as its Assistant Secretary on behalf of and as an act of the Partnership.

Witness my hand and official seal, this 14th day of May, 1991.

My Commission Expires
8/25/91

Charles G. Bunker
Notary Public



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STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

I, a Notary Public of the County and State aforesaid certify that Ledford L. Austin personally came before me this day and acknowledged the due execution of the foregoing instrument in the name of the Secretary of Housing and Urban Development by him as the duly authorized agent of said Secretary of Housing and Urban Development.

Witness my hand and official stamp or seal, this 14th day of May, 1991.

Shirley S. Long
Notary Public

My Commission Expires: Nov. 7, 1994

SHIRLEY S. LONG
NOTARY PUBLIC
GUILFORD COUNTY, NC
COMM. EXPIRES NOV. 7, 1994

STATE OF NORTH CAROLINA ~~Forsyth County~~

The foregoing (or annexed) certificate is of Charles B. Berger NP Orange Co. NC
(here give name and official title of the officer signing the certificate passed upon)
and Shirley S. Long PRESENTED FOR Orange Co. NC
is (are) certified to be correct. This the 14 day of May 19 91.

'91 MAY 14 P3:13 E. Speas, Register of Deeds

Probate and Filing Fee \$ 16.00 L.E. SPEAS By Jeri Stagger Deputy ~~Register~~
REGISTER OF DEEDS
FORSYTH CO. NC

BK1715 P1913

EXHIBIT A

SCHEDULE A

All these two certain tracts or parcels of land located at the intersection of Penny Lane and Falcon Pointe Drive, one tract containing 4.7624 acres, and one tract containing 14.2672 acres, all as more fully shown on a "Revised Map for Falcon Pointe Phase One" prepared by Richard Howard, dated June 19, 1986, Revised May 6, 1987, and recorded in Plat Book 32, Page 20, in the Office of the Registrar of Deeds for Forsyth County, North Carolina.