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**BEFORE THE COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS
STATE OF NEVADA**

JOSEPH (J.D.) DECKER, Administrator,
REAL ESTATE DIVISION, DEPARTMENT
OF BUSINESS & INDUSTRY,
STATE OF NEVADA,

Petitioner,

vs.

222 INCLINE COURT, LLC; FALCON
CAPITAL, LLC; GORDON R. LANE; and
GLENN HARTMAN,

Respondents.

Case No. IN-1650 (2013-1203)

FILED

DEC 02 2015

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

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STIPULATION AND ORDER FOR SETTLEMENT OF DISCIPLINARY ACTION

This matter having come before the Commission at its regularly scheduled meeting on November 18, 2015 in Carson City, Nevada, Petitioner, Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division"), through its Administrator, JOSEPH (J.D.) DECKER, appeared by and through its counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney General and Respondents, FALCON CAPITAL, LLC and GORDON R. LANE (collectively, "Falcon Capital") appeared by and through their counsel Michael J. McLaughlin, of Feldman McLaughlin Thiel LLP. The Division and Falcon Capital presented to the Commission an oral stipulated settlement agreement as set forth in this Stipulation and Order for Settlement of Disciplinary Action. The complaint on file herein alleges as follows:

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JURISDICTION AND NOTICE

1. During the relevant times mentioned in this complaint, RESPONDENTS GORDON R. LANE and GLENN HARTMAN were declarant appointed officers and directors of Northwood Unit-Owners' Association (the "Association"), a homeowners' association located in Incline Village, Nevada.

1 12. RESPONDENTS GLENN HARTMAN and GORDON R. LANE are listed as the
2 board members and officers of the Association in the Initial Association Registration form
3 submitted to the Division on or about October 27, 2008.

4 13. The Initial Registration Form lists RESPONDENT FALCON CAPITAL, LLC as
5 the declarant and custodian of records.

6 14. Seventy-five percent of the units were sold as of April 20, 2012.

7 15. Transition of control of the Association's board occurred on October 19, 2012.

8 16. On March 18, 2013, the Association's board president filed an intervention
9 affidavit against the declarant alleging noncompliance with the turnover requirements of NRS
10 116.31038.

11 17. The Association states that it did not receive original governing documents, as
12 built landscape plans, audited financial statements from the date the Association received
13 money, a reserve study prepared by a reserve study specialist, funded reserve account,
14 disclosure of subsidized amounts, personal property, plans and specifications of the
15 improvements, certificates of occupancy, renewable permits and approvals, warranties from
16 subcontractors, roster of owners and mortgage holders, contracts, conveyance of common
17 elements to the Association, or the public offering statement.

18 18. The Association had a reserve study prepared by a reserve study specialist as
19 of January 22, 2013 which concluded the reserve beginning balance should be \$125,000, but
20 it had just over \$12,000.

21 19. RESPONDENT GORDON R. LANE denied any knowledge about the
22 Association stating he was the original developer of the units, but not part of the condominium
23 conversion.

24 RESPONDENT GORDAN R. LANE signed the re-recorded CC&R's on March 13, 2009 which
25 lists RESPONDENT FALCON CAPITAL, LLC as the declarant.

26 20. Attorneys for RESPONDENT GLENN HARTMAN object to having 222 INCLINE
27 COURT, LLC referred to as the declarant, but do agree to provide what documents they have.
28 RESPONDENT 222 INCLINE COURT, LLC sold the units in the Association under a common
promotional plan to sell all the units not previously sold, which is the definition of "declarant"

1 under NRS 116.035, and is still the owner of the common element parcel.

2 **VIOLATIONS OF LAW**

3 21. RESPONDENTS violated NRS 116.310395 by failing to fund the converted
4 building reserve deficit at the time of each close of escrow of a unit in the Association.

5 22. RESPONDENTS violated NRS 116.31038(1) by failing to provide the original or
6 a certified copy of the recorded declaration as amended, the articles of incorporation, articles
7 of association, articles of organization, certificate of registration, certificate of limited
8 partnership, certificate of trust or other documents of organization for the association, the
9 bylaws, minute books and other books and records of the association and any rules or
10 regulations which may have been adopted.

11 23. RESPONDENTS violated NRS 116.31038(2) by failing to provide an accounting
12 for money of the Association and audited financial statements for each fiscal year and any
13 ancillary period from the date of the last audit of the association to the date the period of the
14 declarant's control ends.

15 24. RESPONDENTS violated NRS 116.31038(3) by failing to provide a complete
16 study of the reserves of the Association, conducted by a person who is registered as a
17 reserve study specialist pursuant to chapter 116A of NRS.

18 25. RESPONDENTS violated NRS 116.31038(3)(a) and (b) by failing to provide a
19 reserve account with declarant's share then due and by failing to disclose the amount the
20 declarant subsidized the Association's dues on a per unit basis.

21 26. RESPONDENTS violated NRS 116.31038(5) by failing to provide all of the
22 declarant's tangible personal property that has been represented by the declarant as property
23 of the Association or, unless the declarant has disclosed in the public offering statement that
24 all such personal property used in the common-interest community will remain the declarant's
25 property, all of the declarant's tangible personal property that is necessary for, and has been
26 used exclusively in, the operation and enjoyment of the common elements, and inventories of
27 the properties.

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1 27. RESPONDENTS violated NRS 116.31038(6) by failing to provide a copy of any
2 plans and specifications used in the construction of the improvements in the common-interest
3 community which were completed within 2 years before the CC&R's were recorded.

4 28. RESPONDENTS violated NRS 116.31038(7) by failing to provide all insurance
5 policies then in force, in which the units' owners, the Association, or its directors and officers
6 are named as insured persons.

7 29. RESPONDENTS violated NRS 116.31038(8) by failing to provide copies of any
8 certificates of occupancy that may have been issued with respect to any improvements
9 comprising the common-interest community.

10 30. RESPONDENTS violated NRS 116.31038(9) by failing to provide any
11 renewable permits and approvals issued by governmental bodies applicable to the common-
12 interest community which are in force and any other permits and approvals so issued and
13 applicable which are required by law to be kept on the premises of the community.

14 31. RESPONDENTS violated NRS 116.31038(10) by failing to provide written
15 warranties of the contractor, subcontractors, suppliers and manufacturers that are still
16 effective.

17 32. RESPONDENTS violated NRS 116.31038(11) by failing to provide a roster of
18 owners and mortgagees of units and their addresses and telephone numbers, if known, as
19 shown on the declarant's records.

20 33. RESPONDENTS violated NRS 116.31038(12) by failing to provide contracts of
21 employment in which the Association is a contracting party.

22 34. RESPONDENTS violated NRS 116.31038(13) by failing to provide contracts for
23 service in which the Association is a contracting party or in which the Association or the units'
24 owners have any obligation to pay a fee to the persons performing the services.

25 35. RESPONDENTS GORDON R. LANE and GLENN HARTMAN violated NRS
26 116.3103 by failing to act in the best interests of the Association when they failed to turn over
27 all required documents to the Association pursuant to NRS 116.31038.
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1 **DISCIPLINE AUTHORIZED**

2 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS
3 116.790 the Commission has discretion to take any or all of the following actions:

4 1. Issue an order directing RESPONDENTS to cease and desist from continuing to
5 engage in the unlawful conduct that resulted in the violation.

6 2. Issue an order directing RESPONDENTS to take affirmative action to correct
7 any conditions resulting from the violation.

8 3. Impose an administrative fine of up to \$1,000 for each violation by
9 RESPONDENTS.

10 4. Require RESPONDENTS to pay the costs of the proceedings incurred by the
11 Division, including, without limitation, the cost of the investigation and reasonable attorney's
12 fees.

13 5. Take whatever further disciplinary action as the Commission deems appropriate.

14 6. The Commission may order one or any combination of the discipline described
15 above. If the Commission finds that the RESPONDENTS knowingly and willfully violated the
16 provisions of NRS or NAC 116, the Commission may order that RESPONDENTS be
17 personally liable for all fines and costs imposed.

18 **SETTLEMENT**

19 1. Respondents Falcon Capital, LLC and Gordon R. Lane deny the allegations of
20 the complaint as more specifically set forth in their answer filed herein.

21 2. Without admitting liability, Respondents Falcon Capital, LLC and Gordon R.
22 Lane and the Division desire to compromise and settle the instant controversy pursuant to the
23 following terms and conditions.

24 3. Respondents Falcon Capital, LLC and Gordon R. Lane agree to pay to
25 Northwood Unit-Owners' Association (the "ASSOCIATION") the amount of \$10,000 no later
26 than 30 days from the date of this Order.

27 4. Respondents Falcon Capital, LLC and Gordon R. Lane agree to provide to the
28 ASSOCIATION all plans for the construction of the buildings as affordable housing

1 apartments, including without limitation, any changes to the plans and repairs made to the
2 apartments by Respondent Falcon Capital, LLC after construction.

3 5. Once this Stipulation and Order is approved and fully performed, the complaint
4 will be dismissed as to Respondents Falcon Capital, LLC and Gordon R. Lane and the
5 Division will close its file in this matter as to Respondents Falcon Capital, LLC and Gordon R.
6 Lane.

7 6. This Stipulation and Order includes any claims that could have been included in
8 a supplemental or amended complaint arising from the same operative facts, transactions and
9 occurrences in existence as of the effective date of this Stipulation and Order. However, this
10 Stipulation and Order does not include claims arising from facts or circumstances which have
11 been concealed by Respondents Falcon Capital, LLC or Gordon R. Lane.

12 7. Respondents Falcon Capital, LLC and Gordon R. Lane agree that if the terms
13 and conditions of this Stipulation and Order are not met, the Division may, at its option,
14 rescind this Stipulation and Order and proceed with prosecuting the Complaint before the
15 Commission.

16 8. Respondents Falcon Capital, LLC and Gordon R. Lane agree and understand
17 that by entering into this Stipulation and Order, Respondents are waiving their right to a
18 hearing at which Respondents may present evidence in their defense, their right to a written
19 decision on the merits of the Complaint, their rights to reconsideration and/or rehearing,
20 appeal and/or judicial review, and all other rights which may be accorded by the Nevada
21 Administrative Procedure Act, the Nevada Common Interest Ownership statutes and
22 accompanying regulations, and the federal and state constitutions.

23 9. Respondents Falcon Capital, LLC and Gordon R. Lane understand that this
24 Stipulation and Order and other documentation may be subject to public records laws. The
25 Commission members who review this matter for approval of this Stipulation and Order may
26 be the same members who ultimately hear, consider and decide the Complaint if this
27 Stipulation and Order is either not approved by the Commission or is not timely performed by
28 Respondents.

1 10. Respondents Falcon Capital, LLC and Gordon R. Lane fully understand that
2 they have the right to be represented by legal counsel in this matter at their own expense.

3 11. Each party shall bear its own attorney's fees and costs.

4 12. Stipulation and Order is Not Evidence. Neither this Stipulation and Order nor
5 any statements made concerning this Stipulation and Order may be discussed or introduced
6 into evidence at any hearing on the Complaint, if the Division must ultimately present its case
7 based on the Complaint filed in this matter.

8 13. Release. In consideration of execution of this Stipulation and Order, the
9 Respondents Falcon Capital, LLC and Gordon R. Lane for themselves, their heirs, executors,
10 administrators, successors, and assigns, hereby releases, remises, and forever discharges
11 the State of Nevada, the Department of Business and Industry and the Division, and each of
12 their respective members, agents, employees and counsel in their individual and
13 representative capacities, from any and all manner of actions, causes of action, suits, debts,
14 judgments, executions, claims, and demands whatsoever, known and unknown, in law or
15 equity, that the Respondents ever had, now has, may have, or claim to have, against any or
16 all of the persons or entities named in this section, arising out of or by reason of the Division's
17 investigation, this disciplinary action, and all other matters relating thereto.

18 14. Indemnification. Respondents hereby indemnify and hold harmless the State of
19 Nevada, the Department of Business and Industry, the Division, and each of their respective
20 members, agents, employees and counsel in their individual and representative capacities
21 against any and all claims, suits, and actions brought against said persons and/or entities by
22 reason of the Division's investigation, this disciplinary action and all other matters relating
23 thereto, and against any and all expenses, damages, and costs, including court costs and
24 attorney fees, which may be sustained by the persons and/or entities named in this section as
25 a result of said claims, suits, and actions.

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1 IT IS ORDERED that the foregoing Stipulation and Order is approved in full.

2 Dated this 30th day of November, 2015.

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4 COMMISSION FOR COMMON-INTEREST
5 COMMUNITIES AND CONDOMINIUM HOTELS
6 DEPARTMENT OF BUSINESS & INDUSTRY
7 STATE OF NEVADA

8 By: 

9 Name: SCOTT Sibley

10 Title: CHAIRMAN

11 Submitted by:
12 ADAM PAUL LAXALT,
13 Attorney General

14 By: 
15 Michelle D. Briggs, Esq,
16 Senior Deputy Attorney General
17 Attorney for the Division
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Office of the Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101