



Doc#: 0430803068  
Eugene "Gene" Moore Fee: \$46.50  
Cook County Recorder of Deeds  
Date: 11/03/2004 01:46 PM Pg: 1 of 12

**This instrument prepared by  
and please return to:  
Kimberly K. Enders, Esq.  
100 West Monroe Street #1500  
Chicago, Illinois 60603**

## ASSUMPTION AGREEMENT

This instrument is an Assumption Agreement ("Assumption") among American Chartered Bank, an Illinois banking corporation ("Lender"), Fontenay, LLC, an Illinois limited liability company ("Borrower") and Gary A. Doles, James M. Moser and Capital Homes, Inc., an Illinois corporation (collectively "Guarantors") and Michael F. Cloonan ("Cloonan").

## RECITALS

A. Borrower holds fee simple title to certain real estate ("Real Estate") commonly known as 500 West Northwest Highway, Palatine, Illinois, which is legally described on Exhibit A attached hereto. Borrower intends to construct and sell seventeen (17) residential town homes and site improvements on the Real Estate (the "Project"). Guarantors are affiliated with Borrower.

B. On April 8, 2003, Borrower, Guarantors and Richard A. Wilkinson executed and delivered to Lender a Construction Loan Agreement ("Loan Agreement") and the following: (1) a Promissory Note Evidencing a Non-Revolving Line of Credit the amount of \$1,300,000 ("Non-Revolving Note"); (2) a Promissory Note Evidencing a Revolving Line of Credit in the amount of \$1,800,000 ("Revolving Note"); (3) a \$100,000 Irrevocable Standby Letter of Credit to the Village

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of Palatine to ensure the completion and development of the subdivision as a planned development, which is evidenced by a Reimbursement Agreement in the amount of \$100,000 ("PUD Reimbursement Agreement"); and (4) a \$269,592 Irrevocable Standby Letter of Credit to the Village of Palatine to ensure the completion of the public improvements on the Real Estate, which is evidenced by a Reimbursement Agreement in the amount of \$269,592 ("Site Improvements Reimbursement Agreement"). The Non-Revolver Note, Revolver Note, PUD Reimbursement Agreement and Site Improvements Reimbursement Agreement evidence a loan to Borrower in the aggregate amount of \$5,959,592 ("Loan"). To secure the Non-Revolver Note and Revolver Note (collectively "Notes") and the PUD Reimbursement Agreement and the Site Improvements Reimbursement Agreement (collectively "Reimbursement Agreements"), Borrower executed and delivered to Lender the following documents and items ("Security Documents"):

1. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Mortgage") executed by Borrower covering the Real Estate, which Mortgage was recorded with the Cook County Recorder of Deeds on April 11, 2003 as Document No. 30493148.
2. Guaranties of Note, Mortgage and Other Undertakings of Guarantors and Richard A. Wilkinson ("Guaranties");
3. an Environmental, ADA and ERISA Indemnification Agreement executed by Borrower, Guarantors and Richard A. Wilkinson;
4. a UCC-1 Financing Statement in connection with the Mortgage executed by Borrower, which was filed and recorded;
5. a General Contractor's Lien Subordination Agreement;
6. an Assignment and Pledge of Real Estate Contracts and Earnest Money

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Deposits;

7. an Assignment of Plans and Specifications and Architectural Contract;
8. an Assignment of Site Improvements Plan and Engineering Contract;
9. an Assignment of Permits, Licenses and Government Approvals and Security

Agreement; and

10. an Assignment of General Construction Contract.

C. Richard A. Wilkinson died on June 29, 2003. The death of a Guarantor, in the event that Borrower or the remaining guarantors are unable to offer a substitute guarantor acceptable to Lender within ninety (90) days thereof, is a default of the Notes and Section 15 (g) of the Mortgage.

D. Immediately before the death of Richard A. Wilkinson, Gary A. Doles and James M. Moser purchased Richard A. Wilkinson's ownership interests in Borrower, which is a default of the Notes, Section 15(b) of the Mortgage and Section 7.1(xii) of the Loan Agreement.

E. On 8/4, 2003, Cloonan purchased 50 % of the membership interest in Borrower, which is also a default of the Notes, Section 15(b) of the Mortgage and Section 7.1 (xii) of the Loan Agreement.

F. Borrower and Guarantors acknowledge the default of the Notes and Security Documents caused by the death of Richard A. Wilkinson and the purchase of Richard A. Wilkinson's ownership interests in Borrower and the sale of ownership interests in Borrower and have requested Lender to waive the above-referenced defaults of the Notes and Security Documents and to permit Guarantors and Cloonan to assume the guaranty of the Loan. Lender is agreeable to these requests subject to the covenants, conditions and restrictions contained herein.

**NOW, THEREFORE**, in consideration of good and valuable consideration, the receipt of

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which is hereby acknowledged, the parties agree as follows:

1. Lender acknowledges and agrees that the Notes and Security Documents are no longer in default because of the death of Richard A. Wilkinson. Lender hereby agrees that Gary A. Doles, James M. Moser, Capital Homes, Inc. and Cloonan will be the sole guarantors of the Loan.
2. Borrower and Gary A. Doles, James M. Moser and Capital Homes, Inc., hereby jointly and severally agree to pay to Lender the outstanding indebtedness of the Loan as evidenced by the Notes and Reimbursement Agreements and to perform individually all covenants and conditions contained in the Mortgage, Loan Agreement and the other Security Documents. Borrower and Guarantors hereby remake and reaffirm the representations and warranties contained in the Notes, the Reimbursement Agreements, the Mortgage, the Loan Agreement and the other Security Documents.
3. Gary A. Doles hereby acknowledges and agrees that he will be responsible for the management of the construction and the sale of the Project in place of Richard A. Wilkinson. Failure to comply with the terms of this Section 3 will be a default of the Notes, Reimbursement Agreements, the Mortgage, the Loan Agreement and the other Security Documents.
4. This Assumption shall be effective upon Lender's receipt of this Assumption executed by the parties hereto and the following documents and items:
  - a) a Revised Guaranty executed by Guarantors and Cloonan;
  - b) a Certificate of Good Standing of Borrower;
  - c) a Borrowing Resolution of Borrower;
  - d) a Borrowing Resolution of Capital Homes, Inc.;
  - e) a certified copy of any amendments to the Operating Agreement of Borrower

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regarding the death of Richard A. Wilkinson;

- f) a certified copy of the death certificate of Richard A. Wilkinson;
- g) an Opinion of Borrowers' Counsel;
- h) a date down endorsement to Lender's loan title insurance policy reflecting the

recording of the Assumption Agreement;

- i) updated evidence of insurance as required by the Mortgage; and
- j) Lender's Loan Settlement Statement showing payment of Lender's expenses.

5. Lender shall record this Assumption forthwith. It is a condition precedent to this Assumption that Borrower provide Lender with an endorsement to Lender's title insurance policy which extends the date of the policy to cover the date of recording of this Assumption, and which reflects that Borrower remains the sole owner in fee simple of the Real Estate and that the Real Estate is subject only to the Mortgage as modified by this Assumption.

6. This Assumption shall constitute an amendment of the Notes, Reimbursement Agreements, the Loan Agreement, the Mortgage and the other Security Documents, and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Notes and Reimbursement Agreements (collectively "Loan Documents") reference is made to the Loan Documents aforesaid, such reference shall be deemed a reference to such Loan Documents as hereby modified and amended. All other provisions of the Loan Documents are unchanged. Nothing herein contained shall in any manner affect the lien or priority of the Mortgage, or the covenants, conditions and agreements therein contained or contained in the Loan Documents.

7. In the event of any conflict between any of the provisions of the Loan Documents and this instrument, the provisions of this instrument shall control.

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8. Borrower hereby agrees to pay all of Lender's expenses arising out of and in connection with this Assumption including, but not limited to, title insurance premiums, recording fees and Lender's attorneys' fees performed in the preparation of necessary documentation.

9. Borrower, Guarantors and Cloonan knowingly, voluntarily and intentionally waive irrevocably the right they may have to trial by jury with respect to any legal proceeding based hereon, or arising out of, under or in connection with the Notes, the Reimbursement Agreements, the Loan Agreement, the Mortgage, the Security Documents, this Assumption, or any of the documents executed or contemplated to be executed in conjunction herewith or any course of conduct or course of dealing, in which Lender and/or Borrower, Guarantors and Cloonan are adverse parties. This provision is a material inducement for Lender in granting any financial accommodation to Borrower, Guarantors or Cloonan, or any of them.

10. Borrower, Guarantors and Cloonan hereby irrevocably submit to the jurisdiction of any state or federal court sitting in Chicago, Illinois over any action or proceeding based hereon and Borrower, Guarantors and Cloonan hereby irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in such state or federal court. Borrower, Guarantors and Cloonan hereby irrevocably waive, to the fullest extent they may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Borrower, Guarantors and Cloonan irrevocably consent to the service of any and all process in any such action or proceeding by the mailing of copies of such process to Borrower, Guarantors and Cloonan at their addresses as specified in the records of Lender. Borrower, Guarantors and Cloonan agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

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Borrower, Guarantors and Cloonan agree not to institute any legal action or proceeding against Lender or the directors, officers, employees, agents or property thereof, in any court other than the one herein above specified. Nothing in this Section shall affect the right of Lender to serve legal process in any other manner permitted by law or affect the right of Lender to bring any action or proceeding against Borrower, Guarantors and Cloonan or their property in the courts of any other jurisdictions.

*(Signature page follows)*

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties hereto have executed this Assumption on

October 22, 2004.

**LENDER:**

American Chartered Bank, an Illinois banking corporation

By: [Signature]  
Its: SENIOR VICE PRESIDENT

Attest: [Signature]  
Its: COMMERCIAL BANKING DEEPIER

**BORROWER:**

Fontenay, LLC, an Illinois limited liability company

By: Capital Homes, Inc., an Illinois corporation, its Manager

By: [Signature]  
Its: PRESIDENT

**GUARANTORS:**

[Signature]  
Gary A. Doles

[Signature]  
James M. Moser

Capital Homes, Inc., an Illinois corporation

By: [Signature]  
Its: PRESIDENT

Attest: [Signature]  
Its: [Signature]

**CLOONAN:**

[Signature]  
Michael P. Cloonan

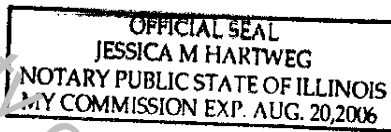


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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that RONALD V. A. ZIEBART and TANIA C. WASNIEWSKI <sup>SENIOR</sup> ~~VICE~~ President and ~~Commercial Banking Officer~~ of American Chartered Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal Oct 22, 2004.

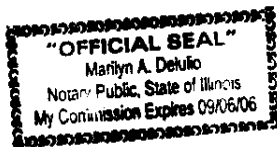


*[Signature]*  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that GARY ADOLFS, President of Capital Homes, Inc., an Illinois corporation, manager of Fontenay, LLC, an Illinois limited liability company personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 10/22, 2004.



*[Signature]*  
Notary Public

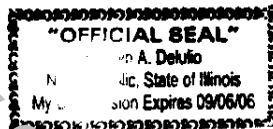
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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF C O O K     )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Gary A. Doles, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 10/22, 2004,

*Mary A. Delucio*  
\_\_\_\_\_  
Notary Public



STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF C O O K     )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that James M. Moser, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 10/22, 2004,

*Mary A. Delucio*  
\_\_\_\_\_  
Notary Public

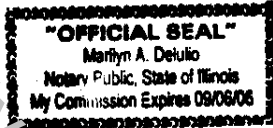


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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that JAMES H. MASIE and CAROL A. DOLY and \_\_\_\_\_ of Capital Homes, Inc., personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 10/22, 2004.

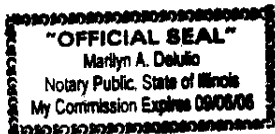


Marilyn A. Delulio  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF C O O K )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Michael P. Cloonan, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 10/22, 2004.



Marilyn A. Delulio  
Notary Public

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## LEGAL DESCRIPTION:

### Parcel 1:

Lots 1 to 9, inclusive, and Lots 12 to 18, inclusive, in Fontenay, a subdivision of parts of the southwest quarter of Section 10 and the northwest quarter of Section 15, all in Township 42 north, Range 10 east of the Third Principal Meridian, according to the plat thereof recorded July 28, 2003 as document 0320927093, in Cook County, Illinois.

### Parcel 2:

Easement for ingress and egress, for the benefit of Parcel 1, over and across that part of Lot 1 in Fontenay depicted as ingress and egress easement as created by the plat of subdivision recorded as document 0320927093.

P.I.N.: 02-15-101-008 Vol. 149

COMMONLY KNOWN AS: 500 West Northwest Highway  
Palatine, Illinois