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Doc#: 0715560105 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/04/2007 04:22 PM Pg: 1 of 15

This instrument prepared by
and please return to:

Polsinelli Shalton Flanigan Suelthaus PC
180 North Stetson, Suite 4525
Chicago, Illinois 60601-6733
Attention: Kimberly K. Enders, Esq.

P.I.N.: 02-15-101-008, Vol. 149
COMMONLY KNOWN AS: 500 West Northwest Highway, Palatine, Illinois

FIFTH LOAN MODIFICATION AGREEMENT

This instrument is a Fifth Loan Modification Agreement ("Fifth Modification") among American Chartered Bank, an Illinois banking corporation ("Lender"), Fontenay, LLC, an Illinois limited liability company ("Borrower"), Gary A. Doles, James M. Mose and Capital Homes, Inc., an Illinois corporation (collectively "Guarantors").

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 has constructed and intends to sell seventeen (17) residential town homes ("Town Homes") and site improvements on the Real Estate (the "Project"). Eleven (11) Town Homes have been sold and are omitted from the legal description. Guarantors are members of Borrower and/or are affiliated with the managers of Borrower.

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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-Revolver Line of Credit the amount of \$1,300,000 ("Non-Revolver Note"), which evidences a non-revolving loan in the amount of \$1,300,000 ("Non-Revolver Loan"); (2) a Promissory Note Evidencing a Revolver Line of Credit in the amount of \$1,800,000 ("Revolver Note"), which evidences a revolving loan in the amount of \$1,800,000 ("Revolver Loan"); (3) a \$100,000 Irrevocable Standby Letter of Credit ("PUD Letter of Credit") to the Village 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 ("Site Improvements 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 (collectively "Original Credit Facilities") evidence a loan to Borrower in the aggregate amount of \$3,969,592 ("Loan"). To secure the Original Credit Facilities, Borrower and Guarantors 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 ("Original Guaranties");

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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 with the Secretary of State of Illinois;

5. a General Contractor's Lien Subordination Agreement;

6. an Assignment and Pledge of Real Estate Contracts and Earnest Money 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. Before his death, Guarantors purchased his membership interest in Borrower and subsequently sold it to Preferred Construction, Inc., an Illinois corporation, which is wholly owned, operated and controlled by Michael P. Cloonan ("Cloonan").

D. On October 22, 2004, Lender, Borrower, Guarantors and Cloonan entered into an Assumption Agreement ("Assumption") pursuant to which: (1) Borrower and Guarantors acknowledged the default of the Original Credit Facilities and Security Documents caused by the death of Richard A. Wilkinson, (2) Lender permitted the purchase of Richard A. Wilkinson's membership interests in Borrower and the sale of membership interests in Borrower to Cloonan, (3) Lender agreed to waive the above-referenced defaults of the Original Credit Facilities and Security

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Documents, and (4) Lender permitted Guarantors and Cloonan to assume the guaranty of the Loan. The Assumption was recorded with the Cook County Recorder of Deeds on November 3, 2004 as Document No. 0430803068.

E. On March 4, 2004, Lender issued its First Amendment to the PUD Letter of Credit and extended its due date until October 8, 2004, and its First Amendment to the Site Improvements Letter of Credit and extended its due date to October 8, 2004 and reduced the amount to \$93,945.44.

F. On September 20, 2004, Lender issued its Second Amendment to the PUD Letter of Credit and extended its due date until April 8, 2005 and its Second Amendment to the Site Improvements Letter of Credit and extended its due date until April 8, 2005.

G. As of October 1, 2004, Borrower, Guarantors, Cloonan and Lender entered into a Loan Modification Agreement ("Modification"), pursuant to which the date for final payment of the Revolving Note and Non-Revolving Note was extended from October 1, 2004 until October 1, 2005 ("Maturity Date"). The Modification was recorded with the Cook County Recorder of Deeds on November 3, 2004 as Document No. 0430803067.

H. As of December 1, 2005, Borrower, Guarantors, Cloonan and Lender entered into a Second Loan Modification Agreement ("Second Modification"), pursuant to which Lender agreed to: (1) extend the Maturity Date of the Revolving Note and Non-Revolving Note from October 1, 2005 to October 1, 2006, (2) increase the amount of the Non-Revolving Loan by \$100,000.00 in order to provide a reserve to pay interest on the Loan, and (3) increase the aggregate funding amount of the Revolving Loan by the amount of \$100,000.00 in order to fund general construction costs associated with the Project. Concurrently therewith, Borrower executed and delivered to Lender a Revised Non-Revolving Promissory Note in the amount of \$663,410.87 ("Revised Non-Revolving Note"), a

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Revised Revolving Promissory Note in the amount of \$1,800,000.00 ("Revised Revolving Note"), and Guarantors and Cloonan executed and delivered to Lender a Revised Guaranty of Notes, Loan Agreement, Mortgage and Other Undertakings ("Revised Guaranty"). The Second Modification was recorded with the Cook County Recorder of Deeds on December 1, 2005 as Document No. 0533527040.

I. On February 27, 2006, Borrower, Guarantors, Cloonan and Lender entered into a Correction to Second Modification Agreement, pursuant to which the parties to the Second Modification acknowledged and agreed that they desired to correct certain inconsistencies between the Second Modification and the amount of the Revised Non-Revolution Note, namely, that the dollar amount of the Revised Non-Revolution Note was incorrect in that the aggregate amount of the available and outstanding Non-Revolution Loan proceeds were actually in the amount of \$880,000.00. Concurrently therewith, Borrower executed and delivered to Lender a Promissory Note Evidencing a Non-Revolution Line of Credit in the amount of \$810,000.00 ("Second Revised Non-Revolution Note"). The Correction to Second Modification Agreement was recorded with the Cook County Recorder of Deeds on March 1, 2006 as Document No. 0606031066.

J. On March 8, 2006, Borrower, Guarantors, Cloonan and Lender entered into a Third Loan Modification and Assumption Agreement ("Third Modification"), pursuant to which Lender consented to Borrower's redemption of the membership interests in Borrower owned by Preferred Construction, Inc., which is wholly owned, operated and controlled by Cloonan, and permitted Guarantors to assume the guaranty of Cloonan and release him from the obligations of the Loan and the Loan Documents (as hereafter defined). The Third Modification was recorded with the Cook County Recorder of Deeds on April 6, 2006 as Document No. 0609644054.

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K. On September 15, 2005, Lender reduced the amount of the Site Improvements Letter of Credit to \$93,945.44 and extended the expiration dates of both the PUD Letter of Credit and the Site Improvements Letter of Credit to April 8, 2006.

L. On March 24, 2006, Lender extended the expiration dates of both the PUD Letter of Credit and the Site Improvements Letter of Credit to October 8, 2006.

M. On October 8, 2007, Lender extended the expiration dates of both the PUD Letter of Credit and the Site Improvements Letter of Credit to April 8, 2007.

N. As of October 1, 2006, Borrower, Guarantors and Lender entered into a Fourth Loan Modification Agreement ("Fourth Modification"), pursuant to which Lender extended the maturity dates of the Non-Revolver Loan and the Revolver Loan from October 1, 2006 until April 1, 2007. The Fourth Modification was recorded with the Cook County Recorder of Deeds on November 16, 2006 as Document No. 0632039152.

O. The Non-Revolver Loan has been paid in full. Borrower and Guarantors have now requested Lender to extend the maturity date of the Revolver Loan from April 1, 2007 until October 1, 2007, and to extend the expiration dates of both the PUD Letter of Credit and the Site Improvements Letter of Credit to October 8, 2007. 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 parties agree as follows:

1. The Maturity Date set forth in Subparagraph (b) of the Revised Revolver Note is hereby modified and amended from April 1, 2007 to October 1, 2007.

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2. The expiration dates of both the PUD Letter of Credit and the Site Improvements Letter of Credit are extended to October 8, 2007.

3. Borrower and Guarantors jointly and severally agree to pay to Lender the outstanding indebtedness of the Loan as evidenced by the Original Credit Facilities, including the PUD Reimbursement Agreement and the Site Improvements Reimbursement Agreement and the Revised Revolving Note, all as hereby amended (collectively the "Credit Facilities"), and to perform individually all covenants and conditions contained in the Original Guaranties, Revised Guaranties, Loan Agreement, Mortgage, Modification, Second Modification, Correction to Second Modification Agreement, Third Modification, Fourth Modification and the other Security Documents, all as hereby amended, as applicable (collectively "Loan Documents"). Borrower and Guarantors hereby remake and reaffirm the representations and warranties contained in the Loan Documents.

3. This Fifth Modification shall be effective upon Lender's receipt of this Fifth Modification executed by the parties hereto and the following documents and items:

(a) a title insurance policy or endorsement to its current title insurance policy which insures the Mortgage as modified by this Fifth Modification as a first lien on the Real Estate, subject only to such exceptions as Lender shall permit;

(b) updated certificates of insurance as required by Lender, if any;

(c) payment of Lender's fee and costs as provided in Section 7 hereof;

(d) an organizational resolution of Borrower;

(e) a printout from the Secretary of State's website showing the good standing status of Borrower;

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(f) a corporate resolution of Capital Homes, Inc., as Borrower's Manager and as a Guarantor;

(g) a printout from the Secretary of State's website showing the good standing status of Capital Homes, Inc.; and

(h) certified copies of Borrower's operating agreement and all amendments thereto showing the current ownership of the membership of Borrower or a certification of no change.

4. This Fifth Modification shall constitute an amendment of the Security Documents and wherever in said instruments or in any other 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 remain 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 Credit Facilities, as amended.

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

6. Borrower and Guarantors hereby renew, remake and affirm the representations and warranties contained in the Loan Documents.

7. Borrower hereby agrees to pay Lender's fee in the amount of \$8,000 plus its expenses arising out of and in connection with this Fifth Modification including, but not limited to, attorneys' fees, title insurance premiums and filing fees.

8. Guarantors hereby affirm their obligations under their Original Guaranty and Revised Guaranty (collectively "Guaranties") and agree that the Guaranties are amended and extended to

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cover and guaranty the Loan Documents as modified by this Fifth Modification. All references in the Guaranties to the Credit Facilities shall mean said documents as revised herein and hereby. Guarantors hereby expressly acknowledge and confirm that by executing this Fifth Modification, Lender has not waived, altered or modified Lender's rights under any of the Loan Documents to amend, extend, renew or modify or otherwise deal with the obligations of the parties hereto or any of the security given to Lender in connection therewith without the consent of Guarantors and without such action releasing, modifying, or affecting the obligations of Guarantors or affecting the security heretofore granted to Lender.

9. BORROWER AND GUARANTORS 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 LOAN DOCUMENTS 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, BORROWER AND GUARANTORS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER OR GUARANTORS, OR ANY OF THEM.

10. BORROWER AND GUARANTORS 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 AND GUARANTORS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE

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OR FEDERAL COURT. BORROWER AND GUARANTORS 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 AND GUARANTORS 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 AND GUARANTORS AT THEIR ADDRESSES AS SPECIFIED IN THE RECORDS OF LENDER. BORROWER AND GUARANTORS 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.

BORROWER AND GUARANTORS 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 HEREINABOVE 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 OR GUARANTORS OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.

11. Borrower and Guarantors warrant to Lender that neither Borrower, Guarantors or any affiliate is identified in any list of known or suspected terrorists published by any United States government agency (collectively, as such lists may be amended or supplemented from time to time,

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referred to as the "Blocked Persons Lists") including, without limitation: (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrower and Guarantors covenant to Lender that if they become aware that they or any affiliate is identified on any Blocked Persons List, Borrower and Guarantors shall immediately notify Lender in writing of such information. Borrower and Guarantors further agree that in the event they or any affiliate is at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Lender to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, Lender may immediately contact the Office of Foreign Assets Control and any other government agency Lender deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Lender will forbear enforcement of its rights and remedies during such time as: (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) Lender determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Lender and encumbering, any part of the Premises (as defined in the Mortgage) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

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IN WITNESS WHEREOF, the parties hereto have executed this Fifth Modification on

4/13/07 to take effect as of April 1, 2007.

LENDER:

American Chartered Bank, an Illinois banking corporation

By: [Signature]
Its: [Signature]

Attest: Jennifer Kostus
Its: Banking Specialist

BORROWER:

Fontenay, LLC, an Illinois limited liability company

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

By: [Signature]
Its: President

GUARANTORS:

[Signature]
Gay A. Dofes

[Signature]
James M. Moser

Capital Homes, Inc., an Illinois corporation

By: [Signature]
Its: President

Attest: [Signature]
Its: [Signature]

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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 KONELLA ZIEBART and _____, _____ President and CR. SR. VP 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 4/13, 2007.

[Handwritten Signature]

Notary Public



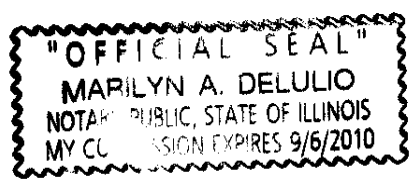
STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that GARY A. DOUGLAS, _____ of Capital Homes, Inc., an Illinois corporation, individually and as 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 4/13, 2007.

[Handwritten Signature]

Notary Public




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

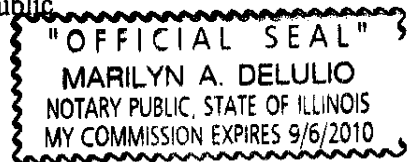
The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Gary A. Doles, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the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

GIVEN under my hand and Notarial Seal 4/13, 2007.




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 4/13, 2007.



Notary Public



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EXHIBIT A

LEGAL DESCRIPTION:

Parcel 1:

Lots 7, 8, 9, 14, 15 and 17, 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.: 02-15-161-008 Vol. 149
COMMONLY KNOWN AS: 500 West Northwest Highway, Palatine, Illinois