



RESTATEMENT AND AMENDMENT NO. 1 TO LICENSE AGREEMENT

This Restatement and Amendment No. 1 to License Agreement ("**Amendment**") is made and entered into as of this 11th day of September, 2008, by and between **ASPEN GLEN LLC**, an Illinois limited liability company, having an office at c/o Benach Bedford Development, 101 N. Main Street, Suite 16C, Crystal Lake, IL 60014 ("**Licensor**") and **CAPITAL HOMES, INC.**, an Illinois corporation, whose address is 3050 N. Kennicott Drive, Arlington Heights, Illinois 60004 ("**Licensee**").

RECITALS:

- A. Licensor is the owner of certain real property located in the Village of Palatine, Cook County, Illinois, which is more particularly described on Exhibit A attached hereto and incorporated herein (the "**Property**").
- B. Licensee is the owner of a certain parcel of real property located immediately adjacent to the Property (the "**Licensee Property**").
- C. Licensee is developing the Licensee Property. The storm water from the Licensee Property drains upon the Property. Licensor will eventually develop the Property and will construct a detention area on the Property, at which time the storm water draining from the Licensee Property shall flow into and be detained in that area. Until that detention area is constructed, Licensee desires a license to install a storm water discharge pipe ("**Drain Pipe**") from the Licensee Property to the Property. Said Drain Pipe shall be removed by Licensee upon construction of the detention area.
- D. A survey prepared by Cowhey Gudmundson Leder Ltd., dated September 5, 2008, Job No.2566.02 (the "**Survey**") describes a proposed Utility Easement area on Exhibit B attached hereto and incorporated herein (the "**Drainage Area**").
- E. Licensor is willing to grant a license to Licensee to allow the installation of a drain pipe from the Licensee Property to and across the Property upon the terms and conditions set forth herein.
- F. Licensor and Licensee heretofore entered into a License Agreement dated July 10, 2007, which was not recorded ("**License Agreement**"). The parties agree that the legal description of the Property and the location of the Utility Easement Area as indicated on that document are incorrect.

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree to amend the License Agreement as follows:

- 1. GRANT OF LICENSE:** Subject to the terms and conditions herein, Licensor grants to Licensee this License for the use of the Property for the purpose of installing a Drain

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Pipe from the Licensee Property to and across a portion of the Property within the Drainage Area (the “**Intended Use**”) and for no other purpose whatsoever. Licensee shall use and operate the Drain Pipe, and shall cause the Drain Pipe to be used and operated in accordance with all applicable laws, codes, and ordinances, and in accordance with the terms of this License. Licensee, at its sole cost and expense, shall obtain all necessary governmental permits, licenses or approvals for Licensee’s use and operation of the Drain Pipe, and Licensee shall deliver to Licensor true and complete copies of all such permits, licenses and approvals, prior to commencement of construction of the Drain Pipe.

2. **TERM:** This License shall terminate upon completion of construction of the detention area on the Property, and is revocable by Licensor, with or without cause, upon delivery of sixty (60) days’ prior written notice to Licensee, upon which Licensee shall remove the Drain Pipe.

3. **LICENSEE’S OBLIGATIONS:**

(a) Licensee and Licensee’s employees, agents or invitees or any other person entering upon the Drainage Area (collectively, “**Licensee’s Agents**”) shall not (i) hinder or interfere with the business and activities of Licensor, or the occupants of the Property; (ii) damage or interfere with any improvements, utilities or other facilities located on the Property; (iii) place, dispose of or use on or about the Property, any hazardous or toxic substances or explosives; (iv) commit or allow to be committed any waste on or about the Property; or (v) create or allow to exist any nuisance (attractive or otherwise) on or about the Property.

(b) Licensee shall not make any alterations, additions or improvements in or to the Property without Licensor’s prior written approval, which approval may be withheld in the sole discretion of Licensor. Any such alterations, additions or improvements shall at once become a part of the realty and belong to Licensor. Licensee shall make the same at Licensee’s sole cost and expense. Upon termination of this License, Licensee shall, upon demand of Licensor, at Licensee’s sole cost and expense, forthwith remove the Drain Pipe and any alterations, additions or improvements, regardless of whether Licensor consented to same.

(c) On or before the termination of the term of this License, Licensee shall (i) fully repair and restore, to the same condition as existed prior to Licensee’s entry, any and all portions of the Property disturbed or damaged by Licensee’s occupancy, use or activities, whether caused solely or in part by any act, omission, negligence or misconduct on the part of Licensee or Licensee’s Agents, and (ii) remove from the Property, the Drain Pipe and all property of Licensee and Licensee’s Agents, and all trash and debris resulting from their activities.

(d) Licensee shall not permit or suffer any lien to be put upon or arise or accrue against any part of the Property. Licensee shall hold Licensor and the Property free from and against any and all liens, or right or claims thereof that may or might accrue under or be based upon any mechanic’s lien law or similar law, now in force or hereafter to be enacted, resulting from Licensee’s activities on the Property, and cause the same to be released, or

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remedied by bonding or other statutory procedure, within twenty (20) days after notice thereof from Licensor.

4. REVOCATION OF LICENSE GRANTED UNDER LICENSE AGREEMENT DATED JULY 10, 2007. Licensor and Licensee hereby revoke the license granted by Licensor to Licensee under License Agreement dated July 10, 2007.

5. NON-LIABILITY OF LICENSOR: Licensor shall not be responsible or liable to Licensee for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining areas or any part of the area adjacent to or connected with the Property, or for any loss or damage resulting to Licensee or its property.

6. INSURANCE:

(a) Licensee shall carry comprehensive general liability insurance insuring Licensee against any and all claims for personal injury or death, including property damage, and including insurance against assumed or contractual liability under this License, in which the aggregate limits shall be at least Two Million and 00/100 Dollars (\$2,000,000.00).

(b) All policies of insurance maintained or required to be maintained by Licensee shall contain a waiver of subrogation. Licensee hereby releases and discharges Licensor and any officer, agent, employee or representative of Licensor, from any liability whatsoever arising from loss, damage or injury for which insurance is carried or required to be carried by Licensee at the time of such loss, damage or injury to the extent of any recovery by the injured party under such insurance.

(c) All insurance required to be carried by Licensee hereunder shall be carried with an insurance company or companies licensed to do business in Michigan, shall have a Best's Insurance Reports rating of A-X or better, shall provide that it is primary insurance and not excess over or contributory with any other valid, existing and applicable insurance in force for or on behalf of Licensor, and shall name Licensor as an additional named insured and shall provide that Licensor shall receive thirty (30) days' notice from the insurer prior to any cancellation or change in coverage. Such insurance may be carried under a policy or policies covering other liabilities or locations of Licensee. Licensee shall deliver certificates of such insurance to Licensor on or before the commencement of this License and, thereafter, at least thirty (30) days before the expiration dates of expiring policies. In the event Licensee shall fail to procure such insurance or deliver such certificates, Licensor may, at its option, procure the same for the account of Licensee and the costs thereof shall be paid by Licensee to Licensor upon delivery of Licensor's demand therefor.

7. RELEASE & INDEMNIFICATION:

(a) Release of Licensor. Licensor shall not be liable to Licensee or Licensee's Agents, or to any other person or organization whatsoever for any injury or damage to their person or property incurred or sustained in, upon, about or without the Property, including but not limited to that caused by accident or a defect in, upon, about the Property because of

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Licensee's activities in, upon or about the Property. Licensee, for itself and Licensee's Agents, hereby expressly releases Licensor and its officers, directors, trustees, shareholders, affiliates, employees, representatives, contractors, lessees, licensees, invitees, agents, successors and assigns (the "**Licensor Group**") from any and all claims, demands, actions, damages, causes of action, costs and expenses which Licensee or any of Licensee's Agents may at any time have for any such injury or damage.

(b) Indemnity by Licensee. Licensee shall defend, indemnify and hold harmless Licensor and the Licensor Group, and each of them, from and against any and all losses, actions, claims, demands, costs, damages, penalties or expenses (including but not limited to attorneys' fees and costs) which may be suffered by Licensor or any of the Licensor Group, or brought or made against any of them by any person or organization, or which they may pay or incur with respect to any person or organization, including but not limited to Licensee and Licensee's Agents, as a result of or arising out of: (a) any act or neglect of Licensee or any of Licensee's Agents, whether before, during or after the term of this License; (b) any condition created by Licensee or Licensee's Agents in, upon, about or without the Property; (c) the grant of this License and exercise of this License by the Licensee; or (d) the presence or activities of Licensee or any of Licensee's Agents in, upon, about or without the Property. This paragraph shall survive termination of this License.

8. CASUALTY AND CONDEMNATION: In the event any improvements located upon the Property, or any part thereof, shall be damaged or destroyed by fire or any other cause or casualty, or if any other casualty or unforeseen occurrence shall render the fulfillment of this License by Licensor impossible, then this License shall terminate. Licensee hereby waives any claim for damages or compensation should this License be so terminated.

9. DEFAULT AND REMEDIES: In the event Licensee shall fail to comply with the terms and conditions of this License or shall breach any of its obligations hereunder ("**Default**"), Licensor shall have the following remedies, in addition to all of the remedies available to Licensor at law, in equity, or under this License:

(a) Licensor, at any time after such event of Default, at Licensor's option, may terminate the License effective upon Licensor's delivery to Licensee of notice of such termination. In the event such notice is given, this License shall come to an end and expire upon the expiration of twenty-four (24) hours after Licensor's delivery of such notice to Licensee.

(b) Either with or without terminating this License, Licensor and its agents may, immediately or at any time after such event of Default or after the date upon which this License shall expire and come to an end, remove the Drain Pipe without notice by any applicable action or proceeding or by force or otherwise (without being liable to indictment, prosecution or damages therefor) and may and eject Licensee, Licensee's Agents and other persons from the Property and remove any and all of their property and effects from the Property.

(c) Notwithstanding anything herein contained to the contrary, if Licensee shall be in Default in the performance of any of the terms or provisions of this License, and if Licensor shall give to Licensee notice in writing of such default specifying the nature thereof,

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and if Licensee shall fail to cure such Default within fifteen (15) days or immediately if such Default requires emergency action, Licensor may, in addition to its other legal and equitable remedies, cure such Default for the account of and at the cost and expense of Licensee, and the sums so expended by Licensor, including reasonable attorneys' fees and costs, shall be paid by Licensee within five (5) days after Licensor's demand therefor.

10. AMENDMENT: The License may be amended or modified only by written instrument signed by Licensor and Licensee.

11. ENTIRE AGREEMENT: This License contains the entire understanding of the parties hereto with respect to the subject matter hereof and there are no further or other agreements or understandings, written or oral, between the parties.

12. SUCCESSORS AND ASSIGNS: This License is personal to Licensee and the privileges appurtenant thereto shall not inure to the successors and/or assigns of Licensee without the prior written consent of Licensor, which such consent may be withheld by Licensor in its sole discretion. This License may not be assigned or transferred by Licensee, nor may Licensee or Licensee's Agents use the Property other than as expressly permitted by this License.

13. NOTICES: Any notice or other communication required or desired to be given under this License, shall be in writing and delivered by registered or certified mail, return receipt requested, or by nationally recognized overnight courier, and shall be deemed to have been given one (1) day after sending transmission, addressed as follows (or to such other address as either party may designate by like notice):

If to Licensee: Capital Homes, Inc.
3050 N. Kennicott Drive
Arlington Heights, IL 60004
Attention: Albert Lander
Facsimile No. (847) 670-7040

with a copy to: Neal H. Good
Lapins & Good
800 East Northwest Hwy.
Palatine, IL 60074
Facsimile: (847) 934-7292

If to Licensor: Aspen Glen LLC
c/o Benach Bedford Development
101 N. Main Street
Suite 16C
Crystal Lake, IL 60014
Attention: Ronald J. Benach
Facsimile No. (815) 444-2464

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with a copy to: Howard D. Galper
 Gordon & Rappold LLC
 20 South Clark Street
 Suite 2600
 Chicago, IL 60603
 Facsimile No. (312) 332-2952

14. NO WAIVER: No covenant or agreement in this License to be performed by Licensee can be waived except by express written consent of Licensor. Any forbearance or indulgence by Licensor shall not constitute a waiver of any covenant or agreement herein to which the same may apply and, until complete performance, Licensor shall be entitled to invoke any remedy available under this License, at law or in equity despite such forbearance or indulgence.

15. CHOICE OF LAW: This License shall be governed by and construed under the laws of the State of Illinois.

16. COUNTERPARTS, FACSIMILE: This License may be executed in counterparts, each of which shall be deemed to be an original and which, together, constitute one License binding upon the parties hereto, notwithstanding that the parties shall not have signed the same counterpart. For the purposes of this License, facsimile signatures shall be given the same force and effect as original signatures.

17. NO AGENCY OR PARTNERSHIP: This License does not create the relationship of principal and agent, partnership, joint venture or other relationship between the parties.

18. EXCULPATION: Anything to the contrary in this License notwithstanding, the covenants and obligations contained in this License to be performed by Licensor are made for the purpose of binding only the fee simple or leasehold estate that Licensor owns in the Encroachment Area.

19. ATTORNEY FEES: If Licensor is required to file suit to enforce the terms of this License against Licensee or to collect any amount owed by Licensee under this License, the Licensor shall be entitled to collect reasonable attorney fees and court costs and all other expenses Licensor may reasonably incur in collection of such amount.

20. SUBORDINATION, ESTOPPEL: Licensee agrees that this License shall at all times be subordinate to any existing mortgages, and to any mortgages that may hereafter be placed upon the Property, and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof. Licensee agrees that, upon the request of Licensor or any mortgagee, Licensee shall execute whatever instruments may be required to carry out the intent of this Section 20.

IN WITNESS WHEREOF, of the parties hereto have executed this License on the day and year first above written.

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EXHIBIT A

THE PROPERTY

15' UTILITY EASEMENT LEGAL DESCRIPTION

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF FONTENAY SUBDIVISION RECORDED AS DOCUMENT NUMBER 0320927093; THENCE SOUTH $00^{\circ}06'14''$ WEST ALONG THE EAST LINE OF SAID FONTENAY SUBDIVISION, A DISTANCE OF 14.52 FEET TO THE POINT OF BEGINNING; THENCE SOUTH $81^{\circ}43'07''$ EAST, 141.27 FEET; THENCE SOUTH $08^{\circ}16'53''$ WEST, 15.00 FEET; THENCE NORTH $81^{\circ}43'07''$ WEST, 139.12 FEET TO THE EAST LINE OF FONTENAY SUBDIVISION, AFORESAID; THENCE NORTH $00^{\circ}06'14''$ EAST ALONG SAID EAST LINE, 15.15 FEET TO THE POINT OF BEGINNING, CONTAINING 2,103 SQUARE FEET OF LAND MORE OR LESS, ALL IN COOK COUNTY, ILLINOIS.

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EXHIBIT B

THE DRAINAGE AREA

