

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

v.

Code No(s). 30301

EVERGREEN DEVELOPMENT, LLC and
RONALD VAN DEN HEUVEL,

Defendants.

**AFFIDAVIT OF NEAL MACCOUX IN
SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AGAINST DEFENDANTS**

STATE OF WISCONSIN)
) SS.
COUNTY OF BROWN)


NEAL MACCOUX, being first duly sworn on oath, deposes and states as follows:

1. I am an adult resident of the State of Wisconsin and am a general member of the Plaintiff in the above-entitled action.
2. Exhibit A hereto is a true and correct copy of the Note delivered to me as signed by the Defendants on or about July 20, 2007.
3. As of today, the Plaintiff has received no money from the Defendants despite the Plaintiff's requests for their adherence to the terms of the Note.
4. On October 20, 2007, as a result of the Defendants' failure to pay the full installment amount due on October 15, 2007, the Plaintiff elected to exercise its option pursuant to the terms of the Note, to require the immediate payment of all outstanding principal and interest due under the Note, with the default interest rate of eighteen percent (18%) per annum.
5. Attached hereto as Exhibit B is a true and correct copy of the calculations setting forth the amount of principal and outstanding interest due and owing as of December 22, 2008.



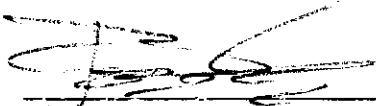
6. I make this affidavit in support of Plaintiff's Motion for Summary Judgment against the Defendants.

Dated this 22 day of December, 2008.



Neal Maccoux

Signed and sworn to before me this
22nd day of December, 2008.



Notary Public, State of Wisconsin
My Commission: Repetual

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The undersigned certifies that a true copy of the within was served by mail or by personal delivery upon all attorneys and parties of record pursuant to Wis. Stat. Sec. 801.14 this 31 day of December 2008.
GODFREY & KAHN, S.C.

BY: James L. Stazak

AMENDED AND RESTATED
PROMISSORY NOTE

\$759,637.50

April 15, 2007
Green Bay, Wisconsin

FOR VALUE RECEIVED, the undersigned Evergreen Development, LLC, a Wisconsin limited liability company and Ronald H. Van Den Heuvel, an adult resident of the State of Wisconsin, in his individual capacity and as a principal, manager, member, director, and officer of Evergreen Development, LLC (collectively, "Maker"), hereby promise to pay to the order of Hilliard Limited Partnership, a Wisconsin limited partnership ("Hilliard") at Green Bay, Wisconsin, the principal sum of Seven Hundred Fifty-ninety Thousand Six Hundred Thirty-seven and 50/100 Dollars (\$759,637.50), as and when set forth herein. Notwithstanding anything in this Amended and Restated Promissory Note (or any prior note, instrument or other related document that is amended and restated herein) to the contrary, Maker shall pay Hilliard all amounts due and payable hereunder not later than the fifteenth (15th) day of October, 2007. This Amended and Restated Promissory Note amends and restates the terms and conditions of that certain Note dated December 31, 2005 between Maker and Hilliard.

1. The principal amount of this Amended and Restated Promissory Note may be prepaid in full, or in part, at any time without penalty.
2. The principal balance of, and all interest accrued and other amounts due pursuant to, this Amended and Restated Promissory Note may be declared by Hilliard immediately due and payable in full and accelerated at any time if an "Event of Default" (as defined below) occurs.
3. Repayment of the Note shall occur in one installment of principal and all accrued interest. The principal amounts due and owing under this Amended and Restated Promissory Note will accrue interest from the date hereof at the rate of eight percent (8.00%) per annum until payment in full; provided, however, that interest shall accrue at the Default Rate if an Event of Default occurs. All Principle and Accrued Interest is payable to Hilliard by Maker no later than the fifteenth (15th) day of October, 2007.
4. As a material inducement to Hilliard to loan the funds described herein, Maker hereby represents and warrants to Hilliard that:
 - (a) The execution and delivery of this Amended and Restated Promissory Note and any other document executed and delivered by Maker do not violate any presently existing provisions of law or any presently existing applicable order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality or constitute a default under any indenture, mortgage, agreement or contract of any kind to which Maker may be bound, so as to adversely affect performance by Maker of their obligations pursuant to, and as contemplated by, the terms and provisions of this Amended and Restated Promissory Note.



- (b) There are no actions, suits or proceedings pending or, to the knowledge of Maker, threatened against Maker, before any court or any governmental, administrative, regulatory, adjudicatory or arbitrational body or agency of any kind (including bankruptcy, insolvency or similar proceedings) that will adversely affect performance by Maker of their obligations pursuant to, and as contemplated by, this Amended and Restated Promissory Note.
 - (c) Maker has not filed any petition, nor has any petition been filed against Maker in bankruptcy or insolvency or reorganization or for the appointment of a receiver or trustee or for the arrangement of debts. Maker is not insolvent nor will they be rendered insolvent by the consummation of the transactions contemplated by this Amended and Restated Promissory Note.
5. An "Event of Default" by Maker shall mean Maker's failure, refusal, inability or other nonpayment or nonperformance for any reason whatsoever: (i) in the payment of any installment of principal and/or interest due hereunder when due; or (ii) in the performance of any of the terms, conditions or provisions contained herein, including without limitation the following: (A) if any representation or warranty made by Maker in this Amended and Restated Promissory Note or in any certificate or document furnished under the terms of this Amended and Restated Promissory Note shall prove untrue in any material respect when made; and (B) if Maker shall admit their inability to pay debts; or if Maker shall make an assignment for the benefit of creditors, or shall be adjudicated a bankrupt; or shall file a voluntary petition in bankruptcy or to effect a plan or other arrangement with creditors, or to liquidate assets of Maker under court supervision, or shall have applied for or permitted the appointment of a receiver or trustee or custodian for Maker's property or assets, or a trustee, receiver or custodian shall have been appointed for any property or assets of Maker who shall not have been discharged within sixty (60) days after the date of his or her appointment.
6. If any Event of Default is not cured by Maker within five (5) calendar days after the occurrence thereof, then any such amounts shall bear interest at a rate equal to eighteen percent (18.00%) per annum (the "Default Rate"), calculated and accruing from the date of the default for so long as and on such amounts as are identified and remain outstanding; provided, however, that if applicable law does not permit the foregoing rate, it shall be reduced to the highest rate allowed under such applicable law. Failure by Hilliard to exercise the terms of this paragraph following any Event of Default hereunder shall not constitute a waiver of the right to exercise the same at a later time or upon the occurrence of any subsequent Event of Default. Hilliard shall have all other rights and remedies available to it at law and in equity with regard to any breach and/or default hereunder. In addition to the foregoing, upon the occurrence of an Event of Default, unless such Event of Default is subsequently waived in writing by Hilliard, Hilliard shall be entitled, at its option, to exercise any or all of the following rights and remedies: (i) Hilliard may suspend its obligations under this Amended and Restated Promissory Note, without further notice to Maker; and (ii) Hilliard may terminate its obligation under this Amended and Restated Promissory Note and may declare the entire unpaid principal balance of the disbursements to Maker made under this Amended and Restated Promissory Note to be immediately due and payable, together

with accrued and unpaid interest on such disbursements, without further notice to or demand on Maker.

7. If any suit or action is instituted to recover any sums due under this Amended and Restated Promissory Note, or on any part of this Amended and Restated Promissory Note, Maker promises to pay all costs of collection, including reasonable attorneys' fees, incurred by Hilliard. Maker, for themselves, and their successors and assigns, hereby expressly waives presentment for payment, notice of nonpayment, protest and notice of protest and diligence in collection, and consent to any and all extensions and renewals of this Amended and Restated Promissory Note without notice. In the event any one or more of the provisions contained in this Amended and Restated Promissory Note shall for any reason be held to be invalid or illegal in any respect, such invalidity or illegality shall not affect any other provision of this Amended and Restated Promissory Note, but this Amended and Restated Promissory Note shall be construed as if such invalid or illegal provision had never been contained herein.
8. This Amended and Restated Promissory Note shall be interpreted and construed under the internal laws of the State of Wisconsin, without regard to the principles of conflict of laws. Maker hereby consents to personal jurisdiction over Maker by the courts of the State of Wisconsin and the federal courts of the United States located in the Eastern District of Wisconsin. Any action to enforce the terms and conditions of this Amended and Restated Promissory Note may be brought therein by Hilliard, and venue shall be proper therein.

[Signature page(s) follow.]

EXHIBIT B

Principal Amount	\$759,637.50
8% Interest through October 20, 2007	\$30,385.50
18% Default Interest From October 20, 2007 through December 23, 2008	<u>\$159,569.45</u>
Total Due as of December 23, 2008	\$949,592.45

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