

STATE OF WISCONSIN :

CIRCUIT COURT 3
BRANCH _____

: BROWN COUNTY

HILLIARD LIMITED PARTNERSHIP
320 North Adams Street, Suite A
Green Bay, WI 54301,

Plaintiff,

v.

EVERGREEN DEVELOPMENT, LLC
2079-A Lawrence Drive
De Pere, WI 54115,

and

RONALD VAN DEN HEUVEL
2303 Lost Dauphin Road
De Pere, WI 54115,

Defendants.

Case No. 08-CV-2705

Code No(s). 30301

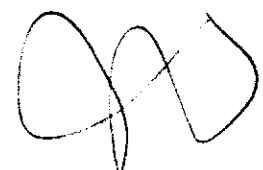
FILE

SUMMONS

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is P.O. Box 23600, Green Bay, Wisconsin 54305-3600, and to Godfrey & Kahn, S.C., Attention: Ross J. Nova, 333 Main



Street, Suite 600, P.O. Box 13067, Green Bay, Wisconsin 54307-3067. You may have an attorney help or represent you.

If you do not provide an answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 12 day of September, 2008.

GODFREY & KAHN, S.C.

By: 

Ross J. Nova
State Bar No. 1036723
Attorneys for Plaintiff

P.O. ADDRESS:

333 Main Street, Suite 600
Post Office Box 13067
Green Bay, WI 54307-3067
Phone: 920-432-9300
Fax: 920-436-7988
rnova@gklaw.com
3170331_1

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 3

BROWN COUNTY

HILLIARD LIMITED PARTNERSHIP
320 North Adams Street, Suite A
Green Bay, WI 54301,

Plaintiff,

v.

EVERGREEN DEVELOPMENT, LLC
2079-A Lawrence Drive
De Pere, WI 54115,

and

RONALD VAN DEN HEUVEL
2303 Lost Dauphin Road
De Pere, WI 54115,

Defendants.

Case No. 08-CV- 2265

Code No(s). 30301

COMPLAINT

NOW COMES the above-named Plaintiff, by its attorneys, Godfrey & Kahn, S.C., and as and for a claim against the Defendants, and each of them, jointly and severally, alleges and shows the Court as follows:

1. The Plaintiff, Hilliard Limited Partnership ("HLP"), is a Wisconsin domestic limited partnership with a principal office address of 320 North Adams Street, Suite A, Green Bay, Wisconsin 54301 and a registered agent of Neal Maccoux.

2. Defendant, Evergreen Development, LLC ("Evergreen"), is a Wisconsin limited liability company with a principal office address of 2079-A Lawrence Drive, De Pere, Wisconsin 54115 and a registered agent of Ronald Van Den Heuvel.

3. Defendant, Ronald Van Den Heuvel ("VDH"), is an adult resident of the State of Wisconsin residing at 2303 Lost Dauphin Road, De Pere, Wisconsin 54115.

4. On or about April 15, 2007, Evergreen and VDH executed a Promissory Note in favor of HLP for valuable consideration in the principal amount of Seven Hundred Fifty-nine Thousand Six Hundred Thirty-Seven and 50/100 Dollars (\$759,637.50) (the "Note"), a copy of which is attached hereto as Exhibit A.

5. The Note provided for repayment of principal and interest at the rate of eight percent (8%) per annum by no later than October 15, 2007.

6. Evergreen and VDH failed to repay the Note on or before October 15, 2007 in breach of their obligations under the Note.

7. Evergreen's and VDH's failure to adhere to the terms of the Note constitutes default thereunder.

8. Evergreen's and VDH's breach of the terms of the Note requires that all unpaid principal and accrued interest on the Note accrue interest at the rate of eighteen percent (18%) per annum from October 20, 2007 until the date of payment in full.

9. Evergreen's and VDH's default on the Note entitles HLP to all reasonable costs of collection, including reasonable actual attorney's fees and costs incurred in bringing this action.

10. Pursuant to the Note, there is due and owing from Evergreen and VDH, jointly and severally, the sum of Nine Hundred Ten Thousand Three Hundred Fifty-seven and 90/100 Dollars (\$910.357.90).

WHEREFORE, Plaintiff, Hilliard Limited Partnership, demands judgment against the Defendants, and each of them, jointly and severally, as follows:

A. Compensatory damages in the amount of Nine Hundred Ten Thousand Three Hundred Fifty-seven and 90/100 Dollars (\$910.357.90);

B. Post-Judgment interest at the rate of eighteen percent (18%) per annum, from the date of Judgment to the date of payment in full;

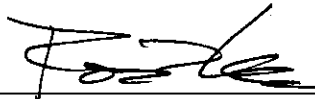
C. For all reasonable actual attorney's fees incurred in the prosecution of this action;

D. For all costs and disbursements incurred in prosecuting this action; and

E. For such other and further relief as the Court may deem just and equitable.

Dated this 12th day of September, 2008.

GODFREY & KAHN, S.C.

By: 

Ross J. Nova
State Bar No. 1036723

Attorneys for Plaintiff, Hilliard Limited
Partnership

P.O. ADDRESS:

333 Main Street, Suite 600
Post Office Box 13067
Green Bay, WI 54307-3067
Phone: 920-432-9300
Fax: 920-436-7988
rnova@gklaw.com
3170271_

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.]

IN WITNESS WHEREOF, Maker has signed, sealed and delivered this Amended and Restated Promissory Note, as of the day, month and year first above written.

Ronald H. Van Den Heuvel
Ronald H. Van Den Heuvel, Individually

EVERGREEN DEVELOPMENT, LLC

By: Ronald H. Van Den Heuvel
Ronald H. Van Den Heuvel
Its: Managing Member

STATE OF WISCONSIN

COUNTY OF BROWN

)
) SS
)

Personally came before me this 20 day of July, 2007, the above-named Ronald H. Van Den Heuvel, to me known to be the person who executed the foregoing document and acknowledged the same.

Debra S. Stary
Notary Public, State of Wisconsin
My commission: 12/20/2009

gb147952_1

