

201389

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

Dated: September 11TH, 1996

96062314

96 SEP 18 AM 10:03

PURCHASE MONEY MARGARETTE CLEVELAND  
REAL ESTATE MORTGAGE RECORDER

TICOR TITLE INSURANCE  
Crown Point, Indiana

This indenture witnesseth that Stillwater Properties, L.L.C., as Mortgagor, mortgage and warrant to Hardy Credit Co., a Pennsylvania Business Trust, of McMurray, Pennsylvania, as Mortgagee, the following real estate in Lake County, State of Indiana, to-wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".

as well as the rents, profits and any other income which may be derived therefrom, to secure the performance of all conditions and stipulations of this agreement and :

A. To secure the payment, when the same shall become due, of the following indebtedness as evidenced and pursuant to the terms of a certain Purchase Money Mortgage Note of even date herewith; A copy of the Purchase Money Mortgage Note is attached hereto as Exhibit B and made a part hereof.

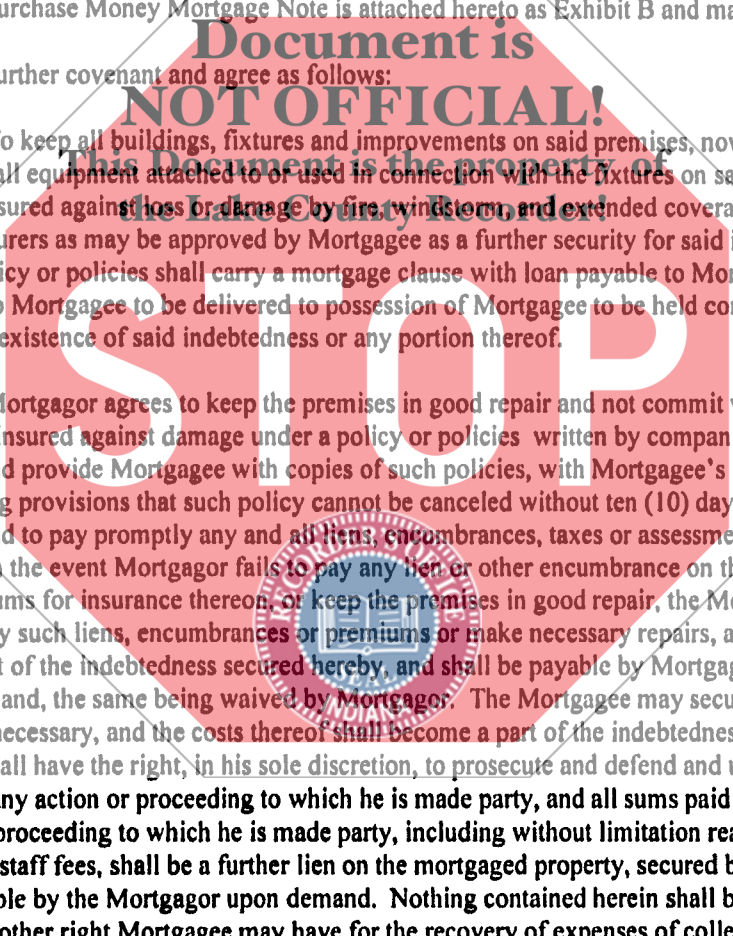
Mortgagors further covenant and agree as follows:

1. To keep all buildings, fixtures and improvements on said premises, now or hereafter erected thereon, and all equipment attached to or used in connection with the fixtures on said premises herein mortgaged insured against loss or damage by fire, windstorm, and extended coverage in such sums and with such insurers as may be approved by Mortgagee as a further security for said indebtedness, which insurance policy or policies shall carry a mortgage clause with loan payable to Mortgagee in form satisfactory to Mortgagee to be delivered to possession of Mortgagee to be held continuously through period of the existence of said indebtedness or any portion thereof.

2. Mortgagor agrees to keep the premises in good repair and not commit waste thereupon, to keep the premises insured against damage under a policy or policies written by companies acceptable to the Mortgagee and provide Mortgagee with copies of such policies, with Mortgagee's interest noted thereon and containing provisions that such policy cannot be canceled without ten (10) days prior written notice to Mortgagee and to pay promptly any and all liens, encumbrances, taxes or assessments against the described real estate. In the event Mortgagor fails to pay any lien or other encumbrance on the mortgaged property, or pay premiums for insurance thereon, or keep the premises in good repair, the Mortgagee may, in his sole discretion, pay such liens, encumbrances or premiums or make necessary repairs, and all sums so paid shall become a part of the indebtedness secured hereby, and shall be payable by Mortgagor forthwith without notice or demand, the same being waived by Mortgagor. The Mortgagee may secure such evidence of title as he deems necessary, and the costs thereof shall become a part of the indebtedness secured hereby. The Mortgagee shall have the right, in his sole discretion, to prosecute and defend and uphold the lien of this mortgage in any action or proceeding to which he is made party, and all sums paid for the expense of such litigation, or proceeding to which he is made party, including without limitation reasonable attorneys' and legal support staff fees, shall be a further lien on the mortgaged property, secured by this Mortgage, and shall be payable by the Mortgagor upon demand. Nothing contained herein shall be construed to limit or preclude any other right Mortgagee may have for the recovery of expenses of collection or other disbursement allowed hereunder.

3. All sums of money so advanced by the Mortgagee, together with interest per annum from the date any sums are so advanced at the highest rate payable on any outstanding indebtedness secured hereby, or, if such rate is contrary to applicable law, together with interest at the highest rate permissible under applicable law, shall become a part of the mortgage debt hereby secured. The Mortgagee shall also be subrogated to any liens, claims or demands paid by them.

4. To exercise due diligence in the operation, management and occupation of said real estate and the improvements thereon and not to remove or suffer to be removed any fixtures and/or appliance, now or



2900  
t  
S

hereafter placed on said premises; and to keep said real estate and improvements thereon in their present condition and repair, normal and ordinary depreciation excepted; Mortgagor shall not do or suffer to be done any acts which will impair the security of this mortgage nor any illegal or immoral acts on said premises; and Mortgagee shall have the right to inspect said premises at all reasonable times.

5. The holder of this obligation may renew the same or extend the time of payment of the indebtedness or any part thereof or reduce the payments thereon; and any such renewal, extension or reduction shall not release any maker, endorser, or guarantor from any liability on said obligation.

6. No sale of the premises hereby mortgaged or extension of time for the payment of the debt hereby secured shall operate to release, discharge or modify in any manner the effect of the original liability of the Mortgagors; and any extension of time on this mortgage by Mortgagee or his assigns, without the consent of the holder of any junior lien or encumbrance, shall not operate to cause a loss of the priority of this mortgage over such junior lien. Mortgagee shall be subrogated to any lien or claim paid by moneys advanced and hereby secured.

7. If any portion of this property is taken by eminent domain proceedings, or if any portion of this real estate is sold before the debt hereby secured is paid in full, then the proceeds received from such condemnation proceedings or sale shall be first applied on the mortgage indebtedness until paid in full.

8. It is agreed that time is the essence of this agreement and that, in case of default in the payment of any installment when the same shall become due and payable, the holder of the note and mortgage may, at his option, declare all of the debt due and payable, and any failure to exercise said option shall not constitute a waiver of right to exercise the same at a later date. In the event any proceedings shall be institute such proceedings as may be necessary to protect his interest. The lien of this mortgage shall include all heating, plumbing and lighting or other fixtures now or hereafter attached to or used in connection with said premises.

9. In case of delinquency or default in any payment required in this mortgage and the institution of foreclosure proceedings thereunder, Mortgagee is expressly authorized to secure a preliminary letter of title insurance at the expense of Mortgagors to show the condition of the title at the date of said preliminary letter and which sums necessarily spent for preliminary letter of title to the real estate, together with interest thereon, shall become part of the debt secured by this mortgage and collectable as such; and in case of foreclosure and purchase of said real estate pursuant to said foreclosure by the holder thereof, the preliminary letter shall be the absolute property of the Mortgagee.

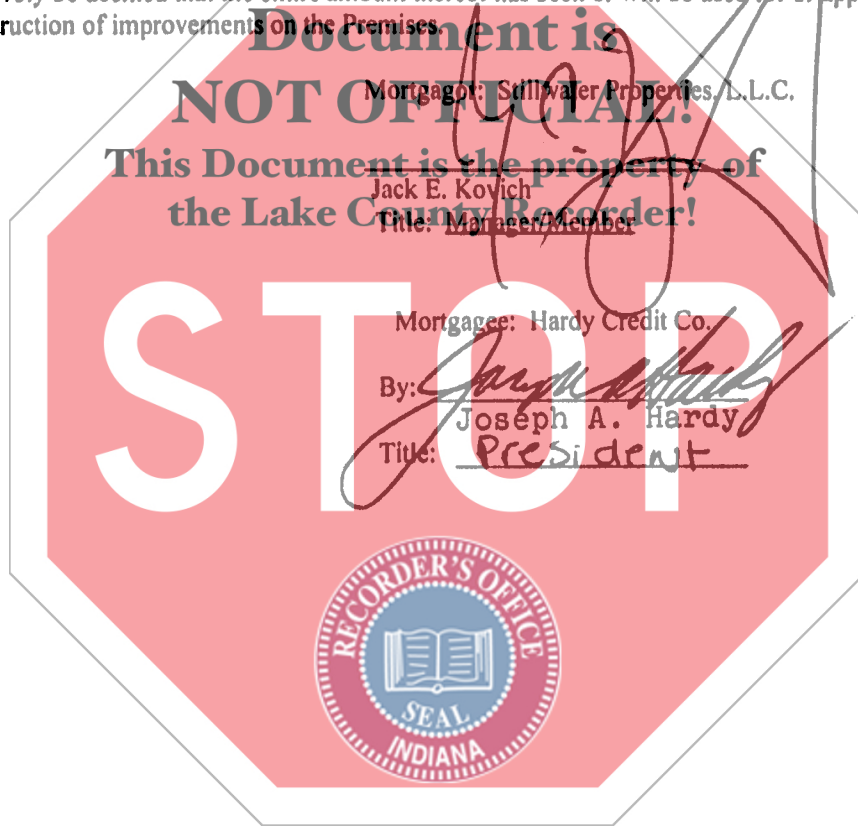
10. In the event an action is filed to foreclose this Mortgage, the Mortgagee, or his assigns, shall have the right to have a receiver appointed, without notice to the Mortgagor, the same being waived, to collect the rents, issues and profits of the real estate. No delay by the Mortgagee in exercising any of his rights herein, upon the occurrence of any default, shall operate as a waiver thereof or preclude the Mortgagee from the exercise thereof during the continuance of any default or breach of covenant or upon any subsequent default. Any expenses incurred by Mortgagee in foreclosing this Mortgage, including, without limitation, reasonable attorneys' and legal support staff fees, shall be a further obligation of Mortgagor to Mortgagee, secured by the lien of this Mortgage.

11. If there be any change in ownership of the premises covered by this Mortgage, the laws of inheritance applicable to the estate of Mortgagor or by testamentary devise, without the consent of the Mortgagee, the entire indebtedness secured hereby shall become due and payable immediately at the election of the Mortgagee; and if approved by the Mortgagee it shall be upon such terms and conditions and for such consideration as the Mortgagee may, in his discretion, prescribe, including a change in the interest rate provided for in the Note secured by the Mortgage. The term Mortgagor shall include the original Mortgagor who executes this instrument and her successors and grantees in interest so long as this Mortgage remains unreleased of record. Any assumption of this Mortgage without prior written approval of the Mortgagee shall be deemed a default and subject to the remedies for default outlined herein. All

rights of the Mortgagee granted herein shall inure to the benefit of Mortgagee's assigns and successors in interest.

12. All terms this mortgage shall be binding on each and all successors in ownership of said real estate, as well as upon all heirs, executors, administrators of Mortgagor or successors in ownership.

13. The Mortgage shall be subject and subordinate to a mortgage to be executed hereafter by Mortgagor covering the premises described in Exhibit A and securing a loan, not exceeding \$2,000,000.00 made primarily for the purpose of constructing and improving such Premises such loan to be evidenced by a note bearing interest at a rate not to exceed prime rate plus one (1) percent per year. The Mortgage will be subordinate only so long as the terms of the Purchase Money Loan Agreement of even date herewith are fully met by Mortgagor and it is understood that in order for the Purchase Money Mortgage to be subordinated Mortgagee has to approve any subsequent mortgage. On recording of any such Mortgage, it shall conclusively be deemed that the entire amount thereof has been or will be used for or applied on the costs of construction of improvements on the Premises.



State of Indiana, \_\_\_\_\_ County, SS:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ before me, a notary public, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledge himself to be the \_\_\_\_\_ of Stillwater Properties, L.L.C., and that (s)he as such \_\_\_\_\_ being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the business trust by himself (herself) as \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



State of Indiana, \_\_\_\_\_ County, SS:

Before me, the undersigned, a Notary Public in and for said County and State, this \_\_\_\_\_ day of \_\_\_\_\_, 1996, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing mortgage. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires: \_\_\_\_\_

State of Pennsylvania, Washington County, SS:



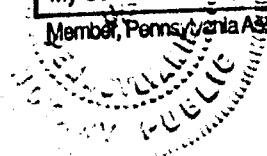
On this the 10<sup>th</sup> day of September, 1996 before me, a notary public, the undersigned officer, personally appeared Joseph A. Hardy, who acknowledge himself to be the President of Hardy Credit Co., a Pennsylvania Business Trust, and that (s)he as such President being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the business trust by himself (herself) as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Brenda Amund*

My Commission Expires: \_\_\_\_\_

Notary Seal  
Drenda Amund, Notary Public  
Peters Twp., Washington County  
My Commission Expires Dec. 21, 1999  
Member, Pennsylvania Association of Notaries



## EXHIBIT A

### LEGAL DESCRIPTION

**PARCEL I:** School Lots 43 and 44, the West 1/2 of School Lot 45, School Lots 46 and 47 and the East 1/2 of School Lots 34 and 35 in Section 16, Township 34 North, Range 8 West of the 2nd Principal Meridian, in the City of Crown Point, in Lake County, Indiana.

**PARCEL II:** The South 1 1/2 rods of the Southwest 1/4 of the Northwest 1/4 of Section 15, Township 34 North, Range 8 West of the 2nd Principal Meridian, in the City of Crown Point, Lake County, Indiana.

**PARCEL III:** Part of Lot 48 in Section 16, Township 34 North, Range 8 West of the 2nd Principal Meridian, in the City of Crown Point, Lake County, Indiana, described as follows: Beginning at the Southeast corner of said Lot 48; thence North along the East line thereof 74.48 feet, more or less, to the Southerly right of way line of State Road No. 8; thence Northwesterly along said Southerly right of way line to a point on a line which is 5 feet Northwesterly of (measured at right angles) and parallel to the Northwesterly line of a tract of land conveyed to John F. Britt and Ruby L. Britt, husband and wife, by a Warranty Deed dated October 14, 1957 and recorded October 21, 1957 in Deed Record 1073 Page 458 thence Southwesterly parallel to the Northwesterly Line of the land conveyed by said deed to a point on the South line of said Lot 48; thence East along said South line to the point of beginning.

**PARCEL IV:** The Easterly 65 feet of the following: Part of School Lot 48, Section 16, Township 34 North, Range 8 West of the 2nd Principal Meridian, described as follows: Beginning at the Southeast corner of said School Lot 48 and running thence North along the East line of said School Lot 48 a distance of 74.48 feet to the Southerly line of said State Road #8; thence Northwesterly along the Southerly line of State Road #8, a distance of 284 feet to the point of beginning of the tract of land herein described; thence continuing Northwesterly along the Southerly line of State Road #8, a distance of 320 feet; thence Southwesterly a distance of 750 feet; more or less, to the intersection of the South line of said School Lot 48 and the East line of Smith Ditch; thence East along the South line of said School Lot 48 to the intersection of the Westerly line of the tract of land conveyed to Leo McDaniel and Lorraine M. McDaniel, husband and wife, by Deed dated September 13, 1967 and recorded October 21, 1967, in Deed Record 1358, page 494, in the Recorder's Office Lake County, Indiana; thence Northeasterly along said Westerly line to the place of beginning, in Lake County, Indiana.

**PURCHASE MONEY MORTGAGE PROMISSORY NOTE**

\$1,265,000.00

Crown Point, Indiana

09-11-, 1996

FOR VALUE RECEIVED, the undersigned, Stillwater Properties, L.L.C., an Indiana Limited Liability Company ("Maker") having an address of 8960 N. 1132 W., Monticello, Indiana 47960 promises to pay to the order of HARDY CREDIT CO., a Pennsylvania business trust ("Lender") in immediately available funds, at the office of Lender at 4121 Washington Road, McMurray, PA 15317 or at such other location as the holder hereof may designate from time to time the principal sum of ONE MILLION TWO HUNDRED SIXTY FIVE THOUSAND DOLLARS (\$1,265,000.00), together with interest, at the rates hereinafter provided, from the date hereof. Maker shall pay interest to the order of Lender monthly in arrears on the first Business Day of each Month from and after the date hereof and interest shall be calculated for the actual number of days elapsed on the basis of a 360-day year. The principal balance hereof shall be payable by Maker to the order of Lender pursuant to Purchase Money Loan Agreement which is attached hereto, and made a part hereof and labeled Exhibit "A". The payment by Maker of a Release Amount (as defined in the Purchase Money Loan Agreement) shall be considered a prepayment of the principal balance hereof from time to time outstanding. Notwithstanding anything to the contrary herein contained, the entire outstanding principal balance hereof, together with all accrued and unpaid interest hereon, shall be due and payable on or before January 1, 1998.

The interest rate applicable to the outstanding principal balance of this Note shall be as follows:

(a) Interest applicable to this Note shall accrue at a rate per annum equal to the Prime Rate (as defined herein) plus one hundred (100) basis points until such rate shall have been adjusted pursuant to subparagraph (b) below.

(b) At such time as Lender shall have calculated the volume of lumber sales for which Maker and Contractors (as defined herein) shall have been billed by 84 Lumber during the calendar quarter when either Maker sales the first Lot (as defined in the Purchase Money Loan Agreement) in the Premises or Maker commences construction of a Building (as defined in the Purchase Money Loan Agreement) and Lender shall have compared the volume of 84 Lumber sales to the total of all lumber and building material sales by Maker and all Contractors and Lender shall have arrived at a percentage of the total volume of lumber sales in the development which shall have been billed by 84 Lumber Company during the calendar quarter and shall have notified Maker of such calculation, the per annum rate at which interest on this Note accrues shall be adjusted retroactively to the date of this Note, based on the percentage of all lumber sales for

which Maker and all Contractors shall have been billed by 84 Lumber Company during such calendar quarter, to that interest rate set forth in subparagraph (c) below which corresponds to such percentage of dollar sales, and such rate as so adjusted shall continue to apply to this Note until a further adjustment, if any, is made pursuant to subparagraphs (b) and (c) hereof. At such time as Lender shall have calculated the percentage of such sales during each three-month period after the initial such period, such interest rate shall again be adjusted in like manner retroactively to the beginning of such three month period until a further adjustment, if any, is made pursuant to subsections (b) and (c) hereof. Any such retroactive adjustment to the interest rate hereunder shall be effective at such time as Lender shall have calculated the percentage of lumber sales for which Maker and all Contractors shall have been billed by 84 Lumber Company during the applicable three-month period and shall have notified Maker of such calculation.

(c) The adjustments of the rate of interest set forth above shall be as follows:

Percentage of 84 Lumber Billings in Applicable Period	But less than:	Applicable Rate of Interest
Equal to or greater than:		
90%	N/A	Prime Rate plus 50 basis points
85%	90%	Prime Rate plus 250 basis points
80%	85%	Prime Rate plus 350 basis points
N/A	80%	Prime Rate plus 450 basis points

(d) Notwithstanding anything in this Note to the contrary, the rate of interest applicable to the outstanding principle balance of this Note from and after maturity, by acceleration or otherwise, shall be the Prime Rate plus four hundred fifty (450) basis points.

(e) If any retroactive interest rate adjustment made pursuant to subparagraphs (b) and (c) shall result in an overpayment or underpayment of interest for any applicable period, then (i) in the case of an overpayment, Maker shall be entitled to deduct such overpayment from payments of interest or principal otherwise thereafter becoming due pursuant to this Note or if the Note shall have been paid in full, Lender shall pay such overpayment to Maker at such time as such overpayment shall be calculated, and (ii) in the case of an underpayment within ten (10) days after having received notice of such underpayment from Lender. Maker shall be liable for any such underpayment notwithstanding that the principal balance of this Note and all interest thereon prior to any such retroactive interest rate adjustment may have been paid in full.

(f) In arriving at the percentage calculation as outlined in subparagraph (b) and (c) above, if Lender is presented with a legitimate estimate from a Competitor of 84 Lumber Company and an 84 Lumber Company estimate could not come within +/-5% of

the Competitor's estimate then the materials bought under this estimate will be ignored in the percentage calculation. However, if Lender believes that Maker or Contractors are selectively choosing items ("cherry picking") rather than submitting whole group estimates then Lender has the option to include the estimates in the percentage calculations. Moreover, in arriving at the percentage calculation as outlined in subparagraph (b) and (c) above, if Lender is presented with a situation wherein Maker or Contractors in the planned development do not purchase materials from 84 Lumber Company due to service, Lender will investigate the situation and determine whether or not such materials should be included in the percentage calculation. Furthermore, if Lender is presented with a situation wherein Maker or Contractors do not purchase materials from 84 Lumber Company due to the fact that materials were not of comparable quality to that of Competitor's, Lender will investigate the situation and if it is determined that the materials of 84 Lumber Company were not of comparable quality to Competitor's materials then materials purchased will not be included in the percentage calculation. The determination as to whether a competitor's materials shall be of comparable quality or not shall be at the sole discretion of the Lender.

(g) If any dispute arises regarding the calculation of the applicable interest rate in accordance with subparagraphs (b) or (f) above should arise, such disputes shall be settled by arbitration. A neutral person mutually selected by the parties will serve as a single arbitrator. Arbitration will take place in McMurray, PA or Pittsburgh, PA unless mutually agreed otherwise by the parties. This arbitration provision only applies to interest calculation disputes all other disputes will be decided in a court of law.

"Prime Rate", as that term is used herein, shall mean the interest rate per annum announced from time to time by PNC Bank, National Association at its principal office in Pittsburgh, Pennsylvania, as its prime rate. The aforesaid interest rates shall continue to apply whether or not judgment shall be entered on this Note.

"Competitors of 84 Lumber Company ("Competitor")" as that term is used herein shall be at the discretion of Lender to determine who or what constitutes a competitor to 84 Lumber Company but generally implies any other home building or supply facility which contractors purchase building materials.

"Contractors" as that term is used herein shall mean any builder, contractor or subcontractor developing or constructing Buildings or Residences in accordance with the Purchase Money Loan Agreement dated the same date hereof.

For purposes of this Note, a "Month" shall commence on the numbered day of a calendar month corresponding to the numbered day of the calendar month of the date of this Note.

If any payment or principal of interest on this Note shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding



Business Day and such extension of time shall in such case be included in computing interest in connection with such payment.

This Note is the Purchase Money Mortgage Note referred to in, is secured by the security interest granted in, and is entitled to the benefits of, the Purchase Money Loan Agreement, which provides, among other things, for the acceleration of the maturity hereof upon the occurrence of certain events. All capitalized terms not otherwise defined in this Note which are defined in the Purchase Money Loan Agreement shall have the meanings assigned to them in the Purchase Money Loan Agreement.

Maker waives presentment for payment, demand or notice of nonpayment of this Note, protest and notice of protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note, including without limitation notice of acceleration and notice of intent to accelerate.

The occurrence of any one or more of the following events (whatever the reason for such events and whether voluntary, involuntary or effected by operation of law) shall constitute "an event of default" under this Note:

- (a) Maker shall fail to make any payment of any installment of interest or any other sum under this Note when due and such failure remains uncured for ten (10) Business Days after the due date;
- (b) An "Event of Default" as defined in the Purchase Money Loan Agreement or the Purchase Money Mortgage shall have occurred;
- (c) Any proceeding for attachment or garnishment or the like shall be commenced against Maker by any creditor of Maker or any guarantor of this Note;
- (d) A proceeding shall have been instituted in a court having jurisdiction in the premises seeking a decree or order for relief in respect of Maker or any guarantor of this Note in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Maker or any such guarantor or for any substantial part of its, his or her property, or for the winding-up or liquidation of its, his or her affairs, and such proceeding shall remain undismissed or unstayed and in effect for a period of sixty (60) consecutive days or such court shall enter a decree or order granting any of the relief sought in such proceeding;
- (e) Maker or any guarantor of this Note shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of itself, himself or herself or of any substantial part of its, his or her property, or shall make a general

assignment for the benefit of creditors, of shall fail generally to pay its, his or her debts as they become due, or shall admit in writing an inability to pay any of its, his or her debts as they become due, or shall take any action in furtherance of any of the foregoing.

Upon the occurrence of an event of default specified in subparagraphs (a) or (b) hereof, then the whole of the principal of the indebtedness evidenced by this Note shall, at the option of the holder hereof and without notice, forthwith become due and payable. Upon the occurrence of an event of default specified in subparagraphs (c), (d), or (e) hereof, then the whole of the principle of the indebtedness evidenced by this Note, and the unpaid interest thereon, and any other sums then unpaid by Maker under this Note shall immediately become due and payable without notice or any other act.

In the event that Lender institutes legal proceedings to enforce this Note, the Purchase Money Loan Agreement or any other document or instrument evidencing or securing this indebtedness, Maker agrees to pay Lender, in addition to any principal, interest or premium, if any, due and unpaid, costs and expenses of such proceedings, including reasonable attorneys' fees, as set forth in Section 11.1 of the Purchase Money Loan Agreement.

Notwithstanding any provision of this Note to the contrary, it is the intent of Maker and Lender that Lender shall not at any time be entitled to receive, collect or apply, and Maker and Lender shall not be deemed to have contracted for, as interest on the principal indebtedness evidenced hereby, any amount in excess of the maximum rate of interest permitted to be charged by applicable law, and in the event Lender ever receives, collects or applies as interest any such excess, such excess shall be deemed partial payment of the principal indebtedness evidenced hereby, and if such principal shall be paid in full, any such excess shall forthwith be paid to Maker. In the event that, but for this paragraph, the rate of interest applicable to this Note would at any time exceed the maximum lawful rate, then this Note and all interest hereon shall thereupon be immediately due and payable.

The rights and obligations of the parties under this Note shall be governed by and interpreted and enforced in accordance with the substantive Laws of the Commonwealth of Pennsylvania, without giving effect to the principles of conflict laws. The provisions of the foregoing sentence shall not be construed to make inapplicable the provisions of any federal Law defining or removing a maximum rate of interest otherwise applicable to this Note.

Maker consents to the jurisdiction and venue of the Court of Common Pleas of Lake County, Indiana or in the United States District Court for the Northern District of Indiana or the District Court for the Western District of Pennsylvania in any action on, relating to or mentioning this Note or any other Purchase Money Loan Document.

In the event any one or more of the provisions contained in this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity,

illegality or unenforceability shall not affect any other provision of the Note, but the Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein.

This Note shall bind Maker its successors and assigns, and the benefits hereof shall inure to the benefit of Lender and its successors and assigns.

WITNESS the due execution hereof on the date first above written with the intention that this Note shall constitute a sealed instrument.

WITNESS/ATTEST:

**Document is  
NOT OFFICIAL!**

Stillwater Properties, L.L.C.

**This Document is the property of  
the Lake County Recorder!**

By: \_\_\_\_\_

Jack E. Kovich

Title: Member Manager

**STOP**

