

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:) Case No. 10-50494
)
FAIR FINANCE COMPANY) Chapter 7
)
Debtor.) Chief Judge Marilyn Shea-Stonum
)

MOTION OF TRUSTEE TO APPROVE COMPROMISE
WITH STEPHEN AND LINDA PLOPPER

Brian A. Bash (the “Trustee”), the duly appointed Chapter 7 Trustee for Fair Finance Company (the “Debtor”) in the above-captioned case, hereby moves for entry of an order, in substantially the form attached hereto as **Exhibit A**, approving the compromise of claims against defendants Stephen E. Plopper and Linda Plopper (the “Ploppers”) in adversary proceeding number 11-05048 pending before this Court for the reasons more fully set forth in the attached memorandum of law. A proposed Order is attached to this Motion as **Exhibit A**. The proposed Settlement Agreement, executed by the parties, is attached to this Motion as **Exhibit B**.

Date: March 30, 2011

Respectfully submitted,

/s/ David Proaño

Brian A. Bash, Trustee (0000134)
Kelly S. Burgan (0073649)
David Proaño (0078838)
Joseph M. Esmont (0084322)
BAKER & HOSTETLER LLP
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1900 East 9th Street, Suite 3200
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Counsel for the Trustee



105049411033000000000001

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	Case No. 10-50494
)	
FAIR FINANCE COMPANY)	Chapter 7
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Debtor.)	Chief Judge Marilyn Shea-Stonum
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**MEMORANDUM IN SUPPORT OF MOTION OF TRUSTEE TO APPROVE
COMPROMISE WITH STEPHEN AND LINDA PLOPPER**

In support of the Motion of Trustee to Approve Compromise With Stephen and Linda Plopper (the “**Motion**”),¹ the Trustee states as follows:

Proposed Findings of Fact:

A. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 9019 of the Federal Rules of Bankruptcy Procedure. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. By agreements executed as of June 13, 2010, the Debtor’s parent entities, Fair Holdings, Inc. (“**Fair Holdings**”) and DC Investments, LLC (“**DCI**”), each assigned to the Trustee all of their respective right, title and interest in and to their respective property, including, among other things, all accounts and notes receivable (the “**Assignments**”), which was subsequently approved by the Bankruptcy Court on June 16, 2010.

C. As a result of the Assignments and the order approving the Assignments, the Trustee has the right to enforce the Ploppers’ obligations to DCI and to pursue DCI’s claims against the Ploppers for the benefit of the Debtor’s estate and its creditors.

D. On or about October 31, 2003, DCI loaned \$250,000.00 to the Ploppers (the “**Loan**”).

¹ Terms capitalized but not defined herein shall have the meanings ascribed to them in the Motion.

In consideration for the Loan, on or about November 1, 2003, the Ploppers executed a Promissory Note in favor of DCI in the original principal amount of \$250,000.00 (the “**Promissory Note**”), a copy of which is attached to as Exhibit A to the Settlement Agreement attached hereto.

E. On or about October 8, 2004, the Ploppers and DCI executed a “First Amendment to Promissory Note” by which the maturity date of the Promissory Note was extended to November 1, 2006 (the “**First Amendment to Promissory Note**”), a copy of which is attached as Exhibit B to the Settlement Agreement attached hereto.

F. Under the terms of the First Amendment to Promissory Note, the entire outstanding principal balance of the Promissory Note, together with accrued interest, was due and payable on or before November 1, 2006.

G. In order to secure the indebtedness evidenced by the Promissory Note, on or about October 8, 2004, the Ploppers executed a mortgage in favor of DCI on real property located at 1205 East 126th Street, Carmel, Indiana 46033 (the “**Mortgage**”), a copy of which is attached as Exhibit C to the Settlement Agreement attached hereto.

H. On February 11, 2011, the Trustee filed a complaint against the Ploppers in an adversary proceeding before this Court under case number 11-05048 (the “**Litigation**”), alleging that the Ploppers defaulted under the terms of the Promissory Note, by, among other things, failing to repay the entire indebtedness due under the Promissory Note by the maturity date and by failing to make the monthly interest payments required under the terms of the Promissory Note.

I. The Trustee and the Ploppers have reached a compromise with respect to the amounts due under the Promissory Note (the “**Settlement**”) on the terms and conditions set forth in the

Settlement Agreement attached hereto as **Exhibit B** (the “**Settlement Agreement**”). As described more particularly in the Settlement Agreement, the Ploppers have agreed to pay the Trustee \$370,999.96 in exchange for a cancellation of the Promissory Note and Mortgage and dismissal of this Litigation.

Proposed Conclusions of Law:

A. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.”

B. Compromises are favored in bankruptcy cases. *In re Leeway Holding Co.*, 120 B.R. 881, 891 (Bankr. S.D. Ohio 1990). The decision to approve a settlement or compromise lies within the discretion of the Court and is warranted where the settlement is found to be reasonable and fair in light of the particular circumstances of the case. *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson (In re TMT Trailer Ferry, Inc.)*, 390 U.S. 414, 424-25 (1968).

C. In determining whether a settlement is reasonable, a court should consider the following factors: (1) the probability of success in litigation; (2) the difficulty in collecting any judgment which may be obtained; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attendant to it; and (4) the interests of creditors and equity holders and a proper deference to their reasonable views of the settlement. *See In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996); *In re Swallen’s, Inc.*, 210 B.R. 128 (Bankr. S.D. Ohio 1997). Bankruptcy courts should approve a proposed settlement unless it “fall[s] below the lowest point in the range of reasonableness.” *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied*, 464 U.S. 822 (1983).

D. Accordingly, courts generally give considerable deference to a trustee's recommendation of a proposed compromise and settlement. *See Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 604 (5th Cir. 1980). Indeed, the Court should give weight to a trustee's informed judgment that a compromise is fair and equitable to the estate. *See International Distrib. Centers, Inc.*, 103 B.R. 420, 423 (S.D.N.Y. 1989).

E. The Trustee respectfully submits that the compromise to be achieved by the proposed Settlement satisfies the standards for approval and as such should be approved under Rule 9019.

F. The proposed Settlement is reasonable and in the best interests of the estate and creditors. As set forth in the Settlement Agreement attached hereto as **Exhibit B**, the Settlement provides for full payment by the Ploppers of the sums due and owing to the Trustee under the Promissory Note. The Trustee, therefore, seeks only to compromise his claims for attorney fees. The Trustee's attorney fees, to date, are limited to amounts spent investigating the claims, preparing the complaint, and negotiating the Settlement. The possible benefit to the estate and creditors of collecting the Trustee's attorney fees through the Litigation is outweighed by the inconvenience, delay, and uncertainty associated with the Litigation, in addition to the expense and uncertainty of collection if the Trustee were required to proceed to judgment on his claims.

G. Having provided notice of the Motion to (a) the Office of the United States Trustee, (b) counsel to the Petitioning Creditors, (c) Stephen Plopper, (d) Linda Plopper, and (e) all parties who have requested notice, the Trustee requests and submits that, under the circumstances, no other or further notice need be given.

WHEREFORE, the Trustee respectfully requests that this Court enter an Order, in substantially the form attached hereto as **Exhibit A**, (i) granting the Motion; (ii) approving the compromise on the terms set forth in the Settlement Agreement; and (iii) authorizing and

directing the parties to take all actions necessary or incidental to performance under the Settlement Agreement.

Date: March 30, 2011

Respectfully submitted,

/s/ David Proaño

Brian A. Bash, Trustee (0000134)

Kelly S. Burgan (0073649)

David Proaño (0078838)

Joseph M. Esmont (0084322)

BAKER & HOSTETLER LLP

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Counsel for the Trustee

EXHIBIT A
PROPOSED ORDER

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	Case No. 10-50494
)	
FAIR FINANCE COMPANY)	Chapter 7
)	
Debtor.)	Chief Judge Marilyn Shea-Stonum
)	

**ORDER APPROVING COMPROMISE OF CLAIMS BY THE TRUSTEE
AGAINST STEPHEN AND LINDA PLOPPER**

This matter having been presented to the Court upon the Motion of Trustee to Approve Compromise With Stephen and Linda Plopper (the “**Motion**”),¹ and upon the Memorandum of Law In Support of the Motion; and the Court having considered the Motion, and it appearing that the Settlement is in the best interest of the Debtor’s estate and creditors, and after due deliberation and consideration of the facts and circumstances therein:

It is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Motion is **GRANTED** in its entirety.
2. The notice of the Motion was adequate and sufficient under the circumstances.

¹ Terms capitalized but not defined herein shall have the meanings ascribed to them in the Motion and the Memorandum of Law in Support of the Motion.

3. The Settlement is hereby approved in accordance with the terms and conditions set forth in the Settlement Agreement attached to the Motion.

4. The parties are hereby authorized and directed, without further order of this Court, to take all actions necessary or incidental to performance under the Settlement Agreement and to implement and effectuate this Order.

IT IS SO ORDERED.

###

Submitted by,

/s/ David Proaño

Brian A. Bash, Trustee (0000134)

Kelly S. Burgan (0073649)

David Proaño (0078838)

Joseph M. Esmont (0084322)

BAKER & HOSTETLER LLP

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Counsel for the Trustee

EXHIBIT B
SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "**Settlement Agreement**") is made and entered into this 25 day of March, 2011, by and between Brian A. Bash, in his capacity as the Chapter 7 Trustee (the "**Trustee**") for Fair Finance Company (the "**Debtor**") in a Chapter 7 Bankruptcy Proceeding pending in the United States Bankruptcy Court for the Northern District of Ohio (the "**Bankruptcy Court**") as case number 10-50494 (the "**Bankruptcy Case**"), Stephen E. Plopper, an individual with a place of residence at 1205 East 126th Street, Carmel, Indiana 46033, and Linda Plopper, an individual with a place of residence at 1205 East 126th Street, Carmel, Indiana 46033 (Stephen Plopper and Linda Plopper hereinafter referred to as the "**Ploppers**").

WHEREAS, by agreements executed as of June 13, 2010, the Debtor's parent entities, Fair Holdings, Inc. ("**Fair Holdings**") and DC Investments, LLC ("**DCI**"), each assigned to the Trustee all of their respective right, title and interest in and to their respective property, including, among other things, all accounts and notes receivable (the "**Assignments**"), which was subsequently approved by the Bankruptcy Court on June 16, 2010; and

WHEREAS, as a result of the Assignments and the order approving the Assignments, the Trustee has the right to enforce the Ploppers' obligations to DCI and to pursue DCI's claims against the Ploppers for the benefit of the Debtor's estate and its creditors; and

WHEREAS, on or about October 31, 2003, DCI loaned \$250,000.00 to the Ploppers (the "**Loan**"); and

WHEREAS, in consideration for the Loan, on or about November 1, 2003, the Ploppers executed a Promissory Note in favor of DCI in the original principal amount of \$250,000.00 (the "**Promissory Note**"), a copy of which is attached to this Settlement Agreement as **Exhibit A**; and

WHEREAS, on or about October 8, 2004, the Ploppers and DCI executed a "First Amendment to Promissory Note" by which the maturity date of the Promissory Note was extended to November 1, 2006 (the "**First Amendment to Promissory Note**"), a copy of which is attached to this Settlement Agreement as **Exhibit B**; and

WHEREAS, under the terms of the First Amendment to Promissory Note, the entire outstanding principal balance of the Promissory Note, together with accrued interest, was due and payable on or before November 1, 2006; and

WHEREAS, in order to secure the indebtedness evidenced by the Promissory Note, on or about October 8, 2004, the Ploppers executed a mortgage in favor of DCI on real property located at 1205 East 126th Street, Carmel, Indiana 46033 (the "**Mortgage**"), a copy of which is attached to this Settlement Agreement as **Exhibit C**; and

WHEREAS, on February 11, 2011, the Trustee filed a complaint against the Ploppers in an adversary proceeding in the United States Bankruptcy Court for the Northern District of Ohio, under case number 11-05048-mss (the "**Litigation**"), alleging that the Ploppers defaulted under the terms of the Promissory Note, by, among other things, failing to repay the entire indebtedness due under the

Promissory Note by the maturity date and by failing to make the monthly interest payments required under the terms of the Promissory Note; and

WHEREAS, the parties desire to enter into this Settlement Agreement in order to provide for certain payment in full settlement and discharge of the claims that the Trustee has against asserted against the Ploppers in the Litigation regarding the Promissory Note, among other terms.

NOW, THEREFORE, in consideration of the covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. **Settlement Sum.** Within seven (7) calendar days of the full execution of this Settlement Agreement, the Ploppers shall deliver a certified check in the amount of \$370,999.96 (the "**Settlement Sum**") made payable to "Brian A. Bash, Trustee for Fair Finance Company" to Kelly Burgan, Baker & Hostetler LLP, 1900 East 9th Street, Suite 3200, Cleveland, Ohio 44114. The Trustee shall deposit the Settlement Sum into an appropriate trust account pending the approval by the Bankruptcy Court of this Settlement Agreement.
2. **Effectiveness upon Bankruptcy Court Approval.** Within seven (7) calendar days of the timely receipt by the Trustee of the Settlement Sum in accordance with paragraph 1 of this Settlement Agreement, the Trustee shall file an appropriate motion with the Bankruptcy Court in the Litigation for authority to compromise the claims in the Litigation on the terms set forth in this Settlement Agreement. This Settlement Agreement shall become effective only upon entry of an order by the Bankruptcy Court approving the compromise on the terms set forth in this Settlement Agreement (the "**Compromise Order**"). The parties agree that the United States Bankruptcy Court for the Northern District of Ohio has jurisdiction over any disputes arising out of this Settlement Agreement, including, without limitation, disputes regarding its enforcement, construction and interpretation.
3. **Mutual Release.** The following mutual releases shall be effective only upon the timely receipt of the full Settlement Sum as set forth in Paragraph 1 of this Settlement Agreement and the entry of the Compromise Order approving this Settlement Agreement as set forth in Paragraph 2 of this Settlement Agreement:
 - (a) **Release by the Trustee of the Ploppers:** Except for claims arising out of this Settlement Agreement, the Trustee and his assigns, successors, employees, attorneys and agents (the "**Trustee Releasing Parties**"), hereby fully, finally and forever release, acquit and discharge the Ploppers and their assigns, successors, employees, attorneys, affiliates, subsidiaries and agents (the "**Ploppers Released Parties**") from any and all claims, demands, obligations, judgments, actions, causes of action and/or liabilities for injuries, losses, damages and/or compensation of any nature, kind or description whatsoever, known or unknown, foreseen or unforeseen, which the Trustee Releasing Parties ever had, now have, or may have against the Ploppers Released Parties arising from or relating to the Loan, the Promissory Note, the First Amendment to Promissory Note, and the

Mortgage. This release includes only those claims, demands, obligations, judgments, actions, causes of action and/or liabilities arising from the Loan, the Promissory Note, the First Amendment to Promissory Note, and/or the Mortgage.

- (b) Release by the Ploppers of the Trustee: Except for claims arising out of this Settlement Agreement, the Ploppers and their assigns, successors, employees, attorneys, affiliates, subsidiaries and agents (the “**Ploppers Releasing Parties**”), hereby fully, finally and forever releases, acquits and discharges the Trustee and his assigns, successors, employees, attorneys and agents (the “**Trustee Released Parties**”) from any and all claims, demands, obligations, judgments, actions, causes of action and/or liabilities for injuries, losses, damages and/or compensation of any nature, kind or description whatsoever, known or unknown, foreseen or unforeseen, which the Ploppers Releasing Parties ever had, now have, or may have against the Trustee Released Parties arising from or relating to the Loan, the Promissory Note, the First Amendment to Promissory Note, and the Mortgage. This release includes only those claims, demands, obligations, judgments, actions, causes of action and/or liabilities arising from the Loan, the Promissory Note, the First Amendment to Promissory Note, and/or the Mortgage.

4. **Dismissal of Litigation.** Within seven (7) calendar days of the entry of the Compromise Order approving this Settlement Agreement as set forth in Paragraph 2 of this Settlement Agreement, the Trustee shall file a notice in the Litigation, in substantially the same form as the notice attached hereto as **Exhibit D**, which dismisses with prejudice the claims asserted against the Ploppers in the Litigation.
5. **Cancellation of Promissory Note and Release of Mortgage.** Within seven (7) calendar days of the full execution of this Settlement Agreement, the Ploppers shall deliver to the Trustee the original copies of the Promissory Note and the First Amendment to Promissory Note. Within seven (7) calendar days of the entry of the Compromise Order approving this Settlement Agreement as set forth in Paragraph 2 of this Settlement Agreement, the Trustee shall mark the Promissory Note and the First Amendment to Promissory Note as “cancelled” and return the marked originals to the Ploppers, further the Trustee shall show the Mortgage as “released” and return the marked original or unmarked confirmed copy to the Ploppers.
6. **Representations by the Ploppers.** To induce the Trustee to enter into this Settlement Agreement, the Ploppers each acknowledge, represent, and warrant that (i) the sum of \$370,999.96 is due and owing by the Ploppers under the terms of the Promissory Note, (ii) the Ploppers have not executed or entered into any other amendments to the Promissory Note other than the First Amendment to Promissory Note, and (iii) the Ploppers have received no money or funds from the Debtor, Fair Holdings and/or DCI in connection with the Promissory Note or Mortgage other than the principal sum of \$250,000.00 loaned to the Ploppers by DCI on or about October 31, 2003. If any of these representations is false, misleading or incorrect, the Trustee reserves the right to set aside this Settlement Agreement and the releases herein by filing an appropriate

motion with the Bankruptcy Court and the Trustee further reserves the right to reassert any claims arising from the Promissory Note, the First Amendment to Promissory Note, and/or the Mortgage.

7. **Tolling Agreement.** In the event this Settlement Agreement is vacated or set aside for any reason, including, but not limited, for any of the reasons set forth in paragraph 6 of this Settlement Agreement, the parties agree that all statutes of limitations applicable to the claims raised by the Trustee in the Litigation shall be tolled from the date of this Settlement Agreement and shall remain tolled for one hundred eighty (180) days from the date on which the Settlement Agreement is vacated or set aside. Nothing in this provision shall be construed as an acknowledgement by any party that the claims raised in the Litigation have or have not been barred, or are about to be barred, by any applicable statute of limitations.
8. **Acknowledgment and Authority.** The parties to this Settlement Agreement acknowledge that each has read this Settlement Agreement and that the execution hereof is not induced by any representation other than as expressly contained herein, that the person executing this Settlement Agreement on behalf of the respective party has been duly authorized to execute and deliver this Settlement Agreement and that this Settlement Agreement is the legally binding obligation of such party.
9. **Choice of Law.** This Settlement Agreement shall be governed by the laws of the State of Ohio as applicable to agreements made and to be performed in Ohio, without regard to conflict of law principles.
10. **Integration.** This Settlement Agreement constitutes the entire agreement of the parties with respect to the subject matter of this agreement and supersedes and extinguishes any and all prior oral and/or written agreements between the parties concerning the subject matter of this agreement.
11. **Construction.** No provision of this Settlement Agreement shall be interpreted or construed against any party hereto because such party or its legal representative drafted such provision. The terms of this Settlement Agreement are contractual and are not mere recitals.
12. **Survivability.** If any provision of this Settlement Agreement is determined to be unlawful, invalid or unenforceable for any reason, the remaining provisions shall continue to be binding upon all the parties.
13. **Successors, heirs and assigns.** This Settlement Agreement is binding on the successors, heirs and assigns of the parties to this Agreement.
14. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery. All such counterparts together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date set forth above.

Stephen E. Plopper

By: Stephen Plopper

Linda E. Plopper

By: Linda E. Plopper

Brian A. Bash, as Trustee of the Fair Finance Company

By: Bobby Tamm

EXHIBIT A
THE \$250,000.00 PROMISSORY NOTE

PROMISSORY NOTE

\$250,000.00

Indianapolis, Indiana
November 1, 2003

FOR VALUE RECEIVED, the undersigned Stephen E. Plopper and Linda E. Plopper, 1205 E. 126th Street, Carmel, IN 46033 (hereinafter referred to as "Maker"), jointly and severally promises to pay to the order of DC Investments, LLC 111 Monument Circle, Ste. 4800, Indianapolis, IN 46204 (hereinafter referred to as "Payee") and any successor holder(s) hereof from time to time, (being hereinafter referred to as "Holder"), or at such other place as Holder may designate to Maker in writing from time to time, the principal sum of Two Hundred Fifty Thousand Dollars and no/100 (\$250,000.00), together with simple interest thereon on so much thereof as is from time to time outstanding and unpaid, at the rate hereinafter set forth, in lawful money of the United States of America, which shall at the time of payment be legal tender in payment of all debts and dues, public and private. Such principal and interest shall be paid in the following manner, to-wit:

1.1 Installment Payments of Interest. The unpaid principal balance of this Note and all accrued and unpaid interest thereon shall be due and payable November 1, 2004 ("Maturity Date"). The interest due and payable on this Note shall be payable in equal monthly installments in the amount of One Thousand Six Hundred Sixty-six and 66/100 Dollars (\$1,666.66) on the first day of each successive calendar month, beginning December 1, 2003, and continuing on the first day of each calendar month thereafter until the Note Maturity Date, on which date the entire unpaid principal balance of the Note shall be due and payable together with all accrued and unpaid interest.

The unpaid principal balance from time to time of the Note shall bear interest from the date hereof until the Note Maturity Date at a rate per annum equal to Eight percent (8%). After the Note Maturity Date, interest on the unpaid principal balance of the Note will accrue at twelve percent (12%) per annum. After the Note Maturity Date, interest which accrues on the unpaid principal balance of the Note shall be payable as accrued and without demand.

1.2 Prepayment. This Note may be prepaid in whole or in part, without the prior written consent of Holder, provided that any such prepayment shall be applied first to the payment of interest accrued hereunder and then to the unpaid principal balance evidenced hereby.

1.3 Default. It is hereby expressly agreed that should any Default occur in the payment of principal or interest as stipulated above, or should any other Default occur under this Note then in such event the indebtedness evidenced hereby, including all unpaid interest accrued thereon, shall, at the option of Holder and without notice to Maker, at once become due and payable and may be collected forthwith, whether or not there has been a prior demand for payment and regardless of the stipulated Maturity Date. Time is of the essence of this Note.

So long as any default exists hereunder, regardless of whether or not there has been an acceleration of the indebtedness evidenced hereby (whether by acceleration or otherwise), interest shall accrue on the outstanding principal balance of this Note at a rate per annum equal to Twelve percent (12%), or if such increased rate of interest may be collected from Maker under

applicable law (the "Default Interest Rate"), then such Default Interest shall be immediately due and payable. All such interest shall be paid at the time of and as a condition precedent to the curing of any such Default should Holder, at its sole option, allow such Default to be cured.

The remedies of Holder under the terms of this Note, or at law or in equity, shall be cumulative and concurrent, and may be pursued singly, successively or together in Holder's discretion. In the event this Note, or any part hereof, is collected by or through an attorney-at-law, Maker agrees to pay all costs of collection including, but not limited to, reasonable attorney's fees.

1.4 No Waiver; Amendment. No failure to accelerate the debt evidenced hereby by reason of default hereunder, acceptance of a partial or past due payment, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Holder thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by any applicable laws; and Maker hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note, shall operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part unless Holder agrees otherwise in writing. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

1.5 Waivers. Presentment for payment, demand, protest and notice of demand, protest and nonpayment and all other notices are hereby waived by Maker. Maker hereby further waives and renounces, to the fullest extent permitted by law, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisal, exemption and homestead now or hereafter provided by the Constitution and laws of the United States of America and of each state thereof, both as to itself and in and to all of its property, real and personal, and against the enforcement and collection of the obligations evidenced by this Note.

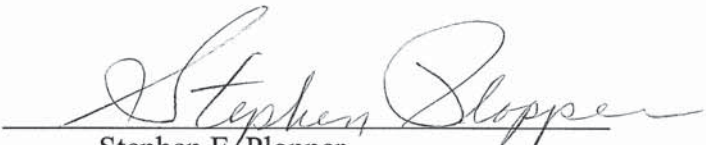
1.6 Unconditional Payment. Maker is and shall be obligated to pay principal, interest and any and all other amounts which become payable hereunder absolutely and unconditionally and without abatement, postponement, diminution or deduction and without any reduction for counterclaim or setoff. In the event that at any time any payment received by Holder hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any bankruptcy, insolvency or other debtor relief law, then the obligation to make such other payment shall survive any cancellation or satisfaction of this Note or return thereof to Maker and shall not be discharged or satisfied with any prior payment thereof or cancellation of this Note, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable upon demand.

1.7 Security. This Note is secured by a subordination mortgage on the principal residence of Maker located at 1205 E. 126th Street, Carmel, IN 46033.

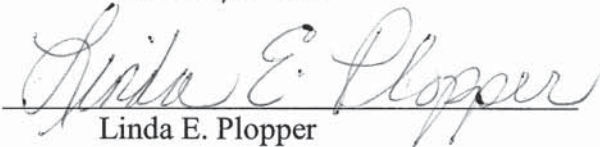
1.8 Miscellaneous. This Note shall be interpreted, construed and enforced according to the laws of the State of Indiana. The terms and provisions hereof shall be binding upon and inure to the benefit of Maker and Holder and their respective heirs, executors, legal representatives, successors-in-title and assigns, whether by voluntary action of the parties or by operation of law. All personal pronouns used herein, whether used in the masculine or feminine or neuter, shall include all other genders; the singular shall include the plural and vice versa. Titles of paragraphs are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provisions hereof. Time is of the essence with respect to all provisions of this Note.

IN WITNESS WHEREOF, Maker has executed this Note and is duly authorized thereunto on the date first above written.

MAKER:



Stephen E. Plopper



Linda E. Plopper

EXHIBIT B

THE FIRST AMENDMENT TO THE PROMISSORY NOTE

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000

First Amendment to Promissory Note

THIS FIRST AMENDMENT TO PROMISSORY NOTE dated this 8th day of October, 2004, is by Stephen E. Plopper and Linda E. Plopper ("Maker") and DC Investments, LLC ("DCI") an Indiana limited liability company. The parties agree as follows:

Recitals

WHEREAS, Borrow and DCI entered into that certain Promissory Note dated November 1, 2006 in the principal amount of \$250,000.00 ("Note");

WHEREAS, Maker has agreed to amend the Note in order to extend the Maturity Date to November 1, 2006;

WHEREAS, DCI is willing to amend the Note subject to the terms herein and subject to the amendment of the Note as herein provided;

NOW THEREFORE, in consideration of the premises, and the mutual promises herein contained, the parties agree that the Note shall be, and hereby is, amended as provided herein and the parties further agrees as follows:


1. **Extended Maturity Date:** Maker agrees to pay the balance due (principal and all accrued interest) in full on or before November 1, 2006.

All other terms and conditions in the Note shall remain the same and shall continue in full force and effect that are not specifically amended herein and shall continue during the amended term of the Note without change.

IN WITNESS WHEREOF, Maker and DCI have caused this First Amendment to Promissory Note to be executed personally and by its duly authorized Managing Member as of the day first written above.

DCI Investments, LLC

By: 
Timothy S. Durham, Managing Member


Stephen E. Plopper

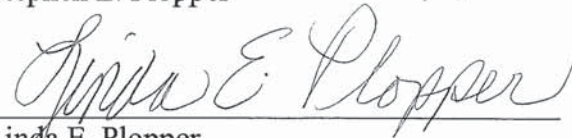

Linda E. Plopper

EXHIBIT C
THE MORTGAGE

REAL ESTATE MORTGAGE

Stephen E. Plopper and Linda E. Plopper, husband and wife (hereinafter referred to as "Mortgagors"), hereby MORTGAGE AND WARRANT to DC Investments, LLC, an Indiana limited liability company, Ste. 4800, 111 Monument Circle, Indianapolis, Indiana 46204 (hereinafter referred to as "Mortgagee"), their interest in and to a parcel of real estate located in Hamilton County, Indiana, more particularly described in Exhibit A, attached hereto and made a part hereof by reference (hereinafter referred to as the "Real Estate"), and all improvements now or hereafter situated thereon or used in connection therewith, and all rights, privileges, interests, easements, hereditaments, appurtenances now or hereafter thereunto belonging or anywise appertaining, or appurtenant to the Real Estate (the "Improvements"), and the rents, issues, income and profits of the Real Estate.

It is the intention of Mortgagors herein, and of this instrument, that the terms of the Mortgage shall cover Mortgagors' interest in and to the Real Estate.

Mortgagors also hereby assign to Mortgagee, as additional and collateral security for the payment and performance of the Obligations (as hereinafter defined), all the rents, issues and profits which may hereafter become due Mortgagor under or by virtue of any lease, sublease, whether written or verbal, or any letting of, or any agreement for the use or occupancy of, any part of the said Mortgaged Property, which may have been heretofore or hereafter made.

The interests of Mortgagee hereunder shall be held by Mortgagee and its successors and assigns, subject, however, to the terms and conditions of this Mortgage and subject to those encumbrances described in Exhibit B attached hereto and made a part hereof by reference (such listed encumbrances collectively referred to as the "Permitted Encumbrances").

ARTICLE I SECURITY OF MORTGAGES

Section 1.01. Performance and Obligations Secured. This Mortgage is given to secure (a) the performance by Mortgagors of the covenants and agreements contained in this Mortgage, (b) the payment by Mortgagors of the indebtedness to Mortgagee, evidenced by a Promissory Note, as amended, of even date herewith, in the total principal sum of Two Hundred Fifty Thousand Dollars (\$250,000.00), executed by Mortgagors and payable to the order of Mortgagee evidencing the amount of the loan made by Mortgagee to Mortgagors (hereinafter the "Note") and any and all other indebtedness or obligations now or hereafter incurred or arising pursuant to the provisions of the Note or this Mortgage, or such other indebtedness or obligation or any part of the same (all of such indebtedness and obligations collectively referred to as the "Obligations"). This Mortgage

shall also secure any and all renewals or extensions of the whole or any part of the Obligations, however evidenced, with interest at such lawful rate as may be agreed upon, and any such renewals or extensions or any change in the terms or rate of interest shall not impair in any manner the validity of or the priority of this Mortgage, nor release Mortgagors from liability for the Obligations. Reference is hereby made to the Note, and all other Loan Documents as if set out here at length and incorporated herein.

ARTICLE II
COVENANTS OF MORTGAGOR

Mortgagors covenant and agree with Mortgagee as follows:

Section 2.01. Covenants of Title. Mortgagors warrant that they are lawfully possessed of the Real Estate and hold the fee simple title to the Real Estate, subject to no liens or encumbrances except the Permitted Encumbrances.

Except as to after acquired property and improvements to be constructed, Mortgagors warrant that they are lawfully possessed of and have good and complete title to all the remainder of the Mortgaged Property, free and clear of all liens and encumbrances, other than the Permitted Encumbrances.

Mortgagors warrant and will defend the Mortgaged Property for the benefit of Mortgagee, and Mortgagee's lien hereunder, against all claims and demands of any person whomsoever. Mortgagors have the right and authority to mortgage the Mortgaged Property as provided in this Mortgage. So long as there is any balance due under the Note or other Obligations, Mortgagors will maintain and preserve the lien of this Mortgage on the whole of the Mortgaged Property now owned or hereafter acquired.

Section 2.02. Covenant To Comply with Terms of Note. Mortgagors will pay the principal amount of and interest on the Note and pay and perform all other Obligations, as the same become due, in accordance with its terms, without relief from valuation or appraisal laws, and they will keep, observe and perform all of the terms, provisions, covenants and agreements of this Mortgage, the Note and all other Loan Documents.

Section 2.03. Covenant To Pay Taxes and Discharge Liens. Mortgagors shall pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges or levies imposed upon them or upon their respective income and profits or upon any of their property, real, personal or mixed, or upon any part thereof, before the same shall become in default, as well as all lawful claims for labor, materials and supplies or otherwise, which, if unpaid, might become a

lien or charge upon such properties or any part thereof; provided that Mortgagors shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment, charge, levy or claim (A) which does not or will not, in the sole judgment of Mortgagee, constitute a lien on the Mortgaged Property so long as (i) the validity thereof shall be contested in good faith and diligently and by appropriate proceedings, (ii) there exists at no time during the contest an Event of Default (as defined in the Note) or an Unmatured Default and (iii) Mortgagors shall have set aside on their books adequate reserves with respect to any such tax, assessment, charge, levy or claim, so contested and (B) which does or may, in Mortgagee's sole judgment, constitute a lien on the Mortgaged Property so long as (i) the requirements of Clauses (A)(i), (ii) and (iii) of this Section are satisfied, (ii) Mortgagors have provided bonds, letters of credit, cash deposits or other assurances to Mortgagee as Mortgagee reasonably requires; and provided, further, that payment with respect to any such tax, assessment, charge, levy or claim (whether or not it may or may not constitute a lien on the Mortgaged Property) shall be made before any of its property shall be seized or sold in satisfaction thereof.

Section 2.04. Payment of Utilities. Mortgagors agree to pay or cause to be paid, before any fine, penalty, interest or additional cost attaches, all water, drainage and sewer charges, rents or levies, of any kind and nature whatsoever, ordinary or extraordinary, which may be levied, assessed or imposed upon or become a lien on or against the Mortgaged Property of any portion thereof and all charges for electricity, power, gas, water and other utilities used in connection with the Mortgaged Property and, at the request of Mortgagee, to exhibit to Mortgagee official receipts evidencing such payments.

Section 2.05. Covenant with Respect to Maintenance of Insurance - Application of Proceeds. Mortgagors shall provide, maintain and keep in force at all times the following policies of insurance:

(a) Insurance against loss or damage to the Mortgaged Property caused by fire and any of the risks covered by insurance of the type now known as "coverage against all risks of physical loss," in an amount equal to one hundred percent (100%) of the replacement cost of the Improvements and the Chattels and sufficient to prevent Mortgagors and Mortgagee from becoming co-insurers, and on such other terms as are satisfactory to Mortgagee; and

(b) Comprehensive broad form general liability insurance, insuring against any and all claims for bodily injury, death or property damage occurring on, in or about the Real Estate, the Improvements and the adjoining streets, sidewalks and passageways, subject to a combined single limit of not less than One Million Dollars (\$1,000,000) for personal injury, death or property damage arising out of any one accident, and otherwise on such terms as are satisfactory to Mortgagee; and

Each policy of insurance required by the terms of this Mortgage shall contain an endorsement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagors which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set-off, counterclaim or deductions against Mortgagors. In addition, each policy shall contain an agreement by the insurer that such policy shall not be canceled or changed except upon not less than thirty (30) days prior written notice delivered to Mortgagee.

All such insurance policies and renewals thereof shall be written by companies acceptable to Mortgagee, shall be in a form acceptable to Mortgagee and shall include a standard mortgage clause in favor of and in form acceptable to Mortgagee. Mortgagee shall have the right to hold the policies, or binders thereof acceptable to Mortgagee, and Mortgagors shall promptly furnish to Mortgagee all renewal notices and all receipts of paid premiums. At least thirty (30) days prior to the expiration date of any such policy, Mortgagors shall deliver to Mortgagee a renewal policy, or binder thereof, in form satisfactory to Mortgagee.

Section 2.06. Covenant To Maintain, Repair and Replace Mortgaged Property. Mortgagors will, at all times, maintain, preserve and keep the Mortgaged Property in good repair, working order and condition and will not commit or suffer any waste thereof, reasonable wear and tear excepted. Mortgagors shall, from time to time, if and when required by Mortgagee (1) perform a site investigation of the Property to determine the existence and levels of hazardous or toxic substances on the Mortgaged Property, (2) issue a report certifying the results of such inspection to Mortgagee, and (3) take such remedial action as may be required by Mortgagee based upon such report.

Section 2.07. Covenant of Further Assurances. Mortgagor will execute and deliver such further instruments and do such further acts as may be reasonably necessary or appropriate to carry out more effectively the purposes of this Mortgage or to protect or preserve the lien hereof or extend such lien to after acquired property.

Section 2.08. Right of Mortgagee To Perform Covenants on Behalf of Mortgagor. Upon the failure of Mortgagors to keep, observe and perform any of the covenants and agreements contained in this Mortgage, the Note, or any other Loan Document, Mortgagee shall be, in its discretion, forthwith entitled, in conjunction with or in addition to any other remedy herein provided, to perform or cause the same to be performed on behalf of Mortgagors and the Mortgaged Property, and any amounts so advanced or expended by Mortgagee in performing or securing the performance thereof shall, immediately upon such performance, become due and payable by Mortgagors to Mortgagee, shall bear per annum interest at the rate equal to the Default Rate (as defined in the Note) and shall, together with the interest thereon, become a part of the Obligations secured under this Mortgage. No such advance shall relieve Mortgagors from any default. Nothing

herein contained shall be construed to require Mortgagee to advance or expend money or moneys for any such purpose or purposes. The rights of Mortgagee under this Section are in addition to all rights granted Mortgagee in this Mortgage, the Note, and all other Loan Documents.

Section 2.09. Damage or Destruction. Mortgagors shall give prompt written notice to the insurance carrier and Mortgagee of any loss or damage to the Mortgaged Property as the result of fire or other casualty. Mortgagee may make proof of loss in connection with such loss or damage if not made promptly by Mortgagors. Unless Mortgagee and Mortgagors otherwise agree in writing, all insurance proceeds payable for such loss or damage shall be applied to restoration or repair of the Mortgaged Property, provided that such restoration or repair is economically feasible in Mortgagee's reasonable determination and Mortgagee's security is not diminished thereby. If Mortgagee reasonably determines that restoration or repair is not economically feasible or that Mortgagee's security hereunder would thereby be impaired, the insurance proceeds shall be applied to the sum secured by this Mortgage, whether or not then due, with any excess paid to Mortgagors. If Mortgagors abandon the Mortgaged Property or does not respond within thirty (30) days to a written notice from Mortgagee that the insurance carrier has offered to settle a claim, then Mortgagee may collect all insurance proceeds and Mortgagee, in its sole discretion, may apply such proceeds to repair or restore the Mortgaged Property or apply the same against the sum secured by this Mortgage, whether or not then due. Said thirty (30) days period will commence when Mortgagee gives such notice to Mortgagors. Unless Mortgagee and Mortgagors otherwise agree in writing, any application of insurance proceeds to the principal amount secured hereby shall not extend or postpone the due date of monthly payments required by the Note or alter the amount of any such monthly payment. If title to the Mortgaged Property is acquired by Mortgagee, Mortgagors' right to receive any insurance proceeds resulting from damage or other casualty to the Mortgaged Property prior to such acquisition shall pass to Mortgagee to the extent of the sum secured by this Mortgage immediately prior to such acquisition.

Section 2.10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation, taking by power of eminent domain or other taking of any part of the Mortgaged Property, or for conveyance in lieu of condemnation, are hereby fully assigned and shall be paid to Mortgagee. In the event of a total taking of the Mortgaged Property, the proceeds shall be applied to the sum secured by this Mortgage, whether or not then due, with any excess paid to Mortgagors. In the event of a partial taking of the Mortgaged Property, unless Mortgagors and Mortgagee otherwise agree in writing, the sum secured by this Mortgage shall be reduced by the amount of the proceeds multiplied by the following fraction:

- (a) The total amount of the sum secured by this Mortgage immediately prior to such taking, divided by
- (b) The fair market value, as reasonably determined by Mortgagee, of the Mortgaged

Property immediately prior to such taking.

Any balance remaining shall be paid to Mortgagors. If the Mortgaged Property is abandoned by Mortgagors, or if, after notice by Mortgagee to Mortgagors, that the condemnor offers to make an award or settle the claim for damages, and Mortgagors fail to respond to Mortgagee within thirty (30) days after the date such notice is given to Mortgagors by Mortgagee, Mortgagee is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Mortgaged Property or to the sum secured by this Mortgage, whether or not then due. Unless Mortgagee and Mortgagors otherwise agree in writing, any application of proceeds to principal under the Note shall not extend or postpone the due date of the monthly payments under the Note or change the amount of such payments.

Section 2.11. Indemnification for Legal Expenses. If any action or proceeding be commenced (except an action to foreclose this Mortgage or to collect or otherwise secure the performance of the Obligations), to which action or proceeding Mortgagee is made a party by virtue of the existence of this Mortgage or a party because it becomes necessary in the opinion of Mortgagee to defend and uphold the lien of this Mortgage, all sums paid by Mortgagee for the expense of any litigation to prosecute and defend the rights and lien granted by this Mortgage (including reasonable counsel fees, costs and allowances) shall, together with per annum interest thereon at the rate equal to the Default Rate, be a further lien on the Mortgaged Property and secured by this Mortgage, and shall be collectible thereupon and thereby in like manner as the principal sum, and paid by Mortgagor upon demand. Nothing in this Section shall be deemed to limit or preclude the recovery of all applicable statutory costs, allowances and disbursements, including reasonable attorneys' fees, in any action to foreclose this Mortgage or to collect or otherwise secure the performance of the Obligations.

Section 2.12. Payment of Filing Fees. Mortgagors will pay all filing fees for the filing of this instrument or of financing statements filed to perfect the security interest provided in this Mortgage or in connection with this Mortgage.

Section 2.13. Inspection. Mortgagee, or its duly authorized agent, shall have the right to enter any portion of the Mortgaged Property, at all reasonable hours of the day, for the purpose of examining and inspecting the same.

Section 2.14. Compliance With Agreements, Laws, etc. Mortgagors agree to perform, comply with all covenants, agreements and restrictions materially affecting the Mortgaged Property and with all laws, ordinances, acts, rules, regulations and orders of any legislative, executive, administrative or judicial body, commission or officer (whether federal, state or local) exercising any power or regulation or supervision over Mortgagors, or any part of the Mortgaged Property, whether now or hereafter enacted and in force, whether the same be directed to the

erection, repair, manner of use or structural alteration of buildings or otherwise. Mortgagors further agree (i) to comply with the terms of all insurance policies covering or applicable to the Mortgaged Property, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of or standards recommended by the National and Regional Fire Protection Associations (or any other body exercising similar functions) applicable to or affecting the Mortgaged Property, or any use or condition of the Mortgaged Property, and (ii) to procure, maintain and comply with, all licenses or other authorizations required for the intended use of the Mortgaged Property then being made by Mortgagors or any other party, and for the proper erection, installation, operation and maintenance of the Improvements and Chattels or any part thereof.

Section 2.15. No Modification of Permitted Encumbrances. Mortgagors shall not modify or permit any modification of any Permitted Encumbrance, without the prior written consent of Mortgagee.

Section 2.16. Hazardous Substances.

(a) Mortgagors hereby represent, warrant, covenant and agree to and with Mortgagee that:

None of Mortgagors, (i) have received any notice of any hazardous or other waste substances or materials in, under or upon the Mortgaged Property or of any violation of any environmental protection laws or regulations with respect to the Mortgaged Property or (ii) know of any basis for any such notice or violation with respect to the Mortgaged Property.

ARTICLE III

DEFAULT AND RIGHTS AND REMEDIES OF MORTGAGEE UPON DEFAULT

Section 3.01. Definition of Default. The term "Event of Default," wherever used in this Mortgage, shall have the meaning set forth for such expression in the Note.

Section 3.02. Acceleration of Maturity on Note. Upon any Event of Default, the unpaid balance of the Obligations with respect to this Note shall, at the option of Mortgagee, become immediately due and payable. Notice of the exercise of this option is hereby waived by Mortgagors.

Section 3.03. Foreclosure and Other Legal Remedies. Upon any Event of Default, Mortgagee shall be, in its discretion, forthwith entitled to protect and enforce its rights under this Mortgage by a suit or suits in equity or at law, for the specific performance of any covenant or

agreement in the Note, or in this Mortgage contained, or in aid of the execution of any power or right therein or herein granted, or for the foreclosure of this Mortgage, including the right to sue upon the Note and proceed thereon to judgment for the whole amount then due under this Mortgage, or the enforcement of any other legal or equitable remedy available to Mortgagee. All expenses incurred by Mortgagee in connection with such legal proceedings, or in any other proceedings wherein it becomes necessary that this Mortgage be allowed or established in court, shall become immediately due and payable by Mortgagors and shall become a part of the Obligations, including, without limiting the generality thereof, reasonable attorneys' fees and litigation preparation expenses, including, without limitation, paraprofessional fees, secretarial overtime, depositions, electronic research, postage, travel, communications and related expenses and costs, the cost of title insurance or continuation of abstracts, and costs and expenses in connection with preparing the Mortgaged Property for sale, including, without limitation, costs of environmental testing, investigation, reporting, remediation and clean-up, and procuring or preparing any documents or evidence for use in any of the foregoing. In the event of any sale made under or by virtue of a judicial proceeding or decree of foreclosure and sale, or as permitted by law, the Mortgaged Property may be sold in one parcel and as an entirety, or in separate parcels or lots, as Mortgagee may determine. Mortgagee may, at its option, foreclose this Mortgage for any portion of the Obligations which is then due and payable, subject to the continuing lien of this Mortgage for the balance of the Obligations not then due and payable. Upon any sale by Mortgagee or by any receiver or public officer, Mortgagee may, if permitted by law and after allowing for costs and expenses of the sale, compensation and other charges in paying the purchase price, apply any portion of or all of the Obligations, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon, to the extent of the purchase price. Mortgagee shall have the right to proceed with foreclosure of the liens and security interest evidenced hereby without declaring the entire Obligations due, and in such event any such foreclosure sale may be made subject to the unmatured part of the Obligations; and any such sale shall not in any manner affect the unmatured part of the Obligations, but as to such unmatured part of the Obligations, this Mortgage shall remain in full force and effect just as though no sale had been made.

Section 3.04. Remedies Are Cumulative. No remedy herein conferred upon or reserved to Mortgagee is intended to be or shall be exclusive of any other remedy, but every remedy herein provided shall be cumulative and shall be in addition to every other remedy given hereunder, or in any instrument executed in connection herewith, or now or hereafter existing at law or in equity, or by statute; and every such right and remedy may be exercised from time to time and as often as may be deemed expedient.

Section 3.05. In the event that Mortgagee: (a) grants any extension of time or forbearance with respect to the payment of any indebtedness secured by this Mortgage; (b) takes other or additional security for the payment thereof; (c) waives or fails to exercise any right granted herein or under the Note; (d) grants any release, with or without consideration, of the whole or any

part of the security held for the payment of the debt secured hereby; or (e) amends or modifies in any respect with the consent of Mortgagor any of the terms and provisions hereof or of the Note; then and in any such event, such act or omission to act shall not release Mortgagor or any co-maker, surety, or guarantor of this Mortgage or of the Note, under any covenant of this Mortgage or of the Note, nor preclude Mortgagee from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other Event of Default then made or any subsequent Event of Default and without in any wise impairing or affecting the lien or priority of this Mortgage.

ARTICLE IV
MISCELLANEOUS

Section 4.01. Successors and Assigns. Reference in this Mortgage to Mortgagors and Mortgagee shall in each case be deemed to include the successors and assigns of such party, and all the covenants, stipulations and agreements herein contained are and shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

Section 4.02. Separability of Provisions. In the event any one or more of the provisions contained in this Mortgage or in the Note, the performance of which are secured hereunder, should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

Section 4.03. Applicable Law. This Mortgage shall be governed by and construed in accordance with the laws of the State of Indiana.

Section 4.04. Notice. All notices, requests, demands and other communications provided for hereunder shall be in writing (including telegraphic communication) and mailed by certified or registered mail or telegraphed or delivered to the applicable party at the address indicated below:

If to Mortgagee:	DC Investments, LLC Ste. 4800 111 Monument Circle Indianapolis, IN 46204
------------------	---

If to Mortgagors: Stephen & Linda Plopper
1205 E. 126th St.
Carmel, IN 46033

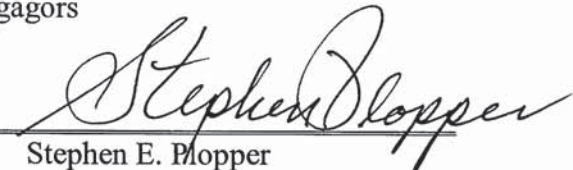
or, as to each party, at such other address as shall be designated by such parties in a written notice to the other party complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall, when mailed or telegraphed, be effective when deposited in the mails or delivered to the telegraph company, respectively, addressed as aforesaid.

Section 4.05. General Provisions. Whenever the context hereof requires, reference herein made to the singular number shall be understood as including the plural, and, likewise, the plural shall be understood as denoting the singular, and specific enumeration shall not exclude the general but shall be considered as cumulative.

The headings and titles of the various articles and sections contained herein are inserted for the purpose of description only and are in no way to be construed as limiting or modifying the content of any such article or section. References to Sections and Articles shall be to Sections and Articles of this Mortgage, unless otherwise specified. This Mortgage may be executed in counterparts, each of which shall constitute an original.

Mortgagors have caused this Mortgage to be executed as of this 8th day of October, 2004.

Mortgagors

By: 
Stephen E. Plopper

By: 
Linda E. Plopper

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Stephen E. Plopper and Linda E. Plopper, by me known who acknowledged the execution of the foregoing "Real Estate Mortgage" and who, being first duly sworn, stated that they are duly authorized to execute such Real Estate Mortgage and that any representations contained therein are true.

WITNESS my hand and Notarial Seal this 8th day of October, 2004.

Shannon Frantz
Notary Public

Printed: SHANNON FRANTZ

My commission expires:

June 13, 2010

My county of residence:

Hamilton

This instrument was prepared by Stephen Plopper, Attorney at Law, Ste. 4800, 111 Monument Circle, Indianapolis, IN 46204 317-822-0800

EXHIBIT A

[Legal Description]

EXHIBIT B

[Permitted Encumbrances]

Exhibit "A"

Legal Description:

Section 32 Township 18 Range 04
Lot 129, Block 5
Subdivision Eden Estates 262
Parcel No. 16-10-32-01-09-005.000
Hamilton County, Indiana

Address:

1205 E. 126th Street East
Carmel, In 46033

EXHIBIT D
THE DRAFT NOTICE OF DISMISSAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In Re:

Fair Finance Company

Debtor.

Brian A. Bash, Trustee

Plaintiff,

vs.

STEPHEN E. PLOPPER,

and

LINDA PLOPPER.

Defendants.

Case No. 10-50494

Judge Marilyn Shea-Stonum

Adversary Proceeding No. 11-05048-mss

NOTICE OF DISMISSAL

Pursuant to FRCP 41(a)(1), made applicable to this proceeding by Bankruptcy Rule 7041,
Plaintiff hereby gives notice of the dismissal of this action with prejudice.

Respectfully submitted,

/s/ David Proaño

Brian A. Bash, Trustee (0000134)

Kelly S. Burgan (0073649)

David Proaño (0078838)

Joseph M. Esmont (0084322)

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Counsel for the Trustee

CERTIFICATE OF SERVICE

A copy of the foregoing has been served via ECF or regular, U.S. Mail, on March 30, 2011, on the attached service list.

/s/ David Proaño

David Proaño

SERVICE LIST

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notice/service for this case.

- Brian A Bash BBash@bakerlaw.com
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Manual Notice List

The following is the list of **parties** who are **not** on the list to receive e-mail notice/service for this case (who therefore require manual noticing/service).

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