IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

TISSUE TECHNOLOGY, LLC, PARTNERS CONCEPTS DEVELOPMENT, INC., OCONTO FALLS TISSUE, INC. and TISSUE PRODUCTS TECHNOLOGY CORP.,

Plaintiffs,

v. Case No. 14CV1203

TAK INVESTMENTS, LLC, and SHARAD TAK,

Defendants.

PLAINTIFFS' BRIEF IN RESPONSE TO TAK INVESTMENTS, LLC'S MOTION FOR SUMMARY JUDGMENT

Tak Investments, LLC has moved for summary judgment citing two arguments, both of which are without merit. First, Tak Investments cites the statute of limitations, while itself noting the cause of actions before the Court accrued on April 16, 2010 though clearly this suit was filed well before Wisconsin's 6-year statute of limitations for contracts had expired. The second claim is that there was a lack of consideration. However, the law in the State of Wisconsin provides that virtually any consideration is sufficient to support a contract. In any event, this submission will show that there was indeed sufficient consideration for the issuance of the Promissory Notes in question.

Finally, the plaintiffs hereby renew their motion for summary judgment previously filed and decided upon the Promissory Notes themselves and asks that the Court uphold the promises made by Tak Investments, LLC and order judgment against Tak Investments, LLC in the amount of $37,028,423.00 through September 1, 2017.

ARGUMENT

I. The Summons And Complaint Were Filed Well Within The Statute Of Limitations.

Tak Investments, LLC struggles to find a way to avoid its responsibilities pursuant to the terms of the Promissory Notes and the Final Business Terms Agreement. This lawsuit was filed on September 30, 2014. (ECF 1) An Amended Complaint was filed April 3, 2017. (ECF 49) In both cases, the Promissory Notes now at issue, along with the Final Business Terms Agreement, were appended to the Complaint. The original iteration of the Complaint claimed the Final Business Terms Agreement provided the plaintiffs herein with an ownership interest of 27% of Tak Investments, LLC. The claim was for, in essence, security for the four Promissory Notes issued by Tak Investments LLC. In that regard, the plaintiffs sought cancellation of the Notes pursuant to the terms of the Final Business Terms Agreement--which request for cancellation was rejected outright by defendant Tak Investments, LLC and defendant Sharad Tak. *See, Affidavit of Michael J. Ganzer, Transcript of Deposition Testimony of Sharad Tak at pgs. 124-126 and Exhibits 34-35.*

Tak Investments, LLC submits to the Court that the accrual date on the Notes is April 16, 2010. *See,* Tak Investments Memorandum in Support of Motion for Summary Judgment at pg. 5 (ECF 61). The State of Wisconsin has a 6-year statute of limitations for breach of contract. Wis. Stats. §893.43. Since the last payment due under each of the Promissory Notes was to be made in 2010, and since demand was made and rejected in 2014, this lawsuit was timely filed on September 30, 2014, clearly commenced within the 6-year statute of limitations. There is no dispute that the Promissory Notes came due in 2010, the defendant states as much in its own

brief. *See*, Tak Investments Memorandum in Support of Motion for Summary Judgment at pg. 5 (ECF 61). The statute of limitations does not accrue until there is a material breach. *CLL Assoc. Ltd. Partnership v. Arrowhead PAC. Corp.*, 174 Wis.2d 604, 497 N.W.2d 115 (1993).

Defendant Tak Investments LLC also claims, somehow, the relation back doctrine precludes enforcement under the statute of limitations. This issue has already been litigated. FRCP 15 governs when an amended pleading relates back to the date of a timely filed original pleading and provides an amendment may relate back to that date. In this case, the original pleading was filed on September 30, 2014. The Complaint alleges a breach of contract based upon four Promissory Notes that were attached to the Complaint. *See*, Complaint (ECF 1). The Complaint also discussed the intrarelationship between the Final Business Terms Agreement and the Notes in question. The same four Notes and the Final Business Terms Agreement are the subject of the Amended Complaint. *See*, Amended Complaint (ECF 49). Those same four Promissory Notes were set forth in their entirety as exhibits to each of the Complaints. The difference between the two Complaints is that in the original Complaint, the plaintiffs' demanded the 27% interest in Tak Investments, LLC as was provided for in the incorporated Final Business Terms Agreement. In the Amended Complaint a money judgment is sought. That initial round of summary judgment motions produced the Court's Decision and Order dated December 12, 2016 (ECF 40) by which the Court determined that Defendant Tak Investments, LLC could not issue an ownership position in itself. Tak Investments, LLC again tries to seek relief from the Promissory Notes as a result. The defendant takes that position because the plaintiffs' deemed the notes "canceled" yet, Sharad Tak and Tak Investments, LLC took the contrary position that

the Notes could not be canceled and therefore have taken a position in this lawsuit absolutely contrary to its previously stated position. *See, Affidavit of Michael J. Ganzer, Transcript of Deposition Testimony of Sharad Tak at pgs. 124-126 and Exhibits 34-35.*

It is clear with the defendant's admission of the April 16, 2010 accrual date of the Notes, and in conjunction with the 6-year statute of limitations, this lawsuit was commenced in a timely fashion. The truth is only the requested relief was changed between the original Complaint and the Amended Complaint. All of the matters before the Court emanate from the issuance of the Promissory Notes and the other obligations described in the Final Business Terms Agreement. The defendant's suggestion to the contrary should be ignored and the motion for summary judgment based on the statute of limitations should be denied.

II. Sufficient Consideration Exists for the Issuance of the Notes.

It is well documented that the Notes in question were executed contemporaneous with the closing of the sale of the Oconto Falls tissue mill to ST Paper LLC owned by Tak Investments, LLC. Goldman Saks had put together an investor group for the purpose of funding Tak Investments, LLC in the purchase of the tissue mill. *See, Affidavit of Michael J. Ganzer, Transcript of Deposition Testimony of Ronald Van De Heuvel at pgs. 60-71.* However, approximately two weeks before closing, one of the members of the Goldman Sachs consortium had pulled out and Goldman Sachs had reduced its level of borrowing substantially. *See, Affidavit of Michael J. Ganzer, Transcript of Deposition Testimony of Ronald Van De Heuvel at pgs. 60-71.* It must be noted that Sharad Tak had been working in the same offices as Ron Van Den Heuvel and his companies listed as plaintiffs herein, for more than one year before the consummation of this transaction. *See, Affidavit of Michael J. Ganzer, Transcript of Deposition Testimony of Ronald Van De Heuvel at pg. 16.* The parties had anticipated future work together

and Mr. Van Den Heuvel was trying to get out of the actual production of tissue and paper products and more into the construction aspect of tissue mills. *See, Affidavit of Michael J. Ganzer, Transcript of Deposition Testimony of Ronald Van De Heuvel at pgs. 24-25.* With the deal heading to a quick crash, or closing, Mr. Van Den Heuvel and Mr. Tak were forced to try to find a way to meet the lending gap before consummation of the transaction. *See, Affidavit of Michael J. Ganzer, Transcript of Deposition Testimony of Ronald Van De Heuvel at pgs. 24-26, 32-33, 35-45 and 60-71.* As a result, and in anticipation of the various methods by which the parties would conduct future business, Ron Van Den Heuvel decided to try to ensure that the difference between the parties was made up by satisfaction of certain liens and debts so as to ensure his company could pass "clean title" to the mill to Tissue Technology LLC. *See, Affidavit of Michael J. Ganzer, Transcript of Deposition Testimony of Ronald Van De Heuvel at pgs. 24-26, 32-33, 35-45 and 60-71.* The Final Business Terms Agreement and the Notes that are the subject of this lawsuit were the result.

The Promissory Notes were executed in order to make up that difference and to reflect the additional debt that Ron Van Den Heuvel and his companies would incur in exchange for the Final Business Terms Agreement. *See, Affidavit of Michael J. Ganzer, Transcript of Deposition Testimony of Ronald Van De Heuvel at pgs. 24-26, 32-33, 35-45 and 60-71.* He also agreed to a course of dealings wherein one of his family's companies, Spirit Construction, anticipated a $315 million deal with the Tak entities for the future construction of paper and tissue processing plants. *See, Affidavit of Michael J. Ganzer, Transcript of Deposition Testimony of Ronald Van De Heuvel at pgs. 24-26, 32-32, 35-45 and 60-71.* In the event that was to go forward, the Promissory Notes were to be cancelled because of the significant profit to be generated by the work of Spirit Construction. *See, Affidavit of Michael J. Ganzer, Transcript of Deposition*

Testimony of Ronald Van De Heuvel at pgs. 24-26, 32-33, 35-45 and 60-71. As has been stated previously in this case, Mr. Van Den Heuvel also thought he was receiving security for those debts in that in the event of breach he would receive the membership interest in Tak Investments, LLC. *See, Affidavit of Michael J. Ganzer, Transcript of Deposition Testimony of Ronald Van De Heuvel at pgs. 24-26, 32-33, 35-45 and 60-71.*

It is clear from the foregoing that there was more than enough consideration for the issuance of the Promissory Notes and the related Final Business Terms Agreement. The Court need not assess the nature and extent of the consideration, only that the consideration was given. *In re: Hatten's Estate*, 233 Wis. 199 at 216, 288 N.W.2d 278 (1940). In *Hatten's Estate*, the Court held that any valued consideration is sufficient to support a simple contract. It is only when there is no consideration whatsoever that a contract can be negated. Citing various cases as precedent the Court in, *Hatten's Estate* stated as follows:

> Legal consideration may be of slight value, or it may be a trifling benefit, loss or act, or it may be of value only to the promising party. It may be of indeterminate value, such as property the value of which is incapable of reduction to any fixed sum and is altogether a matter of opinion, the good will of a business, personal services, or an act which affords the promising party pleasure or gratification, pleases his fancy, or otherwise merits, in his judgment, his appreciation.
>
> It is also said in that same section:
>
> The law concerns itself only with the existence of legal consideration for a contract. Mere inadequacy of the consideration is not within this concern. The adequacy in fact, as distinguished from value in law, is for the parties to judge for themselves. There is no rule by which the courts can be guided if once they undertake the determination of such adequacy. However, nothing is consideration that is not regarded as such by both parties.
>
> *See also Estate of Miller*, 173 Wis. 322, 327, 181 N.W. 238, where it was said:
>
> Whether or not a consideration is adequate is a matter exclusively for the decision of the parties. 1 Williston, Contracts, §140.

and also *Rust v. Fitzhugh*, 132 Wis. 549, 557, 112 N.W. 508, where it was said:

> Generally speaking, a valuable consideration however small is sufficient to support any contract; that inadequacy of consideration alone is not a fatal defect.

Id at 215.

The Final Business Terms Agreement clearly sets forth that the Notes themselves would be cancelled upon entry into a construction contract with Spirit for at least $315 million which is more than adequate consideration for these Notes. In fact, Sharad Tak's own understanding of the Notes and Final Business Terms Agreement should be entirely discounted as a result of the incredible testimony he offered at his recent deposition. As will be set forth below, Mr. Tak's testimony ably demonstrates that not only that the lack of consideration of argument is fantasy, but also, the Court should grant summary judgment, as previously requested, to the plaintiffs. (ECF 26 and 27).

The law in Wisconsin is clear, a contract should be construed in such a way as will make it a rational business instrument that will effectuate what appears to have been the intentions of the parties. *Borchardt v. Wilk*, 156 Wis.2d 420 at 427, 456 N.W.2d 653 (Ct. App. 1990). *Bruns v. Rennebohm Drug Stores, Inc.*, 151 Wis.2d 88, 442 N.W.2d 591 (Ct. App. 1989). The Wisconsin Court of Appeals stated as follows:

> The construction of a contract poses only a question of law, so that this court may construe a contract independent of the trial court's construction. *Zweck v. D P Way Corp.*, 70 Wis.2d 426, 435-36, 234 N.W.2d 921, 926 (1975). So far as reasonably practicable it [a contract] should be given a construction which will make it a rational business instrument and will effectuate what appears to have been the intention of the parties. *Bitker & Gerner Co. v. Green Investment Co.*, 273 Wis. 116, 120 76 N.W.2d 5490, 552 (1956) (quoting *Waldo Bros. Co. v. Platt Contracting Co.*, 25 N.E.2d 770, 773 (Mass. 1940) (brackets added it *Bitker*)

Bruns v. Rennebohm Drug Stores, Inc., 151 Wis. 2d 88, 94, 442 N.W.2d 591, 593 (Ct. App. 1989).

Sharak Tak believed the four Promissory Notes and Final Business Terms Agreement, read together, made no sense—despite his signatures having appeared thereon. . Of course, this is precisely the "hoked up defense" anticipated by the plaintiffs. Mr. Tak incredulously believed the Notes benefit him as something he could borrow against and that the Final Business Terms Agreement made no sense. *See, Affidavit of Michael J. Ganzer, Transcript of Deposition Testimony of Sharad Tak at pgs. 74-77 and 80-97*. Mr. Tak's testimony is nothing more than obfuscation and lies so as to avoid the consequence of signing and satisfying the Promissory Notes. As an example of the absurdity, Mr. Tak stated as follows regarding the Promissory Notes and the Final Business Terms Agreement[1]:

> Q So is it your testimony, then, that there was no intention to ever pay these promissory notes?
> A There was intentions to pay it if money was borrowed against it, if money was advanced against these promissory notes.
> Q So who was going to borrow the money?
> A Tak Investments, LLC, who executed the notes.
> Q So if you were going to borrow money, you're using this as a vehicle to assist you in obtaining financing to borrow money?
> A later date. Yes.
> Q How would a financial services company lend you money and use this in some way to assist that, when it shows that Tak Investments owes Tissue Technology money? Tell me how that would work.
> A With the banks and finance companies, we execute the note to put in place a line of credit kind of arrangement, so if need arise, you would borrow money against it, and you pay it back.
> Q Well, that's how it works. But how would this assist you when it shows that you actually owe money to somebody else?
> A It shows that it has executed note, that Tissue Technology Partners concept and those companies will provide the money, if there is a requirement for it, at a later date.
> Q Where does it say that in either Exhibit 13 or Exhibit 16?
> A That was the understanding. That's why it was a blank note with no consideration at the time.
> Q Well, it was signed the same day as the transaction documents we have just referred to, correct; April 16th of 2017 -- 2007?
> A I have confirmed that already.

[1] Note: the court reporter reflected the term "OFTI GROUP" incorrectly as "OFDI GROUP" throughout.

Q Okay. So it's signed part and parcel of the agreement. And your testimony is there was never an indication this was to be repaid. And it is your testimony that it was to be used somehow favorably for Tak Investments, LLC should they try to borrow money at some point; is that correct?
A That's exactly correct. And that's why final business terms says -- certain sections, it says that all the Van Den Heuvel companies will pay back to themselves within three years' times.

****

Q And is that what you understood to be the reason for the final business terms agreement; to ensure that there would be future business between you and Mr. Van Den Heuvel and his companies?
A My understanding that we may get involved into building more projects at a future date, which would be constructed by his brother's company.
Q That's Spirit Construction?
A That's right. And he asked me to sign those so that he can provide more business to his brother's company later on.
Q And it talks in there about the fact that there was a contemplated construction contract for about 310 million dollars; is that right?
A That's correct.
Q And that was never consummated?
A That's correct.

****

Q So your testimony is that even though you signed those documents and agreed to be obligated, it is your testimony that there were no obligations that would attend the execution of those documents, correct?
A As I have previously stated, that my understanding was that if Investments were to proceed on any of the new projects, then it will borrow money against these notes. And most probably OFDI will pay those out, because Investments were -- were given a large contract to Mr. Van Den Heuvel's brother's company, or otherwise Investments were paid back.

****

agreement.
Understand that one?
A I understand the sentence as it reads. But when you read the first sentence, they were supposed to pay it back. So this situation will never arise. I thought that this is a -- kind of impossibility situation. If you -- if someone has paid the notes off in three years' time, then there's nothing to consider.
Q Right. Makes no sense, correct?
A No sense.
Q Yeah.

A It does not make sense.
Q It is foolishness?
A It is -- it is -- this agreement is pretty badly written.
Q But as we say, that's your interpretation that would render it foolish, correct?

MR. SMIES: Object to form.

A I have stated my position. This sentence is – is inoperative, because if notes are paid off, then this will never come into effect.

****

Q Paragraph H, the final business terms agreement, refers to the fact that the notes were to be completely irrelevant and cancelled if you entered into the 315 million dollar contract with Spirit Construction, right?
A That's what it reads.
Q And so it seems to me that that would be an encouragement of you to go ahead and contract with Spirit.

MR. SMIES: Object to form.

Q Is that right?

MR. SMIES: Object to form.

A That's the way to interpret it.
Q So in other words, encouragement to you to contract with Spirit was obviously a cancellation of the notes, right?
A I have stated previously my understanding was that if we go through second phase, or this phase where Investments provide the -- EPC contract with Spirit, and in getting the financing, if Investment needs some money, then Van Den Heuvel and his companies will provide Investments some money against those notes. And if nothing happens, then notes have no effect.

See, Affidavit of Michael J. Ganzer, Transcript of Deposition Testimony of Sharad Tak at pgs. 74-77 and 80-97.

Sharad Tak's testimony is absurd but sheds great light on the defendant's cavalier attitude towards its obligations and, frankly, toward this Court. Ron Van Den Heuvel's view of the documents in question makes good commercial sense.

The plaintiffs' view of the evidence must be adopted since it is the only construction of the Notes and Final Business Terms Agreement by which they can become a "rational business instrument". Though the documents may not be perfectly drafted, it is clear that they are interrelated and that the Notes are now due. Tak Investments, LLC and Sharad Tak must be held to their obligations.

III. Summary Judgment Should be Granted in Favor of the Plaintiffs.

The plaintiffs had previously moved for summary judgment, upon these Notes, and which summary judgment was denied. (ECF 26 and 40) Based on all of the foregoing, it is clear that summary judgment should be granted to the plaintiffs upon the Notes and said request is hereby renewed. FRCP 56 provides that summary judgment should be granted when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The plaintiffs have previously moved this Court to enter judgment against Tak Investments, LLC based precisely on the existence of the Notes and the Final Business Terms Agreement. Since Tak Investments, LLC by its managing member, Sharad Tak, takes an outrageous position as to the meaning of the Notes herein, it is time to revisit that issue and enter judgment accordingly. The Court has authority to revisit this issue as long as the defendants have the opportunity to respond and issues have been thoroughly submitted. *Osler Inst., Inc. v. Forde*, 333 F.3d 832 (7th Cir. 2003). In making this request, the plaintiffs offer the previous filings and the Declaration of Edward Kolasinski in which he opines that the principal and interest due under the Promissory Notes as of September 1, 2017 is $37,028,423.00. *See, Declaration of Edward Kolasinski*. In addition, the plaintiffs seek an award of actual attorney's fees inasmuch as the Promissory Notes provide: "Maker shall be obligated to pay to payee any costs incurred by payee in the collection

of sums due hereunder by maker including attorney's fees." Upon an appropriate award of principal and interest under the terms of the four Promissory Notes, the plaintiffs ask that the judgment be supplemented with a proper application for attorney's fees and costs.

CONCLUSION

The defendant's motion for summary judgment must be denied. Defendant Tak Investments, LLC fails trying to assert that defenses exist to the obligations undertaken by Tissue Technologies, LLC. In addition, the Court should revisit the plaintiffs' motion for summary judgment and enter judgment in favor of the plaintiffs in accord with the principal and interest due under the Notes along with an award of attorney's fees and costs. It is further requested that these matters continue as it relates to Sharad Tak individually until disposed of by way of trial and other proceedings.

Dated this 11th day of August, 2017.

TERSCHAN, STEINLE, HODAN
& GANZER, LTD.
ATTORNEYS FOR PLAINTIFFS,

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TISSUE TECHNOLOGY, LLC, PARTNERS CONCEPTS DEVELOPMENT, INC., OCONTO FALLS TISSUE, INC. and TISSUE PRODUCTS TECHNOLOGY CORP.,

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TAK INVESTMENTS, LLC, and SHARAD TAK,

Defendants.

AFFIDAVIT OF MICHAEL J. GANZER

STATE OF WISCONSIN)
)ss
MILWAUKEE COUNTY)

Michael J. Ganzer, being first duly sworn on oath, deposes and states as follows:

1. I am one of the attorneys for the plaintiffs herein, Tissue Technology, LLC, Partners Concepts Development, Inc., Oconto Falls Tissue, Inc. and Tissue Products Technology Corp., and make this Affidavit in support of Plaintiffs' Brief in Response to Tak Investment, LLC's Motion for Summary Judgment in reference to the above-captioned matter.

2. Attached hereto and incorporated herein by reference and marked as Exhibit A is the cover page and pages 74-77, 80-97 and 124-126 of the Deposition Transcript of Sharad Tak, including Exhibits 34 and 35 thereto, taken on July 18, 2017.

3. Attached hereto incorporated herein by reference and marked as Exhibit B is the cover page and pages 16, 24-26, 32-33, 35-45 and 60-71, including Exhibit 1 thereto, of the Deposition Transcript of Ronald Van Den Heuvel taken on August 2, 2017.

Dated this 11th day of August, 2017.

By: _____
Michael J. Ganzer
State Bar No. 1005631

Subscribed and sworn to before me
This 11th day of August, 2017.

_____
Notary Public, State of Wisconsin
My commission expires: 2/15/18.

JULIETTE MURPHY NOTARY PUBLIC STATE OF WISCONSIN

Tissue Technology, LLC, et al. vs. Tak Investments, LLC, & Sharad Tak

14-CV-1203

Transcript of the Testimony of:

Sharad Tak

July 18, 2017

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BY MR. GANZER:

Q That was also dated April 16, 2007; is that right?

A That's right.

Q That is a credit agreement --

A Yes.

Q -- that was executed -- it's not in full form here. My client just gave it to me. We will get that full form at a later date.

But I just want you to recognize that, in fact, there was a credit agreement signed that day that went along with the subordination agreement.

Is that your understanding?

A Yes.

Q All right. Let's go back to Exhibit 13. Those would be the notes; the investment notes. And is that your signature on the bottom there?

A Yes.

Q And that would be on all four notes; true?

A I see that it's on all the notes.

Q We're also going to mark a copy of the final business terms agreement. That's Exhibit 16.

(Exhibit Number 16 was marked for identification.)

BY MR. GANZER:

Q That, too, was executed about the same time, right?

A Correct.

Q All right. So let's -- what I want to do is compare exhibits here: Exhibit 16, the final business terms agreement, and Exhibit 13, which is -- are the promissory notes.

At the time that you executed these promissory notes as Exhibit 13, did you intend to pay those notes?

A If we were going to borrow money against these notes later on -- we, means Tak Investment, LLC -- then Tak Investment, LLC would have paid it back if Tak Investment, LLC had borrowed money.

These were placed in place so that if Tak Investment, LLC were to go for another transaction, or addition of paper mills, then Mr. Van Den Heuvel promised that he will provide the funding.

Q And so --

A If required.

Q So is it your testimony, then, that there was no intention to ever pay these promissory notes?

A There was intentions to pay it if money was borrowed against it, if money was advanced against these promissory notes.

Q So who was going to borrow the money?

A Tak Investments, LLC, who executed the notes.

Q So if you were going to borrow money, you're using this as a vehicle to assist you in obtaining financing to

borrow money?

A A later date. Yes.

Q How would a financial services company lend you money and use this in some way to assist that, when it shows that Tak Investments owes Tissue Technology money? Tell me how that would work.

A With the banks and finance companies, we execute the note to put in place a line of credit kind of arrangement, so if need arise, you would borrow money against it, and you pay it back.

Q Well, that's how it works. But how would this assist you when it shows that you actually owe money to somebody else?

A It shows that it has executed note, that Tissue Technology Partners concept and those companies will provide the money, if there is a requirement for it, at a later date.

Q Where does it say that in either Exhibit 13 or Exhibit 16?

A That was the understanding. That's why it was a blank note with no consideration at the time.

Q Well, it was signed the same day as the transaction documents we have just referred to, correct; April 16th of 2017 -- 2007?

A I have confirmed that already.

Q Okay. So it's signed part and parcel of the

agreement. And your testimony is there was never an indication this was to be repaid. And it is your testimony that it was to be used somehow favorably for Tak Investments, LLC should they try to borrow money at some point; is that correct?

A That's exactly correct. And that's why final business terms says -- certain sections, it says that all the Van Den Heuvel companies will pay back to themselves within three years' times.

Q We'll get back to that in a little bit.

Let's go to Exhibit 16 then. That's the final business terms agreement. And you signed this individually, correct?

A I signed it two ways. One is, I signed it for Tak Investment, LLC for the portion that is relevant and obligation of Tak Investment, LLC. And the paragraphs which are not relevant to Tak investment, LLC, those I signed personally.

Q Tell me where in the document Exhibit 16 it shows which portions of the agreement are applied to you and which are applied only to Tak Investments, LLC.

A If you read the paragraphs, then the paragraphs which talks about certain company, then it applies that I signed on behalf of that company. And when the paragraph doesn't read any particular company, then that was signed by me personally.

Q And what in this document does it show that you are personally obligated for?

Q Well, if you want me to set it all forth, you have entered into this record the closing statement as Exhibit 11. Exhibit Number 12 is the subordinated promissory notes. Exhibit 13 is the investment notes, --

A Let's go one-by-one. Okay? I don't --

Q Let me finish my question.

A Okay.

Q -- and Number 16 is the final business terms agreement, all bearing the same date April 16, 2007, correct?

A That's correct.

Q Were they signed at the same time?

A I don't recall. Some were signed with the escrow agent present and attorneys present, and some were signed without the attorneys present.

Q And is it your testimony here that you did not have the advice of an attorney throughout the time that you consummated this transaction up to April 16, 2007?

A I did not say that. The transaction with ST Paper and OFDI, I had advice of counsel, and advice of financial people, and other people.

Q Okay.

A For final business terms and investment notes, I did not have any advice of counsel.

Q So you're telling me that you had advice of counsel for everything except Exhibits 13 and 16?

A I did not say that. I don't know how many other papers we signed, but I'm saying -- and listen to me carefully -- that final business terms, which is Exhibit 16, and the investment notes, which are Exhibit 13, I did not have advice of counsel.

Q Why did you sign them then?

A I signed it because Mr. Van Den Heuvel asked me that he would like me to sign these final business terms so that we can have some other projects later on.

Q And is that what you understood to be the reason for the final business terms agreement; to ensure that there would be future business between you and Mr. Van Den Heuvel and his companies?

A My understanding that we may get involved into building more projects at a future date, which would be constructed by his brother's company.

Q That's Spirit Construction?

A That's right. And he asked me to sign those so that he can provide more business to his brother's company later on.

Q And it talks in there about the fact that there was a contemplated construction contract for about 310 million dollars; is that right?

A That's correct.

Q And that was never consummated?

A That's correct.

Q Was the concept at that point to build another mill in the State of Virginia?

A We had talked about several different projects. In State of Pennsylvania, State of Utah, maybe thinking of State of Virginia, maybe thinking of State of Wisconsin. But I and Mr. Van Den Heuvel had talked about several projects.

Q When was the first time you saw the final business terms agreement, Exhibit 16?

A I don't recall.

Q Was it in advance of the execution on April 16th?

A Yes.

Q Was it shortly before? Was it a couple weeks before? Do you know?

A I think it was, you know, a few weeks before. Maybe a month. Maybe more than a month.

Q And the final business terms agreement refers to some of the other documents, the other agreements, that you have here; is that a fair statement?

A It refers to some agreements.

Q Let's go through that document then.

A Okay.

Q If you look at -- first of all, in the definition sections, it says controlled entity shall mean any entity or business combination directly or indirectly controlled by Investments.

Case 1:14-cv-01203-WCG Filed 08/11/17 Page 10 of 100 Document 69-1

When we refer to Investments, that's Tak Investments, LLC; is that right?

A That's right.

Q And we look down then on covenants, Covenant 2A. It says, Investments shall not authorize or delegate the authority to any controlled entity to terminate the sales and marketing agreement dated as of September 20, 2006.

Do you see that?

A I see that.

Q And never the less, you at some point, your company, terminated that agreement without telling Ron Van Den Heuvel, correct?

MR. SMIES: Object to form.

A ST Paper, LLC considered the agreement terminated.

Q And is that a controlled entity?

A I don't understand it.

Q Well, we talked about the definition of controlled entity.

A Investments did not control ST Paper.

Q Did Tak Investments, LLC have an ownership interest in ST Paper?

A It does not.

Q Did it on April 16th of 2007?

A I don't know.

Q Well, who owned ST Paper, LLC on April 16, 2007?

A ST Paper Holdings.

Q Is that the only company that owned it?

A My understanding is that's the only company that owned it.

Q Who owned ST Paper Holdings?

A I'll go back and have to check the records.

Q You don't know?

A I don't remember right now.

Q If you look down at Covenants D, it says, if Investments, or any controlled entity, or any other entity controlled by Tak individually constructs or owns any tissue and/or linerboard facility other than their facility in Oconto Falls, then Investments or Tak shall cause the entity to enter into a sales or marketing agreement.

Was any controlled entity own any other tissue or liner board facility other than the facility in Oconto Falls?

A In 2007 it did not.

Q Does it now?

A Investments does not own anything. But Tak individually has indirect control of other paper mill.

Q Which paper mill is that?

A It's a paper mill in Franklin, Virginia.

Q And was a sales and marketing agreement executed with the OFDI Group pursuant to the terms of this paragraph?

A No.

Q Why not?

A Because the sales and marketing contract between Tissue Technology and ST Paper was considered terminated.

Q But this paragraph doesn't rely on the previous sales and marketing agreement. It says a new one should be executed, correct?

A Yes. It was a determination done by me that I don't want to be partner with dishonest and crooked people.

Q Okay. The next paragraph talks about the delivery of audited financial statements. Did you ever deliver to any of the -- let's just call them the Van Den Heuvel Group here, which would be Tissue Tech Partners Concepts, OFDI, and Tissue Products Technology. Did you ever deliver to them or Mr. Van Den Heuvel any audited financial statements?

A Investments, to my knowledge, never had any audited financial statement.

Q Who was the accountant for Investments at the time?

A There is no accountant for Investments.

Q So there's no accountant -- there's no audited financial statements for Investments, which is Tak Investments, LLC?

A There are no audited financial invest -- statements for --

Q Were tax returns prepared on behalf of Tak Investments, LLC?

Case 1:14-cv-01203-WCG Filed 08/11/17 Page 13 of 100 Document 69-1

A Yes.

Q And who is the accountant that prepared those?

A Ernst & Young.

Q So you did have an accountant?

A We had a tax filing accountant. Yes. In a way, you can say that we had an accountant who filed tax returns.

Q And also it talks about controlled entities. Were financial statements, audited financial statements, or unaudited, prepared for any controlled entity?

A Investments did not control any entity.

Q Now, it says controlled entity -- this is the definition -- shall mean any entity or business combination, directly or indirectly controlled by Investments, or directly or indirectly controlled by any entity or business combination, directly or indirectly controlled by Investments.

So it's not just Investments. Are there any controlled entities that had audited financial statements?

A The way I read control entity means any entity or combination directly or indirectly controlled by Investments. So I don't -- I don't see what you're asking for.

Q Well, here is what I'm asking for. By the terms of this agreement, Tak Investments, LLC was to provide audited or even unaudited financial statements for itself and any other controlled entity.

My understanding is that no such statements were ever

presented to Mr. Van Den Heuvel or his companies.

That is a correct statement?

A Yes.

Q And that would be in breach of the requirements of Section E here; is that right?

MR. SMIES: Object to form.

A The document says what it says. And I --

Q You didn't do it?

A -- I mentioned that we had not provided any statement, and there were no audited statements.

Q Right. But even -- he is entitled to even unaudited, correct?

A That's what it says.

Q Okay. But he didn't get those, either?

A He did not get any statements, period.

Q Next section, F, talks about payment default under the credit facility arranged by Goldman Sachs. Okay?

Was there ever a payment default with respect to Goldman Sachs Credit Partners, LP?

A I don't recall that there was a payment default with Goldman Sachs.

Q So that being the case there was never, in your mind, a requirement for a step-in event; true?

A That's correct.

Q Paragraph G, I would like you to read that and tell

Case 1:14-cv-01203-WCG Filed 08/11/17 Page 15 of 100 Document 69-1

me what you understand that paragraph to mean.

A It has many parts of it. The first part says that OFDI Group will make all the payments on the investment notes, including principal and -- and interest.

Q So your reading of that is that -- that first part, is that the investment notes are made in favor of the OFDI Group, and the OFDI Group is to pay itself, correct?

A That's what it reads.

Q Okay. That doesn't make sense, does it?

A It does make sense, because no money was borrowed. And the reason this was signed is because this is the agreement Mr. Van Den Heuvel gave. And he said that Investments have no obligation because OFDI Group will take care of the payments if they were due.

Q All right. What is the commercial sense of that interpretation of this agreement? How does that help either party?

MR. SMIES: Object to form.

A In hindsight, Mr. Van Den Heuvel wanted to use these notes to find some unsuspecting lenders and borrow against it.

Q I see.

A And perpetuate fraud. That's how I interpret, in hindsight. I --

Q Were you a party to that fraud?

A No. I did not know what his intentions were at that

time.

Q So your testimony is that even though you signed those documents and agreed to be obligated, it is your testimony that there were no obligations that would attend the execution of those documents, correct?

A As I have previously stated, that my understanding was that if Investments were to proceed on any of the new projects, then it will borrow money against these notes. And most probably OFDI will pay those out, because Investments were -- were given a large contract to Mr. Van Den Heuvel's brother's company, or otherwise Investments were paid back.

Q Isn't it true that later on in -- and we will go through it -- that if you executed an agreement with Spirit Construction in the -- approximately 315 million dollars and that these notes were to be forgiven, correct?

A That's correct.

Q And so wasn't it true that this was an encouragement? In other words, that the -- the money is owed, but that it would be forgiven by Mr. Van Den Heuvel if you executed a contract in the range of 315 million dollars to build some new mills?

MR. SMIES: Object to form.

Q Isn't that correct?

A That's your statement; not mine.

Q All right. We'll go through that then.

A Sure.

Q Let's go to the second sentence, then, of G.

Each member of the OFDI Group agrees -- jointly and severally agrees to indemnify Investments and to hold it harmless from -- and against any and all damages, losses, deficiencies, actions, demands, judgments, etc., resulting from OFDI's failure to make payments.

Do you understand what that section, that paragraph -- that sentence refers to?

A Sentence says what it says. It's English, and it can be interpreted as a sentence.

Q Does it not make sense to you that that provision provides that if Mr. Van Den Heuvel would assign those notes to somebody else, he would hold you harmless if they were collected -- or he'd use those, rather, not as an assignment, but as a security for a loan, that he would hold you harmless on payment of those?

Is that your understanding?

A That's what the sentence says.

Q Okay. The next area that I want to talk about here says, if such investment notes are deemed canceled at the third anniversary date of the investment notes, then OFDI shall receive an undiluted 27 percent ownership interest in the highest class of investments, and such ownership interest shall be above and beyond the ownership interest in item 2K of this

agreement.

Understand that one?

A I understand the sentence as it reads. But when you read the first sentence, they were supposed to pay it back. So this situation will never arise. I thought that this is a -- kind of impossibility situation. If you -- if someone has paid the notes off in three years' time, then there's nothing to consider.

Q Right. Makes no sense, correct?

A No sense.

Q Yeah.

A It does not make sense.

Q It is foolishness?

A It is -- it is -- this agreement is pretty badly written.

Q But as we say, that's your interpretation that would render it foolish, correct?

MR. SMIES: Object to form.

A I have stated my position. This sentence is -- is inoperative, because if notes are paid off, then this will never come into effect.

Q Okay. And so just so we understand your position, the notes are to be paid by Mr. Van Den Heuvel to himself such that because of that, after the third anniversary date, this particular sentence would be inoperable. There would never be

Case 1:14-cv-01203-WCG Filed 08/11/17 Page 19 of 100 Document 69-1

a circumstance where the 27 percent ownership interest would come into play?

A That's correct. That's what I was told.

Q Who told you that?

A Mr. Van Den Heuvel.

Q Paragraph H, the final business terms agreement, refers to the fact that the notes were to be completely irrelevant and cancelled if you entered into the 315 million dollar contract with Spirit Construction, right?

A That's what it reads.

Q And so it seems to me that that would be an encouragement of you to go ahead and contract with Spirit.

MR. SMIES: Object to form.

Q Is that right?

MR. SMIES: Object to form.

A That's the way to interpret it.

Q So in other words, encouragement to you to contract with Spirit was obviously a cancellation of the notes, right?

A I have stated previously my understanding was that if we go through second phase, or this phase where Investments provide the -- EPC contract with Spirit, and in getting the financing, if Investment needs some money, then Van Den Heuvel and his companies will provide Investments some money against those notes. And if nothing happens, then notes have no effect.

Q But of course, in your thinking the notes had no effect anyway, correct?

A I have many times said that notes had no effect, because no money was exchanged at that time. But if -- if Tak Investment had proceeded for a second phase of the contract, or buying additional paper mills, and if Tak Investment had needed some extra money to consummate the financing, then Tak Investments, LLC had ability to borrow some money, if it was needed from Van Den Heuvel entities.

Q But the notes weren't -- strike that.

Can you re-read that answer, please.

(Whereupon, the answer was read back as requested.)

BY MR. GANZER:

Q So is it your testimony, then, that you could borrow money from Van Den Heuvel based on the existence of these notes?

A It's my -- my testimony and understanding that Investments could have the ability to borrow money from Van Den Heuvel entities against these four notes.

Q So the way you looked at it, though, these four notes then were an asset owned by Van Den Heuvel and his companies?

MR. SMIES: Object to form.

Q Correct?

A I don't understand the question. I mentioned that

these notes are considered as a kind of line of credit or a vehicle under which Investments could borrow money from Van Den Heuvel entities if required in the future.

Q How did the notes relate to that? Could you explain that to me?

A Because notes were executed in the amount of 16-point-some-million dollars. And if Investment needed, say, four million dollars to invest into a paper mill, and if Investments did not have money, then Investment would simply go to Mr. Van Den Heuvel's entity, and say, Investment needs four million dollars, and could you lend against those notes.

Q If the notes were worthless, why would he lend against them?

A Because then notes would become about four million dollars if I borrowed four million against it.

Q Like --

A This is the way that it's always made with the banks. You execute a note, and you borrow against it, and you pay only the part you borrow against the particular note.

Q Is that why you executed these notes?

A I executed these notes because Van Den Heuvel presented business terms and these notes to me. And it was our understanding that we may get into businesses later on, and Investment may need money.

Q The next section here, Subjection I, I would like you

to review that and tell me what that means to you.

A Simple English -- I mean, the paragraph means what it says. But in my understanding, it says that OFDI Group jointly and severally agrees to indemnify Investments if anyone makes demand against those notes, including anyone from OFDI Group.

Q Okay. And tell me how that makes sense.

MR. SMIES: Object to form.

A It says what it says. Whether it makes sense or not, it was not the document prepared by me, and it was not reviewed by our attorneys. And I did sign it, and that was a mistake.

Q Paragraph J, there's some collateral that was pledged to Johnson Bank by the OFDI Group, and that was 20 million dollars; is that correct -- rather, 11 million dollars?

A I don't recall. This thing has nothing to do with Investments.

Q Why do you say that?

A Because Investment, LLC was not involved in that transaction.

Q Okay. Why don't we take a short break.

MR. SMIES: Good idea.

(Recess taken from 12:12 p.m. to 12:22 p.m.)

BY MR. GANZER:

Q Mr. Tak, we were talking about Paragraph J on the final business terms agreement, Exhibit 16.

You indicated you didn't have anything to do with

Johnson Bank?

A I did not indicate that I did not have anything to do with Johnson Bank. Tak Investments, LLC did not have anything to do with Johnson Bank.

Q Okay. I'm going to show you what we marked as Exhibit 18.

(Exhibit Number 18 was marked for identification.)

(Off-the-record discussion.)

BY MR. GANZER:

Q Do you see that?

A Yes, I see that.

Q Do you know what that is?

A It says statement from Johnson Bank.

Q Who holds the account there?

A Tak Investments, Inc.

Q And you just said you didn't have anything to do with Johnson Bank.

A I said that Tak Investment, LLC --

Q I see.

A -- did not have anything to do with Johnson Bank.

Q But Tak Investments, Inc. did apparently?

A Yes.

Q It had this account with the balance of 11 million dollars apparently with Partner Concepts Development, correct?

A That's correct.

Q What is this related to?

A This is related with some dealing Tak Investments, Inc. had with Johnson Bank.

Q Was this collateral pledged to Johnson Bank by the OFDI Group?

A I don't recall.

Q Well, you know that there was a reduction in the Goldman lending immediately before the closing by about 15 million dollars, correct?

A I don't recall it.

Q And do you recall that as a result of that, that Mr. Van Den Heuvel pledged this 11.8 million dollars as security so that the deal could be completed?

A The dealing between Tak Investment, Inc. and PCDI or Mr. Van Den Heuvel is a separate deal.

Q What's this related to then?

A It's related with certain transaction.

Q What transaction is that?

A There was a transaction between Johnson Bank, Tak Investments, Inc., and Partners -- PCDI.

Q Okay. What was it? That's what I want to know.

A I -- I -- I -- I -- it's Tak Investments, Inc.'s transaction.

Q Right. What was it?

Q Okay.

A And based on those projections, Poyry did the appraisal.

Q I see.

A And then -- when Tak and ST Paper people bought the mill, ST Paper realized that mill was, you know, bad, terrible.

Q So is it your testimony that Poyry did the appraisal before you purchased?

A I don't know when it was done, but it was done around that time.

Q Show you what we we've marked as Exhibit 33.

(Exhibit Number 33 was marked for identification.)

BY MR. GANZER:

Q Do you recognize that document?

A Yes. I see that.

Q And that was Johnson Bank that did that?

A That's correct.

Q And that talked about you having a 20 million dollar equity investment in ST Paper Holdings, which apparently was going to buy the mill; is that right?

A This says what it says. It says it has sufficient financial accommodation at Johnson Bank to fund Mr. Tak's equity. That's what it says.

Q Before I think you said something to the effect that

you don't remember doing anything with Johnson Bank; is that right?

A I said Tak Investments, LLC --

Q I see.

A -- did not have anything to do with Johnson Bank.

Q Okay. Showing you what's been marked as Exhibit 34.

(Exhibit Number 34 was marked for identification.)

BY MR. GANZER:

Q Do you recognize that document?

A Yes.

Q It's a letter you received from Mr. Van Den Heuvel, correct?

A That's correct.

Q And did you respond to that letter?

A No.

Q That letter is dated, what; August 15th of 2014?

A That's correct.

Q Show you what's been marked as Exhibit 35.

(Exhibit Number 35 was marked for identification.)

BY MR. GANZER:

Q It's a letter dated September 14, 2014, from you to Mr. Van Den Heuvel, correct?

A That's correct.

Q And actually, that is your response to Mr. Van Den Heuvel's letter, correct?

A So I stand corrected.

Q You indicate in there that your company does not recognize the notes as having been deemed canceled; is that right?

A That's what it says.

Q So according to this, since they weren't canceled, they would still be valid notes?

MR. SMIES: Object to form.

Q Right?

MR. SMIES: Same objection.

A It says -- they don't -- we don't -- company does not deem -- does not consider them deemed canceled. That's all it says.

Q Showing you what's been marked as Exhibit 36.

(Exhibit Number 36 was marked for identification.)

BY MR. GANZER:

Q Did you receive that letter from Mr. Van Den Heuvel?

A Yes.

Q And do you recall when you received it?

A I don't know. There's no date here.

Q Some time before April 16th of '15, correct? Because he's -- he's --

Case 1:14-cv-01203-WCG Filed 08/11/17 Page 28 of 100 Document 69-1

August 15, 2014

Via Certified Mail, Return Receipt Requested
Sharad Tak
Tak Investments, LLC
401 Professional Drive, Suite 110
Gaithersburg, MD 20879

Re: Notice of Cancellation of Investment Notes

Mr. Tak:

This letter is written on behalf of Tissue Technology, LLC, Partners Concepts Development, Inc., Oconto Falls Tissue, Inc. and Tissue Products Technology Corp. (collectively referred to as the "OFTI Group").

By way of background, on or about April 16, 2007, Tissue Products Technology Corp. ("TPTC") obtained four promissory notes from Tak Investments, LLC ("Tak") in the amounts of $3,000,000, $4,000,000, $4,400,000 and $5,000,000 respectively (the "Investment Notes"). Copies of the Investment Notes are attached as group Exhibit A. On or about April 17, 2007, TPTC assigned the $4,400,000 promissory note to William Bain ("Bain"). A copy of the Assignment of Promissory Note is attached as Exhibit B. On or about March 5, 2008, the payee of the $4,400,000 note was amended from TPTC to Tissue Technology, LLC ("TTL"). A copy of the amended Promissory Note is attached as Exhibit C. On or about March 5, 2008, Bain acknowledged and agreed to the amendment of the Note, and the Note continued to be assigned to Bain per the terms of the Assignment of Promissory Note. A copy of the Amended and Restated Assignment of Promissory Note is attached as Exhibit D.

On or about August 14, 2014, Bain re-assigned the $4,400,000 note to TTL. A copy of the Re-Assignment of Promissory Note is attached as Exhibit E. Accordingly, as of that date, the OFTI Group is a holder each of the Investment Notes and has an interest in each of the Investment Notes such that it is capable of deeming them cancelled pursuant to the Final Business Terms Agreement between the parties. A copy of the Final Business Terms Agreement is attached as Exhibit F.

EXHIBIT
tabbies
34
T.18.17 AD

September 4, 2014

VIA CERTIFIED U.S. MAIL

Mr. Ron Van Den Heuvel
Tissue Technology, LLC
2077B Lawrence Drive
De Pere, WI 54115

Dear Mr. Van Den Heuvel:

I am in receipt of your correspondence dated August 15, 2014, in which you purport to provide notice of cancellation by the OFTI Group of four promissory notes pursuant to Paragraph G of the Final Business Terms Agreement, dated April 16, 2007.

Tak Investments, LLC does not recognize the validity of the purported assignment from Mr. Bain to Tissue Technology, LLC or the rights you assert Mr. Bain conveyed to Tissue Technology, LLC. Based on our understanding, the transaction you have described is subject to both factual and legal challenge. Thus, Tak Investments, LLC does not recognize the notes as having been deemed cancelled by the OFTI Group. Accordingly, Tak Investments, LLC is under no contractual obligation to transfer an ownership interest.

Very truly yours,

TAK INVESTMENTS, LLC

Sharad Tak

EXHIBIT
35
7.18.17 AD

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

TISSUE TECHNOLOGY, LLC,
PARTNERS CONCEPTS DEVELOPMENT,
INC., OCONTO FALLS TISSUE,
INC., and TISSUE PRODUCTS
TECHNOLOGY CORP.,

COPY

Plaintiffs,

Case No. 14-CV-1203

-vs-

TAK INVESTMENTS, LLC, and
SHARAD Tak,

Defendants.

DEPOSITION OF RONALD H. VAN DEN HEUVEL
August 2, 2017
8:58 a.m. to 2:35 p.m.
200 South Washington Street
Green Bay, Wisconsin

APPEARANCES:

TERSCHAN, STEINLE, HODAN & GANZER, LTD., by **MICHAEL GANZER**, Attorney at Law, 309 North Water Street, Suite 215, Milwaukee, Wisconsin 53202, appearing on behalf of the plaintiffs.

GODFREY & KAHN, S.C., by **JONATHAN T. SMIES**, Attorney at Law, P.O. Box 13067, Green Bay, Wisconsin 54307, appearing on behalf of the defendants.

and one of the things that Mr. Tak was interested in that all of the paper was presold.

Q So did the transaction ultimately close in 2007 for the sale of the million and--

A Yes. And Mr. Tak wanted to put in a wood pellet boiler, which he did, and Goldman made some mistakes with Mr. Tak. They should have hedged natural gas. Natural gas was at $9.20 a dekatherm, and over the next three years it dropped to under $3, which cost Mr. Tak over 470,000 a month.

Q And how do you know that?

A Because I was with them in '07, '08, and '09 yet, so we could see that. And natural gas today is still $3.50.

Q Nice every time I see my heating bill, right?

A What?

Q When I see my heating bill--

A Right, it's a good thing.

Q You said you were with them over those years. I think it was 2007 to 2010, if I recall your testimony. What do you mean by being with them?

A We shared the same building, the same employees. When he came in, he drove one of my spare cars. He had a son named Sahil, and he used what was my 20-year secretary. Debbie Stary actually went on his payroll. And so did my CFO at the time, a lady named Katie

taking the--making it two deals instead of one, so--
Q Did you have discussions with him concerning that?
A Every day. Mr. Tak worked out of our building every week. He might miss a week here and there, but not too often.
Q And where was your building?
A On Glory Road. I don't exactly know the address. 1555 maybe Glory Road.
Q And that's in De Pere?
A No, that is in Ashwaubenon. It's on the corner of Glory Road and Packerland.
Q So in January of 2007 you discussed with Mr. Tak the idea of having two separate transactions instead of the one contemplated transaction?
A Right. And when he-- Goldman was getting out of the hedge business at that time, and Mr. Tak wanted everything hedged. And I don't know why he didn't hedge natural gas, but in that particular case he didn't. And Mr. Tak dealt with the hedges. I had no idea about them.
Q You think the hedges had something to do with the fact the second aspect of this wasn't included in the--
A It had things to do with Oconto Falls. It locks in the labor rate. I mean the interest rate. Locks in the electrical rate. He would hedge wastepaper cost. He

would hedge electricity costs.

Q So I appreciate the notion of hedging these costs, but what, if anything, was discussed between you and Mr. Tak concerning why it is these two deals were made separately?

A Goldman Sachs did not want to do more than 80 million, and they wanted only in the tissue business. They did not want to go into the white or brown linerboard business.

Q So since Goldman Sachs is involved in the financing of the--

A Correct.

Q --purchase, they had certain terms that would exclude this other--

A So in December we had an 80 million with the five million offering or commitment letter, and we had 315 million commitment letter from a bank called Barclays. They're a British bank.

Q But for two separate contemplated transactions?

A Two separate, yes.

Q Are you aware of any documents between you or Mr. Tak and Goldman Sachs, for example, which would have combined those two transactions into one proposed deal?

A The only thing that made an attempt was the document that we got from Mr. Tak, the final business terms. We

did not-- I never seen anything from the banks that combined them. And I know Barclays wasn't a party to the 80 million and five million working capital loan.

Q So let's go back to that final business terms agreement you mentioned. I think you said it was an agreement Mr. Tak proposed or provided you. Is that-- Can you explain that?

A We talked on the seven, eight, nine days. I had to get some people that would take Mr. Tak's name on the note in lieu of cash because I had--when it dropped from 80 to 65 and a five million working line, there wasn't enough cash at closing to clear the title. So I had to use about 16 million of investment notes, and I had to get other people that had liened on the mill to take those in lieu of--in lieu of cash.

Q So who were some of those other people who had liens on the mill?

A Obviously, I talked Spirit into taking a $5 million note. I talked Spirit into taking--not Spirit. I talked Vos Electric into taking a $3 million note, and I talked R&B, a guy named Bill Bain--

Q Who is Bill Bain? His name has come up obviously in this litigation. Tell me how you know him.

A Thirty-five years ago he was married to my sister. He had three wonderful girls, my nieces. Prior to Bill

had to have what's called releases. They had to give them to the title company.

Q So you reference our law firm, Godfrey & Kahn, and is it your understanding that in that transaction Godfrey & Kahn represented Mr. Tak and/or his entities?

A On some things they represented both of us. On some things they only represented Mr. Tak. I used a firm called Foley & Lardner.

Q So in the asset sale, you were represented by Foley & Lardner?

A In the asset purchase agreement, yes. In the permitting, your firm did that.

Q For what entity?

A ST Paper and OFTI. There's a-- When you--

MR. GANZER: You answered the question.

THE WITNESS: All right.

Q You noted earlier--you stated that one of the four investment notes was made to--paid to the order of Tissue Technology, LLC, in the first instance. You remember that?

A Yes. It was done in 2009.

Q So the four notes were originally signed on April 16, 2007; is that right?

A That's correct.

Q At a later point in time there was an assignment from

Tissue Products Technology Corp. to Tissue Technology. Do you understand that?

A Mr. Bain was getting antsy. He went to Mr. Tak. His note was due. Mr. Tak-- Well, it doesn't have anything but you. If you do it to Tissue Technology, he has the Cargill royalty agreement.

Mr. Bain said, "I'll sit still for a couple more years." And Mr. Tak came to me. I said, "That will be okay." Mr. Tak signed the piece of paper. I don't know who drafted it, but he signed a piece of paper assigning that $4.4 million loan that had been assigned to Mr. Bain, he assigned it to Tissue Technology, and Tissue Technology assigned it to Mr. Bain.

Q So you understand that the original four notes, though, were made to Tissue Products Technology Corp.?

A That's correct, one of the entities Mr. Tak bought.

Q You said someone held the Cargill royalty. Can you explain that, who that was, and--

A Tissue Technology, not one of the PCDI groups, held the Cargill royalty agreement.

Q And that was an agreement that if this process were approved by the FDA and Cargill were to use it, there would be funds going to Tissue Technology?

A That's correct.

Q Did that ever happen?

the sale of the Oconto Falls mill, there was a scramble of sorts. You were seeking to raise additional funds, you said, and in connection with that, to satisfy lienholders, you said you needed to get some notes. Are those the investment notes we talked about earlier?

A Yes.

Q And how would those have anything to do with lienholders? Explain that to me.

A The lienholder away from the two big tax exempt bond pieces would file a lien on the mill and take a small piece of equipment or, you know, a wrapper or a rewinder, something like that. Okay? Because we needed money to do different things, and they did that.

So what we did is talk to those people and--and then Mr. Tak came up with the idea, "Listen, Ron, if I do that 213--215, what, 315, whatever that number is, I got to have these investment notes tossed."

And in the meantime, while I'm working on that with Barclays, these people got to remove their lien on the mill so that a first can be given to Goldman Sachs, and then they have to take my investment note as their collateral.

Q So Goldman Sachs would take a security interest in the mill or the real estate or all the assets? Is that your understanding?

A All the assets, yes.
Q And obviously Goldman Sachs didn't want a security interest in something with senior liens.
A Correct. They wouldn't do that.
Q So your effort was then to remove these liens prior to the closing; is that fair?
A That's correct.
Q And how exactly would those investment notes have anything to do with that? Explain the mechanism. Explain what you did with them or how it worked.
A It was a tough sell. But who had the most to gain? Spirit and Vos building those plants. A $315 million contract to Spirit and Vos would be a lot. Be a very good thing. And they would make some profit on that. So if that would go through, for them to lose them two notes that were assigned to them would not be--for $8 million would not be a horrific loss. Okay?

So that's-- And that was Mr. Tak's idea, and he put that clause in there. And he put that he could take those notes, and if we could go around town and borrow some money, he could--he could, you know, get Eco Fibre going and get things going that we had to get going.

Q So is it your testimony it was Mr. Tak's idea to try to assign these notes to other potential lenders in town?

A I don't want to say it was all Sharad's idea. I said to him, "Hey, listen, I'm putting in 15 million more dollars, sixteen four actually. You have spent some money over here. We got all the permitting to do on the big other three projects, the one in Pennsylvania, the one in Utah, and the one in Green Bay, and we're running into a lot of costs with the independent engineer and everything."

So Sharad's idea was I'll give you three notes out of Tak Investments, the owner of ST Paper, and, Ron, you--you have to make that good. And what I'll do against these monies is I'll give you 49 percent of the mill as collateral. I can't give you control. But I'll give you a 22 and a 27 percent of your own mill you're selling me back to you as collateral if something falls apart.

Q When did he communicate that to you?

A Mr. Griepentrog came back with it and--and we read it, and then we moved Mr. Tak over to the other side. And Mr. Griepentrog came back with--without the exact words, but he came back with the whole contract. We talked about it for a couple days. And then he made two more significant changes, and then we agreed to it.

Q So within this--in the span of seven to nine or ten days, however long it was, you in your discussions

decided to arrive at this final business terms agreement; is that fair?

A I just couldn't take any money out of the project. Basically, every--

MR. GANZER: The answer is yes or no.

Q In that course of that seven- to ten-day period prior to the closing through your discussions with Mr. Tak, you started and completed negotiations and execution and filing of this business--

A Yes.

Q And, again, really the problem you had with Goldman adjusting its willingness--the scope of its willingness to finance the project, you didn't have enough funds to pay all the lienholders that existed at the time; is that fair?

A Yes.

Q And then in your mind, at least, these notes would be a mechanism by which you could--you could offer to assign the note to a third party that had a lien in exchange for them releasing a lien on the mill; is that fair?

A Yes.

Q And who are those parties that did that for you?

A I believe I answered that already, but it was Spirit, Vos, R&B Investments, Bill Bain.

Q Any others?

A Associated Bank.
Q Any others?
A No.
Q And what were the amounts of those?
MR. GANZER: Amounts of what?
A The four notes--
THE REPORTER: Excuse me. I'm getting an error message.
MR. GANZER: Why don't we take a short break.
(Recess from 10:00 a.m. to 10:07 a.m.)
Q Mr. Van Den Heuvel, we're back from a short break, and we talked about the fact that there were four creditors of either Oconto Falls Tissue or one of the entities that owned the asset at the mill prior to closing; is that correct?
A That's correct.
Q Those were Spirit Construction, Inc., Vos Electric, R&B Investments, and Associated Bank. Did I get that right?
A That is correct. Those four had a personal guaranty by me and were willing to release their lien for the assignment of those four notes that totalled sixteen four.
Q Let's walk through those four and have you tell me what

they were owed for each of them.
A Five million went to Spirit.
Q I think my question is different actually. What was Spirit owed?
A Spirit was owed five million. Spirit on the whole project? Spirit was owed like 21 million, but they only got 16 because they took five in a note.
Q So Spirit's-- I guess Oconto Falls Tissue's indebtedness to Spirit was how much prior to--
A Twenty-one million.
Q So they took a big cut, and they decided to take a note with the face amount of five million; is that right?
A Yes.
Q And how did that come about? Explain-- Give me the circumstances in which you had those discussions. Who would you talk with at Spirit?
A I would have-- Mr. Tak did most of the talking because I have a--I have an issue. At the time I was president of Spirit, so my father did not want me involved in the transaction.
Q What's your father's role at Spirit?
A Well, he was the president of VHC, the holding company that owned all the companies. And he wanted that-- I talked to them, and then Mr. Tak went and talked to them. And he brought my sister Ann Murphy with him.

Q What role did Ann Murphy have in it?
A At the time she was on the board of St. Norbert's and a couple different things, and Mr. Tak and her did a bunch of things. Mr. Tak is an other-side-of-the-aisle person, and my sister is also. I meant politically. I don't like to talk politics.
Q I understand. So there were discussions had with someone at Spirit. Who was the person that you first spoke with at Spirt about this idea, basically the idea that Spirit--
A I would have talked to my dad. I knew I couldn't sign it because it would be a conflict of interest.
Q You couldn't sign the lien waiver--
A Right.
Q --release?
A So I believe my dad had my brother Steve sign it after Steve and-- I don't know who all was in the meeting with Mr. Tak. I wasn't there. I organized that meeting. I organized the meeting with Vos. I organized the meeting with Bill Bain. I organized the meeting with Nicolet Bank. They would not take any. I did the--organized the meeting with Chris Hartwig. He would not take any. And I organized the meeting with Associated, and Associated--Mr. Tak told them they couldn't get the deal done, and they took a $3 million

note.
Q So Spirit took a $5 million note?
A Vos took a three.
Q Vos took a three. R&B--
A 4.4 was R&B, and four million went to Associated.
Q So Associated was four. You stated it was three. It was four million?
A Okay.
Q Who at Associated did you speak with concerning this?
A My guy at the time was Bob Atwell.
Q At Associated?
A Uh-huh. Bob Atwell and Mike Daniels were my bankers there, and they later formed a bank called Nicolet.
Q At this time did Nicolet Bank exist?
A No, not when we first talked to them.
Q And when did you first talk?
A Right before closing, yeah.
Q You said you approached Nicolet Bank, and they wouldn't take any.
A Well, later I approached Nicolet Bank, and they wouldn't take any.
Q I understand. Chris Hartwig, same story. You said you approached him, and he wouldn't take any notes?
A Correct.
Q When did that happen?

A In them eight days.
Q And--
A He did meet with Mr. Tak, and I don't know what happened.
Q Were you at that meeting?
A No. I had a personal guaranty, and Chris didn't want me in the meeting.
Q How much money was Chris Hartwig owed?
A At the Oconto Falls transaction or on all transactions?
Q All transactions. Then we'll talk about Oconto Falls.
A $4.7 million.
Q And how about as relates to Oconto Falls?
A 1.2.
Q Did he make loans to your companies? How did that happen?
A I actually had shares, and he made loans.
Q Explain the shares aspect of your answer.
A Mr. Hartwig was very influential in cleaning up environmental issues and a pretty good man, and he wanted to see this to be successful. And he knew some of the other partners, Mr. Sherrill, Mr. Dahlin, my sister Ann. And Chris knew them all, so they all got together. And I don't exactly know what came out of it and who took what and who didn't take what, but that's what ended up happening.

Q So he met with these other individuals to extend credit to your entities prior to the closing?
A Yes.
Q Vos Electric, you said, was assigned a $3 million note; is that fair?
A Correct. I couldn't be involved in that because I was the president of Vos Electric at the time.
Q How much money was Vos Electric owed at that time?
A Not a lot. Five million maybe, five and a half.
Q That's a lot of money to me.
A Well, it's a $155 million mill. That's a lot of money to anybody.
Q Was that money owed to them for work done at the mill or--
A Some of it was for work done at the mill. They did the maintenance up at the mill, and some of those bills weren't paid. So they had what's called a mechanic's lien on the mill, so that had to get removed.
Q Vos and Spirit, you said, are both owned by VHC, Inc.; is that right?
A That's correct.
Q Who owns VHC, Inc.?
A Forty-seven individuals. I could not possibly name them all.
Q Are you an owner of VHC, Inc.?

A Yes.
Q And anyone else in your family?
A Everyone.
Q VHC, does that stand for Van Den Heuvel?
A Holding Company.
Q Fair enough. How much was R&B Investments owed by your entities?
A Three and a half million dollars by OFTI and another million dollars, 900,000 by TPTC. He had two separate liens.
Q And then Associated bank, what was the debt there?
A Associated Bank was a little more difficult. They wanted my brother to guarantee the Tak note.
Q Let's go back to my question. How much was Associated Bank owed?
A Between three and a half and four.
Q Were those loans made to your companies for the operation of the mill prior to the closing?
A Correct. When you don't have a big lender, you have a lot of little lenders.
Q And that's what you had prior to the closing?
A Correct. We built the mill with $92 million and about 90 million of equity.
Q You purchased the mill from Kimberly-Clark originally, right?

with a settlement.

Q How do you know that?

A Because she got paid off and signed a release, and no loan was assigned to her. I don't know what they did.

Q So given your prior testimony, the sort of rush period or scramble prior to the closing was a result of Goldman Sachs having a change of heart with respect to the scope of its lending, which resulted in an additional $15 million approximately seller financing, bringing your total up to 30 million. Is that fair?

A Two different companies, but yes.

Q What two companies?

A Oconto Falls Tissue, Inc., was on the seller notes, and TPTC was on the--and there were two companies that owned the mill. The asset purchase agreement was for two companies, so we had to clear both companies of debt. So Oconto Falls Tissue, Inc., had no more capability, but TPTC did. And TPTC owned the second paper machine that we built there, the newer one of the two. They had a lot less debt on it though.

Q So between those two entities in your mind, what was the allocation of the additional $30 million--or, the total $30 million of seller financing?

A Thirty million six forty-nine was all to OFTI. The oldest part had been paid down the most. Basically

used my equity that I was going to get back, and it just--it just--I couldn't get it back, so my equity sat in seller notes.

Q How did-- Explain how you viewed your equity in seller notes based on this transaction.

A The value of the mill at the time of sale, TPTC, OFTI, the value of the mill was appraised at $155 million.

Q By who?

A By Pöyry. And it was done for Mr. Tak and them. Tissue is not like a regular business. It has a 15- to 20-year EBITDA for valuation, and the tissue machines last about 50 years. So it's a long-term profit-producing asset.

Q So although there was seller financing clearly in the sale of the mill of $30 million, those were all in the form of seller notes, right?

A Those four notes were seller notes, that's correct.

Q None of the sale documents reference an investment note that is present in seller financing, do they?

MR. GANZER: Object to the form of the question.

Go ahead.

A Well, the final business terms all signed together. We wouldn't sell the mill without the final business terms. Couldn't.

Q Is there anything in the asset purchase agreement that has anything--any reference to the final business terms agreement to your knowledge?

A It shows 20 million of equity from Mr. Tak, and it shows a 20 million EPC was contemplated because otherwise we wouldn't have done the 30 million of seller notes. And because he was working on the three fifteen, his equity was spread everywhere, so he didn't have a chance to put it in. And then they ended up not being able to do the whole 20 million EPC.

Q Well, the $315 million transaction was not part of the second amended and restated asset purchase agreement, was it?

A It's not part of that, no.

Q And that is the agreement that governs the sale of the mill, correct?

A Yeah, but there's four asset purchase agreements.

Q This is the--

A You only have one.

MR. GANZER: Hold on. It hasn't been marked. You haven't seen it.

Q The second amended and restated asset purchase agreement is the final agreement memorializing the sale of the assets of the mill; is that correct?

A It covers two of the asset purchase agreements, that's

correct. He has two others signed.
Q What two other asset purchase agreements relate to the sale of the Oconto Falls mill?
A Eco Fibre's relates to it, and RAR relates to it.
Q These are agreements signed, I think you said, December of 2006?
A That's correct.
Q How did those relate to the sale of the assets of the Oconto Falls mill?
A Eco Fibre had to run and make pulp for the mill because the mill was short. Couldn't make enough of its own pulp. And RAR was the water cleaning technology for the environmental permit, and he had the right to use both.
Q He didn't obtain-- When I say he, Mr. Tak didn't obtain any assets from those two entities as a result of the closing, did he?
A No, but he owed 2.6 million to Eco Fibre.
Q He owed?
A Yeah, ST Paper did.
Q Explain that.
A Mr. Tak would buy wastepaper and put it into Eco Fibre. Eco Fibre would sell 140 tons a day of pulp to a company called Ekman. Forty tons of that pulp ST Paper had the right of first refusal. So they had the rights

to the first 40 tons of pulp produced by Eco Fibre. The other hundred tons that Ekman would sell to the open market would not be there.

Q So these agreements in your mind relate to the right of purchasing pulp, but they don't--they're not the purchase or sale of an asset; is that right?

A They have all of the assets he owned. He had to pay for them, but he had a signed asset purchase by me. I was completely getting out of the business.

Q Was that ever closed?

A It never closed. It was part of the 315 million.

Q So that deal was never consummated finally?

A No, the only thing that was consummated was the asset purchase agreements were assigned.

(Exhibit 1 marked.)

Q Mr. Van Den Heuvel, this is marked as Exhibit 1. Is this the second amended and restated asset purchase agreement you were just testifying about?

A Eighty-six million, yes. The seller notes are broke out separate, and the fifty-five eight eleven is what was cleared by the title company.

Q So this document is the final agreement memorializing the sale of the Oconto Falls mill; is that correct?

A The day before we closed, this was signed, and this is the asset purchase agreement that the mill was closed

on.

Q If you look at page 4--

A Drafted by your company.

Q If you look at page 4 of this agreement, there's a section there, 2.3. It says payments at closing. Take a look at that.

You see a reference to a payment of $30,589,000 in section 2.3? Do you see that?

A Yes.

Q Is that in the form of a subordinate promissory note from an entity affiliated with Mr. Tak?

A This is from ST Paper to OFTI. Them are the seller notes.

Q And then that is the seller financing you referenced earlier to that debt?

A That's correct.

Q Can you identify for me anywhere in this agreement where, one, the investment notes are referenced?

A Other than the fact that in here we have to give clean title. And your company did what's called a lien search on the mill, and we all knew we had a problem right here.

Q Do you see any reference to those investment notes in this document?

A Nothing except we have to clean the title.

Q Do you see any reference to any additional form of seller financing above the $30,589,000 figure referenced in paragraph 2.3?
A (Pause.) Could you repeat your question, Jon?
(Reporter reads question.)
A It is not listed in here except for cleaning up the title.
Q Explain what you mean by cleaning up the title. Tell us where--
A We have to give them one of our warranties, as we have to give clean title to Mr. Tak.
Q Does that provision say it has to be in the form of an investment note?
A No.
Q Did it say anything else about any other seller financing?
A No, just says clean title.
Q And it doesn't say how much is owed to various lienholders, does it?
A The problem came from Mr. Tak not having his $20 million of equity at the time because the other big project was going. That's where the problem came. We didn't have enough money to clean the title. Had he had his $20 million, we wouldn't have had the sixteen four in notes. We had to clean the title, and the

final business terms was how we did it.

Q But, again, there is no reference to the final business terms agreement in this document, Exhibit 1?

A No. The only thing is we had to clean the title.

Q I'd like you to take look at page 37, section 12.4.

A What page?

Q Thirty-seven.

A Yes?

Q Do you see that section 12.4, entire agreement?

A I see it.

Q It states: "This agreement, the exhibits attached hereto and ancillary agreements constitute the entire agreement between the parties hereto relating to the subject matter hereof, and all prior agreements, correspondence, discussions, and understanding of the parties, paren., whether oral or written, and including, without limitation, the original asset purchase agreement, close paren., are merged herein and made part hereof, it being the intention of the parties hereto that this agreement and the instruments and agreements contemplated hereby shall serve as the complete and exclusive statement of the terms of their agreement together."

Did I read that correctly?

A I see it, but it doesn't say anything about his 20

million of equity.

MR. GANZER: No, no, the answer--the question calls for a yes or no answer. Did he read that correctly?

THE WITNESS: Did he read that section correctly?

MR. GANZER: Yep, that's what he asked.

THE WITNESS: Yes.

Q And the reference to the original asset purchase agreement you see there in that section, isn't that the December '06 agreement you referenced earlier, which relates to Eco Fibre and Recovering Aqua Resources?

A Yes, those are two additional asset purchase agreements signed.

Q When you signed this agreement, you understood then that this was the final expression of the intent of the parties as it relates to all these matters, including that original agreement?

A Wrong.

MR. GANZER: It also references ancillary agreements.

Q Let's talk about the ancillary agreements. But before we do, what do you understand this to be?

A I understood this is a description of the Goldman Sachs transaction to buy the mill.

ST Paper. Doesn't say anything about any agreement with Tak Investments.

Q Exactly.

A Because it was a separate agreement.

Q So you can see then that Exhibit 1 has no reference to any final business terms agreement, does it?

A Other than the title has to be clean.

Q There's nothing in this Exhibit 1 that says anything about the final business terms--

MR. GANZER: I'm going to object. It's been asked and answered.

A I answered it. The title had to be clean.

MR. SMIES: You want to take a short break?

MR. GANZER: Sure.

(Recess from 10:59 a.m. to 11:08 a.m.)

Q Mr. Van Den Heuvel, we're back on. The final business terms agreement, essentially as I understand your prior testimony, was conceived of, negotiated, and executed within that short ten-day-or-less period prior to the closing of the transaction reflected in Exhibit 1; is that correct?

A Yes.

Q And are you aware and when did you sign that agreement?

A It was at our offices, Mr. Tak and mine. Don't know

the lady. Can't remember the lady's name from your firm. I want to say a Carla, but I'm not positive. Okay? I'm not positive of that lawyer's name. But Paul Damm, my lawyer from Foley, and David Stellpflug, Steve Peters, myself. And the biggest problem came from Mr. Tak wanting--if the 315,000 Barclays Bank closed, he wanted the sixteen four of his equity replacement to be forgiven. That was another tough thing to negotiate during this rush period.

Q Well, at your office you said it was signed?

A Glory Road, that's correct.

Q And you understand this document to be attached to the complaint--the amended complaint in this lawsuit, the final business terms agreement?

A Okay.

Q You had a lawyer from Foley & Lardner there; is that right?

A He wasn't an employee of Foley & Lardner. He had quit Foley & Lardner and was our personal attorney. He worked for us.

Q I see.

A In-house counsel you call it?

Q Sure.

A At this closing he was in-house counsel.

Q And that was Mr. Damm?

EXECUTION COPY

SECOND AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

THIS AMENDED AND RESTATED ASSET PURCHASE AGREEMENT ("Agreement"), made and entered into as of this 16th day of April, 2007, by and among **ST PAPER, LLC**, a Delaware limited liability company (the "Buyer"), **OCONTO FALLS TISSUE, INC.**, a Wisconsin corporation (the "Company"), **TISSUE PRODUCTS TECHNOLOGY CORP.**, a Wisconsin corporation ("TPTC"), and **PARTNERS CONCEPTS DEVELOPMENT, INC.**, a Wisconsin corporation ("PCDI") (the Company, TPTC and PCDI, individually a "Seller" and collectively, the "Sellers"). **ST PAPER HOLDINGS, LLC**, a Delaware limited liability company ("Holdings"), shall be a party to this Agreement solely for purposes of Paragraph 12.12.

W I T N E S S E T H:

WHEREAS, the parties to this Agreement entered into that certain Asset Purchase Agreement dated as of September 19, 2006 (the "Original Asset Purchase Agreement") and amended and restated the Original Asset Purchase Agreement by entering into that certain Amended and Restated Asset Purchase Agreement dated as of December 5, 2006 (the "Amended and Restated Agreement"); and

WHEREAS, the parties now wish to amend and restate the Amended and Restated Agreement in its entirety in the manner set forth herein; and

WHEREAS, TPTC owns all of the issued and outstanding shares of the One Cent ($.01) par value common stock of the Company; and

WHEREAS, PCDI owns all of the issued and outstanding shares of the One Cent ($.01) par value common stock of TPTC; and

WHEREAS, Ronald H. Van Den Heuvel owns a majority of the issued and outstanding shares of capital stock of PCDI; and

WHEREAS, the Company desires to sell to the Buyer and the Buyer desires to purchase from the Company substantially all of the assets owned or used by the Company in the operation of its business, upon the terms and conditions set forth herein; and

WHEREAS, TPTC and PCDI and others will benefit financially from the transactions contemplated herein and desire to consummate such purchase and sale.

NOW, THEREFORE, the Buyer and the Sellers, in consideration of the mutual promises hereinafter set forth, do hereby promise and agree as follows:

ARTICLE I

Assets To Be Purchased

1.1. Subject Assets. Subject to the terms and conditions set forth in this Agreement, the Company agrees to sell to the Buyer and the Buyer agrees to purchase from the Company at

Van Den Heuvel
Exhibit No. 1
John Gales 8/21/17

the Closing all of the assets owned or used by the Company in connection with the operation of its business other than the Excluded Assets (collectively, the "Subject Assets"), including, without limitation (except to the extent such assets are Excluded Assets), the following:

(a) all tangible assets of every kind and description, including, without limitation, all fixed assets, machinery, equipment, tools, tooling, molds, leasehold improvements, fixtures, furniture, furnishings, vehicles, computer hardware and software, servers, modems, data processing equipment and other items of similar character, wherever located, including, without limitation, those assets described on **Exhibit 1.1(a)**;

(b) all real estate, fixtures and improvements, including all rights, privileges and easements appurtenant thereto, including, without limitation, the real estate, fixtures, improvements, rights, privileges and easements described on **Exhibit 1.1(b)**;

(c) all supplies, packaging materials, marketing and sales literature, advertising materials, catalogues, consumable materials and other items of similar character;

(d) all Records other than corporate minute books, stock ownership records and tax returns;

(e) all customer lists and supplier lists;

(f) all logos, product specifications, blue-prints, drawings, formulae, patents, patent applications, domain name addresses, trade names, trademarks, trademark registrations and any applications therefor, copyrights, copyright registrations and applications therefore (in each case, whether issued or pending), and all inventions, improvements, manufacturing know-how, trade secrets and technical knowledge, intangible assets relating to web sites, and all other similar interests to which the Company has any right of ownership or use;

(g) any and all goodwill;

(h) to the extent their transfer is permitted by Law, all governmental licenses, permits, approvals, license applications and product registrations and, to the extent permitted by Law, the benefit of those governmental licenses, permits, approvals, license applications and product registrations which are not transferable;

(i) all of the Company's right, title and interest in, to and under those purchase orders, sales orders, licenses, supply agreements, leases and other agreements set forth on **Exhibit 1.1(i)** (the "Assumed Contracts"), including, without limitation, any right to receive payment for products sold or services rendered pursuant to such contracts and to assert claims and to take other rightful actions in respect of breaches, defaults and other violations of such contracts and otherwise;

(j) to the extent such items are not related to the Excluded Assets or Excluded Liabilities, all rights to causes of action, lawsuits, judgments, claims and demands of any nature available to or being pursued by the Company with respect to the ownership, use,

function or value of any Subject Asset, whether arising by way of counterclaim or otherwise;

(k) to the extent such items are not Excluded Assets or related to the Excluded Assets or Excluded Liabilities, all guarantees, warranties, indemnities and similar rights in favor of the Company with respect to any Subject Asset, and all claims, deposits, unemployment compensation account balances of the Company to the extent transferable, refunds, rebates, rights of recovery, rights of recoupment and other rights of action against third parties of the Company;

(l) to the extent their transfer is permitted by Law, all of the Company's rights in, to and under any contract with any of the current and former employees, consultants, agents, representatives, customers, suppliers, vendors or otherwise, regarding non-competition, non-solicitation, and/or confidentiality of trade secrets, proprietary or other information;

(m) to the extent such items are transferable, any and all other rights and assets owned by the Company and/or used by the Company in the operation of its business, including all rights of the Company to conduct its business as it exists at the Closing, including the right to pursue orders resulting from quotations to customers outstanding at the Closing, other than the Excluded Assets;

(n) all prepaid items, expenses and accruals;

(o) all inventories, wherever located, including without limitation, raw materials, work in process and finished goods; and

(p) all spares, spare parts and storeroom materials.

1.2. Excluded Assets. The provisions of Paragraph 1.1, above, notwithstanding, the Subject Assets shall not include the assets set forth in **Exhibit 1.2** (collectively, the "Excluded Assets").

ARTICLE II

Closing; Purchase Price; Assumed Liabilities

2.1. Closing. The Closing shall be held at the offices of Godfrey & Kahn, S.C. located at 333 Main Street, Green Bay, Wisconsin, at 9:00 a.m. on the third business day after the satisfaction or waiver of each of the conditions set forth in Article III or at such other place, time or date as the Sellers and the Buyer may agree; provided, however, that the parties shall use their commercially reasonable efforts to close the transactions contemplated hereby by April 30, 2007.

2.2. Purchase Price. The aggregate purchase price (the "Purchase Price") for the Subject Assets shall be an amount equal to Eighty Six Million Four Hundred Thousand Dollars ($86,400,000).

2.3. Payments at Closing. At the Closing, the Buyer shall pay the Purchase Price as follows:

(i) Buyer shall pay Fifty-Five Million Eight Hundred Eleven Thousand and 00/100 Dollars ($55,811,000.00) less the amount of the Company's debt obligations assumed by the Buyer, as described on Exhibit 2.6 attached hereto, if any, in immediately available U.S. dollars directly to the applicable lenders and other creditors of the Company in order for the Buyer to obtain clear title to the Subject Assets in accordance with payoff letters provided to the Buyer by such lenders and creditors (which shall not relieve the Company from providing clear title to the Subject Assets in accordance with Paragraph 3.1(f)(vi), below).

(ii) Buyer shall assume the Company's debt obligations described on **Exhibit 2.6** attached hereto, if any.

(iii) Buyer shall deliver a subordinated promissory note in the original principal balance of Thirty Million Five Hundred Eighty Nine Thousand and 00/100 Dollars ($30,589,000.00), in the form attached hereto as **Exhibit 2.3** (the "Note").

2.4. [Intentionally Left Blank]

2.5. Allocation of Purchase Price. The Purchase Price shall be allocated among the Subject Assets and the noncompetition provisions set forth in Article VIII, below according to the mutual agreement of the parties. The Buyer and the Sellers shall make all required submissions to governmental agencies, including the filing of all tax returns, on a basis consistent with such allocation unless there is a "determination," as such term is defined in Section 1313(a) of the Code that requires a different allocation.

2.6. Liabilities Being Assumed. As partial consideration for the Subject Assets, the Buyer shall assume and perform only the liabilities and obligations of the Company under the Assumed Contracts which accrue after the Closing and such other liabilities as set forth in **Exhibit 2.6** (the "Assumed Liabilities").

2.7. Liabilities Not Being Assumed. Anything contained herein to the contrary notwithstanding (except for the Assumed Liabilities and Assumed Contracts), the Assumed Liabilities shall not include the following (the "Excluded Liabilities"):

(a) any trade accounts payable, notes payable or accrued liabilities of the Company or any other Seller;

(b) any liability of the Company or any other Seller for Taxes;

(c) any accrued liabilities of the of the Company or any other Seller for brokers', attorneys' or accountants' fees incurred in connection with the transactions contemplated herein or any other expenses of the Company or any other Seller relating hereto (including those described in Paragraph 12.1, below);

(d) any liabilities or obligations of the Company or any other Seller arising under this Agreement;

(e) any liabilities or obligations of the Company or any other Seller arising with respect to current employees and/or former employees (including all retirees) of the Company under any Plan, including, without limitation, any defined benefit program, deferred compensation arrangements, profit sharing plans;

(f) any liabilities or obligations of the Company or any other Seller for dividends or other distributions to their respective shareholders (whether for Tax or otherwise);

(g) any liabilities or obligations of the Company or any other Seller relating in any way to the Excluded Assets; and

(h) any liabilities or obligations of the Company or any other Seller (whether incurred in the ordinary course of business or otherwise) which are not specifically assumed by the Buyer hereunder.

ARTICLE III

Conditions Precedent to Closing

3.1. Conditions Precedent to the Buyer's Obligation. The obligation of the Buyer to consummate the transactions contemplated herein is subject to the satisfaction as of the Closing of the following conditions:

(a) The representations and warranties of the Sellers made in this Agreement shall be true and correct in all respects as of the date hereof and on and as of the Closing, as though made on and as of the Closing Date; the Sellers shall have performed in all respects the covenants of the Sellers contained in this Agreement required to be performed on or prior to the Closing; and the Sellers shall each have delivered to the Buyer a certificate dated the Closing Date and signed by the Sellers or an authorized officer of each Seller confirming the foregoing. The statements contained in such certificates shall be a warranty of the Sellers which shall survive the Closing for the period provided in Paragraph 4.2, below.

(b) No suit, action, investigation, inquiry or other legal or administrative proceeding by any governmental authority or other person shall have been instituted or threatened which seeks to enjoin, restrain or prohibit, or which questions the validity or legality of, the transactions contemplated hereby or which otherwise seeks to affect or could affect the transactions contemplated hereby or impose damages or penalties upon any party hereto if such transactions are consummated.

(c) The Buyer or any Affiliate of the Buyer shall have obtained financing, on terms and conditions satisfactory to the Buyer or any Affiliate of the Buyer, for the transactions contemplated herein.

(d) Between the date hereof and the Closing Date, there shall be no material adverse change in the business or assets of the Company and none the Sellers shall have received any notice or indication that a material customer or material supplier of the Company intends to cease doing business or to materially reduce the business transacted with the Company or intends to terminate any agreements with the Company.

(e) [Intentionally Left Blank.]

(f) The Sellers shall have delivered to the Buyer the following:

(i) Consents, in a form reasonably satisfactory to the Buyer and all other consents, approvals, authorizations, permits and licenses which the Buyer deems necessary to operate the Company's business, if any, all in a form satisfactory to the Buyer.

(ii) A binding commitment to issue a current ALTA form owner's policy of title insurance for each parcel of Real Estate. Such commitment shall be issued by a title carrier acceptable to the Buyer and licensed in the State of Wisconsin. Such commitment shall (i) be in current ALTA form, (ii) show title to the Real Estate to be vested in the Company free and clear of all liens and encumbrances except Permitted Real Estate Encumbrances, (iii) provide extended coverage insuring over the standard preprinted exceptions including an endorsement insuring title through the Closing Date (gap coverage), and (iv) contain such other special endorsements as may be reasonably required by the Buyer or its financing sources.

(iii) A copy of all existing surveys in the Company's or any other Seller's possession and control for the Real Estate, which surveys shall not reveal any matters which could adversely impact the Buyer's occupancy of the Real Estate.

(iv) Constructive possession of all passbooks, keys and other data of the Company or articles required for access thereto and the combinations for all safes, vaults and other places of safekeeping or storage of the Company.

(v) Physical possession of all of the Subject Assets.

(vi) Duly executed satisfactions, termination statements and/or releases, in forms reasonably satisfactory to the Buyer, to the extent required to release any existing liens, claims and encumbrances against the Subject Assets other than the Permitted Liens and Permitted Real Estate Encumbrances.

(vii) An opinion from Stellpflug, Janssen, Hammer, Kirschling & Bartels, S.C., legal counsel to the Sellers, dated as of the Closing Date, in the form attached hereto as **Exhibit 3.1(f)(vii)**.

(viii) A Certificate from the Secretary (or similar officer) of the Company, TPTC and PCDI, in a form satisfactory to the Buyer, setting forth the

resolutions of the Board of Directors (or similar governing body) of the Company, TPTC and PCDI authorizing the execution of this Agreement and all documents to be executed in connection herewith and the taking of any and all actions deemed necessary or advisable to consummate the transactions contemplated herein and the true, complete and correct copies of the Articles of Incorporation and By-laws of such entities, and all amendments thereto.

(ix) An Amendment to Amended and Restated Sales and Marketing Agreement, in the form attached hereto as **Exhibit 3.1(f)(ix)** (the "Sales and Marketing Agreement"), duly executed by TISSUE TECHNOLOGY, LLC, a Wisconsin limited liability company ("TTL").

(x) Warranty bills of sale, general assignments, specific assignments of Intellectual Property, warranty deeds for Real Estate, certificates of title for vehicles owned by the Company, and such other instruments of conveyance as the Buyer shall reasonably require, in forms reasonably satisfactory to the Buyer, duly executed by the Company, to convey to the Buyer the Subject Assets.

(xi) An assignment and assumption agreement, in a form reasonably satisfactory to Buyer and the Company, pursuant to which the Company assigns to the Buyer and the Buyer assumes from the Company, all of the Company's right, title and interest in, to and under the Assumed Contracts and the Buyer assumes the Assumed Liabilities (the "Assignment and Assumption Agreement"), duly executed by the Company.

In the event that any of the foregoing conditions to Closing shall not have been satisfied, the Buyer may elect to: (i) terminate this Agreement without liability to the Buyer; or (ii) consummate the transactions contemplated herein despite such failure. Regardless of whether the Buyer elects to terminate this Agreement or consummate the transactions described herein, if such failure shall be as a result of a breach of any provision of this Agreement by the Company or any other Seller (including, without limitation, the failure of the Company or any other Seller to execute and/or deliver to the Buyer any item described in Paragraph 3.1(f), above), the Buyer may seek appropriate remedies for any and all damages, costs and expenses incurred by the Buyer by reason of such breach including, without limitation, indemnification pursuant to Article IX, below.

3.2. Conditions Precedent to the Sellers' Obligation. The obligation of the Sellers to consummate the transactions contemplated herein is subject to the satisfaction as of the Closing of the following conditions:

(a) The representations and warranties of the Buyer made in this Agreement shall be true and correct in all respects as of the date hereof and on and as of the Closing, as though made on and as of the Closing Date; the Buyer shall have performed in all respects the covenants of the Buyer contained in this Agreement required to be performed on or prior to the Closing; and the Buyer shall have delivered to the Sellers a certificate dated the Closing Date and signed by an authorized officer of the Buyer confirming the

foregoing. The statements contained in such certificate shall be a warranty of the Buyer which shall survive the Closing for the period provided in Paragraph 5.2, below.

(b) No suit, action, investigation, inquiry or other legal or administrative proceeding by any governmental authority or any other person shall have been instituted or threatened which seeks to enjoin, restrain or prohibit, or which questions the validity or legality of, the transactions contemplated hereby or which otherwise seeks to affect or could affect the transactions contemplated hereby or impose damages or penalties upon any party hereto if such transactions are consummated.

(c) The waiting period (and any extension thereof) applicable to the transactions contemplated hereby under the HSR Act shall have been terminated or shall have expired, and approvals under all similar competition or merger control laws that are reasonably determined by Buyer to be to be applicable to the transactions contemplated hereby shall have been obtained.

(d) [Intentionally Left Blank]

(e) The Buyer shall have delivered to the Sellers the following:

(i) The Buyer shall deliver to the Company the payment of the Purchase Price in the manner required by Paragraph 2.3, above.

(ii) The Sellers shall have received a certificate from the Secretary (or other similar officer) of the Buyer, in a form reasonably satisfactory to the Sellers, setting forth the resolutions of the Board of Directors (or other similar governing body) of the Buyer authorizing the execution of this Agreement, and all agreements, documents and instruments to be executed in connection herewith and the taking of any and all actions deemed necessary or advisable to consummate the transactions contemplated herein.

(iii) TPTC shall have received the Sales and Marketing Agreement, duly executed by the Buyer.

(iv) TPTC and PCDI shall have received a Non-Competition Agreement, in the form of **Exhibit 3.2(e)(iv)** attached hereto, setting forth the Buyer's agreement not to engage in the business of tissue converting on the terms set forth therein, duly executed by the Buyer.

(v) An opinion from Godfrey & Kahn, S.C., legal counsel to the Buyer, dated as of the Closing Date, in the form attached hereto as **Exhibit 3.2(e)(v)**.

(vi) The Assignment and Assumption Agreement, duly executed by the Buyer.

In the event that any of the foregoing conditions to Closing shall not have been satisfied, the Sellers may elect to: (i) terminate this Agreement without liability to the Sellers; or (ii)

consummate the transactions contemplated herein despite such failure. Regardless of whether the Sellers elect to terminate this Agreement or consummate the transactions described herein, if such failure shall be as a result of a breach of any provision of this Agreement by the Buyer (including, without limitation, the failure of the Buyer to execute and/or deliver to the Sellers any item described in Paragraph 3.2(e), above), the Sellers may seek appropriate remedies for any and all damages, costs and expenses incurred by the Sellers by reason of such breach including, without limitation, indemnification pursuant to Article IX, below.

ARTICLE IV

Warranties and Representations of the Sellers

4.1. Warranties and Representations. The Sellers hereby jointly and severally warrant and represent to the Buyer, which warranties and representations shall survive the Closing for the period set forth in Paragraph 4.2, below, as follows:

4.1.1. Authority of the Sellers. The Company has full right, power and authority to sell, transfer and deliver to the Buyer the full legal and beneficial ownership in the Subject Assets to be sold by the Company pursuant to this Agreement, and each of the Sellers has full right, power and authority to consummate the transactions contemplated herein. This Agreement has been, and each Ancillary Agreement to which each Seller is a party hereto will be, duly and validly executed and delivered by each Seller and this Agreement and such Ancillary Agreements are and shall constitute the legal, valid and binding obligation of each Seller enforceable against each Seller in accordance with their respective terms. Except as set forth in Section 4.1.1 of the Schedule of Exceptions, the execution, delivery and performance of this Agreement and the Ancillary Agreements to which each Seller is a party does not, and the consummation of the transactions contemplated hereby and compliance with the terms hereof and thereof by the Sellers will not (i) conflict with, or result in a breach or violation of, any Laws, or any judgment, order or decree applicable to any Seller or the Subject Assets, or (ii) violate or conflict with, or result in a breach under, or result in the imposition of any lien, claim or encumbrance upon any of the Subject Assets pursuant to, any agreement, instrument or document to which any Seller is a party or is subject, or which affects any Seller or the Subject Assets and which is not otherwise waived. No action, consent, approval, order or authorization of or registration, declaration, or filing with, any court or governmental or administrative body or agency or other third party is required to be obtained or made in connection with the execution and delivery of this Agreement and the Ancillary Agreements by the Sellers or the consummation by the Sellers of the transactions contemplated hereby.

4.1.2. Shareholder Agreements. Except for this Agreement and the Ancillary Agreements executed in connection herewith, there are no voting trust agreements, powers of attorneys, proxies or any other contracts, agreements, arrangements, commitments, plans or understandings, written or oral, restricting or otherwise relating to the management of the Company, or otherwise granting any person any right in respect of such Subject Assets and there are no existing restrictions on the transfer of the Subject Assets.

4.1.3. Litigation Against Sellers. Except as set forth in Section 4.1.3 of the Schedule of Exceptions, there is no claim, action, suit, proceeding, arbitration, investigation or inquiry before

any court or governmental or administrative body or agency, any securities or commodities exchange, other regulatory body or any private arbitration tribunal now pending or, to the knowledge of the Sellers, threatened, against or relating to any Seller which would affect the ability of the Sellers to consummate the sale of the Subject Assets or the other transactions contemplated by this Agreement.

4.1.4. Corporate Matters. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of Wisconsin. The Company has the power and authority to own or lease its properties and to carry on all business activities now or proposed to be conducted by it. The Company is duly qualified and in good standing in each jurisdiction in which the nature of its business or the ownership, leasing or holding of its assets makes such qualification necessary. Attached hereto as **Exhibit 4.1.4** is a true, complete and correct list of all jurisdictions in which the Company is qualified to do business as a foreign corporation. Except as set forth in Section 4.1.4 of the Schedule of Exceptions, the consummation of the transactions contemplated hereby and compliance with the terms hereof will not (a) conflict with, or result in any breach or violation of (i) any provision of the Articles of Incorporation or By-Laws of the Company, or (ii) any applicable Law or any judgment, order or decree applicable to or which affects or binds the Company or its assets or properties; (b) require any consent, approval, authorization, license, permit, registration, filing, recording or waiver under any order, writ, judgment, injunction, decree, determination, award or Law which affects or binds the Company or under any governmental or judicial license, franchise, permit or approval held by the Company or which binds or may affect the Company or any of the Company's assets; or (c) violate or conflict with, or result in a breach under, or result in the imposition of any lien, claim or encumbrance upon any of the Company's assets pursuant to, any agreement, instrument or document to which the Company is a party or is subject or which affects the Company or its assets or properties which has not otherwise been waived.

4.1.5. Title To and Condition of the Subject Assets. The Company has good and marketable title to all of the Subject Assets, personal and real, tangible and intangible, free and clear of all liens, claims, encumbrances and security interests whatsoever other than those liens described in Section 4.1.5 of the Schedule of Exceptions (the "Permitted Liens"). The Subject Assets are sufficient for the operation of the Company's business in the ordinary course of business and are suitable for the purpose for which they are being used. Any leased personal property included within the Company's assets is in the condition required of such property by the terms of the lease applicable thereto during the term of the lease and upon the expiration thereof. No Affiliate of the Company has any interest in any right, property or asset used or required by the Company in the operation of the Company's business.

4.1.6. Real Estate. Except as set forth in Section 4.1.6 of the Schedule of Exceptions, with respect to the Real Estate:

(a) subject to Permitted Liens and Permitted Real Estate Encumbrances, the Company has good and marketable fee title, free and clear of any security interest, mortgage, pledge, option, right of first refusal, encumbrance, charge, easement, covenant, or other lien or restriction;

(b) neither the Real Estate nor the Company's use thereof is in violation of any applicable Law;

(c) Subject to Permitted Liens and Permitted Real Estate Encumbrances, none of the Real Estate is subject to any lease, option to purchase or rights of first refusal;

(d) except for liens for taxes not yet due and payable and the Permitted Real Estate Encumbrances, there are no (i) actual or, to the Sellers' knowledge, proposed special assessments; (ii) pending or, to the Sellers' knowledge, threatened condemnation proceedings; (iii) pending or, to the Sellers' knowledge, threatened litigation or administrative actions; (iv) mechanics' or materialman's liens; (v) material structural or mechanical defects in any of the buildings located on the Real Estate; (vi) planned or commenced improvements which may result in an assessment or otherwise affect the Real Estate; (vii) governmental agency or court orders requiring the repair, alteration or correction of any existing condition with respect to the Real Estate or any portion thereof; or (viii) pending or, to the Sellers' knowledge, threatened changes in any zoning Laws or ordinances which may affect the Real Estate;

(e) the legal descriptions set forth on attached **Exhibit 4.1.6(e)** accurately describes each parcel of the Real Estate; (ii) the buildings and improvements on the Real Estate are located within the boundary lines of such the Real Estate, are not in violation of applicable setback requirements or zoning Laws, and do not encroach on any easements which may affect the Real Estate; (iii) none of the Real Estate serves any adjoining property for any purpose inconsistent with the use of such parcel; and (iv) none of the Real Estate is located within any flood plain or any area containing wetlands or subject to any similar type of restriction for which all applicable permits or licenses necessary to use thereof have not been obtained; and

(f) the buildings, fixtures and other improvements on the Real Estate have been approved by all necessary governmental authorities and are in good operating condition, working order and repair, ordinary wear and tear excepted, and suitable for the purpose for which they are being used by the Company.

4.1.7. Litigation against the Company. Except as set forth in Section 4.1.7 of the Schedule of Exceptions, there is no claim, action, suit, inquiry, arbitration, proceeding or investigation or other legal or administrative proceeding pending or, to the Sellers' knowledge, threatened against the Company before any federal, state, municipal or other court or government or administrative body or agency, any securities or commodities exchange, other regulatory body or any private arbitration tribunal. The Company is not subject to any order, writ, judgment, injunction or decree of any governmental authority or instrumentality or any court.

4.1.8. Intellectual Property.

(a) **Exhibit 4.1.8** attached hereto sets forth: (i) all U.S. and foreign issued design patents, utility patents and other patents, and all pending applications relating to same, and all reissues, divisions, continuations, continuations-in-part and extensions of

them; (ii) all registered trademarks, registered service marks, registered trade dress, trademark, service mark, and trade dress applications, unregistered trademarks and service marks, trade names, trade dress, logos and designs, and unique product configurations; (iii) all registered copyrights' and copyright applications and all renewals and extensions; and (iv) a general identification of all material trade secrets and know-how including, without limitation, invention disclosures, new product development information, formulas, software and vendor and customer lists, owned by the Company or used in the Company's business or in which the Company has an interest and the nature of such interest thereof (items (i) through (iv) hereinafter collectively referred to as "Intellectual Property"). The Sellers have delivered to the Buyer correct and complete copies of all such patents, trademarks or copyright registrations, applications, licenses, agreements and permissions (as amended to date) and have made available to the Buyer correct and complete copies of all other written documentation evidencing ownership and prosecution (if applicable) of each such item of Intellectual Property.

(b) **Exhibit 4.1.8** attached hereto also sets forth all licenses, franchises and permits granted by or to the Company and all other agreements to which the Company is a party, which create rights in the Company or in any third party regarding any Intellectual Property specifically or other intellectual property generally including, without limitation, trademarks, patents, copyrights, trade secrets and know-how (hereinafter collectively referred to as "Licenses").

(c) Except as set forth in Section 4.1.8 of the Schedule of Exceptions, (i) The Company is the sole and exclusive owner, free and clear of all liens, claims and encumbrances, of all right, title and interest in the Intellectual Property and the Company has the absolute right to use and assign those rights without seeking the approval or consent of any third party and without payments to any third party; (ii) all registrations and applications for the Intellectual Property are in full force and effect; (iii) there are no other items of intellectual property that are material to the Company's business; (iv) there are no existing or, to the Sellers' knowledge, threatened claims or proceedings by any person relating to the use by the Company of the Intellectual Property or challenging its ownership of the same; (v) none of the Intellectual Property is subject to any outstanding order, decree, judgment, stipulation, written restriction, undertaking or agreement limiting the scope or use of the Intellectual Property or declaring any of it abandoned; (vi) to the Sellers' knowledge, there are no infringing or diluting uses of the Intellectual Property, and no investigations are pending concerning the possibility of such infringing or diluting use; and (vii) except for the Licenses, the Company has not granted any license, franchise, permit or other right to any third party to use any of the Intellectual Property.

(d) The Company has not interfered with, infringed upon, misappropriated, or otherwise come into conflict with any intellectual property rights of third parties, and neither the Company nor any other of the Sellers has received any charge, complaint, claim, or notice alleging any such interference, infringement, misappropriation or violation.

4.1.9. Financial Statements. Except as set forth in Section 4.1.9 of the Schedule of Exceptions, the Financial Statements attached hereto as **Exhibit 4.1.9** are true, correct and complete, and fairly represent the financial condition of the Company on the dates designated thereon and the results of operations for the periods designated therein and were prepared in accordance with GAAP (subject to those footnotes to the Financial Statements by the Company's accounting firm) subject, in the case of interim financial statements, to appropriate year-end adjustments. There has been no material change in the capitalization, assets, liabilities, business prospects, gross margin, profitability, or methods of doing business of the Company since the Balance Sheet Date other than changes in the ordinary course of business since the Balance Sheet Date (none of which ordinary course changes have had or will have a Material Adverse Effect on the business, prospects or condition, financial or otherwise, of the Company's business).

4.1.10. Taxes. All Tax returns, reports and forms due prior to the date hereof have been timely and properly filed and properly reflect the Tax liability and/or net operating loss of the Company. Except as set forth in Section 4.1.10 of the Schedule of Exceptions, the Company has not requested any extension of time within which to file returns in respect of any Taxes. Except as set forth in Section 4.1.10 of the Schedule of Exceptions, all Taxes and withholding amounts due and payable by the Company prior to the Closing, and all Taxes for which the Company may otherwise be liable, will have been paid in full prior to the Closing. The Company has withheld and paid over all Taxes required to have been withheld and paid over, and complied with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto, in connection with amounts paid or owing to any employee, creditor, independent contractor or other third party. The provision made for Taxes on the Financial Statements attached hereto as a part of **Exhibit 4.1.9**, is sufficient for the payment of all accrued and unpaid Taxes payable by the Company for the periods ending on such dates and for all periods prior thereto. No Tax deficiencies have been proposed or assessed against the Company. There are no pending or, to the Sellers' knowledge, threatened audits, investigations or claims for or relating to any liability in respect of Taxes and there are no matters under discussion with any governmental authorities with respect to Taxes that are likely to result in an obligation by the Company to pay any additional amount of Taxes. No Tax liens have been filed on any asset owned by the Company. The Company is not, and never has been, a party to a Tax sharing agreement. The Company is not liable for the unpaid Taxes of any other Person whether by contract, operation of law or otherwise.

4.1.11. Undisclosed Commitments or Liabilities. There are no commitments, liabilities or obligations relating to the Company, whether accrued, absolute, contingent or otherwise including, without limitation, guaranties by the Company of the liabilities of third parties, for which specific and adequate provisions have not been made on the Financial Statements, except those incurred in or as a result of the ordinary course of business since the Balance Sheet Date (none of which ordinary course obligations have had or will have a Material Adverse Effect on the Company).

4.1.12. Contracts and Other Agreements. **Exhibit 4.1.12** attached hereto sets forth a true and complete list of all of the following with respect to which the Company is a party or by which any of the Real Estate or any of the Company's assets are bound (collectively, the "Contracts"): (i) all purchase orders and sales orders not in the ordinary course of business and

all purchase and sales orders in excess of Twenty Five Thousand Dollars ($25,000.00), all arrangements or agreements, whether written or oral, between the Company and any of the other Sellers or any other Affiliate, loan agreements, supply agreements, sole source arrangements, security agreements, notes, guarantees, mortgages, licenses, technology agreements, royalty agreements, licensing agreements, authorizations, construction permits, leases, employment agreements, compensation agreements, covenants not to compete, confidentiality agreements, commission agreements, sales representative, distributorship or marketing agreements, employee benefit plans, profit sharing plans, pension plans, group insurance, bonus plans or other contracts or agreements (excluding purchase and sales orders except as described above) made in the ordinary course of business for an amount greater than Five Thousand Dollars ($5,000.00) over the term of such Contract or extending more than sixty (60) days from the Closing Date, and (ii) all other contracts or agreements, whether written or oral, not made in the ordinary course of business. True and correct copies (or memoranda describing each with respect to oral agreements or plans) of each of the Contracts, and all amendments and modifications thereof, have been delivered to the Buyer. Each Contract is valid, binding and in full force and effect in accordance with its terms. Except as set forth in Section 4.1.12 of the Schedule of Exceptions, neither the Company, and to the Sellers' knowledge, no other party to any Contract is in breach or default under any Contract (with or without the lapse of time, or the giving of notice, or both).

4.1.13. Products. No claim for product liability has been asserted against the Company during the five (5) year period immediately preceding the date hereof and no event has occurred which might give rise to the assertion of any such claim. There is no deficiency or inadequacy in the manufacture, design or formulation of any of the products of the Company which may result in any such claim. All products sold by the Company have been manufactured in compliance with all applicable manufacturing and quality control procedures.

4.1.14. Product Warranties. All products and services manufactured and/or sold by the Company (and the delivery thereof) prior to the date hereof have been in conformity with all applicable contractual commitments and all expressed or implied warranties. No liability for any warranty claims exists for the repair or replacement thereof or other damages in connection with such services, sales or deliveries, except for any such claims incurred in the ordinary course of business consistent in amount and character with past experience of the Company. All product labeling of the Company is in conformity with all applicable Laws. Copies of the standard terms and conditions of sale, delivery or lease of the Company (including all warranty provisions) are attached hereto as **Exhibit 4.1.14**.

4.1.15. Employees. **Exhibit 4.1.15** attached hereto contains:

(a) a list of all employee handbooks and/or manuals relating to the employees of the Company, true and correct copies of which have been delivered to the Buyer; and

(b) a list of all employees of the Company, together with their job descriptions, rates of salary, wages or commissions, vacation benefits and accrual rates, and each bonus, deferred compensation, stock option, incentive compensation, severance or termination pay agreement or employment benefit applicable to each such employee, whether formal or informal.

4.1.16. Labor Practices. With respect to the employees of the Company:

(a) The Company is in compliance with all applicable Laws relating to employment discrimination, employee welfare and labor standards. There is no basis for any claim by any past or present employee of the Company that such employee was subject to a wrongful discharge or any employment discrimination by the Company or its management arising out of or relating to such employee's race, sex, age, religion, national origin, ethnicity, handicap or any other protected characteristic under applicable Law.

(b) The Company is in compliance with the Federal Occupational Safety and Health Act, the regulations promulgated thereunder and all other applicable Laws relating to the safety of employees or the workplace or relating to the employment of labor, including, without limitation, any provisions thereof relating to wages, bonuses, collective bargaining, equal pay and the payment of social security and similar payroll taxes. No proceedings are pending before any court, government agency or instrumentality or arbitrator relating to labor matters, and there is no pending investigation by any governmental agency or, to the knowledge of the Sellers, threatened claim by any such agency or other person relating to labor or employment matters.

(c) The Company is not a party to any understanding (whether written or oral), agreement or contract with any union, labor organization, employee group, or other entity or individual which affects the employment of employees of the Company, including but not limited to, any collective bargaining agreements or labor contracts.

(d) To the Sellers' knowledge, none of the employees of the Company are in the process of being organized by or into labor unions or associations. The Company has not been subject to a strike, slowdown or other work stoppage during the three (3) year period immediately preceding the date hereof and, to the Sellers' knowledge, there are no strikes, slow-downs or work stoppages threatened against the Company.

(e) To the knowledge of the Sellers, no key employee or group of employees has expressed plans to terminate employment with the Company.

4.1.17. ERISA.

(a) **Exhibit 4.1.17** attached hereto lists all profit sharing, pension or retirement plans, programs, arrangements or agreements, and each other employee benefit plan, program or agreement maintained or contributed to or required to be contributed to for the benefit of any employee or terminated employee of the Company, whether formal or informal (the "Plan" or "Plans"). The Company does not have any formal plan or commitment, whether legally binding or not, to create any additional Plan or modify or change any existing Plan that would affect any employee or terminated employee of the Company.

(b) No Plans are covered by Title IV of ERISA, nor has the Company ever maintained any such a plan covering employees or former employees of the Company.

(c) The Company has heretofore delivered to the Buyer a true and complete copy of each Plan (including all amendments thereto).

(d) Full payment has been made of all amounts which the Company is required to pay under the terms of each of the Plans for the most recent plan year thereof ended prior to the date of this Agreement, and all such amounts payable with respect to the portion of the current plan year ending on the Closing Date will be paid by the Company on or prior to the Closing Date.

(e) Each of the Plans conforms to, and has been operated and administered in accordance with, all applicable Laws, including but not limited to, ERISA and the Code. Each of the Plans which is intended to be "qualified" within the meaning of Section 401(a) of the Code is so qualified and is the subject of a currently effective favorable determination letter issued by the Internal Revenue Service with respect to the qualification of such Plan under the Code.

(f) Neither the Company nor any of the Plans, nor any trust created thereunder, nor any trustee or administrator thereof, has engaged in a transaction in connection with the Company, or any trustee or administrator or any such trust, or any party dealing with the Plans or any such trusts, which could be subject to either a material civil penalty assessed pursuant to Section 502(i) of ERISA or a material tax imposed pursuant to Section 4975 of the Code. There are not pending, or to the Sellers' knowledge, threatened claims by or on behalf any of the Plans by any employee or beneficiary covered under any such Plan or otherwise involving any such Plan (other than routine claims for benefits) and there have not been any "prohibited transactions" under the meaning of ERISA or the Code with respect to any Plan.

(g) The Company does not contribute to or participate in any multi-employer plan (within the meaning of Section 4001(a)(3) under ERISA) covering employees or former employees of the Company.

4.1.18. Events Since Balance Sheet Date. Except as set forth in Section 4.1.18 of the Schedule of Exceptions, since the Balance Sheet Date, the Company has not suffered any material adverse change in its assets, business or prospects and the Company has been operated only in the normal and ordinary course consistent with past practice and have not done any of the following: (i) incurred or agreed to incur any obligations or liabilities, absolute, incurred, contingent or otherwise, whether due or to become due, except (a) current payables and accruals and (b) the obligations contemplated by this Agreement; (ii) mortgaged, pledged or subjected to, or agreed to mortgage, pledge or subject to, any lien, charge, security interest or any other encumbrance or restriction, any of its assets, except for this Agreement; (iii) sold, transferred, leased or otherwise disposed of or agreed to sell, transfer, lease or otherwise dispose of any of its assets (except sales of inventory in the ordinary course of business), or cancelled or compromised, or agreed to cancel or compromise, any debt or claim, or waived or released, or agreed to waive or release, any right of substantial value; (iv) suffered any damage, destruction or loss (whether or not covered by insurance) having a Material Adverse Effect; (v) transferred or granted, or agreed to transfer or grant, any rights under, or entered into or agreed to enter into, any settlement regarding the breach or in infringement of any lease, license, patent, copyright,

trademark, trade name, invention or similar rights relating to such entity, or modified or agreed to modify any existing rights with respect thereto; (vi) made, or agreed to make, any direct or indirect change (including any general form increase) in the rate of compensation, commission, bonus or other remuneration payable, or paid or agreed to pay, conditionally or otherwise, any bonus, extra compensation, pension or severance pay, to any employee other than raises, bonuses and increases in compensation granted in the ordinary course of business consistent with past practices; (vii) acquired or agreed to acquire any assets which, individually or in the aggregate, are in excess of Ten Thousand Dollars ($10,000.00) or made or agreed to make any capital expenditures or capital additions or betterments; (viii) discharged or satisfied, or agreed to discharge or satisfy, any lien, charge or encumbrance, or paid or agreed to pay any obligation or liability, whether absolute, accrued, contingent or otherwise, whether due or to become due, other than current liabilities shown on the balance sheet as at the Balance Sheet Date and current liabilities incurred since the date of such balance sheet in the ordinary course of business; (ix) made or agreed to make any forward purchase commitments in excess of the requirements of such entity for normal operating inventories of quantity and quality consistent with past practices, or at prices higher than current market prices; (x) deferred, extended or failed to pay, any indebtedness when and as the same became due or allowed the level of indebtedness to increase in any material respect; (xi) suffered any labor trouble adversely affecting the Company's business; (xii) made any change in the manner which extends discounts or credits to customers or suppliers or distributors or otherwise deals with customers or suppliers or distributors; (xiii) made any change in its selling, pricing or advertising practices inconsistent with its prior practice and prudent business practices prevailing in the industry; or (xiv) made or agreed to make any modification or amendment to any of the Contracts or terminated or agreed to terminate any Contract.

4.1.19. Compliance With Environmental Laws. Except as set forth in Section 4.1.19 of the Schedule of Exceptions:

(a) Except in compliance with all Environmental Laws, there are no and, to the knowledge of the Sellers, there have never been any Hazardous Substances (A) at, on, in, above or under the Real Estate or (B) on any adjacent property including, without limitation, Hazardous Substances originating or emanating from any other property that are present in, on, under or above the Real Estate or Hazardous Substances originating or emanating from the Real Estate that are present in, on, under or above any other property and no Hazardous Substances have ever been generated, treated, stored, disposed of, handled on, spilled, discharged or released on or from or removed from the Real Estate by the Company or any of the other Sellers and, to the knowledge of the Sellers, by any third party;

(b) The Company has not and, to the knowledge of the Sellers, no current or former owner of the Real Estate has, received any notice from any governmental agency or any third party notifying of (A) any Hazardous Substances which have been generated, treated, stored, handled or removed from or disposed of on the Real Estate, or (B) any Hazardous Substance which has migrated on, in, under, above or to the Real Estate from any adjacent property or which has migrated, emanated or originated from the Real Estate onto any other property or (C) any violation of any actual or potential liability,

responsibility or obligation arising out of or relating to any Environmental Law with respect to the Company or the Real Estate.

(c) The Company has obtained all necessary Governmental Approvals required for the operation of the Company's business and the use of the Real Estate required by any Environmental Law;

(d) No Environmental Claim with respect to the Company or Real Estate is pending or, to the knowledge of the Sellers, threatened;

(e) No action concerning any Environmental Law has been taken or is threatened against the Company, or to the knowledge of the Sellers, current or previous owners of the Real Estate by any governmental department or agency or third party;

(f) The Company and the Company's assets are, and at all times in the past, have been in compliance with each Environmental Law and with all Governmental Approvals issued in connection with the operation of the Company's business and the use of the Real Estate;

(g) The consummation of the transactions contemplated by this Agreement does not (A) impose any obligations on the Company under any Environmental Law, including without limitation, for the investigation or cleanup of the Real Estate, or (B) require notification to or consent of any governmental authority or third party pursuant to any Environmental Law;

(h) None of the Real Estate contains and, to the knowledge of the Sellers, has never contained any (A) underground or aboveground storage tanks, (B) asbestos-containing material, PCB's, radon, or urea formaldehyde foam, (C) landfill or dumps, (D) septic systems or wells of any type, or (E) a hazardous waste management facility as defined pursuant to RCRA or any comparable state law;

(i) No action or failure to act by the Company or any of the other Sellers, or to the knowledge of the Sellers, the current or former owners of the Real Estate has occurred with respect to the Real Estate which, with the passage of time, the giving of notice, or both, would constitute a violation of any Environmental Law or give rise to an Environmental Claim;

(j) To the knowledge of the Sellers, none of the Company's assets are required to be upgraded, modified or replaced to be in compliance with any existing or proposed Environmental Law; and

(k) Attached as part of **Exhibit 4.1.19** is a copy of all Environmental Claims, reports, studies, assessments and audits or the like of, in the possession of or available to the Company or any of the other Sellers with respect to any environmental matter associated with the Company's business, the Real Estate or any of the Company's assets.

4.1.20. Insurance. The Company maintains policies of fire and casualty, liability and other forms of insurance and bonds in such amounts, with such deductibles, and against such

risks and losses as are reasonable for the business and the assets of the Company. A true and complete list of all such insurance and bonds currently maintained by the Company is attached hereto as **Exhibit 4.1.20**. Each such insurance policy and bond is in full force and effect and the Company has not received notice of and is not otherwise aware of any cancellation or threat of cancellation of such insurance or bond. **Exhibit 4.1.20** attached hereto also sets forth all property damage, personal injury, workers' compensation, products liability or other claims that have been made against the Company in the last five (5) years or which are pending against the Company or, to the Sellers' knowledge, threatened against the Company.

4.1.21. Licenses; Permits. The Company is in compliance with and has all permits, registrations and authorizations required by all applicable Laws in the operation of the Company's business. Attached hereto as **Exhibit 4.1.21** is a true and complete list of all licenses, permits, registrations and authorizations issued or granted to the Company by local, state or federal government authorities or agencies. The Company is not in breach or violation of any applicable Law relating thereto and all such licenses, registrations, permits and authorizations are current and effective.

4.1.22. Compliance With Laws. The operation of the Company's business and the sale and distribution of all goods and services by the Company are and have been in compliance with all Laws. No notice has been issued nor any investigation or review is pending or, to the Sellers' knowledge, threatened by any governmental entity (i) with respect to any alleged violation by the Company or any representative of any of the Company of any Law, or (ii) with respect to any alleged failure to have all permits, certificates, licenses, approvals or other authorizations required by Law in connection with the operation of the Company's business.

4.1.23. Customers; Suppliers. **Exhibit 4.1.23** attached hereto sets forth, with respect to the last two (2) fiscal years of the Company and with respect to the six (6) month period ended June 30, 2006, a list of (i) the dollar amount derived from each of the ten (10) largest (based on dollar amounts purchased from the Company) customers of the Company, and (ii) the dollar amount purchased from the ten (10) largest (based on dollar amounts purchased by the Company) suppliers of the Company. Neither the Company nor any other Seller has any reason to believe or has received any notice or indication of the intention of any of the customers, suppliers or third parties to material contracts of the Company, to cease doing business or reduce in any material respect the business transacted with the Company or to terminate or modify any agreements with the Company (whether upon consummation of the transactions contemplated hereby or otherwise).

4.1.24. Brokers; Agents. None of the Sellers have dealt with any agent, finder, broker or other representative in any manner which could result in the Buyer being liable for any fee or commission in the nature of a finder's fee or originator's fee in connection with the subject matter of this Agreement.

4.1.25. Warranties True and Correct. No warranty or representation by the Sellers contained in this Agreement, the Exhibits and Schedule of Exceptions attached hereto, any Ancillary Agreement or in any writing to be furnished pursuant hereto contains or will contain any untrue statement of fact or omits or will omit to state any material fact required to make the warranties or representations therein contained not misleading and there is no fact or condition

that has not been disclosed in writing to the Buyer that adversely affects or is reasonably likely to adversely affect the Company or the ability of the Sellers to perform their obligations hereunder or thereunder.

4.2. Warranties Survive Closing. Notwithstanding any investigation by or information supplied to the Buyer, the warranties and representations of the Sellers contained herein and in any document delivered pursuant hereto, shall be true and correct on the date hereof and shall survive the Closing as follows: (i) for the representations and warranties described in Paragraphs 4.1.1 and 4.1.4, and the first sentence and last sentence of Paragraph 4.1.5, and any representation or warranty fraudulently made, indefinitely, (ii) for the representations and warranties described in Paragraphs 4.1.10, 4.1.17(e)-(g) and 4.1.19, for four (4) years, and (iii) for all other representations and warranties, for eighteen (18) months. Any claim for indemnification under Paragraph 9.1(a) hereof made in writing prior to the expiration of such applicable survival period, and the rights of indemnity with respect thereto shall survive such expiration until resolved or judicially determined; and any such claim not so made in writing prior to the expiration of such applicable survival period shall be deemed to have been waived.

4.3. Knowledge of the Sellers. For those warranties and representations set forth in this Article IV which are subject to the qualification "to Sellers' knowledge," or similar terms, the Sellers shall be deemed to have knowledge of a matter if (i) any of the Sellers and/or any officer, director and/or management personnel of the Company has knowledge of the matter, or (ii) such matter has come, or should reasonably be expected to have come, to the attention of any of the Sellers or any officer, director or management personnel of the Company if such party had conducted a reasonable due diligence review of the Company's operations and business including reasonable inquiries to key personnel and a review of, and discussions with key personnel regarding, the books, records and operations of the Company.

ARTICLE V

Warranties and Representations of the Buyer

5.1. Warranties and Representations. The Buyer hereby warrants and represents to the Sellers, which warranties and representations shall survive the Closing for the period set forth in Paragraph 5.2, below, as follows:

5.1.1. Authority. The Buyer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, and has the power and authority to carry on all business activities currently conducted by it. The Buyer has the power and authority to enter into this Agreement and the Ancillary Agreements to be signed by it and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the Ancillary Agreements to which the Buyer are a party and the consummation of the transactions contemplated hereby by the Buyer have been approved by all necessary limited liability company action on the part of the Buyer and are and shall constitute valid and legally binding obligations of the Buyer, enforceable against the Buyer in accordance with their respective terms.

5.1.2. No Conflict. The execution and delivery of this Agreement and the Ancillary Agreements by the Buyer does not, and the consummation of the transactions contemplated hereby and compliance with the terms hereof by the Buyer will not: (a) conflict with, or result in any breach or violation of: (i) any provision of the Certificate of Organization or operating or similar governing agreement of the Buyer, or (ii) any judgment, order, decree, or Law, applicable to the Buyer, or (b) violate or conflict with, or result in a breach under, any agreement, instrument or document to which the Buyer is a party or are subject not otherwise waived. No action, consent, approval, order or authorization of, or registration, declaration or filing with, any federal, state, municipal or other court or governmental or administrative body or agency, or other third party is required to be obtained or made in connection with the execution and delivery of this Agreement and the Ancillary Agreements by the Buyer or the consummation by the Buyer of the transactions contemplated hereby.

5.1.3. Brokers; Agents. The Buyer has not dealt with any agent, finder, broker or other representative in any manner which could result in the Sellers being liable for any fee or commission in the nature of a finder's or originator's fee in connection with the subject matter of this Agreement.

5.1.4. Warranties True and Correct. No warranty or representation by the Buyer contained in this Agreement, the Exhibits attached hereto, any Ancillary Agreement or in any writing to be furnished pursuant hereto contains or will contain any untrue statement of material fact or omits or will omit to state any material fact required to make the statements therein contained not misleading.

5.2. Warranties Survive Closing. Notwithstanding any investigation by or information supplied to the Sellers, the warranties and representations of the Buyer contained herein and in any document delivered pursuant hereto, shall be true and correct on the date hereof and shall survive the Closing as follows: (i) for the representations and warranties described in Paragraphs 5.1.1 and 5.1.2, indefinitely, and (ii) for all other representations and warranties, for eighteen (18) months. Any claim for indemnification under clause (i) of Paragraph 9.2 hereof made in writing prior to the expiration of such applicable survival period, and the rights of indemnity with respect thereto, shall survive such expiration until resolved or judicially determined; and any such claim not submitted in writing prior to the expiration of such survival period shall be deemed to have been waived.

ARTICLE VI

Schedule of Exceptions

The schedules and information set forth in the Schedule of Exceptions attached hereto (the "Schedule of Exceptions") specifically refer to the paragraph of this Agreement to which such schedule and information is responsive and each such schedule and information shall not be deemed to have been disclosed with respect to any other paragraph of this Agreement or for any other purpose. All capitalized terms used in the Schedule of Exceptions and not otherwise defined therein shall have the same meanings as are ascribed to such terms in this Agreement. The Schedule of Exceptions shall not vary, change or alter the literal meaning of the representations and warranties of the Sellers contained in this Agreement, other than creating

exceptions thereto which are directly responsive to the language of the warranties and representations contained in this Agreement.

ARTICLE VII

Covenants

7.1. Access. Prior to the Closing, the Buyer (including its officers, directors, employees, accountants, consultants, legal counsel, financing sources, agents and other representatives) shall be entitled to have such access to the officers, employees, agents, assets, properties, business, operations, books, records, commitments and contracts of the Company as is reasonably necessary or appropriate in connection with the Buyer's investigation of the business operations of the Company and the Subject Assets with respect to the transactions contemplated hereby. No investigation by the Buyer shall diminish or obviate any of the representations, warranties, covenants or agreements of the Sellers contained in this Agreement. In order that Buyer may have full opportunity to make such investigation, the Sellers shall furnish the representatives of the Buyer during such period with all such information and copies of such documents concerning the affairs of the Company as such representatives may reasonably request and cause its officers, employees, consultants, agents, accountants and attorneys to cooperate fully with such representatives in connection with such investigation.

7.2. Conduct of Business in the Ordinary Course. Until the Closing, the Company shall, and the other Sellers shall use their best efforts to cause the Company to, carry on its business diligently and substantially in the manner as heretofore conducted, and shall not make or initiate any unusual or novel methods of purchase, sale, management, accounting or operation, or make any adjustments in the pricing or advertising of their products or services not consistent with their past business practices. The Company shall not, and the other Sellers shall not cause the Company to, enter into any contract or commitment to engage in any transaction not in the ordinary course of its business or not consistent with its past business practice. The Company shall, and the other Sellers shall use their best efforts to, preserve for the Buyer the Company's business organization, including present key employees, and the Company's relationship with suppliers, customers and others having business relations with the Company. Without limiting the scope of the foregoing, the Company shall, and the other Sellers shall cause the Company to, until the Closing:

(a) Use, preserve and maintain its properties and assets on a basis consistent with past practices.

(b) Maintain all insurance covering any of its business, properties or assets in full force and effect through the close of business on the Closing Date.

(c) Continue to purchase raw materials and supplies in accordance with current production schedules and in quantities and qualities consistent with past practices and not in excess of its reasonable requirements.

(d) Pay all debts and obligations as the same became due and payable, except to the extent contested in good faith by appropriate proceedings and (and with appropriate reserves established therefor).

(e) Maintain books, accounts and records in the usual manner and on a basis consistent with past practices.

Furthermore, and without limiting the scope of the foregoing, the Company will not, and the other Sellers will not cause the Company to, without the prior written consent of the Buyer:

(f) Make any capital expenditures, or commitments with respect thereto (including, without limitation, capital leases), in excess of Twenty-Five Thousand Dollars ($25,000) for individual items, or in excess of One Hundred Thousand Dollars ($100,000) in the aggregate (other than in connection with the repair of control cables).

(g) Sell, transfer, lease or otherwise dispose of or agree to sell, transfer lease or otherwise dispose of any of the Subject Assets (other than sales of inventory made in the ordinary course of business) or cancel or compromise, or agree to cancel or compromise, any debt or claim, or waive or release, or agree to waive or release, any right of substantial value relating to the Company or the Subject Assets.

(h) Make or agree to make, any direct or indirect change (including any general increase) in the rate of compensation, commission, bonus or other remuneration payable, or grant any severance or termination pay to, or increase benefits payable under any existing severance or termination pay policies to, or enter into or modify any employment agreements with any employees, agents and/or representatives or pay any employee bonuses or make any profit sharing contributions prior to the Closing Date.

(i) Adopt or amend or increase compensation or benefits payable under, or take any actions which might result in an adverse Tax or other consequences with respect to, any bonus, profit sharing, compensation, stock option, pension, retirement, deferred compensation, collective bargaining agreement or other plan, agreement, trust, fund or arrangement for the benefit of any employee or class of employees.

(j) Commit any act or omit to do any act, or permit any act or omission to act, which will or may cause a breach of any Assumed Contract or make or agree to make any modification or amendment to any of the Assumed Contracts or terminate or agree to terminate any Assumed Contract.

(k) Change the prices charged for services or products except in accordance with past practices or change credit policies.

(l) Incur any indebtedness other than indebtedness for accounts payable to trade creditors or to third party lenders, in each case, incurred in the ordinary course of business in connection with obtaining materials or services.

(m) Mortgage, pledge or subject to, or agree to mortgage, pledge or subject to, any lien, charge, security interest or any other encumbrance or restriction on any of the Subject Assets; or

(n) Transfer or grant, or agree to transfer or grant, any rights under, or enter into or agree to enter into, any settlement regarding the breach or infringement of any Intellectual Property or similar rights relating to the Company or the Subject Assets or modify or agree to modify any existing rights with respect thereto.

7.3. Retention of Employees. The Company shall, and the other Sellers shall use their best efforts to, assist the Buyer in retaining those employees of the Company which the Buyer elects to hire in connection with the operation of the business operations of the Company by the Buyer subsequent to the Closing.

7.4. No Shop Provision. The Sellers agree that they shall not solicit or initiate any proposal with, negotiate, discuss or otherwise communicate with, or furnish or cause to be furnished any information to, or otherwise cooperate with or enter into any contract or agreement with any person, corporation, firm or entity with respect to any proposal for the disposition of all or a substantial portion of the assets, stock or interest of any of the Sellers. These obligations shall continue until the Closing Date or, if earlier, the date on which this Agreement is terminated by mutual agreement of the parties hereto or in accordance with the provisions of Paragraphs 3.1 or 3.2, above, as a result of the failure of any Closing condition to be satisfied.

7.5. Mutual Covenants. Each Seller and the Buyer covenant and agree as follows:

(a) The Buyer and the Sellers shall cooperate with each other and shall cause their respective officers, employees, agents, accountants and representatives to cooperate with each other after the Closing to ensure the orderly transition of the ownership of the Subject Assets and the business operations of the Company to the Buyer and to minimize any disruption to the business of the Buyer and the Sellers that might result from the transactions contemplated hereby.

(b) On the Closing Date, the Sellers will deliver or cause to be delivered to the Buyer all original Records in the possession or control of any of the Sellers. After the Closing, upon reasonable written notice, the Buyer and the Sellers agree to furnish or cause to be furnished to each other and their respective representatives, employees, counsel and accountants access, during normal business hours, to such information (including Records pertinent to the Company) and assistance relating to the Company as is reasonably necessary for financial reporting and accounting matters, the preparation and filing of any returns, reports or forms or the defense of any Tax claim or assessment; provided, however, that such access does not unreasonably disrupt the normal operations of the Buyer or the Sellers.

(c) The Sellers agree that they shall make no public release or announcement concerning the transactions contemplated hereby. The Buyer shall have the sole right to determine what, if any, public announcements shall be made.

(d) From time to time, as and when requested by a party hereto, each party hereto shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary to consummate the transactions contemplated by this Agreement.

7.6. Consents. In the event any Consent is not obtained on or prior to the Closing Date, and the Buyer elects to consummate the transactions contemplated herein despite the Sellers' failure or inability to obtain such Consent, the Sellers shall continue to use commercially reasonable efforts to obtain any such assignment or consent after the Closing Date. Until such time as such assignment or approval has been obtained, the Sellers will cooperate with the Buyer in any lawful and economically feasible arrangement to provide that the Buyer shall continue to receive interest in the benefits under any Assumed Contract; provided, however, that the Buyer shall undertake to pay or satisfy the corresponding liabilities for the enjoyment of such benefit to the extent the Buyer would have been responsible therefor if such consent or assignment had been obtained.

7.7. Employees.

(a) The Company shall, and the other Sellers shall use their best efforts to, assist the Buyer in retaining those employees of the Company that the Buyer wishes to hire. Any offers of employment made by the Buyer shall be on terms and conditions as are acceptable to the Buyer in its sole discretion. The Sellers jointly and severally covenant and agree to pay all wages and benefits (including, without limitation, any accrued and unused vacation or sick time) through the Closing Date to each employee hired by the Buyer. Nothing contained in this Agreement shall be deemed to grant any such employee any right to continued employment after the Closing Date.

(b) The Sellers, jointly and severally, shall be responsible for, and shall indemnify and hold the Buyer harmless against and in respect of any liability, loss, claim, damage or deficiency that arises under the WARN Act or other similar statutes or regulations of any jurisdiction ("WARN Liabilities") which arose on or prior to the Closing Date or as a result of or in connection with the transactions contemplated herein. The Buyer shall be responsible for, and shall indemnify and hold the Sellers harmless against and in respect of any WARN Liabilities which arise after the Closing Date with respect to those employees of the Company hired by the Buyer.

7.8. Collection of Accounts Receivable. If, following the Closing, the Sellers shall collect any accounts receivable belonging to the Buyer, the Sellers shall hold the same in trust and shall promptly pay the same over to the Buyer.

7.9. Risk of Loss. Risk of loss, damage or destruction to any of the Subject Assets shall be upon the Sellers until the Closing Date and thereafter upon the Buyer. In the event of any damage, destruction or loss of or to any of the Subject Assets on or prior to the Closing Date, the Sellers shall take steps to repair, replace and restore the damaged, destroyed or lost property to its former condition and at Closing the Sellers shall assign to the Buyer all of their respective rights under any insurance and all proceeds of insurance (excluding business interruption

proceeds for periods prior to the Closing Date) covering the property damage, destruction or loss not so repaired, replaced or restored prior to Closing and shall at Closing reimburse the Buyer for any deductible under such insurance. In the event of any damage, destruction or loss of or to any of the Subject Assets prior to the Closing Date which would cause a Material Adverse Effect upon the Subject Assets or materially interfere with the continued operation of the business of the Company ("Event of Loss") and such property or asset is not replaced or else repaired or restored to substantially the condition it was in prior to the Event of Loss on or before the Closing Date, the Buyer may: (a) elect to consummate the Closing on the Closing Date and accept the property in its then condition, in which event the Purchase Price shall be reduced by an amount equaling the repair and/or replacement value (as reasonably determined by the Buyer) for all property damaged, destroyed or lost in such Event of Loss less all insurance proceeds received by Buyer from Sellers, or (b) elect to terminate this Agreement, in which event all parties shall be released from all liabilities and obligations hereunder, except for liabilities for pre-termination breaches hereof; provided, however, that the Buyer and Sellers may mutually elect to extend the Closing Date for a reasonable period not to exceed sixty (60) days necessary to allow the Sellers to complete any such replacement, repair or restoration.

7.10. HSR Act. On October 19, 2006, the Sellers and the Buyer each filed with the United States Federal Trade Commission (the "FTC") and the Antitrust Division of the United States Department of Justice (the "DOJ") the required Notification and Report Forms relating to the transactions contemplated herein required by the HSR Act. The parties acknowledge that they received notification from the FTC that it granted early termination of the waiting period with respect to the transactions contemplated herein on October 30, 2006.

7.11. Use of Name. As soon as practical after the Closing, and in any event within six (6) months following the Closing, the Buyer shall cease to use the name "Oconto Falls Tissue" in connection with the operation of its business.

ARTICLE VIII

Covenant Not to Compete

8.1. Non-Competition. The Sellers and Ronald H. Van Den Heuvel (the "Restricted Parties") acknowledge and agree that at no time for a period of five (5) years after the Closing Date shall any of them, either directly or indirectly (including, without limitation, through an Affiliate or any family member), whether as agent, stockholder (except as the holder of not more than five percent (5%) of the equity securities of a publicly held enterprise as long as such party does not render advice or assistance to such enterprise), employer, employee, consultant, representative, trustee, partner, proprietor or otherwise:

(a) Acquire an ownership interest in, work for, render advice or assistance to or otherwise engage in the business of the manufacture and/or sale of tissue, medium, white top, linerboard or gypsum, or procuring contracts related thereto or related to pulp processing from any "Competitor" (as hereinafter defined); or

(b) Contact, solicit or entice, or attempt to contact, solicit or entice, any current supplier, customer or prospective customer of the Company (or any Person that

was a supplier or customer of the Company during the two (2) year period immediately prior to the Closing) so as to cause, or attempt to cause, any of said suppliers, customers or prospective customers not to do business with the Buyer or to purchase products or services sold by the Buyer from any source other than the Buyer; or

(c) Induce, or attempt to induce, any person who is currently an employee of the Company to leave the employ of the Buyer (if hired by the Buyer following the Closing) and/or to accept employment elsewhere.

For purposes of this Paragraph 8.1, the term "Competitor" shall mean any business, incorporated or otherwise, other than the Buyer or an Affiliate of the Buyer, which makes, sells or offers products or services competitive with those manufactured, sold or offered by the Company as of the date hereof. This Paragraph 8.1 shall not prohibit the Restricted Parties from temporarily operating tissue, gypsum and/or linerboard facilities or machines upon start-up of the facilities or machines in connection with a Restricted Party's construction projects.

8.2. Non-Disclosure of Confidential Information. The Restricted Parties each acknowledge and agree that none of them shall, at any time following the date hereof, disclose any Confidential Information (as hereinafter defined) to anyone other than to employees and representatives of the Buyer except any such Confidential Information which is required to be disclosed by any Restricted Party in connection with any court action or any proceeding before any administrative body or pursuant to any Law, and then only after such Restricted Party has given written notice to the Buyer of the intention so to disclose such Confidential Information and has given the Buyer a reasonable opportunity to contest the need for such disclosure, and the Restricted Parties shall cooperate with the Buyer in connection with any such contest. For purposes of this Paragraph 8.2, the term "Confidential Information" shall mean all non-public and all proprietary information relating to the Company, their customers and products and services including, without limitation, the following: (i) all formulations, test results, manufacturing and engineering specifications, production and manufacturing information and know-how and all other technical information relating to the manufacture, formulation or production of the products or services; (ii) all information and records concerning products or services being researched by, under development by or being tested but not yet offered for sale; (iii) all information concerning the Intellectual Property; (iv) all information concerning pricing policies, the prices charged to their customers, the volume or orders of such customers and other information concerning the transactions with their customers or proposed customers; (v) customer lists; (vi) financial information; (vii) information concerning salaries or wages paid to, the work records of and other personnel information relative to employees; (viii) information concerning marketing programs or strategies; and (ix) all other confidential and proprietary information of the Company.

8.3. Enforcement. In addition to all other legal remedies available to the Buyer for the enforcement of the covenants of this Article VIII, the Restricted Parties acknowledge and agree that the Buyer shall be entitled to temporary and permanent injunctive relief by any court of competent jurisdiction without the necessity of posting any bond or other security to prevent or restrain any breach or threatened breach hereof. The Restricted Parties further agree that if any of the covenants set forth herein shall at any time be adjudged invalid to any extent by any court

of competent jurisdiction, such covenant shall be deemed modified to the extent necessary to render it enforceable.

ARTICLE IX

Indemnification

9.1. Indemnification of the Buyer. The Sellers jointly and severally agree to indemnify the Buyer and to hold it harmless from and against any and all Losses of or against the Buyer resulting from:

(a) any misrepresentation or breach of warranty on the part of any Seller in this Agreement or in any Ancillary Agreement delivered hereunder on the part of any Seller;

(b) any breach or nonfulfillment of any agreement or covenant contained herein or in any Ancillary Agreement delivered hereunder on the part of any Seller;

(c) any failure of the Sellers to pay and/or perform any liability or obligation of the Sellers other than the Assumed Liabilities; and/or

(d) in addition to the indemnification available under Paragraphs 9.1(a), 9.1(b) and 9.1(c), above, for:

(i) any liability or obligation for product liability claims for goods or services manufactured or sold by the Company on or before the Closing Date;

(ii) any liability or obligation under any Plans relating to events prior to the Closing Date;

(iii) any Tax liabilities or obligations of the Company;

(iv) any liabilities or obligations arising under any Environmental Law or any Environmental Claim applicable to the Company or its operations and relating to events or circumstances existing prior to the Closing Date, including without limitation, (A) all liabilities or obligations related to any enforcement action by the Wisconsin Department of Natural Resources related to the Company's waste water treatment facilities, (B) all liabilities and obligations incurred by the Buyer in upgrading the Real Estate and manufacturing facilities of the Company in order to obtain and/or comply with applicable permits required and Environmental Laws, and (C) any liabilities or obligations arising in connection with those matters described on Section 4.1.19 of the Schedule of Exceptions or any matter that should have been described thereunder;

(v) any liabilities or obligations arising under the litigation matters described on Section 4.1.3 or Section 4.1.7 of the Schedule of Exceptions or any matters that should have been described thereunder; and

(vi) any costs incurred to bring the Yankee dryer at the Company's facility into good operating condition and repair relative to the necessary repairs of which the parties have knowledge as of the date of this Agreement.

9.2. Indemnification of the Sellers. The Buyer agrees to indemnify the Sellers and to hold each of them harmless from and against any and all Losses of or against the Sellers resulting from (i) any misrepresentation or breach of warranty on the part of the Buyer in this Agreement or in any Ancillary Agreement executed and/or delivered by the Buyer in connection herewith; or (ii) any non-fulfillment of any agreement or covenant contained herein or in any Ancillary Agreement delivered hereunder on the part of the Buyer.

9.3. Procedure Relative to Indemnification.

(a) In the event that any party hereto shall claim that it is entitled to be indemnified pursuant to the terms of this Article IX, it (the "Claiming Party") shall so notify the party or parties against which the claim is made (the "Indemnifying Party") in writing of such claim within ninety (90) days after the Claiming Party receives notice of any action, proceeding, demand or assessment or otherwise has received notice of any claim of a third party that may reasonably be expected to result in a claim for indemnification by the Claiming Party against the Indemnifying Party; provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure. Such notice shall specify the breach of representation, warranty or agreement claimed by the Claiming Party and the Losses incurred by, or imposed upon the Claiming Party on account thereof. If such Losses are liquidated in amount, the notice shall so state and such amount shall be deemed the amount of the claim of the Claiming Party. If the amount is not liquidated, the notice shall so state and in such event a claim shall be deemed asserted against the Indemnifying Party on behalf of the Claiming Party, but no payment shall be made on account thereof until the amount of such claim is liquidated and the claim is finally determined.

(b) Subject to the conditions set forth in Paragraph 9.3(c), below, the following provisions shall apply to claims of the Claiming Party which are based upon (i) a suit, action or proceeding filed or instituted by any third party, or (ii) any form of proceeding or assessment instituted by any governmental entity:

(i) The Indemnifying Party shall, upon receipt of such written notice and at its expense, defend such claim in its own name or, if necessary, in the name of the Claiming Party; provided, however, that if the proceeding involves a matter solely of concern to the Claiming Party in addition to the claim for which indemnification under this Article IX is being sought, such matter of sole concern shall be within the sole responsibility of the Claiming Party and its counsel. The Claiming Party will cooperate with and make available to the Indemnifying Party such assistance and materials as may be reasonably requested of it, and the Claiming Party shall have the right, at its expense, to participate in the defense. The Indemnifying Party shall have the right to settle and compromise such claim

only with the consent of the Claiming Party, which consent shall not be unreasonably withheld provided that each of the following is satisfied:

(A) the terms of such settlement and compromise require no more than the payment of money (i.e., such settlement does not require the Claiming Party to admit to any wrongdoing or take or refrain from taking any action);

(B) the full amount of such monetary settlement will be paid by the Indemnifying Party; and

(C) the Claiming Party receives as part of such settlement a legally binding and enforceable unconditional satisfaction and/or release, in a form and substance reasonably satisfactory to the Claiming Party, providing that the claim and any claimed liability of the Claiming Party with respect thereto is being fully satisfied by reason of such settlement and compromise and that the Claiming Party is being released from any and all obligations or liabilities it may have with respect thereto.

(ii) In the event the Indemnifying Party shall not be entitled to defend any claim made against the Claiming Party pursuant to the provisions of this Article IX or the Indemnifying Party shall notify the Claiming Party that it disputes any claim made by the Claiming Party and/or it shall fail to defend such claim actively and in good faith, then the Claiming Party shall have the right to conduct a defense against such claim and shall have the right to settle and compromise such claim upon three (3) days notice to, but without the consent of, the Indemnifying Party. Once the amount of such claim is liquidated and the claim is finally determined, the Claiming Party shall be entitled to pursue each and every remedy available to it at law or in equity to enforce the indemnification provisions of this Article IX and, in the event it is determined, or the Indemnifying Party agrees, that it is obligated to indemnify the Claiming Party for such claim, the Indemnifying Party agrees to pay all costs, expenses and fees, including all reasonable attorneys' fees which may be incurred by the Claiming Party in attempting to enforce indemnification under this Article IX, whether the same shall be enforced by suit or otherwise.

(c) Notwithstanding anything to the contrary contained in this Article IX, the Indemnifying Party shall have no right to defend or control the settlement of any claim unless each of the following conditions is satisfied:

(i) the claim seeks only monetary damages and does not seek any injunction or other equitable relief against the Claiming Party;

(ii) the Indemnifying Party unconditionally acknowledges, in writing in a notice of election to contest or defend the claim given to the Claiming Party within ten (10) days after the Claiming Party gives the Indemnifying Party notice of such claim, that the Indemnifying Party is (jointly and severally in the case of

multiple Indemnifying Parties) obligated to indemnify the Claiming Party in full with respect to the claim;

(iii) the Indemnifying Party is not then in default of any of its obligations to the Claiming Party under this Agreement; and

(iv) the legal counsel chosen by the Indemnifying Party to defend the claim is reasonably satisfactory to the Claiming Party.

9.4. Set-Off. Tissue Technology, LLC, the Sellers and the Buyer acknowledge and agree that the Buyer shall be entitled, in addition to any other remedies which may be available to it, to set-off against amounts payable to any Seller or any of Seller's Affiliates (including, without limitation, any amounts due and owing to the Sellers under the Note, amounts due and owing to any of Seller's Affiliates under any other promissory notes, amounts due and owing to the Sellers by any Affiliate of the Buyer, and those amounts due and owing to Tissue Technology, LLC under the Sales and Marketing Agreement) the amount of any claim by the Buyer for which the Buyer seeks, in good faith, indemnification under Paragraph 9.1, above.

9.5. Limitations. The Sellers shall not be required to provide indemnification with respect to Paragraph 9.1(a), unless the Losses from all claims for indemnification made pursuant to Paragraph 9.1(a) shall exceed in the aggregate $100,000 and then only for amounts in excess of such amount. In no event shall the Sellers' aggregate liability with respect to all claims for indemnification made pursuant to Paragraph 9.1(a) exceed an aggregate amount of $10,000,000. In no event shall the limitations described in this Paragraph 9.5 apply to a breach of the representations and warranties described in Paragraph 4.2(i), above, or if the Sellers committed fraud in connection with such breach or the failure to disclose such breach.

ARTICLE X

Definitions

"Affiliate" means with reference to any person or entity, another person or entity controlled by, under the control of or under common control with that person or entity.

"Agreement" means this Asset Purchase Agreement, as the same may be amended or modified from time to time.

"Ancillary Agreements" means as to any party the agreements, documents and instruments to be executed and delivered by such party pursuant to this Agreement.

"Assumed Liabilities" has the meaning set forth in Paragraph 2.6.

"Balance Sheet Date" means December 31, 2005.

"Buyer" has the meaning set forth in the preface above.

"Closing" means the closing of the purchase and sale contemplated herein.

"Closing Date" means the date on which the Closing occurs.

"Code" means the Internal Revenue Code of 1986, as amended through the date hereof.

"Company" has the meaning set forth in the preface above.

"Confidential Information" has the meaning set forth in Paragraph 8.2.

"Consents" means agreements, from the parties to those Assumed Contracts which by their terms prohibit assignment by the Company or which specifically require consent for such assignment, consenting to the assignment to the Buyer of such Assumed Contracts under the same terms and conditions as are applicable to the Company and without amendment, acceleration or modification of the Assumed Contracts.

"Contracts" has the meaning set forth in Paragraph 4.1.12.

"Environmental Claim" means any investigation, notice, violation, demand, allegation, action, suit, injunction, order, consent decree, penalty, fine, lien, proceeding or claim (whether administrative, judicial or private in nature) arising (i) pursuant to, or in connection with, an actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Substances; (iii) from any abatement, removal, remedial, corrective or other response action in connection with Hazardous Substances, Environmental Law or other order of a governmental authority; or (iv) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, wildlife or the environment.

"Environmental Law" means any of the federal, state, foreign and local statutory laws, ordinances, codes, rules, regulations, approvals or requirements of any governmental authority, court orders, administrative orders, executive orders, consent decrees, injunctions, judgments, and common law pertaining to (i) health, safety, natural resources, wildlife or the environment, (ii) the Occupational Safety and Health Administration, the U.S. Environmental Protection Agency, the Nuclear Regulatory Commission and the Wisconsin Department of Natural Resources and any similar state agency or department, or (iii) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation or handling of, or exposure to, any petroleum products or Hazardous Substances (as hereinafter defined) and all amendments, modifications and additions thereto, in each case as amended to date including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, codified at 42 U.S.C. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, the Solid Waste Disposal Act, codified at 42 U.S.C. 6901 et seq., as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendment of 1984 ("RCRA"), the Toxic Substances Control Act of 1976, codified at 15 U.S.C. 2601 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, codified at 33 U.S.C. 1251 et seq., the Clean Air Act of 1966, codified at 42 U.S.C. 741 et seq., the Hazardous Materials Transportation Act, codified at 49, U.S.C. 651 et seq., the Oil Pollution Act of 1990, codified at 33 U.S.C. 2701 et seq., the Emergency Planning and Community Right-To-Know Act of 1986, codified at 42 U.S.C. 11001, et seq., the National Environmental Policy Act of 1969, codified at 42 U.S.C. 4321, et seq., the

Occupational Safety and Health Act of 1970, and the Safe Drinking Water Act of 1974, codified at 42 U.S.C. 300(f), et seq., the Atomic Energy Community Act of 1955, the Atomic Testing Liability Act, the Atomic Energy Damages Act, the Atomic Energy Omnibus Act, the Atomic/Nuclear Waste Policy Act of 1982, the Atomic/Nuclear Waste Policy Amendments of 1987 or any similar, implementing or successor law.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended through the date hereof, and the rules and regulations promulgated thereunder.

"Event of Loss" has the meaning set forth in Paragraph 7.9.

"Excluded Assets" has the meaning set forth in Paragraph 1.2.

"Excluded Liabilities" has the meaning set forth in Paragraph 2.7.

"Financial Statements" means the financial statements of the Company attached hereto as **Exhibit 4.1.9**, including without limitation, the financial statements of the Company in and for the fiscal periods ended December 31, 2004, 2005 and 2006 and the interim financial statements for the period ended February 28, 2007.

"GAAP" means United States generally accepted accounting principles, consistently applied.

"Governmental Approval" shall mean any permit, license, variance, certificate, closure, exemption, decision, action or approval of a governmental authority.

"Hazardous Substances" shall mean and include any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, material, pollutant or contaminant which is hazardous, toxic or otherwise harmful to health, safety, natural resources, wildlife or the environment including, without limitation, asbestos, PCB's, radon and urea formaldehyde foam, petroleum and petroleum products, hazardous waste source, byproduct or special nuclear material, and raw materials which include hazardous constituents, or any other similar substances, or materials which are now, or in the future, included under or regulated by any Environmental Law.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indemnifying Party" has the meaning set forth in Paragraph 9.3(a).

"Intellectual Property" has the meaning set forth in Paragraph 4.1.8.

"Law" means any constitution, statute, law, ordinance, regulation or rule of any local, state, federal, foreign, territorial or other government body, subdivision, agency, department, commission, board, bureau or instrumentality of a governmental body.

"Licenses" has the meaning set forth in Paragraph 4.1.8(b).

"Losses" means all damages, losses, deficiencies, actions, demands, judgments, fines, fees, costs and expenses, including, without limitation, attorneys' and accountants' fees.

"Material Adverse Effect" means an event, condition, circumstance, act, omission or effect which, individually or in the aggregate with other similar events, conditions, circumstances, acts, omissions or effects: (i) after taking into consideration the relative amount, the absolute amount and the nature of the item would cause a reasonably prudent buyer to conclude that such effect adversely affects the financial condition, assets, liabilities, obligations or operations of the Company in a manner or amount which would be material, or (ii) has or will have a direct financial consequence of Ten Thousand Dollars ($10,000.00) or more.

"Note" has the meaning set forth in Paragraph 2.3.

"Permitted Liens" has the meaning set forth in Paragraph 4.1.5.

"Plan" has the meaning set forth in Paragraph 4.1.17.

"PCDI" has the meaning set forth in the preface above

"Permitted Real Estate Encumbrances" means (i) real estate taxes for the year of the Closing, and (ii) municipal and zoning ordinances, recorded utility easements and other items of record (other than any encumbrances related to debt obligations (except for the Assumed Liabilities) or judgment liens of or against the Sellers or their Affiliates) which do not render the Real Estate unusable as a manufacturing and distribution facility consistent with past practices and (iii) real estate taxes to be paid at Closing.

"Purchase Price" has the meaning set forth in Paragraph 2.2.

"Real Estate" shall mean the real estate, fixtures, improvements, rights, privileges and easements described on **Exhibit 1.1(b)**.

"RCRA" has the meaning set forth in the definition of Environmental Law in this Article X.

"Records" means all books, records, manuals and other materials of the Company, including, without limitation, all sales, manufacturing and customer records, personnel and payroll records, accounting records, purchase and sale records, price lists, correspondence, quality control records and all research and development files, wherever located.

"Restricted Parties" has the meaning set forth in Paragraph 8.1.

"Sales and Marketing Agreement" has the meaning set forth in Paragraph 3.1(f)(ix).

"Schedule of Exceptions" has the meaning set forth in Article VI.

"Seller" has the meaning set forth in the preface above.

"Subject Assets" has the meaning set forth in Paragraph 1.1.

"Subsidiaries" with respect to any person, means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) 50% or more of (i) the outstanding capital stock or other equity interest having voting power to elect a majority of the Board of Directors of such corporation or persons having a similar role as to an entity that is not a corporation, (ii) the interest in the profits of such partnership or joint venture, or (iii) the beneficial interest of such trust or estate are at such time directly or indirectly owned by such person or one or more of such person's Subsidiaries.

"Tax" means all federal, state, county, local, foreign and other taxes or assessments, however, denominated, including, without limitation, income, estimated income, business, occupation, franchise, property (real and personal), sales, employment, gross receipts, use, transfer, ad valorem, profits, license, capital, payroll, employee withholding, unemployment, excise, goods and services, severance, stamp and including interest, penalties and additions in connection therewith for which the Sellers, or the Company, is or may be required to pay, withhold or collect.

"TPTC" has the meaning set forth in the preface above.

ARTICLE XI

Sellers' Agent

11.1. Appointment. Each Seller hereby irrevocably constitutes and appoints Ronald H. Van Den Heuvel and Steve Peters as such Seller's agent (the "Sellers' Agent") for the purpose of performing and consummating the transactions contemplated by this Agreement. The appointment of Ronald H. Van Den Heuvel and Steve Peters as the Sellers' Agent is coupled with an interest and all authority hereby conferred shall be irrevocable and shall not be terminated by any or all of the Sellers without the consent of the Buyer, which consent may be withheld for any reason, and the Sellers' Agent is hereby authorized and directed to perform and consummate on behalf of the Sellers all of the transactions contemplated by this Agreement.

11.2. Authority. Not by way of limiting the authority of the Sellers' Agent, each and all of the Sellers, for themselves and their respective heirs, executors, administrators, successors and assigns, hereby authorize the Sellers' Agent to:

(a) Waive any provision of this Agreement which the Sellers' Agent deems necessary or desirable;

(b) Execute and deliver on the Seller's behalf all documents and instruments which may be executed and delivered pursuant to this Agreement;

(c) Make and receive notices and other communications pursuant to this Agreement and service of process in any legal action or other proceeding arising out of or related to this Agreement or any of the transactions contemplated hereunder;

(d) Settle any dispute, claim, action, suit or proceeding arising out of or related to this Agreement or any of the transactions hereunder;

(e) Appoint or provide for successor agents; and

(f) Pay expenses incurred or which may be incurred by or on behalf of the Sellers in connection with this Agreement.

In the event of the failure or refusal of Ronald Van Den Heuvel or Steve Peters to act as the Sellers' Agent (or upon the death of Ronald Van Den Heuvel, Steve Peters or any successor), the Sellers shall promptly appoint one of the Sellers as their agent for purposes of this Article XI, and failing such appointment within ten (10) days, the Buyer may, by written notice to the Sellers at the last address of the Sellers applicable for purposes of Article XII hereof, designate PCDI as such agent.

11.3. Disputes. Any claim, action, suit or other proceeding, whether in law or equity, to enforce any right, benefit or remedy granted to the Sellers under this Agreement may be asserted, brought, prosecuted or maintained only by the Sellers' Agent. Any claim, action, suit or other proceeding, whether in law or equity, to enforce any right, benefit or remedy granted to the Buyer under this Agreement, including without limitation any right of indemnification provided in Paragraph 9.1 hereof, may be asserted, brought, prosecuted or maintained by the Buyer against the Sellers or the Sellers' Agent by service of process on the Sellers' Agent and without the necessity of serving process on, or otherwise joining or naming as a defendant in such claim, action, suit or other proceeding, any Seller. With respect to any matter contemplated by this Article XI, the Sellers shall be bound by any determination in favor of or against the Sellers' Agent or the terms of any settlement or release to which the Sellers' Agent shall become a party.

ARTICLE XII

Miscellaneous

12.1. Expenses. Except as otherwise specifically provided herein, the parties hereto shall pay their own expenses, including, without limitation, accountants' and attorneys' fees incurred in connection with the negotiation and consummation of the transactions contemplated by this Agreement. The Sellers shall be jointly and severally liable for and shall pay and discharge when due: (i) any sales, use or transfer taxes (including those related to the Real Estate) incurred and/or payable in connection with the purchase and sale of the Subject Assets pursuant to this Agreement; (ii) the costs of the title commitment and title insurance contemplated by Paragraph 3.1(f)(ii) hereof; (iii) all fees, commissions and expenses payable to Stellpflug, Janssen, Hammer, Kirschling & Bartels, SC (iv) expenses imposed on the Sellers, the Company or the Buyer related to obtaining the Consents and other consents and estoppel certificates from third parties enabling the Buyer to receive the benefits of any contracts, leases, or other third-party agreements related to the Company's business.

12.2. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered to be given and received in all respects when hand delivered, when sent by prepaid express or courier delivery service, when sent by facsimile transmission actually received by the receiving equipment or three (3) days after deposited in the United States mail, certified mail, postage prepaid, return receipt requested, in

each case addressed as follows, or to such other address as shall be designated by notice duly given:

IF TO BUYER:	Attention: Sharad K. Tak 1555 Glory Road Green Bay, WI 54304 Fax No.: (920) 347-2228 and Attention: Sharad K. Tak 401 Professional Drive, Suite 110 Gaithersburg, MD 20879 Fax No.: (301) 840-0749
With a Copy to:	Godfrey & Kahn, S.C. Attention: Timothy F. Nixon 333 Main Street Green Bay, WI 54301 Fax No.: (920) 436-7988
IF TO SELLERS:	c/o Tissue Products Technology Corp. Attn: Ronald H. Van Den Heuvel 1555 Glory Road Green Bay, WI 54304 Fax No.: (920) 347-2228
With a Copy to:	Stellpflug, Janssen, Hammer, Kirschling & Bartels, SC Attention: C. David Stellpflug P.O. Box 5637 De Pere, WI 54115-5637 Fax No.: (920) 336-5769

12.3. Right to Specific Performance. The parties agree that the Subject Assets constitute unique property, that there is no adequate remedy at law for the damage which any of them might sustain for the failure of the others to consummate this Agreement, and, accordingly, that each of them is entitled to the remedy of specific performance to enforce such consummation.

12.4. Entire Agreement. This Agreement, the exhibits attached hereto and Ancillary Agreements constitute the entire agreement between the parties hereto relating to the subject matter hereof, and all prior agreements, correspondence, discussions and understandings of the parties (whether oral or written, and including, without limitation, the Original Asset Purchase Agreement) are merged herein and made a part hereof, it being the intention of the parties hereto that this Agreement and the instruments and agreements contemplated hereby shall serve as the complete and exclusive statement of the terms of their agreement together. No amendment, waiver or modification hereto or hereunder shall be valid unless in writing signed by an authorized signatory of the party or parties to be affected thereby.

12.5. Assignment. No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties, except that Buyer may assign any of its rights and delegate any of its obligations under this Agreement to any Subsidiary of Buyer and may collaterally assign its rights hereunder to any financial institution.

12.6. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, successors, legal representatives and permitted assigns.

12.7. Paragraph Headings. The headings in this Agreement are for purposes of convenience and ease of reference only and shall not be construed to limit or otherwise affect the meaning of any part of this Agreement.

12.8. Severability. The parties agree that if any provision of this Agreement shall under any circumstances be deemed invalid or inoperative, this Agreement shall be construed with the invalid or inoperative provision deleted, and the rights and obligations of the parties shall be construed and enforced accordingly.

12.9. Applicable Law. This Agreement and all questions arising in connection herewith shall be governed by and construed in accordance with the internal laws of Wisconsin.

12.10. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other party.

12.11. Bulk Sales. The Sellers and the Buyer hereby waive compliance by the Buyer and the Seller with the provisions of the Bulk Sales Law of the States of Wisconsin, and the Sellers jointly and severally warrant and covenant to pay and discharge when due all claims of creditors which could be asserted against the Buyer by reason of such noncompliance to the extent that such liabilities are not specifically assumed by the Buyer under this Agreement.

12.12. Assignment to ST Paper. The Sellers acknowledge that as of December 5, 2006, ST Paper, LLC changed its legal name to "ST Paper Holdings, LLC." The Sellers agree that all rights, obligations and responsibilities of ST Paper Holdings, LLC under this Agreement are hereby assigned to "ST Paper, LLC," a wholly-owned subsidiary of ST Paper Holdings, LLC, effective as of the date of this Agreement.

[signatures follow on next page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

BUYER:

ST PAPER, LLC

By: _____
Name: Sharad K. Tak
Its: President

SELLERS:

TISSUE PRODUCTS TECHNOLOGY CORP

By: _____
Name: Ronald H. Van Den Heuvel
Its: President

PARTNERS CONCEPTS DEVELOPMENT, INC.

By: _____
Name: Ronald H. Van Den Heuvel
Its: President

OCONTO FALLS TISSUE, INC.

By: _____
Name: Ronald H. Van Den Heuvel
Its: President

HOLDINGS:

ST PAPER HOLDINGS, LLC
(solely for purpose of Paragraph 12.12)

By: _____
Name: Sharad K. Tak
Its: Manager

JOINDER

The following individual hereby joins in the execution of this Agreement for purposes of Article VIII only:

Ronald H. Van Den Heuvel

The following party hereby joins in the execution of this Agreement for purposes of Section 9.4 only, and hereby warrants and represents that the execution and delivery of this Agreement has been duly authorized and shall constitute the legal, valid and binding obligation of such party:

TISSUE TECHNOLOGY, LLC

By: _____
Ronald H. Van Den Heuvel, Manager

List of Exhibits

Exhibit 1.1(a) – Fixed Assets

Exhibit 1.1(b) – Real Estate

Exhibit 1.1(i) – Assumed Contracts

Exhibit 1.2 – Excluded Assets

Exhibits 2.3 – Note

Exhibit 2.6 – Assumed Liabilities

Exhibit 3.1(f)(vii) – Opinion of Sellers' Counsel

Exhibit 3.1(f)(ix) – Form of Sales and Marketing Agreement

Exhibit 3.2(e)(iv) – Form of Non-Competition Agreement

Exhibit 3.2(e)(v) – Opinion of Buyer's Counsel

Exhibit 4.1.4 - Jurisdictions in which the Company is Qualified to do Business as Foreign Entity

Exhibit 4.1.6(e) – Legal Descriptions of the Real Estate

Exhibit 4.1.8 – Intellectual Property

Exhibit 4.1.9 – Financial Statements

Exhibit 4.1.12 – Contracts and Other Agreements

Exhibit 4.1.14 – Product Warranties

Exhibit 4.1.15 – Employees

Exhibit 4.1.17 – ERISA

Exhibit 4.1.19 – Environmental Claims

Exhibit 4.1.20 – Insurance

Exhibit 4.1.21 –License and Permits

Exhibit 4.1.23 – Customers and Suppliers

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

TISSUE TECHNOLOGY, LLC, PARTNERS CONCEPTS DEVELOPMENT, INC., OCONTO FALLS TISSUE, INC. and TISSUE PRODUCTS TECHNOLOGY CORP.,

Plaintiffs,

v. Case No. 14CV1203

TAK INVESTMENTS, LLC, and SHARAD TAK,

Defendants.

DECLARATION OF EDWARD M. KOLASINSKI

I, Edward M. Kolasinski, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am a certified public accountant in the State of Wisconsin and I am currently employed by Reclamation Technology Systems, LLC. In addition, I also consult with some of the various other businesses related to Partners Concepts Development Inc. including Tissue Technology LLC. Tissue Products Technology Corp, and Oconto Falls Tissue Inc. ("the OFTI Group"). I have been working in this capacity since October 2015.

2. Attached hereto and incorporated herein by reference and marked as Exhibit A is a copy of my Curriculum Vitae, which is current and up-to-date as of the date of this Affidavit.

3. I have been asked to assess the damages due and owing under the four Promissory Notes that are the subjects of this lawsuit all dated April 16, 2007. In that regard, I have prepared a letter dated June 28, 2017 which includes my opinions in this regard. I have also attached

thereto an analysis that computes the outstanding principal and interest owed to the OFTI group as of September 1, 2017.

4. I have rendered the opinions herein to a reasonable degree of certainty utilizing generally accepted accounting principles. I would note that these are relatively simple computations based on the terms of the promissory notes themselves.

5. I make this Declaration in support of the Plaintiff's renewed Motion for Summary Judgment.

Dated this 10th day of August, 2017.

By: _____
Edward M. Kolasinski

EXHIBIT
tabbies
A

Edward M. Kolasinski
6760 Kawula Lane, Sobieski, WI 54171
Mobile (503) 703-2802 ed.kolasinski@yahoo.com

C-LEVEL EXECUTIVE

Growth-Driven Sales & Financial Leadership • New Market and Product Development
Operations Management • Mergers, Acquisitions, Integration • Business Transformation

- Multi-faceted entrepreneur and executive leader with record of achieving profitable growth and shareholder value
- Positioned and executed the sale and post-acquisition integration of two companies
- Tested leader in executing cultural transformation and organizational change
- Experienced working on and with Boards of Venture-Backed, Public and Private Companies
- Industry experience: Pulp and Tissue, Water, Medical Device, Manufacturing, Technology, Distribution

PROFESSIONAL EXPERIENCE

CONFIDENTIAL COMPANY **Green Bay, WI** **Sept 2015 – Current**

Chief Operating Officer, Chief Financial Officer
Recruited as COO/CFO by largest outside investors to lead operational restructuring and financial recapitalization efforts for company with production and capabilities in the tissue, pulp and water treatment industries.

- Leading efforts to develop global business strategy and focus organization after recent resignation of CEO.
- Working financial model and projections for $170 Million project financing in Wisconsin.
- Restructured organization and Company which led to the consolidation and closing of 23 LLC's.
- Executing sales, supply and operational plans to reestablish production at a pulping facility with planned first year sales of $12 Million.
- Developed and directly executing sales strategy and operational plan to stabilize and grow the tissue converting operation with projected 2X growth in sales to $10 Million in 2017.
- Established and working a plan to lead a subsidiary company through bankruptcy and negotiating $20 Million in outstanding debt and obligations.

PURALYTICS **Portland, OR** **Dec 2010 – Sept 2015**

Chief Operating Officer, Chief Financial Officer, Member – Board of Directors
Recruited as COO/CFO to accelerate sales, market and channel development efforts, develop manufacturing and financial infrastructure and secure investment for this water purification equipment start-up. Accomplishments to-date includes:

- Launched two innovative product offerings into new markets and channels including US Retail and On-Line Retail, Industrial Lab Water and Commercial Water sectors in the US, Europe, SE Asia and the Middle East.
- Negotiated and directly managing sales representation and distribution agreements in US, Canada, Singapore, India, Malaysia, the Netherlands, Philippines, Middle East and South Africa which produced a sales pipeline in excess of $20 Million.
- Established out-sourced production of the Company's SolarBag product line with US manufacturing partner.
- Raised $6.0 Million from angel, strategic and institutional investors through Convertible Notes and subsequent Preferred Stock Offerings.
- Created global sales strategy, 5-Year Business Plan, cash flow model and supply chain management process.

EXECUTIVE CONSULTANT **Portland, OR** **2009 – 2010**

IMPACT MEDICAL – Developed 5-year financial projections and fund raising strategy for early stage orthopedic device company. Active advisor to CEO on business strategies, corporate issues and investor presentations.

THE QMP GROUP – Invited to join the team of this turnaround and value-enhancement consulting firm to provide strategic financial expertise to their programs. Developed business valuation and financial model for an occupational

health management organization in their long-term exit strategy planning. Completed due diligence, financial projections and business plan for proposed acquisition of an AG and vineyard supply distributor.

UNITED PIPE & SUPPLY **Portland, OR** **2004 – 2009**

President and Chief Financial Officer
Recruited as CFO to upgrade financial systems, direct branch operation process improvements and expand credit facilities. Promoted to dual role of President and CFO in August 2004. Led operational, financial and sales process transformation which grew sales from $121 to $210 Million, with 34 locations and 495 employees for this industrial and commercial service and distribution company serving the Waterworks, Irrigation, Water Systems, Agriculture and HVAC markets.

- Drove 75% sales growth through development of new markets, expanded product offerings and 10 new locations
- Implemented a sales process and customer management program which increased sales per sales-person by 40%
- Established a performance-and results-oriented culture through implementation of new financial systems, process improvements, expense management and employee accountability efforts/ program, achieving a 400% improvement in EBIT
- Executed a matrix management system and routine to ensure monthly review of performance metrics across 5 Divisions, 6 Regions, 34 Locations and more than 5,000 Customers
- Launched vendor management program to improve the performance of key suppliers with improvements in Gross Margin of 10% and Inventory Turns 52% realized
- Negotiated and managed $42 Million Credit Facility with Wells Fargo
- Developed and executed a major reorganization and transition plan, in response to the collapse in new housing and commercial construction and significant declines in commodity prices, which reduced operating expenses by $12 Million and inventory levels by $14 Million in 2009.

EXECUTIVE CONSULTANT **Portland, OR** **2002 – 2004**

VERINFORM SYSTEMS, INC. – Provided strategic, operations and financial expertise to this developer of web-based, enterprise software used for the management of Residency Training and Graduate Medical Education. Accomplishments: Raised $600,000 in seed capital. Developed and implemented pricing strategies, standard license agreements and customer support infrastructure. Negotiated SAAS license agreements with 3 Institutions.

IRONSPIRE – Provided strategic and financial expertise to this developer of web-based collaboration solutions used to manage information and improve communications among construction project teams. Accomplishments: Developed investor presentation and three-year financial plan. Partnered with the CEO, Venture Investor and Private Equity Firm to develop and present an acquisition proposal to the directors of a public software company.

@POS (EPOS.OB) - Member – Board of Directors, Audit Committee and Compensation Committee of this San Jose, CA developer of secure, interactive, web-enabled electronic transaction technologies and software. Advised the Company through a turnaround situation and hired a new CEO. Active leadership and guidance to executive team which led to the successful sale of this Publically-Traded Company to Symbol Technologies in 2002.

WELCH ALLYN, PROTOCOL SYSTEMS, INC., PRYON CORP **1990 – 2001**

WELCH ALLYN PROTOCOL, INC. **Portland, OR**
A wholly-owned subsidiary of Welch Allyn. Annual revenues of $100 Million after consolidation of the Welch Allyn monitoring division into Protocol. Named Acting COO after the sale of the Company and departure of Protocol CEO.

Acting COO, Chief Financial Officer, GM OEM Technologies **2000 – 2001**

- Managed marketing and product development teams through launch of innovative new wireless, ambulatory ECG and cardiac system with first year sales in excess of $4 Million.
- Led the post acquisition integration efforts, achieving cost savings of $3 Million by combining US sales forces, restructuring international distribution channel, implementing best practices for procurement and manufacturing process improvements.
- Developed and led company-wide initiative for strategic planning and employee accountability.

PROTOCOL SYSTEMS, INC. **Portland, OR**

Prior to sale of the Company in 2000 to Welch Allyn, Protocol Systems was a $75 Million public company (PCOL) producing medical monitoring equipment, systems and technologies. Appointed CFO after successful completion of integration and relocation of Pryon to Oregon. Primary representative to shareholders and market analysts.

Vice President-Finance and Chief Financial Officer **1999 - 2000**

- Executed a structured auction process and sale of the Company to Welch Allyn, Inc. for $145 Million which represented a 60% premium over the rejected, unsolicited offer.
- Managed the investment community through an unsolicited, hostile bid to acquire the company.

PRYON CORPORATION **Menomonee Falls, WI**

Venture-backed medical electronics and instrumentation technology start-up. Annual sales grew to $12 Million prior to the 1996 acquisition by Protocol. Promoted to President after completing the sale of the Company.

President **1996 - 1999**

Vice President-Finance and Chief Financial Officer **1990 - 1996**

- Executed OEM agreements with companies in China, Turkey, Brazil and US totaling $4 Million in annual sales.
- Led relocation to Oregon and integration of finance, engineering and manufacturing operations resulting in more than $3 Million in annual cost reductions.
- Negotiated and managed the sale of the Company to Protocol Systems, Inc. for $32 Million in Stock
- Led efforts in engineering and manufacturing to achieve ISO 9000 certification and FDA compliance

REXNORD INC. **Milwaukee, WI** **1987 - 1990**

Wholly-owned, independent SEC Registrant, subsidiary of Banner Industries producing aerospace parts, plastic components, industrial conveyance equipment and municipal waste water treatment equipment. As Director of Finance, developed financial models and business strategies for major corporate initiative which included the acquisition and integration of 13 businesses across 5 separate divisions with combined sales in excess of $600 Million.

PRICE WATERHOUSE **Milwaukee, WI** **1980 - 1987**

Audit Manager, with industry focus in health and life insurance industries, automotive and industrial equipment, responsible for the planning and execution of the annual audits and special project efforts for domestic and multi-national clients, including Johnson Controls, Northwestern Mutual and Harnischfeger Corporation.

EDUCATION, CERTIFICATIONS AND BOARD EXPERIENCE

University of Wisconsin, Madison – Bachelors of Business Administration – Accounting & Information Systems
Certified Public Accountant – State of Wisconsin
Member - Board of Directors – Puralytics 2012 – 2016
Member - Board of Directors – PPV Inc. / Bravo Environmental 2013 - 2016
Member - Advisory Board – American Solar - Gyro Volts 2012 – 2015
Member - Advisory Board – NIVasc, Inc. 2012 - 2015
Member - Board of Directors, Audit and Compensation Committees - @pos 2000 - 2002

Association for Corporate Growth Member
WICPA Member
Maximum Impact (John Maxwell) – Certified Leadership Trainer

EDWARD M. KOLASINSKI – CPA
6760 KAWULA LANE
SOBIESKI, WI 54171

RE: OFTI Group v. Tak Investments
Case No. 14CV1203

I have been asked to review four (4) Promissory Notes executed by TAK Investments, LLC on April 16, 2007 payable to Tissue Products Technology Corp. In the amounts of $4,400,000, $3,000,000, $4,000,000 and $5,000,000, respectively and provide a written report of my review and opinions. With regard to this review:

1. I am a certified public accountant in the State of Wisconsin and am currently employed by Reclamation Technology Systems, LLC. Attached is a copy of my Curriculum Vitae which is current and up-to –date as of the date of this report. In addition, I consult with some of the various other businesses related to Partners Concepts Development Inc. including Tissue Products Technology Corp. I have been performing in this capacity since October 2015.

2. Prior litigation or cases in which I have testified or provided Affidavits include:

- Green Box NA Green Bay LLC Chapter 11 Bankruptcy Case #16-24179 in the Eastern District of Wisconsin – provided witness testimony on a number of occasions from May 2016 to-date
- Affidavit dated March 29, 2017 regarding Tissue Technology LLC v ST Paper, LLC - Case No. 14 CV 156, File No. 080515-0013

3. I am not receiving any direct compensation for my efforts in reviewing and issuing analysis and opinion with regard to amounts due and outstanding from the four (4) Promissory Notes.

I have rendered the opinions herein to a reasonable degree of certainty utilizing generally accepted accounting principles. I would note that these are relatively simple computations based upon the language and terms of the four (4) Promissory Notes.

I have reviewed certain information and documents provided to me with respect to the four (4) Promissory Notes executed by TAK Investments, LLC. These efforts included:

- Review of the terms and language of the four (4) Promissory Notes dated and executed by TAK Investments on April 16, 2007
- Review of Wisconsin Statute 138.05 pertaining to Maximum rate; prepayment, disclosure; corporations.

Based upon this effort, I have prepared two computations and schedules summarizing the amounts due and outstanding with respect to the four (4) Promissory Notes dated April 16, 2017 Principal and Accrued Interest. The first analysis details simple interest computed on the outstanding Principal balance. The second analysis details a compounded interest assumption (accrual for interest on outstanding Principal and all unpaid previous year interest). Wisconsin Statute states that: In the computation of interest upon any bond, note or other instrument or agreement, interest shall not be compounded, nor shall the interest thereon be construed to bear interest, unless an agreement to that effect is clearly expressed in writing, and signed by the parry to be charged therewith (Analysis 1). While the Promissory Notes do not specifically address the compounding of accrued interest, terms required interest to be payable on a semi-annual basis commencing October 16, 2007. This payment of interest has not occurred as required by the Promissory Note. In addition, the Promissory Notes detailed a repayment of Principal schedule, which also did not occur as required. The Promissory Notes also require that Interest shall be calculated based on a year consisting of 360 days applied to the actual days on which there exists an unpaid balance hereunder. My opinion is that an unpaid balance under the Promissory Notes would include the accrued and unpaid interest.

As of September 1, 2017, I have determined with a reasonable degree of certainty utilizing generally accepted accounting principles that amount of outstanding and unpaid Principal and Interest due to Tissue Products Technology Corp as detailed per the schedules attached is:

- $30,019,289 – Outstanding Principal on the four (4) Promissory Notes plus Interest (Simple)
- $37,028,423 - Outstanding Principal on the four (4) Promissory Notes plus Interest (Semi-Annual Compounded)

Edward M Kolasinski

June 28, 2017

TISSUE PRODUCTS TECHNOLOGY CORP
PROMISSORY NOTES

	DATE	NOTE 1	NOTE 2	NOTE 3	NOTE 4	TOTAL
PRINCIPAL	4/16/2007	$ 4,400,000	$ 3,000,000	$ 4,000,000	$ 5,000,000	$ 16,400,000
INTEREST	4/16/2008	$ 352,000	$ 240,000	$ 320,000	$ 400,000	$ 1,312,000
INTEREST	4/16/2009	$ 352,000	$ 240,000	$ 320,000	$ 400,000	$ 1,312,000
INTEREST	4/16/2010	$ 352,000	$ 240,000	$ 320,000	$ 400,000	$ 1,312,000
INTEREST	4/16/2011	$ 352,000	$ 240,000	$ 320,000	$ 400,000	$ 1,312,000
INTEREST	4/16/2012	$ 352,000	$ 240,000	$ 320,000	$ 400,000	$ 1,312,000
INTEREST	4/16/2013	$ 352,000	$ 240,000	$ 320,000	$ 400,000	$ 1,312,000
INTEREST	4/16/2014	$ 352,000	$ 240,000	$ 320,000	$ 400,000	$ 1,312,000
INTEREST	4/16/2015	$ 352,000	$ 240,000	$ 320,000	$ 400,000	$ 1,312,000
INTEREST	4/16/2016	$ 352,000	$ 240,000	$ 320,000	$ 400,000	$ 1,312,000
INTEREST	4/16/2017	$ 352,000	$ 240,000	$ 320,000	$ 400,000	$ 1,312,000
INTEREST	9/1/2017	$ 133,956	$ 91,333	$ 121,778	$ 152,222	$ 499,289
TOTAL DUE	**9/1/2017**	**$ 8,053,956**	**$ 5,491,333**	**$ 7,321,778**	**$ 9,152,222**	**$ 30,019,289**

Simple annual interest computation - no compound interest

TISSUE PRODUCTS TECHNOLOGY CORP
PROMISSORY NOTES

	DATE	NOTE 1	NOTE 2	NOTE 3	NOTE 4	TOTAL
PRINCIPAL	4/16/2007	$ 4,400,000	$ 3,000,000	$ 4,000,000	$ 5,000,000	$ 16,400,000
TOTAL P&I	10/16/2007	$ 4,576,000	$ 3,120,000	$ 4,160,000	$ 5,200,000	$ 17,056,000
TOTAL P&I	4/16/2008	$ 4,759,040	$ 3,244,800	$ 4,326,400	$ 5,408,000	$ 17,738,240
TOTAL P&I	10/16/2008	$ 4,949,402	$ 3,374,592	$ 4,499,456	$ 5,624,320	$ 18,447,770
TOTAL P&I	4/16/2009	$ 5,147,378	$ 3,509,576	$ 4,679,434	$ 5,849,293	$ 19,185,680
TOTAL P&I	10/16/2009	$ 5,353,273	$ 3,649,959	$ 4,866,612	$ 6,083,265	$ 19,953,108
TOTAL P&I	4/16/2010	$ 5,567,404	$ 3,795,957	$ 5,061,276	$ 6,326,595	$ 20,751,232
TOTAL P&I	10/16/2010	$ 5,790,100	$ 3,947,795	$ 5,263,727	$ 6,579,659	$ 21,581,281
TOTAL P&I	4/16/2011	$ 6,021,704	$ 4,105,707	$ 5,474,276	$ 6,842,845	$ 22,444,532
TOTAL P&I	10/16/2011	$ 6,262,572	$ 4,269,935	$ 5,693,247	$ 7,116,559	$ 23,342,314
TOTAL P&I	4/16/2012	$ 6,513,075	$ 4,440,733	$ 5,920,977	$ 7,401,221	$ 24,276,006
TOTAL P&I	10/16/2012	$ 6,773,598	$ 4,618,362	$ 6,157,816	$ 7,697,270	$ 25,247,047
TOTAL P&I	4/16/2013	$ 7,044,542	$ 4,803,097	$ 6,404,129	$ 8,005,161	$ 26,256,928
TOTAL P&I	10/16/2013	$ 7,326,323	$ 4,995,221	$ 6,660,294	$ 8,325,368	$ 27,307,206
TOTAL P&I	4/16/2014	$ 7,619,376	$ 5,195,029	$ 6,926,706	$ 8,658,382	$ 28,399,494
TOTAL P&I	10/16/2014	$ 7,924,151	$ 5,402,831	$ 7,203,774	$ 9,004,718	$ 29,535,473
TOTAL P&I	4/16/2015	$ 8,241,117	$ 5,618,944	$ 7,491,925	$ 9,364,906	$ 30,716,892
TOTAL P&I	10/16/2015	$ 8,570,762	$ 5,843,701	$ 7,791,602	$ 9,739,502	$ 31,945,568
TOTAL P&I	4/16/2016	$ 8,913,593	$ 6,077,450	$ 8,103,266	$ 10,129,083	$ 33,223,391
TOTAL P&I	10/16/2016	$ 9,270,136	$ 6,320,548	$ 8,427,397	$ 10,534,246	$ 34,552,326
TOTAL P&I	4/16/2017	$ 9,640,942	$ 6,573,369	$ 8,764,493	$ 10,955,616	$ 35,934,420
TOTAL P&I	**9/1/2017**	**$ 9,934,455**	**$ 6,773,492**	**$ 9,031,323**	**$ 11,289,153**	**$ 37,028,423**

Interest compounded semi-annually

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

TISSUE TECHNOLOGY, LLC, PARTNERS CONCEPTS DEVELOPMENT, INC., OCONTO FALLS TISSUE, INC. and TISSUE PRODUCTS TECHNOLOGY CORP.,

Plaintiffs,

Case No. 14CV1203

v.

TAK INVESTMENTS, LLC and SHARAD TAK,

Defendants.

DECLARATION OF RONALD VAN DEN HEUVEL

STATE OF WISCONSIN)
) ss
BROWN COUNTY)

Ronald Van Den Heuvel, being first duly sworn on oath, deposes and states as follows:

1. I am Ronald H. Van Den Heuvel, a resident of the State of Wisconsin and the principal for each of the plaintiffs herein, Tissue Technology, LLC, Partners Concepts Development, Inc., Oconto Falls Tissue, Inc., and Tissue Products Technology Corp. In that regard, I am authorized to make this declaration on behalf of the plaintiffs.

2. I have previously offered an Affidavit in this case and I have been deposed and I know my deposition testimony is being offered in support of the response to the Defendants' Motion for Summary Judgment and my companies' request to renew their motion for summary judgment.

3. My deposition testimony explained the manner by which the four Promissory Notes in the Final Business Terms Agreement were agreed between my companies and Sharad Tak's companies. It was imperative to clear debt from the Oconto Falls tissue mill prior to the sale so Sharad Tak and his companies could have "clean title". Another item affecting the financing and directly applicable to the issuance of the Promissory Notes and the Final Business Terms Agreement was that Mr. Tak could not come up with a $20 million equity contribution due to his obligation to pay in various requirements for the Phase II financing.

4. Part and parcel of that "clean title" was the elimination of certain debts, which are detailed in the brief we have submitted and my deposition testimony.

5. At the time of closing, it was necessary for me to clear debt owed to Spirit Construction and Vos Electric, both subsidiaries of a Van Den Heuvel family company, VHC, Inc.

6. I was able to satisfy debts owed to these family companies with two of the Promissory Notes that are in question here. VHC, Inc., the holding company for Voss and Spirit had an outstanding UCC lien against the Oconto Falls tissue mill. That lien was deemed satisfied at closing. However, no payments were made by the purchaser, Sharad Tak's company, ST Paper.

7. Attached hereto and incorporated herein by reference and marked as Exhibit A is a true and correct copy of the Closing Statement dated April 16, 2007 reflecting the payments made out of closing. It must be noted that nowhere on that statement does it indicate that VHC, Inc., Voss Electric or Spirit Construction were paid.

8. Attached hereto and incorporated herein by reference and marked as Exhibit B is a true and correct copy of the UCC Filing Statement, Amendment for VHC, Inc. showing the termination of the security interest on April 17, 2007. Spirit Construction had debt in a lien amount of $5 million, Vos Electric had $3 million in debt. It must be noted that this was obtained by defendant's present counsel, Godfrey & Kahn.

9. There were two other items that needed to be included, the William Bain Note which has been before this court before in the amount of $4.4 million and Associated Bank had a gap in the amount of $4 million for a total of $16.4 million in debt which I cleared and became obligated for and which I reflected in the Promissory Notes now before the Court.

Dated this 10th day of August, 2017.

By: _____
Ronald Van Den Heuvel

CLOSING STATEMENT

BUYER: FEIN: 20-8714157
ST PAPER, LLC

SELLER: OCONTO FALLS TISSUE, INC.

ASSET PURCHASE AGREEMENT DATED: AS OF APRIL 16, 2007

DATE OF CLOSING: APRIL 16, 2007

BUYER'S SETTLEMENT STATEMENT

PURCHASE PRICE:		
BASE PURCHASE PRICE	$26,460,000.00	
ADDITIONAL BUYER FUNDS	$4,649,000.00	
LESS: SELLER NOTE	-$30,109,000.00	
CASH PROCEEDS	$60,460,000.00	
CREDITS TO BUYER:		
TOTAL CREDITS TO BUYER	$0.00	
CHARGES TO BUYER:		
TOTAL CHARGES TO BUYER	$0.00	
TOTAL DUE FROM BUYER	$60,460,000.00	

SELLER'S SETTLEMENT STATEMENT

TOTAL CASH DUE FROM BUYER	$60,460,000.00	
TOTAL DUE SELLER BEFORE DISBURSEMENTS	$60,460,000.00	
DISBURSEMENTS:		
ASSOCIATED TRUST COMPANY, N.A. - AS TRUSTEE FOR TAX EXEMPT BONDS	$34,722,688.20	1
US BANK TRUST COMPANY - AS TRUSTEE FOR WAREHOUSE BONDS	$1,653,568.19	2
ASSOCIATED BANK - AS L.O.C. PROVIDER FOR WASTE WATER TREATMENT BONDS	$4,101,750.83	3
FORTRESS CREDIT CORP	$13,947,457.14	4
GEORGE WASHINGTON SAVINGS BANK	$2,723,751.94	5
IFC CREDIT CORP	$3,051,429.58	6
IFC CREDIT CORP	$230,462.66	7
NICOLET NATIONAL BANK	$2,981,708.23	8
OCONTO COUNTY TAXES	$122,999.15	9
CITY OF OCONTO FALLS	$80,614.52	10
CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP	$832,872.14	11
TITLE INSURANCE/CLOSING FEES RECORDING	$70,000.00	12
TRANSFER TAX	$215,468.00	
RECORDING FEES	$750.00	
MESIROW FINANCIAL	$50,000.00	
INVENTORY PURCHASE - AS DIRECTED BY ST PAPER	$4,000,000.00	
FCDI	$649,000.00	
TOTAL DISBURSEMENTS	$59,342,522.18	
NET BALANCE DUE SELLER	$1,117,477.82	11

WIRE - CHECK

BUYER AND SELLERS AGREE THAT THIS STATEMENT IS ACCEPTED AS TRUE, CORRECT AND COMPLETE.
THIS STATEMENT MAY BE EXECUTED IN COUNTERPARTS AND BY FACSIMILE SIGNATURE.

THE RESPONSIBILITY OF GREEN BAY TITLE COMPANY, INC. (AND THEIR ASSIGNS), IS LIMITED TO THE DISBURSEMENTS AS SET FORTH ON THIS CLO STATEMENT. GREEN BAY TITLE COMPANY, INC. SHALL NOT BE RESPONSIBLE FOR MAKING DISBURSEMENTS (OR OTHERWISE RESPONSIBLE) FOR A OBLIGATIONS THAT ARE NOT ON THIS STATEMENT. THE PARTIES HERETO CONSENT AND AGREE TO HOLD GREEN BAY TITLE COMPANY, INC. (AND THEIR ASSIGNS) HARMLESS FROM ANY DISPUTES ARISING FROM OBLIGATIONS AND DISBURSEMENTS NOT SET FORTH ON THIS CLOSING STATEMEI

BUYER:
ST PAPER, LLC
BY: _____
NAME: SHARAD R. TAK
TITLE: PRESIDENT

SELLER:
OCONTO FALLS TISSUE, INC.
BY: _____
NAME: RONALD H. VAN DEN HEUVEL
TITLE: PRESIDENT

EXHIBIT
tabbies
A

UCC FINANCING STATEMENT AMENDMENT

DFI

NAME & PHONE OF CONTACT
Michelle H. Fullerton Godfrey & Kahn, S.C. mfullert@gklaw.com 262-951-7000
SEND ACKNOWLEDGMENT TO:
Michelle H. Fullerton Godfrey & Kahn, S.C. mfullert@gklaw.com

Filing # - 070005402920
Filed - 4/17/2007 2:28:34 PM
Wisconsin Department of Financial Institutions

INITIAL FINANCING STATEMENT FILE #
020015907628
STATEMENT TYPE

Termination: Effectiveness of the Financing Statement identified above is terminated with respect to security interests(s) of the Secured Party authorizing this Termination Statement.

AUTHORIZING PARTY

OR	ORGANIZATION'S NAME VHC, Inc.			
	INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

OPTIONAL FILER REFERENCE DATA
Not Filled In.

EXHIBIT
B