

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.,

Case No. 14-C-1203

Plaintiffs,

v.

TAK INVESTMENTS, LLC and
SHARAD TAK,

Defendants.

SUPPLEMENTAL DECLARATION OF JONATHAN T. SMIES

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

1. I am counsel for the Defendants in this matter, Tak Investments, LLC and Sharad Tak. I make this declaration on personal knowledge and my review of the file.

2. Attached hereto as **Exhibit 1** are true and correct copies of certain documents produced in response to a subpoena issued to Nicolet National Bank in this matter, including a March 12, 2008 “Baylake Bank Assignment of Note.”

3. Attached hereto as **Exhibit 2** is a true and correct copy of a document produced in response to a subpoena issued to Nicolet National Bank in this matter, a December 28, 2009 “Baylake Bank Assignment of Note.”

4. I received the attached documents too late to include them in the previously-filed submissions on Tak Investments, LLC’s motion for summary judgment, including its reply submissions.

5. These documents produced by Nicolet National Bank are directly relevant to the Defendants' contention that the Investment Notes cannot be enforced by the Plaintiffs because the Plaintiffs no longer hold all of the Investment Notes, and that the Plaintiffs have failed to satisfy a condition precedent to the transfer provision of the Final Business Terms Agreement.

Dated this 1st day of September, 2017.

s/ Jonathan T. Smies
Jonathan T. Smies

EXHIBIT 1

**BAYLAKE BANK
ASSIGNMENT OF NOTE**

ASSIGNMENT, effective this 12 day of MARCH, 2008, between Tissue Technology, LLC, hereafter called "Assignor", and Baylake Bank, hereafter called "Bank".

WHEREAS, Assignor is presently the holder of a certain Promissory Note from TAK Investments, LLC, hereafter called "Maker", payable to the order of Assignor, in the sum of Four Million Four Hundred Thousand and 00/100 (\$4,400,000.00) Dollars, dated March 5, 2008, hereafter called the "Note", and Assignor wishes to assign said Note to Bank as additional collateral for a certain loan transaction by Bank to Ronald Van Den Heuvel, hereafter "Borrower", identified as Note No. 2474 and dated MARCH 12, 2008, in the sum of Six Hundred Fifty Thousand and 00/100 (\$650,000.00) Dollars, hereafter called the "Loan" to secure Borrower's repayment thereof;

NOW, THEREFORE, in consideration of the "Loan" by Bank to Borrower, the receipt of which is hereby acknowledged, and of the mutual benefit accruing to the parties;

ASSIGNOR HEREBY ASSIGNS all right and interest in and to the Note, a copy of which is attached hereto as Exhibit "A" and the terms and conditions of which are fully incorporated herein by reference thereto, subject to the outstanding balance due by Maker, together with interest thereon at a fixed rate of 5% per annum, such assignment to be a full, complete, and final assignment of all of Assignor's rights and interest hereunder, expressly including the right of Bank to the enforcement thereof and receipt of all remaining principal, interest, costs, and fees due and payable under the Note.

It is further agreed that in the event the aforementioned Loan between Bank and Borrower is satisfied, this Assignment shall be used as collateral to secure all debts and obligations of the Assignor, Borrower, Natures Way Tissue Corp., Patriot Investments, LLC, and/or TAK Investments, LLC, arising out of credit previously granted, credit contemporaneously granted or credit granted in the future by Bank to Assignor, Borrower, Natures Way Tissue Corp., Patriot Investments, LLC, and/or TAK Investments, LLC.

IN WITNESS WHEREOF, Assignor has executed this Assignment by its duly authorized agent effective as of the date first set forth above.

ASSIGNOR:
TISSUE TECHNOLOGY, LLC

By 

NOTICE OF ASSIGNMENT

TO: TAK Investments, LLC

Please take notice that the Promissory Note from TAK Investments, LLC, payable to the order of Tissue Technology, LLC, in the principal sum of Four Million Four Hundred and 00/100 (\$4,400,000.00) Dollars, dated March 5, 2008, has been assigned to Baylake Bank. Please be advised that all payments due and owing under said Promissory Note shall be made to Tissue Technology, LLC, but upon Notice of Demand for Payment issued by Baylake Bank, all further payments due under said Promissory Note shall be made to Baylake Bank.

Dated this 12 day of March, 2008.

BAYLAKE BANK

By: 

ACKNOWLEDGMENT AND CONSENT OF ASSIGNMENT

The undersigned hereby acknowledges receipt of the Notice of Assignment of the aforementioned Promissory Note and consents to the assignment under the terms set forth.

Dated this 12 day of March, 2008.

TAK INVESTMENTS, LLC

By: 

Assignment Acknowledgment:

Date: March 12, 2008

I, Sharad Tak as President of Tak Investments, LLC, agree and acknowledge that Ron Van Den Heuvel and Tissue Technology, LLC have pledged a \$4,400,000 promissory note dated March 5, 2008 owed by Tak Investments, LLC to Tissue Technology, LLC as collateral to Baylake Bank in consideration for financing being provided to them.

This acknowledgment provides that in the event of default by Ron Van Den Heuvel or Tissue Technology, LLC for any indebtedness owed to Baylake Bank, that Tak Investments upon request and notice of Baylake Bank, agrees to make payments under the terms of the \$4,400,000 promissory note directly to Baylake Bank.

Tak Investments, LLC

By: Sharad Tak
Sharad Tak, President 3/12/08

P.D.

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THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATE. THIS NOTE MAY NOT BE TRANSFERRED OR RSOLD EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURUSANT TO REGISTRATION OR EXEMPTION THEREFROM.

PROMISSORY NOTE

\$4,400,000.00

March 5, 2008

FOR VALUE RECEIVED, the undersigned, **TAK INVESTMENTS, LLC**, a Delaware limited liability company ("Maker"), hereby promises to pay to the order of **TISSUE TECHNOLOGY, LLC**, a Wisconsin limited liability company ("Payee"), 1555 Glory Road, Green Bay, Wisconsin 54304, or such other place or designee as the Payee shall from time to time direct in writing to the Maker the principal sum of Four Million Four Hundred Thousand Dollars (\$4,400,000.00). The unpaid principal balance of this Note shall bear interest at a rate per annum equal to five percent (5%), per annum. Interest shall accrue from the date hereof and shall be payable on an annual basis commencing on March 5, 2009 and on the final due date hereof. Principal hereon shall be due and payable upon the earlier of 1) the closing of the next ST Paper project (i.e. Utah or Pennsylvania); or 2) on March 5, 2011. 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.

Maker may prepay all or any part of the unpaid balance of this Note at any time, and from time to time, without premium or penalty. No partial prepayment shall relieve Maker of Maker's obligations to make the regularly scheduled payment(s) hereunder until the unpaid balance of this Note is paid in full.

No delay or omission on the part of Payee or any holder of this Note in exercising any right or option given to Payee or such holder shall impair such right or option or be considered as a waiver thereof or acquiescence in any default hereunder. Maker shall be obligated to pay to Payee any costs incurred by Payee in the collection of sums due hereunder by Maker including any attorney's fees.


Maker hereby waives presentment, demand, notice of dishonor and protest and consents to any and all extensions and renewals hereof without notice. If Maker becomes subject to any federal or state bankruptcy or insolvency action, without the requirement of notice or presentment on behalf of Payee to Maker, this outstanding principal and interest, and all other amounts due on and in accordance with this Note, shall become immediately due and payable.

Upon payment in full of this Note, Payee agrees to surrender this Note to Maker for cancellation thereof.

This Note shall be construed in accordance with the internal laws of the State of Wisconsin.

MAKER:

TAK INVESTMENTS, LLC

By: 
(Title)

I Ron Van Don Heavel President of
TTL hereby Pledges this Note to
Bay Lake Bank on March 10th, 2008
Ronald H Van Don Heavel
President

EXHIBIT 2

**BAYLAKE BANK
ASSIGNMENT OF NOTE**

ASSIGNMENT, effective this 28th day of December, 2009, between Tissue Technology, LLC, hereafter called "Assignor", and Baylake Bank, hereafter called "Bank".

WHEREAS, Assignor is presently the holder of a certain Promissory Note from TAK Investments, LLC, hereafter called "Maker", payable to the order of Assignor, in the sum of Four Million Four Hundred Thousand and 00/100 (\$4,400,000.00) Dollars, dated March 5, 2008, hereafter called the "Note", and Assignor wishes to assign said Note to Bank as additional collateral for a certain loan transaction by Bank to Nature's Choice Tissue, LLC and Ronald H. Van Den Heuvel, hereafter jointly referred to as "Borrower", identified as Note No. ■3406 and dated December 24, 2009, in the sum of Seven Hundred Two Thousand Four Hundred Eighty-five and 83/100 (\$702,485.83) Dollars, hereafter called the "Loan" to secure Borrower's repayment thereof;

NOW, THEREFORE, in consideration of the Loan by Bank to Borrower, the receipt of which is hereby acknowledged, and of the mutual benefit accruing to the parties;

ASSIGNOR HEREBY ASSIGNS all right and interest in and to the Note, a copy of which is attached hereto as Exhibit "A" and the terms and conditions of which are fully incorporated herein by reference thereto, subject to the outstanding balance due by Maker, together with interest thereon at a fixed rate of 5% per annum, such assignment to be a full, complete, and final assignment of all of Assignor's rights and interest hereunder, expressly including the right of Bank to the enforcement thereof and receipt of all remaining principal, interest, costs, and fees due and payable under the Note.

It is further agreed that in the event the aforementioned Loan between Bank and Borrower is satisfied, this Assignment shall be used as collateral to secure all debts and obligations of the Assignor, Borrower jointly or individually, and/or Patriot Investments, LLC, arising out of credit previously granted, credit contemporaneously granted or credit granted in the future by Bank to Assignor, Borrower jointly or individually, and/or Patriot Investments, LLC.

IN WITNESS WHEREOF, Assignor has executed this Assignment by its duly authorized agent effective as of the date first set forth above.

**ASSIGNOR:
TISSUE TECHNOLOGY, LLC**

By: 

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATE. THIS NOTE MAY NOT BE TRANSFERRED OR SOLD EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

PROMISSORY NOTE

\$4,400,000.00

March 5, 2008

FOR VALUE RECEIVED, the undersigned, **TAK INVESTMENTS, LLC**, a Delaware limited liability company ("Maker"), hereby promises to pay to the order of **TISSUE TECHNOLOGY, LLC**, a Wisconsin limited liability company ("Payee"), 1555 Glory Road, Green Bay, Wisconsin 54304, or such other place or designee as the Payee shall from time to time direct in writing to the Maker the principal sum of Four Million Four Hundred Thousand Dollars (\$4,400,000.00). The unpaid principal balance of this Note shall bear interest at a rate per annum equal to five percent (5%), per annum. Interest shall accrue from the date hereof and shall be payable on an annual basis commencing on March 5, 2009 and on the final due date hereof. Principal hereon shall be due and payable upon the earlier of 1) the closing of the next ST Paper project (i.e. Utah or Pennsylvania); or 2) on March 5, 2011. 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.

Maker may prepay all or any part of the unpaid balance of this Note at any time, and from time to time, without premium or penalty. No partial prepayment shall relieve Maker of Maker's obligations to make the regularly scheduled payment(s) hereunder until the unpaid balance of this Note is paid in full.

No delay or omission on the part of Payee or any holder of this Note in exercising any right or option given to Payee or such holder shall impair such right or option or be considered as a waiver thereof or acquiescence in any default hereunder. Maker shall be obligated to pay to Payee any costs incurred by Payee in the collection of sums due hereunder by Maker including any attorney's fees.

Maker hereby waives presentment, demand, notice of dishonor and protest and consents to any and all extensions and renewals hereof without notice. If Maker becomes subject to any federal or state bankruptcy or insolvency action, without the requirement of notice or presentment on behalf of Payee to Maker, this outstanding principal and interest, and all other amounts due on and in accordance with this Note, shall become immediately due and payable.

Upon payment in full of this Note, Payee agrees to surrender this Note to Maker for cancellation thereof.

This Note shall be construed in accordance with the internal laws of the State of Wisconsin.

MAKER:

TAK INVESTMENTS, LLC

By: Sum Lee Tsai

(Title)