

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

v.

Code No(s). 30301

EVERGREEN DEVELOPMENT, LLC and  
RONALD VAN DEN HEUVEL,

Defendants.

**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

TO: Evergreen Development, LLC and  
Ronald H. Van Den Heuvel  
c/o C. David Stellpflug and Michael Kirschling  
Stellpflug Law Firm  
444 Reid Street, #200  
De Pere, WI 54115

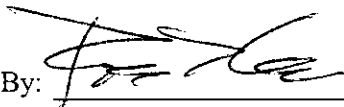
**PLEASE TAKE NOTICE**, that at the time and date to be designated by this Court, the undersigned will appear before the Honorable Sue E. Bischel, on behalf of the Plaintiff, Hilliard Limited Partnership, to present a motion pursuant to Wis. Stat. § 802.08 for Summary Judgment. The bases for this motion are that there are no genuine issues of material fact, and that the Plaintiff is entitled to judgment as a matter of law against the Defendants.

The grounds for this Motion are set forth in further detail in the accompanying Brief in Support of Motion for Summary Judgment and the Affidavits of Ross J. Nova and Neal Maccoux filed herewith.

Dated this 31<sup>st</sup> day of December, 2008.

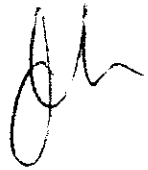
GODFREY & KAHN, S.C.

P.O. ADDRESS:  
333 Main Street, Suite 600  
Post Office Box 13067  
Green Bay, WI 54307-3067  
Phone: 920-432-9300  
Fax: 920-436-7988  
nova@gklaw.com  
3420848\_1

By:   
\_\_\_\_\_  
Ross J. Nova  
State Bar No. 1036723  
Attorneys for Plaintiff, Hilliard Limited Partnership

**The undersigned certifies that a true copy of the within was served by mail or by personal delivery upon all attorneys and parties of record pursuant to Wis. Stat. Sec. 801.14 this 31 day of December 2008.  
GODFREY & KAHN, S.C.**

BY: 



HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

v.

Code No(s). 30301

EVERGREEN DEVELOPMENT, LLC and  
RONALD VAN DEN HEUVEL,

Defendants.

---

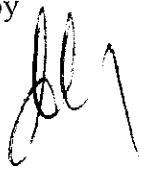
**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

---

**INTRODUCTION**

This case addresses whether the Defendants breached the terms of a promissory note by failing to repay it when due. Defendants, Ronald Van Den Heuvel and Evergreen Development, LLC, the makers of the promissory note (together, the "Defendants"), admitted they did not repay the promissory note when due and that such a failure to repay breached the terms thereof. The Defendants admitted under oath that failure to repay the promissory note is a default under the terms thereof, thereby allowing the Plaintiff to accelerate repayment of the Note. Because the validity of the promissory note is not in question, it is undisputed that the Defendants breached the promissory note, and summary judgment in favor of the Plaintiff is appropriate.

What the Defendants allege is that at some point prior to or contemporaneously with the execution of the promissory note, the Plaintiff orally agreed to modify the promissory note to provide for repayment upon the sale of a non-party business related to the Defendants, whenever that would occur, if ever. The Plaintiff sharply disputes this implausible allegation, but it is immaterial. For reasons explained in this Brief, the promissory note cannot be modified by



alleged oral agreements made prior to or contemporaneously with the making of the promissory note. Because of the parol evidence rule, a failure of consideration and the Statute of Frauds, any oral modification of the promissory note would be ineffective and any evidence in support thereof is inadmissible. Because the Defendants' oral amendment defense must fail as a matter of law, the Plaintiff is entitled to summary judgment.

### **STIPULATED FACTS**

1. Attached hereto is a true and correct copy of the Note in favor of the Plaintiff executed by the Defendants in the principal amount of \$759,637.50 (the "Note"). (Affidavit of Ross J. Nova ("Nova Aff."), ¶ 5 - Defendants' Responses to Plaintiff's First Set of Requests to Admit ("Admission") No. 1; Answer, ¶ 4).

2. The Note was executed by Defendant, Ronald Van Den Heuvel, on or about July 18-20, 2007. (Nova Aff. ¶3-Continued deposition of Ronald Van Den Heuvel ("RVDH Dep. 2"), 56:4-6; 68: 18-20).

3. The Note states that repayment of principal and interest at the rate of eight percent (8%) per annum must occur by no later than October 15, 2007. (Answer ¶ 5).

4. The Note states that an Event of Default by Defendants can occur due to Defendants' "failure, refusal, inability or other nonpayment or nonperformance for any reason whatsoever: (i) in the payment of any installment of principal and/or interest due hereunder when due . . ." (Admission No. 1 at ¶ 5).

5. The Note states that Defendants' failure to repay any amounts due under the Note constitutes an Event of Default thereunder. (RVDH Dep. 2, 46: 18-20).

6. The Note states that upon the occurrence of an Event of Default, the Plaintiff "may declare the entire unpaid principal balance of the disbursement to maker . . . immediately due and payable . . . without further notice or demand on maker." (*Id.*)

7. The Note states that if any Event of Default under the Note is not cured by the Defendants within five (5) calendar days after the occurrence thereof, any unpaid amounts shall accrue interest at the rate of eighteen percent (18%) per annum. (*Id.*, at ¶ 6).

8. The Note states that an Event of Default under the Note can only be waived if done so by the Plaintiff in writing. (*Id.*).

9. The Defendants failed to repay the Note on or before October 15, 2007. (Answer, ¶ 6).

10. Defendants have made no payments on the Note. (RVDH Dep. 2, 44:20-23).

11. Defendants did not receive a written waiver of an “Event of Default” from Plaintiff. (*Id.*; 47: 21-24).

12. The sale of the assets of Eco Fibre, Inc. or Evergreen Development, LLC may never occur. (Admission No. 12).

13. There is no executed document by which the proceeds of the sale of Eco Fibre, Inc. will be made directly to Plaintiff. (*Id.*, No. 8).

14. There is no date certain by which the contemplated sale of Eco Fibre, Inc. must be completed. (*Id.*, No. 11).

15. The possible sale of Eco Fibre, Inc. may never occur. (*Id.*, No. 12).

### **PROPOSED UNDISPUTED FACTS**

1. Plaintiff, as payee under the Note, has elected to apply the defaulting provisions of the Note. (Affidavit of Neal Maccoux, ¶ 4).

2. As of December 23, 2008, there is due and owing upon the Note the sum of \$949,592.45. (Affidavit of Neal Maccoux, ¶ 5).

3. There is nothing in writing between the parties evidencing any agreement for the Plaintiff to forbear collecting on the Note. (RVDH Dep. 2, 16:5-13; 47: 7-11).

4. Plaintiff never signed anything in writing documenting any alleged “compromise and settlement.” (*Id.*, 77: 25-78: 5).

### **DISPUTED FACTS**

1. At some point prior to or contemporaneously with the execution of the promissory note, the Plaintiff orally agreed to modify the promissory note to provide for repayment upon the sale of a non-party business related to the Defendants, whenever that would occur, if ever. There are four versions of the alleged “compromise and settlement”:

a. Plaintiff agreed not to be paid on the Note until the assets of a company called Eco Fibre, Inc. were sold. (Nova Aff., ¶ 4 - Deposition of Ronald H. Van Den Heuvel (“RVDH Dep.”), 13:25-14: 3).

b. Defendants had an understanding with Plaintiff that the Plaintiff would agree to renew the Promissory Note until such time as the assets of Evergreen Development, LLC were sold. (*Id.*, 15: 20-25).

c. Four documents, a Baylake Bank Mortgage, a Stock Purchase Agreement, the Note, and Mortgage represent an agreement that the Plaintiff would not attempt to collect on the Note until assets of some third party company were sold. (RVDH Dep. 2, 63: 17-64: 15).

d. The parties reached an agreement whereby Plaintiff would not attempt to collect on the Note as evidenced by the Mortgage signed by the Defendants on July 20, 2007. (*Id.*, 62: 21-63: 6).

2. The “compromise and settlement” was entered into on one or more of the following dates:

a. The Plaintiff’s agreement not to pursue collection of any Promissory Note until the assets of Eco Fibre and/or Evergreen Development, LLC were sold was reached

at the time of the issuance of the first Promissory Note, on or about February 14, 2006. (RVDH Dep.,16: 3-6).

b. The alleged “Compromise and Settlement” was entered into the same date as the first promissory note between the parties, February 14, 2006. (*Id.*,15:20-16:13).

c. The “compromise and settlement” was entered into was the date of an Eco Fibre, Inc. shareholder meeting held in 2004. (RVDH Dep. 2, 14:20-25).

d. The “compromise and settlement” was entered into “after July 4, 2007.” (*Id.*; 75: 17-24).

e. The “compromise and settlement” was entered into on July 20, 2007. (*Id.*, 68: 14-20).

f. On July 20, 2007, after executing the Note, as alleged in the Complaint and before the commencement of this action, Plaintiff and Defendants entered into a Compromise and Settlement Agreement whereby Plaintiff agreed “to refrain from any legal action and postpone the due date of the Promissory Note until the sale of Eco Fibre, Inc.” (Answer, ¶ 12).

### **STANDARD OF REVIEW**

A party is entitled to summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.” Wis. Stat. § 802.08. Wisconsin courts recognize that “[s]ummary judgment is thus consistent with the underlying purpose of the rules of civil procedure ‘to secure the just, speedy and inexpensive determination of every action and proceeding.’” Transportation Ins. Co. v. Hunzinger Const. Co., 179 Wis.2d 281, 290, 507 N.W.2d 136 (Ct. App. 1993) (quoting Wis. Stat. § 801.01(2)).

A party cannot resist a motion for summary judgment merely by alleging the existence of some disputed fact. The factual dispute must be *material*; that is, it must concern a fact that affects the resolution of the controversy. Clay v. Horton Mfg. Co., 172 Wis.2d 349, 354, 493 N.W.2d 379 (Ct. App. 1992). Here, the factual dispute over the alleged oral “compromise and settlement” of the Note is immaterial, because the oral amendment of the Note alleged by the Defendants is legally ineffective. Because the resolution of the dispute over the alleged oral “compromise and settlement” of the Note would not affect the outcome of the controversy, that factual dispute is not material.

The factual dispute must also be *genuine*, which means that the non-moving party’s assertion must be supported by credible evidence such that a reasonable fact finder could find in the non-moving party’s favor. Baxter v. DNR, 165 Wis.2d 298, 312, 477 N.W.2d 640 (1991). An affidavit that contradicts deposition testimony, or testimony that contradicts physical or documentary evidence, may be insufficient as a matter of law to create a genuine dispute of fact requiring trial. See, e.g., Yahnke v. Carson, 2000 WI 74, ¶ 21, 236 Wis.2d 257, 613 N.W.2d 102; Physicians Plus Ins. Corp. v. Midwest Mut. Ins. Co., 2002 WI 80, ¶ 36, 254 Wis.2d 77, 646 N.W.2d 777. In this case, the Defendants cannot create a genuine factual dispute by submitting affidavits that contradict the deposition testimony or documentary evidence in this case.

Ultimately, this case depends on a question of law: Are the terms of the Note as written enforceable? A case that turns on a question of law is appropriately resolved on summary judgment. Jones v. Sears Roebuck & Co., 80 Wis.2d 321, 327, 259 N.W.2d 70 (1987). For the reasons given below, the alleged oral “compromise and settlement” of the Note is legally insufficient and the Plaintiff is entitled to judgment as a matter of law.

## ARGUMENT

### **I. DEFENDANTS BREACHED THE EXPRESS TERMS OF THE NOTE.**

The essential terms of the Plaintiff's claim – the existence of the Note and its breach – are admitted by the Defendants. The Note is a valid contract and a negotiable instrument between the parties. The Defendants admit that full repayment of the Note was due on or before October 15, 2007 under the terms thereof. (Stipulated Facts, ¶ 3). Defendants further admit that as of today, no payment has been made on the Note. (*Id.*, ¶¶ 9-10). The Defendants agree that such failure constitutes an Event of Default as defined by the Note. (*Id.*, ¶¶ 3-6). Defendants further agree that “unless such Event of Default is subsequently waived in writing by Hilliard,” the Plaintiff may declare the entire balance of the Note “to be immediately due and payable.” (*Id.*, ¶ 8) The Defendants agree that the Plaintiff has never waived any Event of Default in writing. (*Id.*, ¶ 11). The Note has never been modified or amended in a writing signed by the parties. (Proposed Undisputed Facts, ¶¶ 3-4).

### **II. THE COURT MUST ENFORCE THE EXPRESS TERMS OF THE NOTE.**

As a general rule, Wisconsin courts will hold the parties to a contract to the plain terms of their written agreement. *See, e.g., Teff v. Unity Health Plans Ins. Corp.*, 2003 WI App. 115, ¶ 21, 265 Wis.2d 703, 666 N.W.2d 38. The Note provides that an Event of Default cannot be waived except in a writing signed by the Plaintiff. (Stipulated Facts, ¶ 8). Nevertheless, the Defendants apparently are contending that Wisconsin law would permit the parties to act differently than as stated in the Note based on an alleged oral “compromise and settlement.” But the circumstances under which a written agreement may be orally amended are not met here.

#### **A. The Oral “Compromise And Settlement” Alleged By Defendants Would Have Been Ineffective.**

Even though Defendant Van Den Heuvel testified that the alleged “compromise and settlement” happened on many different dates, (2004; February 14, 2006; after July 4, 2007;



July 20, 2007) each date is either prior to or contemporaneous with the execution of the Note. (July 20, 2007). Whichever date the court decides to pick as the date the alleged “compromise and settlement” was entered into is irrelevant. Taking Mr. Van Den Heuvel’s testimony as truth, the alleged “compromise and settlement” is barred by the parol evidence rule and is, therefore, inadmissible to vary the terms of the Note. Alternatively, considering that the alleged sale of Eco Fibre, Inc. and/or Evergreen Development, LLC has not happened in the last five years, and as admitted by the Defendants, may never happen, the alleged “compromise and settlement” fails as a matter of law due to lack of consideration.

1. **The “compromise and settlement” is barred by the parol evidence rule.**

The Defendants’ position, that the alleged “compromise and settlement” entered into prior to or contemporaneously with the Note varies the terms of the Note, is incompatible with the Wisconsin parol evidence rule:

“[E]vidence of an oral agreement prior to, or contemporaneous with, the execution and delivery of a bill or note is not admissible to vary or contradict the written instrument. Thus, as a general rule, a written contract evidenced by a bill or note governs the rights of the parties thereto and testimony of a contemporaneous oral agreement differing therefrom cannot be considered. The maker of a note is estopped from contradicting the plain language of his note.”

E.R. Beyer Lumber Co., Inc. v. Brooks, 45 Wis.2d 262, 268-69, 172 N.W.2d 654 (1969), citing 12 Am.Jur.2d, Bills and Notes, pp. 283, 284, sec. 1252; see also, In re: Spring Valley Meats, Inc., 94 Wis.2d 600, 607 (1980).

In E.R. Beyer, the maker of a note submitted an affidavit opposing a motion for summary judgment stating that at the time the promissory note was made, “it was agreed between affiant and plaintiff’s president that affiant could pay said notes at any time regardless of their maturity.” *Id.* at 269. Eerily, that is exactly what the Defendants are alleging in this case; that

rather than being due on October 15, 2007 as stated in the Note, the Defendants could repay on the Note at some unspecified point in the future contingent on an event which may never occur.

(cite). In responding to such allegation, the Wisconsin Supreme Court concluded:

If we assume such agreement was made, the effect would be to vary the terms of the Notes which are absolute on their face. No evidence of a verbal agreement made at the same time or prior thereto, qualifying the terms of the Notes can be admitted or considered in evidence. *Id.* (citations omitted).

Indeed, the parties to the Note went out of their way to specify a payment date and set forth extensive rights to the Plaintiff in the event that date was not satisfied. (Stipulated Facts, ¶¶ 1-7). The alleged oral “compromise and settlement” touches on that same matter, by amending the payment date of the Note, to some point in the future, or possibly never. If the “particular element of the contract which is claimed to rest in parol is *mentioned* in the writing itself, ‘then presumably the writing was meant to represent all of the transaction on that element . . .’” Touchett v. E.Z. Painter Corp., 268 Wis. 635, 643 (1955) (citations omitted) (emphasis added). Here, the “particular element which claims to rest in parol” – the alleged “compromise and settlement” to pay at some future date – is “mentioned” in the Note, which makes clear that there was no such agreement. Accordingly, the Defendants cannot enforce the Plaintiff’s supposed “compromise and settlement” to postpone payment to some point in the future, or possibly never.

2. **The oral “compromise and settlement” lacked consideration.**

The alleged “compromise and settlement” is ineffective for a second, equally fundamental reason: it is unsupported by consideration.

Under Wisconsin law, a written agreement may be modified orally, but that oral modification itself must be established like any other contract, with an offer, acceptance and, crucially, consideration. Kohlenberg v. American Plumbing Supply Co., 82 Wis.2d 384, 393

263 N.W.2d 496 (1978) (“[T]he existence of an agreement which is in substitution or modification of a previous contract must be established in the same way as any other contract.”); Home Savings Bank v. Gertenbach, 270 Wis. 386, 394-95, 71 N.W.2d 347 (1955) (“[T]o have a valid oral agreement terminating the guarantee as to [appellant], such new agreement must be supported by consideration.”).

The oral “compromise and settlement” alleged by the Defendants is utterly unsupported by consideration. This alleged oral modification would take the Note, whose principal value is over three quarters of a million dollars with a specific due date, and modify it to a payment date contingent upon the sale of a third party company, *which Defendants agree may never happen!* (cite). As the Defendants have alleged, the Plaintiff received absolutely nothing in consideration for its oral “compromise and settlement” to modify a Note that would have paid Plaintiff an amount now worth \$915,515.12 at a point in time that may never occur. (Stipulated Facts, ¶ 15).

The alleged “compromise and settlement” of the Note lacks consideration and, therefore, is not a valid oral contract or negotiable instrument. Accordingly, assuming that the facts alleged by the Defendants are true, the oral “compromise and settlement” is not legally effective as a modification of the Note. The Court must, therefore, enforce the Note as written. There is no genuine dispute that the Defendants have breached the written terms of the Note. The Plaintiff is entitled to summary judgment on its breach of contract claim.

**B. The Alleged “Compromise and Settlement” Is Governed By The Statute Of Frauds.**

The maker of the Note testified that the alleged “compromise and settlement” was entered into at various times between 2004 and 2008. (Disputed Facts, ¶¶ 2(a)-2(f)) Assuming, *arguendo*, that the alleged “compromise and settlement” was entered into in 2006, the “compromise and settlement” cannot, by its terms, be completed within one year, thereby


making it subject to Wisconsin general Statute of Frauds, Wis. Stat. § 241.02(1)(a). Thus, under Wisconsin law, the “compromise and settlement” is one that is significant enough that it must be in writing. The Statute of Frauds is, at its heart, an evidentiary requirement designed to prevent disputes and uncertainties about agreements between the parties. Kocinski v. Home Ins. Co., 147 Wis.2d 728, 734-35, 433 N.W.2d 654 (Ct. App. 1998). A Statute of Frauds is, to put it plainly, designed to forestall exactly the kind of dispute that the Defendants attempt to raise in this case.

### CONCLUSION

For the foregoing reasons, the Court should grant summary judgment to the Plaintiff on its breach of contract claim and enter judgment against the Defendants in the amount of \$949,592.45, plus the Plaintiff’s actual attorney’s fees and costs as allowed by the Note.

Dated this 31<sup>st</sup> day of December, 2008.

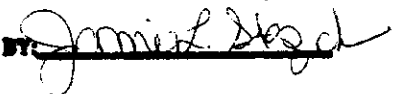
GODFREY & KAHN, S.C.

By:   
\_\_\_\_\_  
Ross J. Nova  
State Bar No. 1036723  
Attorneys for Plaintiff, Hilliard Limited  
Partnership

P.O. ADDRESS:  
333 Main Street, Suite 600  
Post Office Box 13067  
Green Bay, WI 54307-3067  
Phone: 920-432-9300  
Fax: 920-436-7988  
rnova@gklaw.com  
3420253\_1

**The undersigned certifies that  
a true copy of the within was  
served by mail or by personal  
delivery upon all attorneys and  
parties of record pursuant to  
Wis. Stat. Sec. 801.14 this  
31 day of December, 2008.**

**GODFREY & KAHN, S.C.**

BY: 

STATE OF WISCONSIN : CIRCUIT COURT : BROWN COUNTY  
BRANCH 3

---

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

v.

Code No(s). 30301

EVERGREEN DEVELOPMENT, LLC and  
RONALD VAN DEN HEUVEL,

Defendants.

---

**AFFIDAVIT OF ROSS J. NOVA IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

---

STATE OF WISCONSIN )  
) SS  
COUNTY OF BROWN )

ROSS J. NOVA, being first duly sworn on oath, deposes and says:

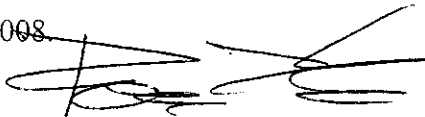
1. I am one of the attorneys for the Plaintiff, Hilliard Limited Partnership, with regard to the above-referenced matter and am authorized to submit this Affidavit.
2. The deposition of Ronald Van Den Heuvel was taken in the presence of a court reporter on November 5, 2008 at the Stellpflug Law Firm at 444 Reid Street, De Pere, Wisconsin. Said court reporter has prepared a transcript of said deposition and Affiant has a copy. Attached hereto as Exhibit A are true and correct copies of Exhibits 1 and 9 of said deposition, along with pages 13-16 of said deposition. Portions of said transcript have been highlighted for the Court.
3. The deposition of Ronald Van Den Heuvel was continued in the presence of a court reporter on December 1, 2008, at the offices of the Stellpflug Law Firm at 444 Reid Street, De Pere, Wisconsin. Said court reporter has prepared a transcript of said deposition and Affiant



has a copy. Attached hereto as Exhibit B are true and correct copies of pages 14, 16, 44, 46-47, 56, 62-64, 75, 77-78. Portions of said transcript have been highlighted for the Court.

4. Attached hereto as Exhibit C is a true and correct copy of Defendants, Evergreen Development, LLC's and Ronald Van Den Heuvel's Responses to Plaintiff's First Set of Requests to Admit. Please note this document was received approximately one month after said parties originally received said discovery requests and, by rule, have been deemed admitted.

Dated this 31<sup>st</sup> day of December, 2008.

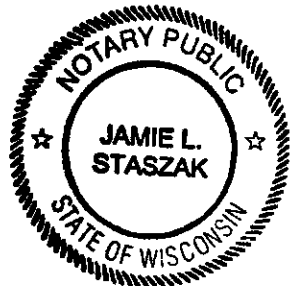


Ross J. Nova

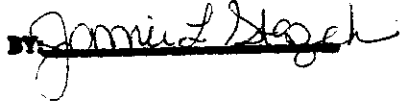
Subscribed and sworn to me this 31<sup>st</sup> day of December, 2008.



Jamie L. Staszak  
Notary Public, Brown County, WI  
My Commission expires: 09/13/2009  
3436605\_1



The undersigned certifies that a true copy of the within was served by mail or by personal delivery upon all attorneys and parties of record pursuant to Wis. Stat. Sec. 801.14 this 31 day of December 2008  
**GODFREY & KAHN, S.C.**

BY: 

1

**PROMISSORY NOTE**

**\$705,000.00**

**December 31, 2005  
Green Bay, Wisconsin**

**FOR VALUE RECEIVED**, dated as of the 13<sup>th</sup> day of February, 2006, effective as of December 31, 2005, and subject to Paragraph 1, below, the undersigned, Evergreen Development, LLC, a Wisconsin limited liability company ("Maker"), hereby promises to pay to the order of Hilliard Limited Partnership, a Wisconsin limited partnership ("Holder"), at Green Bay, Wisconsin, the principal sum of Seven Hundred Five Thousand and 00/100 Dollars (\$705,000.00) plus interest accruing on the outstanding principal amount at the rate of six percent (6.0%) per annum (except in the case of an Event of Default (as defined below)), until all amounts due hereunder are paid in full. The term of this note shall be twelve (12) months, except as set forth in Paragraph 9, below. Notwithstanding the foregoing, all principal and interest due hereunder shall become due and payable on December 31, 2006, except as set forth in Paragraph 9, below. All payments under this Promissory Note shall be applied first to the payment of the then current outstanding principal balance, if any; and then to the interest due thereon, if any, as described below.

1. This Promissory Note shall be secured by the Personal Guaranty of Ronald H. Van Den Heuvel, in the form attached as **Annex 1**.
2. The principal balance of this Promissory Note may be prepaid in full, or in part, at any time without penalty to Maker or Holder.
3. The principal balance of this Promissory Note may be accelerated in full by Holder at any time without advance written consent of Maker in the event of an Event of Default (as defined below) hereunder.
4. As a material inducement to Holder to loan the funds described herein, Maker hereby represents and warrants to Holder that: (i) this Promissory Note has been duly executed and delivered by Maker, so that it constitutes the legally enforceable obligations of Maker in accordance with their respective terms; and (ii) all financial statements, information and other data furnished by Maker to Holder, if any, are true, complete and correct in all material respects to Maker's knowledge.
5. Maker, to its knowledge, is not now in default under any material agreement to which it is a party, the effect of which would adversely affect performance by Maker of its obligations pursuant to, and as contemplated by, the terms and provisions of this Promissory Note. Neither the execution and delivery of this Promissory Note nor any other document executed and delivered by Maker in connection with the loan by Holder hereunder, nor the consummation of the loan, nor compliance with the terms and provisions thereof, violate any presently existing provisions of law or of any presently existing applicable order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality or constitute a default under any indenture, mortgage, agreement or contract of any kind to which Maker may be bound, so as to adversely affect performance by Maker of its obligations pursuant to, and as contemplated by, the terms and provisions of this Promissory Note.

**EXHIBIT**

A

tabbles

6. There are no actions, suits or proceedings pending or, to the knowledge of Maker, threatened against Maker, before any court or any governmental, administrative, regulatory, adjudicatory or arbitrational body or agency of any kind (including bankruptcy, insolvency or similar proceedings) that will adversely affect performance by Maker of its obligations pursuant to, and as contemplated by, this Promissory Note.
7. Maker has not filed any petition, nor has any petition been filed, against any such party in bankruptcy or insolvency or reorganization or for the appointment of a receiver or trustee or for the arrangement of debts. Maker is not insolvent nor will it be rendered insolvent by the consummation of the transactions contemplated by this Promissory Note.
8. Every warranty and representation made herein and all information supplied to Holder in connection with the loan is true and accurate in all material respects on the date hereof and will be true in all material respects on the date of every disbursement under the loan.
9. In the event, prior to the maturity date of this Note, fifty percent (50.0%) or more of all issued and outstanding shares of Eco Fibre, Inc., a Wisconsin corporation ("Eco Fibre"), including fifty percent (50.0%) or more of the Subject Shares (as defined in the Stock Purchase Agreement of even date), are sold or transferred to a non-affiliated third party, in a cash transaction, the remaining principal balance and any accrued interest will be paid within sixty (60) days of such closing.
10. An "Event of Default" by Maker shall mean Maker's failure, refusal, inability or other nonpayment or nonperformance for any reason whatsoever: (i) in the payment of principal and/or interest due hereunder when due; or (ii) in the performance of any of the terms, conditions or provisions contained herein, including without limitation the following: (A) any representation or warranty made by Maker in this Promissory Note, the Personal Guaranty of even date given to Holder by Ronald H. Van Den Heuvel, or in any certificate or document furnished under the terms of this Promissory Note shall prove untrue in any material respect when made, and (B) if Maker shall admit Maker's inability to pay debts, or if Maker shall make an assignment for the benefit of creditors, or shall be adjudicated a bankrupt; or shall file a voluntary petition in bankruptcy or to effect a plan or other arrangement with creditors, or to liquidate assets of Maker under court supervision, or shall have applied for or permitted the appointment of a receiver or trustee or custodian for any of Maker's property or assets, or a trustee, receiver or custodian shall have been appointed for any property or assets of Makers who shall not have been discharged within sixty (60) days after the date of his or her appointment; or (iii) except as set forth in Paragraph 9, above, the sale or transfer of the Subject Shares (as defined in the Stock Purchase Agreement of even date), or any interest in such Subject Shares, including without limitation, the granting of a warrant, option or subordinated collateral pledge, to any third party.
11. If any Event of Default is not cured by Maker within ten (10) calendar days after written notice identifying such Event of Default is sent to Maker; then any such amounts shall bear interest at twelve percent (12.0%), calculated and accruing from the date of the default for so long as, and on such amounts as are identified and remain outstanding. Failure to exercise the terms of this paragraph by Holder following any Event of Default hereunder shall not constitute a waiver of the right to exercise the same at a later time or upon the occurrence of any subsequent Event of Default. Holder shall have all other rights and remedies available to it at law and in equity with regard to any default hereunder. In addition to the foregoing, upon the occurrence of an Event of Default, unless such Event of Default is subsequently



waived in writing by Holder, Holder shall be entitled, at the option of Holder, to exercise any or all of the following rights and remedies: (i) Holder may suspend its obligations under this Promissory Note, without further notice to Maker; and (ii) Holder may terminate its obligation under this Promissory Note and may declare the entire unpaid principal balance of the disbursements to Maker made under this Promissory Note to be immediately due and payable, together with accrued and unpaid interest on such disbursements, without further notice to or demand on Maker.

12. If any suit or action is instituted or if any attorney is employed to recover any sums due under this Promissory Note, or on any part of this Promissory Note, the undersigned Maker promises to pay all costs of collection, including reasonable attorneys' fees, incurred by Holder. The undersigned Maker, for itself and its successors and assigns, hereby expressly waives presentment for payment, notice of nonpayment, protest and notice of protest and diligence in collection, and consents to any and all extensions and renewals of this Promissory Note without notice. In the event any one or more of the provisions contained in this Promissory Note shall for any reason be held to be invalid or illegal in any respect, such invalidity or illegality shall not affect any other provision of this Promissory Note, but this Promissory Note shall be construed as if such invalid or illegal provision had never been contained herein.
13. This Promissory Note shall be interpreted and construed under the internal laws of the State of Wisconsin, without regard to the principles of conflict of laws. Maker hereby consents to personal jurisdiction over Maker by the courts of the State of Wisconsin and/or the federal courts of the United States located in the Eastern District of Wisconsin, and any action to enforce the terms and conditions of this Promissory Note may be brought therein by the Holder, and venue shall be proper therein.

[Signature page follows.]

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

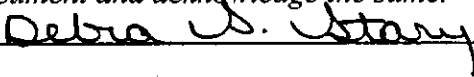
“MAKER”:

EVERGREEN DEVELOPMENT, LLC

By:   
Ronald H. Van Den Heuvel, Member

STATE OF WISCONSIN           )  
  ) SS  
COUNTY OF BROWN           )

Personally came before me this 14<sup>th</sup> day of February, 2006, the above-named Ronald H. Van Den Heuvel, to me known to be the person authorized on behalf of Evergreen Development, LLC to execute the foregoing document and acknowledge the same.



Notary Public, State of Wisconsin

My commission: Expires December 20, 2009

**REQUIRED TO BE ATTACHED:**

Annex 1:     Personal Guaranty

gb131315\_4

State Bar of Wisconsin Form 21-2003  
**MORTGAGE**

2325129 9

CATHY WILLIQUETTE  
BROWN COUNTY RECORDER  
GREEN BAY, WI

RECORDED ON  
07/27/2007 11:53:54AM

REC FEE: 19.00  
TRANS FEE:  
EXEMPT #  
PAGES: 5

Document Number

Document Name

Eco Fibre, Inc. f/k/a/ Re-Box Paper, Inc.,\*

("Mortgagor," whether one or more) mortgages to Hilliard Limited Partnership

, its successors or assigns ("Mortgagee," whether one or more), to secure payment of \$ 750,000.00 evidenced by a note or notes, or other obligation ("Obligation") dated July 18, 2007 executed by Eco Fibre, Inc., a Wisconsin Corporation

to Mortgagee, and any extensions, renewals and modifications of the Obligation and refinancings of any such indebtedness on any terms whatsoever (including increases in interest) and the payment of all other sums, with interest, advanced to protect the Property and the security of this Mortgage, and all other amounts paid by Mortgagee hereunder, the following property, together with all rights and interests appurtenant thereto in law or equity, all rents, issue and profits arising therefrom, including insurance proceeds and condemnation awards, all structures, improvements and fixtures located thereon, in Brown County, State of Wisconsin ("Property"):

\*a Wisconsin Corporation

Recording Area

Name and Return Address  
Hilliard Limited Partnership  
333 Main St., Ste. 601  
Green Bay, WI 54301

WD-1041

Parcel Identification Number (PIN)

This is not  homestead property.  
(is) (is not)

This is not  a purchase money mortgage.  
(is) (is not)

See Attached Addendum for legal description

**1. MORTGAGOR'S COVENANTS.**

a. **COVENANT OF TITLE.** Mortgagor warrants title to the Property, except restrictions and easements of record, if any, and further excepting:

Liens in favor of Baylake Bank consisting of the following: Financing Statement filed as Document No. 678388, Financing Statement filed as Document No. 678389, Financing Statement filed as Document No. 678548, Mortgage, Security Agreement and Fixture Filing filed as Document No. 1772321, Real Estate Security Agreement filed as Document No. 1999394, and Mortgage filed as Document No. 2150335.

b. **FIXTURES.** Any property which has been affixed to the Property and is used in connection with it is intended to become a fixture. Mortgagor waives any right to remove such fixture from the Property which is subject to this Mortgage.

c. **TAXES.** Mortgagor promises to pay when due all taxes and assessments levied on the Property or upon Mortgagee's interest in it and to deliver to Mortgagee on demand receipts showing such payment.

d. **INSURANCE.** Mortgagor shall keep the improvements on the Property insured against loss or damage occasioned by fire, extended coverage perils and such other hazards as Mortgagee may require, without co-insurance, through insurers approved by Mortgagee, in the amount of the full replacement value of the improvements on the Property. Mortgagor shall pay the insurance premiums when due. The policies shall contain the standard mortgage clause in favor of Mortgagee, and evidence of all policies covering the Property shall be provided to Mortgagee. Mortgagor shall promptly give notice of loss to insurance companies and Mortgagee. Unless Mortgagor and Mortgagee

otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided Mortgagee deems the restoration or repair to be economically feasible.

e. **OTHER COVENANTS.** Mortgagor covenants not to commit waste nor suffer waste to be committed on the Property, to keep the Property in good condition and repair, to keep the Property free from future liens superior to the lien of this Mortgage and to comply with all laws, ordinances and regulations affecting the Property. Mortgagor shall pay when due all indebtedness which may be or become secured at any time by a mortgage or other lien on the Property superior to this Mortgage and any failure to do so shall constitute a default under this Mortgage.

2. **DEFAULT AND REMEDIES.** Mortgagor agrees that time is of the essence with respect to payment of principal and interest when due, and in the performance of the terms, conditions and covenants contained herein or in the Obligation secured hereby. In the event of default, Mortgagee may, at its option, declare the whole amount of the unpaid principal and accrued interest due and payable, and collect it in a suit at law or by foreclosure of this Mortgage or by the exercise of any other remedy available at law or equity. If this Mortgage is subordinate to a superior mortgage lien, a default under the superior mortgage lien constitutes a default under this Mortgage.

3. **NOTICE.** Unless otherwise provided in the Obligation secured by this Mortgage, prior to any acceleration (other than under paragraph 9, below) Mortgagee shall mail notice to Mortgagor specifying: (a) the default; (b) the action required to cure the default; (c) a date, not less than 15 days from the date the notice is mailed to Mortgagor by which date the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration.

4. **EXPENSES AND ATTORNEY FEES.** In case of default, whether abated or not, all costs and expenses, including, but not limited to, reasonable attorney fees, to the extent not prohibited by law shall be added to the principal, become due as incurred, and in the event of foreclosure be included in the judgment.

5. **FORECLOSURE WITHOUT DEFICIENCY.** Mortgagor agrees to the provisions of Sections 846.101 and 846.103, Wis. Stats., as may apply to the Property and as may be amended, permitting Mortgagee in the event of foreclosure to waive the right to judgment for deficiency and hold the foreclosure sale within the time provided in such applicable Section.

6. **RECEIVER.** Upon default or during the pendency of any action to foreclose this Mortgage, Mortgagor consents to the appointment of a receiver of the Property, including homestead interest, to collect the rents, issues and profits of the Property during the pendency of such an action, and such rents, issues and profits when so collected shall be held and applied as the court shall direct.

7. **WAIVER.** Mortgagee may waive any default without waiving any other subsequent or prior default by Mortgagor.

8. **MORTGAGEE MAY CURE DEFAULTS.** In the event of any default by Mortgagor of any kind under this Mortgage or any Obligation secured by this Mortgage, Mortgagee may cure the default and all sums paid by Mortgagee for such purpose shall immediately be repaid by Mortgagor with interest at the rate then in effect under the Obligation secured by this Mortgage and shall constitute a lien upon the Property.

9. **CONSENT REQUIRED FOR TRANSFER.** Mortgagor shall not transfer, sell or convey any legal or equitable interest in the Property (by deed, land contract, option, long-term lease or in any other way) without the prior written consent of Mortgagee, unless either the indebtedness secured by this Mortgage is first paid in full or the interest conveyed is a mortgage or other security interest in the Property, subordinate to the lien of this Mortgage. The entire indebtedness under the Obligation secured by this Mortgage shall become due and payable in full at the option of Mortgagee without notice, which notice is hereby waived, upon any transfer, sale or conveyance made in violation of this paragraph. A violation of the provisions of this paragraph will be considered a default under the terms of this Mortgage and the Obligation it secures.

10. **ASSIGNMENT OF RENT.** Mortgagor hereby transfers and assigns : lutely to Mortgagee, as additional security, all rents, issues and profits which become or remain due (under any form or agreement for use or occupancy of the Property or any portion thereof), or which were previously collected and remain subject to Mortgagor's control following any default under this Mortgage or the Obligation secured hereby and delivery of notice of exercise of this assignment by Mortgagee to the tenant or other user(s) of the Property in accordance with the provisions of Section 708.11, Wis. Stats., as may be amended. This assignment shall be enforceable with or without appointment of a receiver and regardless of Mortgagee's lack of possession of the Property.

11. **ENVIRONMENTAL PROVISION.** Mortgagor represents, warrants and covenants to Mortgagee that (a) during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"); (b) Mortgagor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner of or person using the Property; (c) without limiting the generality of the foregoing, Mortgagor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components ("PCBs") or underground storage tanks; (d) there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claims relating to any Hazardous Substance; (e) Mortgagor is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance; and (f) Mortgagor in the past has been, at the present is and in the future will remain in compliance with all Environmental Laws. Mortgagor shall indemnify and hold harmless Mortgagee from all loss, cost (including reasonable attorney fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagor shall immediately notify Mortgagee in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property.

12. **SECURITY INTEREST ON FIXTURES.** To further secure the payment and performance of the Obligation, Mortgagor hereby grants to Mortgagee a security interest in:

**CHOOSE ONE OF THE FOLLOWING OPTIONS; IF NEITHER IS CHOSEN, OPTION A SHALL APPLY:**

- A. All fixtures and personal property located on or related to the operations of the Property whether now owned or hereafter acquired.
- B. All property listed on the attached schedule.

This Mortgage shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to those parts of the Property indicated above. This Mortgage constitutes a fixture filing and financing statement as those terms are used in the Uniform Commercial Code. This Mortgage is to be filed and recorded in the real estate records of the county in which the Property is located, and the following information is included: (1) Mortgagor shall be deemed the "debtor"; (2) Mortgagee shall be deemed to be the "secured party" and shall have all of the rights of a secured party under the Uniform Commercial Code; (3) this Mortgage covers goods which are or are to become fixtures; (4) the name of the record owner of the land is the debtor; (5) the legal name and address of the debtor are \_\_\_\_\_

Eco Fibre, Inc., 500 Fortune Ave, De Pere, WI 54115 \_\_\_\_\_ ;

(6) the state of organization and the organizational identification number of the debtor (if applicable) are Wisconsin \_\_\_\_\_ ; and

(7) the address of the secured party is \_\_\_\_\_

13. **SINGULAR; PLURAL.** As used herein, the singular shall include the plural and any gender shall include all genders.

14. **JOINT AND SEVERAL/LIABILITY** The covenants of this Mortgage set forth herein shall be deemed joint and several among Mortgagors, if more than one. Unless a Mortgagor is obligated on the Obligation secured by this Mortgage, Mortgagor shall not be liable for any breach of covenants contained in this Mortgage.

15. **INVALIDITY.** In the event any provision or portion of this instrument is held to be invalid or unenforceable, this shall not impair or preclude the enforcement of the remainder of the instrument.

Dated July 18, 2007

ECO FIBRE, INC. f/k/a Re-Box Paper, Inc.

\_\_\_\_\_  
(SEAL) *Ronald H. Van Den Heuvel* (SEAL)  
\* Ronald H. Van Den Heuvel, President

\_\_\_\_\_  
(SEAL) *Steven C. Peters* (SEAL)  
\* Steven C. Peters, Secretary

**AUTHENTICATION**

**ACKNOWLEDGMENT**

Signature(s) \_\_\_\_\_  
authenticated on \_\_\_\_\_

STATE OF WISCONSIN )  
Brown ) ss. COUNTY )

\*  
TITLE: MEMBER STATE BAR OF WISCONSIN  
(If not, \_\_\_\_\_  
authorized by Wis. Stat. § 706.06)

Personally came before me on 7/20/07,  
the above-named Ronald H. Van Den Heuvel and Steven C. Peters  
to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

THIS INSTRUMENT DRAFTED BY:  
John Jez *wh*  
1555 Glory Rd., Green Bay, WI 54304

*Debra S. Stary*  
\* Debra S. Stary  
Notary Public, State of Wisconsin  
My Commission (is permanent) (expires: 12/20/2009)

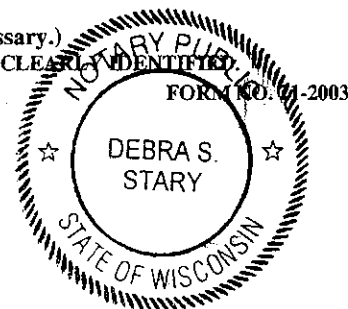
(Signatures may be authenticated or acknowledged. Both are not necessary.)

NOTE: THIS IS A STANDARD FORM. ANY MODIFICATIONS TO THIS FORM SHOULD BE CLEARLY IDENTIFIED.

MORTGAGE

STATE BAR OF WISCONSIN

\* Type name below signatures.



## ADDENDUM TO MORTGAGE

Mortgagor: Eco Fibre, Inc. f/k/a Re-Box Paper, Inc.

Mortgagee: Hilliard Limited Partnership

Legal Description of Property:

Lot 1 of Volume 41 Certified Survey Maps, Page 100, Map No. 6194, said map being part of Lots 1 and 2, De Pere Business Park South Addition and part of the Southwest  $\frac{1}{4}$  of Section 32, Township 23 North, Range 20 East, in the City of De Pere, West side of Fox River, Brown County, Wisconsin.

1 be continued until the assets of Evergreen Development  
2 were sold?

3 A I have that agreement with every one of them. I turn  
4 these into notes because it's better for them. But all  
5 of them approved me entering into the bank debt that  
6 said we could not pay shareholders before the bank debt  
7 was paid.

8 So I can't just skirt this, turn it into a note,  
9 and now pay the note because, I mean, you can't do  
10 that. It would be against the covenants with the  
11 banks. I mean, I can't pay equity-- I can't pay  
12 equity before I pay the bank debt. It's just in the  
13 bank note.

14 Q You referred to sort of an understanding among the  
15 members of Evergreen to renew these notes until the  
16 assets are sold. Is there anything in writing that  
17 evidenced this understanding you had with either  
18 Hilliard Limited Partnership or any other member of  
19 Evergreen Development, LLC, at any time?

20 A The only thing that's in writing is the same thing  
21 that's in Tissue Products Technology and in Eco-Fibre,  
22 and that is that I had shareholders' approval and board  
23 of directors' approval when they were members of  
24 Eco-Fibre and when they were members of TPTC to enter  
25 into the bank debt that is still in place. And very



1 clearly everyone understands they cannot get any money  
2 out of any of the companies directly or indirectly  
3 until the assets are sold.

4 Q Okay. That was actually a yes or no question,  
5 Mr. Van Den Heuvel, so I'm trying to make this go  
6 faster.

7 A Okay.

8 Q So I'll ask the question one more time. You referred  
9 to an understanding that you had with the members of  
10 Evergreen Development, LLC, to renew various promissory  
11 notes until the assets of Evergreen Development were  
12 sold. Is that understanding reduced to writing?

13 A I don't believe so, but I'm not sure.

14 Q Okay. What would you need to do to verify your  
15 understanding?

16 A I'd have to go through five years of e-mails.

17 Q Okay. I'll just request that you do that to verify  
18 your understanding.

19 So we understand, as you sit here today, you don't  
20 know of any writing evidencing the understanding we've  
21 been referring to, and you're going to let me know if  
22 your understanding is incorrect by reviewing e-mails so  
23 that the next time we meet, you can deny your  
24 understanding if it turns out you're mistaken, correct?

25 A Incorrect. The bank documents and the two resolutions

1 from the shareholders and the board of directors  
2 definitely says I cannot buy anybody out without paying  
3 them in full.

4 Q The shareholders and board of directors of what entity?

5 A Eco-Fibre and TPTC.

6 Q Okay. I'll request copies of those documents.

7 A Okay.

8 Q Is there anything--any board of directors or members  
9 vote or writing evidencing an understanding between you  
10 and the members of Evergreen Development, LLC, to renew  
11 the promissory notes until the assets of Evergreen are  
12 sold?

13 A Other than the fact it just keeps happening. They  
14 understand. But no, I don't think anything's in  
15 writing.

16 Q Okay. Did you ever have any conversations with any  
17 member of Hilliard Limited Partnership regarding this  
18 understanding that-- Strike that. Let me lay the  
19 foundation.

20 Is it your testimony then that you believe that  
21 you had an understanding with the Hilliard Limited  
22 Partnership that it would agree to renew the promissory  
23 note represented in Exhibit 1 until such time as the  
24 assets of Evergreen Development, LLC, were sold?

25 A Yes.

1 Q Okay. Was that ever put in writing?

2 A I'm not sure.

3 Q When was that understanding reached with Hilliard

4 Limited Partnership?

5 A I talked to the guys many a time. And when we turned

6 it from stock to a note, that was the understanding. I

7 mean, they wanted on their balance sheet a note instead

8 of stock so that they could value it, and I agreed to

9 do it through an arm's length transaction with full

10 awareness that there was no way to pay it until the

11 assets were sold and that I would work very diligently

12 to sell the assets and not receive a wage from either

13 one of the companies. I agreed to it.

14 Q With whom on behalf of Hilliard Limited Partnership did

15 you reach this understanding to renew the promissory

16 note represented by Exhibit 1?

17 A Mostly with Dan Hilliard, but I did talk to Neal

18 Maccoux several times on it also.

19 Q And what role does Dan Hilliard play with Hilliard

20 Limited Partnership?

21 A I don't know.

22 Q Okay.

23 A He works for me though.

24 Q Okay. Do you know if Dan Hilliard's a member of

25 Hilliard Limited Partnership?

1 Q Who made the \$10,000 payment?  
2 A I don't remember.  
3 Q What form did that payment take? Was that cash,  
4 cashier's check, wire transfer?  
5 A I don't remember.  
6 Q What was the \$10,000 for?  
7 A I want to say it was maybe some legal costs, maybe  
8 some other outside-the-group costs; and we started  
9 to talk about a mortgage at that time.  
10 Q Why would you cause to be paid \$10,000 for the  
11 Hilliard Limited Partnership's legal costs?  
12 A Because it's a deal we made going forward and the  
13 rest of the shareholders had certain amounts of  
14 their legal bills paid also.  
15 Q And what did you or the Evergreen Development, LLC,  
16 receive in return for making the \$10,000 payment to  
17 cover Hilliard Limited Partnership's legal costs?  
18 A Well, switching them from a stock to a note had no  
19 gain to us. It was -- There's absolutely nothing we  
20 received. All we did is helped out our shareholders  
21 by allowing the asset purchase agreement that was  
22 going forward to give people notes that we could  
23 then turn into mortgages and that everybody would  
24 ride along together and be paid when these mortgages  
25 were satisfied upon the sale of the assets. There



1                   Now, there were combined shareholders in  
2                   this meeting, TPTC and Eco-Fibre; and the TPTC  
3                   shareholders have received their monies per the  
4                   agreement. That asset was sold.

5           Q    Is there anything in writing that states that the  
6                   Hilliard Limited Partnership agreed to hold off  
7                   collecting on its promissory note until such time as  
8                   a mortgage had been paid off?

9           A    Other than the fact that the promissory notes each  
10                   one received had paragraph 5 in that says they  
11                   cannot violate any covenants or any mortgages that  
12                   are on the property, and everyone seen this and  
13                   understood it.

14          Q    Okay. Just so I am clear, other than paragraph 5 of  
15                   Exhibit No. 1 you know of no document, no letter, no  
16                   notes, no memo, no e-mail which states that Hilliard  
17                   Limited Partnership agreed to hold off collecting on  
18                   its promissory note or receiving payoff under the  
19                   promissory note until a mortgage had been satisfied?

20          A    I have not reviewed the minutes of those meetings.  
21                   I will review the minutes of those meetings before I  
22                   could answer that.

23          Q    Who took the minutes of these meetings?

24          A    It would be Steve Peters or Debra Stary. Possibly  
25                   it might have been someone else, but I'm not sure.

1 Q Okay. In fact, the promissory note represented by  
2 Exhibit No. 8 was not repaid by October 15, 2007; is  
3 that correct?

4 A The terms and conditions were not satisfied.

5 Q If we turn to the second page of Exhibit No. 8,  
6 paragraph No. 5 defines an event of default. Well,  
7 it states an event of default by maker shall mean  
8 maker's failure, refusal, inability, or other  
9 nonpayment or nonperformance for any reason  
10 whatsoever, (1), in the payment of any installment  
11 of principal and/or interest due hereunder when due.  
12 Did I read that correctly?

13 A Yes.

14 Q And the payment of principal and interest was not  
15 made by October 15 of 2007. We already agree on  
16 that, correct?

17 A Yes.

18 Q That constitutes an event of default under this  
19 promissory note, Exhibit No. 8, correct?

20 A One of them, yes.

21 Q Okay. If we turn to paragraph No. 6 of  
22 Exhibit No. 8, it allows for the maker -- in this  
23 case you individually -- and Evergreen Development,  
24 LLC, to cure the event of default within five  
25 calendar days, correct?

1 A It does allow me to pay it within five calendar  
2 days.

3 Q Okay. After the event of default, correct?

4 A Correct.

5 Q And that did not occur? The note --

6 A There has been no default.

7 Q Okay. Because of the repayment being conditioned on  
8 the satisfaction of the Eco-Fibre mortgage, correct?

9 A Correct.

10 Q Okay. And nothing else, correct?

11 A Correct.

12 Q Approximately halfway down paragraph 6 on the right  
13 side a sentence begins, In addition to the  
14 foregoing, upon the occurrence of an event of  
15 default, unless such default -- event of default is  
16 subsequently waived in writing by Hilliard, Hilliard  
17 shall be entitled, at its option, to exercise any or  
18 all of the following rights and remedies. Do you  
19 see where I am reading?

20 A Yes.

21 Q Did you ever receive a writing from Hilliard Limited  
22 Partnership waiving an event of default under this  
23 promissory note, Exhibit No. 8?

24 A No.

25 Q So other than this alleged condition regarding the

1 THE WITNESS: I really don't know when I  
2 received it; and, you know, I've answered that. I'm  
3 going to say it was somewhere between the closing of  
4 Phase 1 April 15 and when this was signed July 18 or  
5 19th or 20th by the parties, somewhere in that time  
6 period. I think it came altogether on the same  
7 time. It sure looks like it. I was, again, trying  
8 to accommodate my shareholders, my original  
9 shareholders of Eco-Fibre, in which I have worked  
10 very diligently to sell their assets and distribute  
11 the money.

12 BY MR. NOVA:

13 Q You had an opportunity to read Exhibit No. 8 before  
14 you signed it, correct?

15 A I'm not sure.

16 Q Did you take the draft version of Exhibit No. 8 to  
17 your attorneys for them to review?

18 A No.

19 Q Did you understand Exhibit No. 8 at the time you  
20 signed it?

21 A It says amended and restated promissory note. I  
22 just assumed it was one like the 28 others I have  
23 signed.

24 Q Okay. So nothing the Hilliards did prevented you  
25 from reading Exhibit No. 8 before you signed it or



1 Hilliards on many occasions and told them the  
2 mortgage won't be satisfied until we have an asset  
3 purchase agreement, a financial closing; and to  
4 satisfy their concern, we gave them the mortgage and  
5 we had an agreement where they were going to draft a  
6 new amended and restated note.

7 Q The compromise and settlement referred to in  
8 paragraph 12 -- Was that ever reduced to writing?

9 A No. You'll see the trend before. The April 15 note  
10 was signed in July. The December 31 note was signed  
11 at the end of February. This is the way the  
12 Hilliard group moves forward each time. The other  
13 shareholders when the note is due total up the  
14 interest, bring it in. It's resigned. They  
15 understand that the mortgage ain't paid, and they  
16 understand that their liens or mortgages have not  
17 been satisfied. It's a very simple thing. With  
18 this it usually takes Neal a few more days or a few  
19 more weeks depending on how he wants to go through  
20 things.

21 Q Just to make sure that we cover all of the bases,  
22 the compromise part, the compromise and settlement  
23 referred to in paragraph 12 of your answer, was  
24 never reduced to writing in any form? There's no  
25 document, no letter, no notes, no e-mail, nothing in

1 writing referring to the allegations contained in  
2 paragraph 12 regarding a compromise and settlement;  
3 is that correct?

4 A Other than the mortgage.

5 Q The -- Other than the mortgage?

6 A Because the settlement is the mortgage.

7 Q Where in the mortgage does it state that the  
8 plaintiff agreed to refrain from legal action and  
9 postpone the due date of the promissory note?

10 A Why would I give them the mortgage?

11 Q That's not my question.

12 A My question is -- I'm saying it very clearly. Other  
13 than the mortgage, you have nothing in writing.

14 Q Okay.

15 A The mortgage was given to them as settlement.  
16 Otherwise I wouldn't give it to them.

17 Q So other than the amended and restated note itself  
18 and the mortgage itself, there's no other  
19 documentation regarding any understanding between  
20 you, Evergreen Development, and Hilliard Limited  
21 Partnership; is that correct?

22 A Four documents -- Baylake mortgage, stock purchase  
23 agreement, note, and mortgage. Those four documents  
24 understand the settlement that we came apart.

25 Q Show me in writing. Show me in writing,

1 Mr. Van Den Heuvel, where Hilliard Limited  
2 Partnership agreed to, quote, refrain from any legal  
3 action and postpone the due date of the promissory  
4 note until Eco-Fibre, Inc., completed the sale and  
5 expansion of their facility in De Pere, Wisconsin,  
6 closed quote?

7 A In writing they signed a stock purchase agreement.  
8 In writing there's an Eco-Fibre mortgage from  
9 Baylake Bank, which they understand. In writing  
10 Note 1 clearly states that they cannot be repaid  
11 until that mortgage is satisfied, and I gave them a  
12 mortgage here to make sure that I cannot sell the  
13 asset without them being paid. So to me those are  
14 the four documents that bring the commencement of  
15 settlement to agreement.

16 Q Okay. Your lawyer wrote this document and stated  
17 that the compromise and settlement agreement --  
18 Strike that. Your lawyer wrote that on July 20,  
19 2007, after executing the promissory note as alleged  
20 in the complaint and before commencement of this  
21 action plaintiffs and defendants entered into a  
22 compromise and settlement. So your attorney wrote  
23 that this compromise and settlement happened  
24 sometime after July 20, 2007, correct?

25 A I -- I don't know how the words are explained. I do

1 weeds and 54 acres. The retaining ponds, permits,  
2 storm sewer, improvements are approximately  
3 \$17 million. So altogether it's approximately  
4 \$39 million.

5 Q And what currently is the debt owed by Eco-Fibre?

6 A I want to say it is somewhere in the low 30s  
7 including some of the debt is on improvements, not  
8 on Eco-Fibre. I take that back too. The State has  
9 about a million and a half of grants that will be  
10 paid. So in addition to the asset purchase  
11 agreement there's about a million and a half of  
12 grants, so it would exceed \$41 million, 41, three  
13 approximately.

14 Q When did you reach the compromise and settlement  
15 referred to in paragraph 12 of your answer?

16 A Sometime in July is my best guess.

17 Q You can't identify the date?

18 A Not the exact date. I signed the mortgage 18th,  
19 19th, or 20th. It's -- It's probably real close to  
20 that time period.

21 Q Was the compromise settlement -- Strike that. Was  
22 the compromise and settlement agreed to in one  
23 meeting or a series?

24 A There were a series of meetings.

25 Q When was the first meeting regarding the compromise

1 A My office.

2 Q Who was present?

3 A I wouldn't know, but at one of these meetings Steve  
4 Peters was there. One of them I remember Andy  
5 couldn't make it because he was traveling somewhere.  
6 I don't remember what meeting that was; but he maybe  
7 went to Africa, South Africa maybe. I shouldn't say  
8 that, but that's where my memory says he was at.

9 Q It was South Africa.

10 A It was, okay.

11 Q At any of the meetings regarding the alleged  
12 compromise and settlement referred to in 12 of your  
13 answer was anyone else present other than you, Steve  
14 Peters, Dan Hilliard, Andy Hilliard, and Neal  
15 Maccoux?

16 A No. It would be a combination of that group.

17 Q What date was this compromise and settlement  
18 reached?

19 A Right after the 4th of July, I want to say, sometime  
20 in that time period.

21 Q Before or after you signed the amended and restated  
22 promissory note?

23 A At or around that time. I can't remember right when  
24 it was there. I know they wanted to review the  
25 mortgage, and we had given it to him a couple of

1           That's kind of the way it went.

2           Q    Did you discuss the compromise and settlement with  
3           Andy -- Andy Hilliard's father at all?

4           A    Well, I didn't. I said -- I told him we had a tough  
5           situation going forward and financing was tough in  
6           this market; but I do believe that I used the term  
7           your boys are comfortable now that no assets will be  
8           sold underneath them without them being paid in full  
9           and/or that I'm diligently working hard and it's a  
10          real project? And I showed him the off-take  
11          agreement signed by the Kraft family and Wausau  
12          Paper. They were fairly -- I think everybody is  
13          very comfortable that this deal is progressing as  
14          fast as possible.

15          Q    Did you have a conversation with the senior Hilliard  
16          regarding the compromise and settlement referred to  
17          in paragraph 12 of your answer?

18          A    The only thing I said to them is we came apart with  
19          a mortgage that should satisfy any issues that they  
20          had. I didn't get into any specifics. Wally and I  
21          were friends for a long time. I used to do all of  
22          his work, built all of his buildings as an  
23          architect, and did electrical work for him for  
24          years.

25          Q    Did the Hilliard Limited Partnership agreement sign

1 anything in writing documenting the compromise and  
2 settlement referred to in paragraph 12 of your  
3 answer?

4 A The only evidence I have that they did is they  
5 recorded the mortgage. So I don't really have  
6 anything signed by them back because they always  
7 bring things for me to sign back to them and then  
8 they accepted it because they took the mortgage and  
9 filed it. So the mortgage went to them a couple  
10 times back and forth, and they wanted to talk a  
11 little more to see this or that. Finally, they  
12 agreed; and then shortly after they agreed they  
13 filed the mortgage.

14 Q When you say they agreed, who communicated to you  
15 that the Hilliard Limited Partnership agreed to the  
16 compromise and settlement contained in paragraph 12  
17 of the answer?

18 A Well, Dan negotiated or I shouldn't say negotiated.  
19 Dan is the one who told me that they agreed, and  
20 basically a couple different times he said the  
21 mortgage was a good idea, and I know Dan is inside  
22 of our group working as hard as anybody to get this  
23 closed.

24 Q Do you know what role Dan Hilliard has within  
25 Hilliard Limited Partnership?

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 3

BROWN COUNTY

---

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

vs.

Code No.: 30301

EVERGREEN DEVELOPMENT, LLC and  
RONALD VAN DEN HEUVEL,

Defendants.

---

**DEFENDANTS EVERGREEN DEVELOPMENT, LLC,  
AND RONALD VAN DEN HEUVEL'S RESPONSES TO PLAINTIFF'S FIRST SET OF  
REQUESTS TO ADMIT**

---

NOW COME THE DEFENDANTS Evergreen Development, LLC, and Ronald Van Den Heuvel, by their attorneys, Stellpflug Law, S.C., and hereby respond to Plaintiff's First Set of Requests to Admit as follows:

1. Admit that attached hereto as Exhibit A is a true and correct copy of a Promissory Note in favor of the Plaintiff executed by the Defendants in the principal amount of Seven Hundred Fifty-Nine Thousand Six Hundred Thirty-Seven and 50/100 Dollars (\$759,637.50).

**RESPONSE:** Admit.

2. Admit that no writing exists which relieves the Defendants from the terms of the Promissory Note.

**RESPONSE:** Deny. Defendants believe that there are e-mails between the parties that indicate an understanding that the Note is not payable until the sale of EcoFibre, Inc., is





complete. Defendants are currently reviewing their files to locate said e-mails. Upon Defendants' review of their files, this admission will be supplemented.

3. Admit that there is no oral agreement relieving the Defendants from their obligations under the Promissory Note.

**RESPONSE:** Deny. Defendant, Ronald Van Den Heuvel, on behalf of Evergreen Development, LLC, had discussions with the principals of Hilliard Limited Partnership wherein it was agreed that the Note would not be payable until such time as the sale of EcoFibre, Inc., was completed.

4. Admit that EcoFibre, Inc., is not a party to the Promissory Note.

**RESPONSE:** Admit.

5. Admit that the date of closing of the sale of EcoFibre, Inc., has not been set.

**RESPONSE:** Admit that a single date has not been set for the closing, but a time period for the closing has been set in that it is scheduled to close within the first quarter of 2009.

6. Admit that EcoFibre, Inc., does not have in place financing sufficient to complete the financing of its facility in DePere, Wisconsin.

**RESPONSE:** Admit that EcoFibre, Inc., does not have 100 percent financing in place but does have 50 percent in place at this time, with the expectation that the remaining financing will be in place within the first quarter of 2009.

7. Admit that there is no executed document by which proceeds of the sale of EcoFibre, Inc., will be paid directly to either Defendant.

**RESPONSE:** Admit.

8. Admit that there is no executed document by which proceeds of the sale of EcoFibre, Inc., will be paid directly to the Plaintiff.

**RESPONSE:** Admit that no executed document is in place by which the proceeds of the sale of EcoFibre, Inc., will be paid directly to the Plaintiff. However, a payout sheet indicating where the proceeds of the sale will go and to whom has been drafted and is attached hereto indicating that the Plaintiffs will be paid out of said proceeds.

9. Admit that the debt of EcoFibre, Inc., exceeds the assets of EcoFibre, Inc.

**RESPONSE:** Deny that the debt of EcoFibre, Inc., exceeds its assets in that the sale of EcoFibre, Inc., does not only include the real property, but also includes technology and other intangibles such as permits, whose value, combined with the real property of EcoFibre, Inc., and its equipment, will exceed the debt of EcoFibre, Inc.

10. Admit that interests secured by mortgages and/or other recorded documents in EcoFibre, Inc.'s, real property that are senior to the mortgage of the Plaintiff, exceed the value of that real property.

**RESPONSE:** Admit that the real property value of EcoFibre, Inc., is exceeded by other interests senior to the mortgage of the Plaintiff, but that when the total value of EcoFibre, Inc., which includes technology and intangibles, exceeds the debt of EcoFibre, Inc., including all secured interests including that of the Plaintiff.

11. Admit that there is no date certain by which the contemplated sale of EcoFibre, Inc., must be completed.

**RESPONSE:** Admit.

12. Admit it is possible that the sale of EcoFibre, Inc., will never occur.

**RESPONSE:** Admit.

13. Admit that more than one year has passed since the recording date of the mortgage referred to in Paragraph 12 of your Answer.

**RESPONSE:** Admit.

DATED this 8<sup>th</sup> day of December, 2008.

STELLPFLUG LAW, S.C.  
Attorneys for Defendants

By: 

C. David Stellpflug  
State Bar Member No.: 1010142  
Michael J. Kirschling  
State Bar Member No.: 1004642

444 Reid Street  
P.O. Box 5637  
De Pere, WI 54115  
Phone: (920) 336-5766  
Fax: (920) 336-5769

I CERTIFY THAT ON DECEMBER 8, 2008,  
I SERVED THE WITHIN DOCUMENT, BY  
HAND DELIVERY, PURSUANT  
TO RULE 801.14(2) WIS. RULES OF CIVIL  
PROCEDURE.

Stellpflug Law, S.C.

BY: 

TO: Attorney Ross J. Nova

**PHASE 2 PROJECTED CLOSING STATEMENT**  
November 21, 2008

Subordinated Debt		\$12,000,000
Stonehill - ECO	\$4,731,763	
Stonehill - PCDI	\$4,733,817	
Stonehill - TPTC/OFTI	<u>\$2,534,421</u>	
Total Stonehill (Int. through 11/30/07)		\$12,000,000

Asset Purchase		\$10,800,000
<b>Total Sources</b>		<b>\$10,800,000</b>

Anchor Bank		\$1,446,431
ITV		\$1,520,597
Cordova		\$1,534,050
Baylake Bank		\$4,311,584
Bay Bank		\$1,250,567
Accounts Payable		\$500,000
Transfer Tax / Closing Costs (TTL)		\$236,771
<b>Total Uses</b>		<b>\$10,800,000</b>

<i>Nicolet (Tak Loan of \$6,200,000 paid at closing)</i>	<b>\$6,200,000</b>
--	--------------------

<b>Phase 1 Notes Paid at Phase 2 Closing</b>	<b>\$10,000,000</b>
Baylake Bank	\$4,000,000
Chris Hartwig	\$2,000,000
Associated Bank	\$1,300,000
Accounts Payable	\$2,700,000
<b>Total Uses</b>	<b>\$10,000,000</b>

<b>After Dryer Payment</b>	<b>\$7,000,000</b>
Hilliard Limited Partnership	\$823,017
PAMV	\$1,380,283
IFC Credit Corp	\$4,300,000
Accounts Payable	\$496,700
<b>Total Spirit Payments</b>	<b>\$7,000,000</b>

<b>Total of All Payments</b>	<b>\$27,800,000</b>
------------------------------	---------------------

**Remaining Debt**

Nicolet	TTL Working Capital Loan	\$2,800,000
Nicolet	Converting Equip.	\$2,900,000
Nicolet	Sales & Marketing	\$2,924,687
Nicolet (Swakwaeko)	Purely Cotton Equipment	\$2,880,283
Associated Bank (includes VHC paid)	After Dryer Sales	\$2,613,503
Bay Bank	TTL/NWTC	\$2,065,451
Stonehill	After Dryer and Converting Equipment	\$11,000,000
Stonehill	Purely Cotton	\$3,000,000
Pat & Ann Murphy	Various	\$3,500,000
Pat & Ann Murphy & GEMU		\$739,425
Ray VDH & OTHERS		\$1,600,000
Paul Gehl		\$1,258,274
Bernie Dahlin		\$3,236,932
GPD Leasing, Inc (\$2,186,448 EPC)		

Total Stock Buyout	\$6,834,632
--------------------	-------------

<b>Total Remaining Debt</b>	<b>\$40,518,555</b>
-----------------------------	---------------------

<b>Phase 1 Notes - Seller Financing (Current Value)</b>	<b>\$35,349,413</b>
---	---------------------

<b>After Dryer Sets (4 Left)</b>	<b>\$26,000,000</b>
----------------------------------	---------------------

<b>Restricted Cash</b>	<b>\$11,000,000</b>
------------------------	---------------------

<b>Converting Equipment</b>	<b>\$6,000,000</b>
-----------------------------	--------------------

<b>Sales and Marketing Agreement 15 Yr</b>	<b>\$36,900,000</b>
--	---------------------

<b>Sales and Marketing Agreement 7 yr</b>	<b>\$36,400,000</b>
---	---------------------

<b>Cargill - HEMI Force</b>	<b>\$7,400,000</b>
-----------------------------	--------------------

<b>TOTAL</b>	<b>\$159,049,413</b>
--------------	----------------------

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 3

BROWN COUNTY

---

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

vs.

Code No.: 30301

EVERGREEN DEVELOPMENT, LLC and  
RONALD VAN DEN HEUVEL,

Defendants.

---

**DEFENDANTS EVERGREEN DEVELOPMENT, LLC,  
AND RONALD VAN DEN HEUVEL'S RESPONSES TO PLAINTIFF'S FIRST SET OF  
REQUESTS TO ADMIT**

---

NOW COME THE DEFENDANTS Evergreen Development, LLC, and Ronald Van Den Heuvel, by their attorneys, Stellpflug Law, S.C., and hereby respond to Plaintiff's First Set of Requests to Admit as follows:

1. Admit that attached hereto as Exhibit A is a true and correct copy of a Promissory Note in favor of the Plaintiff executed by the Defendants in the principal amount of Seven Hundred Fifty-Nine Thousand Six Hundred Thirty-Seven and 50/100 Dollars (\$759,637.50).

**RESPONSE:** Admit.

2. Admit that no writing exists which relieves the Defendants from the terms of the Promissory Note.

**RESPONSE:** Deny. Defendants believe that there are e-mails between the parties that indicate an understanding that the Note is not payable until the sale of EcoFibre, Inc., is



complete. Defendants are currently reviewing their files to locate said e-mails. Upon Defendants' review of their files, this admission will be supplemented.

3. Admit that there is no oral agreement relieving the Defendants from their obligations under the Promissory Note.

**RESPONSE:** Deny. Defendant, Ronald Van Den Heuvel, on behalf of Evergreen Development, LLC, had discussions with the principals of Hilliard Limited Partnership wherein it was agreed that the Note would not be payable until such time as the sale of EcoFibre, Inc., was completed.

4. Admit that EcoFibre, Inc., is not a party to the Promissory Note.

**RESPONSE:** Admit.

5. Admit that the date of closing of the sale of EcoFibre, Inc., has not been set.

**RESPONSE:** Admit that a single date has not been set for the closing, but a time period for the closing has been set in that it is scheduled to close within the first quarter of 2009.

6. Admit that EcoFibre, Inc., does not have in place financing sufficient to complete the financing of its facility in DePere, Wisconsin.

**RESPONSE:** Admit that EcoFibre, Inc., does not have 100 percent financing in place but does have 50 percent in place at this time, with the expectation that the remaining financing will be in place within the first quarter of 2009.

7. Admit that there is no executed document by which proceeds of the sale of EcoFibre, Inc., will be paid directly to either Defendant.

**RESPONSE:** Admit.

8. Admit that there is no executed document by which proceeds of the sale of EcoFibre, Inc., will be paid directly to the Plaintiff.

**RESPONSE:** Admit that no executed document is in place by which the proceeds of the sale of EcoFibre, Inc., will be paid directly to the Plaintiff. However, a payout sheet indicating where the proceeds of the sale will go and to whom has been drafted and is attached hereto indicating that the Plaintiffs will be paid out of said proceeds.

9. Admit that the debt of EcoFibre, Inc., exceeds the assets of EcoFibre, Inc.

**RESPONSE:** Deny that the debt of EcoFibre, Inc., exceeds its assets in that the sale of EcoFibre, Inc., does not only include the real property, but also includes technology and other intangibles such as permits, whose value, combined with the real property of EcoFibre, Inc., and its equipment, will exceed the debt of EcoFibre, Inc.

10. Admit that interests secured by mortgages and/or other recorded documents in EcoFibre, Inc.'s, real property that are senior to the mortgage of the Plaintiff, exceed the value of that real property.

**RESPONSE:** Admit that the real property value of EcoFibre, Inc., is exceeded by other interests senior to the mortgage of the Plaintiff, but that when the total value of EcoFibre, Inc., which includes technology and intangibles, exceeds the debt of EcoFibre, Inc., including all secured interests including that of the Plaintiff.

11. Admit that there is no date certain by which the contemplated sale of EcoFibre, Inc., must be completed.

**RESPONSE:** Admit.

12. Admit it is possible that the sale of EcoFibre, Inc., will never occur.

**RESPONSE:** Admit.

13. Admit that more than one year has passed since the recording date of the mortgage referred to in Paragraph 12 of your Answer.

**RESPONSE:** Admit.

DATED this 8<sup>th</sup> day of December, 2008.

STELLPFLUG LAW, S.C.  
Attorneys for Defendants

By: 

C. David Stellpflug  
State Bar Member No.: 1010142  
Michael J. Kirschling  
State Bar Member No.: 1004642

444 Reid Street  
P.O. Box 5637  
De Pere, WI 54115  
Phone: (920) 336-5766  
Fax: (920) 336-5769

I CERTIFY THAT ON DECEMBER 8, 2008,  
I SERVED THE WITHIN DOCUMENT, BY  
HAND DELIVERY, PURSUANT  
TO RULE 801.14(2) WIS. RULES OF CIVIL  
PROCEDURE.

Stellpflug Law, S.C.

BY: 

TO: Attorney Ross J. Nova



1

**PROMISSORY NOTE**

\$705,000.00

December 31, 2005  
Green Bay, Wisconsin

**FOR VALUE RECEIVED**, dated as of the 13<sup>th</sup> day of February, 2006, effective as of December 31, 2005, and subject to Paragraph 1, below, the undersigned, Evergreen Development, LLC, a Wisconsin limited liability company ("Maker"), hereby promises to pay to the order of Hilliard Limited Partnership, a Wisconsin limited partnership ("Holder"), at Green Bay, Wisconsin, the principal sum of Seven Hundred Five Thousand and 00/100 Dollars (\$705,000.00) plus interest accruing on the outstanding principal amount at the rate of six percent (6.0%) per annum (except in the case of an Event of Default (as defined below)), until all amounts due hereunder are paid in full. The term of this note shall be twelve (12) months, except as set forth in Paragraph 9, below. Notwithstanding the foregoing, all principal and interest due hereunder shall become due and payable on December 31, 2006, except as set forth in Paragraph 9, below. All payments under this Promissory Note shall be applied first to the payment of the then current outstanding principal balance, if any; and then to the interest due thereon, if any, as described below.

1. This Promissory Note shall be secured by the Personal Guaranty of Ronald H. Van Den Heuvel, in the form attached as **Annex 1**.
2. The principal balance of this Promissory Note may be prepaid in full, or in part, at any time without penalty to Maker or Holder.
3. The principal balance of this Promissory Note may be accelerated in full by Holder at any time without advance written consent of Maker in the event of an Event of Default (as defined below) hereunder.
4. As a material inducement to Holder to loan the funds described herein, Maker hereby represents and warrants to Holder that: (i) this Promissory Note has been duly executed and delivered by Maker, so that it constitutes the legally enforceable obligations of Maker in accordance with their respective terms; and (ii) all financial statements, information and other data furnished by Maker to Holder, if any, are true, complete and correct in all material respects to Maker's knowledge.
5. Maker, to its knowledge, is not now in default under any material agreement to which it is a party, the effect of which would adversely affect performance by Maker of its obligations pursuant to, and as contemplated by, the terms and provisions of this Promissory Note. Neither the execution and delivery of this Promissory Note nor any other document executed and delivered by Maker in connection with the loan by Holder hereunder, nor the consummation of the loan, nor compliance with the terms and provisions thereof, violate any presently existing provisions of law or of any presently existing applicable order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality or constitute a default under any indenture, mortgage, agreement or contract of any kind to which Maker may be bound, so as to adversely affect performance by Maker of its obligations pursuant to, and as contemplated by, the terms and provisions of this Promissory Note.

**EXHIBIT**

tabbles  
            
A

6. There are no actions, suits or proceedings pending or, to the knowledge of Maker, threatened against Maker, before any court or any governmental, administrative, regulatory, adjudicatory or arbitrational body or agency of any kind (including bankruptcy, insolvency or similar proceedings) that will adversely affect performance by Maker of its obligations pursuant to, and as contemplated by, this Promissory Note.
7. Maker has not filed any petition, nor has any petition been filed, against any such party in bankruptcy or insolvency or reorganization or for the appointment of a receiver or trustee or for the arrangement of debts. Maker is not insolvent nor will it be rendered insolvent by the consummation of the transactions contemplated by this Promissory Note.
8. Every warranty and representation made herein and all information supplied to Holder in connection with the loan is true and accurate in all material respects on the date hereof and will be true in all material respects on the date of every disbursement under the loan.
9. In the event, prior to the maturity date of this Note, fifty percent (50.0%) or more of all issued and outstanding shares of Eco Fibre, Inc., a Wisconsin corporation ("Eco Fibre"), including fifty percent (50.0%) or more of the Subject Shares (as defined in the Stock Purchase Agreement of even date), are sold or transferred to a non-affiliated third party, in a cash transaction, the remaining principal balance and any accrued interest will be paid within sixty (60) days of such closing.
10. An "Event of Default" by Maker shall mean Maker's failure, refusal, inability or other nonpayment or nonperformance for any reason whatsoever: (i) in the payment of principal and/or interest due hereunder when due; or (ii) in the performance of any of the terms, conditions or provisions contained herein, including without limitation the following: (A) any representation or warranty made by Maker in this Promissory Note, the Personal Guaranty of even date given to Holder by Ronald H. Van Den Heuvel, or in any certificate or document furnished under the terms of this Promissory Note shall prove untrue in any material respect when made, and (B) if Maker shall admit Maker's inability to pay debts, or if Maker shall make an assignment for the benefit of creditors, or shall be adjudicated a bankrupt; or shall file a voluntary petition in bankruptcy or to effect a plan or other arrangement with creditors, or to liquidate assets of Maker under court supervision, or shall have applied for or permitted the appointment of a receiver or trustee or custodian for any of Maker's property or assets, or a trustee, receiver or custodian shall have been appointed for any property or assets of Makers who shall not have been discharged within sixty (60) days after the date of his or her appointment; or (iii) except as set forth in Paragraph 9, above, the sale or transfer of the Subject Shares (as defined in the Stock Purchase Agreement of even date), or any interest in such Subject Shares, including without limitation, the granting of a warrant, option or subordinated collateral pledge, to any third party.
11. If any Event of Default is not cured by Maker within ten (10) calendar days after written notice identifying such Event of Default is sent to Maker; then any such amounts shall bear interest at twelve percent (12.0%), calculated and accruing from the date of the default for so long as, and on such amounts as are identified and remain outstanding. Failure to exercise the terms of this paragraph by Holder following any Event of Default hereunder shall not constitute a waiver of the right to exercise the same at a later time or upon the occurrence of any subsequent Event of Default. Holder shall have all other rights and remedies available to it at law and in equity with regard to any default hereunder. In addition to the foregoing, upon the occurrence of an Event of Default, unless such Event of Default is subsequently

waived in writing by Holder, Holder shall be entitled, at the option of Holder, to exercise any or all of the following rights and remedies: (i) Holder may suspend its obligations under this Promissory Note, without further notice to Maker; and (ii) Holder may terminate its obligation under this Promissory Note and may declare the entire unpaid principal balance of the disbursements to Maker made under this Promissory Note to be immediately due and payable, together with accrued and unpaid interest on such disbursements, without further notice to or demand on Maker.

12. If any suit or action is instituted or if any attorney is employed to recover any sums due under this Promissory Note, or on any part of this Promissory Note, the undersigned Maker promises to pay all costs of collection, including reasonable attorneys' fees, incurred by Holder. The undersigned Maker, for itself and its successors and assigns, hereby expressly waives presentment for payment, notice of nonpayment, protest and notice of protest and diligence in collection, and consents to any and all extensions and renewals of this Promissory Note without notice. In the event any one or more of the provisions contained in this Promissory Note shall for any reason be held to be invalid or illegal in any respect, such invalidity or illegality shall not affect any other provision of this Promissory Note, but this Promissory Note shall be construed as if such invalid or illegal provision had never been contained herein.
13. This Promissory Note shall be interpreted and construed under the internal laws of the State of Wisconsin, without regard to the principles of conflict of laws. Maker hereby consents to personal jurisdiction over Maker by the courts of the State of Wisconsin and/or the federal courts of the United States located in the Eastern District of Wisconsin, and any action to enforce the terms and conditions of this Promissory Note may be brought therein by the Holder, and venue shall be proper therein.

[Signature page follows.]

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

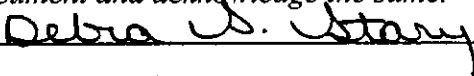
**"MAKER":**

EVERGREEN DEVELOPMENT, LLC

By:   
Ronald H. Van Den Heuvel, Member

STATE OF WISCONSIN            )  
  ) SS  
COUNTY OF BROWN            )

Personally came before me this 14<sup>th</sup> day of February, 2006, the above-named Ronald H. Van Den Heuvel, to me known to be the person authorized on behalf of Evergreen Development, LLC to execute the foregoing document and acknowledge the same.



Notary Public, State of Wisconsin

My commission: Expires December 20, 2009

**REQUIRED TO BE ATTACHED:**

Annex 1: Personal Guaranty

gb131315\_4

State Bar of Wisconsin Form 21-2003  
**MORTGAGE**

2325129 9

CATHY WILLIQUETTE  
BROWN COUNTY RECORDER  
GREEN BAY, WI

RECORDED ON  
07/27/2007 11:53:54AM

REC FEE: 19.00  
TRANS FEE:  
EXEMPT #  
PAGES: 5

Document Number

Document Name

Eco Fibre, Inc. f/k/a/ Re-Box Paper, Inc.,\*

("Mortgagor," whether one or more) mortgages to Hilliard Limited Partnership

, its successors or assigns ("Mortgagee," whether one or more), to secure payment of \$ 750,000.00 evidenced by a note or notes, or other obligation ("Obligation") dated July 18, 2007 executed by Eco Fibre, Inc., a Wisconsin Corporation

to Mortgagee, and any extensions, renewals and modifications of the Obligation and refinancings of any such indebtedness on any terms whatsoever (including increases in interest) and the payment of all other sums, with interest, advanced to protect the Property and the security of this Mortgage, and all other amounts paid by Mortgagee hereunder, the following property, together with all rights and interests appurtenant thereto in law or equity, all rents, issue and profits arising therefrom, including insurance proceeds and condemnation awards, all structures, improvements and fixtures located thereon, in Brown County, State of Wisconsin ("Property"):

\*a Wisconsin Corporation

Recording Area

Name and Return Address  
Hilliard Limited Partnership  
333 Main St., Ste. 601  
Green Bay, WI 54301

WD-1041

Parcel Identification Number (PIN)

This is not \_\_\_\_\_ homestead property.  
(is) (is not)

This is not \_\_\_\_\_ a purchase money mortgage.  
(is) (is not)

See Attached Addendum for legal description

**1. MORTGAGOR'S COVENANTS.**

a. **COVENANT OF TITLE.** Mortgagor warrants title to the Property, except restrictions and easements of record, if any, and further excepting:

Liens in favor of Baylake Bank consisting of the following: Financing Statement filed as Document No. 678388, Financing Statement filed as Document No. 678389, Financing Statement filed as Document No. 678548, Mortgage, Security Agreement and Fixture Filing filed as Document No. 1772321, Real Estate Security Agreement filed as Document No. 1999394, and Mortgage filed as Document No. 2150335.

b. **FIXTURES.** Any property which has been affixed to the Property and is used in connection with it is intended to become a fixture. Mortgagor waives any right to remove such fixture from the Property which is subject to this Mortgage.

c. **TAXES.** Mortgagor promises to pay when due all taxes and assessments levied on the Property or upon Mortgagee's interest in it and to deliver to Mortgagee on demand receipts showing such payment.

d. **INSURANCE.** Mortgagor shall keep the improvements on the Property insured against loss or damage occasioned by fire, extended coverage perils and such other hazards as Mortgagee may require, without co-insurance, through insurers approved by Mortgagee, in the amount of the full replacement value of the improvements on the Property. Mortgagor shall pay the insurance premiums when due. The policies shall contain the standard mortgage clause in favor of Mortgagee, and evidence of all policies covering the Property shall be provided to Mortgagee. Mortgagor shall promptly give notice of loss to insurance companies and Mortgagee. Unless Mortgagor and Mortgagee

otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided Mortgagee deems the restoration or repair to be economically feasible.

e. **OTHER COVENANTS.** Mortgagor covenants not to commit waste nor suffer waste to be committed on the Property, to keep the Property in good condition and repair, to keep the Property free from future liens superior to the lien of this Mortgage and to comply with all laws, ordinances and regulations affecting the Property. Mortgagor shall pay when due all indebtedness which may be or become secured at any time by a mortgage or other lien on the Property superior to this Mortgage and any failure to do so shall constitute a default under this Mortgage.

2. **DEFAULT AND REMEDIES.** Mortgagor agrees that time is of the essence with respect to payment of principal and interest when due, and in the performance of the terms, conditions and covenants contained herein or in the Obligation secured hereby. In the event of default, Mortgagee may, at its option, declare the whole amount of the unpaid principal and accrued interest due and payable, and collect it in a suit at law or by foreclosure of this Mortgage or by the exercise of any other remedy available at law or equity. If this Mortgage is subordinate to a superior mortgage lien, a default under the superior mortgage lien constitutes a default under this Mortgage.

3. **NOTICE.** Unless otherwise provided in the Obligation secured by this Mortgage, prior to any acceleration (other than under paragraph 9, below) Mortgagee shall mail notice to Mortgagor specifying: (a) the default; (b) the action required to cure the default; (c) a date, not less than 15 days from the date the notice is mailed to Mortgagor by which date the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration.

4. **EXPENSES AND ATTORNEY FEES.** In case of default, whether abated or not, all costs and expenses, including, but not limited to, reasonable attorney fees, to the extent not prohibited by law shall be added to the principal, become due as incurred, and in the event of foreclosure be included in the judgment.

5. **FORECLOSURE WITHOUT DEFICIENCY.** Mortgagor agrees to the provisions of Sections 846.101 and 846.103, Wis. Stats., as may apply to the Property and as may be amended, permitting Mortgagee in the event of foreclosure to waive the right to judgment for deficiency and hold the foreclosure sale within the time provided in such applicable Section.

6. **RECEIVER.** Upon default or during the pendency of any action to foreclose this Mortgage, Mortgagor consents to the appointment of a receiver of the Property, including homestead interest, to collect the rents, issues and profits of the Property during the pendency of such an action, and such rents, issues and profits when so collected shall be held and applied as the court shall direct.

7. **WAIVER.** Mortgagee may waive any default without waiving any other subsequent or prior default by Mortgagor.

8. **MORTGAGEE MAY CURE DEFAULTS.** In the event of any default by Mortgagor of any kind under this Mortgage or any Obligation secured by this Mortgage, Mortgagee may cure the default and all sums paid by Mortgagee for such purpose shall immediately be repaid by Mortgagor with interest at the rate then in effect under the Obligation secured by this Mortgage and shall constitute a lien upon the Property.

9. **CONSENT REQUIRED FOR TRANSFER.** Mortgagor shall not transfer, sell or convey any legal or equitable interest in the Property (by deed, land contract, option, long-term lease or in any other way) without the prior written consent of Mortgagee, unless either the indebtedness secured by this Mortgage is first paid in full or the interest conveyed is a mortgage or other security interest in the Property, subordinate to the lien of this Mortgage. The entire indebtedness under the Obligation secured by this Mortgage shall become due and payable in full at the option of Mortgagee without notice, which notice is hereby waived, upon any transfer, sale or conveyance made in violation of this paragraph. A violation of the provisions of this paragraph will be considered a default under the terms of this Mortgage and the Obligation it secures.

10. **ASSIGNMENT OF RENT.** Mortgagor hereby transfers and assigns: fully and exclusively to Mortgagee, as additional security, all rents, issues and profits which become or remain due (under any form or agreement for use or occupancy of the Property or any portion thereof), or which were previously collected and remain subject to Mortgagor's control following any default under this Mortgage or the Obligation secured hereby and delivery of notice of exercise of this assignment by Mortgagee to the tenant or other user(s) of the Property in accordance with the provisions of Section 708.11, Wis. Stats., as may be amended. This assignment shall be enforceable with or without appointment of a receiver and regardless of Mortgagee's lack of possession of the Property.

11. **ENVIRONMENTAL PROVISION.** Mortgagor represents, warrants and covenants to Mortgagee that (a) during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"); (b) Mortgagor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner of or person using the Property; (c) without limiting the generality of the foregoing, Mortgagor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components ("PCBs") or underground storage tanks; (d) there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claims relating to any Hazardous Substance; (e) Mortgagor is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance; and (f) Mortgagor in the past has been, at the present is and in the future will remain in compliance with all Environmental Laws. Mortgagor shall indemnify and hold harmless Mortgagee from all loss, cost (including reasonable attorney fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagor shall immediately notify Mortgagee in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property.

12. **SECURITY INTEREST ON FIXTURES.** To further secure the payment and performance of the Obligation, Mortgagor hereby grants to Mortgagee a security interest in:

**CHOOSE ONE OF THE FOLLOWING OPTIONS; IF NEITHER IS CHOSEN, OPTION A SHALL APPLY:**

- A. All fixtures and personal property located on or related to the operations of the Property whether now owned or hereafter acquired.
- B. All property listed on the attached schedule.

This Mortgage shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to those parts of the Property indicated above. This Mortgage constitutes a fixture filing and financing statement as those terms are used in the Uniform Commercial Code. This Mortgage is to be filed and recorded in the real estate records of the county in which the Property is located, and the following information is included: (1) Mortgagor shall be deemed the "debtor"; (2) Mortgagee shall be deemed to be the "secured party" and shall have all of the rights of a secured party under the Uniform Commercial Code; (3) this Mortgage covers goods which are or are to become fixtures; (4) the name of the record owner of the land is the debtor; (5) the legal name and address of the debtor are \_\_\_\_\_

Eco Fibre, Inc., 500 Fortune Ave, De Pere, WI 54115;

(6) the state of organization and the organizational identification number of the debtor (if applicable) are Wisconsin ;  
Entity ID No. R031170 ; and

(7) the address of the secured party is \_\_\_\_\_

13. **SINGULAR; PLURAL.** As used herein, the singular shall include the plural and any gender shall include all genders.

14. **JOINT AND SEVERAL/LIABILITY** The covenants of this Mortgage set forth herein shall be deemed joint and several among Mortgagors, if more than one. Unless a Mortgagor is obligated on the Obligation secured by this Mortgage, Mortgagor shall not be liable for any breach of covenants contained in this Mortgage.

15. **INVALIDITY.** In the event any provision or portion of this instrument is held to be invalid or unenforceable, this shall not impair or preclude the enforcement of the remainder of the instrument.

Dated July 18, 2007

ECO FIBRE, INC. f/k/a Re-Box Paper, Inc.

\_\_\_\_\_  
(SEAL) *Ronald H. Van Den Heuvel* (SEAL)  
\* Ronald H. Van Den Heuvel, President

\_\_\_\_\_  
(SEAL) *Steven C. Peters* (SEAL)  
\* Steven C. Peters, Secretary

**AUTHENTICATION**

**ACKNOWLEDGMENT**

Signature(s) \_\_\_\_\_  
authenticated on \_\_\_\_\_

STATE OF WISCONSIN )  
Brown ) ss. COUNTY )

\*  
TITLE: MEMBER STATE BAR OF WISCONSIN  
(If not, \_\_\_\_\_  
authorized by Wis. Stat. § 706.06)

Personally came before me on 7/20/07,  
the above-named Ronald H. Van Den Heuvel and Steven C. Peters  
to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

THIS INSTRUMENT DRAFTED BY:  
John Jez wh  
1555 Glory Rd., Green Bay, WI 54304

*Debra S. Stary*  
\* Debra S. Stary  
Notary Public, State of Wisconsin  
My Commission (is permanent) (expires: 12/20/2009)

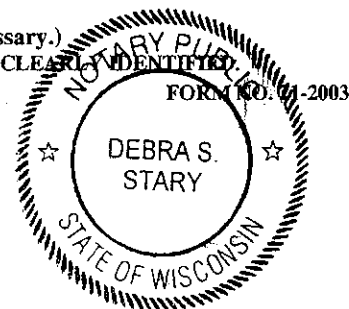
(Signatures may be authenticated or acknowledged. Both are not necessary.)

NOTE: THIS IS A STANDARD FORM. ANY MODIFICATIONS TO THIS FORM SHOULD BE CLEARLY IDENTIFIED.

MORTGAGE

STATE BAR OF WISCONSIN

\* Type name below signatures.





## ADDENDUM TO MORTGAGE

Mortgagor: Eco Fibre, Inc. f/k/a Re-Box Paper, Inc.

Mortgagee: Hilliard Limited Partnership

Legal Description of Property:

Lot 1 of Volume 41 Certified Survey Maps, Page 100, Map No. 6194, said map being part of Lots 1 and 2, De Pere Business Park South Addition and part of the Southwest  $\frac{1}{4}$  of Section 32, Township 23 North, Range 20 East, in the City of De Pere, West side of Fox River, Brown County, Wisconsin.

**PHASE 2 PROJECTED CLOSING STATEMENT**  
November 21, 2008

Subordinated Debt		\$12,000,000
Stonehill - ECO	\$4,731,763	
Stonehill - PCDI	\$4,733,817	
Stonehill - TPTC/OFTI	<u>\$2,534,421</u>	
Total Stonehill (Int. through 11/30/07)		\$12,000,000

Asset Purchase		\$10,800,000
<b>Total Sources</b>		<b>\$10,800,000</b>

Anchor Bank		\$1,446,431
ITV		\$1,520,597
Cordova		\$1,534,050
Baylake Bank		\$4,311,584
Bay Bank		\$1,250,567
Accounts Payable		\$500,000
Transfer Tax / Closing Costs (TTL)		\$236,771
<b>Total Uses</b>		<b>\$10,800,000</b>

<i>Nicolet (Tak Loan of \$6,200,000 paid at closing)</i>	<b>\$6,200,000</b>
--	--------------------

<b>Phase 1 Notes Paid at Phase 2 Closing</b>	<b>\$10,000,000</b>
Baylake Bank	\$4,000,000
Chris Hartwig	\$2,000,000
Associated Bank	\$1,300,000
Accounts Payable	\$2,700,000
<b>Total Uses</b>	<b>\$10,000,000</b>

<b>After Dryer Payment</b>	<b>\$7,000,000</b>
Hilliard Limited Partnership	\$823,017
PAMV	\$1,380,283
IFC Credit Corp	\$4,300,000
Accounts Payable	\$496,700
<b>Total Spirit Payments</b>	<b>\$7,000,000</b>

<b>Total of All Payments</b>	<b>\$27,800,000</b>
------------------------------	---------------------

**Remaining Debt**

Nicolet	TTL Working Capital Loan	\$2,800,000
Nicolet	Converting Equip.	\$2,900,000
Nicolet	Sales & Marketing	\$2,924,687
Nicolet (Swakwaeko)	Purely Cotton Equipment	\$2,880,283
Associated Bank (includes VHC paid)	After Dryer Sales	\$2,613,503
Bay Bank	TTL/NWTC	\$2,065,451
Stonehill	After Dryer and Converting Equipment	\$11,000,000
Stonehill	Purely Cotton	\$3,000,000
Pat & Ann Murphy	Various	\$3,500,000
Pat & Ann Murphy & GEMU		\$739,425
Ray VDH & OTHERS		\$1,600,000
Paul Gehl		\$1,258,274
Bernie Dahlin		\$3,236,932
GPD Leasing, Inc (\$2,186,448 EPC)		

Total Stock Buyout	\$6,834,632
--------------------	-------------

<b>Total Remaining Debt</b>	<b>\$40,518,555</b>
-----------------------------	---------------------

<b>Phase 1 Notes - Seller Financing (Current Value)</b>	<b>\$35,349,413</b>
---	---------------------

<b>After Dryer Sets (4 Left)</b>	<b>\$26,000,000</b>
----------------------------------	---------------------

<b>Restricted Cash</b>	<b>\$11,000,000</b>
------------------------	---------------------

<b>Converting Equipment</b>	<b>\$6,000,000</b>
-----------------------------	--------------------

<b>Sales and Marketing Agreement 15 Yr</b>	<b>\$36,900,000</b>
--	---------------------

<b>Sales and Marketing Agreement 7 yr</b>	<b>\$36,400,000</b>
---	---------------------

<b>Cargill - HEMI Force</b>	<b>\$7,400,000</b>
-----------------------------	--------------------

<b>TOTAL</b>	<b>\$159,049,413</b>
--------------	----------------------

HILLIARD LIMITED PARTNERSHIP,

Plaintiff,

Case No. 08-CV-2265

v.

Code No(s). 30301

EVERGREEN DEVELOPMENT, LLC and  
RONALD VAN DEN HEUVEL,

Defendants.

---

**AFFIDAVIT OF NEAL MACCOUX IN  
SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AGAINST DEFENDANTS**

---

STATE OF WISCONSIN        )  
  ) SS.  
COUNTY OF BROWN        )


NEAL MACCOUX, being first duly sworn on oath, deposes and states as follows:

1. I am an adult resident of the State of Wisconsin and am a general member of the Plaintiff in the above-entitled action.
2. Exhibit A hereto is a true and correct copy of the Note delivered to me as signed by the Defendants on or about July 20, 2007.
3. As of today, the Plaintiff has received no money from the Defendants despite the Plaintiff's requests for their adherence to the terms of the Note.
4. On October 20, 2007, as a result of the Defendants' failure to pay the full installment amount due on October 15, 2007, the Plaintiff elected to exercise its option pursuant to the terms of the Note, to require the immediate payment of all outstanding principal and interest due under the Note, with the default interest rate of eighteen percent (18%) per annum.
5. Attached hereto as Exhibit B is a true and correct copy of the calculations setting forth the amount of principal and outstanding interest due and owing as of December 22, 2008.

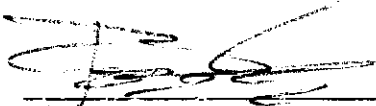


6. I make this affidavit in support of Plaintiff's Motion for Summary Judgment against the Defendants.

Dated this 22 day of December, 2008.

  
\_\_\_\_\_  
Neal Maccoux

Signed and sworn to before me this  
22<sup>nd</sup> day of December, 2008.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: Repetual

3420314\_1

The undersigned certifies that a true copy of the within was served by mail or by personal delivery upon all attorneys and parties of record pursuant to Wis. Stat. Sec. 801.14 this 31 day of December 2008.  
**GODFREY & KAHN, S.C.**

BY: James L. Stazak

**AMENDED AND RESTATED**  
**PROMISSORY NOTE**

\$759,637.50

April 15, 2007  
Green Bay, Wisconsin

**FOR VALUE RECEIVED**, the undersigned Evergreen Development, LLC, a Wisconsin limited liability company and Ronald H. Van Den Heuvel, an adult resident of the State of Wisconsin, in his individual capacity and as a principal, manager, member, director, and officer of Evergreen Development, LLC (collectively, "Maker"), hereby promise to pay to the order of Hilliard Limited Partnership, a Wisconsin limited partnership ("Hilliard") at Green Bay, Wisconsin, the principal sum of Seven Hundred Fifty-ninety Thousand Six Hundred Thirty-seven and 50/100 Dollars (\$759,637.50), as and when set forth herein. Notwithstanding anything in this Amended and Restated Promissory Note (or any prior note, instrument or other related document that is amended and restated herein) to the contrary, Maker shall pay Hilliard all amounts due and payable hereunder not later than the fifteenth (15<sup>th</sup>) day of October, 2007. This Amended and Restated Promissory Note amends and restates the terms and conditions of that certain Note dated December 31, 2005 between Maker and Hilliard.

1. The principal amount of this Amended and Restated Promissory Note may be prepaid in full, or in part, at any time without penalty.
2. The principal balance of, and all interest accrued and other amounts due pursuant to, this Amended and Restated Promissory Note may be declared by Hilliard immediately due and payable in full and accelerated at any time if an "Event of Default" (as defined below) occurs.
3. Repayment of the Note shall occur in one installment of principal and all accrued interest. The principal amounts due and owing under this Amended and Restated Promissory Note will accrue interest from the date hereof at the rate of eight percent (8.00%) per annum until payment in full; provided, however, that interest shall accrue at the Default Rate if an Event of Default occurs. All Principle and Accrued Interest is payable to Hilliard by Maker no later than the fifteenth (15th) day of October, 2007.
4. As a material inducement to Hilliard to loan the funds described herein, Maker hereby represents and warrants to Hilliard that:
  - (a) The execution and delivery of this Amended and Restated Promissory Note and any other document executed and delivered by Maker do not violate any presently existing provisions of law or any presently existing applicable order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality or constitute a default under any indenture, mortgage, agreement or contract of any kind to which Maker may be bound, so as to adversely affect performance by Maker of their obligations pursuant to, and as contemplated by, the terms and provisions of this Amended and Restated Promissory Note.



- (b) There are no actions, suits or proceedings pending or, to the knowledge of Maker, threatened against Maker, before any court or any governmental, administrative, regulatory, adjudicatory or arbitrational body or agency of any kind (including bankruptcy, insolvency or similar proceedings) that will adversely affect performance by Maker of their obligations pursuant to, and as contemplated by, this Amended and Restated Promissory Note.
  - (c) Maker has not filed any petition, nor has any petition been filed against Maker in bankruptcy or insolvency or reorganization or for the appointment of a receiver or trustee or for the arrangement of debts. Maker is not insolvent nor will they be rendered insolvent by the consummation of the transactions contemplated by this Amended and Restated Promissory Note.
5. An "Event of Default" by Maker shall mean Maker's failure, refusal, inability or other nonpayment or nonperformance for any reason whatsoever: (i) in the payment of any installment of principal and/or interest due hereunder when due; or (ii) in the performance of any of the terms, conditions or provisions contained herein, including without limitation the following: (A) if any representation or warranty made by Maker in this Amended and Restated Promissory Note or in any certificate or document furnished under the terms of this Amended and Restated Promissory Note shall prove untrue in any material respect when made; and (B) if Maker shall admit their inability to pay debts; or if Maker shall make an assignment for the benefit of creditors, or shall be adjudicated a bankrupt; or shall file a voluntary petition in bankruptcy or to effect a plan or other arrangement with creditors, or to liquidate assets of Maker under court supervision, or shall have applied for or permitted the appointment of a receiver or trustee or custodian for Maker's property or assets, or a trustee, receiver or custodian shall have been appointed for any property or assets of Maker who shall not have been discharged within sixty (60) days after the date of his or her appointment.
6. If any Event of Default is not cured by Maker within five (5) calendar days after the occurrence thereof, then any such amounts shall bear interest at a rate equal to eighteen percent (18.00%) per annum (the "Default Rate"), calculated and accruing from the date of the default for so long as and on such amounts as are identified and remain outstanding; provided, however, that if applicable law does not permit the foregoing rate, it shall be reduced to the highest rate allowed under such applicable law. Failure by Hilliard to exercise the terms of this paragraph following any Event of Default hereunder shall not constitute a waiver of the right to exercise the same at a later time or upon the occurrence of any subsequent Event of Default. Hilliard shall have all other rights and remedies available to it at law and in equity with regard to any breach and/or default hereunder. In addition to the foregoing, upon the occurrence of an Event of Default, unless such Event of Default is subsequently waived in writing by Hilliard, Hilliard shall be entitled, at its option, to exercise any or all of the following rights and remedies: (i) Hilliard may suspend its obligations under this Amended and Restated Promissory Note, without further notice to Maker; and (ii) Hilliard may terminate its obligation under this Amended and Restated Promissory Note and may declare the entire unpaid principal balance of the disbursements to Maker made under this Amended and Restated Promissory Note to be immediately due and payable, together

with accrued and unpaid interest on such disbursements, without further notice to or demand on Maker.

7. If any suit or action is instituted to recover any sums due under this Amended and Restated Promissory Note, or on any part of this Amended and Restated Promissory Note, Maker promises to pay all costs of collection, including reasonable attorneys' fees, incurred by Hilliard. Maker, for themselves, and their successors and assigns, hereby expressly waives presentment for payment, notice of nonpayment, protest and notice of protest and diligence in collection, and consent to any and all extensions and renewals of this Amended and Restated Promissory Note without notice. In the event any one or more of the provisions contained in this Amended and Restated Promissory Note shall for any reason be held to be invalid or illegal in any respect, such invalidity or illegality shall not affect any other provision of this Amended and Restated Promissory Note, but this Amended and Restated Promissory Note shall be construed as if such invalid or illegal provision had never been contained herein.
8. This Amended and Restated Promissory Note shall be interpreted and construed under the internal laws of the State of Wisconsin, without regard to the principles of conflict of laws. Maker hereby consents to personal jurisdiction over Maker by the courts of the State of Wisconsin and the federal courts of the United States located in the Eastern District of Wisconsin. Any action to enforce the terms and conditions of this Amended and Restated Promissory Note may be brought therein by Hilliard, and venue shall be proper therein.

[Signature page(s) follow.]

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

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

EVERGREEN DEVELOPMENT, LLC

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

STATE OF WISCONSIN )  
 ) SS  
COUNTY OF BROWN )

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

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

gb147952\_1





## EXHIBIT B

Principal Amount	\$759,637.50
8% Interest through October 20, 2007	\$30,385.50
18% Default Interest From October 20, 2007 through December 23, 2008	<u>\$159,569.45</u>
Total Due as of December 23, 2008	\$949,592.45

3435951\_1

