

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN COUNTY SUPERIOR COURT
CAUSE NO. 02D01-1110-CC-

FILED
CENTRAL SERVICES DIVISION
2009 NOV -2 PM 2:59
ALLEN COUNTY SUPERIOR COURTS

FREDERICK ROST II)
a/k/a FRED ROST,)
)
Plaintiff,)
)
v.)
)
MATTHEW KELTY,)
Defendant.)

COMPLAINT ON PROMISSORY NOTE

COMES NOW Plaintiff, Frederick Rost II a/k/a Fred Rost ("Plaintiff"), by counsel, Barrett & McNagny, LLP, and for his Complaint against Defendant, Matthew Kelty, alleges and says as follows:

1. On or about December 15, 2006, Defendant, for good and valuable consideration, executed a Promissory Note in favor of Plaintiff in the amount of \$150,000.00. Said Promissory Note was amended per a First Amendment to Promissory Note ("First Amendment") dated on or about September 28, 2007, and Second Amendment to Promissory Note ("Second Amendment") dated on or about October 17, 2008. A copy of said Promissory Note, as modified and amended by the First Amendment and Second Amendment (collectively the "Note"), is incorporated herein by reference and attached hereto as Exhibit "A".

2. Defendant has failed and refused to perform his obligations under the Note and the Note is past due.

3. Plaintiff has made demands on Defendant to pay the Note according to its terms and conditions. However, despite said demands, Defendant has refused, and continues to refuse, to pay the amounts due and owing to Plaintiff under the Note.

4. As of October 1, 2009, the principal balance due and owing under the Note was \$125,000.00. Additionally, interest and late charges have accrued and are due and owing from Defendant under the Note.

5. In addition to the foregoing, the Note provides that Plaintiff may recover from Defendant Plaintiff's reasonable attorney fees and expenses incurred in enforcing the obligations of the Note. Accordingly, Plaintiff respectfully prays that this court award him attorney fees and expenses as part of any judgment issued against Defendant.

WHEREFORE, Plaintiff, Fred Rost, respectfully demands judgment against Defendant, Matthew Kelty, in the principal amount of \$125,000.00 plus all late charges, interest and expenses accruing under the Note, including but not limited to attorney fees and expenses, and prays for all other just and proper relief.

Respectfully submitted,

BARRETT & McNAGNY LLP

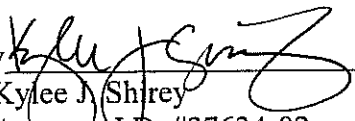
By 
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Exhibit A

PROMISSORY NOTE

\$150,000.00

Fort Wayne, Indiana
Effective December 15, 2006

FOR VALUE RECEIVED, the undersigned, **Matthew Kelty**, an Indiana resident, with his residence at 2424 Florida Avenue, Fort Wayne, IN 46805 (hereinafter the "Borrower") promises to pay to the order of Fred Rost, 11613 Eagle Creek Pass, Fort Wayne, IN 46804, his successors and assigns (hereinafter the "Lender"), the principal sum of One Hundred Fifty Thousand Dollars and 00/100 (\$150,000.00), together with interest on the balance of the principal remaining unpaid hereunder accruing at the rate provided for herein, all without relief from valuation and appraisal laws and with attorney fees and costs and expenses of collection. Interest shall accrue on the unpaid principal balance at the rate of Eight Per Cent (8%) per annum, except that after or during the occurrence of an Event of Default, and after the Maturity Date, interest shall accrue at the rate of Twelve Per Cent (12%) per annum.

1. Payments.

(a) Borrower shall make monthly payments of interest only in the amount of \$1,000.00 per month, commencing on January 1, 2007 and on the first day of each succeeding month through November 1, 2007. Commencing June 1, 2007, and continuing on the first day of each succeeding month thereafter through November 1, 2007, Borrower shall make equal principal payments of \$25,000.00; said principal payments shall be in addition to the monthly interest payments due hereunder. If not sooner paid, the entire balance of this Note, including all principal, interest, late charges, expenses and fees shall be due and owing on November 1, 2007.

(b) If any monthly payment is not paid within ten (10) days of the due date, Borrower shall pay to Lender, within ten days thereafter, a late charge equal to 1% of the amount of such payment. This is in addition to and not by way of limitation of Lender's other rights and remedies.

2. Application of Payments and Place of Payments. All payments received under this Note shall be applied first to any costs, late charges and/or expenses, including reasonable attorney fees incurred by Lender; second, to accrued interest due and owing; and third, to the principal balance. Each payment under this Note shall be made to Lender at Lender's address above, or at such other place as the holder of this Note directs in writing.

3. Security. This Note is unsecured.

4. Events of Default. Each of the following shall be an event of default ("Event of Default") under this Note:

(a) **Payment Obligation.** If default occurs in the payment of any installment of principal or interest under this Note or of any late charge, expense, or other payment at any time owing to Lender under this Note or the Agreement, as and when it shall be or become due and payable, and such default is not cured by Borrower within five (5) days; provided that Borrower shall only be permitted two cure periods per calendar year;

(b) **Non-Payment Obligations.** If default occurs in the performance of any obligation (other than a payment obligation) by Borrower under this Note or the Agreement and such default is not cured by Borrower within ten (10) days;

(c) **Other.** Borrower liquidates, dissolves, or substantially suspends its active business operations.

(d) **Voluntary Bankruptcy.** If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), Borrower (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against it in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing his inability to pay its debts as they become due;

(e) **Involuntary Bankruptcy.** If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of Borrower's properties, or (iii) orders the liquidation of Borrower, and in each case the order or decree is not dismissed within 45 days;

(f) **Cross-Default.** Any payment default of Borrower that remains unpaid for more than a period of five (5) business days under any loan agreement or credit facility between Borrower and (i) any financial institution regularly engaged in the business of lending money, or (ii) any other party that has made an extension of credit to Borrower and such party commences the judicial enforcement of remedies; and

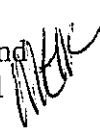
(g) **Miscellaneous.** Notwithstanding any other provision in this Note to the contrary, this Note, including but not limited to any expenses and accrued interest, shall be immediately due and owing if, for any reason, Borrower shall cease to be a Republican Party candidate for the 2007 mayoral election for the City of Fort Wayne, Indiana.

Borrower shall notify Lender upon the occurrence of any Event of Default under this Section 4.

5. Acceleration. Upon the occurrence of any Event of Default, all the indebtedness due under this Note, including principal and interest, and all other indebtedness and obligations then owing by Borrower to the Lender shall, at the option of the holder, become immediately due and payable without notice or demand.

6. Miscellaneous.

(a) Borrower hereby waives demand, presentment, notice of dishonor and protest of this Note, and consents to any extension or postponement of time of its payment without limit as to the number or period thereof.

(b) No delays on the part of Lender in the exercise of any right or remedy shall operate as a waiver thereof, no single or partial exercise by Lender of any right or remedy shall preclude any other future exercise thereof or the exercise of any other right or remedy, and no waiver or indulgence by Lender of any default shall be effective unless in writing and 

signed by Lender, nor shall a waiver on one occasion be construed as a bar to, or waiver of, any such right on any future occasion.

(c) Notwithstanding any terms and provisions to the contrary contained in this Note, or any other document evidencing or securing the indebtedness owed by Borrower to Lender, Lender shall have the right to pursue all remedies available to it at law or in equity directly against Borrower and all of said remedies shall be cumulative and the exercise of any one remedy shall not preclude the exercise of any other remedy.

(d) This Note, and the obligations evidenced hereby, shall be governed by and construed in accordance with the laws of the State of Indiana.

(e) This Note is binding upon, and shall inure to the benefit of the parties and their respective successors and assigns. This Note and the obligations of Borrower hereunder, may not be assigned by Borrower. Lender may transfer and assign its rights under this Note.

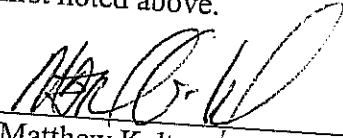
(f) Any notice that may be required under this Note shall be delivered in writing by regular or certified mail, postage prepaid, to the address of the respective parties set forth above (or at such other address as Borrower or Lender shall direct to the other in writing). Such notice shall be deemed "delivered" three (3) business days after the date of its posting.

(g) Borrower agrees to pay all attorney fees and expenses incurred by Lender for the preparation of this Note, as well as those incurred in enforcing the obligations of this Note, including, but not limited to, fees and expenses incurred as part of any bankruptcy or appellate proceedings.

(h) Time is of the essence for performance of this Note.

(i) There shall be no penalty on Borrower for pre-paying this Note.

IN WITNESS WHEREOF, Borrower has executed this Note on the 15 day of December, 2006 effective as of the date first noted above.



Matthew Kelty

FIRST AMENDMENT TO PROMISSORY NOTE

For value received, the undersigned, Matthew Kelty, an Indiana resident with his residence at 2424 Florida Avenue, Fort Wayne, IN 46805 (the "Borrower") and Frederick L. Rost II, an Indiana resident with his residence at 11613 Eagle Creek Pass, Fort Wayne, IN 46804 (the "Lender"), agree that the December 15, 2006 Promissory Note ("Note") from Borrower to Lender shall be amended as follows:

1. Paragraph 1(a) of the Note shall be amended to read in its entirety as follows:

Borrower shall continue to make monthly payments of interest only in the amount of \$1,000.00 per month and continuing on the first day of each succeeding month through January 1, 2008. As a condition of this provision, Borrower will establish an electronic funds transfer (EFT) between his bank and that of the Lender for the agreed monthly payments of interest. Commencing on January 1, 2008, and continuing the first day of each succeeding month thereafter through May 1, 2008, Borrower shall make equal principal payments of \$25,000.00; said principal payments shall be in addition to the monthly interest payments due hereunder. If not sooner paid, the entire balance of this Note, including all principal, interest, late charges, expenses and fess shall be due and owing on May 1, 2008.

Except as expressly stated herein, all of the terms and provisions of the Note shall remain unchanged and in full force and effect. If any term or provision of the Note shall conflict with this First Amendment to Promissory Note, the terms of this First Amendment to Promissory Note shall control.

IN WITNESS WHEREOF, Borrower and Lender have executed this First Amendment to Promissory Note on the 28th day of September, 2007.


Matthew Kelty


Frederick L. Rost II

SECOND AMENDMENT TO PROMISSORY NOTE

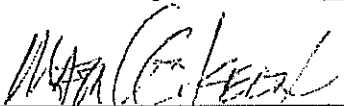
For value received, the undersigned, Matthew Kelty, an Indiana resident with his residence at 2424 Florida Avenue, Fort Wayne, IN 46805 (the "Borrower") and Frederick L. Rost II, an Indiana resident with his residence at 11613 Eagle Creek Pass, Fort Wayne, IN 46804 (the "Lender"), agree that the December 15, 2006 Promissory Note ("Note") from Borrower to Lender, as amended on September 28, 2007, shall be amended as follows:

1. Paragraph 1(a) of the Note shall be amended to read in its entirety as follows:

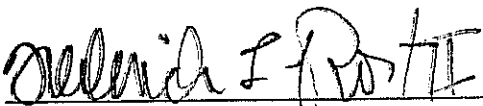
Borrower shall continue to make monthly payments of interest only in the amount of \$1,000.00 per month and continuing on the first day of each succeeding month through January 1, 2009. Borrower will establish an electronic funds transfer (EFT) between his bank and that of the Lender for the agreed monthly payments of interest. Commencing on January 1, 2009, and continuing the first day of each succeeding month thereafter through May 1, 2009, Borrower shall make equal principal payments of \$25,000.00; said principal payments shall be in addition to the monthly interest payments due hereunder. If not sooner paid, the entire balance of this Note, including all principal, interest, late charges, expenses and fees shall be due and owing on June 1, 2009.

Except as expressly stated herein, all of the terms and provisions of the Note shall remain unchanged and in full force and effect. If any term or provision of the Note shall conflict with this Second Amendment to Promissory Note, the terms of this Second Amendment to Promissory Note shall control.

IN WITNESS WHEREOF, Borrower and Lender have executed this Second Amendment to Promissory Note on the 17 day of October, 2008.



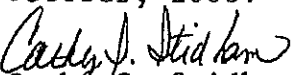
Matthew Kelty



Frederick L. Rost II

State of Indiana
Allen County

Matthew Kelty personally appeared before me this 17 day of October, 2008.


Cathy S. Stidham, Notary

