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FILED SARPY CO. NE.
INSTRUMENT NUMBER
2009-35093
2009 NOV -2 A 8:04 2

Glenn J. Gardner
REGISTER OF DEEDS

PREPARED BY AND WHEN RECORDED,
PLEASE RETURN TO:

H. Daniel Smith
Smith, Gardner, Slusky,
Lazer, Pohren & Rogers, LLP
8712 West Dodge Road
Suite 400
Omaha, NE 68114
(402) 392-0101
(402) 392-1011
dsmith@smithgardnerslusky.com

SECOND AMENDMENT TO LOAN AGREEMENT,
PROMISSORY NOTE AND
DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND
RENTS AND FIXTURE FILING STATEMENT

This Agreement is made and entered into this 1st day of September, 2009, by and between **SOUTHPORT WEST PARTNERS, LLC**, a Nebraska limited liability company, 14301 FNB Parkway, Suite 100, Omaha, NE 68154 (the "Borrower"), and **UNION BANK & TRUST COMPANY**, a Nebraska state banking corporation, and its successors and/or assigns its Commercial Real Estate Lending Division's principal lending office, 2720 South 177th Street, Omaha, Nebraska 68130, Attn: Samantha Mosser (the "Lender").

PRELIMINARY STATEMENT

WHEREAS, on the 17th day of August, 2004, the parties made and entered into certain Loan Documents as defined in the Loan Agreement ("Loan Agreement"), including but not limited to the Loan Agreement, Promissory Note, and a Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement (the "Mortgage") dated August 17, 2004 and recorded August 18, 2004, at Record 2004-31956 in the office of the Clerk of Sarpy County, Nebraska together with certain other agreements under which Lender was granted a first lien security interest in and to the Mortgaged Property as described in the Mortgage and as also described on the attached and incorporated Exhibit A hereto, the purpose of which was to secure the indebtedness of the Promissory Note in the face amount of Seventeen Million Five Hundred Thousand and No/100ths Dollars (\$17,500,000.00); and

NCS 416738

35093

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WHEREAS, on the 20th day of June, 2008, the parties made and entered into that certain First Amendment to Loan Agreement, Promissory Note and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement recorded on June 26, 2008, at 2008-18319 with the Sarpy County Register of Deeds pursuant to which the Lender agreed to the Requested Actions set forth therein.

WHEREAS, the Lender has agreed to consent to the following requested actions (the "**Requested Actions**"): Increase of the loan amount from \$4,720,108.00 to \$4,800,000.00; change the Note Rate to a floating rate resetting monthly to the Prime Rate plus 0.50% with a floor of 4.50% and a ceiling of 6.50%; and extension of the maturity date 36 months to September 1, 2012.

NOW THEREFORE, the parties agree:

ARTICLE 1 ACKNOWLEDGMENTS, WARRANTIES AND REPRESENTATIONS

As a material inducement to Lender to enter into this Agreement and to consent to the Requested Actions, Borrower acknowledges, warrants, represents and agrees to and with Lender as follows:

1.1 **Incorporation of Recitals.** All of the facts set forth in the Preliminary Statement of this Agreement are true and correct and incorporated into this Agreement by reference.

1.2 **Authority of Borrower.** Borrower is a duly organized and validly existing limited liability company in good standing under the laws of the State of Nebraska, and authorized to do business in Nebraska. The execution and delivery of, and performance under, this Agreement by Borrower has been duly and properly authorized pursuant to all requisite company action and will not (i) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower or the Articles of Organization or Operating Agreement or any other organizational document of Borrower or (ii) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which Borrower is a party or by which the Project may be bound or affected.

1.3 **Authority of Borrower Member Southport Ventures Partnership.** Borrower Member Southport Ventures Partnership (the "Borrower LLC Member") is a duly organized and validly existing general partnership in good standing under the laws of the State of Nebraska. Donald F. Dillon and Patrick J. Kerrigan, the ("Authorized Officers"), as the General Partners of Borrower LLC Member, acting together with Dean T. Hokanson, Jr., Dennis J. Hoth as Members and Managers, have the power and authority to execute this Agreement on behalf of and to duly bind Borrower under this Agreement. The execution and delivery of, and performance under, this Agreement by the Authorized Officers on behalf of Borrower LLC Member have been duly and properly authorized pursuant to all requisite corporate action and will not (i) violate any

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provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower LLC Member or the partnership agreement or any other organizational document of Borrower LLC Member or (ii) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which Borrower LLC Member is a party or by which the Project may be bound or affected.

1.4 **Compliance with Laws.** To Borrower's knowledge, all permits, licenses, franchises or other evidences of authority to use and operate the Project as it is presently being operated and as contemplated by the Loan Documents are current, valid and in full force and effect. Borrower has not received any written notice from any governmental entity claiming that Borrower or the Project is not presently in compliance with any laws, ordinances, rules and regulations bearing upon the use and operation of the Project, including, without limitation, any notice relating to any violations of zoning, building, environmental, fire, health, or other laws, ordinances, rules, codes or regulations.

1.5 **Title to Project and Legal Proceedings; Pledges of Equity in Borrower.** Borrower is the current owner of fee title in the Project. There are no pending or threatened suits, judgments, arbitration proceedings, administrative claims, executions or other legal or equitable actions or proceedings against Borrower or the Project, or any pending or threatened condemnation proceedings or annexation proceedings affecting the Project, or any agreements to convey any portion of the Project, or any rights thereto to any person, entity, or government body or agency not disclosed in this Agreement. The Project is not encumbered by any mortgage lien other than the lien created by the Loan Documents. The membership interests in Borrower are not encumbered by any mortgage, pledge, security interest or hypothecation.

1.6 **Loan Documents.** The Loan Documents constitute valid and legally binding obligations of Borrower enforceable against Borrower, as limited herein, and the Project in accordance with their terms. Borrower acknowledges and agrees that nothing contained in this Agreement, nor the Requested Actions, shall release or relieve Borrower from its obligations, agreements, duties, liabilities, covenants and undertakings under the Loan Documents arising prior to the date hereof. Borrower has no defenses, setoffs, claims, counterclaims or causes of action of any kind or nature whatsoever against Lender or any of Lender's predecessors in interest, and any subsidiary or affiliate of Lender and all of the past, present and future officers, directors, contractors, employees, agents, attorneys, representatives, participants, successors and assigns of Lender and Lender's predecessors in interest (collectively, "**Lender Parties**") or with respect to (i) the Loan, (ii) the Loan Documents, or (iii) the Project. To the extent Borrower would be deemed to have any such defenses, setoffs, claims, counterclaims or causes of action as of the date hereof, Borrower knowingly waives and relinquishes them.

1.7 **Bankruptcy.** Borrower has no intent to (i) file any voluntary petition under any Chapter of the Bankruptcy Code, Title 11, U.S.C.A. ("**Bankruptcy Code**"), or in any manner to seek any proceeding for relief, protection, reorganization, liquidation, dissolution or similar relief for debtors ("**Debtor Proceeding**") under any local, state, federal or other insolvency law or laws providing relief for debtors, (ii) directly or

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indirectly to cause any involuntary petition under any Chapter of the Bankruptcy Code to be filed against Borrower or any partners thereof or (iii) directly or indirectly to cause the Project or any portion or any interest of Borrower in the Project to become the property of any bankrupt estate or the subject of any Debtor Proceeding.

1.8 **No Default.** To Borrower's knowledge, no event, fact or circumstance has occurred or failed to occur which constitutes, or with the lapse or passage of time, giving of notice or both, could constitute a default or Event of Default under the Loan Documents.

1.9 **Reaffirmation.** Borrower reaffirms and confirms the truth and accuracy of all representations and warranties set forth in the Loan Documents, in all material respects, as if made on the date hereof.

ARTICLE 2 ADDITIONAL PROVISIONS

2.1 **Consent of Lender.** Subject to the terms of this Agreement, Lender hereby consents to the Requested Actions, as follows:

(a) **Amendment to the Note.** The Promissory Note is amended as follows:

- 1) To state that the principal amount of the Promissory Note shall be Four Million Eight Hundred Thousand and No/100ths Dollars (\$4,800,000.00).
- 2) To change the Note Rate to a floating rate that resets on the first day of each month to, per annum, the Prime Rate plus 0.50%. In no event shall the Note Rate be below 4.50% or above 6.50%.
- 1) To extend the "Maturity Date" to September 1, 2012.

All other provisions of the Promissory Note are ratified and confirmed hereby and shall remain in full force and effect.

(b) **Amendment to the Loan Agreement.** The Loan Agreement is hereby amended as follows:

- 1) In the "Definitions" section the definition of "Note" is amended to: "The Promissory Note, of even date herewith, executed and delivered by Borrower to Lender in the maximum principal amount of up to Four Million Eight Hundred Thousand and No/100ths Dollars (\$4,800,000.00), to evidence the Loan, as the same may be amended, modified or replaced from time to time."
- 2) In the "Definitions" section the definition of "Maturity Date" is amended to September 1, 2012.

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All other provisions of the Loan Agreement are ratified and confirmed hereby and shall remain in full force and effect.

(c) **Amendment to the Mortgage.** The Mortgage is hereby amended as follows:

- 1) All references to the loan amount are amended to Four Million Eight Hundred Thousand and No/100ths Dollars (\$4,800,000.00).
- 2) All references to "Maturity Date" are amended to September 1, 2012.

All other provisions of the Mortgage are ratified and confirmed hereby and shall remain in full force and effect.

2.2 **No Consent To Other Modifications.** Borrower agrees that this Agreement shall not be deemed an agreement by Lender to consent to any other modification of the Loan Documents, or a consent to any additional financing, secondary financing or secondary encumbrance on the Project, or financing of any kind on any future phases of the Project or any other project.

2.3 **References to Loan Documents.** All references to the term Loan Documents in the Mortgage and the other Loan Documents shall hereinafter be modified to include this Agreement and all documents executed and/or required in connection with the Requested Actions.

2.4 **Filing for Record.** This document may be filed for record in Sarpy County, State of Nebraska by Lender.

ARTICLE 3 MISCELLANEOUS PROVISIONS

3.1 **Defined Terms.** All capitalized or defined terms shall have the meaning as set forth in the Loan Agreement unless the context of this Agreement clearly requires otherwise.

3.2 **No Limitation of Remedies.** No right, power or remedy conferred upon or reserved to or by Lender in this Agreement is intended to be exclusive of any other right, power or remedy conferred upon or reserved to or by Lender under this Agreement, the Loan Documents or at law, but each and every remedy shall be cumulative and concurrent, and shall be in addition to each and every other right, power and remedy given under this Agreement, the Loan Documents or now or subsequently existing at law.

3.3 **No Waivers.** Except as otherwise expressly set forth in this Agreement, nothing contained in this Agreement shall constitute a waiver of any rights or remedies of Lender under the Loan Documents or at law. No delay or failure on the part of any party hereto in the exercise of any right or remedy under this Agreement shall operate as a waiver, and no single or partial exercise of any right or remedy shall preclude other or

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further exercise thereof or the exercise of any other right or remedy. No action or forbearance by any party hereto contrary to the provisions of this Agreement shall be construed to constitute a waiver of any of the express provisions. Any party hereto may in writing expressly waive any of such party's rights under this Agreement without invalidating this Agreement.

3.4 **Successors or Assigns.** Whenever any party is named or referred to in this Agreement, the heirs, executors, legal representatives, successors, successors-in-title and assigns of such party shall be included. All covenants and agreements in this Agreement shall bind and inure to the benefit of the heirs, executors, legal representatives, successors, successors-in-title and assigns of the parties, whether so expressed or not.

3.5 **Construction of Agreement.** Each party hereto acknowledges that it has participated in the negotiation of this Agreement and no provision shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. Borrower at all times has had access to an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement and has had the opportunity to review and analyze this Agreement for a sufficient period of time prior to execution and delivery. No representations or warranties have been made by or on behalf of Lender, or relied upon by Borrower pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. All prior statements, representations and warranties relating to this Agreement and its subject matter, if any, are totally superseded and merged into this Agreement, which represent the final and sole agreement of the parties with respect to the subject matter. All of the terms of this Agreement were negotiated at arm's length, and this Agreement was prepared and executed without fraud, duress, undue influence or coercion of any kind exerted by any of the parties upon the others. The execution and delivery of this Agreement is the free and voluntary act of Borrower.

3.6 **Fees and Costs of Lender.** Borrower agrees to pay all fees and costs incurred by Lender in connection with this Agreement, including, without limitation, reasonable attorney's fees, title premiums, recording costs, escrow fees, mortgage or deed tax, and inspection or survey costs.

3.7 **Invalid Provision to Affect No Others.** If, from any circumstances whatsoever, fulfillment of any provision of this Agreement or any related transaction at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity. If any clause or provision operates or would prospectively operate to invalidate this Agreement, in whole or in part, then such clause or provision only shall be deemed deleted, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

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3.8 **Notices.** Except as otherwise specifically provided to the contrary, any and all notices, elections, approvals, consents, demands, requests and responses ("Notices") permitted or required to be given under this Agreement and the Loan Documents shall not be effective unless in writing, signed by or on behalf of the party giving the same, and sent by certified or registered mail, postage prepaid, return receipt requested, or by hand delivery or overnight courier service (such as Federal Express), to the party to be notified at the address of such party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance with this Section. Any Notices shall be effective upon the date sent in the manner indicated in this Section. Notices shall be deemed effective and received notwithstanding that attempted delivery is refused or rejected, the date of rejection shall be deemed the date of receipt. Notices must be addressed as follows, subject to change as provided above:

If to Borrower: Southport West Partners, LLC
14301 FNB Parkway, Suite 100
Omaha, NE 68154
Attn: Dean T. Hokanson, Jr.

with copy to: Rasmussen & Mitchell
1005 S. 107th Avenue
Suite 101
Omaha NE 68114
Attn: Wayne Rasmussen

If to Lender: Union Bank & Trust Company
2720 South 177th Street
Omaha, NE 68130
Attn: Samantha Mosser

with copy to: Smith, Gardner, Slusky,
Lazer, Pohren & Rogers, LLP
8712 West Dodge Road
Suite 400
Omaha, NE 68114
Attn: H. Daniel Smith

3.9 **Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Nebraska.

3.10 **Headings; Exhibits.** The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part of this Agreement and shall not be used to construe, limit or otherwise affect this Agreement.

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3.11 **Modifications.** The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the Party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted. Lender's consent to the Requested Actions shall not be deemed to constitute Lender's consent to any provisions of the organizational documents that would be in violation of the terms and conditions of any of the Loan Documents.

3.12 **Time of Essence; Consents.** Time is of the essence of this Agreement and the Loan Documents. Any provisions for consents or approvals in this Agreement shall mean that such consents or approvals shall not be effective unless in writing and executed by Lender.

3.13 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

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

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

H

LENDER:

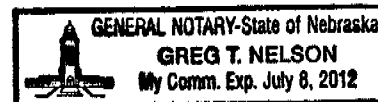
UNION BANK & TRUST COMPANY, a Nebraska
state banking corporation:

By *Samantha Mosser*
Samantha Mosser, Vice President

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS) ss.

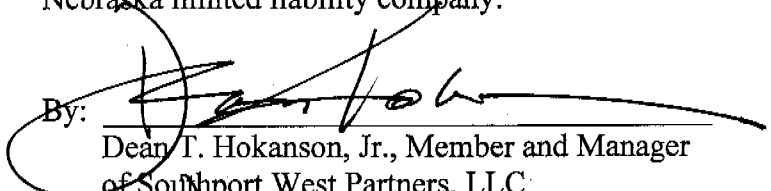
The foregoing instrument was acknowledged before me this 11th day of September, 2009, by Samantha Mosser, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the entity upon behalf of which she acted, executed the instrument. She is the Vice President of Union Bank & Trust Company, a Nebraska state banking corporation, for and on behalf of said Union Bank & Trust Company, and she acknowledged, signed and delivered the instrument as her free and voluntary act, for the uses and purposes therein set forth.

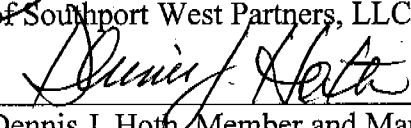
Greg T. Nelson
Notary Public



V

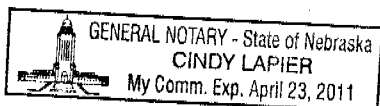
SOUTHPORT WEST PARTNERS, LLC, a
Nebraska limited liability company:

By: 
Dean T. Hokanson, Jr., Member and Manager
of Southport West Partners, LLC

By: 
Dennis J. Hoth, Member and Manager of
Southport West Partners, LLC

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

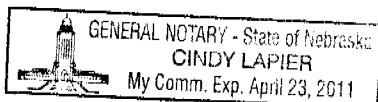
The foregoing instrument was acknowledged before me this 10 day of September, 2009, by Dean T. Hokanson, Jr., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the Member and Manager of Southport West Partners, LLC, for and on behalf of said Southport West Partners, LLC, and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.




Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 10 day of September, 2009, by Dennis J. Hoth, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the Member and Manager of Southport West Partners, LLC, for and on behalf of said Southport West Partners, LLC, and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.




Notary Public

7

By: SOUTHPORT VENTURES PARTNERSHIP,
Member of Southport West Partners, LLC:

By:

Donald F. Dillon

Donald F. Dillon, General Partner of
Southport Ventures Partnership

By:

Patrick J. Kerrigan

Patrick J. Kerrigan, General Partner of
Southport Ventures Partnership

STATE OF NEBRASKA

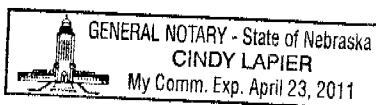
)

) ss.

COUNTY OF DOUGLAS

)

The foregoing instrument was acknowledged before me this 10 day of September, 2009, by Donald F. Dillon, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the General Partner of Southport Ventures Partnership, which in turn is the Member of Southport West Partners, LLC, for and on behalf of said Southport West Partners, LLC, and Southport Ventures Partnership, and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.



Cindy Lapiere
Notary Public

STATE OF NEBRASKA

)

) ss.

COUNTY OF DOUGLAS

)

The foregoing instrument was acknowledged before me this 10 day of September, 2009, by Patrick J. Kerrigan, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the

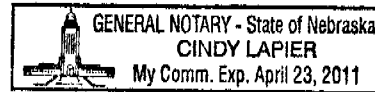
Signature page to
Second Amendment to Loan Documents
Southport West Partners, LLC - \$2,500,000

K

General Partner of Southport Ventures Partnership, which in turn is the Member of Southport West Partners, LLC, for and on behalf of said Southport West Partners, LLC, and Southport Ventures Partnership, and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.



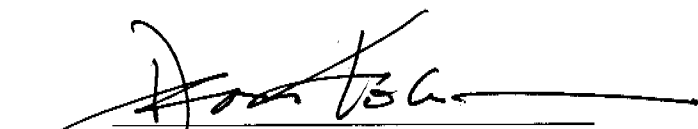
Notary Public



L

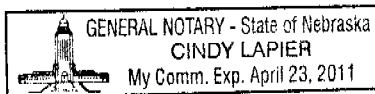
CONSENT OF GUARANTORS


The undersigned Guarantors of the Loan described herein do hereby represent and warrant that all of the facts set forth in the Preliminary Statement of this Agreement are true and correct, and request of the Lender that it agree to the Requested Action, and further consent to the above and foregoing Agreement.


Dean T. Hokanson, Jr., Individually

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS) ss.

The foregoing instrument was acknowledged before me, a Notary Public, this 10 day of September, 2009, by Dean T. Hokanson, Jr., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same and acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.




Notary Public

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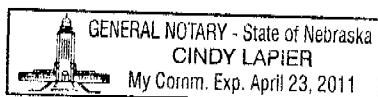
Donald F. Dillon

Donald F. Dillon, Individually

STATE OF NEBRASKA)
COUNTY OF LANCASTER)

ss.

The foregoing instrument was acknowledged before me, a Notary Public, this 10 day of September, 2009, by Donald F. Dillon, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same and acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.



Cindy Lapiere
Notary Public

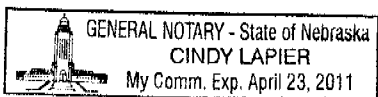
N

Dennis J. Hoth

Dennis J. Hoth, Individually

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS) ss.

The foregoing instrument was acknowledged before me, a Notary Public, this 10 day of September, 2009, by Dennis J. Hoth, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same and acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.



Cindy Lapiere

Notary Public

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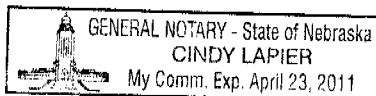
Patrick J. Kerrigan
Patrick J. Kerrigan, Individually

STATE OF FLORIDA)

) ss.

COUNTY OF)

The foregoing instrument was acknowledged before me, a Notary Public, this 10 day of September, 2009, by Patrick J. Kerrigan, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same and acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.



Cindy Lapiere
Notary Public

2009-35093P

EXHIBIT A
Mortgaged Property

Lots 4 and 15, Southport West, an Addition to the City of LaVista, in Sarpy County, Nebraska; and Lot 1, Southport West Replat Four, an Addition to the City of LaVista, in Sarpy County, Nebraska.

Exhibit page to
Second Amendment to Loan Documents
Southport West Partners, LLC - \$2,500,000