

MODIFICATION AGREEMENT

This Loan Modification Agreement ("Agreement") is made as of April 3, 2009, by and between [REDACTED] & [REDACTED] ("Borrower") and IndyMac Bank, FSB ("Lender").

INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK, formerly known as INDYMAC MORTGAGE HOLDINGS, INC, A DELAWARE CORPORATION ("Lender").

The terms of this Agreement preceded by a " " are part of this Agreement only if the box is checked.

FACTUAL BACKGROUND

CLOSED-END LOAN

A. On March 9, 2007, Lender made a loan ("Loan") to Borrower.

B. The Loan is evidenced by a note dated March 9, 2007, ("Note"), made payable to Lender in the stated principal amount of Four Hundred Eleven Thousand Dollars And No Cents (U.S. \$411,000.00). The Note is secured by a Deed of Trust, Mortgage, or Security Deed dated March 9, 2007, ("Security Instrument"), executed by the Borrower. The Security Instrument was recorded on March 16, 2007, in Book n/a, Page n/a, or as Document Number 2007-0179716, of the Official Records of San Diego County, State of California. The Security Instrument encumbers certain property located in San Diego County, State of California, as more particularly described in Exhibit "A" attached hereto ("Property"). The street address of the Property is as follows:

[REDACTED]
San Diego, CA 92114

Borrower is in default on the Loan. The default consists of:

Nonpayment of:

<input checked="" type="checkbox"/>	Past due payments:	<u>\$8,496.39</u>
<input checked="" type="checkbox"/>	Late charges:	<u>\$311.74</u>
<input checked="" type="checkbox"/>	Taxes:	<u>\$82.13</u>
<input type="checkbox"/>	Other (specify):	<u>\$0.00</u>
TOTAL AMOUNT IN DEFAULT		<u>\$8,890.26</u>

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Other defaults:

- Borrower did not keep required insurance in force
- Borrower rented the Property to someone who is not a "Borrower" on the Security Instrument
- a lien has been put on the Property without Lender's permission
- the Property is being used for a business purpose
- the Property no longer is the principal residence of someone who is a "Borrower" on the Security Instrument

C. Under the terms of the Loan, there remains unpaid as of the date of this Agreement the sum of *Four Hundred One Thousand Seven Dollars And Four Cents* (U.S. \$401,007.04) principal, which does not include accrued interest, late charges, collection costs, advances made by the Lender, and interest on such advances, which Borrower owes Lender.

D. Capitalized terms used here without definition have the meanings given to them in the Note and in the Security Instrument. In this Agreement, notwithstanding any other definition, the term "Loan Documents" means the Note, the Security Instrument, this Agreement and the documents evidencing any other indebtedness of Borrower to Lender, the related obligations of performance and the security for such indebtedness and performance, as any or all of them may have been amended to date.

E. Borrower and Lender now wish to modify the Loan Documents.

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Agreement

Therefore, Borrower and Lender, with the intent to be legally bound, agree as follows:

1. Truth and Accuracy of Recitals: Acknowledgment of Indebtedness. The Borrower acknowledges the truth and accuracy of the recitals set forth above in the Factual Background and that Borrower is liable and indebted to Lender for the principal amount set forth above together with interest thereon at the rate specified in the Note or Credit Agreement, as the case may be, and all other fees, charges and expenses accrued and unpaid under the Loan Documents ("Indebtedness"). Borrower acknowledges that:

- (i) Borrower has no defense, counterclaim, offset, cross-complaint, claim or demand of any kind or nature whatsoever to reduce or eliminate all or any part of Borrower's liability to repay the Indebtedness which is due, owing and unpaid;
- (ii) nothing but full and complete performance of all of Borrower's obligations in the payment of Borrower's Indebtedness shall satisfy and discharge Borrower's liability to Lender, and
- (iii) the Loan Documents are in full force and effect, are duly executed and delivered to Lender and constitute valid, binding agreements and obligations, are enforceable in accordance with their terms, and are hereby reaffirmed.

Borrower hereby irrevocably waives and relinquishes all rights, if any, to directly or indirectly challenge, attack or dispute the Loan Documents, Lender's lien on the Property, the Indebtedness, or any actions of Lender taken or omitted to be taken in connection therewith. Borrower further acknowledges that, notwithstanding Lender's willingness to enter into this Agreement, Lender has made no representations regarding, and shall have no obligation to make, any further modifications to the Loan Documents.

2. Release of Claims. Borrower acknowledges that Borrower does not have any claims, demands, actions, causes of action, suits and/or cross-complaints which could be asserted against Lender, its officers, representatives, agents, attorneys, employees, subsidiaries, parents, affiliates or their successors and assigns. Except for any breach of this Agreement by Lender, and to the extent that any such claim, which Borrower represents and warrants, has not been assigned may exist as the date hereof, Borrower, and on behalf of Borrower's heirs, estates, successors and assigns, hereby forever irrevocably releases Lender, its officers, representatives, agents, attorneys, employees, subsidiaries, parents, affiliates and their successors and assigns from any and all claims, demands, suits, causes of action, cross-complaints, assertions, liabilities or debts of any nature whatsoever, whether known or unknown, absolute or contingent, presently existing or hereafter discovered, pertaining to, connected with or arising out of the transactions so described in this Agreement, including, without limitation, any delay in initial funding of the transaction, any relationship between Lender and Borrower, any verbal or written loan agreement, or other commitment, or any document, instrument or agreement entered into in connection herewith or referred to herein, including, without limitation, the Loan Documents.

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3. Modification of Loan Documents. The Loan Documents are hereby amended as follows: (if a box below is checked, the page must be initialed by the Borrower for it to apply to this Agreement.)

(a) Term to Maturity Extension and Curtailment.

(1) Closed-End Loan.

This Modification Agreement modifies the Loan Documents to change the Maturity Date from *Original Maturity Date* to *New Maturity Date*.

(b) Outstanding Balance Modified

(1) Closed-End Loan.

(A) Principal Increased.

The Loan Documents are modified to increase the principal amount of the Loan by the amounts of Borrower's arrears on the Loan in the amount of *Eight Thousand Six Hundred Seventy Four Dollars And Sixty One Cents* (U.S. \$8,674.51), including past due interest in the amount of *Eight Thousand Six Hundred Seventy Four Dollars And Sixty One Cents* (U.S. \$8,674.51). The new principal amount of the Loan is *Four Hundred Nine Thousand Six Hundred Eighty One Dollars And Sixty Five Cents* (U.S. \$409,681.65).

(B) Principal Reduced.

The Loan Documents are modified to reduce the outstanding balance of the Loan to take into account:

(i) Principal Prepayment.

Borrower's partial prepayment of principal of *Principal Prepayment Amount Text* (U.S. \$ *Principal Prepayment Amount Numeric*). The new principal amount of the Loan is *New Principal Amount Text* (U.S. \$ *New Principal Amount Numeric*).

(ii) Principal Forgiveness

Lender's Forgiveness of principal of *Principal Forgiveness Amount Text* (U.S. \$ *Principal Forgiveness Amount Numeric*). The new principal amount of the Loan is *New Principal Forgiveness Amount Text* (U.S. \$ *New Principal Amount Numeric*).

(C) Limit on Unpaid Principal Increased.

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The Loan Documents are modified to increase the maximum unpaid principal amount of the Loan from *Current Cap Amount Text* () to *New Cap Amount Text* ().

(c) Interest Rate Modified

The Loan Documents are modified to change the rate of interest stated in the Note or the Credit Agreement as the case may be.

(1) Adjustable Rate Mortgage.

(A) Change Date.

The Loan Documents are modified to change the Change Date from *Change Date* to *New Change Date*.

(B) Index.

(i) New Index.

The Loan Documents are modified to change the Index from *Current Index* to *New Index 1*.

(ii) New Index Step 1.

Beginning *New Index 2 Start Date*, the Loan Documents are modified to change the Index from *New Index 1* to *New Index 2*.

(iii) New Index Step 2.

Beginning *New Index 3 Start Date*, the Loan Documents are modified to change the Index from *New Index 2* to *New Index 3*.

(C) Margin.

(i) New Margin.

The Loan Documents are modified to change the Margin from *Current Margin* to *New Margin 1*.

(ii) New Margin Step 1.

Beginning *Change Date*, the Loan Documents are modified to change the Margin from *Current Margin* to *New Margin*.

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(iii) New Margin Step 2.

Beginning Current Margin Step 2, the Loan Documents are modified to change the Margin from New Margin to Current Margin.

(D) Limits on Adjustments.

(i) Lifetime Cap.

The Loan Documents are modified to change the Lifetime Cap from Current Lifetime Cap to New Lifetime Cap.

(ii) Annual or Semi-Annual Caps.

The Loan Documents are modified to change the annual or semi-annual cap from Current Periodic Cap to New Periodic Cap.

(iii) Annual or Semi-Annual Floors.

The Loan Documents are modified to change the annual or semi-annual floor from Current Periodic Floor to New Periodic Floor.

(2) Fixed Rate Mortgage.

(A) New Interest Rate.

The rate of interest stated in the Note is changed from Current Interest Rate to New Interest Rate.

(B) New Step Interest Rate 1.

On May 1, 2009 the rate of interest stated in the Note is changed from 6.5000% to 4.0000%.

(C) New Step Interest Rate 2.

On May 1, 2012 the rate of interest stated in the Note is changed from 4.0000% to 5.0000%.

(d) Monthly Payment Modified

(1) Due Date Changed.

The Loan Documents are modified to change the monthly payment due date from May 1, 2007 to June 1, 2009.

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- (2) Billing Cycle Changed

The Loan Documents are modified to change the first day of the Billing Cycle from the *Original Monthly Billing Cycle Begin Date* to *New Monthly Billing Cycle Begin Date*.

- (3) Monthly Payment Amount

- (C) Closed-End Loan Payment Schedule

The Payment Schedule as of the *3rd* day of *April* *2008*, is modified and restated, a copy of which is annexed hereto and incorporated herein as if fully set forth.

- (4) Balloon Payment Amount

The Loan Documents are modified to change the amount of the final monthly payment to *Balloon Payment Amount*.

- (e) Prepayment Penalty

- (1) Prepayment Penalty Added

The Note is modified and restated to incorporate the Prepayment Addendum to Note attached hereto.

- (2) Prepayment Penalty Deleted

The Note or Credit Agreement, as the case may be is modified and restated to delete the Prepayment Penalty stated therein.

- (f) Restated Note

The Note is modified and restated by the terms of this Agreement, as of the *3rd* day of *April*, *2008*, and incorporated herein as if fully set forth.

- (g) Security Instrument Modified

- (1) Cross-Collateral Agreement

The Security Instrument secures to Lender (i) the repayment of the debt evidenced by the Note, and all renewals, extensions, and modifications of the Note or the Credit Agreement as the case may be, (ii) the performance of all of Borrower's covenants and agreements under the Loan Documents, (iii) payment of any and all other existing and future indebtedness of Borrower, and the performance of any and all of Borrower's other covenants and agreements existing or arising under the loans identified on Schedule 1, annexed hereto, and (iv) the payment of all other existing and future indebtedness, and the performance of all of Borrower's other covenants and agreements with Lender, however evidenced.

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In case of breach by Borrower of any covenant or condition of any Loan Document, subject to any right of Borrower to cure Borrower's default, Lender, at Lender's option, with or without entry upon the Property (i) may invoke any of the rights or remedies provided in any Loan Document, (ii) may accelerate the sums secured by the Security Instrument and invoke any of the remedies provided in the Security Instrument, or (iii) may do both.

(2) Security Agreement Ratified

The Security Instrument is modified to secure payment and performance of the Loan or Credit Agreement, as the case maybe, as amended to date, in addition to all other secured obligations as therein defined.

4. Conditions Precedent. Before this Agreement becomes effective and any party becomes obligated under it, all of the following conditions shall have been satisfied at Borrower's sole cost and expense in a manner acceptable to Lender in the exercise of Lender's sole judgment:

(a) Lender shall have received such assurance as Lender may require that the validity and priority of the Security Instrument has not been and will not be impaired by this Agreement or the transactions contemplated by it.

(b) Lender shall have received fully executed and, where appropriate, acknowledged originals of this Modification Agreement and any other documents which Lender may require or request in accordance with this Agreement or the other Loan Documents.

(c) This Agreement shall have been recorded in the Official Records of the County of San Diego County, State of California, in addition to all other documents which Lender may require to be recorded.

(d) Lender shall have received a modification fee in the amount of Zero Dollars *And No Cents* (U.S. \$0.00) in immediately available funds.

(e) Lender shall have received reimbursement, in immediately available funds, of all costs and expenses incurred by Lender in connection with this Agreement, including charges for title insurance (including endorsements), recording, filing and escrow charges, fees for appraisal, and environmental services, mortgage taxes, and legal fees and expenses of Lender's counsel, which Lender may incur in connection with this Agreement up to and including the time when this Agreement is recorded.

5. Borrower's Representation and Warranties. Borrower represents and warrants to Lender as follows:

(a) Loan Documents. All representations and warranties made and given by Borrower in the Loan Documents are true, accurate and correct.

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(b) No Default. No Event of Default has occurred and is continuing, and no event has occurred and is continuing which, with notice or the passage of time or both, would be an Event of Default.

(c) Property. Borrower lawfully possesses and holds fee simple title to all of the Property which is real property, and the Security Instrument is a first and prior lien on that property. Borrower owns all of the Property which is personal property free and clear of any reservations of title and conditional sales contracts, and also of any security interests other than the Security Instrument, which is a first and prior second lien on such property. There is no financing statement affecting any Property on file in any public office except for financing statements in favor of Lender.

6. Incorporation. This Agreement shall form a part of each Loan Document, and all references to a given Loan Document shall mean that document as hereby modified.

7. No Prejudice: Reservation of Rights. This Agreement shall not prejudice any rights or remedies of Lender under the Loan Documents. Lender reserves, without limitation, all rights which it has against any indemnitor, grantor, or endorser of the Note.

8. No Impairment. Except as specifically hereby amended, the Loan Documents shall each remain unaffected by this Agreement and all such documents shall remain in full force and effect. Nothing in this Agreement shall impair the lien of the Security Instrument.

9. Purpose and Effect of Lender's Approval. Lender's approval of any matter in connection with the Loan shall be for the sole purpose of protecting Lender's security and rights. No such approval shall result in a waiver of any default of Borrower. In no event shall Lender's approval be representation of any kind with regard to the matter being approved.

10. Disclosure to Title Company. Without notice to or the consent of Borrower, Lender may disclose to any title insurance company which insures any interest of Lender under the Security Instrument (whether as primary insurer, coinsurer or reinsurer) any information, data or material in Lender's possession relating to Borrower, the Loan, the Line of Credit or the Property.

11. Integration. The Loan Documents, including this Agreement: (a) integrate all the terms and conditions mentioned in or incidental to the Loan Documents; (b) supersede all oral negotiations and prior and other writings with respect to their subject matter; and (c) are intended by the parties as the final expression of the agreement with respect to the terms and conditions set forth in those documents and as the complete and exclusive statement of the terms agreed to by the parties. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other agreement or instrument, including any of the other Loan Documents, the terms, conditions and provisions of this Agreement shall prevail.

12. Miscellaneous. This Agreement and any attached consents or exhibits requiring signatures may be executed in counterparts, and all counterparts shall constitute but one and the same document. If any court of competent jurisdiction determines any provision of this Agreement or any of the other Loan Documents to be invalid, illegal or unenforceable, that portion shall be deemed severed from the rest, which shall remain in full force and effect as though the invalid, illegal or unenforceable portion had never been a part of the Loan Documents. This Agreement shall be

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