

ILLINOIS

Permanent Tax Index Number:

13-27-402-007-0000, 13-27-402-025-0000
13-27-402-035-0000, 13-27-402-043-0000

Property Address:

2701 N. Kilbuck
Chicago, IL 60639

MODIFICATION OF LOAN DOCUMENTS

84 50 36 31011
THIS MODIFICATION OF LOAN DOCUMENTS (this "Modification") is made as of the 6th day of June, 2014 by and among, INDY HOMEBUY LLC, an Illinois limited liability company and Daryoush Chaim Kohanchi (collectively the "Borrower"), and Albany Bank and Trust Company, N.A., not personally but as Trustee under Trust Agreement dated March 13, 2000 and known as Trust Number 11-5627 (the "Mortgagor") and ALBANY BANK AND TRUST COMPANY, N.A., a national banking association, its successors and assigns ("Bank").

RECITALS

A. Bank has heretofore made a revolving line of credit loan ("Loan") to Borrower in the original principal amount of One Million and 00/100 Dollars (\$1,000,000.00) (US) as evidenced by a Demand Note dated November 6, 2008, in the principal amount of the Loan made payable by Borrower to the order of Bank ("Note").

B. The Note is secured by, among other things, (i) that certain Hypothecation Agreement dated November 6, 2008 ("Hypothecation") and Security Agreement to Pledge dated November 6, 2008 ("Security Pledge") granting as collateral security on Property as evidenced by a certain Mortgage dated November 6, 2008 from Mortgagor to Bank recorded with the Recorder of Deeds in COOK County, Illinois (the "Recorder's Office") on November 19, 2008, as Document No. 0832433023 ("Mortgage"), which mortgage encumbers the real property and

**THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:**

ALBANY BANK AND TRUST COMPANY, N.A.
3400 W. Lawrence Avenue
Chicago, Illinois 60625
Attn: Loan Operations Department

UNOFFICIAL COPY

all improvements thereon legally described on Exhibit A hereto (“Property”), (ii) that certain Security Agreement dated June 6, 2014 granting collateral on business assets of Borrower to Bank (“Security Agreement”), which Security Agreement will be executed in conjunction with this Modification, as further described below and (iii) certain other loan documents (the Note, the Mortgage, Security Pledge, Security Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the “Loan Documents”).

C. Borrower desires to amend the Loan Documents in order to request Bank to change the Borrower under the Note from “Indy Home Investments Business LLC, an Indiana limited liability company” to “INDY HOMEBUY LLC, an Illinois limited liability and Daryoush Chaim Kohanchi” as if INDY HOMEBUY LLC, an Illinois limited liability and Daryoush Chaim Kohanchi had originally executed such documents, covenants and agrees to pay, perform and observe all of the indebtedness, liabilities and obligations (including, without limitation, all covenants, agreements and undertakings) of the Note and Related Documents and Bank is willing to consent to such changes subject to the terms and provisions hereinafter provided, with all other terms and conditions remaining the same and in full force.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove, (ii) the agreements by Bank to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation and Definitions.** The foregoing recitals and all exhibits and schedules hereto constitute an integral part of this Modification, evidencing the intent of the parties in executing this Modification and describing the circumstances surrounding its execution. Accordingly, the recitals, exhibits and schedules are, by this express reference, made a part of the covenants hereof, and this Modification shall be construed in the light thereof. The capitalized terms not otherwise defined herein shall have the meanings provided in the Loan Documents.

2. **Loan Amount.** As of the date hereof, the current outstanding principal balance of the Note is \$82,934.29. Any reference in the Note or any other Loan Documents to the outstanding principal balance amount as of the date of this Modification shall mean \$82,934.29.

UNOFFICIAL COPY

3. The first paragraph of the Note commencing "ON DEMAND" is hereby deleted in its entirety and restated to read as follows:

"ON DEMAND, the undersigned, the heirs and assigns, for value received, promises to pay to the order of ALBANY BANK AND TRUST COMPANY N.A., 3400 W. LAWRENCE AVENUE, CHICAGO, IL 60625, (hereinafter, together with any holder hereof, called the "Bank"), at its office in Chicago, Illinois, the principal amount of **ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) (U.S.)** (or if less, so much thereof as shall be disbursed and outstanding from time to time) (**the "Loan"**), together with interest from the date of disbursement on the balance of principal remaining from time to time, unpaid calculated at the stated rate of **Prime, floating** (the "Interest Rate") until paid in full, with regular monthly payments of all accrued unpaid interest due, commencing July 6, 2014, with all subsequent interest payments to be due on same date of each month thereafter. The interest rate for this Note includes the term "P" or "Prime", such term shall mean the Prime rate of interest quoted from time to time by The Wall Street Journal. The Prime Rate is currently at 3.25% and said rate shall fluctuate when and as said prime rate fluctuates. The Bank is not obligated to give notice of such fluctuations. **Notwithstanding the foregoing, the applicable interest rate under the Note shall never be less than 4.00%, resulting in an initial rate of 4.00%.** Interest on this Note shall be calculated on the basis of a 360-day year and the actual number of days elapsed in any portion of a month in which interest is due. Borrower hereby acknowledges and agrees that the use of a 360-day year in the calculation of the interest hereunder will result in a greater effective rate of interest than the stated rate set forth above. Borrower hereby waives any and all counter claims, defenses, causes of action, arguments or other claims it may have against Bank in connection with or in any way related to the calculation of interest based upon a 360-day year."

4. The Note is further amended to include the following paragraphs:

4.1 **Revolving Line of Credit.** This Note evidences a revolving line of credit.

4.2 **Late Charge.** A late charge of 5% of each payment due hereunder will be assessed for any payment made more than fifteen (15) days after its due date.

4.3 **Interest After Default.** The principal of each of said payment unless paid when due shall bear interest upon final maturity at the higher of the stated Interest Rate + 4.00% or Prime Rate + 4.00%. Said payments are to be made at Albany Bank and Trust Company, N.A. in Chicago, Illinois or at such place as the Bank may, from time to time designate in writing. In the event of a default by Borrower under any of the terms, conditions or provisions of the Note,

UNOFFICIAL COPY

or the other Loan Documents securing the Note, the remaining principal shall bear interest at the higher of the stated Interest Rate + 4.00% or Prime Rate + 4.00%. The term "P" or "Prime", shall mean the Prime rate of interest quoted from time to time by The Wall Street Journal. The Prime Rate is currently at 3.25% and said rate shall fluctuate when and as said prime rate fluctuates. The Bank is not obligated to give notice of such fluctuations.

5. **Event of Default.** The Note and the other Loan Documents are hereby amended by adding the following additional event of default:

5.1 The Bank in good faith believes itself insecure.

6. **Modification to Mortgage.** The Mortgage is hereby amended as follows:

6.1 The third paragraph on page 2 of the Mortgage commencing "This instrument" is hereby deleted in its entirety and restated to read as follows:

"This instrument is given to secure the payment of a Demand Note date November 6, 2008 in the principal amount of **ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) (U.S.)** executed by Borrower and made payable by Borrower to the order of Bank, together with all renewals, extensions, modifications, refinancings, consolidations, and substitutions for the Note or agreement thereof."

7. **Not a Novation.** This Modification amends and renews the debt previously evidenced by, that certain Note made by Borrower in favor of Bank, and is not a repayment or novation thereof. Upon the execution of this Modification by Borrower, all indebtedness outstanding under the Note, shall be deemed to be outstanding under this Modification.

8. Concurrent with the execution of this Modification Borrower, shall execute and deliver to Bank a Security Agreement dated same date hereof (the "**Security Agreement**") evidencing a security interest on all business assets of the Borrower, in such form as Bank shall require, and all references in the Loan Documents to the loan documents securing this Modification shall hereafter include the Security Agreement, as may reference in this Modification.

9. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Bank as follows:

(a) The representations and warranties in the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no default or event of default under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or

UNOFFICIAL COPY

circumstance which with the giving of notice or passing of time, or both, would constitute a default or an event of default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Modification, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Bank in connection with the Loan from the date of the most recent financial statement received by Bank.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Each Borrower that is not a natural person validly exists under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Modification and to perform the Loan Documents as modified herein. The execution and delivery of this Modification and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Modification has been duly executed and delivered on behalf of Borrower.

(g) To the best of Borrowers' and Guarantors' knowledge, the Borrowers and Guarantors warrants it is not a Forbidden Entity. For purposes hereof, a "Forbidden Entity" is any of the following:

(1) The government of the Republic of the Sudan and any of its agencies, including but not limited to political units and subdivisions;

(2) Any company that is wholly or partially managed or controlled by the government of the Republic of the Sudan and any of its agencies, including but not limited to political units and subdivisions;

(3) Any company (i) that is established or organized under the laws of the Republic of the Sudan; or (ii) whose principal place of business is in the Republic of the Sudan;

(4) Any company (i) identified by the Office of Foreign Assets Control in the United States Department of the Treasury as sponsoring terrorist activities; or (ii) fined, penalized, or sanctioned by the Office of Foreign Assets Control in the United States Department of the Treasury for any violation of any United States

UNOFFICIAL COPY

rules and restrictions relating to the Republic of the Sudan that occurred at any time following the effective date of this Act; and

(5) Any company who has failed to certify under oath that it does not own or control any property or asset located in, have employees or facilities located in, provide goods or services to, obtain goods or services from, have distribution agreements with, issue credits or loans to, purchase bonds or commercial paper issued by, or invest in (i) the Republic of the Sudan; or (ii) any company domiciled in the Republic of the Sudan.

10. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Bank's title insurance policy No. 008450863 (the "**Title Policy**"), as of the date this Modification is recorded, reflecting the recording of this Modification and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Bank.

11. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Bank in connection with this Modification, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

12. **Miscellaneous.**

(a) This Modification shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) Notwithstanding the execution of this Modification by Bank, the same shall not be deemed to constitute Bank a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(c) Borrower, Guarantor and Bank each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Modification, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Bank; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Modification. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(d) This Modification shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

UNOFFICIAL COPY

(e) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(f) This Modification may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Modification.

(g) Time is of the essence of each of Borrower's obligations under this Modification.

(Signature Page Follows)

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Modification dated as of the day and year first above written.

BANK:

ALBANY BANK AND TRUST COMPANY, N.A.

By: *[Signature]*
Name: JOHN C. SCHELLINGER
Title: VICE PRESIDENT

STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that John C. Schellinger VP of ALBANY BANK AND TRUST COMPANY N.A., is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 9 day of July, 2014.

[Signature]
Notary Public

My Commission Expires: 12-17-17



UNOFFICIAL COPY

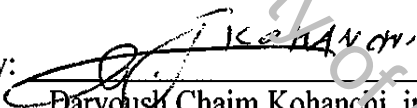
IN WITNESS WHEREOF, the parties hereto have executed this Modification dated as of the day and year first above written.

BORROWER:

INDY HOMEBUY LLC, an Illinois limited liability company

By: 

Daniel Kohanchi, Its Manager

By: 

Daryoush Chaim Kohanchi, individually

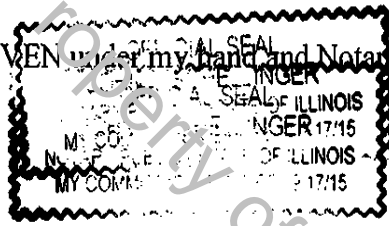
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF Cook) SS

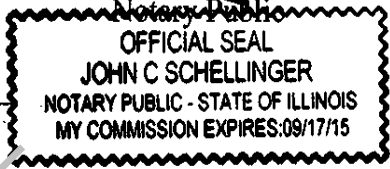
I John C. Schellinger, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Daniel Kohanchi, Manager of INDY HOMEBUY LLC, an Illinois limited liability company**, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 9th day of July, 2014.



John C. Schellinger
Notary Public

My Commission Expires: _____



STATE OF ILLINOIS)
)
COUNTY OF Cook) SS

I John C. Schellinger, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Daryoush Chaim Kohanchi**, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 9th day of July, 2014.



John C. Schellinger
Notary Public

My Commission Expires: _____

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Modification dated as of the day and year first above written.

MORTGAGOR:

ALBANY BANK AND TRUST COMPANY, N.A., as Trustee as aforesaid and not personally

By: *Brenda Helms*
 Brenda Helms, Trust Officer

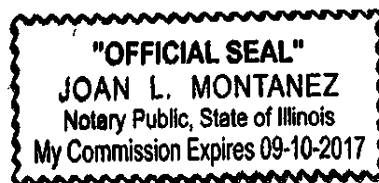
STATE OF ILLINOIS)
 COUNTY OF Cook) SS

I, the undersigned, a Notary Public in and for said County and State aforesaid; DO HEREBY CERTIFY that the above named Trust Officer, **Brenda Helms** of **ALBANY BANK AND TRUST COMPANY, N.A.**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said Bank as Trustee aforesaid for the uses and purposes therein set forth, and the said Vice President then and there acknowledged that as custodian of the corporate seal of said Bank, did affix the seal of said Bank to said instrument as her own free and voluntary act and as the free and voluntary act of said Bank, as Trustee aforesaid, for the uses and purposes herein set forth.

GIVEN under my hand and Notarial Seal this 16 day of July, 2014.

Joan L. Montanez
 Notary Public

My Commission Expires: _____



UNOFFICIAL COPY

EXHIBIT A

THE PROPERTY

THAT PART OF LOTS 14, 17, 18, 19 AND 21 TAKEN TOGETHER AS A SINGLE TRACT OF LAND IN OWNERS DIVISION OF HEALY INDUSTRIAL DISTRICT COMPRISING CERTAIN TRACTS OF LAND IN THE SOUTHEAST ¼ OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS ACCORDING TO THE PLAT THEREOF RECORDED IN THE RECORDERS OFFICE OF SAID COOK COUNTY, ON JULY 25, 1925 AS DOCUMENT NO. 8986164 DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 18; THENCE NORTH 00 DEGREES 20 MINUTES 44 SECONDS WEST ON THE WEST LINE OF SAID LOTS 18 AND 19 ALSO BEING THE EAST LINE OF N. KILDARE AVENUE A DISTANCE OF 360.0 FEET TO THE NORTHWEST CORNER OF SAID LOT 19; THENCE SOUTH 90 DEGREES EAST ON THE NORTH LINE OF SAID LOT 19 DISTANCE OF 247.90 FEET TO A POINT OF CURVE; THENCE EASTERLY ON THE NORTHERLY LINE OF SAID LOT 19 BEING A CURVED LINE TO THE RIGHT AND HAVING A RADIUS OF 360.26 FEET A DISTANCE OF 98.11 FEET TO THE NORTHEAST CORNER OF A BRICK BUILDING, THE CHORD OF SAID CURVED LINE BEING 97.81 FEET HAVING A BEARING OF SOUTH 82 DEGREES 19 MINUTES 52 SECONDS EAST; THENCE SOUTH 83 DEGREES 00 MINUTES 36 SECONDS EAST A DISTANCE OF 74.62 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 14, SAID POINT BEING 116.77 FEET WESTERLY OF AND AT RIGHT ANGLES TO THE STRAIGHT PORTION OF THE EASTERLY LINE OF SAID LOT 21; THENCE EASTERLY ON THE NORTHERLY LINE OF SAID LOT 14 BEING A CURVED LINE TO THE RIGHT HAVING A RADIUS OF 384.26 FEET A DISTANCE OF 122.61 FEET, THE CHORD OF SAID CURVED LINE BEING 122.09 FEET HAVING A BEARING OF SOUTH 54 DEGREES 26 MINUTES 20 SECONDS EAST BEING A CORNER OF SAID LOT 14 AND 21 AND ALSO THE MOST SOUTHERLY CORNER OF LOT 20 IN SAID OWNERS DIVISION; THENCE NORTH 41 DEGREES 42 MINUTES 08 SECONDS EAST A DISTANCE OF 13.53 FEET ON THE LINE BETWEEN SAID LOTS 20 AND 21 TO THE MOST EASTERLY CORNER OF LOT 20 AND ALSO A CORNER OF LOT 21; THENCE SOUTH 69 DEGREES 59 MINUTES 59 SECONDS EAST PARALLEL TO THE NORTH LINE OF SAID LOT 21 A DISTANCE OF 19.42 FEET TO AN INTERSECTION WITH A CURVED PORTION OF THE EASTERLY LINE OF SAID LOT 21; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LOT 21, SAID EASTERLY LINE BEING A CURVED LINE TO THE LEFT A DISTANCE OF 19.13 FEET TO A POINT OF TANGENCY, THE CHORD OF SAID CURVED LINE BEING 19.12 FEET AND HAVING A BEARING OF SOUTH 18 DEGREES 39 MINUTES 35 SECONDS EAST; THENCE SOUTH 20 DEGREES 08 MINUTES 51 SECONDS EAST OF SAID EASTERLY LINE OF LOT 21 A DISTANCE OF 43.81 FEET TO THE MOST SOUTHERLY CORDER OF LOT 21 WHICH ALSO LIES ON THE NORTHEASTERLY LINE OF SAID LOT 14; THENCE CONTINUING SOUTH 20 DEGREES 08 MINUTES 51 SECONDS EAST A DISTANCE OF 80.0 FEET TO AN INTERSECTION WITH THE SOUTHWESTERLY LINE OF SAID LOT 14 ALSO BEING THE NORTHEASTERLY LINE OF LOT 17; THENCE SOUTH 45 DEGREES 17 MINUTES 47 SECONDS EAST ON THE NORTHEASTERLY LINE OF SAID LOT 17 A DISTANCE OF 152.85 FEET TO THE MOST EASTERLY CORNER OF SAID LOT 17; THENCE SOUTH 44 DEGREES 51 MINUTES 14 SECONDS WEST ON THE SOUTHEASTERLY LINE OF SAID LOT 17 A DISTANCE OF 48.80 FEET TO A CORNER OF LOT 17 ON THE SOUTH LINE OF LOT 17 WHICH IS ON THE NORTH LINE OF WEST SCHUBERT AVENUE; THENCE WEST ON THE SOUTH LINE OF SAID LOTS 17 AND 18, ALSO BEING THE NORTH LINE OF WEST SCHUBERT AVENUE A DISTANCE OF 167.98 FEET TO THE POINT OF BEGINNING.

EASEMENT FOR INGRESS AND EGRESS AND FOR VEHICULAR TRAFFIC FOR THE BENEFIT OF PARCEL 1 AS SHOWN ON PLAT OF SURVEY BY CERTIFIED SURVEY CO. DATED DECEMBER 8, 1999 OVER AND UPON THE FOLLOWING:

A 20 FOOT STRIP OF LAND LYING SOUTHEASTERLY OF THE SOUTHEASTERLY CORNER OF LOT 17 AFORESAID AND THE SOUTHEASTERLY 20 FEET OF LOT 14 IN OWNERS DIVISION AFORESAID (EXCEPT THAT PART FALLING IN PARCEL 1)

P.I.N.	13-27-402-007-0000, 13-27-402-025-0000, 13-27-402-035-0000, 13-27-402-043-0000
Commonly known as	2701 N KILDARE, CHICAGO, ILLINOIS