

1 **LAW OFFICES OF RONALD A. MARRON**

2 RONALD A. MARRON (SBN 175650)

3 *ron@consumersadvocates.com*

4 MICHAEL T. HOUCHIN (SBN 305541)

5 *mike@consumersadvocates.com*

6 LILACH HALPERIN (SBN 323202)

7 *lilach@consumersadvocates.com*

8 651 Arroyo Drive

9 San Diego, California 92103

10 Telephone: (619) 696-9006

11 Facsimile: (619) 564-6665

12 Michael G. Olinik (SBN # 291020)

13 The Law Office of Michael G. Olinik

14 3443 Camino Del Rio South, Ste. 101

15 San Diego, CA 92108

16 Phone: (619) 780-5523

17 E-mail: *michael@oliniklaw.com*

18 *Attorneys for Plaintiff Daniel McSwain and*
19 *the Proposed Class*

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **COUNTY OF SAN DIEGO - CENTRAL DIVISION**

22 DANIEL MCSWAIN, TRUSTEE OF THE
23 DANIEL S. MCSWAIN TRUST DATED JULY
24 17, 2012, on behalf of the trust and all others
25 similarly situated, and the general public;

26 Plaintiff,

27 v.

28 AXOS BANK, fka BANK OF INTERNET USA;
and DOES 1-10, INCLUSIVE,

Defendant.

Case No: 37-2019-00015784-CU-BC-CTL

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

- 1) VIOLATION OF THE CALIFORNIA
UNFAIR COMPETITION LAW (CAL. BUS. &
PROF. CODE § 17200, ET SEQ.);
- 2) BREACH OF CONTRACT

UNLIMITED CIVIL ACTION

DEMAND FOR JURY TRIAL

1 Plaintiff Daniel McSwain, Trustee of the Daniel S. McSwain Trust Dated July 17, 2012, on
2 behalf of the trust and all others similarly situated, and the general public, alleges against Defendant
3 AXOS Bank, a federally chartered financial institution formerly known as the Bank of Internet USA;
4 the following upon his own personal knowledge, or where there is no personal knowledge, upon
5 information, belief, and the investigation of his counsel.

6 **I. INTRODUCTION**

7 1. This class action is based upon Defendant AXOS Bank's ("AXOS") blatant and willful
8 violation of California laws requiring a mortgage lender making loans secured by property located in
9 California to pay the borrower a minimum of 2% simple interest for money received in a borrower's
10 escrow account for the payment of property tax and insurance. AXOS requires borrowers such as
11 Plaintiff Daniel McSwain, Trustee of the Daniel S. McSwain Trust Dated July 17, 2012 ("Plaintiff" or
12 "McSwain") to maintain an impound escrow account in connection with their mortgages. Borrowers
13 are forced to pay money into the escrow account in advance, and AXOS holds onto the money until it
14 pays the property tax and insurance for the mortgaged property. The money in the escrow account,
15 however, is the borrower's money and which mortgage lenders have use of for investment.
16 Accordingly, California law requires mortgage lenders, including AXOS, to pay at least 2% interest on
17 the monies to the borrowers. The Ninth Circuit has ruled that California's statutory requirement to pay
18 interest is not preempted by federal banking laws and regulations. *Lusnak v. Bank of America, N.A* (9th
19 Cir. 2018) 883 F.3d 1185. In fact, federal law also requires banks to pay any interest mandated by state
20 law, though this lawsuit is brought solely based on state law.

21 2. AXOS systematically and uniformly has adopted a policy to violate California law.
22 When Mr. McSwain reached out to AXOS demanding his interest, AXOS incorrectly asserted that it is
23 not required to pay interest. Meanwhile, in a quarterly earnings call, AXOS Financial, Inc. touted an
24 increase in non-interest bearing accounts. AXOS is therefore willfully not complying with California
25 law, then using the proceeds in order to enrich itself and the investors of Axos Financial, Inc. This
26 class action is brought in order to force AXOS to pay its borrowers the interest they are entitled to by
27 law on the money that is theirs, and which they are required to pay to AXOS through their mortgages.

II. JURISDICTION AND VENUE

3. Pursuant to Article VI, § 10 of the California Constitution, subject matter jurisdiction is proper in the Superior Court of California, county of San Diego.

4. This Court has jurisdiction over AXOS, as it is a citizen of California and because it is located in California.

5. The amount in controversy under this Complaint exceeds the jurisdictional minimal jurisdictional limit of this Court, and the claims asserted in this Complaint are within the subject-matter jurisdiction of this Court, as, upon information and belief, the improperly withheld interest payments are valued at over \$25,000.

6. This Court has personal jurisdiction over Defendant because it is an association, corporation, limited liability company, business entity, national association, and/or person that resides in, are based in, authorized to, and/or registered to conduct, and in fact do conduct, substantial business in the state of California, county of San Diego.

7. Venue is proper in this Court because material acts upon which this Complaint is based upon occurred in the county of San Diego, and because Defendant conducts substantial business, holds significant contacts, operate business facilities, and entered into a contract with Plaintiff within the state of California, county of San Diego.

III. PARTIES

8. Plaintiff Daniel McSwain, Trustee of the Daniel S. McSwain Trust Dated July 17, 2012, is, and at all times mentioned herein was, a resident and citizen of the state of California. During the Class Period, McSwain was the trustor of a mortgage of which Defendant AXOS was the beneficiary.

9. Defendant AXOS Bank, is a federally chartered financial institution with its principle place of business located at 4350 La Jolla Village Drive, Suite 140, San Diego, CA 92122. AXOS Bank was formerly known as Bank of Internet USA. AXOS Bank's NMLS ID is 524995. AXOS Bank is a bank that, among other activities, hold mortgages as well as services mortgages.

10. The true names and capabilities, whether individual, corporate, associate, or otherwise, of the Doe Defendants 1 through 20, are unknown to Plaintiff, and therefore Plaintiff sues these Doe Defendants by such fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiff

1 will seek leave to amend this Complaint to show their true names and capacities when the same has
2 been ascertained.

3 11. Plaintiff is informed and believes, and based thereon alleges, that each of the Doe
4 Defendants were, or are, in some way or manner, responsible and liable to Plaintiff and Class Members
5 for the events, happenings, and damages hereinafter set forth in the body of this Complaint. Plaintiff is
6 informed and believes, and based thereon allege, that said Doe Defendants may be responsible for the
7 damages and injuries suffered by Plaintiff and Class Members on alternative theories of liability not
8 specifically addressed herein.

9 12. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each
10 of them, were, and are, an owner, co-owner, agent, representative, partner, and/or alter ego of its co-
11 defendants, or otherwise acted, and continue to act, on behalf of each and every remaining defendant
12 and, in doing the things hereinafter alleged, were, at all times material hereto, acting within the course
13 and scope of their authorities as an owner, co-owner, agent, representative, partner, and/or alter ego of
14 its co-defendants, with the full knowledge, permission, consent, and authorization of each and every
15 remaining defendant, each co-defendant having ratified or promoted the acts of the other co-
16 defendants, such that each of them are jointly and severally liable to Plaintiff and Class Members.

17 **IV. GENERAL ALLEGATIONS**

18 13. Plaintiff Daniel McSwain, as Trustee of the Daniel S. McSwain Trust Dated July 17,
19 2012, entered into mortgage contract for a one-to four-family residence located in California that was
20 eventually owned by Defendant AXOS.

21 14. A true and correct copy of the deed of trust entered into by Plaintiff McSwain and
22 Defendant AXOS Bank (formerly, Bank of Internet (BOFI) Federal Bank) is attached hereto as **Exhibit**
23 **1**.

24 15. McSwain has fully complied with the notice and cure requirements of Sections 15 and
25 20 of the deed of trust.

26 16. On or about February 23, 2019, Plaintiff McSwain sent an email to an AXOS Bank
27 representative demanding interest on his impound escrow account. In response, AXOS stated that it
28 would not pay any interest to McSwain in connection with his escrow account. A true and correct copy

1 of the email correspondence between McSwain and AXOS Bank representative Pamela R. is attached
2 hereto as Exhibit 2.

3 17. On or about April 30, 2019, McSwain provided a notice in writing, via first class mail,
4 to AXOS Bank's address at 4350 La Jolla Village Drive, Suite 140, San Diego, CA 92122. A true and
5 correct copy of the April 30 notice and cure letter with a return receipt is attached hereto as Exhibit 3.
6 The letter notified AXOS of the breach alleged herein and afforded AXOS a reasonable period to take
7 corrective action. Specifically, the notice demanded that AXOS initiate a process within 31 days to
8 refund the money owed to McSwain and similarly situated California borrowers who deposited funds
9 into their escrow accounts without receiving the required interest from AXOS. To date, AXOS has
10 failed to take any corrective action. Accordingly, McSwain is entitled to initiate this action.

11 18. Mr. McSwain's mortgage requires him to pay money into an impound escrow account.
12 AXOS uses the money in that escrow account to pay property taxes and insurance for the property
13 when those bills become due. Up until the payment of those bills, the money belongs with Mr.
14 McSwain, but AXOS has use of the funds for their own investment purposes.

15 19. California law requires financial institutions such as AXOS to pay borrowers at least 2
16 percent simple interest per annum on such impound escrow accounts:

17 (a) Every financial institution that makes loans upon the security of real property
18 containing only a one- to four-family residence and located in this state or purchases
19 obligations secured by such property and that receives money in advance for payment of
20 taxes and assessments on the property, for insurance, or for other purposes relating to
21 the property, shall pay interest on the amount so held to the borrower. The interest on
22 such amounts shall be at the rate of at least 2 percent simple interest per annum. Such
23 interest shall be credited to the borrower's account annually or upon termination of such
24 account, whichever is earlier.

25 (b) No financial institution subject to the provisions of this section shall impose any fee
26 or charge in connection with the maintenance or disbursement of money received in
27 advance for the payment of taxes and assessments on real property securing loans made
28 by such financial institution, or for the payment of insurance, or for other purposes
relating to such real property, that will result in an interest rate of less than 2 percent per
annum being paid on the moneys so received.

(c) For the purposes of this section, "financial institution" means a bank, savings and
loan association or credit union chartered under the laws of this state or the United
States, or any other person or organization making loans upon the security of real
property containing only a one- to four-family residence.

(d) The provisions of this section do not apply to any of the following:

(1) Loans executed prior to the effective date of this section.

(2) Moneys which are required by a state or federal regulatory authority to be placed by a financial institution other than a bank in a non-interest-bearing demand trust fund account of a bank.

The amendment of this section made by the 1979–80 Regular Session of the Legislature shall only apply to loans executed on or after January 1, 1980.

Cal. Civ. Code § 2954.8

20. Mr. McSwain has continuously deposited funds into his escrow account which are due every month.

21. McSwain has never received the interest accrued on his funds maintained in the escrow account back from AXOS, and AXOS has expressly refused to pay Plaintiff interest on these funds as demanded by Mr. McSwain prior to his filing the lawsuit.

22. Upon information and belief, AXOS has failed to pay the required at least 2% interest on the impound escrow accounts for other borrowers who have secured real property containing only a one- to four- family residence located in this state or security by property in this state.

23. In 2011, the Dodd-Frank Act eliminated field preemption for federal institutions, including institutions governed by the Homeowner’s Loan Act (“HOLA”). 12 U.S.C. § 1465.

24. In the case *Lusnak v. Bank of America, N.A* (9th Cir. 2018) 883 F.3d 1185, the Ninth Circuit held that California’s Civil Code § 2954.8 does not significantly burden lending activities of national banks, and as preemption analysis is the same for national banks and institutions under HOLA, § 2954.8 applies equally to AXOS.

V. TOLLING OF THE STATUTE OF LIMITATIONS

25. **Delayed Discovery:** Plaintiff and the Class are laypersons who lacked the knowledge and experience to understand that AXOS was not paying interest accrued on their funds maintained in escrow accounts held by AXOS as this information was solely within AXOS’ possession and control. Plaintiff did not discover that AXOS was not paying interest accrued on his funds maintained in an escrow account held by AXOS until March 2, 2019 when he received an email from AXOS denying that it had to pay interest. Thus, the delayed discovery exception postpones accrual of the limitations period for all members of the putative classes.

26. **Fraudulent Concealment:** Additionally, on in the alternative, AXOS was constructively and actually aware that it was not paying interest accrued on Plaintiff and the Class

1 Members' funds maintained in escrow accounts held by AXOS. Nevertheless, AXOS continued to
2 profit from its failure to pay interest. Therefore, at all relevant times AXOS had a duty to inform its
3 customers that it was not paying interest accrued on Plaintiff and the Class Members' funds maintained
4 in escrow accounts held by AXOS. Plaintiff did not discover that AXOS was not paying interest
5 accrued on his funds maintained in an escrow account held by AXOS until March 2, 2019 when he
6 received an email from AXOS denying that it had to pay interest. Accordingly, the fraudulent
7 concealment exception tolls the statute of limitations.

8 27. **Continuing Violation:** Additionally, or in the alternative, because AXOS' fraud and
9 deception continues up to the present, the continuing violation exception tolls all applicable statutes of
10 limitations for all members of the putative class until AXOS' unlawful conduct is corrected.

11 **VI. CLASS ALLEGATIONS**

12 28. Plaintiff brings this class action on behalf of the trust and all Members of the Class
13 ("Class"), initially defined as:

14 All persons in California who have had loans made or held by AXOS upon the security
15 of real property containing only a one- to four- family residence and located in
16 California or secured by property located in California that pay money in advance for
17 payment of taxes and assessments on the property for insurance or for other purposes
relating to the property, and who did not receive interest on the amount held by AXOS
from the period between January 1, 1999 until the date class notice is disseminated.

18 29. This action is being brought as a class action pursuant to California Code of Civil
19 Procedure § 382 because there is a well-defined community of interest and the proposed Class is easily
20 ascertainable. Further, a class action is appropriate because AXOS acted, or refused to act, on grounds
21 generally applicable to the Class, making class-wide relief appropriate.

22 30. The proposed members in the Class may be jointly referred to as "Class Members."

23 31. Upon information and belief, AXOS has failed to pay the Class Members at least 2%
24 simple interest per annum on their impound escrow accounts and retained those funds for AXOS's own
25 benefit and use.

26 32. Plaintiff reserves the right to amend or modify the Class and/or add Subclass definitions
27 with greater specificity or further division into subclasses or limitation to particular issues as discovery
28 and the orders of this Court warrant.

1 33. The Court can define the Class and create additional subclasses as may be necessary or
2 desirable to adjudicate common issues and claims of the Class Members if, based on discovery of
3 additional facts, the need arises.

4 **Commonality**

5 34. This action may be brought as a class action because common questions of law and fact
6 predominate over any issues solely affecting individual Plaintiffs or Class Members, including, but not
7 limited to:

8 i. Whether AXOS was required to pay Class Members 2 percent simple interest per
9 annum;

10 ii. Whether AXIS had a policy to not pay Class Member 2 percent simple interest per
11 annum; and

12 iii. Whether AXOS breached the mortgage agreements with Class Members;

13 iv. Whether AXOS must provide damages, restitution, and/or reimbursement to borrowers
14 in the amount of unpaid interest on funds kept in impound escrow accounts based on the causes of
15 action asserted herein; and

16 v. Whether injunctive relief is appropriate to prohibit AXOS from engaging in this conduct
17 in the future.

18 **Numerosity**

19 35. Upon information and belief, this Class consists of potentially dozens, if not hundreds,
20 of individuals whose mortgage is owed by AXOS. The Members of the Class are so numerous that
21 joinder of each Member is impracticable, if not impossible. As such, a class action is the only available
22 method for the fair and efficient adjudication of this controversy.

23 **Ascertainability**

24 36. Class Members can easily be identified by an examination and analysis of the business
25 records regularly maintained by AXOS, among other records within AXOS's possession, custody, or
26 control.

27 **Typicality**

28 37. Plaintiff's claims are typical of the claims of each Class Member in that all claims result

1 from AXOS's unilateral policy to not pay interest to borrowers on their impound escrow accounts, as
2 alleged herein. Moreover, Plaintiff's claims are typical of the claims of each Class Member because
3 each have sustained damages arising out of, and caused by, AXOS's common course of unlawful
4 conduct, as alleged herein. As such, Plaintiff has the same interest in this matter as all Members of the
5 Class, and have no interests antagonistic to the interests of other Members of the Class.

6 **Superiority**

7 38. This action is brought as a class action because this method is superior for the fair and
8 efficient adjudication of the controversy. This action seeks equitable relief in the form of
9 restitution/surcharge for interest payments improperly retained by AXOS, an injunction to prevent
10 AXOS from continuing its illegal business practice, and breach of contract. A class action is superior
11 as each individual Class Member may lack the resources to undergo the burden and expense of
12 individual prosecution of the complex and extensive litigation necessary to establish AXOS's liability.
13 A class action is the only practicable method by which the Plaintiff and Members of the Class can
14 achieve redress from AXOS and prevent AXOS from unjustly benefitting from its course of unlawful
15 conduct, as alleged herein. The prosecution of individual actions would present a risk of inconsistent
16 judgments, even though each Class Member has an effectively identical claim of right against AXOS.
17 Inconsistent judgments could be dispositive to the interests of other Class Members who are not parties
18 to the individual adjudication and/or may substantially impede their ability to adequately protect their
19 interests. If separate actions were brought, or are required to be brought, by individual Class Members,
20 the resulting multiplicity of lawsuits would cause an undue hardship and burden on the parties and the
21 judicial system. In contrast, the class action device presents far fewer management difficulties and
22 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a
23 single court on the issue of AXOS's liability. Class treatment of the liability issues will ensure that all
24 claims and claimants are before this Court for consistent adjudication of the liability issues.

25 **Adequacy**

26 39. Plaintiff is an adequate representative of the Class. Plaintiff's claims are typical of those
27 of the Class. Plaintiff and Class Members have no unique claims, have no conflicts of interest, and
28 share the same interests in the litigation of this matter. Plaintiff retained competent counsel

1 experienced in the prosecution of class actions and who are committed to the vigorous prosecution of
2 this action. Further, Plaintiff's counsel have the ability and willingness to commit significant resources
3 to the prosecution of this matter. Accordingly, Plaintiff is an adequate representatives of the Class, and
4 will fairly and adequately protect the interests of the Class with the help of experienced and
5 knowledgeable retained counsel.

6 **VI. CAUSES OF ACTION**

7 **First Cause of Action**

8 **Violation of California Business & Professions Code Section 17200 *et seq.* – Unfair** 9 **Competition Law (“UCL”)**

10 40. Plaintiff and Class Members re-allege and incorporate by reference each and every
11 allegation set forth in this Complaint with the same force and effect, and further allege as follows:

12 41. The UCL defines unfair business competition to include any “unfair,” “unlawful,” or
13 “fraudulent” business act or practice. The Act also provides for injunctive relief, restitution, and
14 disgorgement of profits for violations.

15 42. Defendant's unlawful, unfair, and fraudulent business acts and practices are described
16 throughout this Complaint and include, but are not limited to the following. Defendant has and
17 continues to engage in a practice of failing to pay interest to its borrowers on impound escrow account,
18 as required by the laws of California, and other states, thereby illegally profiting from the use of
19 interest free funds in hundreds of thousands of mortgage accounts. This is a *per se* violation California
20 Civil Code § 2954.8.

21 43. Defendant's practice is also unfair since it has no utility and, even if it did, any utility is
22 outweighed by the gravity of harm to Plaintiff and the Class members. Defendant's practice is also
23 immoral, unethical, oppressive or unscrupulous and causes injury to consumers which outweighs its
24 benefits.

25 44. Plaintiff and the Class members, and each of them, have been damaged by said
26 practices. Pursuant to California Business and Professions Code §§ 17200 and 17203, Plaintiff, on
27 behalf of himself and all others similarly situated, seek relief, including
28 restitution/surcharge/disgorgement, and an injunction requiring AXOS to pay Class Members and

1 future mortgage customers 2 percent simple interest per annum on their impound escrow accounts and
2 attorneys' fees and costs.

3 **Second Cause of Action**

4 **Breach of Contract**

5 45. Plaintiff and Class Members re-allege and incorporate by reference each and every
6 allegation set forth in this Complaint with the same force and effect, and further allege as follows:

7 46. AXOS is and was bound by the mortgage agreements with Plaintiff and the Class, and
8 was signatories and/or successors in interest to signatories thereto.

9 47. Plaintiff, and all others similarly situated, did all or substantially all, of the significant
10 things that the agreements required them to do.

11 48. AXOS failed to perform the express terms of the agreements that stated AXOS would
12 comply with applicable state and federal law, which included the state law that mandated AXOS pay
13 interest to borrowers for funds collected on an impound escrow account. As such and as set forth
14 above, AXOS breached an express term of the agreements.

15 49. As a result of AXOS's breach, Plaintiff and the Class Members have been harmed by
16 not receiving the interest they are entitled to under state law.

17 **VII. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff and Class Members pray for judgment against AXOS Bank, as
19 follows:

20 1. An order certifying that this action is properly brought and may be maintained as a class
21 action;

22 2. An order appointing Plaintiff Daniel McSwain as class representative of the Class, and
23 appointing Law Offices of Ronald A. Marron and Law Office of Michael G. Olinik as counsel for the
24 Class;

25 3. An order enjoining AXOS under California Business and Professions Code § 17203:

26 a. To cease such alerts and practices declared by this Court to be an unlawful,
27 fraudulent, or an unfair business act or practice, a violation of laws, statutes, or
28 regulations, or constituting unfair competition;

EXHIBIT 1

Recording Requested By:
BOFI FEDERAL BANK

And After Recording Return To:
BOFI FEDERAL BANK
4350 LA JOLLA VILLAGE DRIVE, 140
SAN DIEGO, CALIFORNIA 92122
Loan Number: 3391194

APN - 1531333600

True and Certified Copy

_____[Space Above This Line For Recording Data]_____

DEED OF TRUST

MIN: 1007359-0003391194-3

MERS Phone: 888-679-6377

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated JULY 12, 2017, together with all Riders to this document.

(B) "Borrower" is DANIEL S MCSWAIN, TRUSTEE OF THE DANIEL S. MCSWAIN TRUST
DATED JULY 17, 2012
BORROWER'S ADDRESS IS 920 MORSE STREET, OCEANSIDE, CALIFORNIA 92054.

Borrower is the trustor under this Security Instrument.

(C) "Lender" is BOFI FEDERAL BANK

Lender is a FEDERALLY CHARTERED SAVINGS BANK organized
and existing under the laws of CALIFORNIA
Lender's address is 4350 LA JOLLA VILLAGE DRIVE, 140, SAN DIEGO, CALIFORNIA 92122

(D) "Trustee" is CHICAGO TITLE COMPANY, A CALIFORNIA CORPORATION
700 SOUTH FLOWER STREET SUITE 900, LOS ANGELES,

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated JULY 12, 2017

The Note states that Borrower owes Lender TWO HUNDRED THIRTY-NINE THOUSAND TWO HUNDRED AND 00/100 Dollars (U.S. \$ 239,200.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than AUGUST 1, 2032

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | |
|--|--|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Planned Unit Development Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Condominium Rider | <input checked="" type="checkbox"/> Other(s) [specify] Accommodation Rider, Revocable Trust Rider, EXHIBIT A |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of

the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of SAN DIEGO :

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".
A.P.N.: 1531333600

which currently has the address of 920 MORSE STREET

[Street]

OCEANSIDE

[City]

, California 92054 ("Property Address"):

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender

may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed

by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to

Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to

Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations

secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which 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 of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

24. Substitute Trustee. Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by Applicable Law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

25. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

The undersigned Borrower requests that a copy of any Notice of Default and any Notice of Sale under this Security Instrument be mailed to Borrower at the address set forth above.

Daniel S. McSwain TRUSTEE (Seal)
DANIEL S MCSWAIN, TRUSTEE OF -Borrower
THE DANIEL S. MCSWAIN TRUST DATED
JULY 17, 2012

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

Witness:

Witness:

[Space Below This Line For Acknowledgment]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA)

County of SAN DIEGO)

On July 12, 2017 before me, S. GORDON, Notary Public
Date Here Insert Name and Title of the Notarizing Officer

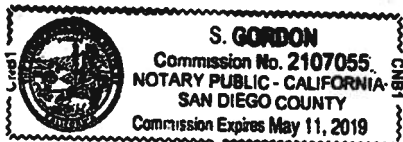
personally appeared DANIEL S MCSWAIN

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

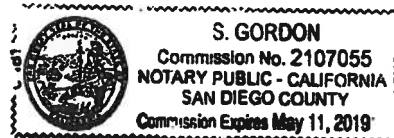
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Seal

[Signature]
Signature of Notary Public



Loan Originator: MATTHEW P. PARKER, NMLSR ID 1545590
Loan Originator Organization: BOFI FEDERAL BANK, NMLSR ID 524995

CALIFORNIA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT - MERS
Form 3005 01/01 Page 14 of 14

DocMagic eForms
www.docmagic.com

MIN: 1007359-0003391194-3

ACCOMMODATION RIDER

Loan Number: 3391194

THIS ACCOMMODATION RIDER is made this 12th day of JULY, 2017 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Mortgagor") to secure Borrower's Promissory Note (the "Note") to BOFI FEDERAL BANK, A FEDERALLY CHARTERED SAVINGS BANK (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

920 MORSE STREET, OCEANSIDE, CALIFORNIA 92054

[Property Address]

Mortgagor acknowledges it is a TRUST and any reference in

[Trust/LLC/Partnership/Corporation]

Mortgage, Deed of Trust or Security Deed to an individual or borrower shall mean the TRUST

[Trust/LLC/Partnership/Corporation]

ADDITIONAL COVENANTS: In addition to the covenants and agreements made in the Security Instrument, Mortgagor and Lender further covenant and agree as follows:

In exchange for a valuable and sufficient consideration, Mortgagors are executing the Security Instrument and this Accommodation Rider to secure the above described Note. The Undersigned Mortgagors, without affecting Lender's rights hereunder or the lien hereof, waives any right of notice or demand in the event Lender, pursuant to the Note and this Security Instrument and any amendments thereto: (a) renews, extends, accelerates or otherwise changes the terms of the indebtedness or any part thereof, including increases or decreases of the rate of interest thereon; (b) takes and holds additional security for the payment of the indebtedness guaranteed, and exchanges, enforces, waives and releases any security; (c) applies such security and directs the order or manner of sale thereof as Lender in its discretion may determine; and (d) releases or substitutes any one or more endorsers or guarantors. Lender may without notice assign this Security Instrument in whole or in part.

ACCOMMODATION: The Security Instrument secures a Promissory Note executed by DANIEL S MCSWAIN

collectively ("Borrower"), in favor of the Lender thereunder. Mortgagor is executing this Accommodation Rider as an accommodation to Borrower and thereafter agrees as follows:

Mortgagor waives any right to require Lender to: (a) proceed against Borrower; (b) proceed against or exhaust any security held from Borrower; or (c) pursue any other remedy in Lender's power whatsoever. Lender may, at its election, foreclose upon any such security by judicial or non-judicial sale, without affecting or impairing in any way the liability of Mortgagor hereunder except to the extent the indebtedness

has been paid, and Mortgagor waives any defense arising out of the absence, impairment or loss of any right or remedy of Mortgagor against Borrower, or any such security, whether resulting from such election by Lender or otherwise. Mortgagor waives any defense arising by reason of the cessation from any cause whatsoever of the liability of Borrower. Until all indebtedness of Borrower to Lender shall have been paid in full, even though such indebtedness is in excess of Mortgagor's liability hereunder, Mortgagor shall have no right of subrogation, and waives any right to enforce and remedy which Lender now has or may hereafter have against Borrower and waives any benefit of, and any right to participate in any security now or hereafter held by Lender. Mortgagor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of the Security Instrument and of the existence, creation or incurring of new or additional indebtedness. Mortgagor assumes the responsibility for being and keeping himself informed of the financial condition of Borrower and of all other circumstances bearing upon the risk of nonpayment of the indebtedness which diligent inquiry would reveal, and agree that absent a request for such information by Mortgagor, Lender shall have no duty to advise Mortgagor of information know to it regarding such condition or any such circumstances.

BY SIGNING BELOW, Mortgagor accepts and agrees to the terms and covenants contained in this Accommodation Rider.

DANIEL S. MCSWAIN TRUSTEE (Seal)
DANIEL S MCSWAIN, TRUSTEE -Borrower
OF THE DANIEL S. MCSWAIN TRUST
DATED JULY 17, 2012

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

SPACE ABOVE FOR RECORDERS USE

REVOCABLE TRUST RIDER

DEFINITIONS USED IN THIS RIDER

(A) "Revocable Trust." THE DANIEL S. MCSWAIN TRUST DATED JULY 17, 2012

(B) "Revocable Trust Trustees." DANIEL S MCSWAIN
trustee(s) of the Revocable Trust.

(C) "Revocable Trust Settlor(s)." DANIEL S MCSWAIN
settlor(s) of the Revocable Trust signing below.

(D) "Lender." BOFI FEDERAL BANK, A FEDERALLY CHARTERED SAVINGS BANK

(E) "Security Instrument." The Deed of Trust/Mortgage and any riders thereto of the same date as this Rider given to secure the Note to the Lender of the same date and covering the Property (as defined below).

(F) "Property." The property described in the Security Instrument and located at:

920 MORSE STREET, OCEANSIDE, CALIFORNIA 92054
(Property Address)

THIS REVOCABLE TRUST RIDER is made this 12th day of JULY, 2017,
and is incorporated into and shall be deemed to amend and supplement the Security Instrument.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, the Revocable Trust Trustee(s), the Revocable Trust Settlor(s), and the Lender further covenant and agree as follows:

ADDITIONAL BORROWER(S) The term "Borrower" when used in the Security Instrument shall refer to the Revocable Trust Trustee(s), the Revocable Trust Settlor(s), and the Revocable Trust, jointly and severally. Each party signing this Rider below (whether by accepting and agreeing to the terms and covenants contained herein and agreeing to be bound thereby, or both) covenants and agrees that, whether or not such party is named as "Borrower" on the first page of the Security Instrument, each covenant and agreement and undertaking of the "Borrower" in the Security Instrument shall be such party's covenant and agreement and undertaking as "Borrower" and shall be enforceable by the Lender as if such party were named as "Borrower" in the Security Instrument.

BY SIGNING BELOW, the Revocable Trust Trustee(s) accepts and agrees to the terms and covenants contained in this Revocable Trust Rider.

DANIEL S. MCSWAIN, TRUSTEE (Seal)
DANIEL S MCSWAIN, TRUSTEE -Borrower
OF THE DANIEL S. MCSWAIN TRUST
DATED JULY 17, 2012

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

BY SIGNING BELOW, the undersigned Revocable Trust Settlor(s) acknowledges all of the terms and covenants contained in this Revocable Trust Rider and agrees to be bound thereby.



DANIEL S MCSWAIN

(Seal)
Revocable Trust Settlor

(Seal)
Revocable Trust Settlor

(Seal)
Revocable Trust Settlor

(Seal)
Revocable Trust Settlor

(Seal)
Revocable Trust Settlor

(Seal)
Revocable Trust Settlor

LEGAL DESCRIPTION

Exhibit A

The following described property:

Lot 7 of South Oceanside Ranchos, in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 6351, filed in the office of the County Recorder of San Diego County May 2, 1969.

Assessor's Parcel No: 153-133-36-00

EXHIBIT 2

From: customerservice@axosbank.com
Subject: Re: 1099-INT
Date: March 2, 2019 at 9:24 AM
To: danmcswain@mac.com



For the most part, a bank is not required to pay interest on any escrow account it holds for its customers. The [U.S. Department of Housing and Urban Development \(HUD\)](#) does not specify that these be interest-bearing accounts. So if the account is not an interest bearing account, we are not required to pay interest that is not collected. Even in states where it is required, there may be legal exceptions that may preclude a bank from paying interest. I will check to see if we have documentation we can provide to you.

Thank you
Pamela R.
Loan Servicing Representative

loanservicing@axosbank.com
Direct: 858-649-2000

Axos Bank
9205 W. Russell Rd.
Las Vegas, NV 89148

www.axosbank.com

----- Original Message -----

From: Daniel Mcswain [danmcswain@mac.com]
Sent: 2/23/2019 12:04 PM
To: customerservice@axosbank.com
Subject: Re: 1099-INT

Caution: This Email Originated From Non-Axos Network. Think before you open attachments or click on links from unknown senders or unexpected emails.

Hi Pamela:

Thanks for your response. How, precisely, are you exempt from paying interest on my escrow account? Please forward any documentation you have on this topic. Every mortgage I've ever had pays interest on an average escrow balance, usually compounded monthly.

Thanks,
Dan

Sent from my iPad

On Feb 23, 2019, at 9:21 AM, "customerservice@axosbank.com" <customerservice@axosbank.com> wrote:

Thank you for your inquiry.

As we are exempt from paying the interest on the escrow, a 1099 would not be sent. Please let us know if we can further.

Thank you
Pamela R.
Loan Servicing Representative

loanservicing@axosbank.com
Direct: 858-649-2000

Axos Bank
9205 W. Russell Rd.
Las Vegas, NV 89148

www.axosbank.com

CONFIDENTIALITY NOTICE: This e-mail message, including all attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. If you are not the intended recipient, you may NOT use, disclose, copy or disseminate this information. Please contact the sender by reply e-mail immediately and destroy all copies of the original message, including all attachments. Your cooperation is greatly appreciated.

CONFIDENTIALITY NOTICE: This e-mail message, including all attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. If you are not the intended recipient, you may NOT use, disclose, copy or disseminate this information. Please contact the sender by reply e-mail immediately and destroy all copies of the original message, including all attachments. Your cooperation is greatly appreciated.

ref:_00Di0KtrF_5000H1DXF45:refCONFIDENTIALITY NOTICE: This e-mail message, including all attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. If you are not the intended recipient, you may NOT use, disclose, copy or disseminate this information. Please contact the sender by reply e-mail immediately and destroy all copies of the original message, including all attachments. Your cooperation is greatly appreciated.

EXHIBIT 3

LAW OFFICES OF
RONALD A. MARRON

A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, California 92103

Tel: 619.696.9006
Fax: 619.564.6665

April 30, 2019

Via: Certified First Class Mail, receipt acknowledgment with signature requested

AXOS Bank
BofI Federal Bank
4350 La Jolla Village Drive, 140
San Diego, California 92122

Re: Loan Number: 3391194

To Whom It May Concern:

PLEASE TAKE NOTICE that this notice letter constitutes the required notice pursuant to paragraph 20 of the Deed of Trust regarding loan number 3391194 before claims may be filed to cure the breach of contracts and violations of Cal. Civ. Code § 2954.8 by AXOS Bank.

Our client, Mr. Daniel McSwain, entered into a mortgage contract for a one-to-four-family residence located in California that is owned by AXOS Bank. Mr. McSwain's mortgage requires him to deposit money into an impound escrow account, which he has continuously done every month. Mr. McSwain asserts that he has never received the interest accrued on his funds maintained in the escrow account back from AXOS Bank.

California law requires financial institutions such as AXOS to pay borrowers at least 2 percent simple interest per annum on such impound escrow accounts:

(a) Every financial institution that makes loans upon the security of real property containing only a one- to four-family residence and located in this state or purchases obligations secured by such property and that receives money in advance for payment of taxes and assessments on the property, for insurance, or for other purposes relating to the property, shall pay interest on the amount so held to the borrower. The interest on such amounts shall be at the rate of at least 2 percent simple interest per annum. Such interest

shall be credited to the borrower's account annually or upon termination of such account, whichever is earlier.

(b) No financial institution subject to the provisions of this section shall impose any fee or charge in connection with the maintenance or disbursement of money received in advance for the payment of taxes and assessments on real property securing loans made by such financial institution, or for the payment of insurance, or for other purposes relating to such real property, that will result in an interest rate of less than 2 percent per annum being paid on the moneys so received.

(c) For the purposes of this section, "financial institution" means a bank, savings and loan association or credit union chartered under the laws of this state or the United States, or any other person or organization making loans upon the security of real property containing only a one- to four-family residence.

(d) The provisions of this section do not apply to any of the following:

(1) Loans executed prior to the effective date of this section.

(2) Moneys which are required by a state or federal regulatory authority to be placed by a financial institution other than a bank in a non-interest-bearing demand trust fund account of a bank.

The amendment of this section made by the 1979-80 Regular Session of the Legislature shall only apply to loans executed on or after January 1, 1980.

Cal. Civ. Code § 2954.8

By this letter, Ms. McSwain provides the required pre-litigation notice regarding AXOS' failure to pay the required at least 2% interest on the impound escrow accounts for borrowers who have secured real property containing only a one-to-four-family residence located in this state or security by property in this state.

Class members in the proposed class of borrowers that Mr. McSwain will represent in a putative class action also did not receive the required interest from their escrow accounts from AXOS. On behalf of himself, all others similarly situated, and the general public, our client therefore hereby demands that you remedy the above-described violations within 31 days of your receipt of this letter. This letter demands that you take prompt and specific corrective action, to include:

1. Initiating a process to refund monies paid by California borrowers who deposited funds into their escrow accounts without receiving the required interest from AXOS.

If you do not promptly initiate the aforementioned corrective actions, our client, on behalf of himself, all others similarly situated, and the general public, will bring legal claims under the California Unfair Competition Law and any other applicable laws and regulations, to compel these steps, as well as seeking any other legally-appropriate restitution and/or damages, attorneys' fees, costs, incentive awards, and the costs of class notice and administration.

I would also like to remind you of your legal duty to preserve all records relevant to such potential litigation. *See, e.g., Convolv, Inc. v. Compaq Computer Corp.*, 223 F.R.D. 162, 175 (S.D.N.Y. 2004); *National Ass'n of Radiation Survivors v. Turnage*, 115 F.R.D. 543, 556-57 (N.D. Cal. 2006). We anticipate that at a minimum all e-mails, letters, reports, notes, minutes of meetings, voice mails, internal corporate instant messages, and laboratory and other records that relate to the escrow accounts and deeds of trust will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents handling these accounts to preserve all such relevant information.

Very truly yours,

THE LAW OFFICES OF RONALD A. MARRON

/s/ Ronald A. Marron

Ronald A. Marron

Attorney for Daniel McSwain and the Proposed Class

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

AXOS Bank
Box I Federal Bank
4350 La Jolla Village Drive, 140
San Diego, CA 92122



9590 9402 1906 6104 2007 42

2. Article Number (Transfer from service label)

7016 2140 0000 0258 4752

COMPLETE THIS SECTION ON DELIVERY

A. Signature

- ☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

5-1-19

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
| <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ |
| <input type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation™ |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> All Restricted Delivery | |

1 **LAW OFFICES OF RONALD A. MARRON**

2 RONALD A. MARRON (SBN 175650)

3 *ron@consumersadvocates.com*

4 MICHAEL T. HOUCHIN (SBN 305541)

5 *mike@consumersadvocates.com*

6 LILACH HALPERIN (SBN 323202)

7 *lilach@consumersadvocates.com*

8 651 Arroyo Drive

9 San Diego, California 92103

10 Telephone: (619) 696-9006

11 Facsimile: (619) 564-6665

12 Michael G. Olinik (SBN # 291020)

13 The Law Office of Michael G. Olinik

14 3443 Camino Del Rio South, Ste. 101

15 San Diego, CA 92108

16 Phone: (619) 780-5523

17 E-mail: michael@oliniklaw.com

18 Attorneys for Plaintiff Daniel McSwain and
19 the Proposed Class

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **IN AND FOR THE COUNTY OF SAN DIEGO - CENTRAL DIVISION**

22 DANIEL MCSWAIN, on behalf of himself, all
23 others similarly situated, and the general public;

24 Plaintiff,

25 v.

26 AXOS BANK, fka BANK OF INTERNET USA;
27 and DOES 1-10, INCLUSIVE,

28 Defendant.

Case No: 37-2019-00015784-CU-BC-CTL

PROOF OF SERVICE

PROOF OF SERVICE
CCP §§ 1011 to 1013(a)

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is: Law Offices of Ronald A. Marron, 651 Arroyo Drive, San Diego, California, 92103.

On June 3, 2019, I served the following documents:

- **FIRST AMENDED CLASS ACTION COMPLAINT**

On the following:

Edward D. Vogel <i>evogel@sheppardmullin.com</i> Alejandro Moreno <i>amoreno@sheppardmullin.com</i> SHEPPARD MULLIN 501 West Broadway, 19 th Floor San Diego, CA 92101	Attorneys for Defendant
Polly Towill <i>ptowill@sheppardmullin.com</i> SHEPPARD MULLIN 222 South Hope Street, 43 rd Floor Los Angeles, CA 90071	Attorney for Defendant

In the following manner of service (check appropriate):

☒ **By Overnight Delivery** I deposited in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service.

☐ **By Express Mail** I deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with Express Mail postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by Express Mail; otherwise at

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- ☐ **By Mail** that party's place of residence
I deposited in a post office, mailbox, subpost office, substation, or
mail chute, or other like facility regularly maintained by the United
States Postal Service, in 2044a sealed envelope, with postage
paid, addressed to the person on whom it is to be served, at the
office address as last given by that person on any document filed
in the cause and served on the party making service by mail;
otherwise at that party's place of residence
- ☐ **By Email** I caused such document(s) to be emailed and .pdf attachment
through the office e-mail service for Law Offices of Ronald A.
Marron.
- ☐ **By Fax** I caused such document(s) to be telecopied to the Offices of the
addressees where indicated.
- ☐ **By Person** I caused a true and correct copy of such document(s) to be
personally delivered on the person of the addressee(s).

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on the 3rd day of June 2019 in San Diego County, California.



Heather Mora