

## GUARANTY

THIS GUARANTY dated as of March 19, 2009 (this "**Guaranty**") is made by IMB HoldCo LLC and OneWest Bank, FSB (each, a "**Guarantor**", and together, the "**Guarantors**"). Capitalized terms used but not defined herein have the meanings assigned to them in the Participation and Servicing Agreement dated as of March 19, 2009 (the "**Participation Agreement**") by and between IndyMac Venture, LLC, a Delaware limited liability company (the "**Company**"), and the Federal Deposit Insurance Corporation (the "**FDIC**") as Receiver for IndyMac Federal Bank, FSB (the "**Participant**").

WHEREAS, the Company and the Participant are also parties to the Limited Liability Company Operating Agreement of IndyMac Venture, LLC (the "**LLC Operating Agreement**") and the Asset Contribution and Assignment Agreement (the "**Contribution Agreement**"), each dated as of March 19, 2009;

WHEREAS, the Guarantors (directly or indirectly) own all of the outstanding equity interests of OneWest Ventures Holdings LLC (the "**Member**");

WHEREAS, the Participant and the Member are concurrently herewith entering into the Limited Liability Company Interest Sale and Assignment Agreement (the "**LLC Interest Sale Agreement**"), pursuant to which, among other things, and subject to the terms and conditions thereof and the other Ancillary Documents, the Participant, as the initial member of the Company, is selling, transferring and assigning to the Member, and the Member is acquiring, all of the Participant's interest in the Company;

WHEREAS, the Guarantors will directly or indirectly receive significant financial benefit from the consummation of the transactions contemplated by the LLC Interest Sale Agreement, the Participation Agreement, the Contribution Agreement and the other Ancillary Documents; and

WHEREAS, as a condition and inducement to the Participant's willingness to enter into the LLC Interest Sale Agreement, the Guarantors have agreed to guarantee (the following are referred to as the "**Guaranteed Obligations**"): (a) the due and punctual payment when due of all amounts now or hereafter payable by the Company or by the Member under the LLC Interest Sale Agreement, the LLC Operating Agreement, the Participation Agreement and each of the other Ancillary Documents to which the Company or the Member is or will be a party; and (b) the full and complete performance by the Company and the Member of all of the terms, covenants and conditions contained in the LLC Interest Sale Agreement, the LLC Operating Agreement, the Participation Agreement and each of the other Ancillary Documents to which the Company or the Member is or will be a party when and as the same shall become due thereunder.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, each Guarantor agrees as follows.

1. **Guaranty.** Each Guarantor hereby unconditionally and irrevocably, jointly and severally, guarantees the Guaranteed Obligations; provided, however, that the aggregate amount for which the Guarantors shall be liable under this Guaranty (such amount, the “**Guaranty Limit**”) shall be the greater of (a) an amount equal to (i) the Unpaid Principal Balance as of the date of the calculation of the Guaranty Limit, *multiplied by* (ii) the Participant’s Share expressed as a fraction, *multiplied by* (iii) 0.50, *multiplied by* (iv) the quotient of the Groups 6-8 Final Purchase Price (as defined in the LLC Interest Sale Agreement) divided by 0.20, *divided by* (v) the Unpaid Principal Balance as of the Closing Date, and (b) \$5,000,000. The Guaranty Limit for any claim under this Guaranty shall be the Guaranty Limit on the date on which the earliest of any act or omission that is a basis of the claim occurred. Any Beneficiary (as defined below) may at any time deliver notice to and proceed against either Guarantor in the event of any failure of payment or performance of any of the Guaranteed Obligations.

2. **Waiver, Etc.**

(a) Each Guarantor waives:

(i) all notices of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice or proof of reliance by the Participant (including its successors and assigns, the “**Beneficiaries**”) on this Guaranty or acceptance of this Guaranty;

(ii) diligence, presentment, demand for payment, protest and notice of nonpayment or dishonor and all other notices and demands whatsoever relating to the Guaranteed Obligations or the requirement that a Beneficiary proceed first against the Company or the Member or any other guarantor of the Guaranteed Obligations or otherwise exhaust any right, power or remedy under the LLC Interest Sale Agreement, the LLC Operating Agreement, the Participation Agreement or any of the other Ancillary Documents to which the Company or the Member is or will be a party giving rise to such Guaranteed Obligations before proceeding hereunder; and

(iii) all suretyship defenses including, without limitation, all defenses based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal.

(b) The Guaranteed Obligations shall conclusively be deemed to have been created, contracted or incurred in reliance on this Guaranty, and all dealings between the Beneficiaries and their Affiliates, on the one hand, and the Guarantors and/or the Guarantors’ respective Affiliates, on the other hand, in connection with the LLC Interest Sale Agreement, the Participation Agreement, the LLC Operating Agreement and the other Ancillary Documents to which the Company or the Member is or will be a party and the transactions contemplated hereby and thereby shall likewise conclusively be presumed to have been had or consummated in reliance on this Guaranty.

(c) Each Guarantor covenants that this Guaranty shall not be discharged except by complete payment and performance of the Guaranteed Obligations.

(d) The obligations of the Guarantors hereunder shall constitute a present and continuing guarantee of payment only and not of collectibility, shall be absolute and unconditional, shall not be subject to any counterclaim, setoff, deduction or defense the Guarantors may, individually or together, have against any Beneficiary or any other Person, and shall remain in full force and effect until all Guaranteed Obligations have been satisfied and performed in full, without regard to any event whatsoever (whether or not the Guarantors shall have any knowledge or notice thereof or shall have consented thereto), including, without limitation:

(i) any amendment or modification of, or supplement to, the LLC Interest Sale Agreement, the LLC Operating Agreement, the Participation Agreement or any of the other Ancillary Documents to which the Company or the Member is or will be a party, any assignment or transfer of any of the rights, obligations, duties or covenants of any party to the LLC Interest Sale Agreement, the LLC Operating Agreement, the Participation Agreement or any of the other Ancillary Documents to which the Company or the Member is or will be a party, any renewal or extension of time for the performance of any of the Guaranteed Obligations, or any furnishing or acceptance of security so furnished or accepted for any of the Guaranteed Obligations;

(ii) any waiver, consent, extension, forbearance, release or substitution of security or other action or inaction under or in respect of the LLC Interest Sale Agreement, the LLC Operating Agreement, the Participation Agreement or any of the other Ancillary Documents to which the Company or the Member is or will be a party or this Guaranty, or any exercise of, or failure to exercise, any right, remedy or power in respect hereof or thereof;

(iii) any bankruptcy, insolvency, marshaling of assets and liabilities, arrangements, readjustment, composition, receivership, assignment for the benefit of creditors, liquidation or similar proceedings with respect to the Company or the Member or any of their Affiliates or either Guarantor;

(iv) the dissolution, sale or other disposition of all or substantially all of the assets of any of the Company or the Member or any of their Affiliates or of either Guarantor;

(v) any default by the Company or the Member or any of their Affiliates or by either Guarantor under, or any invalidity or any unenforceability of, or any misrepresentation by the Company or the Member or any of their Affiliates or either Guarantor in, or any irregularity or other defect in, the LLC Interest Sale Agreement, the LLC Operating Agreement, the Participation Agreement or any of the other Ancillary Documents to which the Company or the Member is or will be a party or this Guaranty or any other instrument or agreement; or

(vi) any other event, action or circumstance that would, in the absence of this Section 2(d)(vi), result in the release or discharge of either Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty or otherwise constitute a defense to this Guaranty.

Any term of this Guaranty to the contrary notwithstanding, if at any time any amount (constituting a Guaranteed Obligation) paid or payable by the Member or the Company is rescinded or must otherwise be restored or returned, whether upon or as a result of the appointment of a custodian, receiver or trustee or similar officer for the Member or the Company or any substantial part of any of their assets, or the insolvency, bankruptcy or reorganization of the Member or the Company or otherwise, the obligations of the Guarantors hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

3. **Obligations Independent.** The obligations of each Guarantor hereunder are independent of the obligations of any other guarantor, the Company or the Member. Separate action or actions may be brought and prosecuted against each Guarantor, whether or not action is brought against the Company or the Member and whether or not the Company or the Member be joined in any such action or actions.

4. **Representations and Warranties of the Guarantors.** Each Guarantor represents and warrants as follows:

4.1 **Capacity, Enforceability and Consents.**

(a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite power and authority (corporate or other) to own, lease and operate its assets and properties and to carry on its business as presently conducted.

(b) The Guarantor has all requisite power and authority (corporate or other) to execute, deliver and perform its obligations under this Guaranty and to consummate the transactions contemplated hereby. The execution and delivery by the Guarantor of, and the performance by the Guarantor of its obligations under, this Guaranty have been duly and validly authorized by all requisite action on the part of the Guarantor, and this Guaranty constitutes a valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws relating to or affecting the rights and remedies of creditors generally and to general principles of equity (regardless of whether in equity or at law).

(c) The execution and delivery by the Guarantor of this Guaranty, the performance by the Guarantor of its obligations hereunder and the consummation by the Guarantor of the transactions contemplated hereby do not and will not: (i) violate any provision of the certificate of formation or limited liability company agreement (or comparable organizational documents with different names) of the Guarantor; (ii) require on the part of the

Guarantor any notice or filing with, or any permits, licenses, authorizations, registrations, franchises, approvals, consents, certificates, variances and similar rights to be obtained from, or other authorization of, or any exemption by, any Governmental Authority; (iii) in any material respect, result in a violation or breach of, constitute a default under, result in the acceleration of, give rise to any right to accelerate, terminate, modify or cancel, or require any notice, consent, authorization, approval or waiver under, or result in any other adverse consequence under, any contract to which the Guarantor is a party or by which the Guarantor or any of its assets or properties is bound; (iv) violate or breach the terms of or cause any default under any Law applicable to the Guarantor or any of its properties or assets; or (v) with the passage of time, the giving of notice or both, have any of the effects described in clauses (i) through (iv) of this Section 4.1(c).

4.2 **Legal Matters.** There is no claim pending against, or, to the knowledge of the Guarantor, threatened against or affecting, the Guarantor or any of the Guarantor's properties or rights, at law or in equity, before or by any court, arbitrator, panel or other Governmental Authority that could adversely affect the ability of the Guarantor to consummate the transactions contemplated by this Guaranty or any of the other Ancillary Documents to which the Guarantor is a party.

5. **Survival.** All representations, warranties, covenants and agreements contained in this Guaranty shall survive (and not be affected in any respect by) the consummation of the transactions contemplated in the LLC Interest Sale Agreement, any investigation conducted by or on behalf of any party hereto and any information which any Beneficiary may receive or have.

6. **Miscellaneous.**

6.1 **Notices.** All notices, requests, demands, and other communications required or permitted to be given or delivered under or by reason of the provisions of this Guaranty shall be in writing and shall be given by certified or registered mail, postage prepaid, or delivered by hand or by nationally recognized air courier service, directed to the address of such Person set forth below:

If to the Participant, to:

Manager, Structured Transactions  
c/o Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW (Room F-7008)  
Washington, D.C. 20429-0002  
Attention: George Alexander

with a copy to:

Senior Counsel  
FDIC Legal Division  
Litigation and Resolutions Branch, Receivership Section  
Special Issues Unit  
3501 Fairfax Drive (Room E-7056)  
Arlington, Virginia 22226  
Attention: David Gearin

If to a Guarantor, to its address on the signature page hereto.

Any such notice shall become effective when received (or receipt is refused) by the addressee, provided that any notice or communication that is received (or refused) other than during regular business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day of the recipient. From time to time, any Person may designate a new address for purposes of notice hereunder by notice to such effect to the other Persons identified above.

6.2 **Assignment.** This Guaranty and all of the provisions hereof shall be binding upon and inure to the benefit of the Guarantors, the Beneficiaries and their respective heirs (in the case of any individual), successors and permitted assigns; provided, however, that neither Guarantor may assign this Guaranty or any of its respective rights, interests or obligations hereunder. Any purported assignment or delegation in violation of this Guaranty shall be null and void *ab initio*.

6.3 **Entire Agreement.** This Guaranty, the LLC Interest Sale Agreement, the LLC Operating Agreement, the Participation Agreement and the other Ancillary Documents (including the Schedules and Exhibits hereto and thereto) embody the entire agreement and understanding of the parties and their respective Affiliates with respect to the transactions contemplated hereby and merge in, supersede and cancel all prior written or oral commitments, arrangements or understandings with respect thereto.

6.4 **Modifications, Amendments and Waivers.** This Guaranty may not be modified or amended except by an instrument or instruments in writing signed by the Beneficiaries and the Guarantors. Any Beneficiary may, only by an instrument in writing, waive compliance by the Guarantors with any term or provision hereof. No failure or delay of any Beneficiary in exercising any right or remedy hereunder shall operate as a waiver thereof, nor will any single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The waiver by any Beneficiary of a breach of any term or provision hereof shall not be construed as a waiver of any subsequent breach. The rights and remedies of the Beneficiaries hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder.

6.5 **Counterparts; Facsimile Signatures.** This Guaranty will become effective when the signature page has, or counterparts thereof have, been signed by the Guarantors and

delivered to the Beneficiaries. A copy of the executed signature transmitted by telecopy, facsimile or other electronic transmission service shall be considered an original for purposes of this Section 6.5, provided that receipt of copies of such signature page is confirmed.

6.6 **Governing Law.** THIS GUARANTY IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK (EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS GUARANTY TO THE LAW OF ANOTHER JURISDICTION). Nothing in this Guaranty shall require any unlawful action or inaction by any Person.

6.7 **Submission to Jurisdiction; Waiver of Jury Trial.** Each Guarantor, for itself and its Affiliates, hereby irrevocably and unconditionally:

(a) (i) agrees that any suit, action or proceeding instituted against it by any Beneficiary with respect to this Guaranty may be instituted, and that any suit, action or proceeding by it against any other Person with respect to this Guaranty shall be instituted, only in the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia (and appellate courts from any of the foregoing), (ii) consents and submits, for itself and its property, to the jurisdiction of such courts for the purpose of any such suit, action or proceeding instituted against it by any other Person and (iii) agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law;

(b) agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 6.7(a) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Guarantor at its address for notices pursuant to Section 6.1 (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 6.7 shall affect the ability of the Guarantor to be served process in any other manner permitted by law;

(c) (i) waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Guaranty brought in any court specified in Section 6.7(a), (ii) waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum and (iii) agrees not to plead or claim either of the foregoing;

(d) agrees that nothing contained in this Section 6.7 shall be construed as a consent to jurisdiction by the Failed Thrift or the FDIC in any capacity or as a limitation on any removal rights the FDIC in any capacity may have; and

(e) WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS GUARANTY AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

6.8 **Severability.** To the fullest extent that it may effectively do so under applicable law, each Guarantor hereby waives any provision of law that renders any provision of this

Guaranty invalid, illegal or unenforceable in any respect. Each Guarantor further agrees that any provision of this Guaranty which, notwithstanding the preceding sentence, is rendered or held invalid, illegal or unenforceable in any respect in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (a) if such provision is rendered or held invalid, illegal or unenforceable in such jurisdiction only as to a particular Person or Persons or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons or under such particular circumstance or circumstances, as the case may be; (b) without limitation of clause (a), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such invalidity, illegality or unenforceability, and such invalidity, illegality or unenforceability in such jurisdiction shall not render invalid, illegal or unenforceable such provision in any other jurisdiction; and (c) without limitation of clause (a) or (b), such ineffectiveness shall not render invalid, illegal or unenforceable this Guaranty or any of the remaining provisions hereof.

6.9 **No Presumption.** With regard to each and every term and condition of this Guaranty, each Guarantor understands and agrees that the same have or has been mutually negotiated, prepared and drafted (by the Guarantors, on the one hand, and on behalf of the Beneficiaries, on the other hand), and if at any time any such term or condition is desired or required to be interpreted or construed, no consideration shall be given to the issue of who actually prepared, drafted or requested any term or condition of this Guaranty or any agreement or instrument subject hereto.

6.10 **Third Party Beneficiaries.** This Guaranty is for the benefit of each of the Beneficiaries and their respective successors and assigns, all of whom shall be express third party beneficiaries under this Guaranty and shall be entitled to enforce their rights hereunder.

[The next page is the signature page]



The Guarantors have caused this Guaranty to be duly executed and delivered as of the date first written above.

IMB HOLDCO LLC

By: 

Name: Steven T. Mnuchin  
Title: Chief Executive Officer

Address:

888 East Walnut Street  
Pasadena, CA 91101-7211  
Attention: Steven T. Mnuchin

with a copy to:

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, NY 10006  
Attention: Paul E. Glotzer

ONEWEST BANK, FSB

By: 

Name: Joshua P. Eaton  
Title: Authorized Signatory

Address:

888 East Walnut Street  
Pasadena, CA 91101-7211  
Attention: Steven T. Mnuchin

with a copy to:

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, NY 10006  
Attention: Paul E. Glotzer