

04 FEB 27 PM 3:04

WTZ-60539W

After recording please return to:  
First Horizon Home Loan Corporation

Vol M04 Page 11510

[Company Name]

Attn: Construction Lending #7545

[Name of Natural Person]

4949 SW Meadows Road, Suite 200

[Street Address]

Lake Oswego, OR 97035

[City, State Zip Code]

State of Oregon, County of Klamath  
Recorded 02/27/2004 3:04 p m  
Vol M04 Pg 11510-17  
Linda Smith, County Clerk  
Fee \$ 56.00 # of Pgs 8

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## ADJUSTABLE RATE LOAN MODIFICATION AGREEMENT

This Loan Modification Agreement ("Agreement"), made  
between **TAMI J. OSBORN and BRETT W. OSBORN**

**February 9, 2004**

and **First Horizon Home Loan Corporation**

("Borrower")

amends and supplements one certain promissory note ("Note") dated  
the original principal amount of \$ **212,400.00**  
**BRETT W. OSBORN**

**June 26, 2003**, in  
executed by **TAMI J. OSBORN AND**

("Maker")

payable to the order of **FIRST HORIZON HOME LOAN CORPORATION**

in accordance with the terms set forth therein. Borrower acknowledges that Lender is the holder and the owner of  
the Note and understands that Lender may transfer the Note, as amended by this Agreement, and that anyone who  
takes the Note by transfer and who is entitled to receive payments under the Note is called the "Lender" in this  
Agreement. The Note is secured by a Contract for Labor and Materials, Mortgage, Deed of Trust, or Deed to  
Secure Debt (the "Security Instrument"), dated **June 26, 2003**, and filed for record on

**July 9, 2003**, under **Book M03 Page 47696-47721** of the official records of  
**Klamath** County, **Oregon**. Said Security Instrument conveys the real  
and personal property described in such Security Instrument (the "Property") located at: **4619 Marsh Hawk**  
**Drive, Klamath Falls, OR 97601**  
(Property Address).

the real property described being set forth as follows:

**LOT 769 OF RUNNING Y RESORT, PHASE 6, SECOND ADDITION, ACCORDING TO THE  
OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH  
COUNTY, OREGON.**

(Legal Description)

**Loan Number: 0043897941**

Adjustable Rate Loan Modification Agreement (Multistate)  
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Borrower now desires to extend or rearrange the time and manner of (re)payment of the Note and to extend and carry forward the lien(s) on the Property whether created by the Security Instrument or otherwise. Lender, the legal holder and owner of the Note and of the lien(s) securing the same has agreed at the request of the Borrower to extend or rearrange the time and manner of payment of the Note.

For and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by each of the parties to the other, the receipt and sufficiency of which are hereby acknowledged and confessed, and in consideration of the mutual promises and agreements exchanged, the parties hereto agree as follows (notwithstanding anything to the contrary contained in the Note or Security Instrument):

1. **Acknowledgment of Unpaid Principal Balance:** Borrower acknowledges that as of **February 9, 2004**, the amount payable under the Note and secured by the Security Instrument (the "Unpaid Principal Balance") is U.S. \$ **212,400.00**. Borrower hereby renews and extends such indebtedness and promises to pay jointly and severally to the order of Lender the sum of U.S. \$ **212,400.00** (the "Principal Balance"), consisting of the amount(s) loaned to Borrower by Lender and any accrued but unpaid interest capitalized to date.
2. **Repayment Terms:** Interest will be charged on the unpaid Principal Balance until the full amount of principal has been paid. Borrower will pay interest at a yearly rate of **5.875** % from **February 13, 2004**. The interest rate Borrower will pay will change in accordance with Paragraph 7 of this Agreement. The interest rate required by this Paragraph 2 and Paragraph 7 of this Agreement is the rate Borrower will pay both before and after any default under the terms of the Note, as amended by this Agreement.
3. **Time and Place of Payments:** Borrower promises to make initial monthly principal and interest payments of U.S. \$ **1,256.43**, beginning on **April 1, 2004**, and continuing thereafter on the same day of each succeeding month until principal and interest are paid in full. If on **March 1, 2034** ("Modified Maturity Date"), Borrower still owes amounts under the Note and the Security Instrument, as amended by this Agreement, Borrower will pay these amounts in full on the Maturity Date. Borrower will make such payments at **First Horizon Home Loan Corporation, P.O. Box 146, Memphis, TN 38101**, or at such other place as Lender may require.
4. **Payment Changes:** Changes in the monthly payment will reflect changes in the unpaid principal of the loan and in the interest rate Borrower must pay. Lender will determine the new interest rate and the changed amount of the monthly payment in accordance with Paragraph 7 of this Agreement. The interest rate Borrower will pay may change on **March 1, 2009**, and on that day every **6th** month thereafter. Each date on which the interest rate could change is called a "Change Date".
5. **The Index:** Beginning with the first Change Date, the interest rate will be based on an Index. The "Index" is The average of interbank offered rates for 6-month U.S. dollar denominated deposits in the London market ("LIBOR"), as of the first business day of the month, as made available by the Federal Reserve Board. The most recent Index figure available as of the date forty-five (45) days before each Change Date is called the "Current Index". If the Index is no longer available, the Lender will choose a new index which is based upon comparable information. Lender will give Borrower notice of this choice.

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6. **Calculation of Changes:** Before each Change Date, Lender will calculate the new interest rate by adding 2.250 % to the Current Index. Lender will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated below, this rounded amount will be the new interest rate until the next Change Date. Lender will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that Borrower is expected to owe at the Change Date in full on the maturity date at the new interest rate in substantially equal payments. The result of this calculation will be the new amount of the monthly payment. Borrower will pay the amount of the new monthly payment beginning on the first monthly payment date after the Change Date until the amount of the monthly payment changes again. The monthly payments will be applied first to the payment of interest due and then to principal.
7. **Interest Rate Limitations:** The interest rate Borrower is required to pay at the first Change Date will not be greater than 11.875 % or less than 2.250 %. Thereafter, the interest rate will never be increased or decreased on any single Change Date by more than 2.000 % from the rate of interest Borrower has been paying for the preceding 6 months. The interest rate will never be greater than 11.875 %.
8. **Notice of Changes:** Before the effective date of any change, Lender will deliver or mail to Borrower notice of any changes in the interest rate and the amount of the monthly payment. The notice will include information required by law to be given to Borrower and also the title and telephone number of a person who will answer any questions Borrower may have. Unless applicable law requires a different method, any notice that must be given to Borrower under this Agreement will be given by delivering it or mailing it by first class mail to Borrower at the Property Address stated above or at a different address if Borrower gives Lender notice of Borrower's different address. Any notice that must be given to Lender under this Agreement will be given by mailing it first class mail to the Lender at the address stated in Paragraph 3 above or at a different address if Borrower is given notice of that different address.
9. **Late Charges for Overdue Payments:** If Lender has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, Borrower will pay a late charge to Lender. The amount of the charge will be 5.000 % of the overdue payment of principal and interest. Borrower will pay this late charge promptly but only once on each late payment. The late charge is not in lieu of any other remedy of Lender, including any default remedy, and will not be charged if such charge would constitute interest in excess of the maximum permitted by state law.
10. **Borrower's Right to Prepay:** Borrower has the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When Borrower makes a prepayment, Borrower will Lender in writing that Borrower is doing so.
11. **Renewal and Extension of Maturity:** The lien security interest secured by this Agreement is a renewal and extension effective as of February 9, 2004. It is the intention of the parties that all liens and security interests described in the Security Instrument are hereby renewed and extended until the Principal Balance evidenced by the Note, as renewed, modified, and extended hereby, has been fully paid. Lender and Borrower acknowledge and agree that such extension, renewal, amendment, modification, or rearrangement shall in no manner affect or impair the Note or the liens and security interests securing same, the purpose of this Agreement being simply to extend, modify, amend or rearrange the time and the manner of payment of the Note and the indebtedness evidenced thereby, and to carry forward all liens and security interests securing the Note (including if applicable any and all vendor's liens securing

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the Note), which are expressly acknowledged by Borrower to be valid and subsisting, and in full force and effect so as to fully secure the payment of the Note. Borrower hereby expressly waives the benefit of any and all statutes of limitation which might otherwise inure to Borrower's benefit, or be in any way applicable to Borrower's obligations under the terms of any and all instruments described herein.

12. **Transfer of the Property or a Beneficial Interest in Borrower:** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by the Security Instrument. 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 delivered or mailed 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 the Security Instrument without further notice or demand on Borrower.
  
13. **Usury:** No provisions of this Agreement or the Note or any instrument evidencing or securing the Note, or otherwise relating to the indebtedness evidenced by the Note, shall require the payment or permit the demand, collection, application or receipt of interest in excess of the maximum permitted by applicable state or federal law. If any excess of interest in such respect is herein or in any such other instrument provided for, or shall be adjudicated to be so provided for herein or in any such instrument, the provisions of this Paragraph shall govern, and neither Borrower nor any endorser or guarantor of the Note nor their respective heirs, personal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent it is in excess of the amount permitted by applicable law. It is expressly stipulated and agreed to be the intent of Borrower and Lender to at all times comply with the usury and other laws relating to the Note and the Security Instrument and any subsequent revisions, repeals or judicial interpretations hereof, to the extent applicable thereto. In the event Lender ever receives, collects or applies as interest any such excess, including but not limited to any "late charges" collected, such amount which would be excessive interest shall be applied to the reduction of the Unpaid Principal Balance of the Note, and, if upon such application the principal balance of the Note is paid in full, any remaining excess shall be paid to Borrower and the provisions of the Note and the Security Instrument shall immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of execution of any new document, so as to comply with the then applicable law, but so as to permit the recovery of the fullest amount otherwise called for thereunder. In determining whether or not the interest paid or payable under any specific contingency exceeds the maximum interest allowed to be charged by applicable law, Borrower and Lender shall, to the maximum extent permitted under applicable law, amortize, prorate, allocate and spread the total amount of interest throughout the entire term of the Note so that the amount or rate of interest charged for any and all periods of time during the term of the Note is to the greatest extent possible less than the maximum amount or rate of interest allowed to be charged by law during the relevant period of time.
  
14. **Release and Waiver of Other Claims:** In consideration of the modification of certain provisions of the Note and Security Instrument, all as herein provided, and the other benefits received by Borrower hereunder, Borrower hereby RELEASES, RELINQUISHES, and forever DISCHARGES Lender, as well as its predecessors, successors, assigns, agents, officers, directors, employees and representatives, of and from any and all claims, demands, actions and causes of action of any and every kind of character, whether known or unknown, present or future, which Borrower may have against Lender, and its predecessors, successors, assigns, agents, officers, directors, employees and representatives, arising out of or with respect to any and all transactions relating to the Note and the Security Instrument occurring prior to the date hereof, including any

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loss, cost or damage, of any kind or character, arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of Lender, and its predecessors, successors, assigns, agents, officers, directors, employees, and representatives, including any breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any claim for wrongfully accelerating the Note or wrongfully attempting to foreclose on any collateral relating to the Note, but in each case only to the extent permitted by the applicable law, of this state.

15. **Loan Documentation:** As amended hereby, the provisions of the Note and Security Instrument shall continue in full force and effect, and Borrower acknowledges and reaffirms Borrower's liability to Lender thereunder. In the event of any inconsistency between this Agreement and the terms of the Note and Security Instruments, this Agreement shall govern. Nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument. Except as otherwise specifically provided in this Agreement, the Note and Security Instrument will remain unchanged, and Borrower and Lender will be bound by, and comply with, all of the terms and provisions thereof, as amended by this Agreement. Any default by Borrower in the Security Instrument, shall allow Lender to exercise all of its remedies set forth in said Security Instrument.
16. **Partial Invalidity:** In the event any portion of the sums intended to be secured by this Agreement cannot be lawfully secured, payments in reduction of such sums shall be applied first to those portions not secured.
17. **Co-Signer Liability:** Any co-signer who signs this Agreement but has not executed the Note is co-signing this Agreement only to mortgage, grant and convey that co-signer's interest in the Property under the terms of this Agreement. Co-signer is not personally obligated to pay the sums secured by the Security Instrument, and agrees that Lender and Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of the Note or the Security Instrument, without co-signer's consent.
18. **Hazardous Substances:** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. 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. Borrower shall promptly give Lender written notice of 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. If Borrower learns, or is notified by any governmental or regulatory authority, 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. As used in this Paragraph 19, "Hazardous Substances" are those substances defined as toxic or hazardous substances 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. As used in this Paragraph 19, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

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19. **Miscellaneous:** Borrower hereby agrees to pay all costs and expenses incurred by Lender in connection with the execution and administration of this Agreement, the renewal and extension and modification of the Note and Security Instrument, and any other documents executed in connection herewith.

Lender does not, by its execution of this Agreement, waive any rights it may have against any person not a party hereto.

This Agreement may be executed in multiple counterparts, each of which shall constitute an original instrument, but all of which shall constitute one and the same Agreement.

20. **NO ORAL AGREEMENTS:** THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED as of the day and year first above written.

Tami J. Osborn (Seal)  
TAMI J. OSBORN -Borrower

Brett W. Osborn (Seal)  
BRETT W. OSBORN -Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

[Sign Original Only]

ACCEPTED AND AGREED TO BY THE OWNER AND HOLDER OF SAID NOTE:

First Horizon Home Loan Corporation

By: Janice A. Miller

Title: VP Mgr.

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**INDIVIDUAL ACKNOWLEDGMENT**

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State of ~~Oregon~~ CALIFORNIA §County of PLACER §This instrument was acknowledged before me on DATE 2/17/04  
by TAMI J. OSBORN and BRETT W. OSBORN  
Notary Public

Individual Acknowledgment (Multistate)

THE COMPLIANCE SOURCE, INC.

To Order Call: (972) 980-2178 Fax (972) 392-2891

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## CORPORATE ACKNOWLEDGEMENT

State of       **Oregon**       )  
  )  
County of     **Clackamas**    )

The foregoing instrument was acknowledged before me on **February 23, 2004 [date]**, by Janice A. Miller, Vice President of **First Horizon Home Loan Corporation, a Kansas Corporation**, on behalf of the Corporation.



A handwritten signature in dark ink, appearing to read 'Mark CB', is written over a horizontal line.

(Seal)

Notary Public, State of   **OREGON**

My Commission Expires: **February 3, 2007**

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