

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**COUNTRYWIDE FINANCIAL CORPORATION**

Dated: January 17, 2008

By: /s/ Susan E. Bow

**Susan E. Bow**  
Senior Managing Director,  
General Counsel, Corporate and Securities  
and Corporate Secretary

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EXHIBIT INDEX

<b>Exhibit No.</b>	<b>Description of Exhibit</b>
2.1	Agreement and Plan of Merger, dated as of <u>January 11, 2008</u> , by and among Countrywide Financial Corporation, Bank of America Corporation and Red Oak Merger Corporation.
10.1	Fourth Amendment to Amended and Restated Rights Agreement, dated as of <u>January 11, 2008</u> , by and between Countrywide Financial Corporation and American Stock Transfer & Trust Company, as rights agent.

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## Dates Referenced Herein and Documents Incorporated By Reference

<u><i>This 425 Filing</i></u>	<u><i>Date</i></u>	<u><i>Other Filings</i></u>
	11/27/01	
	12/8/05	<a href="#">4 8-K</a>
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# GARCIA v. BANK OF AMERICA CORPORATION BAC LP

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**Court of Appeals of Texas, Houston (14th Dist.).**

**Milton GARCIA, Appellant v. BANK OF AMERICA CORPORATION, BAC Home Loan Servicing, LP, and Newport Insurance Company, Appellees.**

**Nos. 14-10-00821-CV, 14-10-00856-CV, 14-10-01145-CV.**

**-- May 17, 2012**

Panel consists of Justices FROST, SEYMORE, and JAMISON. Wyatt David Snider, Jacqueline M. Stroh, for Milton Garcia. Christopher W. Martin, Todd M. Loneragan, for Bank of America Corporation, BAC Home Loan Servicing, LP, and Newport Insurance Company.

### OPINION

In this consolidated appeal, Milton Garcia appeals from the trial court's grant of summary judgments favoring appellees, Bank of America Corporation ("BOA"), BAC Home Loan Servicing, LP ("BAC"), and Newport Insurance Co. ("Newport"). BOA owned the mortgage on Garcia's home, BAC is a mortgage servicing company that serviced Garcia's mortgage, and Newport issued a lender-placed insurance policy to BOA on Garcia's property. Seeking compensation for damage his property sustained in Hurricane Ike, Garcia alleged that he was a third-party beneficiary of the insurance policy Newport issued to BOA, and raised a variety of claims against BOA and BAC related to the procurement of insurance and management of an escrow account. We affirm.

### I. Background

Garcia purchased a home in Harris County in 1998, with the aid of a home equity loan. Pursuant to the mortgage agreement, Garcia was required to maintain insurance on the property sufficient to protect the mortgagee's interest in the property. If Garcia failed to provide such insurance, the mortgagee was authorized to purchase insurance for the property but was not required to purchase insurance which protected Garcia's interest in the property, i.e., any value in the property beyond the amount owed on the loan. Under the escrow agreement contained within the loan documents, Garcia was to pay an amount for insurance premiums into an escrow account, and the mortgagee was to use those funds to pay for either the insurance provided by Garcia, or in the event he failed to provide such insurance, for insurance placed by the mortgagee.

In 2004, Countrywide Home Loans acquired Garcia's mortgage. At the time, Garcia had a homeowner's insurance policy with National Lloyds Insurance. When Garcia failed to renew this policy, Countrywide purchased a "lender-placed" policy from Newport Insurance. This new policy listed Countrywide as the only insured party. According to appellees, the new policy was procured because Garcia failed to maintain coverage on the property as required under the mortgage agreement. According to Garcia, appellees should have either used escrow funds to pay premiums to renew the insurance with National Lloyds or obtained other insurance that covered his interests as well as those of Countrywide. Garcia also alleges that he is an intended third-party beneficiary of the Newport policy.

When Hurricane Ike hit Texas in September 2008, Garcia's house sustained significant damage. Garcia subsequently sued Newport, alleging that while it paid him some money to repair the damage to his house, it failed to adequately compensate him as required under the insurance policy. Garcia later amended his pleadings to add Countrywide, BOA (which had purchased Countrywide), and BAC (the mortgage servicing arm of BOA) as defendants. Countrywide later was dismissed from the lawsuit. Against BOA and BAC, which Garcia refers to as the "Bank Defendants," he alleged that they improperly switched the insurance paid with

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the escrow funds to the lender-placed policy with Newport. The Newport policy was designed to solely or primarily protect the interests of the lender rather than the homeowner, as would have been the case under the National Lloyds policy.<sup>3</sup>

After the case was removed to federal court and then returned to state court, the state trial court granted summary judgment favoring all three defendants without specifying the grounds therefor. In its motion, Newport alleged that Garcia could not sue under the insurance policy because he was neither a named insured nor a third-party beneficiary. In its motion, BOA contended that it had no role in the ownership or servicing of Garcia's mortgage. Lastly, in its motion, BAC attempted to conclusively disprove at least one element of each of Garcia's claims against it.

## II. Standards of Review

In proceedings on a traditional motion for summary judgment, the movant has the burden to show that there is no genuine issue of material fact and he or she is entitled to judgment as a matter of law. See *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex.2000) (per curiam). If the movant satisfies this requirement, the burden shifts to the non-movant to raise a fact issue sufficient to defeat summary judgment. *Walker v. Harris*, 924 S.W.2d 375, 377 (Tex.1996).

In determining whether a fact issue exists precluding summary judgment, evidence favorable to the non-movant is taken as true, and all reasonable inferences are carried in the non-movant's favor. See *City of Keller v. Wilson*, 168 S.W.3d 802, 823 (Tex.2005). We review a trial court's grant of summary judgment de novo. *Ferguson v. Bldg. Materials Corp. of Am.*, 295 S.W.3d 642, 644 (Tex.2009). We must affirm a summary judgment if any ground in the motion that would support the judgment is meritorious. *Progressive Cty. Mut. Ins. Co. v. Kelley*, 284 S.W.3d 805, 806 (Tex.2009).

Resolution of the issues in this appeal involve interpretation of contract and insurance policy language. The interpretation or construction of an unambiguous contract is a matter of law to be determined by the court. *Am. Mfrs. Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 157 (Tex.2003). When interpreting a contract, our primary concern is to ascertain and give effect to the intent of the parties as expressed in the agreement. *Seagull Energy E & P, Inc. v. Eland Energy, Inc.*, 207 S.W.3d 342, 345 (Tex.2006). To discern this intent, we examine and consider the entire writing in an effort to harmonize and give effect to all of its provisions so that none will be rendered meaningless. *Id.* No single provision taken alone will be given controlling effect; rather, all the provisions must be considered with reference to the whole instrument. *Id.* Interpretation of an insurance policy is governed by the same rules of construction applicable to other contracts. *Nat'l Union Fire Ins. Co. v. CBI Indus., Inc.*, 907 S.W.2d 517, 520 (Tex.1995).

## III. Newport's Motion

As stated, Newport's motion was based solely on its assertion that Garcia was neither a named-insured nor an intended third-party beneficiary of the lender-placed insurance policy. In his response below and on appeal, Garcia has focused on the third-party beneficiary argument.

### A. Third-Party Beneficiary Law

A third party may recover on a contract made between other parties only if the parties intended to secure some benefit to that third party, and only if the contracting parties entered into the contract directly for the third party's benefit. *Stine v. Stewart*, 80 S.W.3d 586, 589 (Tex.2002). The mere fact that a person might receive an incidental benefit from a contract does not give that person a right of action to enforce the contract. *Id.* In determining whether a third party can enforce a contract, the intention of the contracting parties is controlling. *S. Tex. Water Auth. v. Lomas*, 223 S.W.3d 304, 306 (Tex.2007). The intention to confer a direct benefit to a third party must be clearly and fully spelled out, or enforcement by the third party must be denied. *Id.* Courts may not create third-party beneficiary contracts by implication. *Stine*, 80 S.W.3d at 589. There is a presumption in Texas against third-party beneficiary agreements. *Tawes v. Barnes*, 340 S.W.3d 419, 425 (Tex.2011).

Texas recognizes two forms of third-party beneficiary: creditor and donee. Garcia contends only that he was a creditor beneficiary. A party is a creditor beneficiary if no intent to make a gift appears from the contract (which would make the party a donee beneficiary), but performance will satisfy an actual or asserted duty of the promisee to the beneficiary. *Lomas*, 223 S.W.3d at 306; *Esquivel v. Murray Guard, Inc.*, 992 S.W.2d 536, 543 (Tex.App.-Houston [14th Dist.] 1999, pet. denied).<sup>4</sup> This duty may be an indebtedness, contractual obligation, or other legally enforceable commitment to the third party. *Esquivel*, 992 S.W.2d at 544. The promisee must intend that the beneficiary will have the right to enforce the contract. *Id.*

### B. Arguments and Analysis

Newport relied on the insurance policy itself, as well as other documents, to demonstrate that the parties to the policy, Newport and Countrywide, did not intend to provide any direct benefit to Garcia but merely contracted to protect Countrywide's secured interest in the property. Garcia is not listed as a primary or additional insured in the policy. Although he is listed in the policy as the owner of the property, mere identification by itself does

not suggest that he was an intended third-party beneficiary. See *Union Pacific R.R. Co. v. Novus Intern., Inc.*, 113 S.W.3d 418, 422 n. 1 (Tex.App.-Houston [1st Dist.] 2003, pet. denied) (explaining that identification of a party in a contract is not determinative of third-party beneficiary status).

Garcia bases his contention that he was a creditor beneficiary primarily on language in the policy (found in endorsement 001), indicating that in the event the covered amount of a covered loss exceeded the value of Countrywide's interest in the property, payment for the loss would be made to Countrywide and Garcia.<sup>5</sup> Garcia argues that this language clearly indicates an intention to secure a benefit for him and thus he could sue to enforce the policy provisions. The very same one-page endorsement, however, contains language at the bottom explaining that "Notwithstanding the foregoing, nothing contained in this endorsement shall make a Mortgagor in legal possession of the Insured Residential Property or Commercial Property an Insured or an additional insured under this Policy." This language indicates that contrary to Garcia's suggestion, there was no intent in endorsement 001 to provide a benefit to Garcia that he would have the right to enforce; in other words, any benefit provided was incidental. Cf. *MCI Telecomms. Corp. v. Tex. Util. Elec. Co.*, 995 S.W.2d 647, 651 (Tex.1999) (holding that although contract in question provided certain benefits to third party, third party was not an intended third party beneficiary where no contractual language indicated parties entered contract directly to benefit third party and provision indicated contract should not be interpreted as conferring any benefits on third party).<sup>6</sup>

Furthermore, Garcia fails to point out what duty Countrywide allegedly owed to him that benefits under the insurance policy would have satisfied. The policy does not demonstrate that any benefits thereunder were to satisfy any duty Countrywide owed to Garcia.<sup>7</sup> Unless Countrywide owed Garcia a duty that the promise to pay insurance proceeds could satisfy, Garcia could not be a creditor beneficiary but was instead an incidental beneficiary with no right to enforce the contract. See, e.g., *MCI Telecomms.*, 995 S.W.2d at 651.

The trial court properly granted summary judgment favoring Newport because Newport established as a matter of law that Garcia was neither an insured nor an intended third-party beneficiary under the policy.<sup>8</sup> Accordingly, we overrule Garcia's first issue.

#### IV. Bank of America's Motion

In his second issue, Garcia contends the trial court erred in granting summary judgment favoring BOA. In its motion, the sole ground BOA asserted for summary judgment was that it simply played no role in the ownership or servicing of Garcia's mortgage. In support, it attached an affidavit from one of its vice presidents, Devra Lindgren, who averred as follows:

My name is Devra Lindgren. I am a Vice President/Assistant Corporate Secretary with Bank of America Corporation. In that position I am familiar with the relationship between Countrywide Home Loans, Inc. and Bank of America Corporation. Bank of America Corporation did not assume ownership of any of the loans issued by Countrywide Home Loans, Inc. to borrowers at time of the purchase of Countrywide Home Loans, Inc. by Bank of America Corporation. Bank of America Corporation has never been involved in the servicing of any of the mortgage loans issued to borrowers by Countrywide Home Loans, Inc.

As a result, Bank of America Corporation would not have had any involvement in either the ownership or servicing of the mortgage loan issued to Milton P. Garcia, Jr. by Countrywide Home Loans, Inc.

A summary judgment may be based on uncontroverted testimonial evidence of an interested witness "if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted." *Tex.R. Civ. P. 166a(c)*; see also *Trico Techs. Corp. v. Montiel*, 949 S.W.2d 308, 310 (Tex.1997). When an affidavit meets these criteria and the opposing party fails to controvert the affidavit through deposition testimony, interrogatories, or other discovery, the affidavit is competent summary judgment evidence. See *Trico Techs.*, 949 S.W.2d at 310.

Garcia's appellate briefing regarding BOA is entirely a critique of Lindgren's affidavit. Garcia's most salient points are that Lindgren (1) speaks only regarding loans "issued" by Countrywide, while his loan was acquired by Countrywide after issuance by another lender; (2) only negated an ownership interest at the time BOA purchased Countrywide, not subsequent ownership or involvement; (3) did not negate any supervision or control by BOA over Countrywide; (4) states BOA "would not have had" involvement but does not say it "did not have" involvement; and (5) did not affirmatively establish personal knowledge or the truth or correctness of her testimony. Additionally, Garcia questions how a different BOA officer, Stephen Grzeskowiak, could have expressed considerable knowledge regarding Garcia's loan when Lindgren denied BOA had any involvement with the loan. We will consider each of these arguments in turn.

First, Garcia points out that Lindgren states BOA had no involvement with any loans "issued" by Countrywide, but Countrywide did not issue Garcia's loan, it acquired it from another lender. While this distinction may be accurate, it is a semantic point at best. Cf. *Martinez v. City of San Antonio*, 768 S.W.2d 911, 915 (Tex.App.-San Antonio 1989, no writ) (refusing to participate in "a semantical word game" while interpreting affidavit). The fact that Lindgren intended the term "issued" to be used in an expansive way is demonstrated by the fact that she concludes from BOA's lack of involvement in loans "issued" by Countrywide that BOA would not have had any involvement with Garcia's loan in particular. Furthermore, if Lindgren's statement was inaccurate, Garcia

could have controverted it through the discovery and summary judgment response processes. See *Trico Techs.*, 949 S.W.2d at 310. He did not do so.

Next, Garcia asserts that Lindgren only negated an ownership interest at the time BOA purchased Countrywide, not any subsequent ownership or involvement with Garcia's loan. However, Lindgren's statements in the affidavit are not as limited as Garcia suggests. Lindgren stated that BOA "has never been involved in the servicing of any of the mortgage loans" and "would not have had any involvement in either the ownership or servicing of" Garcia's loan. This language was comprehensive enough to negate any interest at the time of purchase or subsequent thereto.

Garcia further points out that Lindgren did not specifically negate the possibility that BOA exerted supervision or control over Countrywide in regard to Garcia's loan. However, as appellees point out, Garcia's live pleading at the time judgment was granted did not contain any allegations of supervision or control. A summary judgment movant is not required to negate all potential bases for liability, only those actually pleaded. See *Smithkline Beecham Corp. v. Doe*, 903 S.W.2d 347, 355 (Tex.1995). Furthermore, even if such theories had been pleaded, Lindgren's affidavit statements were sufficient to negate such involvement. Lindgren effectively denied any involvement by BOA in regards to Garcia's loan.

Garcia additionally argues Lindgren did not affirmatively establish personal knowledge of the matters she referenced in her affidavit. Lindgren, however, permissibly explained that her knowledge came via her position as vice president and assistant corporate secretary with BOA. See *Valenzuela v. State & County Mut. Fire Ins. Co.*, 317 S.W.3d 550, 553 (Tex.App.-Houston [14th Dist.] 2010, no pet.) (compiling cases addressing similar statements in affidavits).<sup>9</sup>

Next, Garcia points out that in her affidavit Lindgren stated that BOA "would not have had any" involvement with his loan and did not specifically say that BOA "did not have any" involvement. But these phrases are substantial equivalents. Moreover, this is again an overly restrictive reading of the affidavit. Lindgren stated BOA "did not assume ownership" and "has never been involved in the servicing" of Countrywide's loans, thus it "would not have had any involvement" with Garcia's specific loan. In context, the "would not have had any" language does not suggest Lindgren was attempting to hide behind semantics as Garcia suggests.

Lastly, Garcia questions how another BOA officer, Senior Vice President Stephen Grzeskowiak, could have expressed considerable knowledge regarding Garcia's loan in his affidavit when Lindgren denied BOA had any involvement with the loan in hers. As appellees point out, however, Grzeskowiak's affidavit was not based on his experience with Garcia's loan while at BOA. Grzeskowiak stated in his affidavit that his knowledge of lender-placed insurance policies in general and Garcia's situation in particular was based upon (1) previous employment "where [his] responsibilities included lender placed policies," and (2) a review of Garcia's "loan file." Contrary to Garcia's suggestion, there is no apparent discrepancy between Lindgren's and Grzeskowiak's affidavits.

We find all of Garcia's challenges to Lindgren's affidavit to be without merit. Because Garcia does not raise any other arguments attacking the grant of summary judgment favoring BOA, we conclude the trial court did not err in granting that judgment. Garcia's second issue is overruled.

#### V. BAC Home Loan Servicing's Motion

Garcia's third issue challenges the summary judgment favoring BAC. BAC is the mortgage servicing arm of BOA. BAC and BOA filed a joint motion for summary judgment, making separate arguments for each entity. In contrast to the portion of the motion concerning BOA, in which BOA denied any connection to Garcia's mortgage, BAC acknowledges involvement in the servicing of Garcia's mortgage. BAC primarily argues instead that it properly performed any obligations it had to Garcia and did not breach any duties it may have owed him. Although the motion does not specify whether it was a traditional motion or a no-evidence motion, the specific arguments made are of the traditional variety. See *Tex.R. Civ. P. 166a(c)*. Thus, the initial burden was on BAC to demonstrate that there is no genuine issue of material fact and it is entitled to judgment as a matter of law. See *M.D. Anderson*, 28 S.W.3d at 23.

Garcia's extensive claims against BAC included the following: (1) breach of the duty of good faith and fair dealing; (2) breach of fiduciary duty; (3) negligence; (4) breach of contract; (5) violations of the Deceptive Trade Practices Act (DTPA); (6) common law fraud; (7) statutory fraud; (8) violations of the Texas Insurance Code; (9) negligent misrepresentation; and (10) conspiracy to commit fraud and breach of fiduciary duty.<sup>10</sup> In its motion, BAC addressed each of Garcia's causes of action. BAC also attached Grzeskowiak's affidavit to the motion, in which he stated that he had reviewed Garcia's loan file, "was previously employed in a position where [his] responsibilities included lender placed policies," and had personal knowledge of the facts presented. Grzeskowiak further averred that Countrywide acquired Garcia's mortgage in 2004, Garcia was consistently in default on the loan, and Countrywide had worked with him to get the payments current. At the time Countrywide acquired the loan, Garcia had his own insurance policy with National Lloyds Insurance, but that policy came up for renewal in September 2004 and was not renewed by Garcia.<sup>11</sup> According to Grzeskowiak, because Garcia did not fulfill his obligation under the mortgage agreement to maintain insurance on the subject property, a lender-placed policy was purchased and multiple notices were sent to Garcia before and after placement of the policy.<sup>12</sup> The "loan file" Grzeskowiak relied upon in making his affidavit was not



attached as such to the affidavit; however, included as attachments to the affidavit were copies of various notices Grzeskowiak said had been sent to Garcia, as well as a copy of the master insurance policy that was issued to Countrywide (i.e., the lender-placed policy).

We will discuss each cause of action raised by Garcia; however, as will be seen, several of the claims can be analyzed together because the grounds on which summary judgment was granted against them are similar.<sup>13</sup>

#### A. Breach of Duty of Good Faith and Fair Dealing Claims

Under his cause of action alleging a breach of the duty of good faith and fair dealing, Garcia asserted that BAC created a “special relationship” when it procured the lender-placed insurance policy on Garcia’s property with funds he placed in escrow. Garcia acknowledges that a duty of good faith does not ordinarily arise between parties to a mortgage agreement, see *Federal Deposit Insurance Corp. v. Coleman*, 795 S.W.2d 706, 709 (Tex.1990); however, he insists that such a duty arose here when BAC procured the lender-placed policy. See generally *Hudspeth v. Enter. Life Ins. Co.*, 358 S.W.3d 373, 389–90 (Tex.App.-Houston [1st Dist.] 2011, no pet. h.) (discussing creation of a special relationship and duty of good faith and fair dealing in the insurance context). According to Garcia, because of this special relationship, BAC had a duty to insure that all of the benefits under the policy were paid to him, and BAC violated that duty by not making sure he received the proceeds.

In its motion, BAC explained, inter alia, that as authorized by the mortgage agreement, the lender-placed policy was procured solely for the mortgage company and solely to protect the secured interest of the mortgage company, and Garcia was not entitled to any proceeds from the policy under the terms of the mortgage agreement or the policy itself. Therefore, according to BAC, procurement of the policy did not create any special relationship between BAC and Garcia and there was no breach of a duty for good faith and fair dealing in such a relationship by not insuring that Garcia received proceeds from the policy.

We agree with BAC. As described in detail above, the lender-placed policy was procured pursuant to the mortgage agreement, which permitted such a policy to be obtained under certain circumstances and specified that the policy would not necessarily cover Garcia’s interest in the property. Furthermore, the policy itself did not provide any direct benefit to Garcia for which he was entitled to sue. Consequently, BAC did not sell Garcia insurance or purchase insurance for him, and BAC’s procurement of the policy did not create any duty for it to ensure that Garcia received proceeds under the policy. See *Hudspeth*, 358 S.W.3d at 389–90; see also *Barrand, Inc. v. Whataburger, Inc.*, 214 S.W.3d 122, 139 (Tex.App.-Corpus Christi 2006, pet. denied) (holding that regardless of whether a duty of good faith and fair dealing arose under parties’ agreement, party was not obligated by that duty to perform acts counter to agreement provisions). Moreover, since no such duty existed, no such duty was subsequently breached. Accordingly, the trial court did not err by granting summary judgment favoring BAC on Garcia’s claim of breach of the duty of good faith and fair dealing.

#### B. Breach of Fiduciary Duty Claim

In his breach of fiduciary duty cause of action, Garcia alleged that a fiduciary duty existed because BAC was (1) “the agent to insure that [Garcia] received all benefits he was entitled to under the policy” and (2) the escrow agent for the insurance premium payments. Garcia asserted BAC breached these alleged fiduciary duties by failing to ensure Garcia received all payments due him under the policy, failing to procure non-lender-placed insurance on the property, and failing to timely and properly pay insurance premiums from the escrow account for renewal of the National Lloyds policy.

Relying primarily on the mortgage documents and the escrow agreement, BAC asserted that it owed no fiduciary duties to Garcia and breached no such duties. As discussed in the immediately prior section of this opinion, BAC had no duty (agency-based or otherwise) to insure Garcia received any benefits under the lender-placed policy, so no fiduciary duty could be based on such an alleged duty or agency relationship. Thus, the first basis Garcia provided for creation of a fiduciary duty is without merit.

BAC has not expressly denied that it was the escrow agent for Garcia’s insurance premiums. Cases in which courts have described escrow agents as owing fiduciary duties to both parties to an escrow agreement have considered the issue in the context of closings on real property wherein the agent has a fiduciary duty to both sides in the transaction. See *Shoalmire v. U.S. Title of Harrison County*, No. 06-09-00034-CV, 2010 WL 271302, at \*5 (Tex.App.-Texarkana 2010, no pet.) (mem.op.); *Gary E. Patterson & Assocs., P.C. v. Holub*, 264 S.W.3d 180, 203 (Tex.App.-Houston [1st Dist.] 2008, pet. denied); *Trahan v. Lone State Title Co. of El Paso, Inc.*, 247 S.W.3d 269, 286 (Tex.App.-El Paso 2007, pet. denied). Other cases have explained that when the escrow agreement simply provides for the payment of funds by the mortgagor into an account for the mortgagee’s use to meet tax, insurance, and other obligations—as appears to be the case here—no fiduciary relationship is created. See *Monumental Life Ins. Co. v. Hayes-Jenkins*, 403F.3d 304, 318–10 & n. 27 (5th Cir.2005); *White v. Mellon Mortg. Co.*, 995 S.W.2d 795, 801 (Tex.App.-Tyler 1999, no pet.) (citing *Wesson v. Jefferson Sav. & Loan Ass’n*, 641 S.W.2d 903, 905 n. 2 (Tex.1982)).<sup>14</sup>

Regardless of whether an escrow agent owes a fiduciary duty, the duties of the agent are limited and defined by the escrow agreement itself. See *Shoalmire*, 2010 WL 271302, at \*5; *Trahan*, 247 S.W.3d at 286; *White*, 995 S.W.2d at 801. The escrow agreement in the present case did not require BAC to insure that Garcia received all

payments due him under any insurance policy or to procure any insurance policy for Garcia; to the contrary, the burden of procuring insurance under the mortgage documents was on Garcia. Therefore, summary judgment was properly granted against claims based on these alleged fiduciary duty breaches.

As stated, Garcia additionally asserted that BAC failed to timely and properly pay the insurance premiums from funds in the escrow account. The escrow agreement did, in fact, require timely payments be made for insurance premiums. Garcia's specific claim, as explained in his briefing to this court, is that BAC failed to send the premiums to Garcia's former insurance carrier, National Lloyds, "to renew the policy." But nothing in the mortgage documents, including the escrow agreement, placed a duty on BAC to renew a policy originally procured by Garcia. To the contrary, the duty to provide and maintain insurance for the property was squarely on Garcia. Accordingly, the trial court properly granted summary judgment against Garcia's breach of fiduciary duty claims.

#### C. Failure to Pay Premiums

Similar to the last claim discussed under fiduciary duty above, several of Garcia's other causes of action were also premised on allegations that BAC either failed to pay premiums to renew the policy and was obligated to do so or misrepresented that it would make such payments. Garcia alleged: breach of contract,<sup>16</sup> common law fraud,<sup>17</sup> statutory fraud,<sup>18</sup> negligence,<sup>19</sup> negligent misrepresentation,<sup>20</sup> DTPA violations,<sup>21</sup> and violations under chapter 541 of the Insurance Code.<sup>22</sup>

The mortgage agreement makes clear that BAC had no duty to renew the National Lloyds policy; the duty to provide and maintain insurance under the agreement was always on Garcia. Grzeskowiak explained in his affidavit that because Garcia did not fulfill his obligation to maintain insurance, a lender-placed policy was obtained to protect the mortgagee's interest in the property. Grzeskowiak further identified numerous notices sent to Garcia apprising him of the issue both before and after placement of the policy.

In his responsive affidavit, Garcia asserted that "I was under the impression that I had full insurance coverage and that every month when I made my mortgage payment, I paying [sic] toward an insurance premium for a policy that my bank was purchasing on my behalf." He further stated that Countrywide never instructed him that he needed to get his own insurance policy, and it was his belief that "he paid money into an escrow account every month and Countrywide chose the insurance policy which was the [Newport] policy." Additionally, he averred that "It is not true that I allowed an insurance policy to lapse and therefore the mortgage company procured a force placed policy on my residence."

At no point in his affidavit, however, did Garcia allege that any representations were made by BAC regarding payment of the insurance premiums. Garcia's beliefs and impressions, in light of the unambiguous terms of the mortgage agreement placing the burden on him to provide and maintain insurance, are of no legal significance. This case is therefore unlike the situation addressed by the Amarillo Court of Appeals in *Pankow v. Colonial Life Insurance Co. of Texas*, 932 S.W.2d 271, 277–78 (Tex.App.-Amarillo 1996, writ denied). In *Pankow*, the plaintiff sued her mortgage lender and the insurer under a credit life policy that had not been renewed. *Id.* at 273. She was able to defeat summary judgment on certain of her causes of action with evidence that her lender represented that sums from an escrow account would be used to renew the credit life policy but such sums were never transferred as promised. *Id.* at 277–78.

Here, BAC demonstrated it had no duty to under the mortgage agreement to pay premiums to renew the policy and the notices it sent to Garcia contain no such promises. In response, Garcia did not specifically allege any promise was made by BAC to renew the policy. Accordingly, the trial court did not err in granting judgment against claims premised on allegations BAC either failed to pay premiums to renew the policy or misrepresented that it would make such payments.

#### D. Negligence

In his claim for negligence, Garcia additionally asserted that BAC owed him a legal duty to insure that he received all of the benefits and payments he was due for damage from Hurricane Ike. In its motion, BAC again asserted, based primarily on the mortgage documents, that it had no legal duty to insure that Garcia received all benefits. As fully discussed above, BAC had no duty to insure Garcia received any benefits. Accordingly, the trial court properly granted judgment on Garcia's negligence claim.

#### E. Insurance Code Claim

Garcia further alleged that BAC violated section 556.051 of the Texas Insurance Code by requiring that Garcia purchase insurance from a company affiliated with BAC. Section 556.051 reads as follows:

556.051. Unfair Method of Competition or Unfair Practice: Tying

(a) A depository institution engages in an unfair method of competition or an unfair practice in the sale of insurance by the depository institution if the depository institution:

- (1) is an agent and, as a condition of extending or renewing credit, leasing or selling property, or furnishing services, requires the purchase of insurance from the depository institution or a subsidiary or affiliate of the depository institution, or from or through a particular agent, insurer, or any other person or entity;
  - (2) conditions the terms of credit or the sale or lease of property on acquisition of insurance from or through the depository institution, a subsidiary or affiliate of the depository institution, or any other particular person or entity;
  - (3) rejects a required policy solely because the policy has been issued or underwritten by a person or entity that is not associated with the depository institution; or
  - (4) imposes a requirement on an agent or broker who is not associated with the depository institution that is not imposed on an agent or broker who is associated with the depository institution or a subsidiary or affiliate of the depository institution.
- (b) This section does not prevent a person who lends money or extends credit from placing insurance on property if the mortgagor, borrower, or purchaser fails to provide required insurance in accordance with the terms of the loan or credit document.

Tex. Ins.Code § 556.051.

As BAC explained in its motion for summary judgment, the record demonstrates that Garcia had the option under the mortgage agreement to provide his own insurance, and a lender-placed policy was obtained, pursuant to the mortgage agreement, only after Garcia failed to renew the prior policy or otherwise provide insurance. Moreover, there is no indication in the record that Garcia was required to obtain insurance from a company affiliated with the lender as a condition of extending credit.

BAC additionally relies on subsection 556.051(b), which specifically states that the section should not be read as preventing a lender from placing insurance on a property when the mortgagor fails to provide required insurance. This is precisely the situation in the present case. Nonetheless, Garcia contends that subsection (b) does not authorize a purchase of insurance in such a situation from an affiliated company. However, if Garcia were correct, then it would be difficult to discern what role subsection (b) played in section 556.051. See *Lamar Homes, Inc. v. Mid–Continent Cas. Co.*, 242 S.W.3d 1, 19 (Tex.2007) (explaining that in interpreting the meaning of a statute, it must be read as a whole and construed in such a manner as to harmonize all of its provisions). We interpret this subsection to mean that a depository institution's placement of insurance on property would not violate prohibitions of subsection (a), without regard to whether the insurance was purchased from an affiliate or subsidiary of the depository institution, after a purchaser's failure to provide required insurance. In short, BAC demonstrated as a matter of law that it did not violate Insurance Code section 556.051. Accordingly, the trial court did not err in granting judgment on this cause of action.

#### F. Conspiracy

Lastly, Garcia alleged that BAC conspired with all of the other named defendants to commit fraud and breach of fiduciary duty. Specifically, Garcia complained that the defendants unlawfully required him to purchase insurance coverage from entities "affiliated with a lending institution who [sic] extended credit to" Garcia. As explained above in regard to Garcia's allegations under the Insurance Code, the summary judgment record demonstrates that BAC did not, in fact, require Garcia to purchase insurance from an entity affiliated with a lending institution extending credit to Garcia. Therefore, the trial court did not err in granting judgment regarding conspiracy.

#### VI. Conclusion

The trial court did not err in granting summary judgment favoring Newport, BOA, or BAC. Consequently, we affirm the trial court's judgment.

#### FOOTNOTES

1. Newport is sometimes referred to both in the briefs and in documents filed below as "Balboa Insurance." It is not completely clear why different names are used, but at one point in his pleadings, Garcia suggested that Balboa owns Newport. No issues turn on the distinction. Within this opinion, we will use the name "Newport" to encompass assertions made regarding both Newport and Balboa.
2. Garcia's causes of action against Newport included: breach of contract, violations of the Insurance Code and Deceptive Trade Practices Act (DTPA), and breach of the duty of good faith and fair dealing.
3. The specific claims against BOA and BAC included: breach of the duty of good faith and fair dealing, breach of fiduciary duty, negligence, breach of contract, DTPA violations, Insurance Code violations, common law and statutory fraud, negligent misrepresentation, and conspiracy to commit fraud and breach of fiduciary duty.

4. Garcia does not argue in the alternative that he was a donee beneficiary. Such would require a clear intention to provide a gift to the beneficiary and would be rare in a business relationship. *Esquivel*, 992 S.W.2d at 543.

5. The provision in question reads in full as follows: Loss or damage, if any, shall be adjusted with and made payable to YOU. In the event that the covered amount of a covered loss exceeds Your interest in the covered property and a mortgagor is in legal possession of the Insured Residential Property or Commercial Property at the time of payment for loss or damage payment, [sic] will be made to You and the mortgagor. The policy explained that the terms "you" and "your" were used therein to refer to the named insured, in this case, Countrywide.

6. Garcia further notes that the same endorsement also authorized him to notify Newport of damage to the insured property. Such permission, however, does not connote a clear intention to confer a direct benefit to Garcia. See *Lomas*, 223 S.W.3d at 306. Furthermore, the admonishment in the endorsement that nothing therein should be construed as making a mortgagor an insured or additional insured under the policy also applied to this provision. Moreover, under the mortgage agreement between Garcia and Countrywide, Garcia was obligated to promptly report any damage to the property to the insurer. In other words, this was a duty owed by Garcia, not a benefit he was to receive. Garcia additionally cites a provision in the policy providing that "No one" could bring legal action on the policy unless there had been full compliance with the policy and the action was brought within two years of the damage in question. Garcia suggests that the fact that this provision did not limit itself to the named insured suggests the parties envisioned others might be able to bring suit to enforce the policy as well. However, that this single provision uses somewhat indistinct language does not "clearly and fully spell[] out" that the parties to the policy intended to confer a direct benefit on Garcia under the policy. See *Lomas*, 223 S.W.3d at 306.

7. Additionally, the mortgage agreement between Countrywide and Garcia provided that in the event Countrywide were to procure lender-placed insurance, it would not be obligated to purchase insurance that also protected Garcia's interest. That the premiums for the lender-placed policy were derived from funds provided by Garcia is no evidence of an intent by Countrywide and Newport to insure Garcia's interest. Garcia was obligated under the mortgage agreement to pay for insurance; Countrywide was not obligated to procure insurance that protected Garcia's interest.

8. In support of his position that borrowers can be third-party beneficiaries of lender-placed policies, Garcia cites numerous cases from other jurisdictions, principally federal district courts in Louisiana, Alabama, and Mississippi. This authority is not binding on this court, but in any event, each of these cases is readily distinguishable. See, e.g., *Lee v. Safeco Ins. Co. of Am.*, No. 08-1100, 2008 WL 2622997, at \*3-5 (E.D.La. Jul.2, 2008)) (applying Louisiana law, which is substantially dissimilar regarding third party beneficiaries, and involving substantially dissimilar policy language); *Jones v. Gen. Ins. Co. of Am.*, No. 07-0855-WS-C, 2009 WL 1537866, at \*8-10 (S.D.Ala. May 29, 2009) (emphasizing a course of dealing between the parties and that performance under the contract satisfied a duty by the promisee to the borrower); *Turner v. Gen. Ins. Co. of Am.*, No. 5:09cv00057-DCB-JMR, 2009 WL 3247302, at \*2-4 (S.D.Miss. Oct.7, 2009) (involving policy which covered personal property of homeowner and required payment directly to homeowner and not discussing requirement that performance be in satisfaction of a duty the promisee owed the borrower). In contrast to the cases Garcia cites, the policy in the present case required payment of any amount above the value of the lender's interest be paid to both the lender and the borrower, did not specifically require compliance with policy terms by the borrower, did not cover the borrower's personal property, and included language stating that any amounts paid above the value of the lender's interest in the property would not make the borrower an insured or additional insured under the policy. Furthermore, Garcia presented no evidence of a course of dealing that evidenced the parties' intent to confer a direct benefit on him. We additionally note that a divided panel of the First Court of Appeals recently held that an insurer under a lender-placed policy failed to prove entitlement to summary judgment against a homeowner's claim to be an intended third-party beneficiary of the policy. *Alvarado v. Lexington Ins. Co.*, Nos. 01-10-00740-CV, 01-10-01150-CV, 2012 WL 1355733, at \*17 (Tex.App.-Houston [1st Dist.] Apr. 19, 2012, no pet. h.). Some of the policy language at issue in that case, however, is not contained in the policy before us in the present case. See *id.* at \*12-16.

9. To the extent Garcia urges that Lindgren's affidavit cannot support summary judgment because in it she did not expressly say that her statements are based on her "personal knowledge" or that the facts recounted are "true and correct," such argument raises a matter of form that Garcia waived by not making it in the trial court. See, e.g., *New AAA Apartment Plumbers, Inc. v. DPMC-Briarcliff, L.P.*, No. 14-05-00485-CV, 2006 WL 2827275, \*2 (Tex.App.-Houston [14th Dist.] Oct. 5, 2006, no pet.).

10. Garcia's petition actually addressed each of the causes of action discussed in this section against three entities (BOA, BAC, and Countrywide) that he called "the Bank Defendants." However, in this section, we will examine each cause of action only as it pertained to BAC.

11. Grzeskowiak stated that Countrywide contacted Garcia's agent when a renewal of the policy was not submitted, but the agent was unable to produce a renewal policy.

12. Grzeskowiak did not specify who procured the lender-placed policy, sent notices to Garcia, or later renewed the lender-placed policy. Countrywide was the named insured on the policy, and the return address on the notices is for Countrywide.

13. Garcia spent a considerable portion of his brief arguing that BAC's motion was too conclusory to support the judgment and failed to provide sufficient citation to authority and the summary judgment evidence. While not a model of exposition, we find BAC's motion sufficient. It provided proper citation to legal authority in key places and referenced particular key documents in the record. Moreover, as will be discussed in detail below, a number of Garcia's causes of action were based on very similar allegations that could properly be addressed through shorthand references to arguments already made in the motion.

14. Garcia asserts in his brief that the supreme court in Wesson suggested that a fiduciary relationship would be created if an escrow agreement required the mortgagee to pay insurance premiums from escrow funds. 641 S.W.2d at 905 n. 2. This is not a reasonable reading of Wesson. The court therein stated: "The escrow relationship does not in itself impose a duty to acquire insurance in the absence of an agreement to do so." Id. As fully discussed in this opinion, the mortgage agreement at issue in this case did not require any of appellees to acquire insurance protecting Garcia's interest in the property.

15. Paragraph 5 of the agreement states that Garcia "shall keep the improvements now existing or hereafter erected on the Property insured against loss," and "[t]his insurance shall be maintained."

16. In his breach of contract cause of action, Garcia asserts that BAC had a duty under the escrow agreement to pay the insurance premiums and failure to do so was a breach of contract.

17. Under his common law fraud cause of action, Garcia alleged that BAC represented it would perform under the escrow agreement and pay the insurance premiums timely, and such representation was material, false, and made with the intent for Garcia to rely on it.

18. In his statutory fraud cause of action, Garcia alleged that BAC violated section 27.01 of the Texas Business and Commerce Code by making a false representation that it would perform under the escrow agreement. Tex. Bus. & Comm.Code § 27.01.



19. In his claim for negligence, Garcia alleged that as escrow agent, BAC had a duty to timely pay insurance premiums out of the escrow account and failing to do so caused him damages.

20. Under his negligent representation cause of action, Garcia alleged that BAC supplied false information for his guidance in that it represented it would timely pay premiums and thereby caused him damages.

21. In regards to his DTPA claims, for which he did not cite specific sections of the act, Garcia alleged that he was a consumer of BAC's escrow agent services. He further asserted that BAC made representations about those services in order to induce Garcia into using those services, and he was subsequently damaged by BAC's failure to pay the insurance premiums in accordance with the escrow agreement.

22. Lastly, in his Insurance Code claims under chapter 541, Garcia alleged that BAC violated sections 541.051, .052, and .061 in making misrepresentations regarding timely payment of insurance premiums, thus inducing Garcia into allowing a policy to lapse. Tex. Ins.Code §§ 541.051, .052, .061.

MARTHA HILL JAMISON, Justice.

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## Craig Bartley

**VP, Operations Project Consultant at Bank of America**

Greensboro/Winston-Salem, North Carolina Area · Financial Services

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### Craig Bartley's Overview

**Current** VP, Operations Project Consultant at Bank of America

**Education** University of Louisville

**Connections** 7 connections

### Craig Bartley's Experience

#### VP, Operations Project Consultant

**Bank of America**

Public Company: 10,001+ employees | **NAO**: Banking Industry

Currently holds this position

### Craig Bartley's Education

**University of Louisville**

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\*\*\*\* Leahurst, Louisville, KY 40216  
(502) 449-\*\*\*\* details ...



### Work & Education

#### Experience

Current: **VP, Operations Project Consultant at Bank of America**

Company: Bank of america

Position: Vp, operations project consultant *Currently holds this position*

#### Industries

Financial services

#### Education

University of Louisville

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#### PHATE - Turn It Up (Live @ Buckette)



Duration: 5m 4s

Published: 15 Jun, 2011

Category: Music

Phate's first live performance ripping it up with DJ Altek Fresh at Buckette 'Buckdang', New South Wales. The beat dropped by Craig Bartley - Birdshell (6th Borough Project Shell Toe mix) Visit Phate @ [www.facebook.com](http://www.facebook.com)

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Craig Bartley



Craig Bartley



Craig Bartley



Craig Bartley

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February 5, 2015

VIA FEDEX OVERNIGHT

Desiree Taylor  
Tax Sale Operations-Excess Proceeds Dept.  
Riverside County  
4080 Lemon St. 4th Floor  
Riverside, CA 92501

APN(s): 676490041-1  
TC: 185 Item#: 297

Dear Ms. Taylor,

Per the county's request; Please find the supporting documentation that applies to the above referenced parcel(s):

- Updated Statement of Amount Due and Owing from date of sale until now
- Certificate of Assistant Secretary of Bank of America, National Association giving Amy J. Carnino authority to act on behalf of Bank of America, N.A.

We hope the enclosed should assist in perfecting our claim, if you should have any further questions please contact me at 209-593-3904 or 1-800-370-9109. Thank you.

  
Sincerely,

Michelle Reynosa  
Team Leader of Claims Processing

FedEx Tracking Number: 7728-4815-3343



STATEMENT OF AMOUNT DUE AND OWING

The undersigned hereby states that the original amount of the lien or security interest against Assessor's Parcel Number(s) 676490041-1, Situs Address: 37 VICTORIA FALLS DR RANCHO MIRAGE was \$648,000.00. The amount still due and owing as of the 3/16/2010 sale of the tax-defaulted property by the Riverside County Tax Collector was at least \$646,712.72; no further payments were received after this date.

I declare under penalty of perjury under the laws of the State of Pennsylvania that the foregoing is true and correct to the best of my knowledge.

February 2, 2015  
DATE: MONTH, DAY, YEAR

Amy Carnino

BANK OF AMERICA, NA as servicer for THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE BEAR STEARNS ALT-A TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-9

Print Name: Amy J. Carnino  
Print Title: Assistant Vice President

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

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 Pennsylvania

County of Allegheny

On February 2, 2015 before me, Dana M. Maguire, Notary Public, personally appeared  
(Date) (here insert name and title of the officer)

Amy J. Carnino, 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.

Dana M. Maguire (seal)  
Signature of Notary Public

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Dana M. Maguire, Notary Public  
North Beaver Township, Lawrence County  
My commission expires April 16, 2017

**CERTIFICATE OF ASSISTANT SECRETARY  
OF  
BANK OF AMERICA, NATIONAL ASSOCIATION  
a national banking association**

The undersigned, a duly appointed and acting Assistant Secretary of Bank of America, National Association (the "Association"), a national banking association organized and existing under the laws of the United States of America and having its principal place of business in the City of Charlotte, County of Mecklenburg, State of North Carolina, does hereby certify that:

1. The following is a true and complete copy of an excerpt from the Bylaws of the Association, and the same is in full force and effect as of the date hereof:

**Section 5.2. Execution of Instruments.** All indentures, mortgages, deeds, conveyances, contracts, notes, loan documents, letters of credit, master agreements, swap agreements, guarantees, discharges, releases, satisfactions, settlements, affidavits, bonds, undertakings, powers of attorney, and other instruments or contracts may be signed, executed, acknowledged, verified, attested, delivered or accepted on behalf of the Association by the Chairman of the Board, the Chief Executive Officer, the President, any Vice Chairman of the Board, any Division President, any Managing Director, any Director (as described in Section 4.7 of these Bylaws), any Principal, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Officer, or any individual who is listed on the Association's personnel records in a position equal to any of the aforementioned officer positions, or such other officers, employees or agents as the Board of Directors, the Chief Executive Officer or any officer reporting directly to the Chief Executive Officer may direct in a written delegation kept in the minute book of the Association. The provisions of this Section 5.2 are supplementary to any other provision of these Bylaws and shall not be construed to authorize execution of instruments otherwise dictated by law.

2. Each of the individuals named on Exhibit A attached hereto is a duly elected or appointed and acting officer of the Association holding the title of **Assistant Vice President**.

IN WITNESS WHEREOF, I have hereunto signed my name on this 18<sup>th</sup> day of December, 2014.

BANK OF AMERICA, NATIONAL ASSOCIATION

By: \_\_\_\_\_

Christine Costamagna  
Assistant Secretary

## EXHIBIT A

### FORECLOSURE SERVICES DOCUMENT EXECUTION ASSISTANT VICE PRESIDENTS

Abbott, Marquita LaRae	Ceaser, Natasha	Ganison, Everly Jasmin
Adragna, Jacklyn Ann	Chartrand, Erica Ashley	Garcia, Marcela
Alexander, Geramy Domic	Chinchilla, Gregory David	Garcia, Yanira Izel
Ali, Shamim	Christmann, Erica Renay	Geresti, Jan Marie
Altieri, Aimie Christine	Clark, Amber Johnae	Gibson, Janice R.
Altman, Robert R.	Connolly, Mary F.	Gichuki, Joyce N.
Alvarado Jr., Daniel Juan	Coulehan, Megan Nicole	Gogarty, Steven James
Anderson, Becky Lynn	Cramer, Caryn Elaine	Gonzalez-Weikel, Lucy Lynn
Anderson, Jason Richmond	Cruz, Kimberly Marie	Graziani, Rosemarie
Armbruster, Elysha James	Cummings, Sophia Lorraine	Griffin, Verlina Ann
Arrington, Danielle Lynne	Davis, Carol Gosnell	Guerrero, Myra P.
Augoustidis, Jackie Lyn	Davis, Sherry D.	Haley, Maria Cher
Austrawski, Natalie Elizabeth	Delgado, Rochelle Anne	Handyside, Daniel James
Azeem, Milton P.	Dennis, Kayla Marie	Hannah II, Owen
Baldwin, Robert Lane	Dennison, Evelyn Delores	Hassett, Benjamin Walter
Banks, Caressa Jenice	Dennison, Kevin Vaughn	Havrilla-Spak, Kristen
Banks, Jalisa	Devita, Timothy James	Heath, Michael D.
Barry, Darlene Jeannette	Dilla, Paul Michael	Herbert, Jamie
Beatty, Gloria Ann	Divecchio Jr., Gino	Herman, Sara Nicole
Bell, Carolyne Wanjiku	Dolanch, Tyler J.	Hernandez, Celia Regina
Biggs, Paula R.	Donovan, Lisa Maria	Hillberry, Johnny Richard
Black, James Robert	Dorsey, Keiondria	Hillberry, Justi Nicole
Black, Nicole	Drakeford Jr., Kevin R.	Hillberry, Katelin Marie
Blake, Jacole Shermayne	Eckert, Whitney E.	Hillman, Brittany
Blasco, Janell Renee	Eckoff, Elyse A.	Hirak, Adam Michael
Bluemle, James Francis	Egan, Katherine M.	Hirak, Anthony A.
Bolds, Rickey Trent	Ehrman, McKay Dodds	Hoffman 2ND, Donald R.
Bolick, Bryan R.	Ellis, O Karean Rashad	Holley, Karen Elizabeth
Borgia, Matthew Allan	Estrin, Yisroel Tzvi	Holtz, Lisha Marie
Boyer, Joseph M.	Ewing, Salvatrice M.	Hopson, Lisa Marie
Braby, Sherry LaSha	Fabrick, Ashley Rae	Hosey, Mathew J.
Brandemarte, James M.	Fetkovich, Mary Beth	Ilostovich, Rose J.
Brandstetter, Anthony F.	Fitts, Michael D.	Howden, Christina
Brandstetter, Julie M.	Fitzgerald, Millicent	Hughes, Jason James
Bratton, Teylore Laurice	Flannigan, Jonathan G.	Hunter, Pamela Jean
Brenen, Kasey M.	Forbin, Patrick	Iskierski, Denise Wall
Brown, Kimberly Ann	Foster, Dana Nicole	Ivanoff, Janet Lynn
Bryan, Sandra Leyda	Foster, Danielle L.	Jackson, Adrian Lawrence
Bullock, III, John	Fought, Rochelle Renee	Jackson, Regina A.
Butler, Shelby Joe	Franciscus, Charles James	Jakell, Shelley A.
Carmona, Elvia	Francois, Regina Irving	Jandrasits, Kristy Ann
Carnino, Amy J.	Freeman, Jarred Ryan	Jenkins, Junell
Carrillo, Matthew Caleb	Fuentes, Andra	Johnson, Carmeka Yu'Shay
Cassara, Orlando Ray	Gaire, Rajan	Johnson, Damon Edward
Catalano, Bradley Frank	Galiszewski, Todd F.	Johnson, Ja'Neil LaTrice
Cawley, Jay S	Ganison, DeKendrick K.	Johnson, Norene Beatrice

Johnson, Scott R.  
Johnson, Stephen Allen  
Jones, Charlene Michelle  
Jones, Michelle  
Joseph, Chasity Sharrill  
Juarez, Greg  
Karnes, Jay Robert  
Katraska, Joshua L.  
Kautzman, Marian Joann  
Kerestes, Kevin Anthony  
King, Audrea Melissa  
Koons, Karen Elaine  
Kopp, Nancy  
Koslosky, Lauren A.  
Krane, Ryan R.  
Krenitsky, Robert Andrew  
Kroll, Kody Nathaniel  
Krystek, Ann M.  
Kusich, Samantha Yvonne  
Kwolek, John Dennis  
Lacey, Joseph Wayne  
Lewarchik, Michael Paul  
Lippert, Tanya Jean  
Loebig, Charla Jen  
Long, Matthew R.  
Lucas, Jacob Lee  
Lucha, Fernando H.  
Lyon, Christiny A.  
Macormac, Evelyn  
Manko, Jonathan Louis  
Marsh, Lorene  
Martin, Kellie Sharee  
Matthews, Nicole Lyn  
McCabe, Mary S.  
McCreary, Anthony Randall  
McDaniel, Katherine Collins  
McElwain, Brian Lee  
McNair, Michelle L.  
Miles Jr., Michael John  
Miller, Jr., Gene R.  
Mock, Alexi Renee  
Moore, Jessica Beatrice  
Moore, Tametka  
Moreno, Daniel Gregory  
Morgan, Courtney  
Morgan, Lori Ann  
Mornak, Matthew P.  
Morris, Kelly R.  
Mosberger, Shaun Robert  
Mosely, Mitchell Craig  
Mutschler, Judith L.  
Mutune, Alice Mumbi  
Nase, Catherine A.

Nestor, Adina Marie  
Nunez, Dwayne A.  
Nunn, Sanetrick Darnell  
Olander, Dana Gail  
Ortiz, Elizabeth  
Ortiz, Isabel  
Outman, Robert Leon  
Pacelli, Jessica  
Pack, Judy Smith  
Pajewski, Sandra Lyn  
Palmer, Elizabeth J.  
Panzino, Lynne M.  
Pelesky,Carolynn  
Peretin Jr., Joseph A.  
Perez Jr., Roberto  
Perez, Irma Arriaga  
Pham, Iuan  
Pham, TU-UYEN NU  
Pluebell, Rachel Elizabeth  
Porter, Jacqueline D.  
Prock, Karen Marie  
Pukanic-Smail, Constance Jean  
Pulver, Raymond Glen  
Pyles, Nelson W.  
Rainey, Victoria  
Redling, Beth Ann  
Reese, Michelle A.  
Renock, Rachel Ann  
Reynolds, Tiona Larayne  
Rhoades, Brandon Lee  
Rhodes, Regina Lenale  
Rich, Ginny  
Rideout, Denise P.  
Robertson Darkoh, Andrea  
Rodriguez, John Carlos  
Rolfe, Clement  
Romano Jr., John V  
Rosile, Laura Ann  
Rutkowski, Cherrie Lynn  
Salapow, Kathleen D.  
Sanders, Glenda Michele  
Sanders, Marchelle Chyann  
Sargent, Jonathan Charles  
Sauers, Kristen L.  
Sayre, Brian Christopher  
Sed, Asli Olad  
Shears II, Clayton  
Sherer, Adele Ruth  
Singleton, Ulysees P.  
Skelly, Cara Lynn  
Smith, Jamie Christine  
Smith, Shauna Marie  
Smith, Talor Ashlee

Smith, Yulonda Marie  
Soto Lopez, Stalia M.  
Spera, Lacy Lynn  
Stedeford, Oliver Daniel  
Stewart, David Shawn  
Stewart, Ronald Wade  
Stilwell, Denise L.  
Sumrall, Kimberly Yetta  
Susick, Julia  
Swan, Belinda Lou  
Sweazen, Barbara Ann  
Swinton, Brenda G.  
Syed, Ameen Muhammed  
Szymanski, Jaclyn Christina  
Temple, Joshua Andrew  
Thein, James Joseph  
Thiry, Eileen P.  
Thomas, Duane Wells  
Thomas, Tramelle M.  
Thompson, Christopher M.  
Tichenor, Lindsay Nichols  
Timms, Jason Lee  
Tooks, Suprena Lanell  
Tornetta, Michael G.  
Townsend-Brown, Lisa K.  
Turner, Nicole Lee  
Ulander, Brianne  
Ussery, Glenda Faye  
Varner, Shannon Nicole  
Walker, Gricel E.  
Walker, Lisa Martin  
Wallace, Laureen Lynn  
Wallover, James  
Wang, Nicholas Gilmer  
Washington, Symeon  
Wells, Clarissa Chawnte  
White, Myra Kenyon  
Wiley Jr., Dossey C.  
Wilkerson, Shawndolyn M.  
Williams, Anita Michelle  
Williams, Nichole Renee  
Wilson III, Lewis  
Witt, Ryan E.  
Wojciechowski, Debra Lee  
Woods, Jacqueline  
Yagusic, Carol Ann  
Yates, Shari Lynn  
Yeckley, Brendan Paul  
Young, Sean Roshet  
Yuille, Lorri A.  
Yustince, Rebekah  
Zupke, Paul O.



# Peckar & Abramson

A Professional Corporation • Attorneys & Counselors at Law

RECEIVED

2011 APR -6 PM 3: 59

RIVERSIDE COUNTY  
TREAS-TAX COLLECTOR

1875 Century Park East  
Suite 550  
Los Angeles, CA 90067  
tel. 310.228.1075  
fax 310.228.1076

**Via Certified Mail**

April 4, 2011

Don Kent, Treasurer-Tax Collector  
Attn: Tax Enforcement Unit  
P.O. Box 12005  
Riverside, CA 92502-2205

San Francisco

Orange County

New York

New Jersey

Miami

Fort Lauderdale

Orlando

Washington, D.C.

Chicago

London

**RE: Tax Sale of: 37 Victoria Falls Dr., Rancho Mirage, CA 92270**  
**APN No.: 676-490-041-1 (Theodore A. Fick)**

Dear Mr. Kent:

This law firm represents Bank of America in an effort to recover excess tax proceeds from the sale of the above property. To help facilitate the recovery of these funds, I am hereby providing:

1. A completed "Claim for Excess Proceeds from the Sale of Tax-Defaulted Property" which contains original signature(s) by an authorized representative of Bank of America;
2. Authorization for Agent to Collect Excess Process (which contains original signatures); and
3. Notice of Assignment, Sale or Transfer of Servicing Rights which shows Countrywide (or Bank of America) took over the loan from Pacific America Group, Inc.; Grant Deed; Deed of Trust; Deed of Trust and Assignment of Rents.

Please return the excess tax funds to this office as soon as possible. I have enclosed a self-addressed stamped envelope for your convenience. Should you have questions, please do not hesitate to call me (310/228-1075, x 4605).

Thank you for your assistance with this matter.

Very truly yours,

James L. Ferro

JLF/emg/eac  
Enclosures

www.pecklaw.com

CLAIM FOR EXCESS PROCEEDS FROM THE SALE OF TAX-DEFAULTED PROPERTY  
(SEE REVERSE SIDE FOR FURTHER INSTRUCTIONS)

To: Don Kent, Treasurer and Tax Collector

Re: Claim for Excess Proceeds

TC 185 Item 297 Assessment No.: 676490041-1

Assessee: FICK, THEODORE A

Situs: 37 VICTORIA FALLS DR RANCHO MIRAGE

Date Sold: March 16, 2010

Date Deed to Purchaser Recorded: April 26, 2010

Final Date to Submit Claim: April 26, 2011

I/We, pursuant to Revenue and Taxation Code Section 4675, hereby claim excess proceeds in the amount of \$ 330,202.41 from the sale of the above mentioned real property. I/We were the  lienholder(s),  property owner(s) [check in one box] at the time of the sale of the property as is evidenced by Riverside County Recorder's Document No. 2005-0670382; recorded on 08/17/2005. A copy of this document is attached hereto. I/We are the rightful claimants by virtue of the attached assignment of interest. I/We have listed below and attached hereto each item of documentation supporting the claim submitted.

NOTE: YOUR CLAIM WILL NOT BE CONSIDERED UNLESS THE DOCUMENTATION IS ATTACHED.

Deed of Trust - Doc #2005-0670382 - Dated 08/17/2005  
Notice of Assignment, Sale or Transfer of Servicing Rights -  
Dated 07/25/05, MERs Min Summary - Servicer/Investor -  
BAC Home Loans Servicing LP.

If the property is held in Joint Tenancy, the taxsale process has severed this Joint Tenancy, and all Joint Tentants will have to sign the claim unless the claimant submits proof that he or she is entitled to the full amount of the claim, the claimant may only receive his or her respective portion of the claim.

I/We affirm under penalty of perjury that the foregoing is true and correct.

Executed this 31 day of March, 2011 at Los Angeles, California  
County, State

Signature of Claimant & Agent

Bank of America  
c/o Peckar & Abramson (Attn: James Ferro)  
Print Name

1875 Century Park East, Ste. 550  
Street Address

Los Angeles, CA 90067  
City, State, Zip

(310) 228-1075  
Phone Number

Signature of Claimant

Michael Bentley  
BANK of AMERICA - Michael Bentley  
BAC Tax Sale Services LP  
Print Name VP Tax Sale Recovery

177 Holston Drive - ms: CAD-911-01-03  
Street Address

LANCASTER, CA. 93536  
City, State, Zip

(661) 951-5162  
Phone Number



**ACKNOWLEDGMENT**

State of California  
County of Los Angeles,

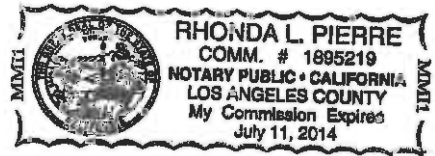
On March 31, 2011 before me, Rhonda Pierre Notary Public  
(insert name and title of the officer)

personally appeared Michael Bentley  
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.

Signature Rhonda Pierre (Seal)



AUTHORIZATION FOR AGENT TO COLLECT EXCESS PROCEEDS

To expedite processing of this claim, we would strongly suggest you use this form. For this form to be valid it must be completed in its entirety and documentation establishing the assignor's claim as a "party of interest" must be provided at the time this document is filed with the Treasurer-Tax Collector. PLEASE SEE REVERSE SIDE OF THIS DOCUMENT FOR FURTHER INSTRUCTIONS.

As a party of interest (defined in Section 4675 of the California Revenue and Taxation Code), I, the undersigned, do hereby make James Ferro my agent to apply for and collect the excess proceeds which you are holding and to which I am entitled from the sale of assessment number 676-490-041-1 sold at public auction on March 16, 2010. I understand that I AM NOT SELLING MY RIGHT TO THE REFUND, but merely naming an agent for collection purposes for my convenience.

I also understand that the total of excess proceeds available for refund is \$ 330,202.41 and that I have a right to file a claim for this refund on my own, without the help of an agent. For valuable consideration received my agent is appointed to act on my behalf.

Bank of America / Michael Bentley (Signature of Party of Interest) Michael Bentley (Name Printed) 96 Bank of America

177 Holston Dr (Address)

STATE OF CALIFORNIA ) ss.  
COUNTY OF LOS ANGELES

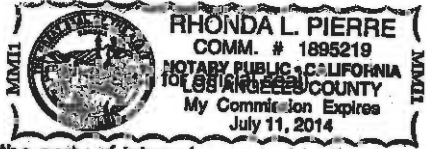
LANCASTER CA 93536 (City/State/Zip)

(661) 951-5162 (Area Code/Telephone Number)

On April 1st 2011 before me, Rhonda Pierre Notary Public, personally appeared Michael Bentley 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.  
Rhonda L. Pierre (Signature of Notary)



I, the undersigned, certify under penalty of perjury that I have disclosed to the party of interest, pursuant to Section 4675 of the California Revenue and Taxation Code, the full amount of excess proceeds available and ADVISED HIM OF HIS RIGHT TO FILE A CLAIM ON HIS OWN, WITHOUT THE HELP OF AN AGENT.

James L. Ferro (Signature of Agent)

James L. Ferro (Name Printed)  
1875 Century Park East, Suite 550 (Address)

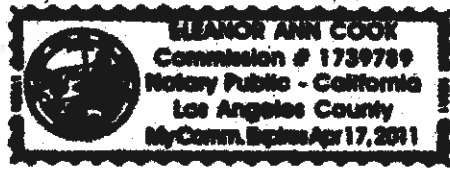
STATE OF CALIFORNIA ) ss.  
COUNTY OF Los Angeles  
4/4/2011

Los Angeles, CA 90087 (City/State/Zip)

On ~~Eleanor Ann Cook EAC~~ before me, the undersigned, a Notary Public in and for said State, personally appeared JAMES L FERRO 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.

WITNESS my hand and official seal.  
Eleanor Ann Cook (Signature of Notary) (see attached form)

(This area for official seal)



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Los Angeles }

On 4/4/2011 before me, Eleanor ANN Cook, Notary Public  
Date Here Insert Name and Title of the Officer

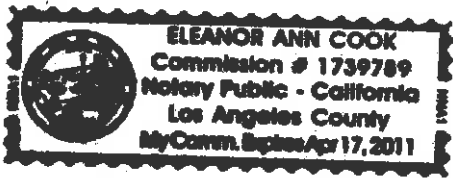
personally appeared James L. Ferro  
Name(s) of Signer(s)

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.

Signature Eleanor Ann Cook  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Authorization for Agent to Collect Excess Proceeds

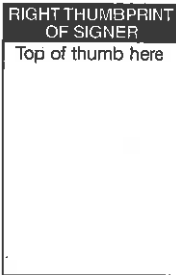
Document Date: \_\_\_\_\_ Number of Pages: 1

Signer(s) Other Than Named Above: Michael Bentley

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: James L. Ferro

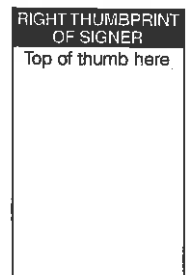
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

# NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING RIGHTS

You are hereby notified\* that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from PACIFIC AMERICA GROUP, INC.

to COUNTRYWIDE DOCUMENT CUSTODY SERVICES, A DIVISION OF TREASURY BANK, N.A., 1800 TAPO CANYON RD., SIMI VALLEY, CA 93063, effective SEPTEMBER 1, 2005

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before this effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing. In this case, the present servicer and the new servicer have combined all necessary information in this one notice.

Your present servicer is PACIFIC AMERICA GROUP, INC.

If you have any questions relating to the transfer of servicing from your present servicer call our servicing department at (562) 290-8936 between 8:30 a.m. and 5:00 p.m. on the following days: Monday through Friday.

Your new servicer will be COUNTRYWIDE HOME LOANS, INC.

The business address for your new servicer is: 400 COUNTRYWIDE WAY, SIMI VALLEY, CALIFORNIA 93065

The toll-free or collect call telephone number of your new servicer is (800) 669-6607. If you have any questions relating to the transfer of servicing to your new servicer call SERVICING DEPARTMENT at (800) 669-6607 between 8:00 a.m. and 5:00 p.m. on the following days: Monday through Friday.

The date that your present servicer will stop accepting payments from you is SEPTEMBER 1, 2005

The date that your new servicer will start accepting payments from you is SEPTEMBER 1, 2005

You should also be aware of the following information, which is set out in more detail in Section 6 of RESPA (12 U.S.C. §2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. §2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request.

A Business Day is any day, excluding legal public holidays (State or Federal), Saturday and Sunday.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

## BORROWER ACKNOWLEDGMENT

I/We have read this disclosure form, and understand its contents, as evidenced by my/our loan signature(s) below.

*Theodore A. Fick* 7/25/05  
Borrower THEODORE A. FICK Date Borrower Date

\_\_\_\_\_  
Borrower Date Borrower Date

\_\_\_\_\_  
Borrower Date Borrower Date

RECORDING REQUESTED BY:  
Ticor Title Company of California  
Escrow No. 131464-JJ  
Title Order No. 870904-12

When Recorded Mail Document  
and Tax Statement To:  
Theodore A. Fick  
37 Victoria Falls  
Rancho Mirage CA 92270

DOC # 2005-0670381

08/17/2005 08:08A Fee:10.00

Page 1 of 2 Doc T Tax Paid

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



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A	R	L				COPY	LONG	REFUND	NCHG	EXAM

APN: 676-490-041

GRANT DEED

TRA:017

The undersigned grantor(s) declare(s)

Documentary transfer tax is \$891.00 City Transfer Tax is \$0.00

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale,
- Unincorporated Area City of Rancho Mirage

10  
T  
LW

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Trounce, Inc.

hereby GRANT(S) to Theodore A. Fick, a widow

the following described real property in the City of Rancho Mirage,  
County of Riverside, State of California:

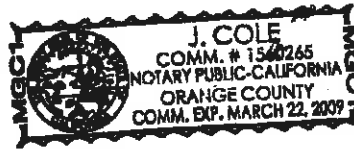
Lot 95, TRACT 28911, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 287,  
PAGE 89 THROUGH 89 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

DATED: July 15, 2005

STATE OF CALIFORNIA  
COUNTY OF Orange  
ON July 25, 2005  
before me,  
J. Cole personally appeared  
John Williams

\_\_\_\_\_  
Trounce, Inc.

personally known to me (or 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.



Witness my hand and official seal.

Signature

MAIL TAX STATEMENTS AS DIRECTED ABOVE

ILLEGIBLE NOTARY SEAL DECLARATION

GOVERNMENT CODE 27361.7

I CERTIFY UNDER THE PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

NAME OF NOTARY J. Cole  
DATE COMMISSION EXPIRES March 22, 2009  
NOTARY IDENTIFICATION NUMBER 1560265  
(NOTARIES COMMISSIONED AFTER 1-1-92)  
MANUFACTURER/VENDOR IDENTIFICATION NUMBER MGC1  
(NOTARIES COMMISSIONED AFTER 1-1-92)  
COUNTY WHERE BOND IS FILED Orange  
PLACE OF EXECUTION OF THIS DECLARATION ORANGE  
DATE 8/16/05

TICOR TITLE COMPANY  
BY: [Signature]

RECORDING REQUESTED BY  
TICOR TITLE  
ORANGE BRANCH

Recording Requested By:  
PACIFIC AMERICA GROUP, INC.

DOC # 2005-0670382

08/17/2005 08:00A Fee:75.00

Page 1 of 23

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



And After Recording Return To:  
PACIFIC AMERICA GROUP, INC.  
13043 EAST 166TH STREET, 2ND FLOOR  
CERRITOS, CALIFORNIA 90703  
Loan Number: 0103456546

8-709104-12

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A	R	L			COPY	LONG	REFUND	NCHG	EXAM

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### DEED OF TRUST

15  
T  
LW

MIN: 1003161-0103456546-8

#### 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 21, 2005, together with all Riders to this document.
- (B) "Borrower" is THEODORE A. FICK, A WIDOW

Borrower is the trustor under this Security Instrument.  
(C) "Lender" is PACIFIC AMERICA GROUP, INC.

Lender is a CALIFORNIA CORPORATION organized and existing under the laws of CALIFORNIA  
Lender's address is 13043 EAST 166TH STREET, 2ND FLOOR, CERRITOS, CALIFORNIA 90703

(D) "Trustee" is TICOR TITLE COMPANY OF CALIFORNIA  
23302 IRVINE BLVD., SUITE 100, TUSTIN, CALIFORNIA 92780

(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 21, 2005  
The Note states that Borrower owes Lender SIX HUNDRED FORTY-EIGHT THOUSAND AND 00/100 Dollars (U.S. \$ 648,000.00) plus interest.

Borrower Initials: *TF*

Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than AUGUST 1, 2035

(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]:

- Adjustable Rate Rider
- Balloon Rider
- 1-4 Family Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- Other(s) [specify]

(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 (24 C.F.R. Part 3500), 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 RIVERSIDE

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

Borrower Initials: *RAF*



SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".  
A.P.N. #: 676-490-041-1

which currently has the address of 37 VICTORIA FALLS DRIVE  
[Street]

RANCHO MIRAGE, California 92270 ("Property Address")  
[City] [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 seized 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

Borrower Initials: YAK

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

Borrower Initials: DM

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.

Borrower Initials: TRP

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.

Borrower Initials: TR



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 Initials: FM

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

Borrower Initials: JRF

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

Borrower Initials: JRP



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

Borrower Initials: FM

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.

Borrower Initials:

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.

  
\_\_\_\_\_  
THEODORE A. FICK (Seal)  
-Borrower

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

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

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(Seal)  
-Borrower

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(Seal)  
-Borrower

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(Seal)  
-Borrower

Witness:

Witness:

\_\_\_\_\_

\_\_\_\_\_

State of California )  
County of Orange ) ss.  
~~RIVERSIDE~~ )

On July 25, 2005 before me, Joseph M SAVALA  
personally appeared THEODORE A. FICK

~~personally known to me~~ (or 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/hers/their  
authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



NOTARY SEAL

[Handwritten Signature]  
NOTARY SIGNATURE  
Joseph M SAVALA  
(Typed Name of Notary)

Title Officer : rr Comment : 37 Victoria Falls docs

Loan Number: 0103456546

Date: JULY 21, 2005

Property Address: 37 VICTORIA FALLS DRIVE, RANCHO MIRAGE, CALIFORNIA  
92270

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

A.P.N. # : 676-490-041-1

*Docmagic*  800-649-1362  
[www.docmagic.com](http://www.docmagic.com)

Legal.mcs

**EXHIBIT "A"**

**PARCEL 1:**

LOT 95 OF TRACT NO. 28911, IN THE CITY OF RANCHO MIRAGE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 287, PAGE(S) 86 THROUGH 89 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES, LYING BELOW A DEPTH OF 500 FEET, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN INSTRUMENTS OF RECORD.

**PARCEL 2:**

NON-EXCLUSIVE EASEMENTS FOR ACCESS, INGRESS, EGRESS, INSPECTION, MAINTENANCE, REPAIR, DRAINAGE, ENCROACHMENT, SUPPORT AND FOR OTHER PURPOSES, ALL AS DESCRIBED IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS RECORDED JUNE 20, 1997 AS INSTRUMENT NO. 217426 OF OFFICIAL RECORDS.

Assessor's Parcel Number: 676-490-041-1

After Recording Return To:  
PACIFIC AMERICA GROUP, INC.  
13043 EAST 166TH STREET, 2ND FLOOR  
CERRITOS, CALIFORNIA 90703

Prepared By:

[Space Above This Line For Recording Data]

**FIXED/ADJUSTABLE RATE RIDER**  
(LIBOR One-Year Index (As Published In *The Wall Street Journal*) - Rate Caps)

DOC ID #: 0103456546

THIS FIXED/ADJUSTABLE RATE RIDER is made this 21st day of JULY 2005, 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 ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to PACIFIC AMERICA GROUP, INC., A CALIFORNIA CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:  
37 VICTORIA FALLS DRIVE, RANCHO MIRAGE, CALIFORNIA 92270  
[Property Address]

**THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.**

Conv

• MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family INTEREST ONLY  
FE-4266 (0309)

Page 1 of 4

Initials: 

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

**A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for an initial fixed interest rate of 5.875%. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

**4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of AUGUST, 2010, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

**(B) The Index**

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND 250/1000 percentage points (2.250%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

**(D) Limits on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than 10.875% or less than 2.250%. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying preceding 12 months. My interest rate will never be greater than 10.875%.

**(E) Effective Date of Changes**

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

Conv

• MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family INTEREST ONLY  
FE-4266 (0309)

Page 2 of 4

Initials: 



**(F) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

**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.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

**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. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

Conv  
• MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family  
INTEREST ONLY  
FE-4266 (0309)

Initials: *JAR*

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, 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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

  
\_\_\_\_\_  
THEODORE A. FICK (Seal)  
-Borrower

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

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(Seal)  
-Borrower

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

Conv  
● MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family  
INTEREST ONLY  
FE-4266 (0309) Page 4 of 4

Loan Number: 0103456546

**PLANNED UNIT DEVELOPMENT RIDER**

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 21st day of JULY, 2005, 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 "Borrower") to secure Borrower's Note to PACIFIC AMERICA GROUP, INC., A CALIFORNIA CORPORATION (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

37 VICTORIA FALLS DRIVE, RANCHO MIRAGE, CALIFORNIA 92270  
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

**COVENANTS, CONDITIONS AND RESTRICTIONS OF RECORD**  
(the "Declaration"). The Property is a part of a planned unit development known as

VICTORIA FALLS  
[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Property Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and 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, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

Borrower Initials: *DM*

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**F. Remedies.** If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

Borrower Initials: FAF

MULTISTATE PUD RIDER--Single Family  
Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
Form 3150 1/01

Page 2 of 3

DocMagic eForm 800-649-1367  
www.docmagic.com

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

  
\_\_\_\_\_  
THEODORE A. FICK (Seal)  
-Borrower

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(Seal)  
-Borrower

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(Seal)  
-Borrower

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(Seal)  
-Borrower

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(Seal)  
-Borrower

**RECORDING REQUESTED BY  
TICOR TITLE  
ORANGE BRANCH**

Recording Requested By:  
PACIFIC AMERICA GROUP, INC.

**DOC # 2005-0670383**

08/17/2005 08:00A Fee:55.00

Page 1 of 14

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder

After Recording Return To:  
PACIFIC AMERICA GROUP, INC.  
13043 EAST 166TH STREET, 2ND FLOOR,  
CERRITOS, CALIFORNIA 90703



870904-12

Prepared By:

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DOC ID #: 0103461147

SS

**DEED OF TRUST AND ASSIGNMENT OF RENTS**

MIN 1003161-0103461147-8



This deed of trust secures an obligation which calls for payment of interest at a variable interest rate.  
THIS DEED OF TRUST is made this 21st day of JULY, 2005, between  
THEODORE A. FICK, A WIDOW

herein called "Trustor," TICOR TITLE COMPANY OF CALIFORNIA, 23302  
IRVINE BLVD., SUITE 100, TUSTIN, CALIFORNIA 92780

herein called "Trustee," and "Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as  
nominee for PACIFIC AMERICA GROUP, INC., A CALIFORNIA  
CORPORATION  
(hereinafter "you" or "Lender" and Lender's successors and assigns.) 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, herein called "Beneficiary."

Trustor irrevocably grants, transfers and assigns to Trustee, in trust and with power of sale, all of the real  
property in the City or Town of RANCHO MIRAGE, County of  
RIVERSIDE, State of California, having the street address of  
37 VICTORIA FALLS DRIVE, RANCHO MIRAGE, CALIFORNIA 92270  
and more specifically described as:  
SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".  
A.P.N. #: 676-490-041-1

HELOC - CA Deed of Trust with MERS  
FE-4331(CA) (0204)

Page 1 of 10  
FORMS EDGE - (800) 636-4111

Initials: *JH*

4/00

Parcel ID Number: 676-490-041-1 together with all improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Beneficiary to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this deed of trust; and all of the foregoing, together with said property (or the leasehold estate if this deed of trust is on a leasehold) are herein referred to as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Deed of Trust; 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 or canceling this Deed of Trust.

1. THIS DEED OF TRUST SECURES:

a. All of the obligations of Trustor in favor of Beneficiary or order under the terms of a revolving credit agreement dated JULY 21, 2005, herein called Agreement. The Agreement provides, among other things, for the payment of all sums advanced by Beneficiary from time to time pursuant to the Agreement and for the payment of interest. The maximum principal obligation under the Agreement to be secured by this deed of trust at any one time is ONE HUNDRED SIXTY-TWO THOUSAND AND 00/100 Dollars (\$ 162,000.00 ) unless Beneficiary, with Trustor's written consent, hereafter increases this amount. Advances made by Beneficiary to protect the security of this deed of trust or to preserve the Property shall not be subject to the limitation of the preceding sentence.

The security of this deed of trust shall not be affected by the extension, renewal or modification from time to time of the obligations, instruments or agreements described above.

b. Payment of any and all obligations and liabilities, whatsoever, whether primary, secondary, direct, indirect, fixed or contingent, whether now or hereafter due from Trustor (or any successor in interest to Trustor) whether created directly or acquired by assignment if the document evidencing such obligation or liability or any other writing signed by Trustor (or any successor in interest to Trustor) specifically provides that said obligation or liability is secured by this deed of trust.

c. Performance of each agreement of Trustor herein contained or contained in any other agreement, instrument or other writing to which Trustor is a party if the same is written in connection with any of the foregoing.

d. Payment of all sums to be expended by the Beneficiary or Trustee pursuant to the terms hereof.

2. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

a. To keep the Property in good condition and repair; not to remove or demolish any building or improvement thereon; to complete or cause to be completed any construction of buildings or other improvements thereon which are financed in whole or in part by the indebtedness secured hereby and to restore promptly and in good and workmanlike manner any building or other improvement which may be damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alteration or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, weed, fertilize, fumigate, spray, prune and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

b. To provide, maintain and deliver to Beneficiary fire and other insurance on the Property satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default hereunder or invalidate any act done pursuant to such notice.

c. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this deed of trust.

d. To pay at least ten days before delinquency all taxes and assessments affecting the Property, including, without limitation, assessment on appurtenant water stock, all encumbrances, charges and liens on the Property or any part thereof, and all costs, fees and expenses of this Trust.

e. That should Trustor fail to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may:

(1) Make or do the same in such manner and to such extent as either may deem necessary or appropriate to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes.

(2) Appear in and defend any action or proceeding purporting to affect the security hereof or the rights or power of Beneficiary or Trustee.

(3) Pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior and superior hereto.

(4) In exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.



f. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the maximum rate allowed by law in effect at the date hereof or at the option of Beneficiary, such sums may be added to the principal balance of any indebtedness secured hereby and shall bear the highest rate of interest as any such indebtedness.

g. To pay for any statement provided for by the law in effect on the date hereof regarding the obligation secured hereby in the amount demanded by the Beneficiary but not to exceed the maximum allowed by law at the time the statement is demanded.

3. IT IS FURTHER AGREED THAT:

a. Any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

b. By accepting payment of any sum secured hereby after its due date, or after the filing of notice of default and of election to sell, Beneficiary shall not waive its right to require prompt payment when due of all other sums so secured, or to declare default for failure so to pay, or to proceed with the sale under any such notice of default and of election to sell, for any unpaid balance of said indebtedness. If Beneficiary holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Trustor, Beneficiary may, at its option, offset against any indebtedness owing by it to Trustor, the whole or any part of the indebtedness secured hereby.

c. Without affecting the liability of any person, including, without limitation, Trustor, for the payment of any indebtedness secured hereby, or the lien of this deed of trust on the remainder of the Property for the full amount of any indebtedness unpaid, Beneficiary and Trustee are respectively empowered as follows:

(1) Beneficiary may from time to time and without notice (a) release any person liable for the payment of any of the indebtedness, (b) extend the time or otherwise alter the terms of payment of any of the indebtedness, (c) accept additional security therefor of any kind, including deeds of trust or mortgages, (d) alter, substitute or release any of the Property securing the indebtedness.

(2) Trustee may, at any time, and from time to time, upon the written request of Beneficiary (a) consent to the making of any map or plat of the Property, (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination or other agreement affecting this deed of trust or the lien or charge thereof or, (d) reconvey, without any warranty, all or any part of the Property.

d. Upon (a) written request of Beneficiary or (b) performance of all obligations of the Trustor hereunder and under each and every note, guarantee, Agreement or other writing evidencing the indebtedness secured hereby, and upon surrender of this deed of trust to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recital in such reconveyance of any matters of facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described

as "the person or persons legally entitled thereto." Five years after issuance of such reconveyance, Trustee may destroy said note, guarantee, Agreement or other evidence of indebtedness and this deed of trust (unless directed in such request to retain them).

e. Trustor hereby gives to and confers upon Beneficiary the right, power and authority during the continuance of these trusts to collect the rents, issues and profits of the Property and of any personal property located thereon, and hereby absolutely and unconditionally assigns all such rents, issues and profits to Beneficiary; provided, however, that Beneficiary hereby consents to the collection and retention of such rents, issues and profits as they accrue and become payable only if Trustor is not, at such time, in default with respect to payment of any indebtedness secured hereby or in the performance of any agreement hereunder. Upon any such default, Beneficiary may at any time, without notice, either in person, by agent, or by a receiver to be appointed by a court, without regard to the adequacy of any security for the indebtedness hereby secured and without limiting the generality of Section 2.e.(1), above, enter upon and take possession of the Property or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine; also perform such acts of repair, nurturing, cultivation, irrigation, weeding, fertilizing, fumigation, spraying, pruning or protection, as may be necessary or proper to conserve the value of the Property or any trees, planting or crops growing thereon; also lease the same or any part thereof for such rental, term, and upon such conditions as its judgment may dictate; also prepare for harvest, sever, remove, and sell any crops that may be growing upon the premises, and apply the net proceeds thereof to the indebtedness secured hereby. The entering upon and taking possession of the Property and performance or failure to perform any of the acts described in the preceding sentence, the collection of or failure to collect such rents, issues and profits, and the application thereof as aforesaid, shall not waive or cure any default or notice of default hereunder, or invalidate any act done pursuant to such notice and shall not constitute or otherwise result in any assumption by or liability of Beneficiary for maintenance, depreciation, misuse or risk of loss other than for damage or loss to the Property due to Beneficiary's gross negligence or intentional torts. Trustor also assigns to Trustee, as further security for the performance of the obligations secured hereby, all prepaid rents and all monies which may have been or may hereafter be deposited with said Trustor by any lessee of the premises herein described, to secure the payment of any rent, and upon default in the performance of any of the provisions hereof, Trustor agrees to deliver such rents and deposits to the Trustee.

f. Upon default by Trustor in the performance of any payment or other obligation secured hereby or in the performance of any agreement hereunder, or if, whether voluntarily or involuntarily, there is a sale or transfer of all or any part of (i) the Property or an interest therein, or (ii) a beneficial interest in Trustor and Trustor is not a natural person, or if Trustor ceases to use the Property as Trustor's primary residence, Beneficiary may declare all sums secured hereby immediately due without notice or demand and no waiver of this right shall be effective unless in writing and signed by Beneficiary.

g. Waiver of a right granted to Beneficiary hereunder as to one transaction or occurrence shall not be deemed to be a waiver of the right as to any subsequent transaction or occurrence. Beneficiary may rescind any notice before Trustee's sale by executing a notice of rescission and recording the same. The recordation of such notice shall constitute also a cancellation of any prior declaration of default and demand for sale, and of any acceleration of maturity of indebtedness

affected by any prior declaration or notice of default. The exercise by Beneficiary of the right of rescission shall not constitute a waiver of any default then existing or subsequently occurring, nor impair the right of the Beneficiary to execute other declarations of default and demand for sale, or notices of default and of election to cause the Property to be sold, nor otherwise affect the note or deed of trust, or any of the rights, obligations or remedies of the Beneficiary or Trustee hereunder.

h. At least three months or any lesser period required by law having elapsed between the recordation of the notice of default and the date of sale, Trustee, having first given notice of sale as then required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as the Trustee may determine, at public auction to the highest bidder for cash, in lawful money of the United State of America, payable at the time of sale except as otherwise permitted by law. Trustee may postpone sale of all or any portion of the Property by public announcement at the time of sale, and from time to time thereafter may postpone the sale by public announcement, all as permitted by law. Trustee shall deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty, expressed or implied. The recital in any such deed of any matters or facts, stated either specifically or in general terms, or as conclusions of law or fact, shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. After deducting all costs, fees and expenses of Trustee and of this trust, including costs of evidence of title in connection with the sale, the Trustee shall apply the proceeds of this sale to the payment of all sums then secured hereby, in such order and manner as may be required by the Beneficiary; the remainder, if any, to be paid to the person or persons legally entitled thereto. If Beneficiary shall elect to bring suit to foreclose this deed of trust in the manner and subject to the provisions, rights and remedies relating to the foreclosure of a mortgage, Beneficiary shall be entitled to reasonable attorney's fees and litigation costs.

i. Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this deed of trust is recorded and the name and address of the new Trustee.

j. This deed of trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including, without limitation, pledgees, of the note, guarantee, Agreement, or other evidence of indebtedness secured hereby, whether or not named as Beneficiary herein. In this deed of trust, whenever the context so requires, the singular number includes the plural.

k. Trustee accepts this Trust when this deed of trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

l. If Trustor or any successor in interest to Trustor sells, transfers or encumbers any interest in the Property, whether voluntarily or involuntarily, or if a beneficial interest in Trustor is sold or transferred, voluntarily or involuntarily, and Trustor is not a natural person: (a) the transferor and the transferee shall each immediately give written notice of said transfer to the Beneficiary, at its address designated on the first page of this deed of trust; (b) if the deed of trust secures Trustor's obligation under an Agreement as defined herein, all credit extended by Beneficiary under the Agreement, whether before or after the property is transferred, shall be secured under this deed of trust as if no transfer had occurred except for credit extended by Beneficiary more than five days after it has received the written notices required by this paragraph.

m. The pleading of any statute of limitations as a defense to any and all obligations secured by this deed of trust is hereby waived to the full extent permitted by law.

4. WITH REGARD TO ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES, TRUSTOR AGREES:

a. As used in this Paragraph 4:

(1) "Environmental Law" means all federal, state and local law concerning the public health, safety or welfare, environment or a Hazardous Substance, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601 et seq., Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., Toxic Substances Control Act, 15 U.S.C. Sec. 2601 et seq., Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., Clean Water Act and Water Quality Act of 1987, 33 U.S.C. Sec. 1251 et seq., Safe Drinking Water Act, 41 U.S.C. Sec. 300f et seq., Clean Air Act, 42 U.S.C. Sec. 7901 et seq., Carpenter-Presley-Tanner Hazardous Account Act, Cal.Health & Safety Code Sec. 25300 et seq., Hazardous Waste Control Law, Cal.Health & Safety Code Sec. 25100 et seq., Porter-Cologne Water Quality Control Act, Cal.Water Code Sec. 1300 et seq., Hazardous Waste Disposal Land Use Law, Cal.Health & Safety Code Sec. 25220 et seq., Safe Drinking Water and Toxic Enforcement Act of 1986, Cal.Health & Safety Code Sec. 25249.5 et seq., Hazardous Substances Underground Storage Tank Law, Cal.Health & Safety Code Sec. 25280 et seq., Air Resources Law, Cal.Health & Safety Code Sec. 3900 et seq., Hazardous Materials Release Response Plans and Inventory, Cal.Health & Safety Code Sec. 25500 et seq., and Toxic Pits Cleanup Act of 1984, Cal.Health & Safety Code Sec. 25208 et seq.

(2) "Hazardous Substance" means any substance which has characteristics of ignitability, corrosivity, toxicity, reactivity or radioactivity or other characteristics which render it dangerous or potentially dangerous to public health, safety or welfare or the environment, including without limitation, (i) petroleum or any fraction or other byproduct thereof, (ii) asbestos, (iii) lead, (iv) cyanide, (v) polychlorinated biphenyls, (vi) urea formaldehyde and (vii) anything defined as a "hazardous material," "toxic substance," "hazardous substance," "hazardous waste" or "waste" under any Environmental Law, including without limitation, "hazardous substance" as defined in Cal.Health & Safety Code Sec. 25316 and "waste" and "hazardous substance" as defined in Cal.Water Code Sec. 13050(d) and Sec. 13050(p)(l), respectively. The term is intended by Trustor and Beneficiary to be interpreted in its most comprehensive and cumulative sense.

b. Trustor represents and warrants that except as disclosed to and acknowledged in writing by Beneficiary before the date of this deed of trust:

(1) No Hazardous Substance has been located, used, manufactured, generated, treated, handled, stored, spilled, disposed of, discharged or released by any person on, under or about the Property.

(2) Trustor has no knowledge of or reason to believe that there is any pending or threatened investigation, assessment, claim, demand, action or proceeding of any kind relating to (i) any alleged or actual Hazardous Substance located under or about the Property or (ii) alleged or actual violation or noncompliance by Trustor or any tenant of Trustor with regard to any Environmental Law involving the Property.

(3) Neither Trustor nor any tenant of Trustor is required by any Environmental Law to obtain or maintain any permit, license, financial responsibility certificate or other approval as a condition to its business operations or in connection with its use, development or maintenance of the Property.

c. Trustor represents and warrants that Trustor and every tenant of Trustor have been, are and will remain in full compliance with any Environmental Law applicable to its business operations and its use, development or maintenance of the Property.

d. Trustor agrees to permit, or cause any tenant of Trustor to permit, Beneficiary to enter and inspect the Property at any reasonable time for purposes of determining, as Beneficiary deems necessary or desirable: (i) the existence, location and nature of any Hazardous Substance on, under or about the Property, (ii) the existence, location, nature, magnitude and spread of any Hazardous Substance that has been spilled, disposed of, discharged or released on, under or about the Property or (iii) whether or not Trustor and any tenant of Trustor are in compliance with applicable Environmental Law. If Trustor or its tenant fails to comply fully with the terms hereof, Beneficiary may obtain affirmative injunctive relief therefor.

e. Trustor agrees to indemnify and hold Beneficiary and its successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including, without limitation, all costs of litigation and attorneys' fees, which Beneficiary and its successors and assigns may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty or promise made in this deed of trust in connection with any Hazardous Substance or Environmental Law. Notwithstanding any of the language in the deed of trust to the contrary, this indemnity covers claims asserted after all the indebtedness secured by this deed of trust has been paid and discharged, whether or not the deed of trust has also been reconveyed to Trustor. The only exclusions hereto may relate to claims arising out of the affirmative acts of Beneficiary or of a third party after Trustor's interest in the Property has terminated.

f. The provisions of this Paragraph 4 shall not be affected by the acquisition by Beneficiary or its successors or assigns of any ownership or other interest in the Property beyond Beneficiary's security interest in the Property created under this deed of trust, whether or not such acquisition is pursuant to the foreclosure of this deed of trust or a merger of the interest of the Beneficiary or its successors and assigns in the Property.

5. ADDITIONAL PROVISIONS:

a. The execution of this deed of trust by any person who has no present interest in the Property shall not be deemed to indicate that such an interest presently exists. Rather, execution of this deed of trust by such a person shall constitute such person's agreement that if such person hereafter acquires an interest in the Property, such interest shall be subject to Beneficiary's interest hereunder.

b. The execution of this deed of trust by any person who has a present interest in the Property shall not in itself be deemed to indicate that such person is liable to Beneficiary for any obligation described in Section 1., above. Any personal liability of such person to Beneficiary shall be determined on an independent basis (such as execution of the document or documents evidencing the obligation described in Section 1., above). Execution of this deed of trust by any such person shall nevertheless indicate that such person's interest in the Property shall be subject to Beneficiary's interest hereunder.

The undersigned Trustors request that a copy of any notice of default, and of any notice of sale hereunder, be mailed to their respective addresses set forth opposite each signature.

By signing below, Trustor agrees to all the terms and conditions of this deed of trust.

Mailing Address For Notices

37 VICTORIA FALLS  
DRIVE, RANCHO MIRAGE,  
CA 92270

  
\_\_\_\_\_  
THEODORE A. FICK

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

State of California  
County of RIVERSIDE *Orange*  
On *July 25, 2005*  
THEODORE A. FICK

before me Joseph M. SAVALA  
, personally appeared

, ~~personally known to me~~ (or 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.  
WITNESS my hand and official seal.

*Joseph M. Savala*



Return To:  
PACIFIC AMERICA GROUP, INC.  
13043 EAST 166TH STREET, 2ND FLOOR  
CERRITOS, CALIFORNIA 90703

[Space Above This Line For Recording Data]

## PLANNED UNIT DEVELOPMENT RIDER

Prepared By:

DOC ID #: 0103461147

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 21st day of JULY, 2005 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 "Borrower") to secure Borrower's Note to PACIFIC AMERICA GROUP, INC.

MULTISTATE PUD RIDER - Single Family/Second Mortgage

FE-4256 (0207)

Page 1 of 3  
FORMSEdge - (800)835-4111

Initials: 

3/99



(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:  
37 VICTORIA FALLS DRIVE, RANCHO MIRAGE, CALIFORNIA 92270  
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in  
SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".  
A.P.N. #: 676-490-041-1

(the "Declaration"). The Property is a part of a planned unit development known as  
VICTORIA FALLS  
[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the: (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

**B. Hazard Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and 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, then: (i) Lender waives the provision in Uniform Covenant 2 for the monthly payment to Lender of the yearly premium installments for hazard insurance on the Property; and (ii) Borrower's obligation under Uniform Covenant 5 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage provided by the master or blanket policy.

In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Uniform Covenant 9.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

**F. Remedies.** If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

  
\_\_\_\_\_  
THEODORE A. FICK (Seal)  
- Borrower

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

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

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

**EXHIBIT "A"**

PARCEL 1:

LOT 95 OF TRACT NO. 28911, IN THE CITY OF RANCHO MIRAGE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 287, PAGE(S) 86 THROUGH 89 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES, LYING BELOW A DEPTH OF 500 FEET, WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN INSTRUMENTS OF RECORD.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR ACCESS, INGRESS, EGRESS, INSPECTION, MAINTENANCE, REPAIR, DRAINAGE, ENCROACHMENT, SUPPORT AND FOR OTHER PURPOSES, ALL AS DESCRIBED IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS RECORDED JUNE 20, 1997 AS INSTRUMENT NO. 217426 OF OFFICIAL RECORDS.

## Green, Shawana

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**From:** Green, Shawana  
**Sent:** Tuesday, January 27, 2015 2:58 PM  
**To:** 'Gruzen, Eric M.'; Cook, Eleanor A.; Taylor, Desiree  
**Subject:** RE: Bank of America Excess Proceeds Claims

Hi Eric,

This serves as confirmation that your claim for EP 185-297, APN 676490041-1 has been withdrawn.

Shawana Green  
County of Riverside  
Treasurer-Tax Collector  
[ssgreen@co.riverside.ca.us](mailto:ssgreen@co.riverside.ca.us)

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**From:** Gruzen, Eric M. [<mailto:EGruzen@pecklaw.com>]  
**Sent:** Tuesday, January 27, 2015 1:42 PM  
**To:** Cook, Eleanor A.; Taylor, Desiree  
**Cc:** Green, Shawana  
**Subject:** RE: Bank of America Excess Proceeds Claims

Hello Ms. Taylor,  
I need confirmation that the Theodore Fick claim has been withdrawn as soon as possible.  
Thank you.



Eric M. Gruzen  
Peckar & Abramson, P.C.  
1875 Century Park East,  
Suite 550  
Los Angeles, CA 90067  
phone 310.228.1075  
fax 310.228.1076  
[egrutzen@pecklaw.com](mailto:egrutzen@pecklaw.com)  
[www.pecklaw.com](http://www.pecklaw.com)

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**From:** Cook, Eleanor A.  
**Sent:** Friday, January 23, 2015 3:10 PM  
**To:** Taylor, Desiree  
**Cc:** Gruzen, Eric M.; Green, Shawana

**Subject:** RE: Bank of America Excess Proceeds Claims  
**Importance:** High

Ms. Taylor:

You were assisting our firm with excess tax proceeds on two different files as follows:

**Letty Rising**

Our File No.: 6075-211980  
APN: 9541-02-0238  
Tax Collector's Ref. No.: EP 185-354  
**Excess Tax Proceeds: \$157,137.76**

**Theodore Fick**

Our File No.: 6075-211960  
APN: 676-490-041-1  
Tax Collector's Ref. No.: 185-297  
**Excess Tax Proceeds: \$330,202.41**

Pursuant to my attorney's request (Eric M. Gruzen, Esq.), please withdraw our claims for excess tax proceeds in regard to **Theodore Fick**, Your Reference No. 185-297. Please be kind enough to acknowledge your receipt of this email and that our claim in regard to Mr. Fick is hereby withdrawn. Also, if you would copy Mr. Gruzen with your responsive email, that would be appreciated.

Thank you.



**Ellie Cook**  
**Assistant to Eric M. Gruzen, Esq.**  
**Peckar & Abramson, P.C.**  
**1875 Century Park East, Suite 550**  
**Los Angeles, California 90067**  
**phone 310.228.1075**  
**fax 310.228.1076**  
**[ecook@pecklaw.com](mailto:ecook@pecklaw.com)**  
**[www.pecklaw.com](http://www.pecklaw.com)**

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**From:** Taylor, Desiree [<mailto:DDTaylor@co.riverside.ca.us>]  
**Sent:** Tuesday, January 06, 2015 12:32 PM  
**To:** [egrusen@pecklaw.com](mailto:egrusen@pecklaw.com)  
**Cc:** Cook, Eleanor A.  
**Subject:** Bank of America Excess Proceeds Claims

Hello Ms. Cook,

It was nice speaking with you earlier in regards to these Bank of America files. I appreciate any help that your office can give us to get these files closed out. The files have been passed to me for approval however I need additional information to approve the files to be sent to Counsel.

As previously discussed when our office requests an updated statement of monies currently owing we need those statement to come directly from the client themselves. A statement from the attorney isn't sufficient to substantiate

their claim. The statement can even be in the form of an email stating that since the time of the initial claim filing that no payments have been received.

The other issue that we had discussed is that Michael Bentley to whom originally filed the claim with your office no longer works for Bank of America. When an individual files a claim on behalf of a company we have to confirm that they have the authority to work on behalf of that company. We are going to need something from your client or new contact showing that they have the authority to claim on behalf of Bank of America and that Michael Bentley is no longer employed with Bank of America any longer.

As soon as I get this information I can move the files to Counsel for approval. Also if you would like me to contact your client directly I can do that as well.

Thank you,

*Desiree Taylor*

County of Riverside, Treasurer-Tax Collector

Phone 951-955-3859

Fax 951-955-3990

[ddtaylor@co.riverside.ca.us](mailto:ddtaylor@co.riverside.ca.us)

**CONFIDENTIALITY NOTICE:** This e-mail transmission, including previous e-mails and attachments, may contain confidential information that is legally privileged. If you are not the intended recipient, your disclosure, copying, distribution or use of information in or attached to this transmission is strictly prohibited. If you have received this transmission in error, please immediately notify us by reply e-mail and destroy the original transmission and its attachments without reading or saving them.

CLAIM FOR EXCESS PROCEEDS FROM THE SALE OF TAX-DEFAULTED PROPERTY  
(SEE REVERSE SIDE FOR FURTHER INSTRUCTIONS)

To: Don Kent, Treasurer and Tax Collector

Re: Claim for Excess Proceeds

TC 185 Item 297 Assessment No.: 676490041-1

Assessee: FICK, THEODORE A

Situs: 37 VICTORIA FALLS DR RANCHO MIRAGE

Date Sold: March 16, 2010

Date Deed to Purchaser Recorded: April 26, 2010

Final Date to Submit Claim: April 26, 2011

RECEIVED  
2011 APR 25 PM 4:17  
RIVERSIDE COUNTY  
TREAS - TAX COLLECTOR

I/We, pursuant to Revenue and Taxation Code Section 4675, hereby claim excess proceeds in the amount of \$ 1475 from the sale of the above mentioned real property. I/We were the  lienholder(s),  property owner(s) [check in one box] at the time of the sale of the property as is evidenced by Riverside County Recorder's Document No. 2009-0555293 recorded on 10/27/09. A copy of this document is attached hereto. I/We are the rightful claimants by virtue of the attached assignment of interest. I/We have listed below and attached hereto each item of documentation supporting the claim submitted.

NOTE: YOUR CLAIM WILL NOT BE CONSIDERED UNLESS THE DOCUMENTATION IS ATTACHED.


\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the property is held in Joint Tenancy, the taxsale process has severed this Joint Tenancy, and all Joint Tentants will have to sign the claim unless the claimant submits proof that he or she is entitled to the full amount of the claim, the claimant may only receive his or her respective portion of the claim.

I/We affirm under penalty of perjury that the foregoing is true and correct.

Executed this 14<sup>th</sup> day of April, 2011 at Riverside County, California  
County, State

Signature of Claimant

  
Signature of Claimant

Print Name

Ron Garcia - City of Rancho Mirage  
Print Name

Street Address

42520 Bob Hope Dr. Ste. A  
Street Address

City, State, Zip

Rancho Mirage, CA 92270  
City, State, Zip

Phone Number

(760) 770-3220  
Phone Number

DOC # 2009-0369274 /

07/17/2009 08:00A Fee:NC

Page 1 of 5

Recorded in Official Records  
County of Riverside

Larry W. Ward  
Assessor, County Clerk & Recorder



Recording requested by and  
when recorded, return to:

Office of the City Clerk  
City of Rancho Mirage  
69-825 Highway 111  
Rancho Mirage, California 92270

Assessor's Parcel No. 676-490-041

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EXEMPT FROM RECORDING FEES  
PURSUANT TO GOVERNMENT CODE SECTION 27383

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040

**NOTICE OF PUBLIC NUISANCE AND  
ORDER TO ABATE**

(Recorded pursuant to Government Code § 38773.5(e);  
Rancho Mirage Municipal Code § 14.120.110)



# CITY OF RANCHO MIRAGE



## NOTICE OF PUBLIC NUISANCE AND ORDER TO ABATE

June 26, 2009

Theodore Fick  
37 Victoria Falls Dr.  
Rancho Mirage, Ca. 92270

Recontrust Company, N. A.  
1800 Tapo Canyon Rd., Ca. 6-914-01-94  
Simi Valley, Ca. 93063

Pacific America Group, Inc. Loan Number # 0103456546  
13043 East 166<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Cerritos, California 90703

Dear Sir,

**PLEASE BE ADVISED** that, on April 27, 2009 the City of Rancho Mirage (the City) performed an inspection of real property located at 37 Victoria Falls Dr., referenced by Assessor's Parcel Number 676-490-041, and legally described as .29 ACRES IN LOT 95 MB 287/086 TR 28911 (the Property). The City has determined that the property owner of record is Theodore Fick and the occupant and/or agent having charge or control of the Property Theodore Fick.

**PLEASE BE FURTHER ADVISED** that the City has determined that the following conditions existed at or upon the Property on April 27, 2009:

< *The dry/dead grass at the front yard of the Property in public view constitutes a nuisance to surrounding properties. (Section 14.60.030, Subsection (c) of the Rancho Mirage Municipal Code):*

First Notice X      Second Notice \_\_\_\_\_      Third Notice \_\_\_\_\_

< *The weeds on the Property in public view constitute a nuisance to surrounding Properties. (Section 14.60.040 of the Rancho Mirage Municipal Code):*

First Notice X      Second Notice \_\_\_\_\_      Third Notice \_\_\_\_\_

ADMINISTRATION  
Tel. (760) 324-4511  
Fax. (760) 324-8830

COMMUNITY DEVELOPMENT  
Tel. (760) 328-2266  
Fax. (760) 324-9851

FINANCE  
Tel. (760) 770-3207  
Fax. (760) 324-0528

HOUSING AUTHORITY  
Tel. (760) 770-3210  
Fax. (760) 770-3261

PUBLIC LIBRARY  
Tel. (760) 341-7323  
Fax. (760) 341-5213

PUBLIC WORKS  
Tel. (760) 770-3224  
Fax. (760) 770-3261



69-825 HIGHWAY 111 RANCHO MIRAGE, CA 92270  
www.ci.rancho-mirage.ca.us

Public Record

< It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain upon any such premises or property any swimming pool, spa or similar man-made feature, reservoir, pond, or such other body of water not already regulated by Municipal Code Section 8.16.170, which is abandoned, unattended, unfiltered, or not otherwise maintained resulting in the water becoming polluted. (Section 14.60.280 of the Rancho Mirage Municipal Code)

First Notice 1 Second Notice \_\_\_\_\_ Third Notice \_\_\_\_\_

---

**YOU ARE HEREBY ORDERED** to perform the following actions within Ten days (10) days from the date of this Notice in order to remedy the above-referenced violations and public nuisance conditions and to maintain the Property in compliance with all laws at all times hereinafter prior to the imposition of any Administrative Fine:

- 
1. All of the landscaping must be maintained at all times front yard and the rear yard
  2. The pool was drained on the property

---

According to records belonging to the City of Rancho Mirage, Code Compliance Division, the above-referenced public nuisances have been identified and cited on your property (1) within the previous thirty-six (36) months. Pursuant to Municipal Code section 14.120.020, any member of the public who commits or causes a Municipal Code violation deemed to be a public nuisance and fails, neglects or refuses to obey this Order to Abate is subject to the following Administrative Fine Schedule:

**ADMINISTRATIVE FINE SCHEDULE**

FIRST NOTICE OF PUBLIC NUISANCE IN A TWELVE (12) MONTH PERIOD	\$100.00 PER VIOLATION
SECOND NOTICE OF PUBLIC NUISANCE FOR THE SAME OFFENSE IN A TWELVE (12) MONTH PERIOD	\$200.00 PER VIOLATION
THIRD NOTICE OF PUBLIC NUISANCE FOR THE SAME OFFENSE IN A TWELVE (12) MONTH PERIOD	500.00 PER VIOLATION
<b>TOTAL AMOUNT OF ADMINISTRATIVE FINES DUE:</b>	<b>\$ <u>200.00</u></b>

**PAYMENT OF ADMINISTRATIVE FINES MAY BE MADE BY SENDING A CHECK, MONEY ORDER OR CASHIER'S CHECK MADE PAYABLE TO: THE CITY OF RANCHO MIRAGE, AND MAILED TO CITY HALL, CITY OF RANCHO MIRAGE, ATTENTION:**

Page 2

Public Record

**RON GARCIA, 42-520 Bob Hope Dr. Suite # A, RANCHO MIRAGE, CALIFORNIA 92270. PAYMENTS MAY ALSO BE MADE BY PERSONAL DELIVERY TO CITY HALL.**

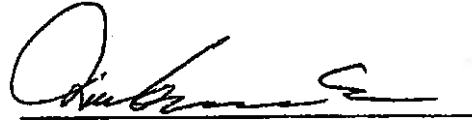
**THE AMOUNT OF THE ADMINISTRATIVE FINE INDICATED ABOVE IS A CIVIL DEBT OWED TO THE CITY. FAILURE TO PAY THE FINE WILL RESULT IN LEGAL ACTION BEING TAKEN AGAINST YOU FOR COLLECTION OF ANY DELINQUENT FINE AND APPLICABLE PENALTIES.**

**PLEASE TAKE FURTHER NOTICE** that you have the right to appeal this Notice of Public Nuisance and Order to Abate by filing a written appeal with Ron Garcia, Code Compliance Officer II, at the Code Compliance Division, City of Rancho Mirage, located at 69-825 Highway 111, Rancho Mirage, California 92270, and paying the requisite filing fee within ten (10) calendar days from the service date of this Notice. The Appeal form for the Issuance of a Public Nuisance and Order to Abate is available at the Code Compliance Division. Your failure to timely and properly file a complete appeal for the Notice of Public Nuisance and Order to Abate and pay the requisite filing fee shall constitute a waiver of all rights to an administrative appeal hearing and adjudication of this Notice of Public Nuisance and Order to Abate or any portion thereof. If you fail to file a timely appeal and pay the requisite filing fee, the determination that the above-referenced violations occurred and that you are responsible for said violations shall be deemed final on the date of this Notice of Public Nuisance and Order to Abate.

In the event you fail to comply with the Notice of Public Nuisance and Order to Abate once said Notice becomes final, the City may take any of the following actions against you:

- < The City may prosecute you for an infraction or misdemeanor violation of the City's Municipal Code. Please be advised that each of the above-referenced violations constitutes a separate offense, and each day a violation continues is a new violation.
- < The City may institute legal action to abate or enjoin any and all public nuisance conditions, which you have failed, refused, or neglected to abate. Such action may include an inspection and/or abatement warrant to permit the abatement of the unlawful conditions, including demolition and removal of unlawful improvements located upon the Property and to remove all public nuisance conditions existing on the Property.
- < All costs and fees, including attorney's fees, shall be recoverable from you and/or may be assessed against the Property in the event the City performs the abatement referenced herein.
- < The City may cause this Notice of Public Nuisance and Order to Abate to be recorded against the Property by the Riverside County Recorder's Office.

Should you have any questions regarding this matter, please contact Ron Garcia, Code Compliance Officer II, at the Rancho Mirage Code Compliance Division at (760) 770-3220.



Ron Garcia  
Code Compliance Officer  
City of Rancho Mirage

Attest: Elena Keeran  
City Clerk



Recording requested by and when recorded, return to:

Office of the City Clerk  
City of Rancho Mirage  
69-825 Highway 111  
Rancho Mirage, California 92270  
CE090816  
Assessor's Parcel No. 676-490-041

DOC # 2009-0555293

10/27/2009 08:00A Fee:NC

Page 1 of 2

Recorded in Official Records  
County of Riverside

Larry U. Ward

Assessor, County Clerk & Recorder



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EXEMPT FROM RECORDING FEES  
PURSUANT TO GOVERNMENT CODE SECTIONS 6103 & 27383

**NOTICE OF SPECIAL ASSESSMENT**



**Rancho Mirage Municipal Code Section 14.150.230**

TO ALL PERSONS AND PARTIES HAVING OR CLAIMING ANY INTEREST IN THE FOLLOWING PROPERTY:

Property Address: 37 Victoria Falls  
Assessor Parcel Number: 676-490-041  
Legal Description: .29 Acres in lot 95 MB 287/086 TR28911

AND TO:

- Theodore Fick  
37 Victoria Falls  
Rancho Mirage, CA 92270
- Mortgage Electronic Registration Systems, Inc.  
C/O Country Wide Way SV-35  
Simi Valley, CA 39065  
Floreclosure Department (800) 669-6650
- Pacific American Group Inc.  
Number 0103456546  
13043 East 166<sup>th</sup> street, 2<sup>nd</sup> Floor  
Cerritos, California 90703

Lender, Mortgage Holder, Guarantor, and other like interested parties and addresses:

(BEING ALL PARTIES KNOWN TO HAVE A RECORD INTEREST IN SUCH PROPERTY)

PLEASE TAKE NOTICE that the City of Rancho Mirage, a municipal corporation, has determined that the property owner of record has failed to pay to the City of Rancho Mirage abatement costs in the amount of (One Thousand Nine Hundred and Seventy Five) (\$1,975.00) for abatement activities performed in relation to the associated City Attorney legal fees and that such failure to pay the outstanding abatement costs permits the City of Rancho Mirage to record a special assessment against the subject parcel.

PLEASE TAKE FURTHER NOTICE that all parties who may hereafter have or claim an interest in the subject property are hereby placed on notice of this special assessment in the amount referenced herein. This Notice of Special Assessment shall be withdrawn by the City of Rancho Mirage upon receipt of payment of the subject abatement costs.

Information regarding this Notice of Special Assessment may be obtained from the Rancho Mirage Code Compliance Division at (760) 770-3220.

I declare under penalty of perjury that the foregoing information is true and correct.

DATE: 10-15-2009

BY:   
Ron Garcia-Code Compliance Officer II  
City Of Rancho Mirage

ATTEST: Cynthia Scott  
City Clerk  
City of Rancho Mirage





**CLAIM SUMMARY**

To: Riverside County Treasurer and Tax Collector  
Assessors Parcel Number: 676490041-1  
Last Assessee: FICK THEODORE A  
Sale Date: 3/16/2010  
Tax Sale Number: TC185  
Item Number: 297

RECEIVED  
2010 MAY -4 AM 11:55  
RIVERSIDE COUNTY  
TREAS - TAX COLLECTOR

Dear Treasurer/Tax Collector:

1. Claimant(s): Global Discoveries, Ltd.

The following proof of claim(s) for excess proceeds and documents are attached:

1. Grant Deed granting interest to Theodore A. Fick, a widow as Document# 2005-0670381, Recorded in Riverside County on 08/17/2005
2. Declaration of one and the Same Person
3. Assignment of Excess Proceeds signed by Theodore A. Fick
4. Claim Form(s) signed by Global Discoveries
5. Photo ID & Copy of Social Security Card for Assignor: Theodore A. Fick

Upon approval, claimant(s) request that the Treasurer and Tax Collector issue its warrant(s) as follows:

- One warrant in the amount of \$325,962.00 or 100% of the claimant's share of the excess proceeds made payable to Global Discoveries, Ltd. and mailed to P.O. Box 1748, Modesto, California 95353-1748.

Please address questions regarding the attached claim(s) to Jed Byerly, Chief Operating Officer, at (209) 593-3913, or e-mail to [jed@globaldiscoveries.com](mailto:jed@globaldiscoveries.com).

The Client(s) and the staff of Global Discoveries, Ltd., thank you in advance for your timely review and approval of the attached claim(s).

**Certified Tracking Number: 7009-3410-0001-7917-5060**



DOC # 2005-0670381  
08/17/2005 08:00A Fee:10.00  
Page 1 of 2 Doc T Tax Paid  
Recorded in Official Records  
County of Riverside  
Larry W. Ward  
Assessor, County Clerk & Recorder

**RECORDING REQUESTED BY:**  
Ticor Title Company of California  
Escrow No. 131464-JJ  
Title Order No. 870904-12  
  
**When Recorded Mail Document  
and Tax Statement To:**  
Theodore A. Fick  
37 Victoria Falls  
Rancho Mirage CA 92270



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A	R	L			COPY	LONG	REFUND	NCHG	EXAM

APN: 676-490-041

**GRANT DEED**

TRA:017

The undersigned grantor(s) declare(s)  
Documentary transfer tax is \$891.00 City Transfer Tax is \$0.00  
 computed on full value of property conveyed, or  
 computed on full value less value of liens or encumbrances remaining at time of sale,  
 Unincorporated Area City of Rancho Mirage



FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Trounce, Inc.

hereby GRANT(S) to Theodore A. Fick, a widow

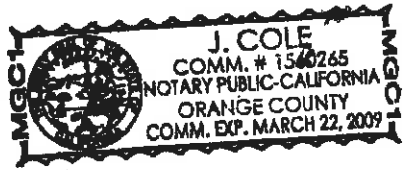
the following described real property in the City of Rancho Mirage,  
County of Riverside, State of California:  
Lot 95, TRACT 28911, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 287,  
PAGE 89 THROUGH 89 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

DATED: July 15, 2005

STATE OF CALIFORNIA  
COUNTY OF Orange  
ON July 25, 2005  
J. Cole before me,  
John Williams personally appeared

Trounce, Inc.

personally known to me (or 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.



Witness my hand and official seal.  
Signature

MAIL-TAX STATEMENTS AS DIRECTED ABOVE



DECLARATION  
OF ONE AND THE SAME PERSON

I, Theodore A. Fick, do hereby declare:

1. I am over the age of 18 and a resident of Anaheim, CA. The facts set forth herein are true of my own personal knowledge. If called to testify as a witness in a judicial proceeding, I could, and would, testify truthfully and competently thereto.
2. I am one and the same person as Theodore Ainslee Fick, Theodore A. Fick and Theodore Fick.
3. I am one and the same person as Ted Ainslee Fick, Ted A. Fick and Ted Fick.
4. I am one and the same person who is mentioned on the referenced Grant Deed as Document# 2005-0670381, Recorded in Riverside County on 08/17/2005.
5. I am one and the same person who assigned the excess proceeds to Global Discoveries, Ltd., for Riverside County Assessors Parcel Number 676490041-1, on 3-19-2010.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 19<sup>th</sup> day of March, 2010, at 6:00, pm

x *TAFick*  
Theodore A. Fick  
4354 E. Elkstone Avenue  
Anaheim, CA 92807

JURAT

State of California  
County of Orange

Subscribed and sworn to (or affirmed) before me on this

19<sup>th</sup> day of March, 20 10, by  
Date Month Year  
Theodore A Fick  
Name of Signer

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Signature *G. Devlahovich*  
Signature of Notary Public



(Place Notary Seal Above)

ASSIGNMENT OF RIGHT TO COLLECT EXCESS PROCEEDS

To expedite processing of this claim, we would strongly suggest you use this form. For this form to be valid it must be completed in its entirety and documentation establishing the assignor as a "party of interest" must be provided at the time this document is filed with the Treasurer-Tax Collector. PLEASE SEE REVERSE SIDE OF THIS DOCUMENT FOR FURTHER INSTRUCTIONS.

As a party of interest (defined in Section 4675 of the California Revenue and Taxation Code), I, the undersigned, do hereby assign to GLOBAL DISCOVERIES, LTD. my right to apply for and collect the excess proceeds which you are holding and to which I am entitled from the sale of assessment number 676490041-1, Tax Sale Number TC185, Item 297 sold at public auction on 3/16/2010. I understand that the total of excess proceeds available for refund is \$ 325,962.00+/-, and that I AM GIVING UP MY RIGHT TO FILE A CLAIM FOR THEM. FOR VALUABLE CONSIDERATION RECEIVED I HAVE SOLD THIS RIGHT OF COLLECTION (assignment) TO THE ASSIGNEE. I certify under penalty of perjury that I have disclosed to the assignee all facts of which I am aware relating to the value of this right I am assigning.

*[Signature]* 3/19/10  
(Signature of Party of Interest/Assignor) (Date)

Theodore A. Fick  
(Name Printed)

Tax ID/SS#

4354 E. Elkstone Avenue  
(Address)

Anaheim, CA 92807  
(City/State/Zip)

STATE OF CALIFORNIA )  
COUNTY OF )

)ss. (714) 998-5249  
(Area Code/Telephone Number)

On \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within instrument and acknowledged to me that he/she/they executed the same. 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.

*[Signature]*  
(Signature of Notary)

(This area for official seal)

I, the undersigned, certify under penalty of perjury that I have disclosed to the party of interest (assignor), pursuant to Section 4675 of the California Revenue and Taxation Code, all facts of which I am aware relating to the value of the right he is assigning, that I have disclosed to him the full amount of excess proceeds available, and that I HAVE ADVISED HIM OF HIS RIGHT TO FILE A CLAIM ON HIS OWN WITHOUT ASSIGNING THAT RIGHT.

*[Signature]*  
(Signature of Assignee)

Jed Byerly, Chief Operating Officer  
(Name Printed)

Tax ID/SS# 77-0558969

Global Discoveries, Ltd.  
(Address)

STATE OF CALIFORNIA )  
COUNTY OF Stanislaus )

)ss. P.O. Box 1748  
Modesto, California 95353-1748  
(City/State/Zip)

Phone: (209) 593-3913

On 3-26-2010, before me, the undersigned, a Notary Public in and for said State, personally appeared \*\*\*Jed Byerly\*\*\* 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. 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.

*[Signature]*  
(Signature of Notary)

(This area for official seal)



**ACKNOWLEDGMENT**

State of California

County of Orange

On March 19, 2010 before me, G. Devlahovich, Notary Public  
(insert name and title of the officer)

personally appeared Theodore A. Fick  
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.

Signature  (Seal)



**CLAIM FOR EXCESS PROCEEDS FROM THE SALE OF TAX DEFAULTED PROPERTY**

To: Riverside County Treasurer and Tax Collector

Assessor's Parcel No: 676490041-1

Tax Sale Number: TC185

Item Number: 297

Date of Sale: 3/16/2010

The undersigned claimant, Global Discoveries, Ltd., claims \$325,962.00+/- or 100% of the claimant's share of the actual amount of excess proceeds from the sale of the property referenced above.

Global Discoveries, Ltd., claims its status as a party of interest pursuant to Section 4675 of the California Revenue and Taxation Code based upon the attached documentation:

Please refer to Claim Summary and attached Documents

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

Executed this 26<sup>th</sup> day of March, 2010 at Modesto, California.

By: Jed Byerly  
Jed Byerly, Chief Operating Officer  
Global Discoveries, Ltd. Tax ID # 77-0558969  
P.O. Box 1748  
Modesto, CA 95353-1748  
(209) 593-3913

**CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC**

State of California

County of Stanislaus

On 3-26-2010 before me, Michelle Reynosa, Notary Public, personally appeared  
(Date) (here insert name and title of the officer)

Jed Byerly, 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.  
Michelle Reynosa (seal)  
Signature of Notary Public



# CALIFORNIA



## DRIVER LICENSE

EXPIRES 12-27-12

CLASS: C



THEODORE AINSLEE FICK

SEX: M      HAIR: GRY      EYES: BLU  
HT: 6-05      WT: 190      DOB: 12-27-40

*Theodore Ainslee Fick*

11/13/2007 607 LM FD/12

# SOCIANT SECURING

CLAP SECUR

THIS NUMBER HAS BEEN ESTABLISHED FOR

THEODORE AINSLEY FICK



SIGNATURE