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16 *Counsel for Plaintiff*

17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 LISA SILVEIRA, on behalf of herself and
20 all others similarly situated,

21 Plaintiff,

22 v.

23 M&T BANK,

24 Defendant.

25 **Case No. 2:19-cv-06958**

26 **CLASS ACTION COMPLAINT**

27 **JURY TRIAL DEMANDED**

**Action for Breach of Contract; Unfair
Competition Law, Cal. Bus. & Prof. Code
§§ 17200 et seq.; Fair Debt Collection
Practices Act, 15 U.S.C. §§ 1692, et seq;
Rosenthal Fair Debt Collection Practices
Act, Cal. Civ. Code §§ 1788 et seq.**

1 Plaintiff Lisa Silveira, on behalf of herself and all others similarly situated, alleges breach of contract,
2 violations of the Rosenthal Fair Debt Collection Practices Act, and Federal Fair Debt Collection Practices
3 Act, against Defendant M&T Bank (“M&T”). In support of these claims, Plaintiff states as follows:

4 **NATURE OF THE ACTION**

5 1. Borrowers in California struggle enough to make their regular mortgage payments without
6 getting charged extra, illegal fees when they try to pay by automated phone system or online (“Pay-to-Pay
7 fees”). Many borrowers pay by phone or online because it generates a receipt of the payment and a clear
8 record. M&T charges California homeowners an excessive \$15.00 Pay-to-Pay fee for each pay-by-phone
9 mortgage payment transaction (“Pay-to-Pay Transaction”). The actual cost for M&T to process these
10 transactions is well below \$15.00, and M&T pockets the profit.

11 2. M&T services mortgages throughout the United States, including California. Despite its
12 uniform contractual obligations to charge only fees explicitly allowed under the mortgage, applicable law,
13 and only those amounts actually disbursed, M&T leverages its position of power over homeowners and
14 demands excessive Pay-to-Pay fees. Even if some fee were allowed, the mortgage uniform covenants allow
15 M&T to pass along only the actual cost of fees incurred by it to the borrower – here only a few cents.

16 3. M&T must be held accountable for its actions. It knowingly violated the FDCPA and
17 Rosenthal Fair Debt Collection Practices Act by demanding excessive Pay-to-Pay fees, and breached its
18 mortgage contract by charging fees not expressly allowed under the uniform contractual obligations
19 contained in standard form mortgage agreements.

20 **JURISDICTION AND VENUE**

21 4. This Court has personal jurisdiction because M&T conducts business in California and
22 commits torts in California, as described in this Complaint.

23 5. Venue is proper because this is where the cause of action accrued.

24 **PARTIES**

25 6. Plaintiff Lisa Silveira is a natural person residing in California who has a mortgage loan
26 serviced by M&T on her home located in San Luis Obispo County, California.

1 7. Defendant M&T Bank is a corporation with a principal place of business in Buffalo, New
2 York.

3 **APPLICABLE LAW**

4 **FDCPA**

5 8. The purpose of the FDCPA is “to eliminate abusive debt collection practices . . . and to
6 promote consistent State action to protect consumers against debt collection abuses.” 15 U.S.C. § 1692.

7 9. The FDCPA prohibits debt collectors from using “any false, deceptive, or misleading
8 representation or means in connection with the collection of any debt,” which includes the false
9 representation of “the character, amount, or legal status of any debt.” *Id.* § 1692e.

10 10. The FDCPA also prohibits debt collectors from “unfair or unconscionable means to collect
11 or attempt to collect any debt,” including “the collection of any amount unless such amount is expressly
12 authorized by the agreement creating the debt or permitted by law.” *Id.* § 1692f.

13 11. The FDCPA creates a private right of action under 15 U.S.C. § 1692k.

14 12. The FDCPA defines “consumer” as “any natural person obligated or allegedly obligated to
15 pay any debt.” *Id.* § 1692a(3).

16 13. The FDCPA defines “debt collector” as “any person who uses . . . any business the principal
17 purpose of which is the collection of any debts, or who regularly collects or attempts to collect . . . debt
18 owed . . . or asserted to be owed or due another.” *Id.* § 1692a(6).

19 14. The FDCPA defines communication as “conveying of information regarding a debt directly
20 or indirectly to any person through any medium.” *Id.* § 1692a(2).

21 15. The FDCPA defines “debt” as “any obligation or alleged obligation of a consumer to pay
22 money arising out of a transaction . . . [that] are primarily for personal, family, or household purposes.” *Id.* §
23 1692a(5).

24 **ROSENTHAL ACT**

25 16. The Rosenthal Act is “a remedial statute [that] should be interpreted broadly in order to
26 effectuate its purpose.” (*See People ex rel. Lungren v. Superior Court*, 14 Cal.4th 294, 313, 58 Cal.Rptr.2d 855,
27 926 P.2d 1042 (Cal. 1996) (“civil statutes for the protection of the public are, generally, broadly construed in

1 favor of that protective purpose.”); *Komarova v. National Credit Acceptance, Inc.*, 95 Cal.Rptr.3d 880, 892, 175
2 Cal.App.4th 324, 340 (Cal.App. 1 Dist. 2009).

3 17. The Rosenthal Act defines “debt collector” as “any person who, in the ordinary course of
4 business, regularly, on behalf of himself or herself or others, engages in debt collection. Cal. Civ. Code
5 §1788.2(c).

6 18. The Rosenthal Act defines a “consumer debt” as “money, property or their equivalent, due
7 or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction.”
8 Cal. Civ. Code §1788.2(f).

9 19. The Rosenthal Act defines “consumer credit transaction” as “a transaction between a natural
10 person and another person in which property, services or money is acquired on credit by that natural person
11 from such other person primarily for personal, family, or household purposes.” Cal. Civ. Code §1788.2(e).

12 20. The Rosenthal Act makes it illegal for any entity covered by it to violate the federal FDCPA.
13 Cal. Civ. Code § 1788.17. By violating the FDCPA, M&T also violated the Rosenthal Act.

14 21. The Rosenthal Act prohibits “(b) Collecting or attempting to collect from the debtor the
15 whole or any part of the debt collector’s fee or charge for services rendered, or other expense incurred by
16 the debt collector in the collection of the consumer debt, except as permitted by law.” Cal. Civ. Code §
17 1788.14.

18 22. The Rosenthal Act also makes it illegal to represent that consumer debt “may be increased
19 by the addition of . . . charges if, in fact, such fees and charges may not be legally added to the existing
20 obligation.” Cal. Civ. Code § 1788.13(e).

21 **FACTUAL ALLEGATIONS**

22 23. On or around December 29, 2008, Ms. Silveira purchased a home in San Luis Obispo
23 County, California through a loan from Stearns Lending, Inc., secured by a mortgage on the property (the
24 “Mortgage Agreement”). In 2016, M&T acquired the loan in default. M&T is the servicer on the loan.

25 24. Since M&T acquired the loan in default, and because M&T otherwise meets the two-part
26 definition of a “debt collector” under the FDCPA, M&T is a debt collector. M&T’s principle purpose is to
27

1 collect debt. M&T used interstate commerce to collect debt. And M&T regularly collects debts which are
2 owed and due another.

3 25. In 2017, Ms. Silveira obtained a loan modification. Since then, she has made timely mortgage
4 payments.

5 26. Ms. Silveira frequently makes her monthly mortgage payments over the phone (the “Pay-to-
6 Pay Transactions”). When Ms. Silveira makes a mortgage payment over the phone, M&T charges her a
7 \$15.00 additional fee. This fee is not authorized by the Mortgage Agreement.

8 27. Ms. Silveira has made several payments over the phone and incurred an illegal \$15.00 fee
9 each time, including on March 1, 2017, December 1, 2017, February 1, 2018, July 2, 2018, April 15, 2019.

10 28. Ms. Silveira’s Mortgage Agreement is attached as Exhibit A.

11 29. M&T’s demand for payment of Pay-to-Pay fees were a direct breach of Paragraph 16 of the
12 Mortgage Agreement, “This Security Instrument shall be governed by Federal law and the law of the
13 jurisdiction in which the Property is located.” *See* Exhibit A, ¶16. M&T’s collection of Pay-to-Pay fees
14 violated both the FDCPA and Rosenthal Act.

15 30. If M&T is allowed to collect a fee under the auspice that it is a “default related fee”, M&T’s
16 demand for payment of Pay-to-Pay fees were a direct breach of Paragraph 9 of the Mortgage Agreement,
17 “Protection of Lender’s Interest in the Property and Rights Under This Security Instrument” section, stating
18 that only “amounts *disbursed* by the lender under this Section 9 will become debt of the borrower.” *See*
19 Exhibit A, ¶9 (emphasis added). M&T collected more than the amount it disbursed to process the Pay-to-
20 pay transactions.

21 31. M&T’s demand for payment of Pay-to-Pay fees were a direct breach of Paragraph 14 of its
22 Mortgage Agreement, “Uniform Covenants” section, stating that lender may not charge fees prohibited by
23 “Applicable Law.” The Agreement defines “Applicable Law” in Paragraph I as “all controlling applicable
24 federal, state, and local statutes, regulations, ordinances and administrative rules and orders (that have the
25 effect of law) as well as all applicable final, non-appealable judicial opinions.” *See* Exhibit A, ¶14.

26 32. By charging Pay-to-Pay fees, M&T has violated the “Governing Law” and “Applicable Law”
27 provisions. Charging Pay-to-Pay fees violates the Federal FDCPA and the RFDCPA because the Mortgage

1 Agreement does not expressly allow M&T to charge Pay-to-Pay fees. *See* 15 U.S.C. § 1692f (making it illegal
 2 to collect “any amount (including any interest, fee, charge, or expense incidental to the principal obligation)
 3 unless such amount is expressly authorized by the agreement creating the debt or permitted by law”); Cal.
 4 Civ. Code § 1788.13(e) (making it illegal to falsely represent that consumer debt “may be increased by the
 5 addition of . . . charges if, in fact, such fees and charges may not be legally added to the existing obligation”).
 6 *See also Sanders v. LoanCare LLC*, No. 18-CV-09376, 2019 WL 441964, at *2 (C.D. Cal. Feb. 1, 2019) (holding
 7 that loan servicer’s practice of assessing fees not expressly authorized by the plaintiff’s mortgage violated the
 8 RFDCPA and FDCPA); *Bagdasaryan v. Bayview Loan Servicing, LLC*, No. CV 14-06691 SJO (VBKx), 2015 WL
 9 13665037, at *13 (C.D. Cal. Oct. 19, 2015) (allegation that mortgage servicer charged improper fees to
 10 mortgage stated a claim under Cal. Civ. Code § 1788.13(e)). By violating federal law and the law of
 11 California, M&T has not only violated those statutes, but also breached the Mortgage Agreement.

12 33. Because the “Governing Law” (§16) “Protection of Lender’s Interest in the Property and
 13 Rights Under This Security Instrument” (§9) and “Applicable Law” (§14) provisions are contained in the
 14 “Uniform Covenants” section, M&T has breached its contract on a class-wide basis.

15 34. Prior to filing this Complaint, Ms. Silveira made a written pre-suit demand upon M&T.

16 35. M&T was given a reasonable opportunity to cure the breaches complained of herein, but has
 17 failed to do so.

18 CLASS ACTION ALLEGATIONS

19 36. Plaintiff Silveira brings this action under Federal Rule of Civil Procedure 23 on behalf of the
 20 following classes of persons (the “Classes”), subject to modification after discovery and case development:

21 **Nationwide FDCPA Class:** All persons who were borrowers on residential mortgage loans that
 22 were not owned by M&T and to which M&T acquired servicing rights when such loans were 30
 23 days or more delinquent on loan payment obligations, and paid a fee to M&T for making a loan
 payment by telephone, IVR, or the internet, during the applicable statutes of limitations for
 Plaintiff’s FDCPA claim through the date a class is certified.

24 **California Class:** All persons with a California address who were borrowers on residential mortgage
 25 loans to which M&T acquired servicing rights, and paid a fee to M&T for making a loan payment by
 telephone, IVR, or the internet, during the applicable statutes of limitations for Plaintiff’s UCL claim
 through the date a class is certified.

26 **California Subclass:** All persons with a California address who were borrowers on residential
 27 mortgage loans that were not owned by M&T and to which M&T acquired servicing rights when
 such loans were 30 days or more delinquent on loan payment obligations, and paid a fee to M&T for

1 making a loan payment by telephone, IVR, or the internet, during the applicable statutes of
limitations for Plaintiff's UCL claim through the date a class is certified.

2 37. Class members are identifiable through Defendant's records and payment databases.

3 38. Excluded from the classes are the Defendant; any entities in which it has a controlling
4 interest; its agents and employees; and any Judge to whom this action is assigned and any member of such
5 Judge's staff and immediate family.

6 39. Representative Plaintiffs proposes that they serve as class representatives.

7 40. Representative Plaintiffs and the Class have all been harmed by the actions of Defendant.

8 41. Numerosity is satisfied. According to M&T's servicing records there are thousands of class
9 members. Individual joinder of these persons is impracticable.

10 42. There are questions of law and fact common to Representative Plaintiffs and to the Class,
11 including, but not limited to:

12 a. Whether M&T assessed Pay-to-Pay fees on Class members;

13 b. Whether M&T breached its contracts with borrowers by charging Pay-to-Pay fees
14 not authorized by their mortgage agreements;

15 c. Whether M&T violated the FDCPA by charging Pay-to-Pay fees not due;

16 d. Whether M&T violated the RFDCPA by charging Pay-to-Pay fees not due;

17 e. Whether M&T violated the UCL;

18 f. Whether M&T's cost to process Pay-to-Pay Transactions is less than the amount that
19 it charged for Pay-to-Pay fees;

20 g. Whether Ms. Silveira and the Classes were damaged by M&T's conduct;

21 h. Whether Ms. Silveira and the Classes are entitled to actual and/or statutory damages
22 as a result of M&T's actions;

23 i. Whether Ms. Silveira and the Classes are entitled to restitution;

24 j. Whether Ms. Silveira and the Classes are entitled to attorney's fees and costs.

25 43. Ms. Silveira's claims are typical of the claims of the Class members. M&T charged her Pay-
26 to-Pay fees in the same manner as the rest of the Class members. Ms. Silveira and the Class members
27 entered into uniform covenants in their Mortgage Agreements that prohibit Pay-to-Pay charges or, at most,

1 cap the amount of Pay-to-Pay fees allowed to be charged at the actual amount disbursed by M&T to process
2 Pay-to-Pay Transactions.

3 44. Ms. Silveira is an adequate class representative because her interests do not conflict with the
4 interests of the class members and she will adequately and fairly protect the interests of the class members.
5 Ms. Silveira has taken actions before filing this amended complaint, by hiring skilled and experienced
6 counsel, and by making a pre-suit demand on behalf of class members to protect the interests of the class.

7 45. Ms. Silveira has hired counsel that is skilled and experienced in class actions and are adequate
8 class counsel capable of protecting the interests of the class members.

9 46. Common questions of law and fact predominate over questions affecting only individual
10 class members, and a class action is the superior method for fair and efficient adjudication of this
11 controversy.

12 47. The likelihood that individual members of the class will prosecute separate actions is remote
13 due to the time and expense necessary to conduct such litigation.

14 **COUNT I**
15 **Breach of Contract**
16 **On Behalf of Plaintiff and the California Class**

17 48. All previous paragraphs are hereby incorporated by reference.

18 49. Ms. Silveira purchased a home subject to the Mortgage Agreement. *See* Exh. A.

19 50. When M&T became servicer of her mortgage, it became a party to the Mortgage Agreement.
20 Thus, M&T entered into the Mortgage Agreement with Ms. Silveira whereby money was lent to Ms. Silveira
21 to purchase property in exchange for certain payment over time.

22 51. The Uniform Covenant in the Mortgage Agreement proscribes fees not allowed under the
23 governing law. Paragraph 7 of the Mortgage Agreement, “Charges to Borrower and Protection of Lender’s
24 Rights in the Property,” provides only that “amounts *disbursed* by the lender” will be come debt of the
25 borrower. *See* Exh. A ¶ 7 (emphasis added).

26 52. Thus, the Uniform Covenant in the Mortgage Agreement allows M&T to charge only the
27 amounts actually disbursed to pay for the cost of processing the Pay-to-Pay transactions. Despite this

1 express limitation, M&T assessed \$15.00 Pay-to-Pay fees not agreed to in the Mortgage agreement and in
2 excess of the amounts actually disbursed by M&T to pay for the cost of the Pay-to-Pay Transactions.

3 53. M&T breached its contracts with Plaintiff and the California Breach of Contract Class
4 members when it charged pay-to-Pay fees not agreed to in the Mortgage Agreement and in excess of the
5 amounts actually disbursed by M&T to pay for the cost of Pay-to-Pay Transactions.

6 54. M&T's demand for Pay-to-Pay fees is also a direct breach of Paragraph 14 of the Mortgage
7 Agreement, "Governing Law." Paragraph 14 states that the Mortgage Agreement "shall be governed by
8 Federal law and the law of the jurisdiction in which the property is located," i.e., California. *See* Exh. A ¶ 14.
9 Charging Pay-to-Pay fees violates the Federal FDCPA and the RFDCPA because the Mortgage Agreement
10 does not expressly allow M&T to charge Pay-to-Pay fees. *See* 15 U.S.C. § 1692f (making it illegal to collect
11 "any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless
12 such amount is expressly authorized by the agreement creating the debt or permitted by law"); Cal. Civ.
13 Code § 1788.13(e) (making it illegal to falsely represent that consumer debt "may be increased by the
14 addition of . . . charges if, in fact, such fees and charges may not be legally added to the existing obligation").

15 55. By violating the Federal FDCPA and the RFDCPA, M&T violated the Governing Law and
16 breached the Mortgage Agreement.

17 56. Plaintiff and the California Breach of Contract Class members were harmed by this breach.

18 **COUNT II**

19 **Violation of the Fair Debt Collection Practices Act**

20 **15 U.S.C. § 1692 *et seq.***

21 **On behalf of Plaintiff and the Nationwide FDCPA Class**

22 57. All previous paragraphs are hereby incorporated by reference.

23 58. This action is maintainable as a nationwide class action pursuant to 15 U.S.C. §
24 1692k(a)(2)(b).

25 59. The FDCPA makes it an illegal, unfair practice for a debt collector to undertake the
26 "collection of any amount (including any interest, fee, charge, or expense incidental to the principal
27 obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by
law." 15 U.S.C. § 1692f(1).

1 60. Because M&T regularly collects debts owed others and because it acquired the loans of
2 Plaintiff and the Nationwide Class members while those loans were in default, it qualifies as a debt collector
3 under the FDCPA.

4 61. The Mortgage Agreements of Plaintiff and the Nationwide Class members do not expressly
5 authorize M&T to collect Pay-to-Pay fees. At most, the Mortgage Agreements permit M&T to collect the
6 actual amount disbursed to process the Pay-to-Pay transactions.

7 62. Although the Mortgage Agreements do not expressly authorize collection of Pay-to-pay fees,
8 M&T collected such fees anyway.

9 63. In so doing, M&T violated 15 U.S.C. § 1692f(1).

10 64. As a result of each and every violation of the FDCPA, Plaintiff and the Nationwide Class
11 members are entitled to actual damages under 15 U.S.C. § 1692k(a)(1); statutory damages for knowing or
12 willful violation in the amount up to \$1,000.00 under 15 U.S.C. § 1692k(a)(2)(A), and reasonable attorneys'
13 fees and costs under 15 U.S.C. § 1692k(a)(3) from M&T.

14 **COUNT III**

15 **Violation of the Rosenthal Fair Debt Collection Practices Act**
16 **Cal. Civ. Code §§ 1788 *et seq.* (RFDCPA)**
17 **On behalf of Plaintiff and the California Class**

18 65. All previous paragraphs are hereby incorporated by reference.

19 66. The RFDCPA applies to M&T because it regularly engages in debt collection as defined by
20 the statute. Cal. Civ. Code § 1788.2.

21 67. By charging the Pay-to-Pay fee, a portion of which it retains, M&T acted in violation of the
22 federal Fair Debt Collection Practices Act, which prohibits “[t]he collection of any amount (including any
23 interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly
24 authorized by the agreement creating the debt or permitted by law.” 15 U.S.C. § 1692f(1).

25 68. The Mortgage Agreements of Plaintiff and the Nationwide Class members do not expressly
26 authorize M&T to collect Pay-to-Pay fees. At most, the Mortgage Agreements permit M&T to collect the
27 actual amount disbursed to process the Pay-to-Pay transactions.

1 80. As a result of the conduct above, M&T has been unjustly enriched at the expense of Plaintiff
2 and members of the California Default Subclass. Specifically, M&T has been unjustly enriched by obtaining
3 revenues and profits that it would not have otherwise obtained absent its false, misleading and deceptive
4 conduct.

5 81. Through its unlawful acts and practices, M&T has improperly obtained money from Plaintiff
6 and the California Default Subclass. As such, Plaintiff requests that the Court cause M&T to restore the
7 money to Plaintiff and the California Default Subclass members, and to enjoin M&T from continuing to
8 violate the UCL in the future. Otherwise, Plaintiff and the members of the California Default Subclass may
9 be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff, on behalf of herself and others similarly situated, respectfully requests that the
12 Court:

13 82. Certify the proposed Classes and Subclass pursuant to Rule 23 of the Federal Rules of Civil
14 Procedure;

15 83. Award damages, including compensatory and exemplary damages, to Plaintiff and the
16 Classes in an amount to be determined at trial;

17 84. Award statutory damages and/or penalties to Plaintiff and the proposed Classes and
18 Subclasses;

19 85. Permanently enjoin M&T from the wrongful and unlawful conduct alleged herein;

20 86. Award Plaintiff and the Class and Subclass members their expenses and costs of suit,
21 including reasonable attorneys' fees to the extent provided by law;

22 87. Award pre- and post-judgment interest to the extent provided by law; and

23 88. Award such further relief as the Court deems appropriate.

24 **PLAINTIFF DEMANDS A JURY ON ALL ISSUES SO TRIABLE.**

25 [Signature on next page]
26
27

1 Dated: August 9, 2019

Respectfully Submitted,

2
3 /s/ Hassan A. Zavareei

Hassan A. Zavareei

4 *Counsel for Plaintiff*

5 *Lisa Silveira*

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EXHIBIT A

JULIE RODEWALD
San Luis Obispo County – Clerk/Recorder

SC
1/07/2009
10:24 AM

Recorded at the request of
Title Court Services Inc

DOC #: **2009000631**

Titles: 2 Pages: 9



Fees 40.00
Taxes 0.00
Others 4.00
PAID \$44.00

“LSI TITLE, FNDS DIVISION”

Recording Requested By:

Return To:
STEARNS LENDING, INC.
4 HUTTON CENTRE DRIVE, SUITE 500
SANTA ANA, CALIFORNIA 92707-8710
Attn.: **SHIPPING DEPT./DOC.**
CONTROL
Loan No.: **44004653**
Prepared By:

1803538

[Space Above This Line For Recording Data]

State of California

DEED OF TRUST

FHA Case No.

197-4057525-703

MIN: **1001833-0000057153-0**
MERS TELEPHONE: **(888) 679-6377**

THIS DEED OF TRUST (“Security Instrument”) is made on **December 26, 2008**. The Trustor is **JOSEPH SILVEIRA, AN UNMARRIED MAN, AND LISA SILVEIRA, AN UNMARRIED WOMAN**, whose address is **1809 MIRASOL WAY, ATASCADERO, CALIFORNIA 93422** (“Borrower”). The trustee is **FIRST AMERICAN TITLE INSURANCE COMPANY, a CALIFORNIA Corporation** (“Trustee”). The beneficiary is Mortgage Electronic Registration Systems, Inc. (“MERS”), (solely as nominee for Lender, as hereinafter defined, 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.

STEARNS LENDING, INC., (“Lender”) is organized and existing under the laws of the **State of CALIFORNIA**, and has an address of **4 HUTTON CENTRE DRIVE, SUITE 500, SANTA ANA, CALIFORNIA 92707-8710**. Borrower owes Lender the principal sum of **Three Hundred One Thousand Five Hundred Forty Eight And 00/100 Dollars (U.S. \$301,548.00)**. This debt is evidenced by Borrower’s note dated the same date as this Security Instrument (“Note”), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **January 1, 2039**. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower’s covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to the Trustee, in trust, with power of sale, the following described property located in **SAN LUIS OBISPO County, California**:

FHA California Deed of Trust with MERS - 4/96

Amended 11/07
Initials:

LOT 7 OF TRACT 2546, IN THE CITY OF ATASCADERO, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE MAP RECORDED APRIL 5, 2005, IN BOOK 25, PAGES 95-98 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Property Tax ID Number: **049-102-067**

which has the address of **1809 MIRASOL WAY** [Street]
ATASCADERO [City], California **93422** [Zip Code] ("Property Address");

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 or 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.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement

Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless

extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

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; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; 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 may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or 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 Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security

Instrument only to mortgage, grant and convey that Borrower'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 may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. 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. To this end the provisions of this Security Instrument and the Note are declared to be severable.

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

16. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

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

17. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

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Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender 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 paragraph 18, 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.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. 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 and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

20. 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.

21. Request for Notices. Borrower requests that copies of the notices of default and sale be sent to Borrower's address which is the Property Address.

22. Beneficiary Statement. Lender may collect a fee, not to exceed the maximum amount permitted by law for furnishing Beneficiary statement as provided by Section 2943 of the Civil Code of California.

23. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

- Condominium Rider
- Growing Equity Rider
- Other(s) [specify]
- Planned Unit Development Rider
- Graduated Payment Rider

The undersigned Borrower requests that a copy of any Notice of Default and any Notice of Sale under this Security Instrument be mailed to the Borrower at the address set forth above. A copy of any Notice of Default and any Notice of Sale will be sent only to the address contained in this recorded request. If the Borrower's address changes a new request must be recorded.

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

_____  _____ (Seal)
JOSEPH SILVEIRA -Borrower

_____  _____ (Seal)
LISA SILVEIRA -Borrower

_____ _____ (Seal)
 -Borrower

_____ _____ (Seal)
 -Borrower

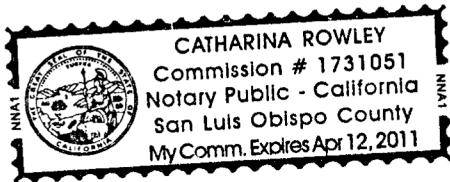
State of California County of San Luis Obispo } ss.

On 12-29-2008 before me, Catharina Rowley, Notary Public, personally appeared

JOSEPH SILVEIRA and LISA SILVEIRA, *

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.
(This area for official notarial seal)



[Handwritten Signature] (Seal)

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4N(CA) (0711)

Page 9 of 9

Amended 11/07

Initials: [Handwritten Initials]

END OF DOCUMENT

JULIE RODEWALD

San Luis Obispo County – Clerk/Recorder

SC

1/07/2009

10:24 AM

Recorded at the request of
Title Court Services Inc

DOC #: **2009000631**

Titles: 2 Pages: 9



Fees 40.00
Taxes 0.00
Others 4.00
PAID \$44.00

“LSI TITLE, FNDS DIVISION”

Recording Requested By:

Return To:
STEARNS LENDING, INC.
4 HUTTON CENTRE DRIVE, SUITE 500
SANTA ANA, CALIFORNIA 92707-8710
Attn.: **SHIPPING DEPT./DOC.**
CONTROL
Loan No.: **44004653**
Prepared By:

1803538

[Space Above This Line For Recording Data]

State of California

DEED OF TRUST

FHA Case No.

197-4057525-703

MIN: 1001833-0000057153-0

MERS TELEPHONE: (888) 679-6377

THIS DEED OF TRUST (“Security Instrument”) is made on **December 26, 2008**. The Trustor is **JOSEPH SILVEIRA, AN UNMARRIED MAN, AND LISA SILVEIRA, AN UNMARRIED WOMAN**, whose address is **1809 MIRASOL WAY, ATASCADERO, CALIFORNIA 93422** (“Borrower”). The trustee is **FIRST AMERICAN TITLE INSURANCE COMPANY, a CALIFORNIA Corporation** (“Trustee”). The beneficiary is Mortgage Electronic Registration Systems, Inc. (“MERS”), (solely as nominee for Lender, as hereinafter defined, 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.

STEARNS LENDING, INC., (“Lender”) is organized and existing under the laws of the **State of CALIFORNIA**, and has an address of **4 HUTTON CENTRE DRIVE, SUITE 500, SANTA ANA, CALIFORNIA 92707-8710**. Borrower owes Lender the principal sum of **Three Hundred One Thousand Five Hundred Forty Eight And 00/100 Dollars (U.S. \$301,548.00)**. This debt is evidenced by Borrower’s note dated the same date as this Security Instrument (“Note”), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **January 1, 2039**. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower’s covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to the Trustee, in trust, with power of sale, the following described property located in **SAN LUIS OBISPO County, California**:

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Amended 11/07

Initials:

LOT 7 OF TRACT 2546, IN THE CITY OF ATASCADERO, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO THE MAP RECORDED APRIL 5, 2005, IN BOOK 25, PAGES 95-98 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Property Tax ID Number: **049-102-067**

which has the address of **1809 MIRASOL WAY** [Street]
ATASCADERO [City], California **93422** [Zip Code] ("Property Address");

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 or 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.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement

Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless

extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

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; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; 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 may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or 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 Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security

Instrument only to mortgage, grant and convey that Borrower'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 may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. 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. To this end the provisions of this Security Instrument and the Note are declared to be severable.

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

16. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

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

17. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

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Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender 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 paragraph 18, 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.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. 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 and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

20. 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.

21. Request for Notices. Borrower requests that copies of the notices of default and sale be sent to Borrower's address which is the Property Address.

22. Beneficiary Statement. Lender may collect a fee, not to exceed the maximum amount permitted by law for furnishing Beneficiary statement as provided by Section 2943 of the Civil Code of California.

23. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

- Condominium Rider Growing Equity Rider Other(s) [specify]
- Planned Unit Development Rider Graduated Payment Rider

The undersigned Borrower requests that a copy of any Notice of Default and any Notice of Sale under this Security Instrument be mailed to the Borrower at the address set forth above. A copy of any Notice of Default and any Notice of Sale will be sent only to the address contained in this recorded request. If the Borrower's address changes a new request must be recorded.

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

_____  _____ (Seal)
JOSEPH SILVEIRA -Borrower

_____  _____ (Seal)
LISA SILVEIRA -Borrower

_____ _____ (Seal)
 -Borrower

_____ _____ (Seal)
 -Borrower

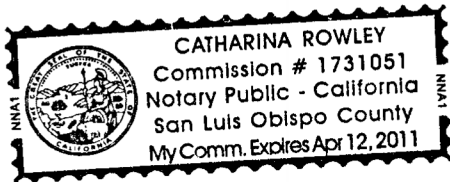
State of California County of San Luis Obispo } ss.

On 12-29-2008 before me, Catharina Rowley, Notary Public, personally appeared

JOSEPH SILVEIRA and LISA SILVEIRA, *

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.
(This area for official notarial seal)



[Handwritten Signature] (Seal)

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Accuses M&T Bank of FDICPA Violations Over "Pay-to-Pay" Fees](#)
