

EXHIBIT “A”

EXHIBIT “A”

312

20070108-0001436

Assessor's Parcel Number:  
178-04-514-044  
Return To: GreenPoint Mortgage Funding,  
Inc.  
981 Airway Court, Suite E  
Santa Rosa, CA 95403-2049

Prepared By: GreenPoint Mortgage  
Funding, Inc.  
100 Wood Hollow Drive, Novato, CA  
94945

Recording Requested By: GreenPoint Mortgage  
Funding, Inc.  
981 Airway Court, Suite E  
Santa Rosa, CA, 95403-2049

Fee: \$39.00  
N/C Fee: \$0.00

01/08/2007 09:39:16

T20070003253

Requestor:

FIRST AMERICAN TITLE COMPANY OF NEV

Debbie Conway

STN

Clark County Recorder

Pgs: 26

[Space Above This Line For Recording Data]

## DEED OF TRUST MIN 100013800914365016

### 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 December 21, 2006 together with all Riders to this document.

(B) "Borrower" is Amy B. Facklam, A Single Woman

Borrower is the trustor under this Security Instrument.

(C) "Lender" is GreenPoint Mortgage Funding, Inc.

Lender is a Corporation  
organized and existing under the laws of the State of New York

6501

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
WITH MERS

Form 3029 1/01

VMP-6A(NV) (0507)

Page 1 of 15

VMP Mortgage Solutions, Inc.

(800)521-7291

Lender's address is 100 Wood Hollow Drive, Novato, CA 94945

(D) "Trustee" is Marin Conveyancing Corp.

(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 December 21, 2006

The Note states that Borrower owes Lender three hundred twenty-six thousand and 00/100

Dollars

(U.S. \$326,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than January 1, 2037

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

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

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

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider                         | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider                    | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider   |
| <input type="checkbox"/> VA Rider                         | <input type="checkbox"/> Biweekly Payment Rider                    | <input type="checkbox"/> Other(s) [specify] |
| <input checked="" type="checkbox"/> Occupancy Rider       | <input type="checkbox"/> Interim Interest Rider                    |   |

(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. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to

6501

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 [Type of Recording Jurisdiction] of Clark [Name of Recording Jurisdiction]:

As more particularly described in exhibit "A" attached hereto and made a part hereof.

Parcel ID Number: 178-04-514-044  
1513 Shotgun Lane  
Henderson  
("Property Address"):

which currently has the address of  
[Street]  
[City], Nevada 89014 [Zip Code]

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

6501

of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives

6501

Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

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

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

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

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

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

6501

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. 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.

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

6501

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

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

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

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

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

6501



attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

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

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

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

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

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

6501

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

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

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

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

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

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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

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

6501

**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 charge without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

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

6501

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

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

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

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

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

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

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be

6501

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.

6501

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

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, 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 written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the 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. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a 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.

**24. Substitute Trustee.** Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

**25. Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$900.00

6501

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.

Witnesses:

\_\_\_\_\_  
Amy B. Facklam (Seal)  
-Borrower

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

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

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

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

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

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

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

6501

STATE OF NEVADA  
COUNTY OF *Clark*

This instrument was acknowledged before me on *December 24<sup>th</sup>* *2006* by  
**Amy B. Facklam**

*Anita Kauffman*

Mail Tax Statements To:  
**Amy B. Facklam**  
1513 Shotgun Lane, Henderson, NV 89014





**EXHIBIT 'A'**

**LOT ONE (1) IN BLOCK ONE (1) OF CANDLE CREEK UNIT NO. 1, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 39 OF PLATS, PAGE 83, AND AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED FEBRUARY 13, 1989 IN BOOK 890213 AS DOCUMENT NO. 00542 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.**

## ADJUSTABLE RATE RIDER

THIS ADJUSTABLE RATE RIDER is made this 21st day of December, 2006, 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 Adjustable Rate Note (the "Note") to GreenPoint Mortgage Funding, Inc.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 1513 Shotgun Lane, Henderson, NV 89014

[Property Address]

**THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. INCREASES IN THE INTEREST RATE WILL RESULT IN HIGHER PAYMENTS. DECREASES IN THE INTEREST RATE WILL RESULT IN LOWER PAYMENTS.**

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

### **A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for an initial interest rate of 6.875 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

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

#### **(A) Change Dates**

The interest rate I will pay may change on the first day of January, 2012, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

6501

**(B) The Index**

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is: the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR").

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 75/100 \_\_\_\_\_ percentage points ( 2.750 %) to the Current Index. The Note Holder will then round the result of this addition to the ☒ Nearest ☐ Next Highest ☐ Next Lowest 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 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.

☒ **Interest-Only Period**

The "Interest-only Period" is the period from the date of this Note through 01/01/2017 . For the interest-only period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to pay the interest which accrues on the unpaid principal of my loan. The result of this calculation will be the new amount of my monthly payment.

The "Amortization Period" is the period after the interest-only period. For the amortization period, after calculating my new interest rate as provided above, 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.

6501

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

**(Please check appropriate boxes; if no box is checked, there will be no maximum limit on changes.)**

- ☐ (1) There will be no maximum limit on interest rate changes.
- ☐ (2) The interest rate I am required to pay at the first Change Date will not be greater than \_\_\_\_\_ % or less than \_\_\_\_\_ %.
- ☐ (3) My interest rate will never be increased or decreased on any single Change Date by more than \_\_\_\_\_ percentage points ( \_\_\_\_\_ %) from the rate of interest I have been paying for the preceding period.
- ☒ (4) My interest rate will never be greater than 11.875 %, which is called the "Maximum Rate."
- ☐ (5) My interest rate will never be less than \_\_\_\_\_ %, which is called the "Minimum Rate."
- ☐ (6) My interest rate will never be less than the initial interest rate.
- ☒ (7) The interest rate I am required to pay at the first Change Date will not be greater than 11.875 % or less than 2.750 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than 1.000 percentage points ( 1.000 %) from the rate of interest I have been paying for the preceding period.

**(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.

**(F) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include 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.

6501

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

Uniform Covenant 18 of the Security Instrument is 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.

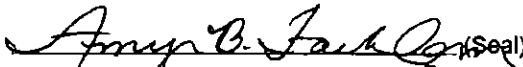
If all or any part of the Property or any Interest in the Property is sold or transferred (or if a Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by 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.

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.

6501

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

 (Seal)  
Amy B. Facklam -Borrower

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

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

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

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

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

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

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

6501

## PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this **21st** day of **December, 2006**, 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 **GreenPoint Mortgage Funding, Inc.**

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: **1513 Shotgun Lane, Henderson, NV 89014**

[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 **Declaration of Covenants, Conditions, and Restrictions**

(the "Declaration"). The Property is a part of a planned unit development known as **Candle Creek**

[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.

6501

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

Wolters Kluwer Financial Services  
VMP®-7R (0411).01

Page 1 of 3

**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.

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.

6501



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

*Amy B. Facklam* (Seal) \_\_\_\_\_ (Seal)  
Amy B. Facklam -Borrower -Borrower

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

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

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

6501

## **OCCUPANCY RIDER TO MORTGAGE/ DEED OF TRUST/SECURITY DEED**

THE OCCUPANCY RIDER is made this 21st day of December, 2006, 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 (the "Note") to GreenPoint Mortgage Funding, Inc. (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

**1513 Shotgun Lane, Henderson, NV 89014**

("Property Address")

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

1. That the above-described property will be personally occupied by the Borrower as their principal residence within 60 days after the execution of the Security Instrument and Borrower shall continue to occupy the property as their 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.
2. That if residency is not established as promised above as well as in the Security Instrument, the Lender may, without further notice, take any or all of the following actions:
  - a. increase the interest rate on the Note by one-half of one percent (0.500%) per annum on a fixed-rate loan or increase the Margin on an Adjustable Rate Note by one-half of one percent (0.500%) per annum and to adjust the principal and interest payments to the amount required to pay the loan in full within the remaining term; and/or
  - b. charge a non-owner occupancy rate adjustment fee of two percent (2.00%) of the original principal balance and/or
  - c. require payment to reduce the unpaid principal balance of the loan to the lesser of (1) 70% of the purchase price of the property or (2) 70% of the appraised value at the time the loan was made. The reduction of the unpaid principal balance shall be due and payable within thirty (30) days following receipt of a written demand for payment, and if not paid within thirty (30) days will constitute a default under the terms and provisions of the Note and Security Instrument, and/or
  - d. declare a default under the terms of the Note and Security Instrument and begin foreclosure proceedings, which may result in the sale of the above-described property; and/or
  - e. refer what is believed to be fraudulent acts to the proper authorities for prosecution. It is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements or reports for the purpose of influencing in any way the action of the Lender in granting a loan on the above property under the provisions of TITLE 18, UNITED STATES CODE, SECTIONS 1010 AND 1014.

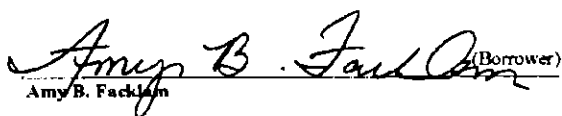
6501

It is further understood and agreed that any forbearance by the Lender in exercising any right or remedy given here, or by applicable law, shall not be a waiver of such right or remedy.

Should any clause, section or part of this Occupancy Rider be held or declared to be void or illegal for any reason, all other clauses, sections or parts of this Occupancy Rider which can be effected without such illegal clause, section or part shall nevertheless continue in full force and effect.

It is further specifically agreed that the Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies set forth above, including but not limited to, reasonable attorney's fees.

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

  
Amy B. Facklam (Borrower)

\_\_\_\_\_  
(Borrower)

\_\_\_\_\_  
(Borrower)

\_\_\_\_\_  
(Borrower)

\_\_\_\_\_  
(Borrower)

\_\_\_\_\_  
(Borrower)

\_\_\_\_\_  
(Borrower)

\_\_\_\_\_  
(Borrower)

6501

EXHIBIT “B”

EXHIBIT “B”

**RECORDING REQUESTED BY:  
WHEN RECORDED MAIL TO:  
RECONTRUST COMPANY  
2380 Performance Dr, TX2-985-07-03  
Richardson, TX 75082**

**TS No. 09-0144623  
Title Order No. 4267567  
APN No. 178-04-514-044  
Property Address:  
1513 SHOTGUN LN  
HENDERSON, NV 89014**

---

**NEVADA IMPORTANT NOTICE**

**NOTICE OF DEFAULT/ELECTION TO SELL UNDER DEED OF TRUST**

NOTICE IS HEREBY GIVEN THAT: RECONTRUST COMPANY, N.A., is the duly appointed Trustee under a Deed of Trust dated 02/21/2006, executed by AMY B. FACKLAM, A SINGLE WOMAN as Trustor, to secure certain obligations in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. as beneficiary recorded 01/08/2007, as Instrument No. 0001436 (or Book 20070108, Page ) of Official Records in the Office of the County Recorder of Clark County, Nevada. Said obligation including ONE NOTE FOR THE ORIGINAL sum of \$326,000.00. That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of :

FAILURE TO PAY THE INSTALLMENT OF PRINCIPAL, INTEREST AND IMPOUNDS WHICH BECAME DUE ON 06/01/2009 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL, INTEREST AND IMPOUNDS, TOGETHER WITH ALL LATE CHARGES, PLUS ADVANCES MADE AND COSTS INCURRED BY THE BENEFICIARY, INCLUDING FORECLOSURE FEES AND COSTS AND/OR ATTORNEYS' FEES. IN ADDITION, THE ENTIRE PRINCIPAL AMOUNT WILL BECOME DUE ON 01/01/2037 AS A RESULT OF THE MATURITY OF THE OBLIGATION ON THAT DATE.

That by reason thereof, the present beneficiary under such deed of trust has deposited with RECONTRUST COMPANY, N.A. such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

### NOTICE

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed Of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. Where reinstatement is possible, if the default is not cured within 35 days following recording and mailing of this Notice to Trustor or Trustor's successor in interest, the right of reinstatement will terminate and the property may there after be sold. The Trustor may have the right to bring court action to assert the non existence of a default or any other defense of Trustor to acceleration and sale.

To determine if reinstatement is possible and the amount, if any, to cure the default, contact: BAC Home Loans Servicing, LP, c/o RECONTRUST COMPANY, 2380 Performance Dr, TX2-985-07-03, Richardson, TX 75082, PHONE: (800) 281-8219. Should you wish to discuss possible options for loan modification, you may contact the Home Retention Division at 1-800-669-6650. If you meet the requirements of Section NRS 107.085, you may request mediation in accordance with the enclosed Election/Waiver of Mediation Form and instructions. You may also contact the Nevada Fair Housing Center at 1-702-731-6095 or the Legal Aid Center at 1-702-386-1070 for assistance.

DATED: September 25, 2009

RECONTRUST COMPANY, N.A., as agent for  
the Beneficiary

By: FIRST AMERICAN TITLE, as Agent

BY: Charlotte Olmos  
Charlotte Olmos, ASSISTANT  
Secretary

State of: California )

County of: Contra Costa )

On 9-25-09 before me LINDA S. DERNONCOURT, notary public,  
personally appeared Charlotte Olmos, 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 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.

Linda S. Dernoncourt



EXHIBIT “C”

EXHIBIT “C”

Inst #: 201112050000543

Fees: \$18.00

N/C Fee: \$0.00

12/05/2011 09:21:31 AM

Receipt #: 997107

Requestor:

DOCUMENT PROCESSING SOLUTIONS

Recorded By: SCA Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

**RECORDING REQUESTED BY:**

**WHEN RECORDED MAIL TO:**

Owner of Record

1513 SHOTGUN LN

HENDERSON, NV 89014

NVRESC\_2011.11.0\_11/2011

TS No. 09-0144623

Title Order No. 4267567

APN No. 178-04-514-044

---

**RESCISSION OF ELECTION TO DECLARE DEFAULT  
NEVADA**

NOTICE IS HEREBY GIVEN that RECONTRUST COMPANY, N.A., Trustee for the Beneficiary does hereby rescind, cancel and withdraw the Notice of Default and Election to Sell hereinafter described, provided, however, that this rescission shall not be construed as waiving, curing, extending to, or affecting any default, either past, present or future, under such Deed of Trust, or as impairing any right or remedy thereunder, and it is and shall be deemed to be, only an election without prejudice not to cause a sale to be made pursuant to such Notice of Default and Election to Sell, and it shall not in any way alter or change any of the rights remedies or privileges secured to Beneficiary and/or Trustee under such Deed of Trust, nor modify, nor alter in any respect any of the terms, covenants, conditions or obligations therein contained. Said NOTICE OF DEFAULT AND ELECTION TO SELL under Deed of Trust specifically described therein was:

Recorded on 09/25/2009, as Instrument No. 200909250003750, in Book \_\_\_\_\_, Page \_\_\_\_\_, of Official Records of Clark County, Nevada.

The DEED OF TRUST affected by this notice recorded on 01/08/2007 as Instrument No. 0001436 in Book 20070108 Page \_\_, executed by AMY B. FACKLAM, A SINGLE WOMAN, as Trustor in Clark County, Nevada.



DATED: December 01, 2011

RECONTRUST COMPANY, N.A.

State of: Texas )  
County of: Tarrant )  
On 12/1/2011 before me Elsie Kroussakis, personally appeared  
Laura Dailey AVP, know to me (or proved to me on the oath of  
or through Pers. Knowledge to be the person whose name is subscribed to the  
foregoing instrument and acknowledged to me that he/she executed the same for the purposes and  
consideration therein expressed.  
Witness my hand and official seal.

Elsie Kroussakis  
Notary Public's Signature

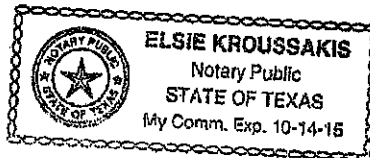


EXHIBIT “D”

EXHIBIT “D”

TS No.: 2015-01206-NV

APN: 178-04-514-044

**WHEN RECORDED MAIL TO:**  
Western Progressive - Nevada, Inc.  
Northpark Town Center  
1000 Abernathy Rd NE, Bldg 400, Suite 200  
Atlanta, GA 30328

TS No.: 2015-01206-NV  
TSG Order No: 1509-NV-2737241

Inst #: 20160129-0000551

Fee: \$224.00

N/C Fee: \$25.00

01/29/2016 08:06:00 AM

Receipt #: 2671064

Requestor:

PREMIUM TITLE TSG

Recorded By: RYUD Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

The undersigned hereby affirms that there is no Social Security number contained in this document.

## **NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY UNDER THE DEED OF TRUST**

**IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION**, and you may have the legal right to bring your account into good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property, if the property is owner-occupied. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice). **YOU MAY HAVE A RIGHT TO PARTICIPATE IN THE STATE OF NEVADA FORECLOSURE MEDIATION PROGRAM IF THE TIME TO REQUEST MEDIATION HAS NOT EXPIRED.**

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the three month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2);

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor. Included with this Notice of Default, please see "Exhibit A" - Nevada HUD Approved Housing Counseling Agency Contacts for a listing of local housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD).

**NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY  
UNDER THE DEED OF TRUST**

**NOTICE IS HEREBY GIVEN THAT: WESTERN PROGRESSIVE - NEVADA, INC.** is the duly appointed Trustee under a Deed of Trust dated 12/21/2006, executed by **AMY B. FACKLAM, A SINGLE WOMAN**, as trustor in favor of **GREENPOINT MORTGAGE FUNDING, INC., AS LENDER, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS BENEFICIARY**, recorded 01/08/2007, under instrument no. 20070108-0001436, in book ---, page ---, of Official Records in the office of the County recorder of Clark, County, Nevada describing land therein as:

**COMPLETELY DESCRIBED IN SAID DEED OF TRUST**

Securing, among other obligations, one Note for the Original sum of \$ 326,000.00, that the beneficial interest under such Deed of Trust and the obligations secured hereby are presently held by the undersigned; that a breach of and default in the obligations for which such Deed of Trust is security has occurred or that payment has not been made of:

Installment of Principal and Interest plus impounds and/or advances which became due on 01/01/2010 plus late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.

You are responsible to pay all payments and charges due under the terms and conditions of the loan documents which come due subsequent to the date of this notice, including, but not limited to, foreclosure trustee fees and costs, advances and late charges.

Furthermore, as a condition to bring your account in good standing, you must provide the undersigned with written proof that you are not in default on any senior encumbrance and provide proof of insurance.

Nothing in this notice of default should be construed as a waiver of any fees owing to the beneficiary under the deed of trust, pursuant to the terms and provisions of the loan documents..

The street address and other common designation, if any, of the real property described above is purported to be: **1513 SHOTGUN LANE, HENDERSON, NV 89014**

That by reason thereof the present Beneficiary under such Deed of Trust has executed and delivered to said duly appointed Trustee a written request to commence foreclosure and has deposited with said duly appointed Trustee a copy of such Deed of Trust and documents evidencing the obligations secured thereby and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

"See Attached Declaration"

**NOTICE**

You may have the right to cure the default hereon and reinstate the one obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. Where reinstatement is possible, if the default is not cured within the statutory period set forth in NRS Section 107.080, the right of reinstatement will terminate and the property may thereafter be sold.

**NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY  
UNDER THE DEED OF TRUST**

To determine if reinstatement is possible and the amount, if any, to cure the default, contact:

HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Mortgage  
Pass-Through Certificates Series 2007-AR2  
C/O Coven Loan Servicing, LLC  
1661 Worthington Road  
West Palm Beach, FL 33409  
Phone: 877-596-8580

If you are the Trustor and wish to contact a representative of the Beneficiary to discuss foreclosure prevention alternatives, please contact: 877-596-8580

For foreclosure status, please contact: Western Progressive - Nevada, Inc., Northpark Town Center 1000  
Abernathy Rd NE; Bldg 400, Suite 200 Atlanta, GA 30328, (866)-960-8299

Additionally included with this Notice of Default, please see "Exhibit A" - Nevada HUD Approved Housing  
Counseling Agency Contacts for a listing of local housing counseling agencies approved by the United States  
Department of Housing and Urban Development (HUD).

**NOTICE OF DEFAULT AND ELECTION TO SELL REAL PROPERTY  
UNDER THE DEED OF TRUST**

If you have any questions, you should contact a lawyer or the governmental agency that may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

2. The mortgage servicer has exercised due diligence to contact the borrower pursuant to Nevada Senate Bill 321, Section 11(5), to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure". Thirty (30) days, or more have passed since these due diligence efforts were satisfied.

Dated: January 26, 2016

Western Progressive - Nevada, Inc., as Trustee for beneficiary

By:   
Chelsea Jackson, Trustee Sale Assistant

**WESTERN PROGRESSIVE - NEVADA, INC. MAY BE ACTING AS A DEBT COLLECTOR  
ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED MAY BE USED FOR THAT  
PURPOSE.**

State of Georgia }ss  
County of Fulton }

On January 26, 2016 before me, Laterrika Thompkins, Notary Public, personally appeared Chelsea Jackson, 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.

Signature

  
Laterrika Thompkins

(Seal)



**AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE**

Record Title Holder:

OR

Borrower(s):

**AMY B. FACKLAM**

Trustee Name and Address:

Western Progressive Nevada Inc

Northpark Town Center

1000 Abernathy Rd NE; Bldg 400,

Suite 200, Atlanta, GA 30328

Property Address:

1513 Shotgun Lane, Henderson, NV 89014

Deed of Trust Document:

Instrument No.: 20070108-0001436

STATE OF

Florida

COUNTY OF

Palm Beach

The affiant, Carle Priebe, being first duly sworn upon oath and under penalty of perjury, attests as follows:

1. I am an Asset Management Consultant of Owen Loan Servicing, LLC. I am duly authorized to make this Affidavit on behalf of Owen Loan Servicing, LLC as servicer for HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-AR2 in its capacity as the current beneficiary of the subject Deed of Trust ("Beneficiary") or the Servicer for the current beneficiary of the Deed of Trust.

2. I have the personal knowledge required to execute this Affidavit from my review of the business records of the beneficiary, the successor in interest of the beneficiary or the servicer of the obligation or debt secured by the deed of trust, my review of the records of the recorder of the county in which the property is located, and/or title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State. I can confirm the accuracy of the information set forth herein. If sworn as a witness, I could competently testify to the facts contained herein.

3. In the regular and ordinary course of business, it is Owen Loan Servicing, LLC's practice to make, collect, and maintain business records and documents related to any loan it originates, funds, purchases and/or services, including the Subject Loan (collectively, "Business Records"). I have continuing access to the Business Records for the Subject Loan, and I am familiar with the Business Records and I have personally reviewed the business records relied upon to compile this Affidavit.

4. The full name and business address of the current trustee or the current trustee's representative or assignee is:

Western Progressive Nevada Inc	Northpark Town Center 1000 Abernathy Rd NE, Bldg 400, Suite 200 Atlanta, GA 30328
--------------------------------	---

5. The full name and business address of the current holder of the note secured by the Deed of Trust is:

HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-AR2	c/o Owen Loan Servicing, LLC 1661 Worthington Road, Suite 100 West Palm Beach, FL 33409
---	---

6. The full name and business address of the current beneficiary of record of the Deed of Trust is:

HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-AR2	c/o Owen Loan Servicing, LLC 1661 Worthington Road, Suite 100 West Palm Beach, FL 33409
---	---

7. The full name and business address of the current servicer of the obligation or debt secured by the Deed of Trust is:

Owen Loan Servicing, LLC	1661 Worthington Road, Suite 100 West Palm Beach, FL 33409
--------------------------	---

8. The beneficiary, its successor in interest, or the trustee of the Deed of Trust has actual or constructive possession of the note secured by the Deed of Trust and is entitled to enforce the obligation or debt secured by the Deed of Trust.

9. The beneficiary, its successor in interest, the trustee, the servicer of the obligation or debt secured by the Deed of Trust, or an attorney representing any of those persons, has sent to the obligor or borrower of the obligation or debt secured by the Deed of Trust a written statement containing the following information (I) the amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the underlying obligation or debt, as of the date of the statement; (II) the amount in default; (III) the principal amount of the obligation or debt secured by the Deed of Trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the exercise of the power of sale; and (VI) contact information for obtaining the most current amounts due and a local or toll free telephone number where the obligor or borrower of the obligation or debt may call to receive the most current amounts due and a recitation of the information contained in this Affidavit.

10. The borrower or obligor may utilize the following toll-free or local telephone number to inquire about the default, obtain the most current amounts due, and receive a recitation of the information contained in this Affidavit: 1-800-746-2936.



11. Pursuant to my review of the business records of the beneficiary, the successor in interest of the beneficiary, and/or the business records of the servicer of the obligation or debt secured by the Deed of Trust; and/or the records of the county recorder where the subject real property is located; and/or the title guaranty or title insurance issued by a title insurer or title agent authorized to do business in the state of Nevada, the following is the (I) date, (II) recordation number (or other unique designation); and (III) assignee of each recorded assignment of the subject Deed of Trust:

October 8, 2009.

Instrument No. 200910080002975

From: Mortgage Electronic Registration Systems, Inc.

To: HSBC Bank USA, National Association, as trustee for The Holders of Deutsche Alt-A Securities Mortgage Loan Trust, Series 2007-AR2 Mortgage Pass-Through Certificates

Affiant Signature: 

Print Name: Carla Pribo

Title: Contract Management Coordinator

Ocwen Loan Servicing, LLC, servicer for HSBC Bank USA, National Association, as trustee for Deutsche Alt-A Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-AR2

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged and sworn before me this 24<sup>th</sup> day of DEC., year of 2015 by Carla Pribo as Contract Management Coordinator of Ocwen Loan Servicing, LLC, who is personally known to me or has produced \_\_\_\_\_ as identification.

  
Notary Public - State of Florida

Michelle Abraham

My Commission Expires: 10/08/2017



EXHIBIT “E”

EXHIBIT “E”

TS No.: 2015-01206-NV

APN: 178-04-514-044

**Western Progressive - Nevada, Inc.**  
**Northpark Town Center**  
**1000 Abernathy Rd NE; Bldg 400, Suite 200**  
**Atlanta, GA 30328**

T.S. No.: 2015-01206-NV

**The undersigned hereby affirms that there is no Social Security number contained in this document.**

### **NOTICE OF TRUSTEE'S SALE**

**YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 12/21/2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.**

**Western Progressive - Nevada, Inc.**, as duly appointed trustee under and pursuant to the Deed of Trust recorded **01/08/2007**, as Inst. No. **20070108-0001436**, in book ---, page ---, of Official Records in the office of the County Recorder of **Clark County, Nevada** executed by: **Amy B. Facklam, A Single Woman**

**WILL SELL AT PUBLIC AUCTION TO HIGHEST BIDDER FOR CASH, CASHIER'S CHECK DRAWN ON A STATE OR NATIONAL BANK, A CHECK DRAWN BY A STATE OR FEDERAL CREDIT UNION, OR A CHECK DRAWN BY A STATE OR FEDERAL SAVINGS AND LOAN ASSOCIATION, A SAVINGS ASSOCIATION OR SAVINGS BANK:**

**Place of Sale: NLN, 930 S. 4th Street, Las Vegas, NV 89101**

**All right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described as:**

**Lot One (1) In Block One (1) Of Candle Creek Unit No. 1, As Shown By Map Thereof On File In Book 39 Of Plats, Page 83, And Amended By That Certain Certificate Of Amendment Recorded February 13, 1989 In Book 890213 As Document No. 00542 Of Official Records, In The Office Of The County Recorder Of Clark County, Nevada**

## NOTICE OF TRUSTEE'S SALE

The street address and other common designation, if any, of the real property described above is purported to be:

1513 Shotgun Lane, Henderson, NV 89014

The undersigned Trustee disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above.

Date of Sale: **08/17/2016 at 10:00 AM**

The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale. This property is sold as-is, the beneficiary and undersigned Trustee are unable to validate the condition, defects or disclosure issues of said property and Buyer waives the disclosure requirements under NRS 113.130 by purchasing at this sale and signing a receipt in connection therewith. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is:

**\$ 438,602.95.**

**NOTICE TO POTENTIAL BIDDERS:** If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on this property.

**Note:** Because the Beneficiary reserves the right to bid less than the total debt owed, it is possible that at the time of the sale the opening bid may be less than the total debt.

## NOTICE OF TRUSTEE'S SALE

The beneficiary of the Deed of Trust has executed and delivered to the undersigned a written request to commence foreclosure and due to the continuing default on the loan obligation, the beneficiary under said Deed of Trust has authorized the undersigned Trustee to proceed with a trustee's sale.

Date: **July 6, 2016**

Western Progressive - Nevada, Inc., as Trustee for  
beneficiary  
Northpark Town Center  
1000 Abernathy Rd NE; Bldg 400, Suite 200  
Atlanta, GA 30328  
Automated Sale Information Line: (866) 960-8299  
<http://www.altisource.com/MortgageServices/DefaultManagement/TrusteeServices.aspx>  
For Non-Automated Sale Information, call:  
(866) 240-3530

---

Trustee Sale Assistant

State of GA } ss  
County of Fulton }

On **July 6, 2016** before me, \_\_\_\_\_, Notary Public,  
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.

Signature \_\_\_\_\_ (Seal)

**NOTICE TO TENANTS OF THE PROPERTY**

*Foreclosure proceedings against this property have started, and a notice of sale of the property to the highest bidder has been issued.*

*You may either: (1) terminate your lease or rental agreement and move out; or (2) remain and possibly be subject to eviction proceedings under chapter 40 of the Nevada Revised Statutes. Any subtenants may also be subject to eviction proceedings.*

*Between now and the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the landlord.*

*After the date of the sale, you may be evicted if you fail to pay rent or live up to your other obligations to the successful bidder, in accordance with chapter 118A of the Nevada Revised Statutes.*

*Under the Nevada Revised Statutes eviction proceedings may begin against you after you have been given a notice to surrender.*

*If the property is sold and you pay rent by the week or another period of time that is shorter than 1 month, you should generally receive notice after not less than the number of days in that period of time.*

*If the property is sold and you pay rent by the month or any other period of time that is 1 month or longer, you should generally receive notice at least 60 days in advance.*

*Under Nevada Revised Statutes 40.280, notice must generally be served on you pursuant to chapter 40 of the Nevada Revised Statutes and may be served by:*

- (1) Delivering a copy to you personally in the presence of a witness, unless service is accomplished by a sheriff, constable or licensed process server, in which case the presence of a witness is not required;*
- (2) If you are absent from your place of residence or usual place of business, leaving a copy with a person of suitable age and discretion at either place and mailing a copy to you at your place of residence or business and to the place where the leased property is situated, if different; or*
- (3) If your place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, posting a copy in a conspicuous place on the leased property and mailing a copy to you at the place where the leased property is situated.*

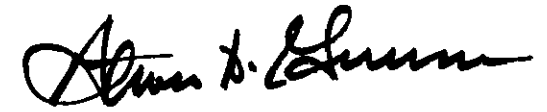
*If the property is sold and a landlord, successful bidder or subsequent purchaser files an eviction action against you in court, you will be served with a summons and complaint and have the opportunity to respond. Eviction actions may result in temporary evictions, permanent evictions, the awarding of damages pursuant to Nevada Revised Statutes 40.360 or some combination of those results.*

*Under the Justice Court Rules of Civil Procedure:*

- (1) You will be given at least 10 days to answer a summons and complaint;*
- (2) If you do not file an answer, an order evicting you by default may be obtained against you;*
- (3) A hearing regarding a temporary eviction may be called as soon as 11 days after you are served with the summons and complaint; and*
- (4) A hearing regarding a permanent eviction may be called as soon as 20 days after you are served with the summons and complaint.*

EXHIBIT “F”

EXHIBIT “F”



CLERK OF THE COURT

**ORDER**

Jeffrey S. Allison (NV Bar No. 8949)  
Mark H. Hutchings (NV Bar No. 12783)

**HOUSER & ALLISON, APC**

3900 Paradise Road, Suite 101  
Las Vegas, Nevada 89169  
Phone: (702) 410-7593/(949) 679-1111  
Fax: (702) 410-7594/(949) 679-1112  
jallison@houser-law.com  
mhutchings@houser-law.com

Attorneys for Defendant HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE  
FOR DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-  
THROUGH CERTIFICATES SERIES 2007-AR2, by and through its servicer and attorney-in-  
fact OCWEN LOAN SERVICING, LLC

**EIGHTH JUDICIAL DISTRICT COURT FOR  
CLARK COUNTY, NEVADA**

AMY FACKLAM,

Plaintiff,

vs.

HSBC BANK USA, National Association, as  
TRUSTEE for DEUTSCHE ALT-A  
SECURITIES MORTGAGE LOAN TRUST,  
MORTGAGE PASS-THROUGH  
CERTIFICATES SERIES 2007-AR2; DOES  
1 through X; and ROE CORPORATIONS 1  
through X, inclusive,

) Case No. A-16-733762-C

) Dept. No. VI

) **~~PROPOSED~~ ORDER DENYING**  
) **PLAINTIFF'S MOTION FOR SUMMARY**  
) **JUDGMENT AND GRANTING**  
) **DEFENDANT'S COUNTER-MOTION TO**  
) **DISMISS THE COMPLAINT**

This matter having come before the Court for hearing on June 7, 2016 AT 8:30 a.m. in

Department VI on the Motion for Summary Judgment brought by Plaintiff AMY FACKLAM

("Plaintiff") and the Counter-Motion to Dismiss Complaint by Defendant HSBC BANK USA,

NATIONAL ASSOCIATION, AS TRUSTEE FOR DEUTSCHE ALT-A SECURITIES

MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES

2007-AR2, by and through its servicer and attorney-in-fact OCWEN LOAN SERVICING, LLC

☐ Summary Judgment  
☐ Stipulated Judgment  
☐ Default Judgment  
☐ Judgment of Arbitration

☐ Voluntary Dismissal  
☐ Involuntary Dismissal  
☐ Stipulated Dismissal  
☒ Motion to Dismiss by Def(s)



1 (“Defendant”), with appearances by Jacob L. Hafter, Esq. of HafterLaw as counsel for Plaintiff  
2 and Jeffrey S. Allison, Esq. of Houser & Allison, APC as counsel for Defendant, having  
3 reviewed the parties’ Motions, Oppositions and Replies thereto, and pleadings on file with the  
4 Court, oral arguments, and with good cause therefore, the Court made findings and ruled as  
5 follows:

6 **Plaintiff’s Motion for Summary Judgment**

7 **I. Findings of Fact**

- 8 1. The loan that is the subject of this matter evidenced by a note and recorded deed of  
9 trust was obtained by Plaintiff on or about December 21, 2006;
- 10 2. An exhibited notice of default for the subject loan was recorded September 25, 2009;
- 11 3. Plaintiff entered into a trial loan modification with the prior servicer on or about  
12 October 30, 2009;
- 13 4. An exhibited notice of sale was recorded July 20, 2011;
- 14 5. An exhibited rescission of the notice of default was recorded December 5, 2011;
- 15 6. An exhibited notice of default was recorded January 29, 2016 on behalf of Defendant;
- 16 7. Plaintiff filed the instant action against Defendant on or about March 21, 2016.

17 **II. Conclusions of law**

- 18 1. The December 5, 2011 rescission rescinded any acceleration by the 2009 notice of  
19 default.
- 20 2. Even under Plaintiff’s statute of limitations arguments, any time which may have begun  
21 to run with that notice no longer applied.

22 For these and additional reasons set forth in the record, Plaintiff’s Motion for Summary  
23 Judgment is DENIED.  
24

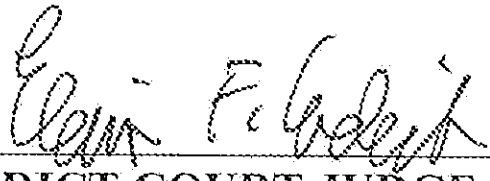
**Defendant's Motion to Dismiss**

Defendant's Counter-Motion to Dismiss the Complaint is GRANTED. For the reasons set forth above and in the record, Plaintiff's Complaint fails to state the claims.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion for Summary Judgment is DENIED and Defendant's Counter-Motion to Dismiss the Complaint is GRANTED. Accordingly, this action is dismissed and this shall constitute the final order and judgment.


**IT IS SO ORDERED.**

Dated this 23 day of June, 2016.

  
\_\_\_\_\_  
DISTRICT COURT JUDGE *KFG*

Respectfully submitted by:

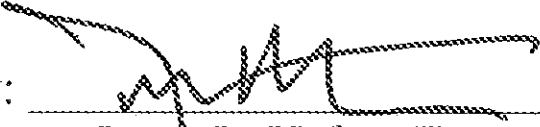
HOUSER & ALLISON, APC

By:   
\_\_\_\_\_  
Jeffrey S. Allison, Esq.

Attorneys for HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-AR2, by and through its servicer and attorney-in-fact OCWEN LOAN SERVICING, LLC

1 APPROVED AS TO FORM AND CONTENT:

2  
3 HAFTERLAW

4 By:   
5 Jacob L. Hafter, Esq.

6 Attorneys for Plaintiff AMY FACKLAM  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am over the age of eighteen (18), that I am not a party to this action, and that on this date I caused to be served a true and correct copy of the following documents:

**ORDER DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANT’S COUNTER-MOTION TO DISMISS THE COMPLAINT**

By:      X        U.S. Mail  
  
           X        Electronic Service  
                   Facsimile transmission  
                   Overnight Mail  
                   Hand and/or Personal Delivery

and addressed to the following:

Jacob L. Hafter, Esq.  
HafterLaw  
6851 W. Charleston Blvd.  
Las Vegas, Nevada 89117  
Tel: (702) 405-6700  
Fax: (702) 685-4184  
jhafter@hafterlaw.com  
  
Attorney for Plaintiff AMY FACKLAM  
  
Dated: June 27, 2016

  
An employee of HOUSER & ALLISON, APC

**EXHIBIT “G”**

**EXHIBIT “G”**

**AFFT**

JACOB L. HAFTER, ESQ.  
Nevada State Bar No. 9303

**HAFTERLAW**

6851 W. Charleston Blvd.

Las Vegas, Nevada 89117

Tel: (702) 405-6700

Fax: (702) 685-4184

[jhafter@hafterlaw.com](mailto:jhafter@hafterlaw.com)

*Counsel for Plaintiffs*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**AMY FACKLAM,**

Plaintiff,

vs.

**HSBC BANK USA, National Association,  
as TRUSTEE for DEUTCHE ALT-A  
SECURITIES MORTGAGE LOAN  
TRUST, MORTGAGE PASS-THROUGH  
CERTIFICATES SERIES 2007-AR2;  
DOES I through X; and ROE  
CORPORATIONS I through X,  
inclusive,**

Defendant.

Case No.: A-16-733762-C

Dept. No. VI

**AFFIDAVIT OF  
AMY FACKLAM**

I, Amy Facklam, hereby depose and state:

1. I am the Plaintiff in the above captioned case.
2. I am a resident of Clark County, Nevada.
3. I am familiar with the facts of this case.
4. Through my attorney, I filed a complaint with this Court which initiated this matter.



1       5. I have read the Complaint and believe that its contents are true and correct to the best  
2 of knowledge and belief.

3       6. In October 2002, I executed a Deed of Trust, which was recorded with the Clark County  
4 Recorder, naming me as Borrower and AAMES FUNDING CORPORATION as the lender and  
5 beneficiary on my home located at 1513 Shotgun Lane, Henderson, Nevada 89014 ("Property").

6       1. The Parcel Identification Number of the Property is 178-04-514-044.

7       2. Upon information and belief, the named Defendant not identified as a beneficiary on the  
8 original deed of trust.

9       3. Based on public records, it is my understanding that on or about October, 21, 2004, the  
10 Deed of Trust was assigned to ABN AMRO.

11       4. On or about December 21, 2006, I re-financed my Mortgage, executed a deed of trust  
12 naming GreenPoint Mortgage Funding, In., as the "Lender", and Marin Conveying Corp., as the  
13 "Trustee", and encumbering the Property with an indebtedness in the amount of \$326,000.00  
14 ("Deed of Trust").

15       5. I was told that Bank of America was my servicer of this new mortgage.

16       6. In the beginning of 2009, I experienced a severe economic hardship as a result of the  
17 downturn in the economy.

18       7. As a result, I turned to my servicer to help.

19       8. Based on their advice, I stopped paying my mortgage in June, 2009.

20       9. Recon Trust filed a Notice of Default and Election to Sell ("Notice of Default") on  
21 September 24, 2009.

22       10. Because of the economic troubles I was having, I contacted my servicer, again to arrange  
23 for assistance with the loan.

24       11. On or about October 30, 2009, my servicer offered me a three month trial modification.

25       12. My trial period mortgage payment was \$620.00.

26       13. I only agreed to the loan modification because the servicer, through their representatives,  
27 promised that it would help me lower my payments and keep my home.  
28



1 14. I had questions about the terms of the loan modification. When I spoke with  
2 representatives from my servicer, they answered my questions but told me that the loan  
3 modification was a take it or leave it deal. I had no ability to negotiate the terms of the Plan.

4 15. I worked diligently to provide Defendant BAC all of the requested information which  
5 they sought, each and every time that they asked for it. I believe that I provided all documents  
6 required under the Plan.

7 16. The documents which I sent contained my sensitive financial information.

8 17. Based upon my information and belief, the representations in Section 1 of the Plan  
9 documents continued to be true in all material aspects.

10 18. During this trial period, I made all of the trial period payments in a timely manner.

11 19. After my three trial payments were made, the servicer continued to demand new  
12 information.

13 20. In response, I provided my servicer with all of the requested documentation in a timely  
14 manner.

15 21. On or about May 7, 2010, my servicer denied the permanent loan modification, despite  
16 my payment of approximately 10 trial loan modification payments.

17 22. On or about July 18, 2011, Recon Trust executed a Notice of Trustee's Sale in the  
18 official records of Clark County Recorder as Instrument No. 20110720-0001856.

19 23. The Notice of Trustee's Sale set the date of sale for August 8, 2011.

20 24. I filed a lawsuit against BAC Home Loan Servicing and others on August 4, 2011, to  
21 stop this sale.

22 25. Once the suit was filed, the sale was postponed.

23 26. Ultimately, I entered into a confidential settlement agreement in 2014.

24 27. It was my understanding that the settlement did not affect the underlying Mortgage, as  
26 that had been sold to another party and the servicing rights had been transferred to another party,  
27 long before the case was settled.

28 28. On January 25, 2016, Defendants, through their agents, predecessors, or predecessors'  
agents, specifically, Western Progressive-Nevada, Inc., filed another Notice of Default and



1 Election to Sell the Property, in the official records of Clark County, Nevada, which was assigned  
2 document number 20160129-0000551 ("Second Notice of Default").

3 29. A few weeks later, in mid-February, I was served with the Second Notice of Default.

4 30. Upon receipt of the Second Notice of Default, I contacted Mr. Hafter for assistance.

5 31. We immediately tried to elect to participate in the Foreclosure Mediation Program,  
6 however, because I was served late with the Second Notice of Default, I was told that my election  
7 was a few days late.

8 32. I was denied entrance into the Foreclosure Mediation Program.

9 33. Because a timely election was not made, the Defendant will be eligible to obtain a  
10 Certificate to Foreclose any day now, if they have not received such already.

11 34. Once the Defendant has a Certificate to Foreclose, they can proceed with a Foreclosure  
12 Sale in due course.

13 35. Based on advice of counsel, I am now pursuing the instant action.

14 36. I fear that without assistance from this Court, I will lose my home.

15 37. This action is not intended to harass the Defendant, nor is it based upon a frivolous  
16 claim.

17  
18 Further, Affiant Sayeth Naught.

19 I, AMY FACKLAM, hereby declare under penalty of perjury under the laws of the State of  
20 Nevada, that the foregoing facts are true of my own knowledge except for those matters herein  
21 stated on information and belief, and as for those matters I believe them to be true.

22 Dated this 2 day of April, 2016.

23  
24  
25  
26 By:   
27 Amy Facklam  
28

**IN THE SUPREME COURT  
OF THE STATE OF NEVADA**

Case Number: 70786

District Court Case Number: A-16-733762-C

Electronically Filed  
Aug 09 2016 03:28 p.m.  
Tracie K. Lindeman  
~~Clerk of Supreme Court~~

---

**AMY FACKLAM,**

Appellant,

vs.

**HSBC BANK USA, National Association, as TRUSTEE for DEUTCHE ALT-  
A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-  
THROUGH CERTIFICATES SERIES 2007-AR2,**

Respondent.

---

**APPELLANT'S  
MOTION FOR INJUNCTIVE RELIEF  
PURSUANT TO NRAP 8(2)**

**\*\*\* RELIEF NEEDED BY AUGUST 16, 2016 \*\*\***

---

**Respectfully Submitted by,**

**HAFTERLAW**

Jacob L. Hafter, Esq. (NV 9303)

6851 W. Charleston Boulevard

Las Vegas, Nevada 89117

Telephone: 702-405-6700

[jhafter@hafterlaw.com](mailto:jhafter@hafterlaw.com)

*Counsel for Appellant*

July 14, 2016

COMES NOW, Appellant, **AMY FACKLAM**, by and through her counsel of record, Jacob L. Hafter, Esq., of the law firm **HAFTERLAW**, to move this Court for an injunction order prohibiting Respondent, **HSBC BANK USA, National Association, as TRUSTEE for DEUTCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-AR2.**, and any of its collective agents, employees, attorneys, successors and/or anyone acting on their behalf, including, without limitation, **WESTERN PROGRESSIVE – NEVADA, INC.**, from pursuing any foreclosure sales related to that certain first deed of trust entered into on or about December 21, 2006, naming GreenPoint Mortgage Funding, In., as the “Lender”, and Marin Conveying Corp., as the “Trustee”, and encumbering the Property with an indebtedness in the amount of \$326,000.00 (referred to herein as Appellant’s “Mortgage”) until this case has been resolved.

On July 13, 2016, Appellant received a copy of the Notice of Trustee Sale wherein it stated that her residence, the real property located at 1513 Shotgun Lane, Henderson, Nevada 89104, and bearing Assessor’s Parcel Number 178-04-514-044 (the “Property”), would be sold at public auction on August 17, 2016, at 9 am.

This Motion is made and based upon NRAP 8(2), the papers and pleadings on file herein, the attached memorandum of points and authorities, and any oral argument that this Honorable Court may entertain at the hearing on this matter.

1 Dated this 14<sup>st</sup> day of July, 2016.

2 **HAFTERLAW**

3  
4 By: 

Jacob L. Hafter, Esq.  
Nevada Bar Number 9303  
6851 W. Charleston Blvd  
Las Vegas, Nevada 89117  
Telephone: 702-405-6700  
[jhafter@hafterlaw.com](mailto:jhafter@hafterlaw.com)  
*Counsel for Appellant*

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
6851 W. Charleston Blvd.  
Las Vegas, Nevada 89117  
(702) 405-6700 Telephone  
(702) 685-4184 Facsimile



1       **DECLARATION OF JACOB L. HAFTER, ESQ. IN SUPPORT OF THE**  
2       **MOTION FOR INJUNCTION AND PURSUANT TO NRAP 8(2)(A)**

3       I, Jacob L. Hafter, Esq., hereby depose and say as follows:

4       1.   I am admitted to practice law in the State of Nevada.

5       2.   I am counsel for Appellant in the matter presently before the Court and I  
6 am familiar with the facts of this case.

7       3.   The parties have a long history related to Appellant's Mortgage, as defined  
8 above.

9       4.   Because of extraneous circumstances, including a predecessor of  
10 Respondent who advised Appellant to stop paying her mortgage so she could be  
11 eligible for loan modification assistance, Appellant stopped paying her Mortgage  
12 on or about June, 2009.

13       5.   A Notice of Default was filed on the Property on September 25, 2009,  
14 accelerating all amounts due and owing thereunder ("First Deed of Trust").

15       6.   Respondent, or their predecessor, failed to foreclose on the Property within  
16 six (6) years from the filing of the Notice of Default.

17       7.   Appellant believes that the statute of limitations for enforcing a mortgage  
18 is six (6) years in Nevada, as a mortgage is a contract and foreclosure is a contractual  
19 remedy for breaching that contract.  
20

1       8. On January 25, 2016, Respondent, through their agents, predecessors, or  
2 predecessors' agents, specifically, **WESTERN PROGRESSIVE-NEVADA,**  
3 **INC.**, filed another Notice of Default and Election to Sell the Property, in the  
4 official records of Clark County, Nevada, which was assigned document number  
5 20160129-0000551 ("Second Notice of Default").

6       9. The Second Notice of Default was filed well after six (6) years from when  
7 Respondent, or its predecessor, filed the First Notice of Default, accelerating the  
8 Mortgage.

9       10. On July 13, 2016, Appellant received a copy of a Notice of Trustee Sale  
10 wherein it stated that the Property would be sold at public auction on August 17,  
11 2016, at 9 am.

12       11. This Motion seeks an Order to prohibit Respondent, and any of its collective  
13 agents, employees, attorneys, successors and/or anyone acting on their behalf, from  
14 pursuing any foreclosure sales related to Appellant's Mortgage, including, without  
15 limitation, the sale set for August 17, 2016, until this case has been resolved.

16       12. Without intervention by this Court, Appellant may lose her home, despite  
17 the fact that the statute of frauds prevents Respondent from foreclosing on the  
18 Property.

19       13. This Motion is not being made for purposes of harassment.  
20



1 14. Appellant did not attempt to make this Motion in the district court first for  
2 the following reasons:

- 3 a. While not technically an emergency, as set forth in NRAP 27(e),  
4 there is limited time for relief to be effective; and  
5 b. In order to succeed on such a motion in the district court, Appellant  
6 would have to demonstrate a likelihood of success; as the district  
7 court issued a final judgment against Appellant (the subject of this  
8 Appeal),<sup>1</sup> she would not be able to meet this standard, and such  
9 motion practice would be futile and would waste precious judicial  
10 resources.

11 Further, I sayeth naught.

12 I, Jacob L. Hafter, Esq., hereby declare under penalty of perjury under the  
13 laws of the State of Nevada, that the foregoing facts are true of my own knowledge  
14 except for those matters herein stated on information and belief, and as for those  
15 matters I believe them to be true.

16  
17 <sup>1</sup> Appellant did ask for injunctive relief in the district court when the  
18 case was first filed. The district court denied it because there was no  
19 apparent immediate harm, in that no sale had been set. As this case  
20 primarily involves questions of law, Appellant filed a motion for summary  
judgment early in the case. The district court ruled against Appellant  
because of a Rescission that was filed with the Clark County Recorder in  
2011. The district court ruled that the Rescission reset the statute of  
limitation. Appellant challenges this legal conclusion because the express  
language of the Rescission stated that such rescission did not "waiv[e],  
cur[e], extend[] to, or affect[] any default, either past, present or future,  
under such Deed of Trust, or as impair[] any right or remedy thereunder."  
(emphasis added). Such is the crux of this Appeal.

1 Dated this 14<sup>st</sup> day of July, 2016.

2 **HAFTERLAW**

3  
4 By: 

Jacob L. Hafter, Esq.  
Nevada Bar Number 9303  
6851 W. Charleston Blvd  
Las Vegas, Nevada 89117  
Telephone: 702-405-6700  
[jhafter@hafterlaw.com](mailto:jhafter@hafterlaw.com)  
*Counsel for Appellant*

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
6851 W. Charleston Blvd.  
Las Vegas, Nevada 89117  
(702) 405-6700 Telephone  
(702) 685-4184 Facsimile





# MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Despite this Court's work in the field of residential foreclosures, it appears that there are two issues of first impression still outstanding. The first is whether there is a limitation on the time that a lender has to exercise its remedy of foreclosure as a result of a breach of one's mortgage. The second is whether a rescission of a notice of default, which is limited in nature by the language of the rescission, resets that statute of limitations on pursuing a remedy for one's breach of that mortgage contract.

The parties have a long and complicated history related to the Mortgage on Appellant's Las Vegas home. (At the recommendation of the prior servicer) Appellant stopped making her Mortgage payments in June, 2009. Respondent's predecessor filed the First Notice of Default, accelerating the Mortgage, on September 25, 2009. Notwithstanding, six years thereafter, Respondent had not foreclosed on Appellant's Property or otherwise sought a remedy for Appellant's alleged breach of the Mortgage.

Under Nevada law, a party to a contract has six years to enforce any remedies which may be available as a result of a breach of that contract. A foreclosure is a contractual remedy available to a bank when a party breaches a mortgage. Accordingly, a bank has six years from when it accelerates and calls due any

1 mortgage of which a borrower has breached. Notwithstanding, Respondent waited  
2 until almost seven years from when Appellant stopped paying her mortgage to  
3 initiate the current foreclosure attempt. Such attempt should not be permitted under  
4 Nevada's statute of limitations for contract law.

5 To that end, Appellant turned to the judicial system to stop the current  
6 foreclosure. In the course of that action, the district court ruled that a 2011  
7 rescission reset the statute of limitations. Appellant believes that this was an  
8 erroneous decision because the language of the rescission was limited in scope,  
9 intending to fix technical deficiencies in the record, not to suggest that the default  
10 had been cured, or otherwise waive their rights related to a breach that occurred in  
11 June, 2009; hence, this appeal.

12 In the interim, Appellant received notice on July 13, 2016, that the Property  
13 is set for a Trustee's Sale on August 17, 2016. This Motion seeks to prevent that  
14 sale, and any other future sales, until the underlying issues of this case can be  
15 addressed by this Court.

16 ///

17 ///

18 ///

19 ///

20 ///

1 **II. STATEMENT OF FACTS<sup>2</sup>**

2 1. This lawsuit involves real property located at 1513 Shotgun Lane,  
3 Henderson, Nevada 89104, and bearing Assessor's Parcel Number 178-04-514-044  
4 (the "Property").

5 2. On or about December 21, 2006, Appellant executed a deed of trust naming  
6 GreenPoint Mortgage Funding, In., as the "Lender", and Marin Conveying Corp.,  
7 as the "Trustee", and encumbering the Property with an indebtedness in the amount  
8 of \$326,000.00 ("Deed of Trust"), a true and correct copy of which is attached  
9 hereto as **Exhibit "A"**.

10 3. In or around June 2009, Appellant missed a payment (based upon the  
11 recommendation of the servicer of the Mortgage, at the time).

12 4. On September 25, 2009, a Notice of Default was recorded on the title records  
13 for the Property, a true and correct copy of which is attached hereto as **Exhibit "B"**,  
14 (the "First Notice of Default").

15 5. By filing the First Notice of Default, Respondent, through its predecessor,  
16 initiated a six year statute of limitations for bringing action against Appellant as a  
17 result of her alleged breach of the Mortgage.

18 6. After the filing of the First Notice of Default, the parties tried to work  
19 together to resolve the issue. A trial loan modification was obtained. Appellant

20 \_\_\_\_\_  
<sup>2</sup> These facts are supported by the Affidavit of Amy Facklam, a true and correct copy of which is attached hereto as **Exhibit "G"**.

1 made all of the requisite payments, as well as many additional payments, only to  
2 have Respondent's predecessor deny Appellant for a permanent loan modification.

3 7. Notwithstanding any loan payments that were made between June, 2009, and  
4 July, 2011, on or about July 18, 2011, Recon Trust recorded a Notice of Trustee's  
5 Sale in the official records of Clark County Recorder as Instrument No. 20110720-  
6 0001856.

7 8. The Notice of Trustee's Sale set the date of sale for August 8, 2011; that sale  
8 never occurred.

9 9. On or about December 5, 2011, a rescission of the First Deed of Trust  
10 ("Rescission") was filed in the official records of the Clark County Recorder as  
11 document 20111205-0000543 a true and correct copy of which is attached hereto  
12 as **Exhibit "C"**.

13 10. The Rescission was limited in scope, such that did not "waiv[e], cur[e],  
14 extend[] to, or affect[] any default, either past, present or future, under such Deed  
15 of Trust, or as impair[] any right or remedy thereunder." Id.

16 11. On September 24, 2015, six years after the filing of the First Notice of  
17 Default, the statute of limitations ran.

18 12. On December 11, 2015, a substitution of trustee was filed as Instrument No.  
19 20151211-0002092 of the official Clark County Recorder's records naming  
20 Western Progressive-Nevada, Inc., as Trustee under the Mortgage ("Substitution").

1 13. On January 25, 2016, Respondents, through their agents, predecessors, or  
2 predecessors' agents, specifically, Western Progressive-Nevada, Inc., filed another  
3 Notice of Default and Election to Sell the Property, in the official records of Clark  
4 County, Nevada, which was assigned document number 20160129-0000551  
5 ("Second Notice of Default") a true and correct copy of which is attached hereto as  
6 **Exhibit "D"**;

7 14. Both the Substitution and the Second Notice of Default were filed after the  
8 statute of limitations had run.

9 15. This suit was filed shortly thereafter.

10 16. A Notice of Trustee's sale was published at the Property on July 13, 2016, a  
11 true and correct copy of which is attached hereto as **Exhibit "E"**;

### 12 13 **III. LEGAL DISCUSSION**

#### 14 **A. An Injunction Should Be Issued to Protect Appellant's Property** 15 **Rights.**

16 Injunctive relief may be issued "to preserve the status quo" if the party  
17 seeking the preliminary injunction enjoys a reasonable likelihood of success on the  
18 merits, and that the party will be subjected to irreparable harm if the injunction is  
19 not issued. See NRS § 33.010; Univ. & Cmty. Coll. Sys. v. Nevadans for Sound  
20 Gov't, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); Pickett v. Comanche

1 Construction, Inc., 108 Nev. 422, 426, 836 P.2d 42, 44 (1992) (*citing* Dixon v.  
2 Thatcher, 103 Nev. 414, 415-16, 742 P.2d 1029, 1029-30 (1987)).

3 Injunctions have been granted in various situations where a party is at risk of  
4 its property being disposed of by the other party before the case can be resolved by  
5 the court. For example, in a dispute over the sale of a business, the purchaser of the  
6 business “sought a temporary restraining order prohibiting [the seller] from selling  
7 the repossessed business to a third party.” Herup v. First Boston Financial, LLC,  
8 123 Nev. Adv. Op. 27, 2 n.1, 162 P.3d 870, 871, n.1 (2007).

9 In this case, an injunction is proper to prevent Respondent from taking action  
10 that would further damage Appellant. Because Appellant is claiming that  
11 Respondent is legally estopped from engaging any such sales under the statute of  
12 limitations, such injunction would preserve Appellants’ rights in the Property.

13  
14 **B. Appellant Will Likely Prevail on Its Claims**

15 Under Nevada law, the Mortgage is a contract between Appellant and the  
16 beneficiary of the Mortgage. The remedies of any breach of the obligations  
17 contained in the Mortgage, including foreclosure, whether it be judicial or non-  
18 judicial, stem from that initial mortgage contract. Under Nevada law, a foreclosure  
19 of real property pursuant to NRS Chapter 107 is a remedy available as a result of  
20 the failure to pay a mortgage obligation, inherently a breach of that mortgage

1 contract. In fact, NRS §107.080 says a bit more about the role of contract in a  
2 foreclosure. Specifically, it states, in part, “if any transfer in trust of any estate in  
3 real property is made after March 29, 1927, to secure the performance of an  
4 obligation or the payment of any debt, a power of sale is hereby conferred upon the  
5 trustee to be exercised after a breach of the obligation for which the transfer is  
6 security.” (*emphasis added*). Clearly, the power to engage in a non-judicial  
7 foreclosure under NRS §107.080 is a contractual remedy. Under Nevada law, no  
8 breach of contract action shall be brought after six years from when the breach is  
9 alleged to have occurred. NRS §11.190.

10 “[W]here contract obligations are payable by installments, the limitations  
11 statute begins to run only with respect to each installment, when due, unless the  
12 lender exercises his or her option to declare the entire note due.” Clayton v.  
13 Gardner, 107 Nev. 468, 470, 813 P.2d 997, 999 (1991) (citations omitted)  
14 (*emphasis added*). Courts will seldom allow lenders to accelerate a contract  
15 obligation unless the “acceleration [is] exercised in a manner so clear and  
16 unequivocal that it leaves no doubt as to the lender's intention.” Id. (*quoting United*  
17 States v. Feterl, 849 F.2d 354, 357 (8th Cir.1988)). Some “affirmative action by  
18 the creditor must be taken to make it known to the debtor that [the creditor] has  
19 exercised his option to accelerate,” Feterl, 849 F.2d at 357; usually, the filing of a  
20

1 document with the county recorder which states that the loan has been accelerated  
2 is a sufficient.

3 Nevada law gives a lender the option to accelerate through the notice of  
4 default. While not required to fulfil the requirements of such notice under law, the  
5 legislature has stated that that “a notice of default and election to sell must: (a)  
6 [d]escribe the deficiency in performance or payment and may contain a notice of  
7 intent to declare the entire unpaid balance due if acceleration is permitted by the  
8 obligation secured by the deed of trust, but acceleration must not occur if the  
9 deficiency in performance or payment is made good and any costs, fees and  
10 expenses incident to the preparation or recordation of the notice and incident to the  
11 making good of the deficiency in performance or payment are paid within the time  
12 specified in subsection 2.” NRS § 107.080(3) (*emphasis added*).

13 In this case, due to illness and a downturn in the economy, Appellant ran  
14 into economic trouble in the height of the economic crisis. Appellant reached out  
15 to Respondent’s predecessor for help in 2009. Appellant was told that if she was  
16 not late on his mortgage, then it could not help her. Appellant, in adhering to the  
17 advice of the representatives of Respondent’s predecessor, went late on her  
18 mortgage in June, 2009.

19 Four months later, Respondent’s predecessor took the affirmative action  
20 necessary to notify Appellant (and the general public) of its intent to accelerate the



1 Appellant's mortgage, when, on or about September 25, 2009, it filed the First  
2 Notice of Default. See Exhibit "B". In part, First Notice of Default stated that  
3 because there was a failure to pay the "installment of principal and interest plus  
4 impounds and/or advances which became due on 06/01/2009 ... the "beneficiary  
5 under such deed of Trust has deposited with RECONTRUST COMPANY, N.A.  
6 such deed of trust and all documents evidencing obligations secured thereby and  
7 has declared and does hereby declare all sums secured thereby immediately due  
8 and payable and has elected and does hereby elect to cause the trust property to be  
9 sold to satisfy the obligations secured thereby." Id. (emphasis added). As a result  
10 of this quoted section from the First Notice of Default, Respondent accelerated the  
11 Note and Deed of Trust on September 25, 2009, or the day that the First Notice of  
12 Default was recorded. Accordingly, the six year statute of limitations began to run  
13 on September 25, 2009.

14 To date, it has been approximately six (6) years and six (6) months since  
15 the Respondents accelerated the mortgage, and yet they have not foreclosed on the  
16 Property. While they have taken numerous steps in the foreclosure process, and  
17 there has been some litigation between the parties prior to this case, any injunctive  
18 relief that may have been temporarily provided fails to have tolled the statute of  
19 limitations more than a month. As such, Respondents had six (6) years to seek the  
20 contractual remedy of foreclosure of the Property or to otherwise initiate a cause of

1 action for Appellant's alleged default under the Deed of Trust and related  
2 promissory note. Respondents did not successfully seek the contractual remedy of  
3 foreclosure of the Property or to otherwise initiate a cause of action for Appellant's  
4 alleged default under the Deed of Trust and related promissory note within this six  
5 year period.

6 This was argued in the district court. The district court did not disagree with  
7 this position; rather, the district court had concerns that a rescission which was filed  
8 in December, 2011, reset the statute of limitations. See Order, **Exhibit "F"**.  
9 Appellant is challenging that legal conclusion in this case.

10 First, as the Rescission was limited in scope, it did not stop the clock on the  
11 collection activities related to the breach that occurred in 2009. Specifically, by  
12 its own language, the Rescission did not "waiv[e], cur[e], extend[] to, or affect[]  
13 any default, either past, present or future, under such Deed of Trust, or as impair[]  
14 any right or remedy thereunder." **Exhibit "C"**.

15 Second, the language of the Second Notice of Default continues the  
16 acceleration of the mortgage from a default that occurred prior to the Rescission.  
17 In that document, Respondent (or its agent) stated that "installment of Principal and  
18 Interest plus impounds and/or advances which became due on 01/01/2010<sup>3</sup> plus  
19

20 <sup>3</sup> This date is after the date used in the first notice of default (June 1, 2009); however, the later date still will not save Respondent from missing the statute of limitations. The Second Notice of Default was filed after January 1, 2016, or six years from this date.

late charges, and all subsequent installments of principal, interest, balloon payments, plus impounds and/or advances and late charges that become payable.”

**Exhibit “D”**. Clearly, the default was not resolved or otherwise waived as of the date of the Rescission, a requirement to reset the statute of limitations.

This makes sense. It would be the antithesis of the benefit of a statute of limitations if, at any time prior to it running, a lender can rescind the notice of default and related acceleration, resetting its own clock for bringing a claim. A statute of limitations prohibits a suit after a period of time that follows the accrual of the cause of action. Allstate Ins. Co. v. Furgerson, 104 Nev. 772, 775 n. 2, 766 P.2d 904, 906 n. 2 (1988). A statute of limitations conditions a party’s ability to pursue a remedy within the statutory time period and “defines the right involved in terms of the time allowed to bring suit.” P. Stolz Family P’ship L.P. v. Daum, 355 F.3d 92, 102 (2d Cir.2004). Such a statute seeks to give a defendant peace of mind by barring delayed litigation, so as to prevent unfair surprises that result from the revival of claims that have remained dormant for a period during which the evidence vanished and memories faded. See Underwood Cotton Co. v. Hyundai Merch. Marine (Am.), Inc., 288 F.3d 405, 408–09 (9th Cir.2002) (providing that statutes of limitations are concerned with a Respondent’s peace of mind); Joslyn v. Chang, 445 Mass. 344, 837 N.E.2d 1107, 1112 (2005) (noting that statutes of limitations prevent stale claims from springing up and surprising parties when the evidence has

1 been lost). While statutes of limitations are intended to protect a defendant against  
2 the evidentiary problems associated with defending a stale claim, these statutes are  
3 also enacted to “promote repose by giving security and stability to human affairs....  
4 They stimulate to activity and punish negligence.” Wood v. Carpenter, 101 U.S.  
5 135, 139, 25 L.Ed. 807 (1879). For these reasons, a statute of limitations cannot  
6 be a sword and shield that can be delayed, stopped or reset at the plaintiff’s whim.

7 As such, Appellant believes that she will prevail on the merits in this case.

8  
9 **D. The Injunction Should Issue to Preserve the Status Quo.**

10 It is appropriate for an injunction is issue to preserve the status quo pending  
11 an adjudication of a claim. Number One Rent-ACar v. Ramada Inns, Inc., 94 Nev.  
12 779, 780-81, 587 P.2d 1329, 1330 (1978). As has long been held in Nevada, where  
13 “the sole object for which an injunction is sought is the preservation of a fund in  
14 controversy, or the maintenance of the status quo, until the question of right between  
15 the parties can be decided on final hearing, the injunction properly may be allowed,  
16 although there may be serious doubt of the ultimate success of the complainant.”  
17 Rhodes Mining Co. v. Belleville Placer Mining Co., 32 Nev. 230, 106 P. 561, 562  
18 (1910). Here, because the subject matter of the case involves title to property, and  
19 property is deemed unique, the status quo can be maintained only by issuing a  
20 preliminary injunction enjoining Respondents, and any of their collective agents,

1 employees, attorneys, and anyone acting on their behalf, from pursuing any  
2 Trustee's Sales prior to the resolution of this case.

3  
4 **IV. CONCLUSION**

5 For the foregoing reasons, Appellant respectfully requests that this Court  
6 enter an Order prohibiting Respondent, **HSBC BANK USA, National**  
7 **Association, as TRUSTEE for DEUTCHE ALT-A SECURITIES**  
8 **MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH**  
9 **CERTIFICATES SERIES 2007-AR2**, and any of its collective agents,  
10 employees, attorneys, successors and/or anyone acting on their behalf, from  
11 pursuing any foreclosure sales, including that set for August 17, 2016, related to  
12 Appellant's Mortgage, until this case has been resolved.

13 Dated this 14<sup>th</sup> day of July, 2016.

14 **HAFTERLAW**

15  
16 By: \_\_\_\_\_

17 Jacob L. Hafter, Esq.  
18 Nevada Bar Number 9303  
19 6851 W. Charleston Blvd  
20 Las Vegas, Nevada 89117  
Telephone: 702-405-6700  
[jhafter@hafterlaw.com](mailto:jhafter@hafterlaw.com)  
*Counsel for Appellant*

1

2 **CERTIFICATE OF SERVICE**

3 I certify that I am an employee of **HAFTERLAW**, and that on this 14<sup>th</sup> day  
4 of July, 2016, I served a copy of the foregoing **MOTION INJUNCTION** as  
5 follows:

- 6 ☒ Electronic Service —By filing a true copy thereof with the district  
7 court's electronic filing system; and/or
- 8 ☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class  
9 postage prepaid and addressed as listed below; and/or
- 10 ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the  
11 facsimile number(s) shown below and in the confirmation sheet filed  
12 herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed  
13 unless an objection to service by facsimile transmission is made in writing  
14 and sent to the sender via facsimile within 24 hours of receipt of this  
15 Certificate of Service; and/or
- 16 ☐ Hand Delivery—By hand-delivery to the addresses listed below.
- 17 ☒ Electronic Delivery—By e-mailing a true copy to the addresses listed  
18 below.

15 Jeffrey S. Allison, Esq.  
16 Lindsey E. Pena, Esq.  
**HOUSER & ALLISON, APC**  
2900 Paradise Road, Suite 101  
Las Vegas, Nevada 89169  
Telephone: 702-410-7593  
[jallison@houser-law.com](mailto:jallison@houser-law.com)  
[lpna@houser-law.com](mailto:lpna@houser-law.com)  
*Attorneys for HSBC Bank USA National Association.*

19  
20 /s/ Kelli Wightman  
An employee of HAFTERLAW