

CASE NO. 70786
IN THE SUPREME COURT OF THE STATE OF NEVADA

AMY FACKLAM, an individual,

Appellant,

v.

Electronically Filed
Nov 15 2016 04:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK, AND THE **HONORABLE ELISSA
CADISH**,

Appellees,

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

Real Parties In Interest.

JOINT APPENDIX VOLUME 1

On appeal from the Eight Judicial District Court,
Clark County, Nevada
District Court Case No. A-16-733762-C
The Honorable Elissa Cadish

HAFTERLAW

JACOB L. HAFTER, Esq.
Nevada Bar Number 9303
6851 West Charleston Blvd.
Las Vegas, Nevada 89117

November 15, 2016

INDEX TO JOINT APPENDIX

Document	Volume	Page
Complaint	Volume 1	APPX_1
Affidavit of Service	Volume 1	APPX_12
Motion for TRO and Preliminary Injunction on Order Shortening Time	Volume 1	APPX_16
Opposition to Motion for TRO	Volume 1	APPX_70
Reply in Support for Motion for TRO	Volume 1	APPX_84
Order Denying Motion for TRO	Volume 1	APPX_100
Motion for Summary Judgment	Volume 1	APPX_103
Opposition to Motion for Summary Judgment and Counter-Motion to Dismiss	Volume 1	APPX_160
Reply in Support of Motion to Dismiss	Volume 1	APPX_178
Reply in Furtherance of Motion for Summary Judgment and Opposition to Motion for Summary Judgment	Volume 2	APPX_189
Transcript from Hearing on Dispositive Motions	Volume 2	APPX_228

Document	Volume	Page
Order Denying Motion for Summary Judgment and Granting Motion to Dismiss	Volume 2	APPX_250
Notice of Entry of Order Denying Motion for Summary Judgment and Granting Motion to Dismiss	Volume 2	APPX_255
Notice of Appeal	Volume 2	APPX_263
Motion for Injunctive Relief Pursuant to NRAP 8(a) on Order Shortening Time	Volume 2	APPX_266
Order Shortening Time to Hear Motion for Injunctive Relief	Volume 2	APPX_338
Notice of Entry of Order Granting Injunctive Relief	Volume 2	APPX_340

DISTRICT COURT CIVIL COVER SHEET

A-16-733762-C

CLARK

County, Nevada

Case No.

VI

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)	
Plaintiff(s) (name/address/phone): Army Facklam c/o HAFTERLAW 6851 West Charleston Blvd., Las Vegas, NV 89117 Tel: (702) 405-6700	Defendant(s) (name/address/phone): HSBC BANK USA, National Association, as TRUSTEE for Deutsche Alt-A Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-AR2
Attorney (name/address/phone): Jacob L. Hafter, Esq. HAFTERLAW 6851 West Charleston Blvd., Las Vegas, NV 89117 Tel: (702) 405-6700	Attorney (name/address/phone): To Be Determined

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

<p>Real Property</p> <p>Landlord/Tenant</p> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <p>Title to Property</p> <input type="checkbox"/> Judicial Foreclosure <input checked="" type="checkbox"/> Other Title to Property <p>Other Real Property</p> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<p>Torts</p> <p>Other Torts</p> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<p>Probate (select case type and estate value)</p> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <p>Estate Value</p> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<p>Construction Defect & Contract</p> <p>Construction Defect</p> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <p>Contract Case</p> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract
<p>Civil Writ</p> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<p>Judicial Review/Appeal</p> <p>Judicial Review</p> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <p>Nevada State Agency Appeal</p> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <p>Appeal Other</p> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<p>Other Civil Filing</p> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters	

Business Court filings should be filed using the Business Court civil coversheet.

March 21, 2016

Date

Signature of including party or representative

See other side for family-related case filing.

Alan D. Blum
CLERK OF THE COURT

1 **COMP**
2 JACOB L. HAFTER, ESQ.
3 Nevada State Bar No. 9303
4 **HAFTERLAW**
5 6851 W. Charleston Boulevard
6 Las Vegas, Nevada 89117
7 Tel: (702) 405-6700
8 Fax: (702) 685-4184
9 jhafter@hafterlaw.com

10 *Counsel for Plaintiff*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **AMY FACKLAM,**
14 Plaintiff,
15 vs.

Case No.: A-16-733762-C
Dept. No.: VI

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

23 Defendant.

COMPLAINT
For

1. Declaratory Relief and Quiet Title to Real Property
2. Injunctive Relief

Exemption from Arbitration Claimed:

1. Action for Declaratory Relief
2. Action Concerning Real Property

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23 COMES NOW, Plaintiff AMY FACKLAM, by and through her counsel of record, Jacob
24 L. Hafter, Esq. of the law firm **HAFTERLAW**, hereby demands quiet title against the above-named
25 defendant, and alleges as follows:

26 ///
27 ///
28 ///

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(702) 685-4184 Facsimile



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PRELIMINARY STATEMENT

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

2. This action seeks declaratory confirming:

- a. that, on or about December 21, 2006, Plaintiff executed a deed of trust 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 Plaintiff's "Mortgage");
- b. that, Plaintiff stopped paying her Mortgage on or about June, 2009;
- c. that, Defendant, or its predecessor, accelerated the Mortgage when, on or about September 25, 2009, Defendants, through their agents, predecessors, or predecessors' agents, specifically, ReconTrust Company, NA, filed a Notice of Default and Election to Sell the Property, in the official records of Clark County, Nevada, which was assigned document number 20090925-0003750 ("First Notice of Default");
- d. that, when Defendants, or its predecessor, accelerated the Mortgage through the First Notice of Default and Election to Sell, the six year statute of limitations to foreclose on a property began to run;
- e. that, the failure of Defendants to initiate a foreclosure action, or any other breach of contract action stemming from Plaintiff's cessation of his Mortgage payments within six (6) years of the acceleration of the Mortgage, or September 24, 2015, bars Defendants from foreclosing on the Property or otherwise attempting to sue Plaintiff for a breach of his Mortgage;
- f. as such, the Mortgage obligation shall be removed from title of the Property; and
- g. Defendant should be enjoined and stopped from pursuing any interests towards acquiring ownership of the Property or otherwise seeking monetary damages

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(702) 405-6700 Telephone
(702) 685-4184 Facsimile

1 from Plaintiff with respect to any breach of contract claim related to the Deed
2 of Trust or the associated promissory note.

3 3. This action also seeks injunctive relief preventing any Defendant, individually or
4 collectively through its agents, trustees, or assigns from impinging on Plaintiff's use and
5 enjoyment of the Property as its lawful owner, by taking any further actions to collect any monies
6 from Plaintiff or otherwise foreclose against the Property.

7
8 **PARTIES**

9 4. Plaintiff is, and at all times pertinent hereto was, an individual who is a Nevada resident
10 residing in Clark County, Nevada.

11 5. Upon information and belief, Defendant HSBC BANK USA, National Association, as
12 TRUSTEE for DEUTCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE
13 PASS-THROUGH CERTIFICATES SERIES 2007-AR2 ("HSBC"), may have obtained an
14 interest in the Property through the Mortgage, as defined above, where such interest was obtained
15 through assignment, merger or otherwise.

16 6. Upon information and belief, each of the defendants sued herein as DOES I through X,
17 inclusive, is responsible in some manner for the events and happenings herein referred to, which
18 thereby proximately caused the injuries and damages to Plaintiff as alleged herein; that when the
19 true names and capacities of such defendants become known, Plaintiff will ask leave of this Court
20 to amend this Complaint to insert the true names, identities and capacities together with proper
21 charges and allegations.

22 7. Upon information and belief, each of the defendants sued herein as ROE
23 CORPORATIONS I through X, inclusive, is responsible in some manner for the events and
24 happenings herein referred to, which thereby proximately caused the injuries and damages to
25 Plaintiff as alleged herein; that when the true names and capacities of such defendants become
26 known, Plaintiff will ask leave of this Court to amend this Complaint to insert the true names,
27 identities and capacities together with proper charges and allegations.

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1 **JURISDICTION AND VENUE**

2 8. All of the acts complained of herein occurred in Clark County, Nevada.

3 9. This Court has subject matter jurisdiction pursuant to NRS 3.220 and Nevada
4 Constitution, Art. IV, §6.

5 10. This Court is the proper venue pursuant to NRS § 13.040.

6 11. Where applicable, all matters set forth herein are incorporated by reference in the various
7 causes of action which follow.

8 **GENERAL ALLEGATIONS**

9
10 12. On or about December 21, 2006, Plaintiff executed the Mortgage, as defined above.

11 13. In or around June 2009, Plaintiff missed a payment (based upon the recommendation of
12 the servicer of the Mortgage, at the time).

13 14. On September 25, 2009, the First Notice of Default was recorded on the title records for
14 the Property.

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

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

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

21 18. On or about December 5, 2011, a rescission of the First Deed of Trust ("Rescission") was
22 filed in the official records of the Clark County Recorder as document 20111205-0000543.

23 19. The Rescission stated:

24
25 NOTICE IS HEREBY GIVEN that RECONTRUST COMPANY, N/A/
26 Trustee for the Beneficiary does hereby rescind, cancel and withdraw the
27 Notice of Default and Election to Sell herein described, provided, however,
28 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 as shall be
deemed to be, only an election without prejudice not to cause a sale to be

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1 made pursuant to such Notice of Default and Election to Sell, and it shall
2 not in any way alter or change any of the rights remedies or privileges
3 secured to the Beneficiary and/or Trustee under such Deed of Trust, nor
4 modify, nor alter in any respect any of the terms, covenants, conditions or
5 obligations therein contained. Said NOTICE OF DEFAULT AND
6 ELECTION TO SELL under Deed of Trust specifically described therein
7 was

8 Recorded on 09/25/2009, as Instrument 200909250003750, in Book
9 _____, Page _____, of the Official Records of Clark County, Nevada.

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

13 20. Because the Rescission specifically stated that it did not affect the underlying alleged
14 breach of the Mortgage, it did not affect the statute of limitations.

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

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

20 23. On January 25, 2016, Defendants, through their agents, predecessors, or predecessors'
21 agents, specifically, Western Progressive-Nevada, Inc., filed another Notice of Default and
22 Election to Sell the Property, in the official records of Clark County, Nevada, which was assigned
23 document number 20160129-0000551 ("Second Notice of Default");

24 24. Both the Substitution and the Second Notice of Default were filed after the statute of
25 limitations had run.

26 25. This suit was filed shortly thereafter.

27 **FIRST CLAIM FOR RELIEF**

28 **(Declaratory Relief/Quiet Title against all Defendants)**

29 26. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs of this
30 Complaint as though fully set forth herein and incorporates the same herein by reference.

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1 27. Under Nevada law, the Mortgage is a contract between Plaintiff and the beneficiary of
2 the Mortgage.

3 28. Under Nevada law, the remedy of any breach of the obligations contained in the
4 Mortgage would be a breach of contract action.

5 29. Under Nevada law, a foreclosure of real property pursuant to NRS Chapter 107 is a
6 remedy available through a breach of contract action.

7 30. Under Nevada law, no breach of contract action shall be brought after six years from
8 when the breach is alleged to have occurred. NRS §11.190.

9 31. A statute of limitations prohibits a suit after a period of time that follows the accrual
10 of the cause of action. Allstate Ins. Co. v. Ferguson, 104 Nev. 772, 775 n. 2, 766 P.2d 904, 906
11 n. 2 (1988).

12 32. A statute of limitations conditions the cause of action on filing a suit within the statutory
13 time period and “defines the right involved in terms of the time allowed to bring suit.” P. Stolz
14 Family P’ship L.P. v. Daum, 355 F.3d 92, 102 (2d Cir.2004).

15 33. Such a statute seeks to give a defendant peace of mind by barring delayed litigation, so
16 as to prevent unfair surprises that result from the revival of claims that have remained dormant
17 for a period during which the evidence vanished and memories faded. See Underwood Cotton
18 Co. v. Hyundai Merch. Marine (Am.), Inc., 288 F.3d 405, 408–09 (9th Cir.2002) (providing that
19 statutes of limitations are concerned with a defendant’s peace of mind); Joslyn v. Chang, 445
20 Mass. 344, 837 N.E.2d 1107, 1112 (2005) (noting that statutes of limitations prevent stale claims
21 from springing up and surprising parties when the evidence has been lost).

22 34. While statutes of limitations are intended to protect a defendant against the evidentiary
23 problems associated with defending a stale claim, these statutes are also enacted to “promote
24 repose by giving security and stability to human affairs.... They stimulate to activity and punish
25 negligence.” Wood v. Carpenter, 101 U.S. 135, 139, 25 L.Ed. 807 (1879).

26 35. “[W]here contract obligations are payable by installments, the limitations statute
27 begins to run only with respect to each installment, when due, unless the lender exercises his or
28

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1 her option to declare the entire note due.” Clayton v. Gardner, 107 Nev. 468, 470, 813 P.2d 997,
2 999 (1991) (citations omitted).

3 36. Courts will seldom allow lenders to accelerate a contract obligation unless the
4 “acceleration [is] exercised in a manner so clear and unequivocal that it leaves no doubt as to the
5 lender’s intention.” Id. (quoting United States v. Feterl, 849 F.2d 354, 357 (8th Cir.1988)).

6 37. Some “affirmative action by the creditor must be taken to make it known to the debtor
7 that [the creditor] has exercised his option to accelerate.” Feterl, 849 F.2d at 357.

8 38. On or about August 11, 2009, Defendant filed the First Notice of Default.

9 39. In the First Notice of Default, Defendant gave Plaintiff notice that “by reason thereof
10 the present Beneficiary under such deed of Trust has deposited with RECONTRUST
11 COMPANY, N.A. such deed of trust and all documents evidencing obligations secured thereby
12 and has declared and does hereby declare all sums secured thereby immediately due and payable
13 and does hereby elect to cause the trust property to be sold to satisfy the obligations secured
14 thereby.”

15 40. The notice in Paragraph 39, hereof, suffices as the Defendant’s affirmative action that
16 made it known to the debtor that Defendant has exercised its option to accelerate the Deed of
17 Trust.

18 41. As such, Defendants had six (6) years to seek the contractual remedy of foreclosure of
19 the Property or to otherwise initiate a cause of action for Plaintiff’s alleged default under the Deed
20 of Trust and related promissory note.

21 42. Defendants did not successfully seek the contractual remedy of foreclosure of the
22 Property or to otherwise initiate a cause of action for Plaintiff’s alleged default under the Deed of
23 Trust and related promissory note within this six year period.

24 43. Under Nevada law, “[a]n action may be brought by any person against another who
25 claims an estate or interest in real property, adverse to the person bringing the action, for the
26 purpose of determining such adverse claim.” Nev. Rev. Stat. § 40.010.

27 44. This Court has the power and authority to declare the rights, status and interests of
28 Plaintiff and Defendants in the Property.

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- 1 45. Plaintiff is entitled to a declaratory judgment from this Court finding:
- 2 a. that, on or about December 21, 2006, Plaintiff executed a deed of trust naming
- 3 GreenPoint Mortgage Funding, In., as the "Lender", and Marin Conveying
- 4 Corp., as the "Trustee", and encumbering the Property with an indebtedness in
- 5 the amount of \$326,000.00 (referred to herein as Plaintiff's "Mortgage");
- 6 b. that, Plaintiff stopped paying her Mortgage on or about June, 2009;
- 7 c. that, Defendant, or its predecessor, accelerated the Mortgage when, on or about
- 8 September 25, 2009, Defendants, through their agents, predecessors, or
- 9 predecessors' agents, specifically, ReconTrust Company, NA, filed a Notice
- 10 of Default and Election to Sell the Property, in the official records of Clark
- 11 County, Nevada, which was assigned document number 20090925-0003750
- 12 ("First Notice of Default");
- 13 d. that, when Defendants, or its predecessor, accelerated the Mortgage through
- 14 the First Notice of Default and Election to Sell, the six year statute of
- 15 limitations to foreclose on a property *began* to run;
- 16 e. that, the failure of Defendants to initiate a foreclosure action, or any other
- 17 breach of contract action stemming from Plaintiff's cessation of his Mortgage
- 18 payments within six (6) years of the acceleration of the Mortgage, or
- 19 September 24, 2015, bars Defendants from foreclosing on the Property or
- 20 otherwise attempting to sue Plaintiff for a breach of his Mortgage;
- 21 f. as such, the Mortgage obligation shall be removed from title of the Property;
- 22 and
- 23 g. Defendant should be enjoined and stopped from pursuing any interests towards
- 24 acquiring ownership of the Property or otherwise seeking monetary damages
- 25 from Plaintiff with respect to any breach of contract claim related to the Deed
- 26 of Trust or the associated promissory note.
- 27 46. Plaintiff seeks an order from this Court quieting title to the Property in favor of Plaintiff
- 28 and extinguishing any and all interests Defendants may have had in the Property.

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1 **SECOND CLAIM FOR RELIEF**

2 **(Preliminary and Permanent Injunction)**

3 47. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs of this
4 Complaint as though fully set forth herein and incorporate the same herein by reference.

5 48. As stated above, Defendant failed to bring a timely foreclosure action related to the
6 Property or any other contractual cause of action to obtain monetary damages related to the
7 Mortgage.

8 49. Defendant, nonetheless, may claim an adverse interest in the Property by way of the
9 Mortgage, all of which were extinguished by the Defendant's failure to initiate a timely breach
10 action, or are otherwise abandoned.

11 50. As such, Defendant may improperly attempt to foreclose the Mortgage and/or any
12 interests which the Defendant may have or claim to have and sell the Property or otherwise impair
13 or cloud Plaintiff's title in and to the Property.

14 51. Plaintiff is entitled to a preliminary and a permanent injunction to enjoin Defendant, and
15 any trustee, assign or successor or predecessor, from taking any action to impair or cloud
16 Plaintiff's interest or title to the Property including, without limitation, foreclosing the Mortgage,
17 and/or any interests which the Defendant may have or proceeding to sell the Property.

18 **PRAYER FOR RELIEF**

19
20 1. For a declaration and determination that Plaintiff is the rightful holder of title to the
21 Property;

22 2. For an order from this Court quieting title to the Property in favor of Plaintiff and
23 extinguishing any and all interests Defendant may have had in the Property;

24 3. For a preliminary and permanent injunction that Defendant, including, any trustees,
25 successors, predecessors or assigns, are prohibited from continuing foreclosure proceedings
26 pursuant to the Deed of Trust, Mortgage, First Notice of Default or Second Notice of Default, or
27 otherwise taking any actions to impair or cloud Plaintiff's interest or title to or in the Property;

28 and

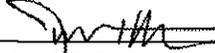
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4. For such other and further relief as the Court may deem proper
DATED this 21st day of March, 2016.

HAFTERLAW

By: 
Jacob L. Hafter, Esq.
Nevada State Bar No. 9303
6851 W. Charleston Boulevard
Las Vegas, Nevada 89117
Tel: (702) 405-6700
Fax: (702) 685-4184
jhafter@hafterlaw.com
Counsel for Plaintiff

Alvin L. Quinn
CLERK OF THE COURT

1 **AOS**
2 **JACOB L. HAFTER, ESQ.**
3 Nevada State Bar No. 9303
4 **HAFTERLAW**
5 6851 W. Charleston Blvd.
6 Las Vegas, Nevada 89117
7 Tel: (702) 405-6700
8 Fax: (702) 685-4184
9 jhafter@hafterlaw.com
10 *Counsel for Plaintiff*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **AMY FACKLAM,**
14 Plaintiff,

15 vs.

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

24 Defendant.

Case No.: A-16-733762-C

Dept. No. VI

AFFIDAVIT OF SERVICE

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(702) 405-6700 Telephone
(702) 685-4184 Facsimile

25 COMES NOW, Plaintiff AMY FACKLAM, by and through her counsel of record, Jacob
26 L. Hafter, Esq. of the law firm HAFTERLAW, and hereby notifies the court that the following
27 defendant has been served with the Summons and Complaint, Notice of Entry of Order Shortening
28 Time to Hear Motion for Temporary Restraining Order and Preliminary Injunction, Motion for
Temporary Restraining Order and Preliminary Injunction on Order Shortening Time:

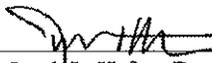
HSBC BANK USA, National Association as Trustee for Deutche Alt-A Securities
Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-AR2:

- a. By serving the Registered Agent: Corporation Trust Company of Nevada—
served March 23, 2016 at 10:15 a.m.

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Attached, as exhibit "A", is evidence of service of the above named defendant.
Dated this 28th day of March, 2016.

HAFTERLAW

By: 
Jacob L. Hafter, Esq.
Nevada State Bar No. 9303
6851 West Charleston Blvd.
Las Vegas, Nevada 89117
Tel: (702) 405-6700
Fax: (702) 685-4184
Counsel for Plaintiff

6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



EXHIBIT "A"

EXHIBIT "A"

Alvin D. Blum
CLERK OF THE COURT

1 **MOT**
2 **JACOB L. HAFTER, ESQ.**
3 Nevada State Bar No. 9303
4 **HAFTERLAW**
5 6851 W. Charleston Blvd.
6 Las Vegas, Nevada 89117
7 Tel: (702) 405-6700
8 Fax: (702) 685-4184
9 jhafter@hafterlaw.com
10 *Counsel for Plaintiffs*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **AMY FACKLAM,**
14 Plaintiff,
15 vs.

16 Case No.: A-16-733762-C
17 Dept. No. VI

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

26 Defendant.

27 **MOTION FOR**
28 **TEMPORARY RESTRAINING**
29 **ORDER**
30 **AND**
31 **PRELIMINARY INJUNCTION**
32 **ON**
33 **ORDER SHORTENING TIME**

34 HEARING DATE: 4/12/16
35 HEARING TIME: 8:30AM

36 COMES NOW, Plaintiff, **AMY FACKLAM**, by and through its counsel of record, Jacob
37 L. Hafter, Esq., of the law firm **HAFTERLAW**, to move this Court for an order prohibiting
38 Defendant, **HSBC BANK USA, National Association**, as **TRUSTEE for DEUTCHE ALT-A**
39 **SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH**
40 **CERTIFICATES SERIES 2007-AR2.**, and any of their collective agents, employees, attorneys,
41 successors, agents, or anyone acting on their behalf, from (a) pursuing any foreclosure sales related

42 DEPARTMENT VI
43 NOTICE OF HEARING
44 DATE 4/12/16 TIME 8:30AM
45 APPROVED BY: KCV

46 FILE WITH
47 MASTER CALENDAR

HAFTERLAW
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



1 to that certain first deed of trust entered into on or about December 21, 2006, Plaintiff executed a
2 deed of trust naming GreenPoint Mortgage Funding, In., as the "Lender", and Marin Conveying
3 Corp., as the "Trustee", and encumbering the Property with an indebtedness in the amount of
4 \$326,000.00 (referred to herein as Plaintiff's "Mortgage") until this case has been resolved, and
5 (b) staying the pending foreclosure mediation, for which Plaintiff has made an election.

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

9 Dated this 21st day of March, 2016.

10 **HAFTERLAW**

11 By:  with permission

12
13 Jacob L. Hafter, Esq.
14 Nevada Bar Number 9303
15 6851 W. Charleston Blvd
16 Las Vegas, Nevada 89117
17 *Counsel for Plaintiffs*

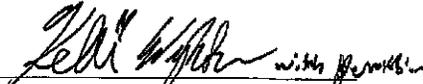
18 **NOTICE OF MOTION**

19 **TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

20 PLEASE TAKE NOTICE that the undersigned will bring the foregoing **MOTION FOR**
21 **TEMPORARY RESTRAINING ORDER ON ORDER SHORTENING TIME** for a hearing
22 in Department 6 on the 17th day of APRIL, 2016, at the hour of
23 8:30AM, or, alternatively, as soon thereafter as counsel may be heard.

24 Dated this 21st day of March, 2016.

25 **HAFTERLAW**

26 By:  with permission

27 Jacob L. Hafter, Esq.
28 Nevada Bar Number 9303
6851 W. Charleston Blvd
Las Vegas, Nevada 89117
Counsel for Plaintiffs

1001 W. CHARLESTON BLVD.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



ORDER SHORTENING TIME

TO: ALL PARTIES AND THEIR ATTORNEY OF RECORD:
UPON APPLICATION OF PLAINTIFFS and good cause appearing therefor:

IT IS HEREBY ORDERED that the time for hearing **PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER** is hereby shortened and shall be heard before Dept. 6 on the 12th day of April, at the hour of 8:30am, or, alternatively, as soon thereafter as counsel may be heard.

Service of this Order and the accompanying Motion must be made on the registered agent of the Defendant no later than by 5 pm on 25th day of March, 2016.

Dated this 22nd day of March, 2016.

ANY OPPOSITION TO THIS MOTION SHALL BE DUE NO LATER THAN APRIL 4, 2016. ANY SUBSEQUENT REPLY SHALL BE FILED NO LATER THAN 4/8/16

By:

John F. Godes
District Court Judge *KOL*

Submitted By:

By:

Jacob L. Hafter with permission
Jacob L. Hafter, Esq.
Nevada Bar Number 9303

1001 S. CHURCHILL BLVD.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile

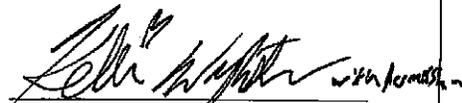


1 11. This Motion is not being made for purposes of harassment.

2 Further, I sayeth naught.

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

6 Dated this 21st day of March, 2016.

7
8 By: 
9 Jacob L. Hafter, Esq.

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3004 N. UNIVERSITY BLVD.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

Defendant waited until almost seven years from when Plaintiff stopped paying her mortgage to initiate the current foreclosure attempt. Such attempt should not be permitted under Nevada's statute of limitations for contract law. To that end, Plaintiffs are turning to this Court to tell the Defendant that neither it, nor its agents, trustees, or representatives, are able to collect on the Mortgage, because it waited too long. For that reason, Plaintiffs are seeking a preliminary injunction to preserve the status quo and prevent the Defendant from engaging in another Trustee's Sale.

II. STATEMENT OF FACTS

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

2. On or about December 21, 2006, Plaintiff executed a deed of trust 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 ("Deed of Trust"), a true and correct copy of which is attached hereto as Exhibit "A".

W. J. FACKLAM & ASSOCIATES, P.C.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



1 3. In or around June 2009, Plaintiff missed a payment (based upon the recommendation of
2 the servicer of the Mortgage, at the time).

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

5 5. By filing the First Notice of Default, the Defendant, through its predecessor, initiated a
6 six year statute of limitations for bringing action against Plaintiff as a result of her alleged breach
7 of the Mortgage.

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

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

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

14 9. The Rescission stated:

15
16 NOTICE IS HEREBY GIVEN that RECONTRUST COMPANY, N/A,
17 Trustee for the Beneficiary does hereby rescind, cancel and withdraw the
18 Notice of Default and Election to Sell herein described, provided, however,
19 that this rescission shall not be construed as waiving, curing, extending to,
20 or affecting any default, either past, present or future, under such Deed of
21 Trust, or as impairing any right or remedy thereunder, and it is as shall be
22 deemed to be, only an election without prejudice not to cause a sale to be
23 made pursuant to such Notice of Default and Election to Sell, and it shall
24 not in any way alter or change any of the rights remedies or privileges
25 secured to the Beneficiary and/or Trustee under such Deed of Trust, nor
26 modify, nor alter in any respect any of the terms, covenants, conditions or
27 obligations therein contained. Said NOTICE OF DEFAULT AND
28 ELECTION TO SELL under Deed of Trust specifically described therein
was

Recorded on 09/25/2009, as Instrument 200909250003750, in Book
_____, Page _____, of the 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, in Trustor in Clark County, Nevada.



1 Id.

2 10. Because the Rescission specifically stated that it did not affect the underlying alleged
3 breach of the Mortgage, it did not affect the statute of limitations.

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

6 12. On December 11, 2015, a substitution of trustee was filed as Instrument No. 20151211-
7 0002092 of the official Clark County Recorder's records naming Western Progressive-Nevada,
8 Inc., as Trustee under the Mortgage ("Substitution").

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

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

16 15. This suit was filed shortly thereafter.

17
18 **III. LEGAL DISCUSSION**

19 **A. An Injunction Should Be Issued to Protect Plaintiff's Property Rights.**

20 Injunctive relief may be issued "to preserve the status quo" if the party seeking the
21 preliminary injunction enjoys a reasonable likelihood of success on the merits, and that the party
22 will be subjected to irreparable harm if the injunction is not issued. See NRS § 33.010; Univ. &
23 Cmty. Coll. Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004)
24 Pickett v. Comanche Construction, Inc., 108 Nev. 422, 426, 836 P.2d 42, 44 (1992) (citing Dixon
25 v. Thatcher, 103 Nev. 414, 415-16, 742 P.2d 1029, 1029-30 (1987)).

26 Injunctions have been granted in various situations where a party is at risk of its property
27 being disposed of by the other party before the case can be resolved by the court. For example,
28



1 in a dispute over the sale of a business, the purchaser of the business “sought a temporary
2 restraining order prohibiting [the seller] from selling the repossessed business to a third party.”
3 Herup v. First Boston Financial, LLC, 123 Nev. Adv. Op. 27, 2 n.1, 162 P.3d 870, 871, n.1 (2007).

4 In this case, an injunction is proper to prevent Defendant from taking action that would
5 further damage Plaintiff, and would protect the status quo. Plaintiff is seeking an order
6 prohibiting Defendants, and any of their collective agents, employees, attorneys, and anyone
7 acting on their behalf, from pursuing any Trustee’s Sales prior to the resolution of this case.
8 Because Plaintiffs are claiming that Defendants are legally estopped from engaging any such sales
9 under the Statute of Limitations, such injunction would preserve Plaintiffs’ rights in the Property.

10
11 **B. Plaintiff Will Likely Prevail on Its Claims**

12 Under Nevada law, the Mortgage is a contract between Plaintiffs and the beneficiary of
13 the Mortgage. The remedy of any breach of the obligations contained in the Mortgage would be
14 a breach of contract action. Under Nevada law, a foreclosure of real property pursuant to NRS
15 Chapter 107 is a remedy available through a breach of contract action. Under Nevada law, no
16 breach of contract action shall be brought after six years from when the breach is alleged to have
17 occurred. NRS §11.190.

18 A statute of limitations prohibits a suit after a period of time that follows the accrual of
19 the cause of action. Allstate Ins. Co. v. Furgerson, 104 Nev. 772, 775 n. 2, 766 P.2d 904, 906 n.
20 2 (1988). A statute of limitations conditions the cause of action on filing a suit within the
21 statutory time period and “defines the right involved in terms of the time allowed to bring suit.”
22 P. Stolz Family P’ship L.P. v. Daum, 355 F.3d 92, 102 (2d Cir.2004). Such a statute seeks to give
23 a defendant peace of mind by barring delayed litigation, so as to prevent unfair surprises that
24 result from the revival of claims that have remained dormant for a period during which the
25 evidence vanished and memories faded. See Underwood Cotton Co. v. Hyundai Merch. Marine
26 (Am.), Inc., 288 F.3d 405, 408–09 (9th Cir.2002) (providing that statutes of limitations are
27 concerned with a defendant’s peace of mind); Joslyn v. Chang, 445 Mass. 344, 837 N.E.2d 1107,
28 1112 (2005) (noting that statutes of limitations prevent stale claims from springing up and



DOUGLASS, GARDNER & FETERL, P.A.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



1 surprising parties when the evidence has been lost). While statutes of limitations are intended to
2 protect a defendant against the evidentiary problems associated with defending a stale claim, these
3 statutes are 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. 135, 139, 25
5 L.Ed. 807 (1879).

6 “[W]here contract obligations are payable by installments, the limitations statute begins
7 to run only with respect to each installment, when due, unless the lender exercises his or her
8 option to declare the entire note due.” Clayton v. Gardner, 107 Nev. 468, 470, 813 P.2d 997, 999
9 (1991) (citations omitted) (*emphasis added*). Courts will seldom allow lenders to accelerate a
10 contract obligation unless the “acceleration [is] exercised in a manner so clear and unequivocal
11 that it leaves no doubt as to the lender’s intention.” Id. (*quoting United States v. Feterl*, 849 F.2d
12 354, 357 (8th Cir.1988)). Some “affirmative action by the creditor must be taken to make it
13 known to the debtor that [the creditor] has exercised his option to accelerate.” Feterl, 849 F.2d at
14 357.

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

20 Four months later, Defendant took the affirmative action necessary to notify Plaintiff of
21 its intent to accelerate the Plaintiff’s mortgage. On or about September 25, 2009, Defendant filed
22 the First Notice of Default. See Exhibit “B”. As part of the First Notice of Default stated that
23 because there was a failure to pay the “installment of principal and interest plus impounds and/or
24 advances which became due on 04/01/2009 ... the “beneficiary under such deed of Trust has
25 deposited with RECONTRUST COMPANY, N.A. such deed of trust and all documents
26 evidencing obligations secured thereby and has declared and does hereby declare all sums
27 secured thereby immediately due and payable and has elected and does hereby elect to cause the
28 trust property to be sold to satisfy the obligations secured thereby.” Id. (*emphasis added*). As a

1 result of this quoted section from the First Notice of Default, Defendant accelerated the Note and
2 Deed of Trust on September 25, 2009, or the day that the First Notice of Default was executed.
3 Accordingly, the six year statute of limitations began to run on September 25, 2009.

4 To date, it is has been approximately six (6) years and six (6) months since the Defendants
5 accelerated the mortgage, and yet they have not foreclosed on the Property. While they have
6 taken numerous steps in the foreclosure process, and there has been some litigation between the
7 parties prior to this case, any injunctive relief that may have been temporarily provided fails to
8 have toiled the statute of limitations more than a month.

9 As such, Defendants had six (6) years to seek the contractual remedy of foreclosure of
10 the Property or to otherwise initiate a cause of action for Plaintiff's alleged default under the Deed
11 of Trust and related promissory note. Defendants did not successfully seek the contractual
12 remedy of foreclosure of the Property or to otherwise initiate a cause of action for Plaintiff's
13 alleged default under the Deed of Trust and related promissory note within this six year period.
14 As such, Plaintiffs will prevail on the merits in this case.

15
16 **D. The Injunction Should Issue to Preserve the Status Quo.**

17 It is appropriate for a injunction is issue to preserve the status quo pending an adjudication
18 of a claim. Number One Rent-A-Car v. Ramada Inns, Inc., 94 Nev. 779, 780-81, 587 P.2d 1329,
19 1330 (1978). As has long been held in Nevada, where "the sole object for which an injunction is
20 sought is the preservation of a fund in controversy, or the maintenance of the status quo, until the
21 question of right between the parties can be decided on final hearing, the injunction properly may
22 be allowed, although there may be serious doubt of the ultimate success of the complainant."
23 Rhodes Mining Co. v. Belleville Placer Mining Co., 32 Nev. 230, 106 P. 561, 562 (1910).

24 In this case, a preliminary injunction, pending the resolution of the case is consistent with
25 the principles of the Nevada case law. Here, because the subject matter of the case involves title
26 to property, and property is deemed unique, the status quo can be maintained only by issuing a
27 preliminary injunction enjoining Defendants, and any of their collective agents, employees,
28

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

3
4 **IV. CONCLUSION**

5 For the foregoing reasons, Plaintiff respectfully requests that this Court enter an Order
6 prohibiting Defendant, **HSBC BANK USA, National Association, as TRUSTEE for**
7 **DEUTCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-**
8 **THROUGH CERTIFICATES SERIES 2007-AR2**, and any of its collective agents, employees,
9 attorneys, successors and/or anyone acting on their behalf, from (a) pursuing any foreclosure sales
10 related to that certain first deed of trust entered into on or about December 21, 2006, Plaintiff
11 executed a deed of trust naming GreenPoint Mortgage Funding, In., as the "Lender", and Marin
12 Conveying Corp., as the "Trustee", and encumbering the Property with an indebtedness in the
13 amount of \$326,000.00 (referred to herein as Plaintiff's "Mortgage") until this case has been
14 resolved, and (b) staying the pending foreclosure mediation, for which Plaintiff has made a timely
15 election.

16 Dated this 21st day of March, 2016.

17 **HAFTERLAW**

18
19 By: 

Jacob L. Hafter, Esq.
Nevada State Bar No. 9303
6851 W. Charleston Boulevard
Las Vegas, Nevada 89117
Tel: (702) 405-6700
Fax: (702) 685-4184
Counsel for Plaintiff

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HAFTERLAW
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HAFTERLAW, and that on this 2nd day of March, 2016, I served a copy of the foregoing **MOTION FOR TRO AND PRELIMINARY INJUNCTION** as follows:

U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

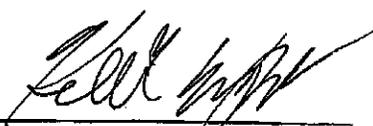
Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

Hand Delivery—By hand-delivery to the addresses listed below.

Having Legal Wings serve a file stamped copy on :

**THE CORPORATION TRUST COMPANY OF NEVADA
701 S. CARSON STREET, SUITE 200
CARSON CITY, NEVADA 89701**

Registered Agent for HSBC Bank USA National Association.


An employee of HAFTERLAW

NEVADA STATE BAR, JUDICIAL DIVISION
Las Vegas, Nevada 89117
(702) 465-6700 Telephone
(702) 685-4164 Facsimile



EXHIBIT "A"

EXHIBIT "A"

212

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

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

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~~

[Space Above This Line For Recording Data]

DEED OF TRUST MIN 100013900914365016

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
Renderson

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

("Property Address"):

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

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

6501

6A(NV) (0507)

Page 3 of 15

Form 3029 1/01

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 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

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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.

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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.

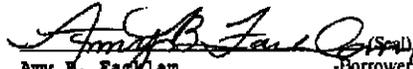
24. **Substitute Trustee.** Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable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

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

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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

STATE OF NEVADA
COUNTY OF *Clark*

This instrument was acknowledged before me on *December 27th* ^{*194*} 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."

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(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.

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(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.

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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.

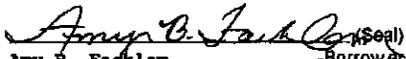
If all or any part of the Property or any interest in the Property is sold or transferred (or if a Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by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

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

 (Seal) _____ (Seal)
Amy B. Facklam -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

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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.

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MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3150 1/01
Wolters Kluwer Financial Services Page 1 of 3
VMP®-7R (0411).01

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.

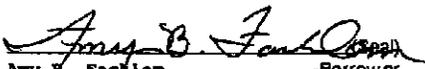
D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby 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.

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

 _____ (Seal)
Amy M. Facklam -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

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.

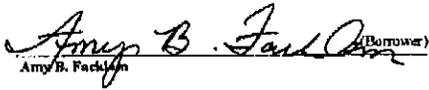
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It is further understood and agreed that any forbearance by the Lender in exercising any right or remedy given here, or by applicable law, shall not be a waiver of such right or remedy.

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)

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EXHIBIT "B"

EXHIBIT "B"

Inst#:200909250003750 Fees:\$65.00 N/C Fee:\$0.00 09/25/2009 02:56:26 PM
Receipt#:71700 Requestor:FIRST AMERICAN NATIONAL DEFAULT TITLE INSURANCE
CONCORD Recorded By:RNS Pgs:2 DEBBIE CONWAY CLARK COUNTY RECORDER

**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. Deroncourt



EXHIBIT "C"

EXHIBIT "C"

Inet #: 201112050000543

Fee: \$18.00

N/C Fee: \$0.00

12/04/2011 09:21:31 AM

Receipt #: 997107

Requestor:

DOCUMENT PROCESSING SOLUTK

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) BY: Laura Dalley 12/1/11
 County of Tarrant) Laura Dalley AVP
 On 12/1/2011 before me Elsie Kroussakis, personally appeared
Laura Dalley AVP, know to me (or proved to me on the oath of
 or through Fern Kroussakis 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

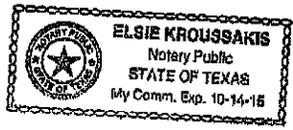


EXHIBIT "D"

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-273734T

Inst#: 20150129-0000551
Fee: \$224.00
N/C Fee: \$23.10
2/12/2015 08:05:14 AM
Receipt #: 2671064
Requestor:
PREMIUM TITLE TSG
Recorded By: RMJD Pgs: 8
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).**

Version 1.1 NV NOD0515

Page 1 of 4

**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 herein 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 Owen 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).

TS No.: 2015-01206-NV

**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 521, 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: *Chelsa Jackson*
Chelsa 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, Latetrika Thompkins, Notary Public, personally appeared Chelsa 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 *Latetrika Thompkins* (Seal)
Latetrika Thompkins



TX No.: 2015-01206-NV

AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

Record Title Holder:

Trustee Name and Address:
Western Progressive Nevada Inc
Northpark Town Center
1000 Abernathy Rd NE, Bldg 400,
Suite 200, Atlanta, GA 30328

OR

Borrower(s):
AMY B. FACKLAM

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, Carla Pilbo, being first duly sworn upon oath and under penalty of perjury, attests as follows:

1. I am an ~~Equity Management Consultant~~ of Qewen Loan Servicing, LLC. I am duly authorized to make this Affidavit on behalf of Qewen 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 Qewen 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.

Version 1.1 NV AOA 0515

TS No. 2013-01206-NV

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.

Version 1.1 NV AOA 0515

TS No.: 2015-01205-NV

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 3, 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: [Signature] 12/24/15
Print Name: Carla Prieto
Title: Contract Management Coordinator
Orwen 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

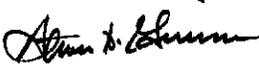
STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged and sworn before me this 24th day of DEC., year of 2015 by Carla Prieto as Contract Management Coordinator of Orwen Loan Servicing, LLC, who is personally known to me or has produced _____ as identification.

[Signature]
Notary Public - State of Florida Michelle Abraham
My Commission Expires: 10/03/2017



Version 1.4 NV AOA 0515


CLERK OF THE COURT

1 **OPPM**
Jeffrey S. Allison (NV Bar No. 8949)
2 Lindsey E. Peña (NV Bar # 13558)
3 **HOUSER & ALLISON, APC**
3900 Paradise Road, Suite 101
4 Las Vegas, Nevada 89169
Phone: (702) 410-7593/(949) 679-1111
5 Fax: (702) 410-7594/(949) 679-1112
jallison@houser-law.com
6 lpena@houser-law.com

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

10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

13 AMY FACKLAM,) Case No. A-16-733762-C
14 Plaintiff,)
15 vs.) Dept. No. VI
16) **OPPOSITION TO MOTION FOR**
17) **TEMPORARY RESTRAINING ORDER**
18) **AND PRELIMINARY INJUNCTION ON**
19) **SHORTENED TIME**
20) Date: April 12, 2016
21) Time: 8:30 a.m.
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22 **COMES NOW**, Defendant HSBC BANK USA, NATIONAL ASSOCIATION, AS
23 TRUSTEE FOR DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST,
24 MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-AR2, by and through its
25 servicer and attorney-in-fact OCWEN LOAN SERVICING, LLC (collectively "Defendant" or
26 "HSBC").
27
28

1 **I. INTRODUCTION**

2 This action has not been formally and properly served upon Defendant to date. The
3 undersigned was retained as counsel for Defendant and reviewed Plaintiff's Motion for
4 Temporary Restraining Order on or about April 1, 2016, just one business day before this
5 Opposition was apparently due upon shortened time. Also, the undersigned presently has a
6 calendar conflict on the shortened hearing date of April 12th due to previously scheduled
7 appearances for two other court hearings in California and Nevada around the same time.
8 (Allison Decl. hereto, ¶¶ 2, 6).

9
10 Plaintiff's Motion fails under the erroneous legal premise upon which this action is based.
11 Plaintiff concludes that Defendant's lien securing her \$326k principal loan obtained in 2006, and
12 any right to foreclose thereon is barred by the 6 year statute of limitations applicable to breach of
13 contract actions. Plaintiff bases this conclusion on a Notice of Default recorded in 2009 by a
14 prior loan servicer, which Plaintiff improperly mischaracterizes as an acceleration of the loan.

15
16 On the contrary, a notice of default gives notice of the borrower's default of prior
17 monthly installments in arrearage, and giving the borrower at least 90 days to cure before any
18 potential loan acceleration and issuance of a notice of trustee's sale. A non-judicial foreclosure
19 sale is not a judicial action or one for breach of contract. Plaintiff's loan contract provides the
20 full secured debt to be paid by the maturity date of January 1, 1037. (Exh. 1 to Plaintiff's
21 Motion, ¶ (F)).

22
23 Plaintiff attaches a Notice of Rescission of the 2009 Notice of Default and a new Notice
24 of Default recorded in January 2016 stating Plaintiff's subsequent default on the loan. To date,
25 there has been no Notice of Sale issued or a trustee's date scheduled. Moreover, Defendant has
26 placed the present foreclosure on hold pending this action. Loan modification terms have
27 recently been extended to Plaintiff per her application. (Allison Decl. ¶ 3). The loan has not
28

1 been accelerated. There is no immediate foreclosure or imminent threat of irreparable injury to
2 Plaintiff. The undersigned so informed Plaintiff's counsel on April 1, 2016. (Allison Decl. ¶ 4).

3 Plaintiff cannot cancel her loan debt and enjoin foreclosure indefinitely to keep her house
4 for free based on erroneous claims and insufficient evidence. Plaintiff can cure her loan default
5 to avoid any future acceleration or foreclosure. Plaintiff has not done so to date and has not
6 bothered to pay her property taxes and insurance. Plaintiff has not done equity and is not entitled
7 to the equitable relief she now seeks. Plaintiff's Motion should be denied.
8

9 **II. STANDARDS FOR INJUNCTIVE RELIEF**

10 In order to be entitled to injunctive relief, a plaintiff has the burden to prove a reasonable
11 probability of success on the merits and an imminent irreparable threat of injury for which there
12 is no adequate remedy at law. See, Pickett v. Comanche Construction, 108 Nev. 422, 836 P.2d
13 42 (1992); Dixon v. Thatcher, 103 Nev. 414, 742, P.2d 1029 (1997).

14 **III. EVIDENTIARY OBJECTIONS**

15 The Motion is not accompanied by any declaration of evidence from Plaintiff. Rather,
16 Plaintiff's counsel attached his own declaration testifying as to ultimate facts and potentially
17 thereby placing himself into a conflict as a witness. Defendant objects to portions of the
18 declaration of Jacob L. Hafter on the following grounds:
19

- 20 5. "Defendant, or its predecessor, has not tried to exercise its rights under the Deed
21 of Trust through taking any formal steps to initiate foreclosure until January 25,
22 2016, when Defendant filed another Notice of Default and Election to Sell [sic]
23 on the Property."

24 **Objections:** Lack of personal knowledge, lack of foundation, argumentative,
25 contradictory.

- 26 6. "This Notice of Default was filed on the property over six and a half years after
27 Plaintiff stopped making payments on her Mortgage (at the request of a
28 representative of the servicer at the time), and almost six and a half years since
Defendant, through its predecessor, filed notice a breach of the Mortgage on
September 25, 2009, accelerating all amounts due and owing thereunder."

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Objections: Lack of personal knowledge, lack of foundation, argumentative, erroneous legal conclusion, contradictory.

7. “The statute of limitations for enforcing a mortgage is six (6) years in Nevada.”

Objections: Lack of foundation, vague and ambiguous, non-factual, argumentative, erroneous legal conclusion.

8. “Accordingly, the current effort to foreclose on Plaintiff’s property is unlawful.”

Objections: Lack of foundation, vague and ambiguous, argumentative, legal conclusion.

10. “Without intervention by this Court, Plaintiff may lose her home, despite the fact that the statute of frauds [sic] prevents Defendant from foreclosing on the Property.”

Objections: Lack of personal knowledge, lack of foundation, speculative, argumentative, erroneous legal conclusion.

- Exhibits to Plaintiff’s Motion – **Objections:** Lack of authentication, no reference to same in the Declaration.

The declaration should be stricken or credibility of the proffered evidence weighed accordingly.

IV. PLAINTIFF FAILS TO PROVE PROBABILITY OF SUCCESS ON THE MERITS

Plaintiff concludes that Defendant is forever barred from any right to foreclose or recover upon the undisputed foreclosed loan based on her misinterpretation of a 2009 Notice of Default and misapplication of the 6 year statute of limitations for breach of contract actions. The 6 year statute of limitations suggested by Plaintiff is inapplicable here because (1) the 2009 Notice of Default did not effect an acceleration of the loan; and (2) the non-judicial foreclosure process is not a judicial action or a case filed for breach of contract. The Deed of Trust securing Plaintiff’s loan states the maturity date of January 1, 2037 as when all unpaid amounts are due, not March 2009. (Exh. to Motion, ¶ (F)).

1 **A. The 2009 Notice of Default Did Not Accelerate the Loan to Effect the Statute**

2 Pursuant to NRS § 107.080(1), a non-judicial trustee's sale is authorized pursuant to a
3 deed of trust securing the underlying loan obligation by the borrower. Pursuant to NRS §
4 107.080(2)(c), a notice of default is recorded to commence a non-judicial foreclosure of a
5 secured loan by estimating the amount of the arrearages in default and affording time and
6 method for a borrower to cure the default. If the borrower has not cured the default, then a
7 notice of sale may be recorded at least 90 days later giving notice of the trustee's sale date on the
8 total accelerated loan pursuant to NRS § 107.080(4). The trustee's sale is not a judicial process
9 or an action for breach of contract filed by Defendant against Plaintiff. Indeed, a foreclosure
10 must first be accomplished before a lender or servicer can file a breach of contract action under
11 the 'security first' or 'one-action rule.' Nevada Wholesale Lumber Co. v. Myers Realty, Inc., 92
12 Nev. 24, 28, 544 P.2d 1204, 1207 (1976).
13

14 There is no implied or actual acceleration on a notice of default. Acceleration occurs on
15 a notice of sale recorded at least 90 days later if a borrower does not cure the default in the
16 interim. Prior to the acceleration of a loan, the 6 year statute of limitations may begin to run only
17 with respect to each installment when due. Clayton v. Gardner, 107 Nev. 468, 470, 813 P.2d
18 997, 999 (1991) (“[t]he law is well settled that where the acceleration of the installment
19 payments in cases of default is optional on the part of the holder, then the entire debt does not
20 become due on the mere default on payment but affirmative action on the part of the creditor
21 must be taken...”).
22

23 The 2009 Notice of Default recorded by a prior servicer stated that a “default, in the
24 obligations in which such Deed of Trust is security has occurred in that payment as not been
25 made of.”
26

27 FAILURE TO PAY THE INSTALLMENT OF PRINCIPAL, INTEREST, AND
28 IMPOUNDS WHICH BECAME DUE ON 06/01/2009...THE ENTIRE PRINCIPAL

1 AMOUNT WILL BECOME DUE ON 01/01/2037 AS A RESULT OF THE
2 MATURITY OF THE OBLIGATION ON THAT DATE.

3 And further in pertinent part:

4 You may have the right to cure the default hereon and reinstate the one obligation
5 secured by such Deed of Trust above described. Section NRS 107.080 permits certain
6 defaults to be cured upon the payment of the amounts required by that statutory section
7 without requiring payment of that portion of principal and interest which would not be
8 due had no default occurred....

9 To determine if reinstatement is possible and the amount, if any, to cure the default,
10 contact....

11 (Exh. B to Motion).

12 The 2009 Notice of Default was then rescinded in or about December 2011, as it
13 appeared Plaintiff cured the default and resumed monthly loan payments and/or loss mitigation
14 options. (Exh. C to Motion). See, Trident Center v. Connecticut Gen. Life Ins., 847 F.2d 564,
15 567 (9th Cir. 1988) (a lender or servicer pursuing non-judicial foreclosure options in Nevada
16 ordinarily has the option under the loan documents whether to declare a default, whether and
17 when to accelerate, and to rescind the process before completion). A notice of rescission renders
18 moot disputes concerning the notice of default or its timing. Coley v. Accredited Home Lenders,
19 Inc., 2011 WL 1193072, at *4 (E.D.Ark. Mar. 29, 2011) (“Whether the Notice of Default was
20 valid is moot because the nonjudicial foreclosure sale described in the notice was cancelled.”);
21 Sakugawa v. MERS, Inc., 2011 WL 776051, at #6 (D.Haw. Feb. 25, 2011 (“the Notice of
22 Rescission moots Plaintiff’s claims for equitable relief—there is no existing controversy
23 regarding the Notice of Foreclosure because it was rescinded...”). These cases have cited with
24 favor by the Nevada Supreme Court as well.

25 After transfer of the loan servicing to the present servicer on or about November 30, 2013
26 and further efforts to assist Plaintiff to no avail regarding Plaintiff’s subsequent default, a new
27 Notice of Default was recorded in January 2016 to commence a new foreclosure. (Allison Decl.
28

1 ¶ 5, Exh. 1). The Notice gave Plaintiff time and manner to cure the arrearages subject to a
2 possible notice of sale and acceleration of the loan debt in the future. (Exh. D to Motion).

3 Thus, the 6 year statute of limitations for breach of contract actions does not bar
4 Plaintiff's obligation to repay her secured debt or Defendant's right to foreclose pursuant to the
5 Deed of Trust because (1) the 2009 Notice of Default was not an acceleration of the loan as a
6 matter of law; and (2) the Notice and non-judicial foreclosure commenced thereby was later
7 rescinded after the default was cured. Any subsequent acceleration was rendered moot by
8 Plaintiff's reinstatement and the rescission. There is no resulting statute of limitations bar to
9 Defendant's right to record the new 2016 Notice of Default, accelerate the loan if Plaintiff does
10 not cure the default or record a notice of trustee's sale of the secured collateral at some point in
11 the future.
12

13 **B. Plaintiff's Action and Motion Fails Because She Has Not Tendered the**
14 **Arrearages to Cure the Present Default**

15 Regardless of the above, an action challenging a loan foreclosure as wrongful in some
16 regard will not lie if the borrower does not "establish that at the time the power of sale was
17 exercised or the foreclosure occurred, no breach of condition or failure of performance existed
18 on the mortgagor's or trustor's part which would have authorized the foreclosure or exercise of
19 power of sale." See, Collins v. Union Federal Sav. & Loan Ass'n, 99 Nev. 284, 662 P.2d 610,
20 623 (1983); Pimental v. Countrywide Home Loans, Inc., 2011 WL 2619093 (D.Nev. 2011)
21 ("Nevada recognizes the tort of wrongful foreclosure only where a homeowner essentially asserts
22 a lender wrongfully exercised the power of sale and foreclosed upon his or her property when the
23 mortgagor was not in default on the mortgage loan.") (citing Collins); and, Ernestberg v.
24 Mortgage Investors Group, 2009 WL 160241, *6 (D.Nev. 2009). This requirement comes from
25 the age old maxim, he who seeks equity must do equity. See, McQuiddy v. Warem, 87 U.S. 14,
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1 19 (1873). Thus, the plaintiff must show they were not “in default when the power of sale was
2 exercised.” Collins, 99 Nev. at 304.¹ Without such a claim, the presumption is that Plaintiffs
3 cannot maintain an action challenging foreclosure of a defaulted loan. Id.

4 As undisputedly established, Plaintiff has defaulted on her loan and not tendered the
5 arrearage amounts to cure prior to filing this action. Plaintiff’s Complaint and this Motion
6 seeking to enjoin the foreclosure as wrongful are barred. Accordingly, Plaintiff does not have a
7 probability of success on the merits of her claims.

8
9 **V. THERE IS NO IMMINENT FORECLOSURE SALE OR IMMINENT INJURY**

10 To date, there been no loan acceleration or notice of sale on the present Notice of Default.
11 Moreover, Defendant has placed the non-judicial foreclosure on HOLD to preserve the present
12 status quo pending this action. (Allison Decl. ¶ 3). Plaintiff if she chooses has the right to cure
13 her default and/or further explore loss mitigation options. Accordingly, there is no foreclosure
14 sale to enjoin or imminent threat of injury to Plaintiff. Plaintiff’s Motion is unripe, moot, and/or
15 unnecessary. The Motion should be denied at least without prejudice at this time.
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19 ¹ Nevada follows to a large extent California foreclosure law. California courts have also long
20 established the “tender rule,” i.e. in order to maintain an action based on any claims challenging
21 foreclosure. The borrower must first offer or actually pay the entire loan amount or at least the amount
22 reasonably due. See, Munger v. Moore, 11 Cal.App. 3d 1, 6, 89 Cal.Rptr. 323 (1970); FPCI Re-Hab 01 v.
23 E & G Investments, Ltd., 207 Cal.App.3d 1018, 1022 (1989); United States Cold Storage v. Great
24 Western Savings & Loan Association, 165 Cal.App.3d 1214, 1225, 212 Cal.Rptr. 232 (1985); Arnolds
25 Management Corp. v. Eishen, 158 Cal.App. 3d 575, 577, 205 Cal.Rptr. 15 (1984); Bisno v. Sax, 175
26 Cal.App.2d 715, 346 P.2d 814 (1995); was due); Arnolds Management Corp. v. Eishen, 158 Cal.App.3d
27 575, 577-580, 205 Cal.Rptr. 15 (1984); Karlsen v. American Savings & Loan Association, 15 Cal.App.
28 3d 112 (1971); Abdallah v. United Savings Bank, 43 Cal. App. 4th 1101, 1109 (Cal.Ct.App. 1996) (a party
must tender the undisputed amount due and owing to challenge the validity of the foreclosure sale).
Courts in Nevada have followed an analogous tender rule as well. The tender rule was again recognized
by the Court stating that “reversing a [foreclosure] sale would be an extraordinary act of equity in a case
where there is in fact a default, and Plaintiffs have not indicated any ability or willingness to do equity (by
paying the mortgage arrearage) to receive such a remedy.” Olivas v. Carrington Mortg. Loan Trust, 2011
WL 240229 * 4 (D.Nev. Jan. 20, 2011); and see, Smith v. Community Lending, 2011 WL 1127046 * 2
(D.Nev. March 29, 2011) (Under Nevada law, “no damages claim for wrongful foreclosure lies where
there is in fact a default.”).

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VI. CONCLUSION

For the reasons set forth above, Defendant respectfully requests that Plaintiff's Motion be DENIED, and for such other and further relief as the Court deems warranted.

AFFIRMATION PURSUANT TO N.R.S. 239B.030

The undersigned hereby affirms that the above document does not contain a social security number pursuant to N.R.S. § 239.030B.

DATED: April 4, 2016

HOUSER & ALLISON
A Professional Corporation

/s/ Jeffrey S. Allison
Jeffrey S. Allison, Esq.
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

1 action. I further conveyed the terms of the resolution approved by Defendant pursuant to
2 Plaintiff's application.

3 5. Attached as **Exhibit "1"** is a true and correct copy of Defendant's notice of
4 transfer of servicing of the subject loan with a stated effective date of November 30, 2013 that I
5 obtained from my client's servicing records. I verified that the information in the notice
6 appeared accurate from other sources in my client's database records.
7

8 6. I presently have calendar conflicts on the shortened hearing date of April 12, 2016
9 30 at 8in that I have hearings in two other cases on or around that time in California and Nevada
10 which may prevent my attendance herein. I respectfully request the Court to accept Defendant's
11 Opposition to Plaintiff's Motion and excuse any unavoidable non-attendance by my office under
12 these circumstances. I apologize to the Court and counsel for any inconvenience in this regard.
13

14 I declare under penalty of perjury under the laws of the State of Nevada that the
15 foregoing is true and correct and that this declaration was executed this 4th day of April, 2016.
16

17 /s/ Jeffrey S. Allison
18 Jeffrey S. Allison
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Ocwen Loan Servicing, LLC
 WWW.OCWEN.COM
 Helping Homeowners is What We Do!SM

1661 Worthington Blvd, Ste 100
 West Palm Beach, FL 33409
 Toll Free: (800) 746-2936

December 9, 2013

Loan Number: 7131397235

Amy B Packlam
 1513 Shotgun Ln
 Henderson, NV 89014

Property Address: 1513 Shotgun Ln
 Henderson, NV 89014

**NOTICE OF SERVICING TRANSFER (RESPA)
 WELCOME TO OCWEN LOAN SERVICING, LLC**

Dear Customer(s):

Ocwen Loan Servicing, LLC ("Ocwen") welcomes you as a new customer. Effective November 30, 2013, the servicing of your mortgage loan, that is, the right to collect payments from you, is transferring from Bank Of America to Ocwen. Except in limited circumstances, the law requires that your present Servicer send you notice fifteen (15) days prior to service transfer. The new Servicer must also send you notice no later than fifteen (15) days after this effective date. The transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Your Prior Servicer is Bank Of America. If you have questions relating to the transfer of servicing from your Prior Servicer, please call Bank Of America Customer Care Center, Monday through Friday, between 7:00 am and 7:00 pm CST at 800-609-6607.

Effective November 30, 2013 please direct your monthly mortgage payments to your new Servicer, Ocwen. Bank Of America will stop accepting payments from you on November 29, 2013. Please send all payments to Ocwen at P.O. Box 8448, Carol Stream, IL 60197-6448. Please note that payments sent to any other location will cause a delay in posting. Payments and correspondence sent to Ocwen should include your new Ocwen Loan Number, as shown to the right.

If you use a Bill Pay Service, you will also need to inform them of this new payment address. For Western Union Quick Collect users, you can find the location nearest to you by calling (800) 238-5772 or visiting westernunion.com and clicking on "Find a location". At the location, please pay to name "OCWEN" and provide the loan number.

Your Loan Account Details
 as of November 30, 2013

Prior Account Number:
2282293

Ocwen Account Number:
7131397235

Property Address:
1513 Shotgun Ln
Henderson, NV 89014

Transfer Date:
November 30, 2013

Principal Balance:
\$525,288.70

Interest Balance:
-\$8,724.80

Loan Rate:
8.875%

Next Payment Date:
01/01/2014

Payment Amount:
\$1933.88

Ocwen Loan Servicing, LLC
 Contact Customer Care

Phone: (800) 746-0936

Payment Assistance:
 8:00am to 9:00pm ET M-F
 8:00am to 9:00pm ET Sat
 8:00am to 9:00pm ET Sun

Web: www.ocwenservicing.com

Mail:
 Attn: Customer Care Center
 P.O. Box 26738
 West Palm Beach, FL 33416-8738

NMIS # 1852

WELM0620

This communication is from a debt collector attempting to collect a debt; any information obtained will be used for that purpose. However, if the debt is in active bankruptcy or has been discharged through bankruptcy, this communication is not intended as and does not constitute an attempt to collect a debt.



Ocwen Loan Servicing, LLC
 WWW.OCWEN.COM
 Helping Homeowners is What We DoSM

1661 Worthington Road, Ste 100
 West Palm Beach, FL 33409
 Toll Free: (800) 746-2936

The transfer of servicing rights may affect the terms or the continued availability of mortgage life, disability insurance, or any other type of optional insurance. Not everyone has this type of insurance, but if you do, please be advised that it may not transfer to Ocwen Loan Servicing, LLC. However, to verify if Ocwen is able to offer any of these services, please call our Customer Care Center at (800) 746-2936 during business hours or contact an independent insurance agent for alternative coverage options.

Mortgage escrow accounts ensure homeowners' property taxes, fire and hazard insurance premiums, mortgage insurance premiums, and other escrow items are paid in a timely fashion. Escrow accounts provide assurance that there will be enough money to pay these bills when they are due so that the homeowner avoids the risk of lapsed insurance coverage or delinquent taxes. If you would like to establish an escrow account with Ocwen, please call our office at (800) 746-2936.

We appreciate the opportunity to serve your home loan needs. If you have questions relating to the transfer of servicing, please contact Ocwen's Customer Care Center, Monday through Friday between 8:00 am ET to 9:00 pm ET, Saturday 8:00 am ET to 5:00 pm ET or Sunday 9:00 am ET till 9:00 pm ET. Information concerning Ocwen and your mortgage loan may also be found online at www.ocwencustomers.com.

Sincerely,
 Ocwen Loan Servicing, LLC



ACH (Automated Payments) or One-time Web Payments

Automatic monthly payments or one-time web payments can be setup and managed from our website at www.ocwencustomers.com.

Western Union Quick Collect

Code City: OCWEN
 State: FLORIDA
 Reference: OCWEN LOAN NUMBER:
 7131397239
 Agent Locator: (800) 926-6000

MoneyGramSM

Receiver Code: 2355
 Payable To: OCWEN LOAN
 SERVICING, LLC
 City: ORLANDO
 State: FLORIDA
 Reference: OCWEN LOAN NUMBER:
 7131397239
 Agent Locator: (800) 926-9400

Check Payment Via Regular Mail

Address:
 Ocwen Loan Servicing, LLC
 P.O. Box 6440
 Carol Stream, IL 60197-6440

Please be sure to always include your Ocwen loan number with your payment.

1063693 444444881 7131397239 50 001863695

Please detach below and include with your monthly payment.



Amy B. Facklam
 Account Number: 7131397239

AMOUNT DUE	\$	<input type="text"/>
Additional Principal:	\$	<input type="text"/>
Additional Escrow:	\$	<input type="text"/>
Other: (Please Specify)	\$	<input type="text"/>
Total Enclosed:	\$	<input type="text"/>

OCWEN
 P.O. BOX 6440
 CAROL STREAM IL 60197-6440

EXHIBIT 1
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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:

OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ON SHORTENED TIME

I served the above-named document(s) by the following means to the persons as listed below:

- Electronic Service through Wiznet pursuant to NRCP 5(b)(2)(D) and EDCR 8.05**
- United States Mail, Postage Fully Prepaid**
- Personal Service**
- By Direct Email (as opposed to through the ECF System)**
- By Fax Transmission**
- By Messenger**

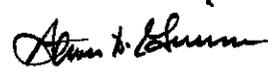
Jacob L. Hafter, Esq.
HafterLaw
6851 W. Charleston Blvd.
Las Vegas, NV 89117
Tel: (702) 405-6700
Fax: (702) 685-4184
jhafter@hafterlaw.com
kelli@hafterlaw.com

Attorney for Plaintiff AMY FACKLAM

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

Dated: April 4, 2016

/s/ Courtney Hershey
An employee of HOUSER & ALLISON, APC


CLERK OF THE COURT

1 **RPLY**
2 JACOB L. HAFTER, ESQ.
3 Nevada State Bar No. 9303
4 **HAFTERLAW**
5 6851 W. Charleston Blvd.
6 Las Vegas, Nevada 89117
7 Tel: (702) 405-6700
8 Fax: (702) 685-4184
9 jhafter@hafterlaw.com
10 *Counsel for Plaintiffs*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **AMY FACKLAM,**
14 Plaintiff,
15
16 vs.

Case No.: A-16-733762-C
Dept. No. VI

17 **HSBC BANK USA, National Association,**
18 **as TRUSTEE for DEUTCHE ALT-A**
19 **SECURITIES MORTGAGE LOAN**
20 **TRUST, MORTGAGE PASS-THROUGH**
21 **CERTIFICATES SERIES 2007-AR2;**
22 **DOES I through X; and ROE**
23 **CORPORATIONS I through X,**
24 inclusive,
25 Defendant.

26 **REPLY IN SUPPORT OF**
27 **MOTION FOR**
28 **TEMPORARY RESTRAINING**
ORDER
AND
PRELIMINARY INJUNCTION
ON
ORDER SHORTENING TIME

HEARING DATE: April 12, 2016
HEARING TIME: 8:30 AM

6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



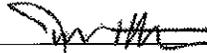
24 COMES NOW, Plaintiff, **AMY FACKLAM**, by and through its counsel of record, Jacob
25 L. Hafter, Esq., of the law firm **HAFTERLAW**, files this REPLY in furtherance of her Motion for
26 an order prohibiting Defendant, **HSBC BANK USA, National Association, as TRUSTEE for**
27 **DEUTCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-**
28 **THROUGH CERTIFICATES SERIES 2007-AR2.**, and any of their collective agents,

1 employees, attorneys, successors and/or anyone acting on their behalf, from (a) pursuing any
2 foreclosure sales related to that certain first deed of trust entered into on or about December 21,
3 2006, Plaintiff executed a deed of trust naming GreenPoint Mortgage Funding, In., as the
4 "Lender", and Marin Conveying Corp., as the "Trustee", and encumbering the Property with an
5 indebtedness in the amount of \$326,000.00 (referred to herein as Plaintiff's "Mortgage") until
6 this case has been resolved, and (b) staying the pending foreclosure mediation, for which Plaintiff
7 has made an election.

8 This **REPLY** is made and based upon the papers and pleadings on file herein, the attached
9 memorandum of points and authorities, and any oral argument that this Honorable Court may
10 entertain at the hearing on this matter.

11 Dated this 8th day of April, 2016.

12 **HAFTERLAW**

13
14 By: 

15 Jacob L. Hafter, Esq.
16 Nevada Bar Number 9303
17 6851 W. Charleston Blvd
18 Las Vegas, Nevada 89117
19 *Counsel for Plaintiffs*
20 *Counsel for Plaintiffs*

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6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 495-6700 Telephone
(702) 685-4184 Facsimile

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MEMORANDUM OF POINTS AND AUTHORITIES

Defendant appears to be a bit confused with the nature of this action. This is not a wrongful foreclosure; rather it is an action for declaratory relief and quiet title. See Complaint. Accordingly, despite Defendant's inclusion of their best wrongful foreclosure boilerplate language suggesting why Plaintiff "fails to prove probability of success on merits" because Plaintiff has not cured the current default, Opposition at Section IV, Plaintiff need not demonstrate that she has cured the present default to prevail. Whether Plaintiff is currently in default is irrelevant to whether Defendant can seek a contractual remedy for breach, a foreclosure, more than six years after the breach occurred.

To that end, Defendants err in stating to this Court that the "notice of default did not accelerate the loan." Opposition at Section IV.A. Defendants actually try to suggest that the "notice of sale" is what accelerates the loan! Opposition at 5:15-16.¹ The Nevada Supreme Court has been very clear about the concept of acceleration. In Cadle Co. II, Inc. v. Fountain, 281 P.3d 1158 (Nev., 2009), it said:

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

Plaintiff argues that the September 2009 Notice of Default was the affirmative step that accelerated her Mortgage. In this publicly recorded document, Defendant's predecessor publicly

¹ Defendant as far as to suggest that "[i]f the borrower has not cured the default, then a notice of sale may be recorded at least 90 days later giving notice of the trustee's sale date on the total accelerated loan pursuant to NRS §107.080(4)." Opposition at 5:7-9 (emphasis added). This is misleading, as NRS §107.080(4) says NOTHING about acceleration. While the sale is of an "accelerated loan", the loan became accelerated through the Notice of Default, not the Notice of Sale.

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Las Vegas, Nevada 89117
(702) 495-6700 Telephone
(702) 685-4184 Facsimile

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Las Vegas, Nevada 89117
(702) 495-6700 Telephone
(702) 685-4184 Facsimile

1 "declared and does hereby declare all sums secured thereby immediately due and payable and
2 has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations
3 secured thereby." Motion at Exhibit "B". While the language was quoted by Plaintiff in the
4 Motion, for clarification, Plaintiff hereby copies and pastes a copy of the material language from
5 the Notice of Default here for the benefit of opposing counsel²:

6
7 That by reason thereof, the present beneficiary under such deed of trust has deposited
8 with RECONTRUST COMPANY, N.A. such deed of trust and all documents evidencing
9 obligations secured thereby, and has declared and does hereby declare all sums secured
10 thereby immediately due and payable and has elected and does hereby elect to cause the
11 trust property to be sold to satisfy the obligations secured thereby.

12 Motion at Exhibit "B". Despite Defendant's blanket denial, the fact that the Notice of Default
13 stated that "all sums secured thereby [are] immediately due and payable," such was an
14 "affirmative action by the creditor must be taken to make it known to the debtor that [the creditor]
15 has exercised his option to accelerate." Feterl, 849 F.2d at 357. Accordingly, the statute of
16 limitations began to run on September 25, 2009, the date of the Notice of Default.

17 With respect to deceleration, the Nevada Supreme Court stated that "[b]ecause an
18 affirmative act is necessary to accelerate a mortgage, the same is needed to decelerate." Cadle
19 Co., 281 P.3d at 1158. Plaintiff raised the December 5, 2011, rescission filed in the official
20 records of the Clark County Recorder as document 20111205-0000543, to fulfill her duty of
21 candor to the Court. However, Plaintiff also noted that while, technically, the document that was
22 filed was called a "rescission" and was filed to "rescind, cancel and withdraw the [September
23 2009] Notice of Default and Election to Sell," it did not meet the legal test for a true deceleration.
24 That is because it did not alter the legal acceleration which was set in place by the September
25 2009 Notice of Default.

26
27 ² While the Opposition does cite to certain language in the Notice of
28 Default, Defendant conveniently omitted the actual relevant language which
"declared .. all sums secured [by the Mortgage] immediately due and payable"
- a clear acceleration.

1 The Rescission specifically said:

2
3 **RESCISSION OF ELECTION TO DECLARE DEFAULT**
4 **NEVADA**
5 NOTICE IS HEREBY GIVEN that RECONSTRUCT COMPANY, N.A., Trustee for the Beneficiary does
6 hereby rescind, cancel and withdraw the Notice of Default and Election to Sell hereinafter described,
7 provided, however, that this rescission shall not be construed as waiving, curing, attending to, or affording
8 any default, either past, present or future, under such Deed of Trust, or as impairing any right or remedy
9 thereunder, and it is and shall be deemed to be, only an election without prejudice not to cause a sale to be
10 made pursuant to such Notice of Default and Election to Sell, and it shall not in any way alter or change any
11 of the rights, remedies or privileges secured to Beneficiary and/or Trustee under such Deed of Trust, nor
12 modify, nor alter in any respect any of the terms, covenants, conditions or obligations therein contained.
13 Said NOTICE OF DEFAULT AND ELECTION TO SELL under Deed of Trust specifically described
14 therein was:
15 Recorded on 09/23/2009, as Instrument No. 2009023000730, in Book _____, Page _____
16 of Official Records of Clark County, Nevada.
17 The DEED OF TRUST affected by this notice recorded on 01/08/2007 as Instrument No. 0031436 in Book
18 3097008 Page _____, executed by AMY B. FACKLAM, A SINGLE WOMAN, as Trustor in Clark County,
19 Nevada.

20 Motion at Exhibit "C". Because the 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," id., and the Defendant's predecessor had already accelerated the Mortgage through that Notice of Default, the Rescission cannot be construed to have decelerated the loan. Accordingly, on September 24, 2015, six years after the filing of the September, 2009, Notice of Default, the statute of limitations ran.

21 Defendants also try to dissuade this Court by trying to link a loan modification that "it appeared Plaintiff cured the default and resumed monthly loan payments and/or loss mitigation options" to the Rescission. Opposition at 6:10-12. This is not, exactly, true either!

22 Plaintiff missed her first mortgage payment in June, 2009. She wasn't alone; rather, she was one of the thousands of Las Vegans who were hit hard by the economic downturn. She reached out for help, through counsel, and was given a temporary loan modification. Plaintiff not only made the three required payments, but made additional monthly payments while the servicer of the loan was working to implement a permanent loan modification. Ultimately, Plaintiff was denied for a loan modification. Plaintiff sued, alleging wrongful foreclosure, unjust enrichment and tortious breach of implied covenant of good faith and fair dealing. See Facklam v. BAC Home Loan Servicing, et. al., Case No. 2:11-cv-1267-JAD-CWH. That case survived motions

6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 495-6700 Telephone
(702) 685-4184 Facsimile



6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



1 to dismiss and summary judgment motions, and, ultimately, settled close to trial pursuant to a
2 confidential settlement.

3 It is not coincidence that the Rescission was filed on the next business day³ as
4 Defendant's predecessor, BAC Home Loan Servicing, accepted service of the complaint in that
5 matter. See Acceptance of Service, Document 8, Case No. 2:11-cv-1267-JAD-CWH, a true and
6 correct copy of which is attached hereto as Exhibit "A". Perhaps that is why a Rescission which
7 had no legal effect on the default or the acceleration was filed – it was a litigation tactic to suggest
8 to the court that there wasn't really a justiciable controversy.

9 With respect to Defendant's evidentiary objections, such should not prevent this Court
10 from issuing injunctive relief. With respect to the exhibits to the Motion and to this Reply, all are
11 public records of which this Court can take judicial notice. With respect to the portions of Mr.
12 Hafter's declaration to which they object, Mr. Hafter stands by all of them. Mr. Hafter has been
13 representing Ms. Facklam since 2009, through a number of venues and actions. Based on his
14 prior representation of her, the public records available and the evidence that he has seen in
15 preparing for this case, all of these statements are true and correct to the best of his knowledge.
16 As this case really rests on questions of law which can be addressed through facts established
17 through publicly recorded documents, a declaration from Plaintiff is not necessary.
18 Notwithstanding, attached as Exhibit "B" to this Reply is a copy of an affidavit which Plaintiff
19 has executed to support the Motion.

20 With respect to service,⁴ Plaintiff did have some difficulty serving HSBC Bank USA,
21 National Association, as there is no such entity registered in the State of Nevada with the
22

23 ³ In December, 2011, the 2nd was on a Friday, and the 5th was on a Monday.
24 The complaint in this case was originally filed in August, 2011. The parties
25 worked together for months to try to settle the case. Ultimately, to ensure
26 that service deadlines were met, opposing counsel agreed to accept service in
27 December. Hence, in a coordinated effort, the Rescission was executed the
day before opposing accepted service. It was filed the next business day.
The parties then worked together and stipulated seven extensions for filing a
responsive pleading. A motion to dismiss was ultimately filed – a motion
where in the Rescission was clearly noted for the court.

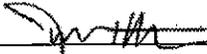
28 ⁴ Defendant suggests that "[t]his action has not been formally and
properly served upon Defendant to date," Opposition at 2:2; yet Defendant
fails to cite what was defective with the service.

1 Secretary of State's office to do business in Nevada. Accordingly, Plaintiff served HSBC
2 Finance Corporation, as such was registered with the Secretary of State, on March 28, 2016.
3 Plaintiff further researched the issue by looking at this Court's records from other cases involving
4 HSBC Bank USA, National Association, and found that there was a branch of HSBC Bank USA,
5 National Association, which has been served previously at 1111 N. Town Center; service was
6 effectuated at that location the next day, March 29, 2016. Affidavit of service was filed with this
7 Court on March 28, 2016, and, again, on April 7, 2016. Hence, this matter was properly served.

8 For these reasons, this Court should GRANT Plaintiff the injunctive relief requested in
9 the Motion.

10 Dated this 8th day of April, 2016.

11 **HAFTERLAW**

12
13 By: 

14 Jacob L. Hafter, Esq.
15 Nevada State Bar No. 9303
16 6851 W. Charleston Boulevard
17 Las Vegas, Nevada 89117
18 Tel: (702) 405-6700
19 Fax: (702) 685-4184
20 *Counsel for Plaintiff*

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6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of **HAFTERLAW**, and that on this 8th day of April, 2016, I served a copy of the foregoing **REPLY IN FURTHERANCE OF MOTION FOR TRO AND PRELIMINARY INJUNCTION** as follows:

Electronic Service—By filing a true copy thereof with the Court’s electronic docketing system, and electing that such be not only filed but served, as well; and/or

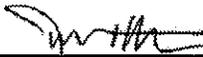
U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

Hand Delivery—By hand-delivery to the addresses listed below.

Jeffrey S. Allison, Esq.
Lindsey E. Pena, Esq.
HOUSER & ALLISON, APC
2900 Paradise Road, Suite 101
Las Vegas, Nevada 89169
Telephone: 702-410-7593
jallison@houser-law.com
lpna@houser-law.com

Attorneys for HSBC Bank USA National Association.


An employee of HAFTERLAW

6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



EXHIBIT "A"

EXHIBIT "A"

JACOB L. HAFTER, ESQ.
Nevada State Bar No. 9303
LAW OFFICE OF JACOB L. HAFTER & ASSOCIATES
7201 W. Lake Mead Blvd., Suite 210
Las Vegas, Nevada 89128
Tel: (702) 405-6700
Fax: (702) 685-4184

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AMY B. FACKLAM, an individual;
Plaintiff,

vs.

Case No.: 2:11-cv-01267

ACCEPTANCE OF SERVICE

BAC HOME LOANS SERVICING, LP;
RECON TRUST COMPANY, N.A.; ABN
AMRO MORTGAGE GROUP, INC.; DOE
Defendants I through X, inclusive; and ROE
CORPORATIONS A through Z, inclusive,
Defendants.

I, Jacob Bundick, Esq., counsel for BAC Home Loans Servicing, LP, and Recon Trust Company, N.A., hereby accept service of Plaintiff's Complaint in the above captioned matter on behalf of Defendants BAC Home Loans Servicing, LP, and Recon Trust Company, N.A.

Dated this 2nd day of December, 2011.

AKERMAN SENTERFITT, LLP

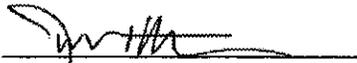
By: ___/s/ JACOB BUNDICK, ESQ____
JACOB BUNDICK, ESQ.
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144

7201 W. Lake Mead Blvd., Suite 210
Las Vegas, Nevada 89128
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



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Respectfully Submitted By:
Law Office of Jacob Hafter & Associates

By: 
Jacob L. Hafter, Esq.
Nevada Bar No. 9303
7201 W. Lake Mead Blvd, Suite 210
Las Vegas, Nevada 89128

7201 W. Lake Mead Blvd., Suite 210
Las Vegas, Nevada 89128
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



ACCEPTANCE OF SERVICE - 2

EXHIBIT "B"

EXHIBIT "B"

1 **AFFT**
2 **JACOB L. HAFTER, ESQ.**
3 Nevada State Bar No. 9303
4 **HAFTERLAW**
5 6851 W. Charleston Blvd.
6 Las Vegas, Nevada 89117
7 Tel: (702) 405-6700
8 Fax: (702) 685-4184
9 jhafter@hafterlaw.com
10 *Counsel for Plaintiffs*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **AMY FACKLAM,**
14 Plaintiff,
15
16 vs.

Case No.: A-16-733762-C
Dept. No. VI

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

AFFIDAVIT OF
AMY FACKLAM

25 Defendant.

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Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile

26 I, Amy Facklam, hereby depose and state:

- 27 1. I am the Plaintiff in the above captioned case.
- 28 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.

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(702) 405-6700 Telephone
(702) 685-4184 Facsimile



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

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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
25 that had been sold to another party and the servicing rights had been transferred to another party,
26 long before the case was settled.

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

4661 W. Charleston Blvd.
Las Vegas, Nevada 89127
(702) 408-6700 Telephonic
(702) 688-4184 Facsimile



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.

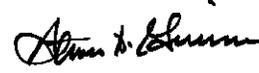
17
18 Further, Affiant Sayeth Naught.

19 I, AMY JACKLAM, 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
27
28
By:

Amy Jacklam


CLERK OF THE COURT

1 **ORDR**
Jeffrey S. Allison (NV Bar No. 8949)
2 **HOUSER & ALLISON, APC.**
3900 Paradise Road, Suite 101
3 Las Vegas, Nevada 89169
Phone: (702) 410-7593/(949) 679-1111
4 Fax: (702) 410-7594/(949) 679-1112
jallison@houser-law.com

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

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

10
11 AMY FACKLAM,) Case No. A-16-733762-C
12 Plaintiff,) Dept. No. VI

13 vs.) **~~PROPOSED~~ ORDER DENYING**
14 HSBC BANK USA, National Association, as) **MOTION FOR TEMPORARY**
TRUSTEE for DEUTSCHE ALT-A) **RESTRAINING ORDER AND**
15 SECURITIES MORTGAGE LOAN TRUST,) **PRELIMINARY INJUNCTION**
MORTGAGE PASS-THROUGH) **WITHOUT PREJUDICE**
16 CERTIFICATES SERIES 2007-AR2; DOES)
1 through X; and ROE CORPORATIONS 1)
17 through X, inclusive,)

18
19 This matter having come before the Court for hearing on April 12, 2016 on Plaintiff's
20 Motion for Temporary Restraining Order and Preliminary Injunction on Order Shortening Time
21 ("Motion"), with Opposition thereto filed by Defendant and appearances as noted on the record,
22 and with good cause therefore, the Court ruled as follows:

23 Plaintiff's Motion is DENIED without prejudice. The Court finds there is no immediate
24 irreparable injury to Plaintiff as there is no notice of sale issued or scheduled trustee's sale at the

1 time of the Motion, and Defendant's further ^{representation} trustee's sale process is on hold as a result of this
2 action. Counsel for Defendant agreed to provide 21 days advance notice to counsel for Plaintiff
3 before any Notice of Sale is recorded with the Clark County Recorder's Office should the hold
4 on Defendant's trustee's sale process be lifted during the pendency of this action.

5
6 **IT IS SO ORDERED** this 6 day of May, 2016.

7
8 
9 **DISTRICT COURT JUDGE**

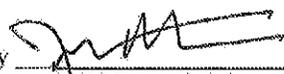
10 Respectfully submitted by:

11 HOUSER & ALLISON
12 Professional Corporation

13 By 
14 /s/ Jeffrey S. Allison
15 JEFFREY S. ALLISON, ESQ.

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

20 Approved as to form and content:
21 HAFTERLAW

22
23 By 
24 JACOB L. HAFTER, ESQ.

CERTIFICATE OF SERVICE

On May 24, 2016, I served the following document(s):

**ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION WITHOUT PREJUDICE**

I served the above-named document(s) by the following means to the persons as listed below:

- Electronic Service through Wiznet pursuant to NRCP 5(b)(2)(D) and EDCR 8.05**
- United States Mail, Postage Fully Prepaid**
- Personal Service**
- By Direct Email (as opposed to through the ECF System)**
- By Fax Transmission**
- By Messenger**

Jacob L. Hafter, Esq.
HafterLaw
6851 W. Charleston Blvd.
Las Vegas, NV 89117
jhafter@hafterlaw.com
kelli@hafterlaw.com

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

Dated: May 24, 2016


Courtney Hershey

Alvin D. Quinn
CLERK OF THE COURT

1 MSJD
JACOB L. HAFTER, ESQ.
Nevada State Bar No. 9303
2 HAFTERLAW
6851 W. Charleston Blvd.
3 Las Vegas, Nevada 89117
Tel: (702) 405-6700
4 Fax: (702) 685-4184
jhafter@hafterlaw.com
5 *Counsel for Plaintiff*

6 EIGHTH JUDICIAL DISTRICT COURT
7 CLARK COUNTY, NEVADA

9 AMY FACKLAM,
10 Plaintiff,

11 vs.

12
13 HSBC BANK USA, National Association,
as TRUSTEE for DEUTCHE ALT-A
14 SECURITIES MORTGAGE LOAN
TRUST, MORTGAGE PASS-THROUGH
15 CERTIFICATES SERIES 2007-AR2;
DOES I through X; and ROE
16 CORPORATIONS I through X,
inclusive,

17 Defendant.

Case No.: A-16-733762-C

Dept. No. VI

MOTION FOR
SUMMARY JUDGMENT

18 HEARING DATE: _____

19 HEARING TIME: _____

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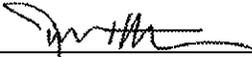
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22
23 COMES NOW, Plaintiff, AMY FACKLAM, by and through its counsel of record, Jacob
24 L. Hafter, Esq., of the law firm HAFTERLAW, to move this Court to find that, as a matter of law,
25 as presented in this MOTION FOR SUMMARY JUDGMENT, that Defendant, HSBC BANK
26 USA, National Association, as TRUSTEE for DEUTCHE ALT-A SECURITIES
27 MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES
28 SERIES 2007-AR2., and any of their collective agents, employees, attorneys, successors and/or

1 anyone acting on their behalf, may not pursue any foreclosure sales related to that certain first
2 deed of trust entered into on or about December 21, 2006, Plaintiff executed a deed of trust naming
3 GreenPoint Mortgage Funding, In., as the "Lender", and Marin Conveying Corp., as the
4 "Trustee", and encumbering the Property with an indebtedness in the amount of \$326,000.00
5 (referred to herein as Plaintiff's "Mortgage"), as the time for them to have done so has passed.
6 The Motion also seeks an order removing the deed of trust from title records.

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

10 Dated this 13th day of April, 2016.

11 **HAFTERLAW**

12
13 By: 

14 Jacob L. Hafter, Esq.
15 Nevada Bar Number 9303
16 6851 W. Charleston Blvd
17 Las Vegas, Nevada 89117
18 *Counsel for Plaintiff*

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6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 585-4184 Facsimile

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Las Vegas, Nevada 89117
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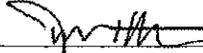
1 **NOTICE OF MOTION**

2 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that the undersigned will bring the foregoing **MOTION FOR**
4 **SUMMARY JUDGMENT** for a hearing in Department 6, on the 7 day of
5 June, 2016, at the hour of 8:30am, or, alternatively, as soon
6 thereafter as counsel may be heard.

7 Dated this 13th day of April, 2016.

8 **HAFTERLAW**

9
10 By: 

Jacob L. Hafter, Esq.
Nevada Bar Number 9303
6851 W. Charleston Blvd
Las Vegas, Nevada 89117
Counsel for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

Defendant waited until almost seven years from when Plaintiff stopped paying her mortgage to initiate the current foreclosure attempt. Such attempt should not be permitted under Nevada's statute of limitations for contract law. To that end, Plaintiffs are turning to this Court to tell the Defendant that neither it, nor its agents, trustees, or representatives, are able to collect on the Mortgage, because it waited too long. For that reason, Plaintiffs are a ruling that, as a matter of law, the statute of limitations for collecting on the promissory note or the Deed of Trust, including foreclosure of the Property, has passed, and, as such Defendants may no longer pursue foreclosure of the Property and the Deed of Trust shall be rescinded from the Property's title records.

II. STATEMENT OF FACTS¹

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

¹ See, also, Affidavit of Amy Facklam, attached hereto as Exhibit "E".

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Las Vegas, Nevada 89117
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1 2. On or about December 21, 2006, Plaintiff executed a deed of trust naming GreenPoint
2 Mortgage Funding, In., as the "Lender", and Marin Conveying Corp., as the "Trustee", and
3 encumbering the Property with an indebtedness in the amount of \$326,000.00 ("Deed of Trust"),
4 a true and correct copy of which is attached hereto as Exhibit "A".

5 3. In or around June 2009, Plaintiff missed a payment (based upon the recommendation of
6 the servicer of the Mortgage, at the time).

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

9 5. By filing the First Notice of Default, the Defendant, through its predecessor, initiated a
10 six year statute of limitations for bringing action against Plaintiff as a result of her alleged breach
11 of the Mortgage.

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

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

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

18 9. The Rescission stated:

19
20 NOTICE IS HEREBY GIVEN that RECONTRUST COMPANY, N/A/
21 Trustee for the Beneficiary does hereby rescind, cancel and withdraw the
22 Notice of Default and Election to Sell herein described, provided, however,
23 that this rescission shall not be construed as waiving, curing, extending to,
24 or affecting any default, either past, present or future, under such Deed of
25 Trust, or as impairing any right or remedy thereunder, and it is as shall be
26 deemed to be, only an election without prejudice not to cause a sale to be
27 made pursuant to such Notice of Default and Election to Sell, and it shall
28 not in any way alter or change any of the rights remedies or privileges
secured to the 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

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Recorded on 09/25/2009, as Instrument 200909250003750, in Book _____, Page _____, of the 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, in Trustor in Clark County, Nevada.

Id.

10. Because the Rescission specifically stated that it did not affect the underlying alleged breach of the Mortgage, it did not affect the statute of limitations.

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

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

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

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

15. This suit was filed shortly thereafter.

III. LEGAL STANDARD FOR SUMMARY JUDGMENT

"A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof." NRCP 56(a).

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1 NRCP 56(c) states in pertinent part “[t]he judgment sought shall be rendered forthwith if
2 the pleadings, depositions, answers to interrogatories, and admissions on file, together with the
3 affidavits, if any, show that there is no genuine issue as to any material fact and that the moving
4 party is entitled to a judgment as a matter of law.” NRCP 56(c). Summary judgment is
5 appropriate when the moving party is entitled to judgment as a matter of law, and no genuine
6 issue remains for trial. Foster v. Costco Wholesale Corp., 291 P.3d 150, 153, 128 Nev. Adv. Op.
7 71 (2012); NRCP 56. A dispute as to a material fact is genuine if there is sufficient evidence for
8 a reasonable jury to return a verdict for the nonmoving party. Kennedy v. Carriage Cemetery
9 Services, Inc., 727 F.Supp.2d 925, 928 (D. Nev. July 19, 2010).² “Summary judgment is
10 inappropriate if reasonable jurors, drawing all inferences in favor of the nonmoving party, could
11 return a verdict in the nonmoving party’s favor.” Diaz v. Eagle Produce Ltd. P’ship, 521 F.3d
12 1201, 1207 (9th Cir.2008) (citing United States v. Shumway, 199 F.3d 1093, 1103–04 (9th
13 Cir.1999)).

14 15 IV. ANALYSIS

16 This action is grounded in one primary claim – a request for declaratory relief asking
17 this Court to find that, as a matter of law, Defendants are no longer able to execute on their deed
18 of trust, or otherwise seek any damages as a result of Plaintiffs’ alleged breach of the mortgage
19 related to their Property.

20 Declaratory relief is available when: (1) a justiciable controversy exists; (2) the
21 controversy is between parties with adverse interests; (3) the party seeking declaratory relief has
22 a legally protectable interest; and (4) the issue involved in the controversy is ripe for judicial
23 determination. Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986) (citing Kress v. Corey,
24 65 Nev. 1, 26, 189 P.2d 352, 364 (1948)); see also Douglas v. Don King Productions, Inc., 736
25 F.Supp 223, 225 (1990). Here, there is a justiciable controversy – whether the statute of
26 limitations bars Defendants from enforcing their rights under the Deed of Trust or the related

27
28 ² “The Nevada Rules of Civil Procedure are based closely on the federal rules.” Barry v. Lidner,
119 Nev. 661, 669, 81 P.3d 537, 542 (2003).

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1 note. Clearly, the parties are adverse. The interest which Plaintiffs are seeking to protect is their
2 ownership of the Property. And, finally, given that the statute of limitations has run – almost a
3 year and a half ago – the controversy is ripe for judicial determination.

4 Under Nevada law, the Mortgage is a contract between Plaintiffs and the beneficiary of
5 the Mortgage. The remedy of any breach of the obligations contained in the Mortgage would be
6 a breach of contract action. Under Nevada law, a foreclosure of real property pursuant to NRS
7 Chapter 107 is a remedy available through a breach of contract action. Under Nevada law, no
8 breach of contract action shall be brought after six years from when the breach is alleged to have
9 occurred. NRS §11.190.

10 A statute of limitations prohibits a suit after a period of time that follows the accrual of
11 the cause of action. Allstate Ins. Co. v. Furgerson, 104 Nev. 772, 775 n. 2, 766 P.2d 904, 906 n.
12 2 (1988). A statute of limitations conditions the cause of action on filing a suit within the
13 statutory time period and “defines the right involved in terms of the time allowed to bring suit.”
14 P. Stolz Family P'ship L.P. v. Daum, 355 F.3d 92, 102 (2d Cir.2004). Such a statute seeks to give
15 a defendant peace of mind by barring delayed litigation, so as to prevent unfair surprises that
16 result from the revival of claims that have remained dormant for a period during which the
17 evidence vanished and memories faded. See Underwood Cotton Co. v. Hyundai Merch. Marine
18 (Am.), Inc., 288 F.3d 405, 408–09 (9th Cir.2002) (providing that statutes of limitations are
19 concerned with a defendant's peace of mind); Joslyn v. Chang, 445 Mass. 344, 837 N.E.2d 1107,
20 1112 (2005) (noting that statutes of limitations prevent stale claims from springing up and
21 surprising parties when the evidence has been lost). While statutes of limitations are intended to
22 protect a defendant against the evidentiary problems associated with defending a stale claim, these
23 statutes are also enacted to “promote repose by giving security and stability to human affairs....
24 They stimulate to activity and punish negligence.” Wood v. Carpenter, 101 U.S. 135, 139, 25
25 L.Ed. 807 (1879).

26 “[W]here contract obligations are payable by installments, the limitations statute begins
27 to run only with respect to each installment, when due, unless the lender exercises his or her
28 option to declare the entire note due.” Clayton v. Gardner, 107 Nev. 468, 470, 813 P.2d 997, 999

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1 (1991) (citations omitted) (*emphasis added*). Courts will seldom allow lenders to accelerate a
2 contract obligation unless the “acceleration [is] exercised in a manner so clear and unequivocal
3 that it leaves no doubt as to the lender’s intention.” *Id.* (*quoting United States v. Feterl*, 849 F.2d
4 354, 357 (8th Cir.1988)). Some “affirmative action by the creditor must be taken to make it
5 known to the debtor that [the creditor] has exercised his option to accelerate.” *Feterl*, 849 F.2d at
6 357.

7 In this case, due to a downturn in the economy, Plaintiff quickly ran into economic
8 trouble in the height of the economic crisis. Plaintiff reached out to Defendant (or their
9 predecessor) for help in 2009. Plaintiff was told that if she was not late on her mortgage, then
10 Defendant (or their predecessor) could not help her. Plaintiff, in adhering to the advice of the
11 representatives of Defendant, went late on her mortgage in June, 2009.

12 Four months later, Defendant took the affirmative action necessary to notify Plaintiff of
13 its intent to accelerate the Plaintiff’s mortgage. On or about September 25, 2009, Defendant filed
14 the First Notice of Default. See **Exhibit “B”**. As part of the First Notice of Default stated that
15 because there was a failure to pay the “installment of principal and interest plus impounds and/or
16 advances which became due on 04/01/2009 ... the “beneficiary under such deed of Trust has
17 deposited with RECONTRUST COMPANY, N.A. such deed of trust and all documents
18 evidencing obligations secured thereby and ***has declared and does hereby declare all sums***
19 ***secured thereby immediately due and payable*** and has elected and does hereby elect to cause the
20 trust property to be sold to satisfy the obligations secured thereby.” *Id.* (*emphasis added*). As a
21 result of this quoted section from the First Notice of Default, Defendant accelerated the Note and
22 Deed of Trust on September 25, 2009, or the day that the First Notice of Default was executed.
23 Accordingly, the six year statute of limitations began to run on September 25, 2009.

24 To date, it is has been approximately six (6) years and six (6) months since the Defendants
25 accelerated the mortgage, and yet they have not foreclosed on the Property. While they have
26 taken numerous steps in the foreclosure process, and there has been some litigation between the
27 parties prior to this case, any injunctive relief that may have been temporarily provided fails to
28 have toiled the statute of limitations more than a month.

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1 As such, Defendants had six (6) years to seek the contractual remedy of foreclosure of
2 the Property or to otherwise initiate a cause of action for Plaintiff's alleged default under the Deed
3 of Trust and related promissory note. Defendants did not successfully seek the contractual
4 remedy of foreclosure of the Property or to otherwise initiate a cause of action for Plaintiff's
5 alleged default under the Deed of Trust and related promissory note within this six year period.

6 As such, Plaintiffs shall prevail on the merits in this case.

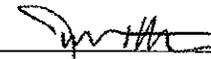
7
8 **V. CONCLUSION**

9 For the foregoing reasons, Plaintiff respectfully requests that this Court enter an Order in
10 her favor, declaring that the six year statute of limitations will prevent Defendant, **HSBC BANK**
11 **USA, National Association, as TRUSTEE for DEUTCHE ALT-A SECURITIES**
12 **MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES**
13 **SERIES 2007-AR2**, and any of its collective agents, employees, attorneys, successors and/or
14 anyone acting on their behalf, from pursuing any foreclosure sales related to that certain first deed
15 of trust entered into on or about December 21, 2006, Plaintiff executed a deed of trust naming
16 GreenPoint Mortgage Funding, In., as the "Lender", and Marin Conveying Corp., as the
17 "Trustee", and encumbering the Property with an indebtedness in the amount of \$326,000.00 and
18 ordering that the Deed of Trust be rescinded from the Clark County Recorder's records related to
19 the Property.

20 Dated this 13th day of April, 2016.

21 **HAFTERLAW**

22
23 By: _____


24 Jacob L. Hafter, Esq.
25 Nevada State Bar No. 9303
26 6851 W. Charleston Boulevard
27 Las Vegas, Nevada 89117
28 Tel: (702) 405-6700
Fax: (702) 685-4184
Counsel for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of **HAFTERLAW**, and that on this 13th day of April, 2016, I served a copy of the foregoing **MOTION FOR SUMMARY JUDGMENT** as follows:

- Electronic Service —By filing a true copy thereof with the district court's electronic filing system; and/or

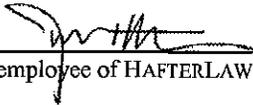
- U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

- Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCPC 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

- Hand Delivery—By hand-delivery to the addresses listed below.

Jeffrey S. Allison, Esq.
Lindsey E. Pena, Esq.
HOUSER & ALLISON, APC
2900 Paradise Road, Suite 101
Las Vegas, Nevada 89169
Telephone: 702-410-7593
jallison@houser-law.com
lpna@houser-law.com

Attorneys for HSBC Bank USA National Association.


An employee of HAFTERLAW

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Las Vegas, Nevada 89117
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(702) 685-4184 Facsimile

EXHIBIT "A"

EXHIBIT "A"

File

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

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

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

[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

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3029 1/01
WITH MERS
6501
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 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 seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

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 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.

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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

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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.

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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

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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:

 (Seal)
Amy B. Facklam -Borrower

_____ (Seal)
-Borrower

STATE OF NEVADA
COUNTY OF *Clark*

This instrument was acknowledged before me on *December 29th* ^{*PK*} 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."

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(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 $\frac{Two\ And\ 75}{100}$ 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.

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(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.

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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.

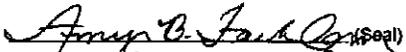
If all or any part of the Property or any Interest in the Property is sold or transferred (or if a Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by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

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


Amy B. Facklam (Seal)
-Borrower

(Seal)
-Borrower

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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.

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MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3150 1/01
Walters Kluwer Financial Services Page 1 of 3
VMP®-7R (0411).01

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.

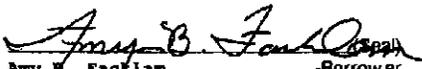
D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby 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.

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

 _____ (Seal)
Amy M. Facklam -Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

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.

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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.

 _____ (Borrower) _____ (Borrower)
Amy B. Facklam

_____ (Borrower) _____ (Borrower)

_____ (Borrower) _____ (Borrower)

_____ (Borrower) _____ (Borrower)

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EXHIBIT "B"

EXHIBIT "B"

Inst#:200909250003750 Fees:\$65.00 N/C Fee:\$0.00 09/25/2009 02:56:26 PM
Receipt#:71700 Requestor:FIRST AMERICAN NATIONAL DEFAULT TITLE INSURANCE
CONCORD Recorded By:RNS Pgs:2 DEBBIE CONWAY CLARK COUNTY RECORDER

**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 thereafter 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. Derroncourt, 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. Derroncourt



EXHIBIT "C"

EXHIBIT "C"

Inst #: 201112050000543

Fees: \$18.00

N/C Fee: \$0.00

12/08/2011 09:21:31 AM

Receipt #: 997107

Requestor:

DOCUMENT PROCESSING SOLUTK

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

NVRSSC_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) BY: Laura Dalley/12/1/11
 County of: Tarrant) Laura Dalley AVP
 On 12/1/2011 before me Elsie Kroussakis, personally appeared
Laura Dalley or through AVP, know to me (or proved to me on the oath of
Pers. Kroussakis) 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

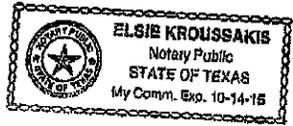


EXHIBIT "D"

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

Inet #: 20160129-0000551

Fee: \$224.00

HC Fee: \$25.00

01/29/2016 09:06:00 AM

Receipt #: 2571054

Requester:

PREMIUM TITLE TSG

Recorded By: RYOD Pgs: 2

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).

Version 1.1 NV NOD 0515

Page 1 of 4

**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 Owen 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 331, 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

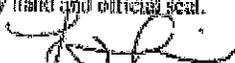
By: 
Chelsea Jackson, Trustee Sale Assistant

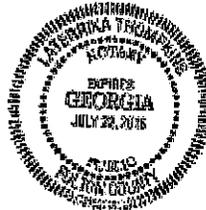
**WESTERN PROGRESSIVE - NEVADA, INC. MAY BE ACTING AS A DEBT COLLECTOR
ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED MAY BE USED FOR THAT
PURPOSE.**

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.

WITNESSE my hand and official seal.

Signature  (Seal)
Laterrika Thompkins



CS No.: 2015-01206-NV

AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

Record Title Holder:

Trustee Name and Address:
Western Progressive Nevada Inc
Northpark Town Center
1000 Abernathy Rd NE; Bldg 400,
Suite 200, Atlanta, GA 30328

OR

Borrower(s):
AMY B. FACKLAM

Property Address:
1513 Shotgun Lane, Henderson, NV 89014

Deed of Trust Document:
Instrument No.: 20070108-0001436

STATE OF Florida
COUNTY OF Polk

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

1. I am an Senior Management Coordinator 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, purchase 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.

Version 1.1 NV AOA 0515

TS No.: 2013-01206-NV

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 1600 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: 1-800-744-3936.

Version 1.1 NV AOA 0615

TS No.: 2015-01206-NV

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: 

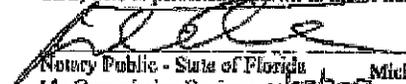
Print Name: Carla Priolo

Title: Contract Management Coordinator

Owens Loan Servicing, L.L.C., 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 24th day of DEC., year of 2015 by Carla Priolo as Contract Management Coordinator of Owens Loan Servicing, L.L.C., who is personally known to me or has produced _____ as identification.


Notary Public - State of Florida

Michelle Abraham

My Commission Expires: 10/08/2017



Version 1.4 NV AQA 0515

EXHIBIT “E”

EXHIBIT “E”

1 **AFFT**
2 **JACOB L. HAFTER, ESQ.**
3 Nevada State Bar No. 9303
4 **HAFTERLAW**
5 6851 W. Charleston Blvd.
6 Las Vegas, Nevada 89117
7 Tel: (702) 405-6700
8 Fax: (702) 685-4184
9 jhafter@hafterlaw.com
10 *Counsel for Plaintiffs*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **AMY FACKLAM,**
14 **Plaintiff,**

15 vs.

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

24 **Defendant.**

Case No.: A-16-733762-C

Dept. No. VI

AFFIDAVIT OF
AMY FACKLAM

6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile

25 I, Amy Facklam, hereby depose and state:

- 26 1. I am the Plaintiff in the above captioned case.
- 27 2. I am a resident of Clark County, Nevada.
- 28 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.

AFFIDAVIT OF AMY FACKLAM - 1

6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



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

6851 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 465-6700 Telephone
(702) 685-4184 Facsimile



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
25 that had been sold to another party and the servicing rights had been transferred to another party,
26 long before the case was settled.

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

6801 W. Charleston Blvd.
Las Vegas, Nevada 89117
(702) 305-6700 Telephone
(702) 685-4184 Facsimile



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. Harter 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.

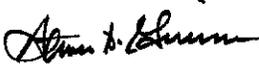
15 37. This action is not intended to harass the Defendant, nor is it based upon a frivolous
16 claim.

17 Further, Affiant Sayeth Naught.

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

21 Dated this 2 day of April, 2016.

22
23
24
25 By: 
Amy Facklam


CLERK OF THE COURT

1 **OPPO/MDSM**
Jeffrey S. Allison (NV Bar No. 8949)
2 Lindsey E. Peña (NV Bar # 13558)
HOUSER & ALLISON, APC
3 3900 Paradise Road, Suite 101
Las Vegas, Nevada 89169
4 Phone: (702) 410-7593/(949) 679-1111
Fax: (702) 410-7594/(949) 679-1112
5 jallison@houser-law.com
lpena@houser-law.com

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

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

11 AMY FACKLAM,
12 Plaintiff,

13 vs.

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

) Case No. A-16-733762-C

) Dept. No. VI

) **OPPOSITION TO PLAINTIFF'S**
MOTION FOR SUMMARY JUDGMENT;
COUNTER-MOTION TO DISMISS THE
COMPLAINT

) [N.R.C.P. 12(b)(5), 56]

) Date: June 7, 2016
) Time: 8:30 a.m.
) Dept: 6

19 Defendant HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR
20 DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-
21 THROUGH CERTIFICATES SERIES 2007-AR2, by and through its servicer and attorney-in-
22 fact OCWEN LOAN SERVICING, LLC (collectively "Defendant" or "HSBC"), by and through
23 its counsel, submits the following in Opposition to Plaintiff's Motion for Summary Judgment
24

1 (“MSJ”) with hearing noticed for June 7, 2016 in the above-department. Defendant also submits
2 the following Counter-Motion and hereby moves the Court pursuant to N.R.C.P. 12(b)(5) for an
3 order dismissing with prejudice the claims alleged in Plaintiff’s Complaint.

4 Defendant’s Counter-Motion to Dismiss (“Motion”) is made on the grounds that
5 Plaintiff’s Complaint fails to state a claim upon which relief can be granted and/or that
6 Defendant is entitled to a judgment of dismissal. This Motion is based upon this Notice, NRCP
7 12(b)(5), the following Memorandum of Points and Authorities, matters for which judicial notice
8 is requested and/or proper, and any further matter and argument the Court may entertain at the
9 time of hearing.

10 **NOTICE OF MOTION**

11 TO: ALL COUNSEL OF RECORD:

12 PLEASE TAKE NOTICE that on the 7th day of June, 2016, at 8:30 a.m./p.m in
13 Department VI of the above-entitled Court pursuant to Plaintiff’s MSJ noticed at that time, or as
14 soon thereafter as the matter may be heard, Defendant HSBC BANK USA, NATIONAL
15 ASSOCIATION, AS TRUSTEE FOR DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN
16 TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-AR2, by and
17 through its servicer and attorney-in-fact OCWEN LOAN SERVICING, LLC (collectively
18 “Defendant” or “HSBC”) will bring the foregoing Counter-Motion to Dismiss the Complaint
19 (“Motion”) on for further hearing at such time.

20 DATED this 18th day of April, 2016. HOUSER & ALLISON, APC

21 By /s/ Jeffrey S. Allison
JEFFREY S. ALLISON

22
23 Attorneys for HSBC BANK USA, NATIONAL
24 ASSOCIATION, AS TRUSTEE FOR DEUTSCHE
ALT-A SECURITIES MORTGAGE LOAN
TRUST, MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2007-AR2

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff filed the Complaint in this action on March 21, 2016 and purported to serve a
4 different entity than that of Defendant on or about March 29, 2016. Plaintiff's Motion for TRO
5 and Preliminary Injunction was denied by the Court on April 12, 2016. Plaintiff then filed her
6 MSJ the next evening on April 13, 2016 before the date of response to the Complaint by
7 Defendant, and prior to any early case conference under NRC 16.1 or discovery. Defendant
8 submits the following in Opposition to Plaintiff's MSJ and as a Counter-Motion to Dismiss in
9 response to Plaintiff's Complaint under Rule 12(b)(5).

10 Plaintiff obtained her loan in 2006 for the original principal amount of \$326k. Her MSJ
11 and Complaint challenge Defendant's current non-judicial foreclosure of her loan on the sole
12 ground that any such foreclosure is barred by the 6-year statute of limitations applicable to
13 actions for breach of contract. Plaintiff bases that conclusion on a notice of default recorded by
14 the prior loan servicer on September 25, 2009.

15 Plaintiff's Complaint asserts two causes of action for (1) declaratory relief/quiet title, and
16 (2) injunctive relief on this sole premise. Plaintiff mischaracterizes the statutory import and
17 effect of the notice of default, and contends without legal or evidentiary support that the notice of
18 default effected an acceleration of the loan. Plaintiff glosses over or ignores the effect of the
19 2011 rescission of the 2009 notice of default and non-judicial foreclosure, upon her
20 reinstatement, loan modification and payments thereafter. She alleges that as a result of the 2009
21 notice of default subsequently rescinded, her loan should be extinguished and Defendant is now
22 barred from conducting any non-judicial foreclosure sale under the statute of limitations.

23 Plaintiff's Complaint and MSJ fail on erroneous legal premise upon which they are
24 based. Pursuant to NRS 107.080 *et seq.* governing the non-judicial trustee's sale process in

1 Nevada, a notice of default sets forth the arrearages in default under the loan and election to
2 proceed with the trustee sale process. The borrower then has the opportunity to timely elect
3 mediation under the Nevada Foreclosure Mediation Rules ("FMR"), and following any
4 applicable certificate of completion by the Mediation Office then has at least 90 days to bring
5 current the loan arrearages in default. If the borrower fails to do so, the loan can then be
6 accelerated with a notice of sale recorded to notify borrower that a trustee's sale has been
7 scheduled at least 20 days thereafter giving the approximate accelerated amount for
8 reinstatement prior to the stated date, time, place for the trustee's sale. This non-judicial
9 trustee's sale process is not a judicial action filed in a court or a lawsuit filed for breach of
10 contract. Notwithstanding, the rescission of the 2009 notice of default and foreclosure upon
11 Plaintiff's loan reinstatement stopped any argued running of the statute thereon.

12 There has been no notice of sale issued in Defendant's present non-judicial foreclosure
13 process and the loan has not been accelerated. The 6-year statute of limitations is inapplicable to
14 bar Defendant's present non-judicial foreclosure. Plaintiff can cure her default to avoid an
15 acceleration of the loan and notice of sale. Plaintiff has not done so or tendered any monies to
16 date. She would rather use this action in an attempt to extinguish her secured loan and keep her
17 house for free without bothering to pay her property taxes or insurance either with Defendant is
18 presently advancing to further protect the secured property. Plaintiff's Complaint and MSJ fails
19 to state a claim or establish evidence to support her claims and as a matter of law. Plaintiff's
20 MSJ should be denied, and Defendant's Motion to Dismiss should be granted.

21 **II. STATEMENT OF FACTS**

22 Defendant responds to the Statement of Facts asserted in Plaintiff's MSJ, and sets forth
23 additional facts as follows:
24

- 1 1. Undisputed that Plaintiff's action involves the secured real property at 1513 Shotgun
2 Lane, Henderson, Nevada 89104 ("property").
- 3 2. Undisputed that Plaintiff obtained the subject loan and on or about December 21,
4 2005 executed a Note in the principal amount of \$326,000 and a recorded Deed of
5 Trust securing the loan as a lien against the property, and which was subsequently
6 assigned to Defendant. The loan provides that the full secured debt be paid by the
7 maturity date of January 1, 2037. (Cplt. ¶¶ 2(a), 12; MSJ ¶ 2, Exh. A ¶ (F).
- 8 3. Undisputed that Plaintiff defaulted on her loan at some time in 2009 leading to the
9 notice of default recorded on behalf of the prior loan servicer on September 25, 2009.
10 Erroneous legal conclusions and disputed regarding Plaintiff's contention that the
11 notice of default accelerated the loan, constituted a notice of sale, stated a scheduled
12 trustee's sale, and/or commenced the 6-year statute of limitations to extinguish
13 Plaintiff's secured loan or bar Defendant's present non-judicial foreclosure. (Cplt. ¶¶
14 2(b)-(g),13-15; MSJ ¶¶ 3-5, Exh. B, Facklam Decl. ¶¶ 5, 6, 9).
- 15 4. Undisputed that on July 20, 2011, a notice of sale was recorded on behalf of the prior
16 loan beneficiary and servicer setting a stated trustee's sale for August 8, 2011. (Cplt.
17 ¶¶ 16-17; MSJ ¶¶ 6-7, Facklam Decl. ¶¶ 22-23).
- 18 5. Undisputed that on December 5, 2011, the noticed trustee's sale was postponed and a
19 Rescission of the notice of default was recorded on behalf of the prior loan
20 beneficiary and servicer as a result of Plaintiff's reinstatement, loan modification
21 agreement by which Plaintiff then made monthly payments, and/or settlement
22 agreement with the prior loan servicer following her lawsuit filed against them styled
23 as Facklam v. BAC Home Loan Servicing et al., Case No. 2:11-cv-1267-JAD-CW.
24 Erroneous legal conclusion regarding Plaintiff's contention that the Rescission and

1 these intervening events did not effect, toll or cease any running of the statute of
2 limitations. (Cplt. ¶¶ 18-20; MSJ ¶¶ 8-10, Exh. C, Facklam Decl. ¶¶ 10-13, 18, 21,
3 24-26).

4 6. The loan servicing was transferred from the prior servicer Bank of America to
5 Ocwen Loan Servicing, LLC (“Ocwen”) on or about November 13, 2013. Ocwen as
6 servicer of the loan then continued to work with Plaintiff regarding any further
7 modification or loss mitigation possibilities to avoid foreclosure. (Defendant’s Opp.
8 to Motion for TRO & Prelim. Inj., Exh. 1; MSJ, Facklam Decl. ¶¶ 5, 27).

9 7. Undisputed that on January 25, 2016, Defendant through its servicer and substituted
10 trustee recorded a Notice of Default to commence a new non-judicial foreclosure
11 process upon Plaintiff’s default subsequent to the above. (Cplt. ¶¶ 22-23; MSJ ¶¶ 12-
12 13, Exh. D).

13 8. To date, there has been no loan acceleration or notice of sale recorded subsequent to
14 the Notice of Default to advance Defendant’s non-judicial foreclosure process. The
15 process is now on hold to preserve the present status quo pending this action.
16 Plaintiff was provided with another loan modification offer per her application as
17 recent as April 1, 2016, which was denied by Plaintiff through her counsel herein.
18 (Defendant’s Opp. to Motion for TRO & Prelim. Inj., Allison Decl. ¶¶ 3, 4).

19 **III. MOTION TO DISMISS AND SUMMARY JUDGMENT STANDARDS**

20 Dismissal is proper under NRCP 12(b)(5) where the pleadings do not set forth the
21 elements to make a prima facie claim supporting the relief sought. Lubin v. Kunin 117 Nev.107,
22 17 P.3d 422, 427 (2001); Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985). A complaint
23 may be dismissed for failure to state a claim where there it lacks a cognizable legal theory or
24 sufficient facts under a cognizable legal theory. Bell Atlantic Corp. v. Twombly, 550 U.S. 544,

1 555 (2007); and see, Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir.
2 2008) (complaint “must allege sufficient facts ‘to raise a right to relief above the speculative
3 level’”); Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (complaint does not allege sufficient
4 facts to raise a right to relief above the speculative level if it contains nothing more than “labels
5 and conclusions” or a “formulaic recitation of the elements of a cause of action.”).

6 With respect to the similar Federal Rule, the Court on a motion to dismiss need not
7 accept as true unwarranted deductions of fact, legal characterizations, or conclusory allegations
8 or unreasonable inferences in a complaint. See, State of Nev. v. Buford, 708 F.Supp. 289, 292
9 (1989)(F.R.C.P. 12(b)(6)). The Court may disregard allegations in a complaint if contradicted
10 by facts established in documents exhibited, referenced, or which are central to the plaintiff’s
11 claims. Id.; and see, Wynn v. Clark Co. Bd. Of Com’rs., 74 Fed.Appx. 808, 809 (9th Cir. 2003)
12 citing to, Parrino v. FHP, Inc., 146 F.3d 699, 706 (9th Cir. 1998)(F.R.C.P. 12(b)(6)). This
13 prevents plaintiffs from deliberately omitting references to documents upon which their claims
14 are based. Parrino, id.

15 If matters outside the pleadings are presented or proper, the Court may treat the motion
16 as a motion for summary judgment. N.R.C.P. 12(b). “The party moving for summary judgment
17 bears the initial burden of production to show the absence of a genuine issue[dispute] of
18 material fact. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 602, 172 P.3d 131,
19 134 (2007). “A genuine issue of material fact exists when a reasonable fact finder could return
20 a verdict for the non-moving party.” LaMantia v. Redisi, 118 Nev. 27, 29; 38 P.3d 877, 879
21 (2002). Whether by way of motion to dismiss or for summary judgment, judgment is proper
22 where an essential element of a claim for relief is absent. Bulbman, Inc. v. Nevada Bell, 108
23 Nev. 105, 111, 825 P.2d 588, 592 (1992).

24

1 **IV. PLAINTIFF'S MSJ IS PREMATURE**

2 NRCP 16.1 requires an early case conference and initial disclosures at the earliest 30
3 days after Defendant answers the complaint. The Rule contemplates no formal discovery until
4 afterward. Defendant has not answered Plaintiff's Complaint. Even based on Plaintiff's
5 purported service of process of the named Defendant through another entity on or about March
6 29, 2016, Defendant's response to the Plaintiff's Complaint was not yet due at the time she filed
7 the MSJ.

8 The parties have not exchanged initial disclosures, conducted an early case conference,
9 or filed an early case conference report under NRCP 16.1. As a result, discovery has not begun
10 and it has not been possible for Defendant to pursue the issues in Plaintiff's MSJ filed 23 days
11 after she filed her Complaint. See, Aviation Ventures, Inc. v. Joan Morris, Inc., 121 Nev. 113,
12 118-19, 110 P.3d 59, 63 (2005) (when an early case conference report per Rule 16.1 has not
13 been filed and as a result discovery has not commenced, a plaintiff's MSJ is premature).

14 Defendant should be afforded the opportunity identify the operative facts, develop a
15 discovery plan and pursue discovery, including written requests to and the deposition of
16 Plaintiff as well as subpoenas to third parties such as the prior servicer if necessary. NRCP
17 56(d), (f). Defendant is otherwise prejudiced whereas there is no intervening prejudice to
18 Plaintiff to continue living in her house mortgage and tax free as further established herein.

19 **V. EVIDENTIARY OBJECTIONS**

20 Plaintiff's MSJ attaches one declaration from Plaintiff discussing events with the prior
21 servicer, non-party Bank of America, prior to the involvement of Defendant through its current
22 servicer Ocwen. Ms. Facklam's declaration provides no authentication, testimony, or evidence
23 for several of the assertions in her MSJ. Defendant objects as follows to the Facklam
24 declaration attached to the MSJ as Exh. E:

- 1 • Entire declaration – lack of authentication of documents referenced and exhibits
- 2 attached to the MSJ;
- 3 • Paragraphs 14 - hearsay

4 **VI. THE FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF/QUIET**

5 **TITLE FAILS**

6 Plaintiff's first cause of action is alleged as a hybrid claim for declaratory relief and to
7 quiet title. Whether under N.R.S. § 30.040 or otherwise, declaratory relief requires a present and
8 actual controversy between the parties as to an actionable existing or future right. See, Golden v.
9 Zwickler, 394 U.S. 103, 109 (S.Ct. 1969). Declaratory relief is not a claim in and of itself, but
10 rather a remedy based upon underlying claims stated. See, e.g., Stock West, Inc. v. Confederated
11 Tribes of Coville Reservations, 873 F.2d 1221, 1225 (9th Cir. 1989) (no substantive cause of
12 action for declaratory judgment).

13 Turning to the claim as one for quiet title, it is long established that a quiet title claim
14 requires a plaintiff to allege and establish that the defendant is unlawfully asserting an adverse
15 claim to title to real property. Union Mill & Mining Co. v. Warren, 82 F. 519, 520 (D.Nev.
16 1897); Clay v. Scheeline Banking & Trust Co., 40 Nev. 9, 159 P. 1081, 1082 -1083 (1916). A
17 plaintiff must not only establish the legal right, but must establish an equitable right to quiet title.
18 See MacDonald v. Krause, 77 Nev. 312, 317-18, 362 P.2d 724 (1961) (quiet title is equitable in
19 nature); Transaero Land & Dev. Co. v. Land Title Co. of Nev., Inc., 108 Nev. 997, 1001, 842
20 P.2d 716 (1992) (“[I]n seeking equity, a party is required to do equity.”).

21 Plaintiff mischaracterizes the effect of the September 2009 notice of default and
22 misapplies the 6-year statute of limitations for filing of breach of contract actions. The statute of
23 limitations suggested by Plaintiff is inapplicable here as a matter of law because (1) the
24 September 2009 notice of default did not effect an acceleration of the loan or a scheduled

1 trustee's sale under NRS 107.080 *et seq.*; and (2) the non-judicial foreclosure process is not a
2 judicial action at all let alone a case filed by Defendant asserting a claim for breach of contract.

3 **A. The Loan Maturity Date is January 2037 when all Secured Amounts are Due**

4 The Deed of Trust securing Plaintiff's loan states the maturity date of January 1, 2037 as
5 when all unpaid amounts are due. Nowhere does it state that the loan is accelerated and the full
6 secured loan debt due immediately upon a notice of default for payments due, such as the
7 September 2009 notice of default. (MSJ Exh. 1, ¶ (F)).

8 **B. The 2009 Notice of Default Did Not Accelerate the Loan to Effect the Statute**

9 Under NRS § 107.080(1), a non-judicial trustee's sale is authorized pursuant to a deed of
10 trust securing the underlying loan obligation by the borrower. Pursuant to NRS § 107.080(2)(c),
11 a notice of default is recorded to commence a non-judicial foreclosure of a secured loan by
12 estimating the amount of the arrearages in default and affording time thereafter for a borrower to
13 cure the default. If after any timely borrower-elected foreclosure mediation under the FMR's
14 and certificate issued by the Nevada Administration Office if applicable pursuant to NRS
15 107.086, and the borrower has still not cured the default at least 90 days after the notice of
16 default, a notice of sale may then be recorded with an estimation of the then total accelerated
17 loan debt and a scheduled date and time for a trustee's sale pursuant to NRS § 107.080(4). The
18 loan is not accelerated for sale by a notice of default recorded pursuant to NRS § 107.080(1).
19 Acceleration occurs when the notice of sale is recorded at least 90 days later if the default is not
20 addressed through mediation or otherwise cured.

21 Further, the statutory trustee's sale process is not a judicial action or an action filed
22 against the borrower for breach of contract. Plaintiff's hollow suggestion otherwise is not
23 supported with a citation to any authority. Indeed, such a foreclosure must be attempted or occur
24 before an action for breach of contract can be filed under the 'security first' or 'one-action rule.'

1 Nevada Wholesale Lumber Co. v. Myers Realty, Inc., 92 Nev. 24, 28, 544 P.2d 1204, 1207
2 (1976).

3 Prior to an acceleration of a loan, the 6-year statute of limitations may begin to run only
4 with respect to each installment when due. Clayton v. Gardner, 107 Nev. 468, 470, 813 P.2d
5 997, 999 (1991) (“[t]he law is well settled that where the acceleration of the installment
6 payments in cases of default is optional on the part of the holder, then the entire debt does not
7 become due on the mere default on payment but affirmative action on the part of the creditor
8 must be taken...”). As pointed out in Plaintiff’s MSJ, courts seldom find a loan acceleration
9 unless it is “exercised in a manner so clear and unequivocal that it leaves no doubt as the lender’s
10 intention.” Clayton, at 470, 999. So unless there is clear and unequivocal further action by the
11 lienholder or servicer leaving no doubt as to an acceleration of the loan on a notice of default in
12 circumvention of Nevada foreclosure statutes, the 6-year statute to bar a secured lien would
13 begin to run upon loan acceleration and continue to run where there is no further action by the
14 parties to address, foreclose, or otherwise effect a tolling of the statute.

15 Again, Plaintiff concludes based on the boilerplate form language of the 2009 notice of
16 default, without any supporting citation to legal authority or evidence, the it somehow effected
17 an immediate acceleration of the loan. The 2009 Notice of Default recorded by a prior servicer
18 stated that a “default, in the obligations in which such Deed of Trust is security has occurred in
19 that payment as not been made of:”

20 FAILURE TO PAY THE INSTALLMENT OF PRINCIPAL, INTEREST, AND
21 IMPOUNDS WHICH BECAME DUE ON 06/01/2009...THE ENTIRE PRINCIPAL
22 AMOUNT WILL BECOME DUE ON 01/01/2037 AS A RESULT OF THE
23 MATURITY OF THE OBLIGATION ON THAT DATE.

24 And further in pertinent part:

 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

1 without requiring payment of that portion of principal and interest which would not be
2 due had no default occurred....

3 To determine if reinstatement is possible and the amount, if any, to cure the default,
4 contact....

5 (Exh. B to MSJ).

6 The notice of default stating the defaulted payment amounts in arrears as of "06/01/2009"
7 with boilerplate form language that an election has been commenced for the non-judicial
8 trustee's sale process was not a notice of sale and did not state or effect an immediate
9 acceleration of the full secured loan indebtedness. Indeed, the notice stated that Plaintiff had
10 "the right to cure the default" pursuant to "Section NRS 107.080." The notice further reiterated
11 that "THE ENTIRE PRINCIPAL AMOUNT WILL BECOME DUE ON 01/01/2037 AS A
12 RESULT OF THE MATURITY OF THE OBLIGATION ON THAT DATE." (Exh. B to MSJ).

13 The 2009 notice of default is not clear and unequivocal evidence without doubt that the
14 loan was immediately accelerated upon the recordation of that notice. If Plaintiff's legal
15 conclusion was correct, it would eviscerate the required notice process for trustee's sales under
16 NRS § 107.080 *et seq.*, and render meaningless the requirement for a subsequent notice of sale
17 on the full amount of the accelerated loan indebtedness under NRS § 107.080(4). At most, the 6-
18 year statute of limitations for Defendant's filing of a breach of contract action commenced with
19 the Notice of Sale recorded on behalf of the prior servicer on July 20, 2011. Even assuming the
20 statute is applicable, the notice of sale was recorded within the 6-year period prior to Plaintiff's
21 filing of her Complaint herein on March 21, 2016 and is not barred thereby.

22 **C. Any Acceleration of the Debt by the 2011 Notice of Sale and Running of the**
23 **Statute was Terminated by the Subsequent 2011 Rescission**

24 In any event, the 2009 notice of default and non-judicial foreclosure process commenced
thereby was then rescinded with the Notice of Rescission recorded on December 5, 2011, as the

1 loan was reinstated and Plaintiff resumed modified monthly payments pursuant to her agreement
2 with the prior servicer Bank of America. (Exh. C to MSJ; Facklam Decl. ¶¶ 10-13, 18). And
3 see, Trident Center v. Connecticut Gen. Life Ins., 847 F.2d 564, 567 (9th Cir. 1988) (a lender or
4 servicer pursuing non-judicial foreclosure options in Nevada ordinarily has the option under the
5 loan documents whether to declare a default, whether and when to accelerate, and to rescind the
6 process before completion). A notice of rescission renders moot disputes concerning the notice
7 of default or its timing. Holt v. Regional Trustee Sale Services Corp., 266 P.3d 602, 606 (2011)
8 (the Nevada Supreme Court cited with favor the following cases); Cofey v. Accredited Home
9 Lenders, Inc., 2011 WL 1193072, at *4 (E.D.Ark. Mar. 29, 2011) (“Whether the Notice
10 of Default was valid is moot because the nonjudicial foreclosure sale described in the notice was
11 cancelled.”); Sakugawa v. MERS, Inc., 2011 WL 776051, at #6 (D.Haw. Feb. 25, 2011 (“the
12 Notice of Rescission moots Plaintiff’s claims for equitable relief—there is no existing
13 controversy regarding the Notice of Foreclosure because it was rescinded…”).

14 Thus, as a matter of law the Rescission terminated the 2009 notice of default, the
15 acceleration pursuant to the 2011 notice of sale, and the non-judicial foreclosure. Likewise, any
16 continued running of the 6-year statute of limitations was terminated. The equitable claims in
17 Plaintiff’s Complaint fail as moot.

18 **D. There has been No Acceleration and Notice of Sale under of the Present Non-**
19 **Judicial Foreclosure Commenced with Defendant’s 2016 Notice of Default**

20 Upon transfer of the loan servicing from Bank of America on or about November 30,
21 2013, Ocwen made further lengthy efforts to assist Plaintiff with further loan modification or
22 loss mitigation possibilities. A new Notice of Default was recorded on January 29, 2016 to
23 commence the non-judicial process pursuant to NRS 107.080(2)(c). (Exh. D to MSJ). The
24 Notice explained that Plaintiff was “behind in [her] payments” and if not cured could lead to a

1 issuance of a notice of sale for the “entire debt” “without any court action.” The Notice also
2 gave Plaintiff instructions on how to “cure” the “past due” arrearages and bring her loan current
3 “within the time permitted by law for reinstatement” and pursuant to “NRS 107.80.” (Exh. D to
4 MSJ).

5 Plaintiff’s Complaint does not allege and it is undisputed that there has been no notice of
6 sale of the entire accelerated loan debt for the non-judicial foreclosure commenced with the 2016
7 Notice of Default, and the foreclosure process is presently on hold pending this action. (Opp. to
8 Motion for TRO & Prelim. Injunc., Allison Decl. ¶ 3). The 6-year statute of limitations for
9 breach of contract actions does not bar Plaintiff’s secured debt obligation of Defendant’s right to
10 foreclose.

11 **E. Plaintiff’s Action Further Fails Because She Has Not Tendered the Arrearages**
12 **to Cure the Present Default**

13 An action challenging a foreclosure will not lie if the borrower does not “establish that at
14 the time the power of sale was exercised or the foreclosure occurred, no breach of condition or
15 failure of performance existed on the mortgagor’s or trustor’s part which would have authorized
16 the foreclosure or exercise of power of sale.” See, Collins v. Union Federal Sav. & Loan Ass’n.,
17 99 Nev. 284, 662 P.2d 610, 623 (1983); Pimental v. Countrywide Home Loans, Inc., 2011 WL
18 2619093 (D.Nev. 2011) (“Nevada recognizes the tort of wrongful foreclosure only where a
19 homeowner essentially asserts a lender wrongfully exercised the power of sale and foreclosed
20 upon his or her property when the mortgagor was not in default on the mortgage loan.”) (*citing*
21 Collins); and, Ernestberg v. Mortgage Investors Group, 2009 WL 160241, *6 (D.Nev. 2009).
22 This requirement comes from the age old maxim, he who seeks equity must do equity. See,
23 McQuiddy v. Warem, 87 U.S. 14, 19 (1873). Thus, the plaintiff must show they were not “in
24

1 default when the power of sale was exercised.” Collins, 99 Nev. at 304.¹ Without such a claim,
2 the presumption is that Plaintiffs cannot maintain an action challenging foreclosure of a
3 defaulted loan. Id.

4 It is undisputed that Plaintiff has defaulted on her loan. Plaintiff’s Complaint and MSJ
5 challenges Defendant’s foreclosure asserting it to be barred forever under the statute of
6 limitations. It is undisputed that Plaintiff did not tender monies to Defendant to cure her loan
7 default prior to filing the Complaint in this action. Plaintiff’s action is barred to this extent.

8 **VII. PLAINTIFF’S SECOND CAUSE OF ACTION FOR INJUNCTIVE RELIEF IS**
9 **MOOT AND FAILS**

10 Injunctive relief is not a claim in and of itself, rather it is a remedy based on an
11 underlying claim. See, e.g., In re Wal-Mart Wage & Hour Employment Practices Litig., 490
12 F.Supp.2d 1091, 1130 (D.Nev. 2007) (claim for injunctive relief is not a separate cause of
13 action). Injunctive relief requires a plaintiff to establish an imminent and irreparable threat of
14 injury, for which there is no adequate remedy at law, and a reasonable probability of success on
15 the merits. See, Pickett vs. Comanche Construction, 108 Nev. 422, 836 P.2d 42 (1992); Dixon

16 _____
17 ¹ Nevada follows to a large extent California foreclosure law. California courts have also long
18 established the “tender rule,” i.e. in order to maintain an action based on any claims challenging
19 foreclosure. The borrower must first offer or actually pay the entire loan amount or at least the amount
20 reasonably due. See, Munger v. Moore, 11 Cal.App. 3d 1, 6, 89 Cal.Rptr. 323 (1970); FPCI Re-Hab 01 v.
21 E & G Investments, Ltd., 207 Cal.App.3d 1018, 1022 (1989); United States Cold Storage v. Great
22 Western Savings & Loan Association, 165 Cal.App.3d 1214, 1225, 212 Cal.Rptr. 232 (1985); Arnolds
23 Management Corp. v. Eishen, 158 Cal.App. 3d 575, 577, 205 Cal.Rptr. 15 (1984); Bisno v. Sax, 175
24 Cal.App.2d 715, 346 P.2d 814 (1995); was due); Arnolds Management Corp. v. Eischen, 158 Cal.App.3d
575, 577-580, 205 Cal.Rptr. 15 (1984); Karlsen v. American Savings & Loan Association, 15 Cal.App.
3d 112 (1971); Abdallah v. United Savings Bank, 43 Cal. App. 4th 1101, 1109 (Cal.Ct.App. 1996) (a party
must tender the undisputed amount due and owing to challenge the validity of the foreclosure sale).
Courts in Nevada have followed an analogous tender rule as well. The tender rule was again recognized
by the Court stating that “reversing a [foreclosure] sale would be an extraordinary act of equity in a case
where there is in fact a default, and Plaintiffs have not indicated any ability or willingness to do equity (by
paying the mortgage arrearage) to receive such a remedy.” Olivas v. Carrington Mortg. Loan Trust, 2011
WL 240229 * 4 (D.Nev. Jan. 20, 2011); and see, Smith v. Community Lending, 2011 WL 1127046 * 2
(D.Nev. March 29, 2011) (Under Nevada law, “no damages claim for wrongful foreclosure lies where
there is in fact a default.”).

1 vs. Thatcher 103 Nev. 414, 742 P.2d 1029 (1997). Injunctive relief “is sought upon the theory
2 that there is an urgent need for speedy action to protect the plaintiff’s rights” under an actionable
3 claim. See, Lydo Enterprises, Inc. v. City of Las Vegas, 745 F.2d 1211, 1213 (9th Cir. 1984).
4 “[P]laintiff must demonstrate that there exists a significant threat of irreparable injury.” Oakland
5 Tribune, Inc. v. Chronicle Pub. Co., Inc., 762 F.2d 1374, 1376 (9th Cir. 1985).

6 The Court on April 12, 2016 denied Plaintiff’s Motion for TRO and Preliminary
7 Injunction. The Court found there was no imminent threat of irreparable injury to Plaintiff in
8 that was no notice of sale recorded or trustee’s sale scheduled in the present non-judicial
9 foreclosure, which was also placed on hold as a result of this action. (Opp. to Motion for TRO &
10 Prelim. Injunc., Allison Decl. ¶ 3). Counsel stipulated to advance notice between their offices
11 should the hold be lifted during this action. Plaintiff’s Motion for TRO was denied without
12 prejudice in this regard. As a result of the denial of Plaintiff’s Motion and nothing to enjoin in
13 this action, Plaintiff’s second cause of action is moot and/or fails for the same reasons as above.

14 **VIII. CONCLUSION**

15 For the reasons set forth above, it is respectfully requested that Plaintiff’s Motion for
16 Summary Judgment be DENIED. It is further requested that Defendant’s Motion to Dismiss be
17 GRANTED with a judgment of dismissal of Defendant with prejudice, and for such other and
18 further relief as may be just.

19 **AFFIRMATION PURSUANT TO N.R.S. 239B.030**

20 The undersigned hereby affirms that the above document does not contain a social
21 security number pursuant to N.R.S. § 239.030B.
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1 DATED this 18th day of April, 2016.

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HOUSER & ALLISON, APC

By /s/ Jeffrey S. Allison
JEFFREY S. ALLISON

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

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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:

OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; COUNTER-MOTION TO DISMISS THE COMPLAINT

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

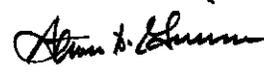
and addressed to the following:

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: April 18, 2016

/s/ Courtney Hershey
An employee of HOUSER & ALLISON, APC


CLERK OF THE COURT

1 **RPLY**
Jeffrey S. Allison (NV Bar No. 8949)
2 Mark H. Hutchings (NV Bar No. 12783)
HOUSER & ALLISON, APC
3 3900 Paradise Road, Suite 101
Las Vegas, Nevada 89169
4 Phone: (702) 410-7593/(949) 679-1111
Fax: (702) 410-7594/(949) 679-1112
5 jallison@houser-law.com
mhutchings@houser-law.com

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

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

11 AMY FACKLAM,
12 Plaintiff,

13 vs.

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

) Case No. A-16-733762-C

) Dept. No. VI

) **REPLY TO OPPOSITION TO**
) **DEFENDANT'S MOTION TO DISMISS**
) **THE COMPLAINT**

) [N.R.C.P. 12(b)(5), 56]

) Date: June 7, 2016

) Time: 8:30 a.m.

) Dept: 6

19 Defendant HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR
20 DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, MORTGAGE PASS-
21 THROUGH CERTIFICATES SERIES 2007-AR2, by and through its servicer and attorney-in-
22 fact OCWEN LOAN SERVICING, LLC (collectively "Defendant" or "HSBC"), submits the
23 following in Reply to Plaintiff's Opposition to Defendant's Counter-Motion to Dismiss the
24 Complaint.

1 **I. INTRODUCTION**

2 Plaintiff filed her Complaint in this action on or about March 21, 2016. An answer to the
3 Complaint has not been filed. A Rule 16.1 early case conference has not been conducted and
4 discovery not commenced. The precise nature and extend of any discovery is to be determined
5 at the appropriate time should the Court not grant the Motion.¹

6 Plaintiff's Opposition to the Motion continues her assertion that the 6 year statute of
7 limitations for breach of contract actions bars Defendant's right to foreclose on the loan that is
8 the subject of the Complaint, and without authority even "seeks an order removing the deed of
9 trust from title records." (Plaintiff's Opp. p. 2). Plaintiff asserts in the Introduction of her
10 Opposition, "This case involves a question of law." (Plaintiff's Opp. p. 3). Even assuming
11 *arguendo* that Plaintiff's application of the 6 year statute and alleged legal conclusion based
12 thereon were not erroneous, the intervening events tolled and superseded the running of that
13 statute.

14 Indeed as a matter of law, the 6 year statute of limitations for breach of contract actions is
15 not applicable to bar the secured loan or Defendant's non-judicial foreclosure. The controlling
16 statute of limitations for enforcement by foreclosure of the Note and Deed of Trust is 10 years
17 after affirmative acceleration of the loan pursuant to NRS 106.240. The 6 year statute for breach
18 of contract actions does not come into play unless and until Defendant were to file a contract
19 action to enforce the Note, or were to pursue a deficiency action, and only then as to installments
20 that are more than 6 years old. Plaintiff's Complaint fails to state a claim based on the 6 year
21 statute and Defendant is entitled to dismissal.

22
23 ¹ Plaintiff in Reply to Defendant's Opposition to her MSJ filed approximately two weeks after Defendant was
24 served in this action, argues that Defendant's request for discovery was not specific or supported by an affidavit.
Such is not necessarily required and is a premature expectation under the circumstances regarding any genuine issue
of material fact. *See, Halimi v. Blacketer*, 105 Nev. 105, 770 P.2d 531(1989) (court did not adhere to an affidavit
requirement and held the opposing memorandum was sufficient).

1 **II. FORECLOSURE OF SECURED LOANS AFTER ACCELERATION IS**
2 **GOVERNED BY THE 10 YEAR STATUTE OF LIMITATIONS**

3 Plaintiff misapprehends the law governing mortgages and deeds of trust. Indeed, Plaintiff
4 even concedes “there is not much recent case law on this issue” and leaps to the unsupported
5 legal conclusion that the 6 year statute of limitations applicable to contract actions under NRS
6 11.190 must by implication also apply to mortgage foreclosure. (Plaintiff’s Opp. p. 3). Plaintiff
7 goes on to discuss the following cases including two from the 1800’s on different facts
8 addressing statutory periods for contract actions on the note, as opposed to rights to foreclose.
9 Rights to foreclose on a secured loan are not governed by the same contract action statute, as
10 acknowledged by the case law for which Plaintiff’s interpretation is somewhat misleading.

11 It is “long recognized” by the Nevada Supreme Court “that separate sections of the
12 statute of limitations can be applicable to a given business transaction.” El Rancho Inc. v. New
13 York Meat & Provision Co. 88 Nev. 111 (1972). Not long after Nevada became a state, the
14 Court clarified its position that the statute of limitations does not destroy a debt, but only takes
15 away a specific remedy. Henry v. Confidence Gold & Silver Mining Co. 1 Nev. 619 (1866).
16 Indeed the very first sentence in the Henry opinion states, “When a debt is secured by a mortgage
17 is barred by the statute of limitations, the mortgage is not thereby extinguished.” Id. at 1.
18 Merely because the statute of limitations may expire for the underlying contract, i.e. the Note for
19 which Defendant may lose the remedy for a breach of contract action, it does not lose the power
20 to foreclose pursuant to the Deed of Trust. Id.; and see, Mackie v. Lansing 2 Nev. 302 (1866).
21 Here, Plaintiff does not allege and there was undisputedly no breach of contract action filed by
22 Defendant on the Note.

23 NRS 106.240, entitled “Extinguishment of lien created by mortgage or deed of trust upon
24 real property” very clearly states:

1 The lien hereto or hereafter created of any mortgage or deed of trust upon any real
2 property, appearing of record, and not otherwise satisfied and discharged of record shall
3 at the expiration of **10 years** after the debt secured by the mortgage or deed of trust
4 according to the terms thereof or any recorded written extension thereof become wholly
5 due, terminate and it shall be conclusively presumed that the debt has been regularly
6 satisfied and the lien discharged. (**Emphasis added**)

7 Even assuming *arguendo* that the debt was somehow accelerated and “become wholly
8 due” based on an equivocal notice of default in September 2009 (not a “notice of acceleration” or
9 “notice of sale”), Defendant would still have 10 years after the final debt due date to exercise its
10 foreclosure rights. The final debt due date is triggered by the debt maturity date under NRS
11 106.240. Under Section 106.240, the expiration of the lien secured by the deed of trust occurs
12 when the debt “according to the terms thereof” becomes “wholly due.” In Pro-Max Corp v.
13 Feenstra 117 Nev. 90 (2001), the borrower made no payments on the secured note for the
14 entirety of the loan and did not pay when the note became wholly due on the maturity date of
15 May 14, 1984. The Nevada Supreme Court held that the deed of trust did not expire until 10
16 years after the note matured in its entirety despite general nonpayment on the note itself in the
17 interim. Id. at 92.

18 Here, Plaintiff’s signed Note and Deed of Trust expressly state that they do not expire
19 until the loan maturity date of January 1, 2007. (Plaintiff’s Opp. Exh. A ¶ 3; Plaintiff’s MSJ,
20 Exh. A ¶ (F).² Accordingly, Defendant has until 10 years after the maturity date to foreclose, i.e.
21 January 1, 2017. Again, a non-judicial foreclosure is not an **action** filed in a court of law,
22 whether for breach of contract or otherwise. The 6 year statute for breach of contract actions
23 alleged by Plaintiff is not applicable or controlling.

24 ² Even the 2009 notice of default by another party confirmed the loan maturity date of “01/01/2037.” (Plaintiff’s MSJ, Exh B; not attached to Complaint). The cases cited in Plaintiff’s Opposition requiring an affirmative act by the lender to effect an acceleration of the entire debt also acknowledge that this is not done “on the mere default” or notice of default.

1 Indeed, the Nevada Supreme Court recently ruled that the district court properly
2 dismissed a similar complaint that the 6 year statute of limitations of NRS 11.190(1)(b) barred
3 the foreclosure of a secured loan. See, Penrose v. Quality Loan Service Corporation, et al., Case
4 No. 68946 (Nev. Apr. 15, 2016). The Court stated as follows:

5 Having considered the parties' arguments and the record, we conclude that the district
6 court properly dismissed appellant's action. *See Buzz Stew, LLC v. City of N. Las Vegas*,
7 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (reviewing de novo a district court
8 NRC 12(b)(5) dismissal). Specifically, at the time when appellant filed his complaint,
9 there was no set of facts that appellant could have established under which Nationstar
10 Mortgage would have been time-barred from foreclosing on the subject property. *See id.*;
11 *Henry v. Confidence Gold & Silver Mining Co.*, 1 Nev. 619, 621-22 (1865) (recognizing
12 that a mortgagee may seek to nonjudicially foreclose on secured property even if an
13 **action** on the secured debt would be time-barred); *cf. Miller v. Provost*, 33 Cal. Rptr. 2d
14 288, 289-90 (Ct. App. 1994) (observing that this rule is "based on the equitable principle
15 that a mortgagor of real property cannot, without paying his debt, quiet his title against
16 his mortgagee"). (**Emphasis added**).

17 Id. at p. 1. Similarly here, Plaintiff's Complaint alleging Defendant is time barred from
18 foreclosing or recovering on the secured loan fails.

19 **III. PLAINTIFF'S COMPLAINT FAILS TO ACCOUNT FOR THE TOLLING AND**
20 **SUPERSEDING EVENTS IN THIS CONTEXT**

21 Even assuming *arguendo* that the 6 year statute of limitations applies to the September
22 2009 notice of default, Plaintiff ignores or devalues the importance of the intervening events
23 which tolled and superseded the running of 6 year period. As set forth in Defendants Motion,
24 these events were as follows:

25 First, the notice of sale stating a non-judicial trustee's sale date on the full accelerated
26 debt amount at the time was undisputedly not recorded until July 20, 2011. (Cplt. ¶¶ 16-17;
27 Plaintiff's MSJ ¶¶ 6-7, Facklam Decl. ¶¶ 22-23). While Plaintiff has attached numerous other
28 recorded documents, Plaintiff conveniently does not attach a copy of the notice of sale to her
29 Complaint or any other papers filed in this action. The July 20, 2011 stated in pertinent part:

1 The total amount of the unpaid balance with interest thereon of the obligation secured by
2 the property to be sold plus reasonable estimated costs, expenses and advances at the time
of the initial publication of the Notice of sale is \$365,616.53.

3 (See the Notice as **Exhibit 1** hereto for which judicial notice is requested and proper as a public
4 record alleged at ¶¶ 16-17 in Plaintiff's Complaint. N.R.S. §§ 47.130 *et. seq.*, Wilson v. Lyon
5 County Bank, 4 F.Supp. 608 (D.Nev. 1933); Jory v. Bennett, 91 Nev. 763, 542 P.2d 1400, 1403
6 (1975), Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994)). The total debt amount was not
7 stated in the September 2009 notice of default.³

8 Second, Plaintiff filed a lawsuit against the prior loan servicer on or about August 4, 2011
9 to stop the trustee's foreclosure sale set by the notice of sale. The foreclosure ceased. The
10 lawsuit was not settled by Plaintiff until 2014. (Plaintiff's MSJ, Facklam Decl. ¶ 24).

11 Third, the non-judicial foreclosure under the September 2009 notice of default and July
12 2011 notice of sale was rescinded as evidenced by the Rescission recorded on December 5, 2011.
13 (Cplt. ¶ 18; Plaintiff's MSJ, Exh. C; Facklam Decl. ¶¶ 10-13, 18).

14 Fourth, Plaintiff's loan was reinstated and additional loan modification or other efforts to
15 assist Plaintiff were made up until approximately January 2016. Due to Plaintiff's default,
16 Defendant caused to be recorded a new Notice of Default on January 25, 2016 to commence a
17 new non-judicial foreclosure upon a later default date stated (further corroborating the prior

18
19 ³ Once again, "Acceleration is seldom implied and courts usually require that acceleration be exercised in a manner
20 so clear and unequivocal that it leaves no doubt as to the lender's intention." Clayton v. Gardner 107 Nev. 468, 470-
21 471 (1991). Absent a clear and unequivocal acceleration, the statute of limitations as it effects a mortgage only
22 begins to run with respect to each installment when due. *Id.* Here, Plaintiff does not cite controlling authority
23 specifically holding that the notice of default effected a loan acceleration by the prior loan servicer. There is no
24 uncontroverted evidence by Plaintiff that the Defendant had undoubtedly intended and affirmatively effected a clear
and unequivocal acceleration by the other party's September 2009 notice of default, particularly since Plaintiff
tactfully omits the July 2011 notice of sale on the full debt amount then stated. Plaintiff acknowledges NRS
107.080(3) allows a notice of default to include language regarding intent to accelerate if the default amount is not
paid by the time of issuance of a notice of sale, i.e. an acceleration cannot occur if the default is paid or reinstated
during the default period (also see Deed of Trust ¶ 22). The extraneous and objectionable letters from another party
prior to the September 2009 notice of default, indicating a right to cure the payment "default" amount stated at the
time under \$5k subject to a possible foreclosure and loan acceleration at some undeterminable time in the future, are
not alleged in the Complaint and are Objection thereto is made on the following grounds: lack of foundation, lack of
authentication, hearsay, seeks improper consideration of matters extraneous to Complaint on the motion to dismiss.

1 reinstatement and rescission of foreclosure). (Cplt. ¶¶ 22-23; Plaintiff's MSJ ¶¶ 12-13, Exh. D,
2 Facklam Decl. ¶ 28).

3 Fifth, Plaintiff filed her second instant lawsuit herein on or about March 21, 2016, and
4 Defendant's new non-judicial foreclosure was put on hold.⁴ Plaintiff's Complaint does not
5 allege and to date there has been no full loan acceleration with a Notice of Sale issued for the
6 new Notice of Default, and no trustee's sale. (Defendant's Opp. to Plaintiff's denied Mtn for PI,
7 Allison Decl. ¶¶ 3, 4).

8 The July 2011 notice of sale issued approximately 22 months after the September 2009
9 notice of sale, Plaintiff's August 2011 lawsuit not resolved until 2014, the reinstatement and/or
10 efforts to modify the loan from approximately December 2011 to January 2016, and the present
11 hold on the new foreclosure pending this action filed by Plaintiff in March 2016 and further
12 advance notice as confirmed by the Court on April 12, 2016, all function to at least toll any
13 applicable or purported running of the 6 year statute of NRS 11.190. The total tolling time for
14 these intervening events is at least approximately 50 months after the September 2009 notice of
15 default, which would mean the 6 year statute has only run approximately 22 months of less than
16 two years since then. Moreover, the September 2009 notice of default which Plaintiff alleges
17 somehow accelerated the loan was then rescinded in December 2011, which supersedes the
18 running of the 6 year statute outright.

19 Plaintiff has made sure to keep her property mortgage free for as long as possible. She
20 has filed lawsuits to stop and made multiple efforts to interfere with the non-judicial foreclosure
21 process. In response to Defendant's numerous efforts to assist with her loan over many months,
22 Plaintiff filed this second lawsuit challenging the foreclosure, and asserting that the entire loan
23

24 ⁴ Regarding Plaintiff's lawsuits and motions for injunctive relief, NRS §11.350 provides, "When the commencement of one action shall be stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action."

1 and Defendant's right to recover on the security interest is now wiped out. If Plaintiff's
2 contention were correct, a borrower could simply fail to make payments on her secured loan,
3 reinstate under the auspices of negotiating a loan work-out plan to address her default, file
4 bankruptcies or lawsuits to enjoin foreclosure in the interim, and then argue the loan and right to
5 foreclose thereon is time-barred. Such a result would negate incentives by lenders to work with
6 borrowers, ignore lawsuits or injunctions, and would not foster favorable or sound policy.

7 Plaintiff's Complaint presenting what she characterizes as a "question of law," fails to
8 state the claim as a matter of law and equity. Plaintiff's Opposition fails to address other points
9 of Defendant's Motion as well, such as the law establishing the her first claim for declaratory
10 relief is not a claim in and of itself, that there is no unlawful adverse interest in the Note and
11 Deed of Trust by Defendant, that the second claim for injunctive relief is not a claim in and of
12 itself, there is no present notice of sale or immediate threat of foreclosure, and is moot.

13 **IV. CONCLUSION**

14 For the reasons set forth in Defendant's Motion and above, it is respectfully requested
15 that the Motion to Dismiss the Plaintiff's Complaint be GRANTED with prejudice, and for such
16 other and further relief as may be just.

17 DATED this ^{21st} day of May, 2016.

18 HOUSER & ALLISON, APC

19
20 By /s/ Jeffrey S. Allison
JEFFREY S. ALLISON

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

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Instr #: 201107200001856
Fees: \$15.00
N/C Fee: \$0.00
07/20/2011 12:17:24 PM
Receipt #: 850334
Requestor:
PASION TITLE SERVICES
Recorded By: DHG Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

WHEN RECORDED MAIL TO:
RECONTRUST COMPANY
2380 Performance Dr, TX2-984-0407
Richardson, TX 75082

TS No. 09-0144623
Title Order No. 4267567 53

APN No. 078-04-514-044

NEVADA 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.

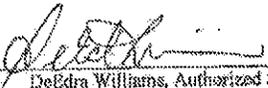
Notice is hereby given that RECONTRUST COMPANY, N.A., as duly appointed trustee pursuant to the Deed of Trust executed by AMY B. FACKLAM, A SINGLE WOMAN, dated 12/21/2006 and recorded 01/09/2007, as Instrument No. 0001436, in Book 20070108, Page , of Official Records in the office of the County Recorder of CLARK County, State of Nevada, will sell on 08/08/2011 at 10:00 AM, at at the front entrance to the Nevada Legal News, 930 E. Fourth St., Las Vegas, NV, at public auction, to the highest bidder for cash (in the forms which are lawful tender in the United States, payable in full at time of sale), all right, title, and interest conveyed to and now held by it under said Deed of Trust, in the property situated in said County and State and as more fully described in the above referenced Deed of Trust. The street address and other common designation, if any, of the real property described above is purported to be: 1513 SHOTGUN LN, HENDERSON, NV 89014. The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

The total amount of the unpaid balance with interest thereon of the obligation secured by the property to be sold plus reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$365,618.53. It is possible that at the time of sale the opening bid may be less than the total indebtedness due.

In addition to cash, the Trustee will accept cashier's checks 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, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. In the event tender others than cash is accepted, the Trustee may withhold the issuance of the Trustee's Deed until funds become available to the payee or endorsee as a matter of right. Said sale will be made, in an "AS IS" condition, but without covenant or warranty, express or implied, regarding title, possession or encumbrances, to satisfy the indebtedness secured by said Deed of Trust, advances thereunder, with interest as provided therein, and the unpaid principal of the Note secured by said Deed of Trust with interest thereon as provided in said Note, plus fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust.

EXHIBIT 1
PAGE 1 OF 2

DATED: July 18, 2011
RECONTRUST COMPANY NA, Trustee
2380 Performance Dr., TX 2-983-07-03
Richardson, TX 75082
Phone/Sale Information (800)281-8219

By:  7/18/11
DeEdra Williams, Authorized Signer

RECONTRUST COMPANY NA is a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

EXHIBIT 1
PAGE 2 OF 2

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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:

REPLY TO OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

By: U.S. Mail
 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: May 31, 2016

/s/ Courtney Hershey
An employee of HOUSER & ALLISON, APC