

2009-005985

Klamath County, Oregon

After recording, return to:  
ROBERT A. SMEJKAL, P.C.  
PO Box 654  
Eugene, OR 97440



04/30/2009 03:04:07 PM

Fee: \$36.00

Re Trust Deed from Grantor:  
KATHRYN E. BICE  
PO Box 271  
Crescent, OR 97733

1st 1182821

## AFFIDAVIT OF MAILING AMENDED TRUSTEE'S NOTICE OF SALE

STATE OF OREGON, County of Lane ) ss.

I, ROBERT A. SMEJKAL, being first duly sworn, depose and say that:

At all times hereinafter mentioned, I was and am a resident of the State of Oregon, a competent person over the age of eighteen years, and not the Beneficiary nor the Beneficiary's successor in interest named in the attached original Amended Trustee's Notice of Sale given under the terms of that certain Deed described in the Amended Trustee's Notice of Sale.

I gave notice of the sale of the real property described in the attached Amended Trustee's Notice of Sale by mailing copies thereof by both first class and certified mail, with return receipt requested, to each of the following persons (or their legal representatives, where so indicated) at their respective last known addresses, to-wit:

Name	Address	Date
Karen Johnson, Personal Representative of the Estate of Kathryn Ellen Bice	135036 Riverview Street Crescent, OR 97733	April 24, 2009
Karen Johnson	135036 Riverview Street Crescent, OR 97733	April 24, 2009
John Helmick Gorilla Capital, LLC	1400 High Street, Suite B-2 Eugene, OR 97401	April 24, 2009
Rob Colville Gorilla Capital Klamath Co., LLC	1400 High Street, Suite B-2 Eugene, OR 97401	April 24, 2009

These persons include: (a) the Grantor in the Trust Deed; (b) any successor in interest to the Grantor whose interest appears of record or of whose interest the Trustee or the Beneficiary have actual notice; (c) any person, including the Department of Revenue or any other state agency, having a lien or interest subsequent to the Trust Deed, if the lien or interest appears of record or the Beneficiary have actual notice of the lien or interest; and (d) any person requesting notice as set forth in ORS 86.785.

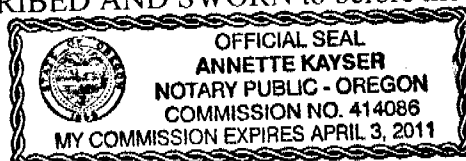
Each of the notices so mailed was certified to be a true copy of the original Amended Trustee's Notice of Sale by ROBERT A. SMEJKAL, Attorney for the Trustee named in the notice. Each such copy was mailed in a sealed envelope, with postage thereon fully prepaid, and was deposited by me in the United States post office at Eugene, Oregon, on the date or dates indicated herein. With respect to each person listed above, one such notice was mailed with postage thereon sufficient for first class delivery to the address indicated, and another such notice was mailed with a proper form to request and obtain a return receipt, with postage thereon in an amount sufficient to accomplish the same. Each such notice was mailed after the Notice of Default and Election to Sell was recorded.

As used herein, the singular includes the plural, "Trustee" includes a successor trustee, and "person" includes a corporation and any other legal or commercial entity.

ROBERT A. SMEJKAL

STATE OF OREGON, County of Lane ) ss.

SUBSCRIBED AND SWORN to before me this 24<sup>th</sup> day of April, 2009, by ROBERT A. SMEJKAL.



NOTARY PUBLIC FOR OREGON

## AMENDED TRUSTEE'S NOTICE OF SALE

The Trustee, under the terms of the Trust Deed described herein, at the direction of the Beneficiary, hereby elects to sell the property described in said Trust Deed to satisfy the obligations secured thereby.

**A. PARTIES TO THE TRUST DEED:**

Grantor: KATHRYN E. BICE  
Trustee: ROBERT A. SMEJKAL, Attorney at Law  
Beneficiary: JOHN E. OCKERT

**B. DESCRIPTION OF THE PROPERTY:** See Exhibit "A" attached hereto and by this reference incorporated herein.

**C. TRUST DEED INFORMATION:**

Dated: June 29, 2006  
Recording Date: July 5, 2006  
Recording Nos.: Volume M06, Page 13614  
Recording Place: Microfilm Records of Klamath County, Oregon.

**D. DEFAULT:** The Grantor is in default and the Beneficiary elects to foreclose the Trust Deed for failure to pay the following: (1) the balance of the January 6, 2008 monthly installment in the amount of \$500.00, and monthly installments in the amount of \$1,000.00 each commencing with the installment due February 6, 2008, and continuing each month thereafter; and (2) real property taxes for 2006-2007 in the amount of \$751.11, plus interest and penalties, if any; 2007-2008 in the amount of \$760.43, plus interest and penalties, if any; and 2008-2009 in the amount of \$823.95, plus interest and penalties, if any.

**E. AMOUNT DUE:** By reason of the default, the Beneficiary has declared all sums owing on the obligation secured by the Trust Deed immediately due and payable, those sums being the following: the principal amount of \$100,000.00, plus interest at the rate of 12% per annum from December 22, 2007, until paid; plus late charges, attorney fees incurred prior to initiating foreclosure of the Trust Deed, attorney fees and costs incurred in connection with foreclosure of the Trust Deed, and amounts, if any, advanced pursuant to the terms of the Trust Deed and/or applicable law.

**F. ELECTION TO SELL:** NOTICE IS HEREBY GIVEN that the Beneficiary and the Trustee, by reason of said default, have elected and do hereby elect to foreclose said Trust Deed by advertisement and sale pursuant to Oregon Revised Statutes §86.705 et seq., and to cause to be sold at public auction to the highest bidder, for cash or certified funds, the interest in said described property which Grantor had, or had the power to convey, at the time of the execution of the Trust Deed, together with any interest the Grantor or successor in interest acquired after the execution of the Trust Deed, to satisfy the obligations secured by said Trust Deed together with the expenses of sale, including the compensation of the Trustee as provided by law, and the reasonable fees of the Trustee's attorney.

**G. DATE, TIME AND PLACE OF SALE:**

Date & Time: May 29, 2009, at 11:00 a.m.  
Place: Inside the front entrance of the Klamath County Courthouse,  
316 Main Street, Klamath Falls, Oregon

**H. SALE PROCEEDINGS.** The original sale proceedings were stayed by a Chapter 13 Bankruptcy Petition filed by Kathryn Ellen Bice in the United States Bankruptcy Court for the District of Oregon, Case No. 08-62573-aer13. Stay of the sale proceedings was terminated by an Order re: Relief from the Debtor Stay filed April 13, 2009.

- I. RIGHT TO REINSTATE:** NOTICE IS FURTHER GIVEN that at any time prior to five (5) days before the sale, this foreclosure proceeding may be dismissed and the Trust Deed reinstated by payment to the Trustee of the entire amount then due (other than a portion of the principal as would not then be due had no default occurred), and by curing any other default complained of herein that is capable of being cured by tendering the performance required under the obligation or Trust Deed, and in addition to paying said sums or by tendering the performance necessary to cure the default, by paying all costs and expenses to the Trustee actually incurred by the Beneficiary and the Trustee in enforcing the obligation and Trust Deed, together with the Trustee's fees and attorney's fees.
- J. NOTICE:** The Federal Fair Debt Practices Act requires we state that this is an attempt to collect a debt and any information obtained will be used for that purpose.
- K. MISCELLANEOUS:** In construing this Notice, the singular includes the plural, the word "Grantor" includes any successor in interest to the Grantor as well as any other person owing an obligation, the performance of which is secured by the Trust Deed, and the words "Trustee" and "Beneficiary" include their respective successors in interest, if any.

**DATED** this 24<sup>th</sup> day of April, 2009.

  
\_\_\_\_\_  
ROBERT A. SMEJKAL, Trustee

STATE OF OREGON, County of Lane ) ss.

I, the undersigned, certify that I am the attorney for the above named Trustee, and that the foregoing is a complete and exact copy of the original Amended Trustee's Notice of Sale.

\_\_\_\_\_  
Attorney for said Trustee

**Exhibit "A"**

Real property in the County of Klamath, State of Oregon, described as follows:

A PARCEL OF LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 24 SOUTH, RANGE 8 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 36; THENCE SOUTH 89° 28' 54" EAST ALONG THE SOUTHERLY LINE OF SAID SECTION 36, 254.05 FEET TO THE WESTERLY LINE OF THAT CERTAIN PARCEL DESCRIBED IN DEED VOLUME M74, PAGE 13285, BEING THE OFFICIAL KLAMATH COUNTY RECORDS; THENCE NORTH 00° 34' 19" EAST ALONG THE WESTERLY LINE OF SAID PARCEL DESCRIBED IN DEED VOLUME M74, PAGE 13285, 202.25 FEET TO THE NORTHWEST CORNER OF THAT PARCEL DESCRIBED IN DEED VOLUME M74, PAGE 13285; THENCE SOUTH 89° 25' 41" EAST ALONG THE NORTHERLY LINE OF SAID PARCEL DESCRIBED IN DEED VOLUME M74, PAGE 13285, 546.69 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL DESCRIBED IN DEED VOLUME M77, PAGE 17497 BEING THE OFFICIAL KLAMATH COUNTY RECORDS; THENCE NORTH 00° 34' 19" EAST ALONG THE WESTERLY LINE OF SAID PARCEL DESCRIBED IN DEED VOLUME M77, PAGE 17497, 295.00 FEET TO THE NORTHWEST CORNER OF SAID PARCEL DESCRIBED IN DEED VOLUME M77, PAGE 17497; THENCE SOUTH 89° 25' 41" EAST ALONG THE NORTHERLY LINE OF SAID PARCEL DESCRIBED IN DEED VOLUME M77, PAGE 17495, 528.10 FEET TO THE EASTERLY LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 36; THENCE NORTH 00° 19' 29" EAST ALONG THE EASTERLY LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, 823.43 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, THENCE NORTH 89° 34' 19" WEST ALONG THE NORTHERLY LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, 1,332.27 FEET TO THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE SOUTH 00° 16' 06" WEST ALONG THE WESTERLY LINE OF SAID SECTION 36, 1,317.59 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT 60 FEET IN WIDTH FOR PURPOSES OF INGRESS AND EGRESS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTHERLY 60 FEET OF THE SOUTHERLY 400 FEET OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 36 LYING WEST OF THE KLAMATH NORTHERN RAILROAD RIGHT OF WAY.

AN EASEMENT 60 FEET IN WIDTH FOR PURPOSES OF INGRESS AND EGRESS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EASTERLY 60 FEET OF THE SOUTHERLY 400 FEET OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 36.

Tax Parcel Number: R149903 and R7959