

2010-003621

Klamath County, Oregon



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03/23/2010 03:29:32 PM

Fee: \$52.00

AFTER RECORDING RETURN TO:  
Shapiro & Sutherland, LLC  
5501 N.E. 109th Court, Suite N  
Vancouver, WA 98662  
10-103964  
ATE 67599

## NOTICE OF DEFAULT AND ELECTION TO SELL

A default has occurred under the terms of a trust deed made by Espedicto Hernandez and Rosa Hernandez, as grantor to First American Title Insurance Co. of Oregon, as trustee, in favor of Mortgage Electronic Registration Systems, Inc., as nominee for Gateway Business Bank, dba Mission Hills Mortgage Bankers, as beneficiary, dated July 27, 2006, recorded August 3, 2006, in the mortgage records of Klamath County, Oregon, as Instrument No. 2006-015696, beneficial interest having been assigned to EverHome Mortgage Company, as covering the following described real property:

See complete Legal Description attached hereto as Exhibit "A"

**COMMONLY KNOWN AS:** 5407 Hwy 39, Klamath Falls, OR 97603

Kelly D. Sutherland, Successor Trustee, hereby certifies that no action has been instituted to recover the debt, or any part thereof, now remaining secured by the said trust deed, or, if such action has been instituted, such action has been dismissed except as permitted by ORS 86.735(4).

There is a default by the grantor or other person owing an obligation, the performance of which is secured by said trust deed, or by their successor in interest, with respect to provisions therein which authorize sale in the event of default of such provision; the default for which foreclosure is made is grantor's failure to pay when due the following sums:

Monthly payments in the sum of \$1,642.41, from November 1, 2009, and monthly payments in the sum of \$1,638.88, from January 1, 2010, together with all costs, disbursements, and/or fees incurred or paid by the beneficiary and/or trustee, their employees, agents or assigns.

By reason of said default, the beneficiary has declared all sums owing on the obligation that the trust deed secures immediately due and payable, said sums being the following, to-wit:

\$215,374.81, together with interest thereon at the rate of 7.375% per annum from October 1, 2009, together with all costs, disbursements, and/or fees incurred or paid by the beneficiary and/or trustee, their employees, agents or assigns.

Notice hereby is given that the beneficiary and trustee, by reason of said default, have elected and do hereby elect to foreclosure said trust deed by advertisement and sale pursuant to ORS 86.705 to 86.795, and to cause to be sold at public auction to the highest bidder for cash the

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execution by him of the trust deed, together with any interest the grantor or his successors in interest acquired after the execution of the trust deed, to satisfy the obligations secured by said trust deed and the expenses of the sale, including the compensations of the trustee as provided by law, and the reasonable fees of trustee's attorneys.

Said sale will be held at the hour of 10:00 AM PT, in accordance with the standard time established by ORS 187.110 on July 29, 2010, at the following place: at the main entrance of the Klamath County Courthouse, located at 316 Main Street, in the City of Klamath Falls, County of Klamath, State of Oregon, which is the hour, date and place last set for said sale.

Notice is further given to any person named in ORS 86.753 that the right exists, at any time that is not later than five days before the date last set for the sale, to have this foreclosure proceeding dismissed and the trust deed reinstated by paying to the beneficiary of the entire amount then due (other than such 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 tendering the performance necessary to cure the default by paying all costs and expenses actually incurred in enforcing the obligation and trust deed, together with trustee's fees and attorney fees not exceeding the amounts provided by said ORS 86.753.

In construing this notice, the masculine gender includes the feminine and the neuter, 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 said trust deed, and the words "trustee" and beneficiary" include their respective successors in interest, if any.

The Fair Debt Collection Practice Act requires that we state the following: This is an attempt to collect a debt, and any information obtained will be used for that purpose. If a discharge has been obtained by any party through bankruptcy proceedings: This shall not be construed to be an attempt to collect the outstanding indebtedness or hold you personally liable for the debt.

Dated: 3-22-2010

By: [Signature]

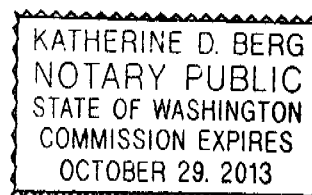
**KELLY D. SUTHERLAND**

Successor Trustee

STATE OF WASHINGTON )  
 ) SS.  
COUNTY OF CLARK )

SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of March, 2010,  
by Kelly D. Sutherland, Successor Trustee.

Katherine D. Berg  
Notary Public for Washington  
My commission expires 10-29-2013



## EXHIBIT A

### LEGAL DESCRIPTION:

#### PARCEL 1:

A TRACT OF LAND BEING THE SOUTHERLY 100 FEET OF PARCEL 3 OF "LAND PARTITION 10-96", SITUATED IN THE NW1/4 SW1/4 OF SECTION 18, TOWNSHIP 39 SOUTH, RANGE 10 EAST, WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY RIGHT OF WAY OF STATE HIGHWAY 39, BEING THE SOUTHWEST CORNER OF SAID PARCEL 3 FROM WHICH THE 1/4 CORNER COMMON TO SECTION 13, TOWNSHIP 39 SOUTH, RANGE 9 EAST, WILLAMETTE MERIDIAN AND SAID SECTION 18 BEARS NORTH 01° 27' 09" WEST 1,053.06 FEET; THENCE ALONG THE WEST BOUNDARY OF SAID PARCEL 3 NORTH 00° 03' 01" WEST 121.17 FEET; THENCE SOUTH 55° 40' 10" EAST 487.60 FEET; THENCE ALONG THE EAST AND SOUTH BOUNDARY OF SAID PARCEL 3, SOUTH 00° 03' 01" EAST 121.17 FEET AND NORTH 55° 40' 10" WEST 487.60 FEET TO THE POINT OF BEGINNING, AS EVIDENCED BY LOT LINE ADJUSTMENT 7-97 ON FILE IN THE OFFICE OF THE KLAMATH COUNTY PLANNING DEPARTMENT.

#### PARCEL 2:

A TRACT OF LAND SITUATED IN GOVERNMENT LOTS 3 AND 4 IN THE SW1/4 OF SECTION 18, TOWNSHIP 39 SOUTH, RANGE 10 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS NORTH A DISTANCE OF 1249.0 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 18, SAID POINT BEING SITUATED ON THE CENTERLINE OF THE STATE HIGHWAY AND ALSO BEING ON THE WEST LINE OF SAID SECTION 18; THENCE NORTH ALONG SAID CENTERLINE AND WEST LINE OF SAID SECTION 18 A DISTANCE OF 375.5 FEET; THENCE SOUTH 55° 36' EAST A DISTANCE OF 36.36 FEET TO A 5/8 INCH IRON PIN ON THE EAST RIGHT OF WAY LINE OF THE STATE HIGHWAY; THENCE CONTINUING SOUTH 55° 36' EAST ALONG THE WESTERLY EXTENSION OF THE CENTERLINE OF AN EXISTING DRAIN DITCH A DISTANCE OF 1298.64 FEET, MORE OR LESS, TO A 5/8 INCH IRON PIN ON THE WESTERLY LINE OF AN IRRIGATION LATERAL KNOWN AS THE "J" LATERAL; THENCE SOUTH 85° 04' WEST ALONG THE WESTERLY LINE OF SAID LATERAL A DISTANCE OF 293.0 FEET TO A 5/8 INCH IRON PIN; THENCE SOUTH 36° 30' WEST ALONG THE WESTERLY LINE OF SAID LATERAL 165.0 FEET TO A 5/8 INCH IRON PIN; THENCE NORTH 53° 00' WEST ALONG THE NORTHERLY LINE OF AN EXISTING DRAIN DITCH A DISTANCE OF 853.44 FEET, MORE OR LESS, TO A 5/8 INCH IRON PIN SITUATED ON THE EAST RIGHT OF WAY LINE OF THE STATE HIGHWAY; THENCE CONTINUING NORTH 53° 00' WEST A DISTANCE OF 37.56 FEET TO THE POINT OF BEGINNING.

ALSO A STRIP OF LAND 30 FEET IN WIDTH ADJOINING AND MEASURED AT RIGHT ANGLES TO THE NORTHERLY LINE OF THE RIGHT OF WAY OF THE MAIN CANAL OF THE GOVERNMENT IRRIGATION SYSTEM IN THE SW1/4 SW1/4 OF SECTION 18, TOWNSHIP 39 SOUTH, RANGE 10 EAST OF THE WILLAMETTE MERIDIAN, AND RUNNING AND EXTENDING THE ENTIRE DISTANCE FROM THE THREAD OR CENTERLINE OF THAT CERTAIN LATERAL BRANCHING FROM THE NORTHERLY SIDE OF SAID MAIN CANAL AND KNOWN AS LATERAL "J" IN A NORTHWESTERLY DIRECTION TO THE WEST BOUNDARY OF SAID SW1/4 SW1/4 OF SECTION 18, AND BEING A STRIP OF LAND ADJOINING SAID RIGHT OF WAY SAVED AND EXCEPTED IN DEED DATED SEPTEMBER 13, 1907, RECORDED AT PAGE 101 IN VOLUME 26, DEED RECORDS OF KLAMATH COUNTY, OREGON.

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE BOUNDARIES OF THE KLAMATH FALLS - MERRILL HIGHWAY STATE 39.

ALSO EXCEPTING THEREFROM THAT PORTION DEEDED TO THE STATE OF OREGON DEPARTMENT OF TRANSPORTATION RECORDED FEBRUARY 4, 1997 IN VOLUME M97, PAGE 3478, MICROFILM RECORDS OF KLAMATH COUNTY, OREGON .

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