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NO PART OF ANY STEVENS-NESS FORM MAY BE REPRODUCED IN ANY FORM OR BY ANY ELECTRONIC OR MECHANICAL MEANS.



# NOTICE OF DEFAULT AND ELECTION TO SELL

2010-013422

Klamath County, Oregon

RE: Trust Deed from

Ernst Brothers, LLC

PO Box 637

Gilchrist, OR 97737

To

Grantor

South Valley Bank &amp; Trust

803 Main Street

Klamath Falls, OR 97601

Trustee

After recording, return to (Name, Address, Zip):

James R. Uerlings

Boivin, Uerlings &amp; Dilaconi, P.C.

803 Main Street, Ste 201

Klamath Falls, OR 97601



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11/18/2010 03:44:43 PM

Fee: \$62.00

SPACE F

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RECORD

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Reference is made to that certain trust deed made by Ernst Brothers, LLC

EARNCO

as grantor, to  
as trustee,  
in favor of South Valley Bank & Trust, as beneficiary,  
dated December 30, 2002, recorded on January 15, 2003, in the Records of  
Klamath County, Oregon, in Book 1420, volume No. M03 at page 2790

and/or as ☐ fee ☐ file ☐ document ☐ microfilm ☐ description No. xxxxxxxxxxxxxxxxxx (indicate which), covering the following  
described real property situated in the above-mentioned county and state, to-wit:

See Exhibit 1, attached hereto and incorporated by this reference.

NOTE: The Trust Deed includes other real property not included in this foreclosure.

The undersigned hereby certifies that no assignments of the trust deed by the trustee or by the beneficiary and no appointments of a successor trustee have been made, except as recorded in the Records of the county or counties in which the above-described real property is situated. Further, no action has been instituted to recover the debt, or any part thereof, now remaining secured by the 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 grantor or other person owing an obligation, performance of which is secured by the trust deed, or by the 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:

- 1) Failure to make loan payments due on October 1, 2009 and thereafter;
- 2) Failure to pay real estate taxes for 2005 to present;
- 3) Failure to maintain insurance on real property;
- 4) Failure to provide financial information; and,
- 5) Properties are understood to be contaminated by hazardous substance(s). Borrower agreed to maintain compliance with all Environmental Laws, all applicable federal, state and local laws and regulations.

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, to-wit:

Balance of \$773,185.67, plus interest of \$12,115.80 through October 20, 2010 and \$140 in late fees to October 20, 2010, plus interest at 8.5% per annum and late fees until paid.

(OVER)



Notice hereby is given that the beneficiary and trustee, by reason of the default, have elected and do hereby elect to foreclose the 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 interest in the described property which grantor had, or had the power to convey, at the time of the execution by grantor of the trust deed, together with any interest grantor or grantor's successor in interest acquired after the execution of the trust deed, to satisfy the obligations secured by the 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.

The sale will be held at the hour of 11 o'clock, A M., in accord with the standard of time established by ORS 187.110 on April 5, 2011, at the following place: 803 Main Street, Ste 201 in the City of Klamath Falls, County of Klamath, State of Oregon, which is the hour, date and place last set for the sale.

Other than as shown of record, neither the beneficiary nor the trustee has any actual notice of any person having or claiming to have any lien upon or interest in the real property hereinabove described subsequent to the interest of the trustee in the trust deed, or of any successor in interest to grantor or of any lessee or other person in possession of or occupying the property, except:

Name and Last Known Address

Nature of Right, Lien or Interest

See Exhibit 2, attached hereto and incorporated by this reference.

Notice is further given that any person named in ORS 86.753 has the right, at any time prior to five days before the date last set for the sale, to have this foreclosure proceeding dismissed and the trust deed reinstated by payment 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 the 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 and attorney fees not exceeding the amounts provided by ORS 86.753.

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 November 18, 2010

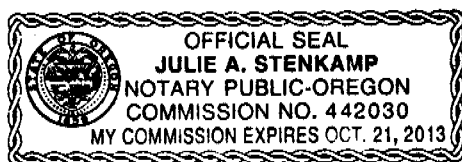
James R. Uerlings, Successor Trustee

☒ Trustee ☐ Beneficiary (indicate which)

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on \_\_\_\_\_  
by James R. Uerlings, Successor Trustee

This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_  
as \_\_\_\_\_  
of \_\_\_\_\_



Julie Stenkamp  
Notary Public for Oregon

My commission expires 10/21/2013

**EXHIBIT 1**  
**LEGAL DESCRIPTION**

**TRACT 1:**

A piece or parcel of land situated in the NE1/4 of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon and more particularly described as follows:

Beginning at an iron pipe which is South 0° 06' West 323.4 feet and North 89° 49' West 234.2 feet from the Northeast corner of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, which point of beginning is also the Northeast corner of that certain tract of land conveyed to Elmer W. and Flora M. Zigler on page 238, Deed Volume 278 of the Records of Klamath County, Oregon; thence North 89° 49' West along the Northerly boundary of said tract of land conveyed on page 238 Deed Volume 278, a distance of 334.8 feet to an iron pipe set at its intersection with a line which is parallel to and 192.77 feet Northeasterly of, when measured at right angles to, the Northeasterly right of way line of the Dalles-California Highway (No. US 97) as the same is now located across said Section 19; thence North 38° 52' West parallel to and 192.77 feet distant from said Northeasterly highway right of way line a distance of 147.25 feet to an iron pipe; thence South 89° 49' East a distance of 427.3 feet to an iron pipe; thence South 0° 06' West a distance of 114.35 feet more or less, to the point of beginning.

**TRACT 2:**

Beginning at a point which is South 0° 06' West a distance of 477.4 feet and North 89° 49' West a distance of 234.2 feet from the Northeast corner of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon; thence North 0° 06' East a distance of 154 feet to a point; thence North 89° 49' West a distance of 336 feet, more or less, to a point on a line which is parallel to and distant 192.77 feet at right angles from the Northeasterly right of way line of the Dalles-California Highway; thence South 38° 52' East a distance of 200 feet, more or less, to a point which is North 0° 06' East a distance of 211.1 feet from the North line of Byrd Avenue in Chelsea Addition; thence South 89° 49' East a distance of 210.2 feet to the place of beginning, being in the NE1/4 NE1/4 of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

TOGETHER WITH an easement for ingress and egress as granted by instrument recorded September 26, 1986 in Volume M86, page 17486, Microfilm Records of Klamath County, Oregon.

**TRACT 3:**

All that portion of the NE1/4 NE1/4 of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the section corner common to Sections 17, 18, 19 and 20, said Township and Range; thence South 0° 06' West along the East line of said Section 19, a distance of 388.5 feet to a point; thence North 89° 49' West a distance of 174.2 feet to a point; thence South 0° 06' West a distance of 300.0 feet to a point on the North line of Byrd Avenue; thence West along said North line a distance of 60 feet to a point; thence North 0° 06' East a distance of 479.45 feet to a point; thence North 89° 44' West a distance of 427.3 feet to a point; thence North 38° 46' West a distance of 268.15 feet to a point on the North line of said Section 19; thence South 89° 44' East along said North line a distance of 833.95 feet to the point of beginning.

(Legal description continued)

EXCEPTING THEREFROM a tract of land situated in the NE1/4 NE1/4 of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the section corner common to Sections 17, 18, 19 and 20, said Township and Range; thence South 0° 06' West along the East line of said Section 19, a distance of 388.5 feet to a point; thence North 89° 49' West a distance of 174.2 feet to a point; thence South 0° 06' West a distance of 89 feet to the True Point of Beginning of this description; thence continuing South 0° 06' West a distance of 211 feet to a point on the North line of Byrd Avenue; thence West along said North line a distance of 60 feet to a point; thence North 0° 06' East a distance of 211 feet to a point; thence South 89° 49' East 60 feet to the point of beginning.

AND EXCEPTING THEREFROM an Easterly portion thereof conveyed to The State of Oregon, by and through its Department of Transportation, by Warranty Deed recorded May 5, 2003 in Volume M03, page 29566, Microfilm Records of Klamath County, Oregon, being more particularly described as follows:

A parcel of land lying in the NE1/4 NE1/4 of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon and being a portion of that property designated as Parcel 3 and described in that deed to Ernst Brothers LLC, recorded in Book M00, page 13950, Microfilm Records of Klamath County, Oregon, the said parcel being that portion of said property described as follows:

Beginning at the Northeast corner of Section 19; thence Southerly along the East line of Section 19, a distance of 118.415 meters to the Northerly line of that property described in that deed to Alvin M. Hamlin, Trustee and Merry Anne Hamlin, Trustee, recorded in Book M96, page 5936, Microfilm Records of Klamath County, Oregon; thence Westerly along said Northerly line, a distance of 40.300 meters; thence Northerly on a line parallel with and 40.300 meters Westerly of the East line of Section 19, a distance of 32.433 meters; thence Easterly on a line parallel with and 86 meters Southerly of the North line of Section 19, a distance of 5.800 meters; thence Northerly on a line parallel with and 34.500 meters Westerly of the East line of Section 29, a distance of 86 meters to the North line of Section 19; thence Easterly along the North line of Section 19, 34.500 meters to the point of beginning.

#### **TRACT 4:**

Beginning at a point on the Northeasterly right of way line of State Highway No. 97 which lies South 0° 06' West along the East section line a distance of 688.5 feet and North 89° 49' West along the North line of Byrd Avenue in Chelsea Addition, a distance of 521.6 feet and North 38° 52' West along the Northeasterly right of way line of State Highway No. 97 (Note: State Highway bearing of this line shows North 39° 7 1/2' West) a distance of 130.55 feet from the iron axle which marks the Northeast corner of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, running thence; continuing North 38° 52' West along the Northeasterly right of way line of State Highway No. 97, a distance of 250 feet to a point; thence North 51° 08' East a distance of 192.77 feet to a point; thence South 38° 52' East a distance of 250 feet to a point; thence South 51° 08' West a distance of 192.77 feet, more or less to the point of beginning, in the NE1/4 NE1/4 of Section 19, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

TOGETHER WITH an easement for ingress and egress as granted by instrument recorded September 26, 1986 in Volume M86, page 17486, Microfilm Records of Klamath County, Oregon.

## Exhibit 2

### Parties with Lien, Interest or Right in the Real Property

<u>Name &amp; Last Known Address</u>	<u>Nature of Right, Lien or Interest</u>
Carter-Jones Collection Service, Inc. 1143 Pine Street PO Box 145 Klamath Falls, OR 97601	Judgment Lien
Sysco Portland, Inc. c/o Donald R. Slayton 143 West 8 <sup>th</sup> Avenue Eugene, OR 97401	Judgment Lien
Klamath County Tax Collector 305 Main Street, 1 <sup>st</sup> Floor Klamath Falls, OR 97601	Property Taxes and 2 Personal Property Tax Warrants: 2009168 and 2009169
Wayne G. Ernst & John S. Ernst Personal Representatives of the Estate of William L. Ernst PO Box 637 Gilchrist, OR 97737	Trust Deed
Debra Ernst, Conservator for William A. Ernest and John G. Ernst c/o John D. Sorlie Bryant, Lovlien & Jarvis PO Box 1151 Bend, OR 97709	Assignee of Trust Deed
Debra Ernst, Conservator for William A. Ernest and John G. Ernst c/o Bradford Aspell Aspell, Della-Rose & Richard 122 S 5 <sup>th</sup> Street Klamath Falls, OR 97601	Assignee of Trust Deed
Ed Staub & Sons Petroleum, Inc. PO Box 528 Merrill, OR 97633	Trust Deed
Cat Scale Company PO Box 630 Walcott, IA 52773	Financing Statement - UCC

**Exhibit 2 - continued**

<u>Name &amp; Last Known Address</u>	<u>Nature of Right, Lien or Interest</u>
Suty Fuel & General Store, Inc. 2360 S 6 <sup>th</sup> Street Klamath Falls, OR 97601	Assignee of Financing Statement & Lessee
State of Oregon Employment Department 875 Union Street NE, Rm 107 Salem, OR 97311	Tax Warrants: A6389 - 0805274 05/15/2009 A7522 08/31/2009 A8066 10/27/2009
United States of America Internal Revenue Service Small Business / Self Employed Area #6 IRS Advisory Group 915 2nd Avenue, MS W245 Seattle, WA 98174	Federal Tax Lien 12/08/2009 #601627609
John G. Ernst 614 Grant Klamath Falls, OR 97601	Assignee of Trust Deed
William A. Ernst 614 Grant Klamath Falls, OR 97601	Assignee of Trust Deed
Mollies Restaurant & Lounge Again, LLC c/o John D. Scott 3817 Hwy 97 N Klamath Falls, OR 97601	Lessee