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2010-014201

Klamath County, Oregon



12/14/2010 03:23:40 PM

Fee: \$62.00

AFTER RECORDING RETURN TO:

Frank C. Rote, III, Attorney

612 NW Fifth Street

Grants Pass, OR 97526

Re: Trust Deed from:

Philip K. Swisher and Lana A. Swisher,

Grantor

to

Amerititle,

Trustee,

NOTICE OF DEFAULT AND ELECTION TO SELL

REFERENCE is made to that certain Trust Deed made by **PHILIP K. SWISHER and LANA A. SWISHER**, as grantors, to **AMERITITLE**, as trustee, in favor of **SOFCU COMMUNITY CREDIT UNION, HIGHLAND BRANCH**, as beneficiary, dated December 3, 2004, recorded on December 13, 2004, in the Official Records of Klamath County, Oregon, as Document M04 Page 85369 covering the following described real property situated in Klamath County, Oregon, to-wit:

Lot 18 in Block 9 of TRACT NO. 1064 – FIRST ADDITION TO GATEWOOD, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Said real property is commonly known as: 5443 Knightwood Drive, Klamath Falls, OR 97603.

Frank C. Rote, III, Attorney, OSB #893898, is now the Successor Trustee. His office is located at 612 NW Fifth Street, Grants Pass, OR 97526, and his telephone number is (541) 479-2678.

The undersigned hereby certifies that no assignments of the trust deed by the trustee or by the beneficiary and no appointment of a successor trustee have been made, except as recorded in the mortgage records of the county or counties in which the above-described real property is situated. Further, that 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 are defaults by the grantor or other person owing an obligation, the 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 defaults for which foreclosure is made are grantors' failure to pay when due the following sums:

- (a) Monthly payments in the amount of \$661.51 beginning October 1, 2010, and thereafter;
- (b) Late charges in the amount of \$33.07 beginning with the October 2010, payment;
- (c) Title expense, costs, trustee's fees and attorney fees incurred herein by reason of said default;
- (d) Unpaid property taxes for 2010-2011 in the amount of \$1,815.13, plus interest and penalties.

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

- (a) The principal sum of \$112,990.26, with accrued interest thereon at the rate of 4.8750% per annum beginning September 14, 2010, until paid;
- (b) Monthly late charges with the October 2010 payment; monthly late charges beginning with the October 2010 payment;
- (c) Unpaid property taxes for 2010-2011 in the amount of \$1,815.13, plus interest and penalties;
- (d) Title expense, costs, trustee's fees and attorney's fees incurred herein by reason of said default; and any further sums advanced by beneficiary for protection of the above described real property and beneficiary's interest therein.
- (e) Any other defaults which may exist prior to the foreclosure sale not hereinabove mentioned for the protection of the above-described real property and beneficiary's interest therein.

Notice hereby is given that the beneficiary and/or 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. Pursuant to said statutes, the interest in the described property that grantor had, or had the power to convey, at the time that grantor executed the trust deed, together with any interest the grantor or grantor's successor in interest acquired after the execution of the trust deed will be sold by the beneficiary and trustee, at public auction to the highest bidder for cash, 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 10:00 o'clock, A.M., in accord with the standard of time established by ORS 187.110 on April 26, 2011, at the following place: the front steps of the offices of First American Title Company of Oregon, 404 Main Street, Klamath Falls, Klamath County, 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 the grantor or of any lessee or other person in possession of or occupying the property, except:

<u>Name and Last Known Address</u>	<u>Nature of Right, Lien or Interest</u>
Lana A. Swisher 5443 Knightwood Drive, Klamath Falls, OR 97603	Grantor
Philip K. Swisher 2825 Eastmount St., Klamath Falls, OR 97603	Grantor
US National Bank, NA 4325 17 th Avenue, SW, Fargo, ND 58103	Creditor
US Bank Trust Company, NA 111 SW Fifth Avenue, Suite 3300, Portland, OR 97204	Creditor

Notice is further given to any person named in ORS 86.753 that the right exists under ORS 86.753 to have the proceeding dismissed and the trust deed reinstated by paying the entire amount then due, together with costs, trustee's fees and attorney fees, and by curing any other default complained of in the notice of default, at any time that is not later than five days before the date last set for the sale.

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.

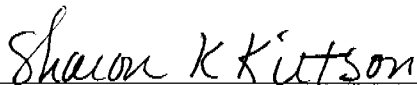
DATED this 13 day of December, 2010


Frank C. Rote III, OSB #893898
612 NW Fifth Street, Grants Pass, OR 97526
(541) 479-2678

STATE OF OREGON)
) ss.
County of Josephine)

This instrument was acknowledged before me on December 13, 2010, by Frank C. Rote, III, Successor Trustee.




Notary Public for Oregon

FAIR DEBT COLLECTION PRACTICES ACT NOTICE

Trustee is a debt collector. This communication is an attempt to collect a debt and any information obtained will be used for that purpose.

NOTICE TO RESIDENTIAL TENANTS 5443 Knightwood Drive, Klamath Falls, Oregon

The property in which you are living is in foreclosure. A foreclosure sale is scheduled for April 26, 2011. Unless the lender who is foreclosing on this property is paid, the foreclosure will go through and someone new will own this property.

The following information applies to you only if you occupy and rent this property as a residential dwelling under a legitimate rental agreement. The information does not apply to you if you own this property or if you are not a residential tenant.

If the foreclosure goes through, the business or individual who buys this property at the foreclosure sale has the right to require you to move out. The buyer must first give you an eviction notice in writing that specifies the date by which you must move out. The buyer may not give you this notice until after the foreclosure sale happens. If you do not leave before the move-out date, the buyer can have the sheriff remove you from the property after a court hearing. You will receive notice of the court hearing.

FEDERAL LAW REQUIRES YOU TO BE NOTIFIED

IF YOU ARE OCCUPYING AND RENTING THIS PROPERTY AS A RESIDENTIAL DWELLING UNDER A LEGITIMATE RENTAL AGREEMENT, FEDERAL LAW REQUIRES THE BUYER TO GIVE YOU NOTICE IN WRITING A CERTAIN NUMBER OF DAYS BEFORE THE BUYER CAN REQUIRE YOU TO MOVE OUT. THE FEDERAL LAW THAT REQUIRES THE BUYER TO GIVE YOU THIS NOTICE IS EFFECTIVE UNTIL DECEMBER 31, 2012.

Under federal law, the buyer must give you at least 90 days' notice in writing before requiring you to move out. If you are renting this property under a fixed-term lease (for example, a six-month or one-year lease), you may stay until the end of your lease term. If the buyer wants to move in and use this property as the buyer's primary residence, the buyer can give you written notice and require you to move out after 90 days, even if you have a fixed-term lease with more than 90 days left.

STATE LAW NOTIFICATION REQUIREMENTS

IF THE FEDERAL LAW DOES NOT APPLY, STATE LAW STILL REQUIRES THE BUYER TO GIVE YOU NOTICE IN WRITING BEFORE REQUIRING YOU TO MOVE OUT IF YOU ARE OCCUPYING AND RENTING THE PROPERTY AS A TENANT IN GOOD FAITH. EVEN IF THE FEDERAL LAW REQUIREMENT IS NO LONGER EFFECTIVE AFTER DECEMBER 31, 2012, THE REQUIREMENT UNDER STATE LAW STILL APPLIES TO YOUR SITUATION. Under state law, if you have a fixed-term lease (for example, a six-month or one-year lease), the buyer must give you at least 60 days' notice in writing before requiring you to move out. If the buyer wants to move in and use this property as the buyer's primary residence, the buyer can give you written notice and require you to move out after 30 days, even if you have a fixed term lease with more than 30 days left.

If you are renting under a month-to-month or week-to-week rental agreement, the buyer must give you at least 30 days' notice in writing before requiring you to move out.

IMPORTANT: For the buyer to be required to give you notice under state law, you must prove to the business or individual who is handling the foreclosure sale that you are occupying and renting this property as a residential dwelling under a legitimate rental agreement. The name and address of the business or individual who is handling the

foreclosure sale is shown on this notice under the heading "TRUSTEE". You must mail or deliver your proof not later than March 27, 2011 (30 days before the date first set for the foreclosure sale). Your proof must be in writing and should be a copy of your rental agreement or lease. If you do not have a written rental agreement or lease, you can provide other proof, such as receipts for rent you paid.

ABOUT YOUR SECURITY DEPOSIT

Under state law, you may apply your security deposit and any rent you paid in advance against the current rent you owe your landlord. To do this, you must notify your landlord in writing that you want to subtract the amount of your security deposit or prepaid rent from your rent payment. You may do this only for the rent you owe your current landlord. If you do this, you must do so before the foreclosure sale. The business or individual who buys this property at the foreclosure sale is not responsible to you for any deposit or prepaid rent you paid to your landlord.

ABOUT YOUR TENANCY AFTER THE FORECLOSURE SALE

The business or individual who buys this property at the foreclosure sale may be willing to allow you to stay as a tenant instead of requiring you to move out. You should contact the buyer to discuss that possibility if you would like to stay. Under state law, if the buyer accepts rent from you, signs a new residential rental agreement with you or does not notify you in writing within 30 days after the date of the foreclosure sale that you must move out, the buyer becomes your new landlord and must maintain the property. Otherwise, the buyer is not your landlord and is not responsible for maintaining the property on your behalf and you must move out by the date the buyer specified in a notice to you.

YOU SHOULD CONTINUE TO PAY RENT TO YOUR LANDLORD UNTIL THE PROPERTY IS SOLD TO ANOTHER BUSINESS OR INDIVIDUAL OR UNTIL A COURT OR LENDER TELLS YOU OTHERWISE. IF YOU DO NOT PAY RENT, YOU CAN BE EVICTED. AS EXPLAINED ABOVE, YOU MAY BE ABLE TO APPLY A DEPOSIT YOU MADE OR PREPAID RENT YOU PAID AGAINST YOUR CURRENT RENT OBLIGATION, BE SURE TO KEEP PROOF OF ANY PAYMENTS YOU MAKE AND OF ANY NOTICE YOU GIVE OR RECEIVE CONCERNING THE APPLICATION OF YOUR DEPOSIT OR YOUR PREPAID RENT.

IT IS UNLAWFUL FOR ANY PERSON TO TRY TO FORCE YOU TO LEAVE YOUR HOME WITHOUT FIRST GOING TO COURT TO EVICT YOU. FOR MORE INFORMATION ABOUT YOUR RIGHTS, YOU MAY WISH TO CONSULT A LAWYER. If you believe you need legal assistance, contact the Oregon State Bar at 1-503-620-0222 or toll-free in Oregon at 1-800-452-8260 or you may visit its website at www.osbar.org and ask for the lawyer referral service. Legal assistance may be available if you have a low income and meet federal poverty guidelines. For more information and a directory of legal aid programs, go to <http://www.oregonlawhelp.org>.

TRUSTEE: Frank C. Rote, III, Attorney at Law
612 NW Fifth Street, Grants Pass, OR 97526