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2011-000418  
Klamath County, Oregon



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01/11/2011 03:36:46 PM

Fee: \$232.00

**RECORDING COVER SHEET  
FOR NOTICE OF SALE PROOF  
OF COMPLIANCE, PER ORS 205.234**

THIS COVER SHEET HAS BEEN PREPARED BY THE PERSON PRESENTING THE ATTACHED INSTRUMENT FOR RECORDING. ANY ERRORS IN THIS COVER SHEET DO NOT AFFECT THE TRANSACTIONS(S) CONTAINED IN THE INSTRUMENT ITSELF.

**AFTER RECORDING RETURN TO:**

Shapiro & Sutherland, LLC  
5501 N.E. 109th Court, Suite N  
Vancouver, WA 98662  
Telephone: (360) 260-2253

Affidavit of Mailing/Trustee's Notice of Sale

Affidavit of Service

Affidavit of Publication

Certificate of Non Military Service & DOD certificate

Affidavit of Compliance (HB 3630)

Affidavit of Compliance (SB 628)

**ORIGINAL GRANTOR: John McClellan and Cheryl McClellan**

**BENEFICIARY: Mortgage Electronic Registration Systems, Inc., as nominee for Gateway Business Bank, dba Mission Hills Mortgage Bankers**

**S&S#: 10-105164**

**Loan #: XXXXX-0394**

257pmf

AFTER RECORDING RETURN TO:  
Shapiro & Sutherland, LLC  
5501 N.E. 109th Court, Suite N  
Vancouver, WA 98662  
10-105164

OREGON  
AFFIDAVIT OF MAILING OF NOTICE OF SALE

I, Kelly D. Sutherland, say and certify that:

I was and now am a resident of the State of Oregon, a competent person over the age of eighteen years and not the beneficiary or the successor in interest named in the Trust Deed described in the attached Notice of Sale.

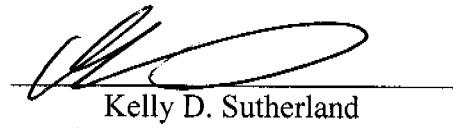
I have given notice of sale of the real property described in the attached Notice of Sale by mailing a copy of the notice by registered or certified mail, return receipt requested, and first class mail to each of the following named persons at their last known addresses, to-wit:

John McClellan 4655 Austin Street Klamath Falls, OR 97603	Cheryl McClellan 28402 S. Dalmatian Road Mulino, OR 97042	Ford Motor Credit Company Legal Office - Md 7440 1 American Road Dearborn, MI 48126
John McClellan 28402 S. Dalmatian Road Mulino, OR 97042	John McClellan P.O. Box 7493 Klamath Falls, OR 97601	Chelsea S. Lewandowski, Esq. Hooper Englund & Weil, LLP 1001 S.W. 5th Ave., Ste 2150 Portland, OR 97204
Cheryl McClellan 4655 Austin Street Klamath Falls, OR 97603	Cheryl McClellan P.O. Box 7493 Klamath Falls, OR 97601	

The persons mailed to include the grantor in the trust deed, any successor in interest to the grantor whose interest appears of record or whose interest the trustee or the beneficiary has actual notice and any person requesting notice as provided in ORS 86.785 and all junior lien holders as provided in ORS 86.740.

Each of the notices so mailed was certified to be a true copy of the original Notice of Sale by Kelly D. Sutherland, Shapiro & Sutherland, LLC, the trustee named in said notice; each copy was mailed in a sealed envelope, with postage prepaid, and was deposited by me in the United States post office at Vancouver, Washington, on October 7, 2010. Each notice was mailed after the date that the Notice of Default and Election to Sell described in said Notice of Sale was recorded which was at least 120 days before the day of the trustee sale.

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



Kelly D. Sutherland

State of Washington      )  
                            )  
County of Clark      )

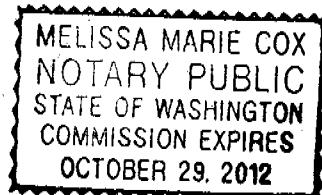
On this 10 day of January, in the year 2011, before me the undersigned, a Notary Public in and for said County and State, personally appeared Kelly D. Sutherland personally known to me to be the person whose name is subscribed to this instrument and acknowledged that he executed.

Witness my hand and official seal

Notary Public

My Commission Expires:

10/29/12



## TRUSTEE'S NOTICE OF SALE

A default has occurred under the terms of a trust deed made by John McClellan and Cheryl McClellan, as tenants by the entirety, as grantor to First American Title Insurance Company 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 January 23, 2007, recorded January 29, 2007, in the mortgage records of Klamath County, Oregon, in Book 2007, at Page 001510, 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:** 4655 Austin Street, Klamath Falls, OR 97603

Both the beneficiary and the trustee have elected to sell the said real property to satisfy the obligations secured by said trust deed and a notice of default has been recorded pursuant to Oregon Revised Statutes 86.735(3); the default for which the foreclosure is made is grantor's failure to pay when due the following sums:

Monthly payments in the sum of \$1,186.25, from June 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 sum being the following, to-wit:

\$134,943.33, together with interest thereon at the rate of 7.5% per annum from May 1, 2010, together with all costs, disbursements, and/or fees incurred or paid by the beneficiary and/or trustee, their employees, agents or assigns.

WHEREFORE, notice hereby is given that the undersigned trustee will on February 7, 2011, at the hour of 10:00 AM PT, in accord with the standard time established by ORS 187.110, 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, sell at public auction to the highest bidder for cash the interest in the said described real property which the grantor has or had power to convey at the time of the execution of said trust deed, together with any interest which the grantor or his successors in interest acquired after the execution of said trust deed, to satisfy the foregoing obligations thereby secured and the costs and expenses of sale, including a reasonable charge by the trustee. 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 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 obligations 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's 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.

Also, please be advised that pursuant to the terms stated on the Deed of Trust and Note, the beneficiary is allowed to conduct property inspections while property is in default. This shall serve as notice that the beneficiary shall be conducting property inspections on the said referenced property.

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### **NOTICE TO RESIDENTIAL TENANTS**

The property in which you are living is in foreclosure. A foreclosure sale is scheduled for February 7, 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 January 8, 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 specifies 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 A 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 and ask for the lawyer referral service. Contact information for the Oregon State Bar is included with this notice. If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to receive legal assistance for free. Information about whom to contact for free legal assistance is included with this notice.

OREGON STATE BAR, 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, Phone (503) 620-0222, Toll-free 1-800-452-8260 Website: <http://www.osbar.org>

Directory of Legal Aid Programs: <http://www.oregonlawhelp.org>

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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: 10/5/2011

By: 

**KELLY D. SUTHERLAND**  
Successor Trustee  
SHAPIRO & SUTHERLAND, LLC  
5501 N.E. 109th Court, Suite N  
Vancouver, WA 98662  
[www.shapiroattorneys.com/wa](http://www.shapiroattorneys.com/wa)  
Telephone: (360) 260-2253  
Toll-free: 1-800-970-5647  
S&S 10-105164

I, the undersigned certify that the foregoing instrument is a complete and exact copy of the original Trustee's Notice of Sale

EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

THE WEST 174 FEET OF THE FOLLOWING DESCRIBED TRACT, TO WIT:

BEGINNING AT A POINT SOUTH  $0^{\circ} 06'$  EAST A DISTANCE OF 131.4 FEET FROM THE NORTHWEST CORNER OF LOT 10 IN THE RESUBDIVISION OF TRACTS 25 TO 32 OF ALTAMONT RANCH TRACTS LOCATED IN SECTION 15, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, AND RUNNING THENCE AT RIGHT ANGLES NORTH  $89^{\circ} 54'$  EAST A DISTANCE OF 542.4 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF SAID LOT 10; THENCE SOUTH  $00^{\circ} 06'$  EAST ALONG THE EASTERLY LINE OF SAID LOT 10 TO A POINT WHICH MARKS THE NORTHEASTERLY CORNER OF THE LAND HERETOFORE DEEDED TO G.H. STILES AND RECORDED IN BOOK 107, PAGE 354, DEED RECORDS OF KLAMATH COUNTY, OREGON; THENCE WESTERLY ALONG THE NORTH BOUNDARY OF SAID STILES TRACT TO A POINT ON THE WESTERLY BOUNDARY OF SAID LOT 10; THENCE NORTH  $0^{\circ} 06'$  WEST ALONG THE WESTERLY BOUNDARY OF SAID LOT 10 TO THE POINT OF BEGINNING.

PARCEL 2:

BEGINNING AT A POINT ON THE LINE BETWEEN TRACTS 9 AND 10 OF THE SUBDIVISION OF TRACTS 25 TO 32, INCLUSIVE, OF ALTAMONT RANCH TRACTS, A PLATTED SUBDIVISION OF KLAMATH COUNTY, OREGON, WHICH IS SOUTH  $0^{\circ} 06'$  EAST A DISTANCE OF 131.4 FEET FROM THE NORTHEAST CORNER OF SAID TRACT 9, AND WHICH POINT OF BEGINNING IS THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN A DEED RECORDED IN VOLUME 132, PAGE 535, DEED RECORDS OF KLAMATH COUNTY; THENCE SOUTH  $0^{\circ} 06'$  EAST ALONG THE LINE BETWEEN SAID TRACTS 9 AND 10, A DISTANCE OF 160.6 FEET, TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN A DEED RECORDED IN VOLUME 117, PAGE 92, DEED RECORDS KLAMATH COUNTY; THENCE NORTH  $88^{\circ} 46'$  WEST 48.69 FEET; THENCE NORTH  $1^{\circ} 40'$  WEST 159.54 FEET; THENCE NORTH  $89^{\circ} 54'$  EAST 53.05 FEET TO THE POINT OF BEGINNING; BEING A PORTION OF TRACT 9 OF THE SUBDIVISION OF TRACTS 25 TO 32, INCLUSIVE, OF ALTAMONT RANCH TRACTS.

PARCEL 3:

A STRIP OR PARCEL OF LAND TEN FEET WIDE AND 159.54 FEET LONG OFF THE EAST SIDE OF A TRACT OR PARCEL OF LAND LYING IN TRACT 9, RESUBDIVISION OF TRACTS 25 TO 32 INCLUSIVE, OF ALTAMONT RANCH TRACTS, SAID TRACT BEING MORE PARTICULARLY DESCRIBED IN A DEED RECORDED IN VOLUME 186, PAGE 201, DEED RECORDS OF KLAMATH COUNTY, OREGON, SAID STRIP ABUTTING UPON THE WEST LINE OF A TRACT OWNED BY THE SAID GRANTOR AND DESCRIBED IN A DEED RECORDED IN VOLUME 169, PAGE 123, DEED RECORDS OF KLAMATH COUNTY, OREGON.

10105164 / MCCLELLAN  
ASAP# 3765915**SHAPOR****AFFIDAVIT OF POSTING**STATE OF OREGON  
County of Klamath ss.

I, Gabriel Martinez, hereby certify and swear that at all times herein mentioned I was and now am a competent person 18 years of age or older and a resident of the state wherein the service hereinafter set forth was made; that I am not the beneficiary or trustee named in the original trustee's Notice of Sale attached hereto, nor the successor of either, nor an officer, director, employee or attorney for the beneficiary, trustee, or successor of either, corporate or otherwise.

I made service of the attached original Trustee's Notice of Sale, Exhibit "A" and Notice to Residential Tenants upon the individuals and/or entities named below, by delivering a copy of the aforementioned documents, upon an OCCUPANT at the following "Property Address":

**4655 Austin Street  
Klamath Falls, OR 97603**

As follows:

On 10/08/2010 at 12:28 PM, I attempted personal service at the Property Address. I received no answer at the front door and no one appeared to be home. At that time, I POSTED such true copy conspicuously on the front door, pursuant to ORS 86.750 (1)(b)(A).

On 10/13/2010 at 10:51 AM, I returned to the Property Address and, again, received no answer at the front door. At that time, I POSTED another such copy conspicuously on the front door, pursuant to ORS 86.750 (1)(b)(B).

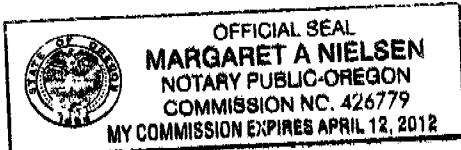
On 10/15/2010 at 11:00 AM, I returned to the Property Address and, again, received no answer at the front door. This attempt in person at the Property Address satisfies the third attempt requirement under ORS 86.750(1)(b)(C).

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

SUBSCRIBED AND SWEARN BEFORE ME  
this, 22<sup>nd</sup> day of October, 2010  
by Gabriel Martinez.

*Margaret A. Nielsen*  
Notary Public for Oregon

X   
Gabriel Martinez  
Nationwide Process Service, Inc.  
420 Century Tower  
1201 SW 12th Avenue  
Portland, OR 97205  
(503) 241-0636



\*244809\*

10105164 / MCCLELLAN  
ASAP# 3765915

**SHAPOR**

**AFFIDAVIT OF MAILING**

STATE OF OREGON  
County of Multnomah ss.

I, Sarah Ruth Tasko, being first duly sworn, depose and say that I am employed by Nationwide Process Service, Inc. On October 20, 2010, I mailed a copy of the Trustee's Notice of Sale, Exhibit "A" and Notice to Residential Tenants, by First Class Mail, postage pre-paid, to occupant, pursuant to ORS 86.750(1)(b)(C).

The envelope was addressed as follows:

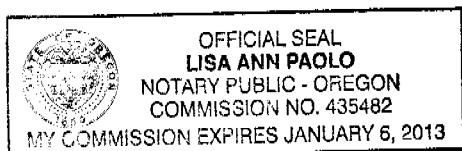
**OCCUPANT  
4655 Austin Street  
Klamath Falls, OR 97603**

This mailing completes service upon an occupant at the above address with an effective date of 10/08/2010 as calculated pursuant to ORS 86.750 (1)(c).

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

SUBSCRIBED AND SWORN BEFORE ME  
this 10 day of October, 20 10  
by Sarah Ruth Tasko.  
\_\_\_\_\_  
Notary Public for Oregon

16  
X \_\_\_\_\_  
Sarah Ruth Tasko  
Nationwide Process Service, Inc.  
420 Century Tower  
1201 SW 12th Avenue  
Portland, OR 97205  
(503) 241-0636



\*244809\*

## TRUSTEE'S NOTICE OF SALE

A default has occurred under the terms of a trust deed made by John McClellan and Cheryl McClellan, as tenants by the entirety, as grantor to First American Title Insurance Company 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 January 23, 2007, recorded January 29, 2007, in the mortgage records of Klamath County, Oregon, in Book 2007, at Page 001510, 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:** 4655 Austin Street, Klamath Falls, OR 97603

Both the beneficiary and the trustee have elected to sell the said real property to satisfy the obligations secured by said trust deed and a notice of default has been recorded pursuant to Oregon Revised Statutes 86.735(3); the default for which the foreclosure is made is grantor's failure to pay when due the following sums:

Monthly payments in the sum of \$1,186.25, from June 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 sum being the following, to-wit:

\$134,943.33, together with interest thereon at the rate of 7.5% per annum from May 1, 2010, together with all costs, disbursements, and/or fees incurred or paid by the beneficiary and/or trustee, their employees, agents or assigns.

WHEREFORE, notice hereby is given that the undersigned trustee will on February 7, 2011, at the hour of 10:00 AM PT, in accord with the standard time established by ORS 187.110, 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, sell at public auction to the highest bidder for cash the interest in the said described real property which the grantor has or had power to convey at the time of the execution of said trust deed, together with any interest which the grantor or his successors in interest acquired after the execution of said trust deed, to satisfy the foregoing obligations thereby secured and the costs and expenses of sale, including a reasonable charge by the trustee. 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 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 obligations 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's 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.

Also, please be advised that pursuant to the terms stated on the Deed of Trust and Note, the beneficiary is allowed to conduct property inspections while property is in default. This shall serve as notice that the beneficiary shall be conducting property inspections on the said referenced property.

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### **NOTICE TO RESIDENTIAL TENANTS**

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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.



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**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 January 8, 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.

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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 specifies 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 A 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 and ask for the lawyer referral service. Contact information for the Oregon State Bar is included with this notice. If you do not have enough money to pay a lawyer and are otherwise eligible, you may be able to receive legal assistance for free. Information about whom to contact for free legal assistance is included with this notice.

OREGON STATE BAR, 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, Phone (503) 620-0222, Toll-free 1-800-452-8260 Website: <http://www.osbar.org>

Directory of Legal Aid Programs: <http://www.oregonlawhelp.org>

\*\*\*\*\*

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: 10/9/2010

By: 

**KELLY D. SUTHERLAND**  
Successor Trustee  
SHAPIRO & SUTHERLAND, LLC  
5501 N.E. 109th Court, Suite N  
Vancouver, WA 98662  
[www.shapiroattorneys.com/wa](http://www.shapiroattorneys.com/wa)  
Telephone: (360) 260-2253  
Toll-free: 1-800-970-5647  
S&S 10-105164

I, the undersigned certify that the foregoing instrument is a complete and exact copy of the original Trustee's Notice of Sale

EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

THE WEST 174 FEET OF THE FOLLOWING DESCRIBED TRACT, TO WIT:

BEGINNING AT A POINT SOUTH  $0^{\circ} 06'$  EAST A DISTANCE OF 131.4 FEET FROM THE NORTHWEST CORNER OF LOT 10 IN THE RESUBDIVISION OF TRACTS 25 TO 32 OF ALTAMONT RANCH TRACTS LOCATED IN SECTION 15, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, AND RUNNING THENCE AT RIGHT ANGLES NORTH  $89^{\circ} 54'$  EAST A DISTANCE OF 542.4 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF SAID LOT 10; THENCE SOUTH  $00^{\circ} 06'$  EAST ALONG THE EASTERN LINE OF SAID LOT 10 TO A POINT WHICH MARKS THE NORTHEASTERLY CORNER OF THE LAND HERETOFORE DEEDED TO G.H. STILES AND RECORDED IN BOOK 107, PAGE 354, DEED RECORDS OF KLAMATH COUNTY, OREGON; THENCE WESTERLY ALONG THE NORTH BOUNDARY OF SAID STILES TRACT TO A POINT ON THE WESTERLY BOUNDARY OF SAID LOT 10; THENCE NORTH  $0^{\circ} 06'$  WEST ALONG THE WESTERLY BOUNDARY OF SAID LOT 10 TO THE POINT OF BEGINNING.

PARCEL 2:

BEGINNING AT A POINT ON THE LINE BETWEEN TRACTS 9 AND 10 OF THE SUBDIVISION OF TRACTS 25 TO 32, INCLUSIVE, OF ALTAMONT RANCH TRACTS, A PLATTED SUBDIVISION OF KLAMATH COUNTY, OREGON, WHICH IS SOUTH  $0^{\circ} 06'$  EAST A DISTANCE OF 131.4 FEET FROM THE NORTHEAST CORNER OF SAID TRACT 9, AND WHICH POINT OF BEGINNING IS THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN A DEED RECORDED IN VOLUME 132, PAGE 535, DEED RECORDS OF KLAMATH COUNTY; THENCE SOUTH  $0^{\circ} 06'$  EAST ALONG THE LINE BETWEEN SAID TRACTS 9 AND 10, A DISTANCE OF 160.6 FEET, TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN A DEED RECORDED IN VOLUME 117, PAGE 92, DEED RECORDS KLAMATH COUNTY; THENCE NORTH  $88^{\circ} 46'$  WEST 48.69 FEET; THENCE NORTH  $1^{\circ} 40'$  WEST 159.54 FEET; THENCE NORTH  $89^{\circ} 54'$  EAST 53.05 FEET TO THE POINT OF BEGINNING; BEING A PORTION OF TRACT 9 OF THE SUBDIVISION OF TRACTS 25 TO 32, INCLUSIVE, OF ALTAMONT RANCH TRACTS.

PARCEL 3:

A STRIP OR PARCEL OF LAND TEN FEET WIDE AND 159.54 FEET LONG OFF THE EAST SIDE OF A TRACT OR PARCEL OF LAND LYING IN TRACT 9, RESUBDIVISION OF TRACTS 25 TO 32 INCLUSIVE, OF ALTAMONT RANCH TRACTS, SAID TRACT BEING MORE PARTICULARLY DESCRIBED IN A DEED RECORDED IN VOLUME 186, PAGE 201, DEED RECORDS OF KLAMATH COUNTY, OREGON, SAID STRIP ABUTTING UPON THE WEST LINE OF A TRACT OWNED BY THE SAID GRANTOR AND DESCRIBED IN A DEED RECORDED IN VOLUME 169, PAGE 123, DEED RECORDS OF KLAMATH COUNTY, OREGON.

# Affidavit of Publication

## STATE OF OREGON, COUNTY OF KLAMATH

I, Jeanine P. Day, Business Manager, being first duly sworn, depose and say that I am the principal clerk of the publisher of the Herald and News a newspaper in general circulation, as defined by Chapter 193 ORS, printed and published at Klamath Falls in the aforesaid county and state; that I know from my personal knowledge that the

Legal # 12870

Trustee's Notice of Sale

McClellan

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for: ( 4 )

Four

Insertion(s) in the following issues:

November 10, 17, 24, December 01, 2010

Total Cost: \$1,603.71

Subscribed and sworn by Jeanine P Day  
before me on: December 1, 2010

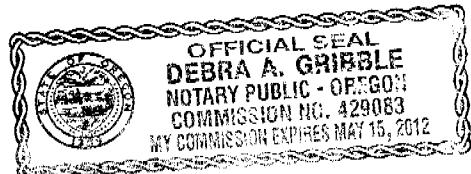
Debra A. Gribble  
Notary Public of Oregon

My commission expires May 15, 2012

### TRUSTEE'S NOTICE OF SALE 10-105164

A default has occurred under the terms of a trust deed made by John McClellan and Cheryl McClellan, as tenants by the entirety, as grantor to First American Title Insurance Company 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 January 23, 2007, recorded January 29, 2007, in the mortgage records of Klamath County, Oregon, in Book 2007, at Page 001510, beneficial interest having been assigned to EverHome Mortgage Company, as covering the following described real property: PARCEL 1: THE WEST 174 FEET OF THE FOLLOWING DESCRIBED TRACT, TO WIT: BEGINNING AT A POINT SOUTH 0° 06' EAST A DISTANCE OF 131.4 FEET FROM THE NORTHWEST CORNER OF LOT 10 IN THE RESUBDIVISION OF TRACTS 25 TO 32 OF ALTAMONT RANCH TRACTS LOCATED IN SECTION 15, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, AND RUNNING THENCE AT RIGHT ANGLES NORTH 89° 54' EAST A DISTANCE OF 542.4 FEET TO A POINT ON THE EASTERN BOUNDARY LINE OF SAID LOT 10; THENCE SOUTH 00° 06' EAST ALONG THE EASTERN LINE OF SAID LOT 10 TO A POINT WHICH MARKS THE NORTHEASTERLY CORNER OF THE LAND HERETOFORE DEEDED TO G.H. STILES AND RECORDED IN BOOK 107, PAGE 354, DEED RECORDS OF KLAMATH COUNTY, OREGON; THENCE WESTERLY ALONG THE NORTH BOUNDARY OF SAID STILES TRACT TO A POINT ON THE WESTERLY BOUNDARY OF SAID LOT 10; THENCE NORTH 0° 06' WEST ALONG THE WESTERLY BOUNDARY OF SAID LOT 10 TO THE POINT OF BEGINNING. PARCEL 2: BEGINNING AT A POINT ON THE LINE BETWEEN TRACTS 9 AND 10 OF THE SUBDIVISION OF TRACTS 25 TO 32, INCLUSIVE, OF ALTAMONT RANCH TRACTS, A PLATTED SUBDIVISION OF KLAMATH COUNTY, OREGON, WHICH IS SOUTH 0° 06' EAST A DISTANCE OF 131.4 FEET FROM THE NORTHEAST CORNER OF SAID TRACT 9, AND WHICH POINT OF BEGINNING IS THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN A DEED RECORDED IN VOLUME 132, PAGE 535, DEED RECORDS OF KLAMATH COUNTY; THENCE SOUTH 0° 06' EAST ALONG THE LINE BETWEEN SAID TRACTS 9 AND 10, A DISTANCE OF 160.6 FEET, TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN A DEED RECORDED IN VOLUME 117, PAGE 92, DEED RECORDS KLAMATH COUNTY; THENCE NORTH 89° 46' WEST 48.69 FEET; THENCE NORTH 1° 40' WEST 159.54 FEET; THENCE NORTH 89° 54' EAST 53.05 FEET TO THE POINT OF BEGINNING; BEING A PORTION OF TRACT 9 OF THE SUBDIVISION OF TRACTS 25 TO 32, INCLUSIVE, OF ALTAMONT RANCH TRACTS. PARCEL 3: A STRIP OR PARCEL OF LAND TEN FEET WIDE AND 159.54 FEET LONG OFF THE EAST SIDE OF A TRACT OR PARCEL OF LAND LYING IN TRACT 9, RESUBDIVISION OF TRACTS 25 TO 32 INCLUSIVE, OF ALTAMONT RANCH TRACTS, SAID TRACT BEING MORE PARTICULARLY DESCRIBED IN A DEED RECORDED IN VOLUME 186, PAGE 201, DEED RECORDS OF KLAMATH COUNTY, OREGON, SAID STRIP ABUTTING UPON THE WEST LINE OF A TRACT OWNED BY THE SAID GRANTOR AND DESCRIBED IN A DEED RECORDED IN VOLUME 169, PAGE 123, DEED RECORDS OF KLAMATH COUNTY, OREGON, COMMONLY KNOWN AS: 4655 Austin Street, Klamath Falls, OR 97603.

Both the beneficiary and the trustee have elected to sell the said real property to satisfy the obligations secured by said trust deed and a notice of default has been recorded pursuant to Oregon Revised Statutes 86.735(3); the default for which the foreclosure is made is grantor's failure to pay when due the following sums: Monthly payments in the sum of \$1,186.25, from June 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 sum being the following, to-wit: \$134,943.33, together with interest thereon at the rate of 7.5% per annum from May 1, 2010, together with all costs, disbursements, and/or fees incurred or paid by the beneficiary and/or trustee, their employees, agents or assigns.

WHEREFORE, notice hereby is given that the undersigned trustee will on February 7, 2011, at the hour of 10:00 AM PT, in accord with the standard time established by ORS 187.110, 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, sell at public auction to the highest bidder for cash the interest in the said described real property which the grantor has or had power to convey at the time of the execution of said trust deed, together with any interest which the grantor or his successors in interest acquired after the execution of said trust deed, to satisfy the foregoing obligations thereby secured and the costs and expenses of sale, including a reasonable charge by the trustee. 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 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 obligations 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's 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. Also, please be advised that pursuant to the terms stated on the Deed of Trust and Note, the beneficiary is allowed to conduct property inspections while property is in default. This shall serve as notice that the beneficiary shall be conducting property inspections on the said referenced property. 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: 11/10/2010 By: KELLY D. SUTHERLAND Successor Trustee SHAPIRO & SUTHERLAND, LLC 5501 N.E. 109th Court, Suite N Vancouver, WA 98662 [www.shapiroattorneys.com/wa](http://www.shapiroattorneys.com/wa). Telephone: (360) 260-2253 Toll-free: 1-800-970-5647 S&S 10-105164 ASAP# 3765652 11/10/2010, 11/17/2010, 11/24/2010, 12/01/2010.

#12870 November 10, 17, 24, December 01, 2010.

AFTER RECORDING RETURN TO:

Shapiro & Sutherland, LLC  
5501 N.E. 109th Court, Suite N  
Vancouver, WA 98662  
Telephone: (360) 260-2253  
10-105164

## **CERTIFICATE OF NON-MILITARY SERVICE**

STATE OF WASHINGTON )  
 ) SS.  
County of CLARK )

THIS IS TO CERTIFY THAT I, Kelly D. Sutherland, am the Successor Trustee of that certain trust deed serviced by EverHome Mortgage Company, the current beneficiary, in which John McClellan and Cheryl McClellan, as tenants by the entirety, as grantor, conveyed to First American Title Insurance Company of Oregon, as trustee, certain real property in Klamath County, Oregon; which said trust deed was dated January 23, 2007, and recorded January 29, 2007, in the mortgage records of said county, in Book No. 2007, at Page 001510, as thereafter a Notice of Default with respect to said trust deed was recorded October 1, 2010, in Book 2010, at Page No. 011655, of said mortgage records; thereafter the said trust deed was duly foreclosed by advertisement and sale and the real property covered by said trust deed is scheduled to be sold at the trustee's sale on February 7, 2011. I reasonably believe at no time during the period of three months and one day immediately preceding the day of said sale and including the day thereof, was the real property described in and covered by said trust deed, or any interest therein, owned by a person in the military service as defined in Article I of the "Soldiers' and Sailor's Civil Relief Act of 1940," as amended, as evidenced by the attached Department of Defense certificate(s), or legally incompetent under the laws of the State of Oregon.

In construing this certificate, the masculine includes the feminine, the singular includes the plural, the word "grantor" includes any successor in interest to the grantor, the word "trustee" includes any successor trustee, and the word "beneficiary" includes any successor in interest to the beneficiary named in said trust deed.

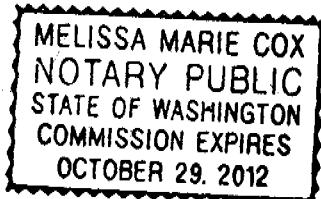


Kelly D. Sutherland  
Successor Trustee

STATE OF WASHINGTON )  
 ) SS.  
COUNTY OF CLARK )

SUBSCRIBED AND SWORN to before me this 10 day of January, 2011,  
by Kelly D. Sutherland, Successor Trustee.

Notary Public for Washington  
My commission expires 10/29/12



Department of Defense Manpower Data Center

Jan-06-2011 13:15:52



Military Status Report  
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
MCCLELLAN	CHERYL		Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.		

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavely-Dixon, Director  
Department of Defense - Manpower Data Center  
1600 Wilson Blvd., Suite 400  
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects **active duty status** including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

***More information on "Active Duty Status"***

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

***Coverage Under the SCRA is Broader in Some Cases***

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

**WARNING:** This certificate was provided based on a name and SSN provided by the requester.

Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID:UC942P4EIT

Department of Defense Manpower Data Center

Jan-06-2011 13:16:13



Military Status Report  
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
MCCLELLAN	JOHN		Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.		

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

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Mary M. Snavely-Dixon, Director  
Department of Defense - Manpower Data Center  
1600 Wilson Blvd., Suite 400  
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

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Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

**WARNING:** This certificate was provided based on a name and SSN provided by the requester.

Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID:6J1R6SGEG4

AFTER RECORDING RETURN TO:  
Shapiro & Sutherland, LLC  
5501 N.E. 109th Court, Suite N  
Vancouver, WA 98662  
10-105164

**TRUSTEE'S AFFIDAVIT AS TO COMPLIANCE TO ORS 86.737  
AND AFFIDAVIT OF NO TIMELY RECEIPT OF REQUEST FOR LOAN MODIFICATION  
OR MEETING UNDER ORS 86.737**

State of Washington )  
County of Clark )

I, Kelly D. Sutherland, being first duly sworn, depose, say and certify that:

I am the Successor trustee in that certain trust deed executed and delivered by John McClellan and Cheryl McClellan, as tenants by the entirety, as grantor to First American Title Insurance Company of Oregon as trustee, in which Mortgage Electronic Registration Systems, Inc., as nominee for Gateway Business Bank, dba Mission Hills Mortgage Bankers is beneficiary, recorded on January 29, 2007, in the mortgage records of Klamath County, Oregon in Book No. 2007, at Page 001510, covering the following described real property situated in said county:

See complete Legal Description attached hereto as Exhibit "A"

Commonly known as: 4655 Austin Street, Klamath Falls, OR 97603

I hereby certify that on October 5, 2010, the notice required by ORS 86.737 ("Notice") was furnished by mailing a copy of the notice by registered or certified mail, return receipt requested, and first class mail to each of the following named persons:

John McClellan  
4655 Austin Street  
Klamath Falls, OR 97603

Cheryl McClellan  
4655 Austin Street  
Klamath Falls, OR 97603

Cheryl McClellan  
P.O. Box 7493  
Klamath Falls, OR 97601

John McClellan  
28402 S. Dalmatian Road  
Mulino, OR 97042

Cheryl McClellan  
28402 S. Dalmatian Road  
Mulino, OR 97042

Occupant(s)  
4655 Austin Street  
Klamath Falls, OR 97603

John McClellan  
P.O. Box 7493  
Klamath Falls, OR 97601

With the Notice, the trustee also included the form contemplated by ORS 86.737 on which the borrower could elect to ask the beneficiary to consider granting a loan modification ("Form"). The Notice also invited the borrower(s) to request a meeting.

The Notice and/or request form instructed the borrower(s) to submit the request for modification and/or meeting to the trustee at the address provided in the Notice and/or Form. The Notice also provided a deadline date, which was more than 30 days after the date the Trustee signed the Notice, by which the trustee would need to receive from the borrower(s) a request for loan modification or request for a meeting. The trustee did not receive a request for loan modification form or request for meeting from the borrower(s) before the deadline set forth in the Notice.

The word "trustee" as used in this affidavit means any successor-trustee to the trustee named in the trust deed first mentioned above.

  
Kelly D. Sutherland

State of Washington )  
 )  
County of Clark )

On this 17 day of OCTOBER, in the year 2010, before me the undersigned, a Notary Public in and for said County and State, personally appeared Kelly D. Sutherland personally known to me to be the person whose name is subscribed to this instrument and acknowledged that he executed.

Witness my hand and official seal

Notary Public  
My Commission Expires 10/29/12

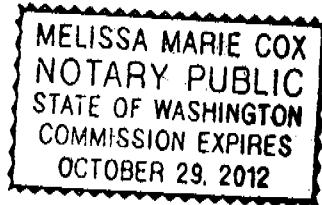


EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

THE WEST 174 FEET OF THE FOLLOWING DESCRIBED TRACT, TO WIT:

BEGINNING AT A POINT SOUTH  $0^{\circ} 06'$  EAST A DISTANCE OF 131.4 FEET FROM THE NORTHWEST CORNER OF LOT 10 IN THE RESUBDIVISION OF TRACTS 25 TO 32 OF ALTAMONT RANCH TRACTS LOCATED IN SECTION 15, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, AND RUNNING THENCE AT RIGHT ANGLES NORTH  $89^{\circ} 54'$  EAST A DISTANCE OF 542.4 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF SAID LOT 10; THENCE SOUTH  $0^{\circ} 06'$  EAST ALONG THE EASTERLY LINE OF SAID LOT 10 TO A POINT WHICH MARKS THE NORTHEASTERLY CORNER OF THE LAND HERETOFORE DEEDED TO G.H. STILES AND RECORDED IN BOOK 107, PAGE 354, DEED RECORDS OF KLAMATH COUNTY, OREGON; THENCE WESTERLY ALONG THE NORTH BOUNDARY OF SAID STILES TRACT TO A POINT ON THE WESTERLY BOUNDARY OF SAID LOT 10; THENCE NORTH  $0^{\circ} 06'$  WEST ALONG THE WESTERLY BOUNDARY OF SAID LOT 10 TO THE POINT OF BEGINNING.

PARCEL 2:

BEGINNING AT A POINT ON THE LINE BETWEEN TRACTS 9 AND 10 OF THE SUBDIVISION OF TRACTS 25 TO 32, INCLUSIVE, OF ALTAMONT RANCH TRACTS, A PLATTED SUBDIVISION OF KLAMATH COUNTY, OREGON, WHICH IS SOUTH  $0^{\circ} 06'$  EAST A DISTANCE OF 131.4 FEET FROM THE NORTHEAST CORNER OF SAID TRACT 9, AND WHICH POINT OF BEGINNING IS THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN A DEED RECORDED IN VOLUME 132, PAGE 535, DEED RECORDS OF KLAMATH COUNTY; THENCE SOUTH  $0^{\circ} 06'$  EAST ALONG THE LINE BETWEEN SAID TRACTS 9 AND 10, A DISTANCE OF 160.6 FEET, TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN A DEED RECORDED IN VOLUME 117, PAGE 92, DEED RECORDS KLAMATH COUNTY; THENCE NORTH  $88^{\circ} 46'$  WEST 48.69 FEET; THENCE NORTH  $1^{\circ} 40'$  WEST 159.54 FEET; THENCE NORTH  $89^{\circ} 54'$  EAST 53.05 FEET TO THE POINT OF BEGINNING; BEING A PORTION OF TRACT 9 OF THE SUBDIVISION OF TRACTS 25 TO 32, INCLUSIVE, OF ALTAMONT RANCH TRACTS.

PARCEL 3:

A STRIP OR PARCEL OF LAND TEN FEET WIDE AND 159.54 FEET LONG OFF THE EAST SIDE OF A TRACT OR PARCEL OF LAND LYING IN TRACT 9, RESUBDIVISION OF TRACTS 25 TO 32 INCLUSIVE, OF ALTAMONT RANCH TRACTS, SAID TRACT BEING MORE PARTICULARLY DESCRIBED IN A DEED RECORDED IN VOLUME 186, PAGE 201, DEED RECORDS OF KLAMATH COUNTY, OREGON, SAID STRIP ABUTTING UPON THE WEST LINE OF A TRACT OWNED BY THE SAID GRANTOR AND DESCRIBED IN A DEED RECORDED IN VOLUME 169, PAGE 123, DEED RECORDS OF KLAMATH COUNTY, OREGON.

**NOTICE:**

**YOU ARE IN DANGER OF LOSING YOUR PROPERTY IF YOU DO NOT  
TAKE ACTION IMMEDIATELY**

This notice is about your mortgage loan on your property at 4655 Austin Street, Klamath Falls, OR 97603

Your lender has decided to sell this property because the money due on your mortgage loan has not been paid on time or because you have failed to fulfill some other obligation to your lender. This is sometimes called 'foreclosure'.

In order to bring your mortgage loan current, the amount you need to pay as of today, October 5, 2010 is \$6,292.64.

**By law, your lender has to provide you with details about the amount you owe, if you ask. You may call this office at (360) 260-2253, or toll-free 1-800-970-5647, extension 278, to find out the exact amount you must pay to bring your mortgage loan current and to get other details about the amount you owe. You may also get these details by sending a request by certified mail to:**

Shapiro & Sutherland, LLC  
5501 N.E. 109th Court, Suite N  
Vancouver, WA 98662  
Our File #: 10-105164

**THIS IS WHEN AND WHERE  
YOUR PROPERTY WILL BE SOLD  
IF YOU DO NOT TAKE ACTION:**

February 7, 2011, at the hour of 10:00 AM PT, at the main entrance of the Klamath County Courthouse, located at 316 Main Street, in the City of Klamath Falls, OR

## **THIS IS WHAT YOU CAN DO TO STOP THE SALE:**

1. You can pay the amount past due or correct any other default, up to five days before the sale.
2. You can refinance or otherwise pay off the loan in full anytime before the sale.
3. You can call the Loss Mitigation department of EverHome Mortgage Company at 800-669-7724 to find out if your lender is willing to give you more time or change the terms of your loan.
4. You can sell your home, provided the sale price is enough to pay what you owe.

There are government agencies and nonprofit organizations that can give you information about foreclosure and help you decide what to do. For the name and telephone number of an organization near you, please call the statewide phone contact number at **1-800-SAFENET (1-800-723-3638)**. You may also wish to talk to a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at **(503) 684-3763**, or toll-free in Oregon at **1-800-452-7636** or you may visit its website at: [www.osbar.org](http://www.osbar.org). 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>.

Your lender may be willing to modify your loan to reduce the interest rate, reduce the monthly payments or both. You can get information about possible loan modification programs by contacting your lender at 800-669-7724. If you can't reach your lender, you may contact the trustee at the telephone number at the bottom of this notice. If you have already entered into a loan modification with your lender, it is possible that you will not be able to modify your loan again unless your circumstances have changed. Your lender is not obligated to modify your loan.

You may request to meet with your lender to discuss options for modifying your loan. During discussions with your lender, you may have the assistance of a lawyer, a housing counselor or another person of your choosing. To receive a referral to a housing counselor or other assistance available in your community, call this toll-free consumer mortgage foreclosure information number 1-800-SAFENET (1-800-723-3638). Many lenders participate in new federal loan

modification programs. You can obtain more information about these programs at: <http://www.makinghomeaffordable.gov/>.

IF YOU WANT TO APPLY TO MODIFY YOUR LOAN, YOU MUST FILL OUT AND MAIL BACK THE ENCLOSED "MODIFICATION REQUEST FORM." YOUR LENDER MUST RECEIVE THE FORM BY NOVEMBER 7, 2010, WHICH IS MORE THAN 30 DAYS AFTER THE DATE SHOWN BELOW.

WARNING: You may get offers from people who tell you they can help you keep your property. You should be careful about those offers. Make sure you understand any papers you are asked to sign. If you have any questions, talk to a lawyer or one of the organizations mentioned above before signing.

DATED: October 5, 2010

Kelly D. Sutherland, Shapiro & Sutherland, LLC

Trustee signature: 

Trustee telephone number: (360) 260-2253 or 1-800-970-5647

**You must send in all required documentation by no later than November 7, 2010.**

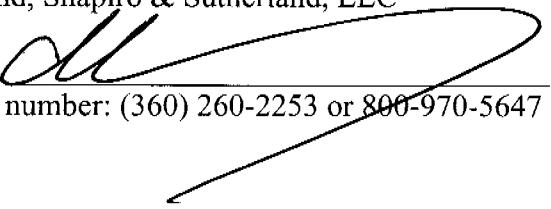
Keep a copy of documents for records. Don't send original income documents, as copies are acceptable.

**NEXT STEPS: HERE'S WHAT WILL HAPPEN:**

Once the mortgage servicer receives all of your documentation and verifies your information, the mortgage servicer will determine whether you qualify for a payment assistance program. The mortgage servicer will contact you, as reasonably practical but not less than 45 days after receiving the form, to notify you whether the mortgage servicer approves or denies your request, or requires additional information. During this period, the mortgage servicer may require additional information to determine whether the loan can be modified. IF you do not qualify, the mortgage servicer will discuss other alternative with you that may help you keep your home or ease your transition to another home.

DATED: October 5, 2010

Kelly D. Sutherland, Shapiro & Sutherland, LLC

Trustee signature:   
Trustee telephone number: (360) 260-2253 or 800-970-5647

## LOAN MODIFICATION REQUEST FORM

John McClellan  
4655 Austin Street  
Klamath Falls, OR 97603

Cheryl McClellan  
28402 S. Dalmatian Road  
Mulino, OR 97042

John McClellan  
28402 S. Dalmatian Road  
Mulino, OR 97042

John McClellan  
P.O. Box 7493  
Klamath Falls, OR 97601

Cheryl McClellan  
4655 Austin Street  
Klamath Falls, OR 97603

Cheryl McClellan  
P.O. Box 7493  
Klamath Falls, OR 97601

RE: Loan#: 9000470394  
Property Address: 4655 Austin Street, Klamath Falls, OR 97603

Pursuant to Oregon law, we are providing you with this Modification Request Form. The mortgage servicer is interested in helping you stay in your home. The mortgage servicer wants you to know there are payment assistance programs available that may help you. If you qualify under the programs, the mortgage servicer may be able to bring be able to bring your loan current and /or decrease the monthly payment so that you can avoid foreclosure.

**If you want to apply to modify you must fill out this form and provide all the documentation to the address shown in Step 2 of this form.** Please make sure to provide your current address, phone number and electronic mail address (Email). **The form must be received by the mortgage servicer no later than November 7, 2010 at the address shown in Step 2 of this form.** Please indicate by checking the applicable location whether or not you would like your Loan Modified, whether you would like to meet the mortgage servicer, or both

I would like to have my loan modified.

I would like to meet with the mortgage servicer.

Borrower's signature

Borrower's signature

Borrower's Printed Name

Borrower's Printed Name

Borrower's Address

Borrower's Address

Borrower's Phone Number

Borrower's Phone Number

---

Borrower's E-mail Address

---

Borrower's E-mail Address

## **STEP 1: GATHER THE INFORMATION NEEDED TO HELP YOU**

Detailed Instructions on what you need to do to take advantage of this program are set forth below. Generally, you will need to:

- Explain in a letter requesting assistance and explaining the circumstances of the financial hardship that makes it difficult for you to pay your mortgage loan.
- Submit the required documentation of your income.

If you meet the eligibility criteria, you may be offered either a temporary or permanent payment assistance program with a decreased monthly payment. The monthly payments will be based on the Income documentation that you provide.

## **STEP 2: COMPLETE AND SUBMIT**

Please submit all the required income documentation by no later than November 7, 2010. If you have any questions, please contact mortgage servicer at (800) 669-7724.

### **Act Now!**

To see if you qualify for this program, send the items listed below to Mortgage Servicer no later than November 7, 2010 to the address provided below:

***Shapiro & Sutherland, LLC  
5501 N.E. 109th Court, Suite N  
Vancouver, WA 98662***

Documentation to verify all of the income of each borrower. (Including any alimony or child support that you choose to rely upon to qualify). This documentation should include:

The most recent two paystubs for all account holders, or  
If self-employed, copies of your profit and loss statements, ledgers and receipts, or  
If you're not currently employed, your social security/unemployment benefit letters or denial letter, or  
If you're disabled, your disability benefits letters denial letter, or  
If you're retired, a pension or retirement letter  
Most recent Tax Return  
Last two Bank Statements  
Information about Assets  
Evidence of any "junior" second or more liens

Additional Information on your expenses:

- Medical bills (if applicable)
- Childcare (if applicable)
- Copy of court order for child support and/or alimony (if applicable)

If you have other types of Income, cannot locate required documents, or have questions about the documentation required, please contact the mortgage servicer at (800) 669-7724.

**You must send in all required documentation by no later than November 7, 2010.**

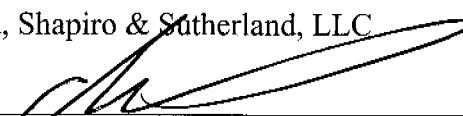
Keep a copy of documents for records. Don't send original income documents, as copies are acceptable.

#### **NEXT STEPS: HERE'S WHAT WILL HAPPEN:**

Once the mortgage servicer receives all of your documentation and verifies your information, the mortgage servicer will determine whether you qualify for a payment assistance program. The mortgage servicer will contact you, as reasonably practical but not less than 45 days after receiving the form, to notify you whether the mortgage servicer approves or denies your request, or requires additional information. During this period, the mortgage servicer may require additional information to determine whether the loan can be modified. IF you do not qualify, the mortgage servicer will discuss other alternative with you that may help you keep your home or ease your transition to another home.

DATED: October 5, 2010

Kelly D. Sutherland, Shapiro & Sutherland, LLC

Trustee signature: 

Trustee telephone number: (360) 260-2253 or 800-970-5647

AFTER RECORDING RETURN TO:

Shapiro & Sutherland, LLC  
5501 N.E. 109th Court, Suite N  
Vancouver, WA 98662  
10-105164

Affidavit of Compliance with Oregon ORS 86.737

**County Clerk Recording Info: Book 2007, Page 001510**

**Grantor (name): John McClellan and Cheryl McClellan, as tenants by the entirety,**

**Trustee (name): First American Title Insurance Company of Oregon**

**Original Beneficiary (name): Mortgage Electronic Registration Systems, Inc., as nominee for  
Gateway Business Bank, dba Mission Hills Mortgage Bankers**

**Assignee(s), if any (name(s)): EverHome Mortgage Company**

**Original Loan Amount: \$139,500.00**

**Borrower name(s): McClellan, John & Cheryl**

**Property Address: 4655 Austin Street, Klamath Falls, OR 97603**

The undersigned is an employee of the beneficiary of the trust deed securing the above-referenced loan or of its authorized agent, at least 18 years of age and competent to testify in a court of law

In the regular course of its business the Beneficiary or its authorized agent creates and maintains records relating to its loans. Copies of the documents are promptly placed in a file specific to each loan once they are received. The copies of documents attached hereto as exhibits are copies from the specific loan file and are not materially altered from the form of the document in the file. The Beneficiary or its authorized agent relies upon these documents to determine whether to make loans, and in servicing the loan. The system does not allow for deletion or alteration of entries once made to avoid alteration of the history and to maintain an accurate record of transactions as entered in the system.

The undersigned further represents and avers, under the penalty of perjury, that the following selected paragraph(s) is/are true and correct (select all that apply):

**No Request for Meeting or Loan Modification Received.** The borrower failed to return the Loan Modification Request Form ("Form") required by ORS 86.737 ("Law:") sent by the Foreclosure Trustee, to the address required on the Notice or Form, by the date set forth on the Notice; the date was more than 30 days after the date the Trustee signed the foreclosure notice sent to Borrower by Trustee with the Form ("deadline date").

**Meeting Requested But Borrower Unavailable to Schedule Meeting.** Borrower requested a meeting prior to the deadline date set forth on the Notice, sending the Form to the address required on the Notice or Form. The beneficiary or beneficiary's authorized agent attempted to contact the borrower by the methods contemplated by "Law" within the time period required by the Law after receiving the loan modification request. Borrower did not respond within 7 days of attempted contact. Accordingly, no meeting was required and no meeting occurred.

- [ ] **Meeting Occurred.** Borrower requested a meeting by telephone or in person prior to the deadline date set forth on the Notice, sending the Form to the address required on the Notice or Form. The beneficiary or beneficiary's authorized agent timely contacted Borrower by the methods allowed by the Law to schedule a meeting. A meeting was scheduled and took place between Borrower and a representative of the beneficiary or beneficiary's agent -- authorized to modify the loan or able to obtain authority to modify the loan – prior to the beneficiary determining whether or not to grant Borrower's request for a loan modification.
- [ ] **Loan Modification Requested. After Evaluation, Borrower Deemed Ineligible. Request Denied.** Borrower requested a loan modification prior to the deadline date set forth on the Notice, sending the Form to the address required on the Notice or Form. The loan modification request was evaluated in good faith within required time period under the Law. After considering the most current financial information provided by Borrower, the beneficiary or beneficiary's agent determined that Borrower is ineligible for a loan modification. Within the required time period under the Law after receiving Borrower's Form or, if applicable additional information, the beneficiary or beneficiary's authorized agent notified Borrower that Borrower is ineligible for a loan modification. The beneficiary or the beneficiary's agent provided notice to the borrower that included an explanation of how the beneficiary or beneficiary's agent calculated that the grantor was not eligible for a loan modification.
- [ ] **Loan Modification Requested. For Non-Financial Reasons, Request Denied.** Borrower requested a loan modification prior to the deadline date set forth on the Notice, sending the Form to the address required on the Notice or Form. The loan modification request was evaluated in good faith within required time period under the Law. Within the required time period under the Law after receiving Borrower's Form or, if applicable additional information, the beneficiary or beneficiary's authorized agent notified Borrower that Borrower's request for a loan modification was denied.
- [ ] **Loan Modification Requested. Borrower Approved for a Modification but Subsequently Defaulted.** Borrower requested a loan modification prior to the deadline date set forth on the Notice, sending the Form to the address required on the Notice or Form. The loan modification request was evaluated in good faith within required time period under the Law. Within the required time period under the Law after receiving Borrower's Form or, if applicable additional information, the beneficiary or beneficiary's authorized agent notified Borrower that Borrower's request for a loan modification was approved. Borrower subsequently failed to return the executed modification agreement, required down payment, or failed to timely make the payment(s) under the terms of the agreement.
- [ ] **Loan Modification Requested. Insufficient Information Provided by Borrower. Request Denied.** Borrower requested a loan modification prior to the deadline date set forth on the Notice, sending the Form to the address required on the Notice or Form. The loan modification request was evaluated in good faith within required time period under the Law, but Borrower, despite one or more additional requests from beneficiary or its agent, failed to provide sufficient information to enable beneficiary to determine in good faith whether borrower is eligible for a loan modification. Accordingly, within required time period under the Law, of the beneficiary's receipt of Borrower's Loan Modification Request Form or, if applicable, additional information, the beneficiary or beneficiary's authorized agent notified borrower that borrower's request for a loan modification was denied.

[ ] Other (Specify):

DATED: 1/3/11

By:

Typed Name: E. Michele de Craen

Title: Assistant Vice President

State of Florida )  
County of Duval ) ss.

This instrument was acknowledged before me on JANUARY 3, 2011 by  
E. Michele de Craen as Assistant Vice President of  
EverHome Mortgage Company

Notary signature Aleksandar Kokotovic  
My commission expires July 31, 2011

ALEKSANDAR KOKOTOVIC  
Notary Public, State of Florida  
My comm. exp. July 31, 2011  
Comm. No. DD 700535