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2011-008507

Klamath County, Oregon

After recording, return to:

Cody J. Elliott  
Successor Trustee & Attorney  
Miller Nash LLP  
111 S.W. Fifth Avenue, Suite 3400  
Portland, Oregon 97204-3699



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07/21/2011 01:50:25 PM

Fee: \$62.00

### NOTICE OF DEFAULT AND ELECTION TO SELL

1. This notice of default and election to sell is recorded pursuant to ORS 86.735(3) with respect to that deed of trust (the "Trust Deed") dated **May 26, 2009**, by **Jesse R. Mortensen and Mary Mortensen** (the "Grantor"), to **U.S. Bank Trust Company, National Association** (the "Trustee"), to secure payment and performance of certain obligations of Grantor to **U.S. Bank National Association ND** (the "Beneficiary"), including repayment of a U.S. Bank Equiline Agreement dated **May 26, 2009**, in the principal amount of \$111,110.82 (the "Agreement").

2. The legal description of the real property covered by the Trust Deed is as follows:

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

LOTS 3, 18, AND 19 IN BLOCK 3 OF WOODLAND PARK,  
ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE  
OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY,  
OREGON, TOGETHER WITH THE FOLLOWING:

AN UNDIVIDED 3/88THS INTEREST IN THE FOLLOWING  
DESCRIBED LAND: TWO PARCELS SITUATED IN LOTS 1 AND 2,  
SECTION 15, TOWNSHIP 34 SOUTH, RANGE 7 EAST OF THE  
WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, AND  
BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

#### PARCEL 1

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 15,  
TOWNSHIP 34 SOUTH, RANGE 7 EAST OF THE WILLAMETTE  
MERIDIAN, KLAMATH COUNTY, OREGON AND RUNNING;  
THENCE ALONG THE NORTH LINE OF SAID SECTION, NORTH 89  
DEGREES 42' 15" EAST 400 FEET; THENCE SOUTH 62.42 FEET;  
THENCE SOUTH 46 DEGREES 57' 20" WEST 408.82 FEET TO THE  
NORTHEASTERLY BANK OF THE WILLIAMSON RIVER: THENCE

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FOLLOWING SAID RIVER BANK NORTH 37 DEGREES 53' 20" WEST 136.90 FEET; THENCE NORTH 16 DEGREES 33' WEST 60.98 FEET TO THE WEST LINE OF SECTION 15; THENCE NORTHERLY ON SAID SECTION LINE 172.92 FEET TO THE POINT OF BEGINNING.

PARCEL 2

BEGINNING AT THE NORTHWEST CORNER OF SECTION 15, TOWNSHIP 34 SOUTH, RANGE 7 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON AND RUNNING THENCE NORTH 89 DEGREES 42' 15" EAST 400.00 FEET ALONG THE NORTH LINE OF SAID SECTION 15; THENCE SOUTH 62.42 FEET; THENCE SOUTH 50 DEGREES 43' 50" EAST 453.16 FEET; THENCE SOUTH 76 DEGREES 17' 30" EAST 886.79 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE SOUTH 35 DEGREES 56' 30" WEST 446.55 FEET TO A POINT ON THE NORTHEASTERLY BANK OF WILLIAMSON RIVER; THENCE SOUTH 45 DEGREES 32' 20" EAST 84.00 FEET; THENCE NORTH 44 DEGREES 52' 10" EAST 411.59 FEET, THENCE NORTH 34 DEGREES 25' 40" WEST 156.01 FEET, MORE OR LESS TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

3. The Trust Deed was recorded on **June 19, 2009**, as **Instrument No. 2009-8519** in the official real property records of Klamath County, Oregon.

4. The successor trustee hereby certifies that no action has been instituted to recover the obligation, 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).

5. The default for which the foreclosure is made is Grantor's failure to pay when due the following sums: monthly payments in full owed under the Agreement beginning January 2011 and each month thereafter; late charges in the amount of \$87.00 as of May 16, 2011, plus any late charges accruing thereafter; and expenses, costs, trustee fees and attorney fees.

6. By reason of said default, Beneficiary has declared all sums owing on the obligation secured by the Trust Deed immediately due and payable which sums are as follows: (a) the principal amount of \$111,110.82 as of May 16, 2011, (b) accrued interest of \$3,020.54 as of May 16, 2011, and interest accruing thereafter on the principal amount at the rate set forth in the Agreement until fully paid, (c) late charges in the amount of \$87.00 as of May 16, 2011, plus any late charges accruing thereafter and any other expenses or fees owed under the Agreement or Trust Deed, (d) amounts that Beneficiary has paid on or may hereinafter pay to protect the lien, including by way of illustration, but not limitation, taxes, assessments, interest on prior liens, and insurance premiums, and (e) expenses, costs and attorney and trustee fees incurred by Beneficiary in foreclosure, including the cost of a trustee's sale guarantee and any other environmental or appraisal report.

7. Notice is hereby given that by reason of said default, Beneficiary and the successor trustee have elected to foreclose the Trust Deed by advertisement and sale pursuant to ORS 86.705 to ORS 86.795 and to sell the real property identified in paragraph 2 to satisfy the obligation that is secured by the Trust Deed.

8. The sale will be conducted on **December 6, 2011, at one o'clock (1:00) p.m., based on the standard of time established by ORS 187.110, just outside the main entrance of the Klamath County Courthouse, 316 Main Street, Klamath Falls, Oregon.**

9. 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 Beneficiary of the entire amount then due, (other than such portion of principal as would not then be due had no default occurred) and by curing any other default complained of herein that is capable of being cured by tendering the performance required under the obligation or Trust Deed, and, in addition to paying said sums or tendering the performance necessary to cure the default, by paying all costs and expenses actually incurred in enforcing the obligation and Trust Deed, together with Trustee and attorney fees not exceeding the amount provided by ORS 86.753.

10. 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 said Trust Deed, and the words "trustee" and "beneficiary" include their respective successor in interest, if any.

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### **NOTICE TO RESIDENTIAL TENANTS**

The property in which you are living is in foreclosure. A foreclosure sale is scheduled for **December 6, 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.

If you have a fixed-term lease, you may be entitled to receive after the date of the sale a 60-day notice of the purchaser's requirement that you 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 **November 6, 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.

IF 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 – Lawyer Referral Service  
16037 Upper Boones Ferry Road  
Tigard, Oregon 97224  
503-684-3763 or toll-free in Oregon at 800-452-7636  
<http://www.osbar.org/public/ris/ris.html#referral>

Legal Aid: <http://www.osbar.org/public/ris/lowcostlegalhelp/legalaid.html>

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**In accordance with the Fair Debt Collection Practices Act, this is an attempt to collect a debt, and any information obtained will be used for that purpose. This communication is from a debt collector.**

For further information, please contact Cody J. Elliott at his mailing address of Miller Nash LLP, 111 S.W. Fifth Avenue, Suite 3400, Portland, Oregon 97204 or telephone him at (503) 224-5858.

DATED: July 20, 2011.

  
Cody J. Elliott  
Successor Trustee & Attorney

STATE OF OREGON                    )  
  ) SS  
COUNTY OF MULTNOMAH    )

This instrument was acknowledged before me on July 20, 2011, by Cody J. Elliott, successor trustee and attorney.

  
Notary Public for Oregon

File No. 080090-0724  
Grantor: Mortensen, Jesse R. and Mary  
Beneficiary: U.S. Bank National Association ND

