

2012-003587

Klamath County, Oregon



00116309201200035870070072

04/06/2012 09:11:24 AM

Fee: \$67.00

1 AFFIDAVIT OF NON-MILITARY SERVICE

2 Trust Deed from Patrick D. Fitzgerald, a married  
3 man, as his sole and separate property, Grantor  
11630 Highway 39, Klamath Falls, Or 97603

4 To: Geneva Real Estate Investments, Inc., Beneficiary  
1 Northwood Drive, Suite 1, Orinda, CA 94563

5 Scott D. MacArthur, Successor Trustee  
6 125 S. 6<sup>th</sup> Street, Klamath Falls, Or 97601

7  
8 STATE OF OREGON )  
9 )  
County of Klamath )

10  
11 Scott D. MacArthur being first duly sworn deposes and says:

12 That the undersigned Affiant, is over the age of eighteen years and competent to make  
13 this affidavit, and says

14 **Patrick D. Fitzgerald,**

15 not and neither is, in the military service of the United States, within the meaning of the  
16 Service Members Civil Relief Act, as amended; that neither person is a member of the  
17 United States Marine Corps, Women's Reserve, or Women's Army Auxiliary Corps or  
18 Women's Army Corps(WACS), or Women's Coast Guard Reserve(SPARS), or being  
19 educated under the supervision of the United States preliminary to induction into the  
20 Military Service or under orders to report for induction under the Selective Training and  
21 Service Act of 1940, as amended, or as a member of the Enlisted Reserve Corps under  
22 orders to report for military service of an American Citizen serving with the forces of any  
23 nation allied with the United states in the prosecution of a war, or in the Federal Service  
24 or active duty as a member of the Army of the United States, or the United States Navy  
of the Marine Corps, or the Coast Guard, or as an officer of the Public Health Service  
within the purview of the Service Members Civil Relief Act of 1940, as amended.

25 That this affidavit is made for the purpose of enabling, without leave of court first  
26 obtained, the Trustee to sell certain property to be sold under the terms of a deed of  
27  
28

1 trust pursuant to the power of sale contained therein.

2 Dated this 6<sup>th</sup> day of April, 2012.

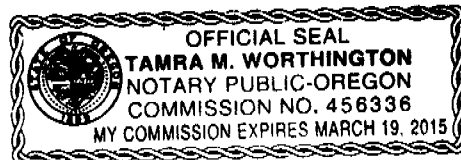
4 Geneva Real Estate Investments

5 By: Scott D. MacArthur  
6 Agent Geneva Real Estate

8 STATE OF OREGON )

9 County of Klamath )

10 Subscribed and sworn to before me this 6<sup>th</sup> day of April, 2012, by Scott D. MacArthur,  
11 personally known to me or proved to me on the basis of satisfactory evidence to be the  
12 person who appeared before me.



Tamra M. Worthington  
Notary Public for Oregon  
My commission expires: March 19 2015

**AFFIDAVIT OF MAILING TRUSTEE'S  
AMENDED NOTICE OF SALE**

AFFIDAVIT OF MAILING TRUSTEE'S NOTICE OF SALE RE:  
Trust Deed from Patrick D. Fitzgerald

TO

Geneva Real Estate Investments, Inc., Beneficiary

After recording return to: Successor trustee  
Scott D. MacArthur,  
635 Main Street  
Klamath Falls, OR 97601

STATE OF OREGON, County of Klamath) ss.

I, Scott D. MacArthur, being first duly sworn, depose, and say and certify that:

At all times hereinafter mentioned 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 beneficiary's successor in interest named in the attached original notice of sale given under the terms of that certain deed described in said notice.

I gave notice of the sale of the real property described in the attached notice of sale by mailing a copy thereof by both first class and certified mail with return receipt requested to each of the following named persons (or their legal representatives, where so indicated) at their respective last known addresses, together with Important Notice Regarding Alternatives to Foreclosure and Notice to Tenants where applicable, to-wit:

Patrick D. Fitzgerald, 3157 Wagner Heights Road, Stockton, CA 95209.

Patrick D. Fitzgerald, 11630 Highway 39, Klamath Falls, OR 97603.

Emmett's Auto Repair, Gary F. Harlan, Manager, 3315 Washburn Way, Klamath Falls, OR 97603.

Robert L. Brown, 5030 Old Sonoma Road, Napa, CA 94558

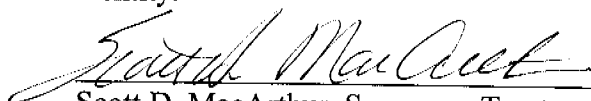
Lee R. Shelton, P.O. Box 70569, Eugene, OR 97401

Said persons include (a) the grantor in the trust deed, (b) any successor in interest to the grantor whose interest appears of record or of whose interest the trustee or the beneficiary has actual notice, (c) any person, including the Department of Revenue or any other state agency, having a lien or interest subsequent to the trust deed if the lien or interest appears of record or the beneficiary has actual notice of the lien or interest, and (d) any person requesting notice, as required by ORS 86.785.

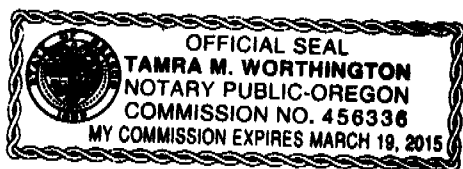
Each of the notices so mailed was certified to be a true copy of the original notice of sale by Scott D. MacArthur, attorney for the trustee named in said notice; each such copy was contained in a sealed envelope, with postage thereon fully prepaid, and was deposited by me in the United States post office at Klamath Falls,

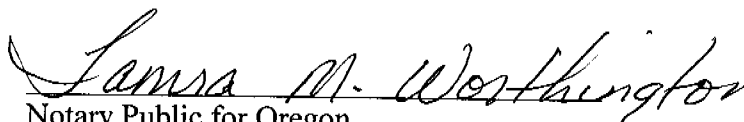
Oregon, on December 1, 2011, With respect to each person listed above, one such notice was mailed with postage thereon sufficient for first class delivery to the address indicated, and another such notice was mailed with a proper form to request and obtain a return receipt and postage thereon in the amount sufficient to accomplish the same. Each of said notices was mailed after the notice of default and election to sell described in said notice of sale was recorded.

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

  
Scott D. MacArthur, Successor Trustee

Subscribed and sworn to before me this 1st day of December, 2011.



  
Notary Public for Oregon  
My commission expires March 19 2015

**AFFIDAVIT OF POSTING NOTICE OF SALE IN LIEU OF SERVICE**

STATE OF OREGON, County of Klamath) ss.

I, Geeg Rote, being first duly sworn, depose and certify that:

At all times hereinafter mentioned, I was and now am, a resident of the State of Oregon, a competent person over the age of 18 years and not the beneficiary or his successor in interest name in the notice of sale given under the terms of that certain trust deed described in said notice.

I posted the Notice of Sale of the real property in the Notice of Sale posting said notice on the premises of:

**NAME:**

Patrick D. Fitzgerald

**ADDRESS:**

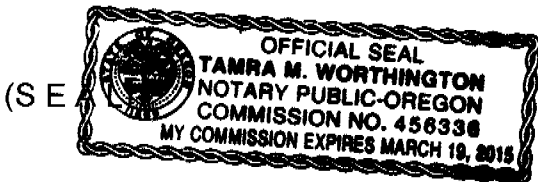
11630 Highway 39  
Klamath Falls, Oregon 97603

Each of the notices so posted was certified to be a true copy of the original notice of sale by Scott D. MacArthur, attorney for the trustee named in said notice; and was posted by me on Dec 5<sup>th</sup> 2011. Each of said notices was posted after the Notice of Default and Election to Sell by the trustee was recorded and at least 90 days before the day fixed in said notice by the trustee for the trustee's sale.

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

Geeg Rote

Subscribed and sworn to before me this 13<sup>th</sup> day of March, 2011.



Tamra M. Worthington  
Notary Public for Oregon  
My Commission Expires: March 19, 2015

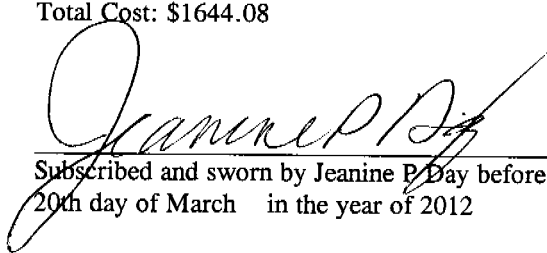
After Recording return to:  
Scott D. MacArthur, P.C.  
635 Main Street  
Klamath Falls, OR 97601

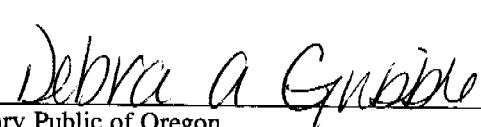
**AFFIDAVIT OF PUBLICATION  
STATE OF OREGON,  
COUNTY OF KLAMATH**

I, Jeanine P. Day, Finance Director, being duly sworn, depose and say that I am the principle clerk of the publisher of the Herald and News, a newspaper in general circulation, as defined by Chapter 193 ORS, printed and published at 2701 Foothills Blvd, Klamath Falls, OR 97603 in the aforesaid county and state; that I know from my personal knowledge that the Legal#14059 SALE FITZGERALD GENEVA/FITZGERALD a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for: 4

Insertion(s) in the following issues:  
02/28/2012 03/06/2012 03/13/2012 03/20/2012

Total Cost: \$1644.08

  
Subscribed and sworn by Jeanine P. Day before me on:  
20th day of March in the year of 2012

  
Notary Public of Oregon  
My commission expires on May 15, 2012



**TRUSTEE'S NOTICE OF SALE**

A default has occurred under the terms of a trust deed made by PATRICK D. FITZGERALD, a married man, as his sole and separate property, as grantor, to GENEVA REAL ESTATE INVESTMENTS, INC., as the trustee, in favor of GENEVA REAL ESTATE INVESTMENTS, INC., as the beneficiary under that certain trust deed July 12, 2005, as recorded on July 19, 2005, in book/reel/volume No. M05 at page 055466 of the Mortgage Records of Klamath County, Oregon. **LEGAL DESCRIPTION** A parcel of land situated in the S1/2 S1/2 NE1/4 of Section 1, Township 40 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at the East one-quarter corner of Section 1; thence North 89°45'40" West 30.00 feet to a 3/4" iron rod at the intersection with the Westerly right of way line of Oregon State Highway 39; thence North 00°15'29" East 229.06 feet along the Westerly right of way line of said Highway 39 to a 5/8" iron rod, being a corner of said parcel, the true point of beginning; thence North 89°45'40" West 950.84 feet to a 5/8" iron rod; thence South 00°15'29" West 229.06 feet to a 5/8" iron rod at the intersection with the center one-quarter section line of Section 1; thence North 89°45'40" West 1663.99 feet along the center one-quarter section line of Section 1 to the center one-quarter corner of Section 1 marked by a 5/8" iron rod; thence North 00°04'23" East 664.33 feet along the center one-quarter section line of Section 1 to a point; thence South 89°46'18" East 2616.98 feet to a point at the intersection with the Westerly right of way line of said Highway 39; thence South 00°15'29" West 435.75 feet along the Westerly right of way line of said Highway 39 to the point of true beginning.

The basis of bearing Minor Land Partition No. 79-82 on file in the office of the County Clerk of Klamath County, Oregon.

**EXCEPTING THEREFROM** a 40 foot wide strip of K.I.D. Drain over and across the S1/2 S1/2 NE1/4 Section 1, Township 40 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

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 Section 86.735(3) of Oregon Revised Statutes. The Default for which the foreclosure is made is grantor's failure to pay when due the following sums: Monthly payments in the amount of \$2,800.00 beginning March 18, 2008, plus interest. Taxes for the fiscal year 2011-2012, delinquent in the sum of \$1,176.90, plus interest.

By reason of said default, the beneficiary has declared all sums owing on the obligation secured by said trust deed immediately due and payable, said sums being the following, to-wit: \$300,000.00 together with interest thereon at the rate of 11.00% per annum from March 18, 2008, 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 April 6, 2012 at the hour of 11:00 a.m. pacific time, as established by Section 187.110, Oregon Revised Statutes, 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 said described real property which the grantors had or had power to convey at the time of the execution by it of said trust deed, to satisfy the foregoing obligations thereby secured and the costs or their 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 that any person named in Section 86.753 of Oregon Revised Statutes has the right, at any time prior to five days before

any person named in Section 86.753 of Oregon Revised Statutes has the right, at any time prior to five days before the trustee conducts the sale, to have this foreclosure proceeding dismissed and the trust deed reinstated by payment to the beneficiary of the entire amount then due (other than such portion of the principal as would not then be due had no default occurred) and by curing any other default complained of herein that is capable of being cured by tendering the performance required under the obligations of 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 and attorney's fees not exceeding the amounts provided by said Section 86.753 of Oregon Revised Statutes.

**NOTICE TO TENANTS/PROTECTION FROM EVICTION**  
IF YOU ARE A BONA FIDE TENANT OCCUPYING AND RENTING THIS PROPERTY AS A RESIDENTIAL DWELLING, YOU HAVE THE RIGHT TO CONTINUE LIVING IN THIS PROPERTY AFTER THE FORECLOSURE SALE FOR: THE REMAINDER OF YOUR FIXED TERM LEASE, IF YOU HAVE A FIXED TERM LEASE; OR AT LEAST 90 DAYS FROM THE DATE YOU ARE GIVEN A WRITTEN TERMINATION NOTICE.

If the new owner wants to move in and use this property as a primary residence, the new owner can give you written notice and require you to move out after 90 days, even though you have a fixed term lease with more than 90 days left.

You must be provided at least 90 days' written notice after the foreclosure sale before you can be required to move.

A bona fide tenant is a residential tenant who is not the borrower (property owner) or a child, spouse or parent of the borrower, and whose rental agreement: Is the result of an arm's-length transaction; Requires the payment of rent that is not substantially less than fair market rent for the property, unless the rent is reduced or subsidized due to a federal, state or local subsidy; and Was entered into prior to the date of the foreclosure sale. **The date that is 30 days before the date of the sale is March 6, 2012.**

The name of the trustee and the trustee's mailing address are listed on this notice. Federal law may grant you additional rights including a right to a longer notice period. Consult a lawyer for more information about your rights under federal law. You have the right to apply your security deposit and any prepaid rent toward your current obligations under your rental agreement. If you want to do so, you must notify your landlord in writing and in advance that you intend to do so. If you believe you need legal assistance with this matter, you may contact the Oregon State Bar and ask for the lawyer referral service. The Oregon State Bar attorney referral service may be reached at (800)452-7636. If you have a low income and meet federal poverty guidelines, you may be eligible for free legal assistance. Legal Aid may be reached at (800)480-9160.

In construing this notice, the masculine gender includes the feminine and the neuter, the singular includes the plural, the word "grantor" includes any successor in interest to the grantor as well as any other person owing an obligation, the performance of which is secured by said trust deed, and the words "trustee" and "beneficiary" include their respective successors in interest, if any. The Fair Debt Collection Practices 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: February 22, 2012.

/s/Scott D. MacArthur, Successor Trustee  
125 S. 6<sup>th</sup> Street, Klamath Falls, OR 97601  
#14059 February 28, March 06, 13, 20, 2012.