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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF JOSEPHINE

FV-I, INC. IN TRUST FOR MORGAN
STANLEY MORTGAGE CAPITAL
HOLDINGS LLC,

Plaintiff,

vs.

THE UNKNOWN HEIRS AND DEVISEES
OF FLOY A. SMITH; MARY J. KERN;
CHERYL R. RUIGOMEZ; PORTFOLIO
RECOVERY ASSOCIATES; SOUTHERN
OREGON CREDIT SERVICE INC.;
OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 15CV29934

WRIT OF EXECUTION IN
FORECLOSURE

TO THE JOSEPHINE COUNTY SHERIFF:

A Judgment of Foreclosure was entered and docketed in this case on 11/23/2016. A true copy of the Judgment is attached hereto. The Judgment was entered in favor of the Plaintiff:

FV-I, INC. IN TRUST FOR MORGAN STANLEY MORTGAGE CAPITAL
HOLDINGS LLC
c/o Michael Scott
Attorney for Plaintiff
McCarthy & Holthus, LLP
920 SW 3rd Ave, 1st Floor
Portland, OR 97204

1 With the adjudicated amount due of \$196,261.10, plus post judgment interest at the statutory rate
2 of 9.0% per annum from 11/23/2016 to 8/7/2017 in the amount of \$12,437.04, and continuing
3 with a per diem of \$48.39, currently totaling \$208,698.14.

4 **NOW, THEREFORE, IN THE NAME OF THE STATE OF OREGON**, you are
5 hereby commanded to sell, in the manner prescribed by law for the sale of real property on
6 execution (subject to redemption of 180 days), all of the interest that the Defendant had on or
7 about 11/20/2008, the date of the Deed of Trust, and also the interest that the Defendant had
8 thereafter, in the real property described as follows:

9 *See attached Exhibit 1*

10 and commonly known as: 5830 Hugo Rd, Grants Pass, OR 97526.

11 Sale of the property is to satisfy the sum listed above, plus the costs incurred in
12 performing this Writ. Pursuant to ORS 18.872, you are authorized to continue execution under
13 the writ and delay making a return on the writ to no later than 150 days from receipt of the writ.
14 You are to make the return within 60 days after you receive this Writ. Should the sale be
15 continued, the writ may be automatically extended for 30 days.

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Sarah M. [Signature]
August 15, 2017



Dated: August 7, 2017 and submitted by:

McCarthy & Holthus, LLP

s/ Michael S. Scott

Michael S. Scott OSB No. 973947
920 SW 3rd Ave, 1st Floor
Portland, OR 97204
Phone: (971) 201-3200
Fax: (971) 201-3202
msscott@mccarthyholthus.com
Of Attorneys for Plaintiff

EXHIBIT 1

COMMENCING AT THE INTERSECTION OF THE NORTHWESTERLY RIGHT OF WAY LINE OF HUGO ROAD AND THE NORTH LINE OF SECTION 33, TOWNSHIP 34 SOUTH, RANGE 6 WEST, OF THE WILLAMETTE MERIDIAN, JOSEPHINE COUNTY, OREGON; THENCE WEST ALONG SAID NORTH LINE, 400 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN VOLUME 279, PAGE 731, JOSEPHINE COUNTY DEED RECORDS, FOR THE TRUE POINT OF BEGINNING; THENCE CONTINUE WEST ALONG SAID NORTH LINE, 395 FEET, MORE OR LESS, TO A POINT 60 FEET EAST OF THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE SOUTH, PARALLEL WITH SAID WEST LINE 810 FEET, MORE OR LESS, TO THE NORTHERLY RIGHT OF WAY LINE OF SAID HUGO ROAD; THENCE NORTHEASTERLY ALONG SAID RIGHT OF WAY LINE TO THE SOUTHWEST CORNER OF SAID PARCEL OF LAND DESCRIBED IN VOLUME 279, PAGE 731, JOSEPHINE COUNTY DEED RECORDS; THENCE NORTH ALONG THE WEST LINE THEREOF, 500 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING

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OF FLOY A SMITH; MARY J KERN;
CHERYL R RUIGOMEZ; PORTFOLIO
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OREGON CREDIT SERVICE INC.;
OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 15CV29934

GENERAL JUDGMENT OF FORECLOSURE

1.

THIS MATTER came before the Court on Plaintiff's motion.

a. Defendants THE UNKNOWN HEIRS AND DEVISEES OF FLOY A SMITH;
MARY J KERN; CHERYL R RUIGOMEZ; PORTFOLIO RECOVERY
ASSOCIATES; SOUTHERN OREGON CREDIT SERVICE INC., and
OCCUPANTS OF THE PROPERTY ("Defendants") were duly served with process
and failed to appear; the default has been entered against Defendants, and it appearing
that Defendants are not incapacitated, protected persons, respondents as defined in
ORS 125.005, minors, or in the military service of the United States; now therefore,

2.

IT IS HEREBY ADJUDGED that Plaintiff shall have judgment as follows:

1 a. The real property to which this judgment relates is located and situated in Josephine County,
2 Oregon, and is commonly known as 5830 Hugo Rd, Grants Pass, OR 97526 (the "Subject
3 Property"), legally described as shown in the attached *Exhibit 1*, and having APN/Parcel No.
4 R301662.

5 b. Plaintiff is the owner and holder of the beneficial interest in a deed of trust and original note
6 dated 11/20/2008 and made, delivered, and executed by Floy A. Smith and Mary J. Kern to
7 Countrywide Bank, FSB in the amount of \$218,813.00 (the "Note"). The Note was
8 transferred to Plaintiff by delivery of possession and by indorsement set forth on the Note.

9 c. A deed of trust was made, executed, and delivered by Borrowers Floy A. Smith and Mary J.
10 Kern on or about 11/20/2008 (the "Deed of Trust"). The Deed of Trust was recorded on
11 11/26/2008 as Instrument No. 2008-018156 in the official records of Josephine County,
12 Oregon. The Deed of Trust is a valid and perfected lien against all of the Property for and
13 securing the Amount Due. The lien of the Plaintiff is superior to any interest, lien, or claim
14 of the Defendants and shall remain in effect until issuance of a Sheriff's Deed.

15 d. The amount of debt secured by the Deed of Trust that is now due and owing is comprised of
16 the following amounts (the "Amount Due"):

17	a) Unpaid principal balance:	\$151,291.78
18	b) Prejudgment interest accruing from	\$30,169.17
19	5/1/2012 through 11/22/2016 and	
20	continuing until the entry of	
	judgment at the current Note rate of	
	4.375%:	
21	c) Additional amounts due under the	\$8,510.80
22	terms of the loan:	
23	d) Attorney fees and costs:	\$5,989.35
24	e) Prevailing party fee (ORS 20.190	\$300.00
	(2)(a)):	
25	Total:	\$196,261.10

1 Pursuant to ORS 82.010 (2), post-judgment interest shall accrue on the Amount Due from the
2 date of entry of this judgment through the sale of the Subject Property at the rate of 9.00%
3 per annum.

4 e. The interest of the Defendants and any successor in interest in the Subject Property is
5 foreclosed and terminated excepting only any statutory right of redemption as provided by
6 Oregon law.

7 f. The Defendants are not entitled to a homestead exception as against Plaintiff's judgment.

8 g. All right, title and interest in the Subject Property that Borrowers Floy A. Smith and Mary J.
9 Kern had as of the date of the Deed of Trust or thereafter acquired is hereby ordered to be
10 sold by the Josephine County Sheriff's Office in accordance with the process for sale upon
11 execution, and the proceeds of sale shall be applied:

- 12 1) First, to the costs of sale not incurred by Plaintiff;
- 13 2) Second, to the Amount Due, plus post-judgment interest accruing from the date of
14 entry of judgment through the date of the sale and any incurred costs of sale;
- 15 3) Third, the surplus, if any, to the Defendants in the priority as their interest may
16 appear, described *infra*, or to the clerk of the court to be distributed by the Court to
17 such party or parties as they may establish their right thereto.

18 h. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS
19 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from
20 the date of entry of judgment through the date of the sale and any incurred costs of sale.

21 i. The purchaser at the sale is entitled to exclusive and immediate possession of the Subject
22 Property from and after the date of the sale and is entitled to such remedies as are available at
23 law or in equity to secure possession. The purchaser at the sale may apply to the Court for a
24 writ of assistance if any Defendant, other party, or other person shall refuse to surrender
25 possession to the purchaser immediately upon the purchaser's demand for possession.

26 j. In the event the proceeds of sale are insufficient to pay the Amount Due, Plaintiff shall not be
27 entitled to any further or other judgment, including a judgment for the deficiency.

1 k. If, before the sale, the Amount Due is brought into court and paid to the clerk, the execution,
2 if issued, shall be recalled and the effect of the judgment as to the Amount Due shall be
3 terminated.

4 l. Pursuant to ORS 88.050, the apparent priority of liens subsequent and inferior to the Deed of
5 Trust are as follows:

6 1) Defendant PORTFOLIO RECOVERY ASSOCIATES may claim an interest in Subject
7 Property by virtue of a judgment entered on 02/05/2014 in the Circuit Court of Josephine
8 County, Case No. 14CV0123.

9 2) Defendant SOUTHERN OREGON CREDIT SERVICE INC. may claim an interest in
10 Subject Property by virtue of a judgment entered on 09/22/2015 in the Circuit Court of
11 Josephine County, Case No. 15SC30389.

Signed: 11/23/2016 03:32 PM



Circuit Court Judge Thomas M. Hull

18 Presented by:

19 **McCarthy & Holthus, LLP**

20 s/ Jeremy Clifford

21 Casey C. Pence, OSB No. 975271

22 Jeremy Clifford, OSB No. 142987

23 920 SW 3rd Ave, 1st Floor

24 Portland, OR 97204

25 Phone: (971) 201-3200

26 Fax: (971) 201-3202

27 jclifford@mccarthyholthus.com

28 Of Attorneys for Plaintiff

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RECOVERY ASSOCIATES; SOUTHERN
OREGON CREDIT SERVICE INC.;

15 Defendants.

Case No.: 15CV29934

CERTIFICATE OF READINESS

16 I hereby certify that the requirements of UTCR 5.100 have been satisfied.

17 This proposed General Judgment of Foreclosure is ready for judicial signature because:

18 Each opposing party affected by this order or judgment has stipulated to the order or
19 judgment, as shown by each opposing party's signature on the document being
20 submitted.

21 Each opposing party affected by this order or judgment has approved the order or
22 judgment, as shown by signature on the document being submitted or by written
23 confirmation of approval sent to me.

24 I have served a copy of this order or judgment on all parties entitled to service and:

25 No objection has been served on me.

26 I received objections that I could not resolve with the opposing party despite
27 reasonable efforts to do so. I have filed a copy of the objections I received
28 and indicated which objections remain unresolved.

After conferring about objections, _____ agreed to independently file
any remaining objection.

The relief sought is against an opposing party who has been found in default.

An order of default is being requested with this proposed judgment.

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Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise.

This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (4) of this rule.

Other: _____

DATED: November 22, 2016

McCarthy & Holthus, LLP

By: s/ Jeremy Clifford
Jeremy Clifford, Attorney