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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF KLAMATH**

BANK OF AMERICA, N.A.,

Plaintiff,

vs.

ESTATE OF JOHN E. PARKS, an Estate;
CORY WIRTZ, an heir; BRIAN
MCDERMOTT, an heir; CODY PARKS, an
heir; DONNA GAGLIARDI, an heir;
WILLIAM MCDERMOTT, an heir;
UNKNOWN HEIRS OF JOHN E. PARKS,
unknown heirs; and all other persons, parties,
or occupants unknown claiming any legal or
equitable right, title, estate, lien, or interest in
the real property described in the complaint
herein, adverse to Plaintiff's title, or any cloud
on Plaintiff's title to the Property.

Defendants.

CASE NUMBER: 16CV37011

WRIT OF EXECUTION IN FORECLOSURE

TO: THE SHERIFF OF KLAMATH COUNTY, OREGON:

1.

WHEREAS, on May 10, 2017, in the above-entitled Court, a General Judgment of Foreclosure ("Judgment") was entered and docketed in the above-entitled and numbered proceeding

2.

NOW, THEREFORE, IN THE NAME OF THE STATE OF OREGON, you are hereby commanded to sell, in the manner prescribed by law for the sale of real property upon (subject to

1 redemption, if applicable), all of the interest which the Defendants ESTATE OF JOHN E. PARKS,
2 CORY WIRTZ, BRIAN MCDERMOTT, CODY PARKS, WILLIAM MCDERMOTT AND
3 UNKNOWN HEIRS OF JOHN E. PARKS (“Defendants”) had on October 14, 2009, the date of the
4 foreclosed Deed of Trust which was recorded on October 19, 2009, as Instrument No. 2009-013546
5 in the official records of the Klamath County Recorder’s Office, and/or all of the interest which
6 Defendants had thereafter, in the real property described in the Judgment to satisfy the Judgment as
7 follows:

8
9 **Lender’s Principal Judgment:**

Unpaid Principal Balance:	\$202,174.59
Pre-Judgment Interest from February 12, 2016 to January 24, 2017, the date set forth in the Judgment at 5.560%, per annum, (\$34.70 per diem):	\$739.13
Lender’s Fees and Costs:	\$3,526.89
Attorney’s Fees and Costs:	\$3,665.50

14 ***Total Judgment Entered:*** ***\$210,106.11***

15 **Additional Pre-Judgment Interest:**

Accrued Interest from January 25, 2017, the day after the date set forth in the Judgment through May 10, 2017, the date of entry of the Judgment, at 5.560%, per annum (\$34.70 per diem):	\$3,643.50
--	------------

20 ***Total Judgment Entered Including***
21 ***Additional Pre-Judgment***
22 ***Interest:*** ***\$213,749.61***

3.

23 Additionally, Plaintiff is entitled to the accrual of post-judgment interest on ***\$213,749.61*** at
24 the legal rate of interest of 9% per annum, \$52.70 per diem, from May 11, 2017 to the date the real
25 property subject to the Judgment is sold by the County Sheriff at its foreclosure auction, plus costs of
26 this Writ, Sherriff’s fees and sale costs, and all other recovered costs pursuant to law.

4.

28 The real property subject to this writ of execution is commonly known as 11333 Chinquapin

1 Drive, Crescent Lake, OR 97733 ("Property") and described in Exhibit "1" attached hereto.

2 5.

3 The Judgment Creditor's name and address is:

4 Bank of America, N.A.

5 8930 S. Beck Avenue, Suite 111

6 Tempe, Arizona 85284-2864

7 The Judgment Creditor's name and address for the purpose of this Writ is:

8 Bank of America, N.A.

9 c/o Malcolm & Cisneros, ALC (Attention: Nathan F. Smith)

10 2112 Business Center Drive


11 Irvine, CA 92612

12 949-252-9400

13 THEREFORE, in the name of the State of Oregon, you are hereby commanded to seize and
14 sell the Property, in the manner prescribed by law; or so much thereof as may be necessary to satisfy
15 the Judgment, interest, fees, and costs.

16 MAKE RETURN HEREOF within 60 days after you receive this Writ.

17
18
19
20
21 Submitted by:

22 
23 _____
24 Nathan F. Smith, OSB #120112
25 Attorney for Plaintiff
26 MALCOLM ♦ CISNEROS, A Law Corporation
27 2112 Business Center Drive, Second Floor
28 Irvine, California 92612
Phone: (949) 252-9400
Fax: (949) 252-1032
Email: nathan@mclaw.org

7/11/17

John M Powell, TCA
Amy Hammel, Clerk

Dated:

6/2/17

EXHIBIT 1

Lot 13 in Block 5 of Tract No. 1042, TWO RIVERS NORTH, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.



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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF KLAMATH**

BANK OF AMERICA, N.A.,

Plaintiff,

vs.

ESTATE OF JOHN E. PARKS, an Estate;
CORY WIRTZ, an heir; BRIAN
MCDERMOTT, an heir; CODY PARKS, an
heir; DONNA GAGLIARDI, an heir;
WILLIAM MCDERMOTT, an heir;
UNKNOWN HEIRS OF JOHN E. PARKS,
unknown heirs; and all other persons, parties,
or occupants unknown claiming any legal or
equitable right, title, estate, lien, or interest in
the real property described in the complaint
herein, adverse to Plaintiff's title, or any cloud
on Plaintiff's title to the Property.

Defendants.

CASE NUMBER: 16CV37011

**GENERAL JUDGMENT OF
FORECLOSURE AGAINST:**

- (1) ESTATE OF JOHN E. PARKS
- (2) CORY WIRTZ
- (3) BRIAN MCDERMOTT
- (4) CODY PARKS
- (5) WILLIAM MCDERMOTT
- (6) UNKNOWN HEIRS OF JOHN E. PARKS

1.

THIS MATTER, coming on regularly before the Court, and it appearing from the record herein that Plaintiff, Bank of America, N.A. ("Plaintiff"), filed its Complaint for Foreclosure of Deed of Trust; that Defendants ESTATE OF JOHN E. PARKS, CORY WIRTZ, BRIAN MCDERMOTT, CODY PARKS, WILLIAM MCDERMOTT and UNKNOWN HEIRS OF JOHN E. PARKS ("Defendants") were duly served with the Summons and Complaint as required by law; that Defendants failed to appear, that an order of default has been entered against them on Plaintiff's Complaint, and that Plaintiff is entitled to entry of a General Judgment foreclosing Plaintiff's deed of

1 trust against the property commonly known as 11333 Chinquapin Drive, Crescent Lake, OR 97733
2 (“Property”) and extinguishing any and all interest of the Defendants in the Property.

3 2.

4 The Court being fully advised; it is hereby
5 ORDERED AND ADJUDGED that:

6 3.

7 Plaintiff is the holder of that certain fixed rate note-closed end (home equity conversion) note
8 (“Note”), dated October 14, 2009, in the amount of \$285,000.00, and executed by John E. Parks.

9 4.

10 The Note is secured by that certain deed of trust (“Deed of Trust”) dated October 14, 2009
11 and executed by John E. Parks. The Deed of Trust was recorded on October 19, 2009 under the
12 recording number 2009-013546 of the Official Records of Klamath County, Oregon, against the
13 Property, which is legally described in Exhibit "1" attached hereto. (“Property”) and constitutes a
14 valid lien against the Property.

15 5.

16 The terms of the Note and Deed of Trust are in breach, therefore, Plaintiff has now declared
17 all sums due and owing under the Note and Deed of Trust as immediately due and payable.

18 6.

19 The Deed of Trust is a valid first priority lien encumbering the Property, is superior to any
20 interest, lien, or claim of the Defendants and any other party in the Property, which are hereby
21 foreclosed and terminated, excepting only any statutory right of redemption to which the Defendants
22 may be entitled under Oregon law.

23 7.

24 A judgment of foreclosure in the amount of \$210,106.11 shall be granted in favor of Plaintiff,
25 and its successors and/or assigns, as further described below in the Declaration of Amount Owed –
26 Not a Money Award (“Amount Owed”).

27 8.

28 The Property is hereby ordered to be sold by law and the proceeds of sale applied toward the

1 satisfaction of Plaintiff's Amount Owed herein; and the surplus, if any to the Clerk of the Court to be
2 disbursed to such party or parties as may establish their right thereto.

3 9.

4 Plaintiff is entitled to recover its reasonable attorney's fees and all reasonable and necessary
5 costs and expenses incurred to enforcing the Note and Deed of Trust.

6 10.

7 Any increased interest or any such additional amounts as Plaintiff may advance for taxes,
8 assessments, municipal charges, and such other items as may constitute liens on the Property,
9 together with insurance and repairs necessary to prevent the impairment of the Property, together
10 with interest thereon from the date of payment may also be added to the Amount Owed and paid
11 from the proceeds from the sale of the Property.

12 11.

13 Defendants and all parties claiming an interest in the Property as purchasers, encumbrancers,
14 or otherwise, are forever barred and foreclosed of all interests, liens, or claims in the Property and
15 every portion thereof, excepting only any statutory right of redemption provided by the laws of the
16 State of Oregon.

17 12.

18 John E. Parks is not entitled to a homestead exemption in the Property.

19 13.

20 Plaintiff may become purchaser at the Sheriff's Sale of the Property and may bid up to the
21 aggregate amount of its Amount Owed, plus any additional interest and reasonable costs until sale.

22 14.

23 The purchaser of the Property at the Sheriff's Sale is entitled to exclusive and immediate
24 possession of the Property from and after the date of the sale, and is entitled to such remedies as are
25 available at law to secure possession of the Property, and may apply to the Clerk of the Court for a
26 writ of assistance, if Defendants, any of them, or any other party or person shall refuse to surrender
27 possession of the Property to the purchaser immediately on the purchaser's demand for possession.

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15.

This Court shall retain jurisdiction to enforce all provisions of this General Judgment and to enter such additional order, judgment, or decree necessary for the purchaser at the foreclosure sale to obtain possession of the Property.

16.

Under the Note, there is now due and owing to Plaintiff, the following amounts, to be hereinafter described as the Amount Owed.

17.

This suit does not constitute an attempt to collect the debt against Defendants ESTATE OF JOHN E. PARKS, CORY WIRTZ, BRIAN MCDERMOTT, CODY PARKS, WILLIAM MCDERMOTT and UNKNOWN HEIRS OF JOHN E. PARKS. Rather, it is a suit to execute upon the Property as security for the Amount Owed.

**DECLARATION OF DEBT SECURED BY DEED OF TRUST
(Pursuant to Senate Bill 368)**

18.

Under the terms of the Deed of Trust and the Note dated October 14, 2009, in the original principal amount of \$285,000.00, there is now due and owing the following amounts, to be hereinafter described as the Amount Due:

DECLARATION OF AMOUNT OWED – NOT A MONEY AWARD

- 1. Judgment Creditor:** Bank of America, N.A.
- Address:** c/o MALCOLM ♦ CISNEROS,
A Law Corporation
2112 Business Center Drive, 2nd Floor
Irvine, California 92612
- Judgment Attorney:** Nathan F. Smith
- Address:** MALCOLM ♦ CISNEROS, A Law Corporation
2112 Business Center Drive, 2nd Floor
Irvine, California 92612
- Telephone Number:** (949) 252-9400
- 2. Persons or Public Bodies Entitled to a Portion the Judgment:** N/A
- 3. Judgment Amount:** \$206,440.61

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4. Pre-Judgment Interest:

Simple interest to accrue on \$202,174.59 from January 25, 2017 to the date the Judgment is entered into the Court's register at 5.560% per annum, \$34.70 per diem.

5. Post-Judgment Interest:

Simple interest to accrue on \$210,106.11 plus Pre-Judgment Interest from the day after the General Judgment is entered to the date upon which the Writ of Execution in Foreclosure is levied at the legal rate of interest or 9% per annum, whichever is greater.

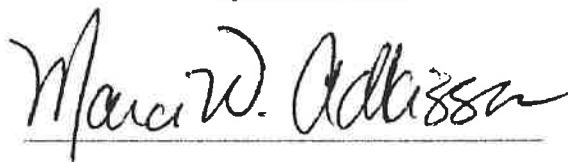
6. Periodic accrual:

N/A

7. Attorney's Fees and Costs:

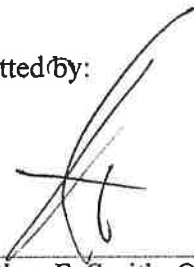
An award of \$3,665.50 in attorney's fees and costs is made.

Signed: 5/10/2017 10:41 AM



Circuit Court Judge Marci W. Adkisson

Submitted by:



Dated:

5/9/17

Nathan F. Smith, OSB #120112
Attorney for Plaintiff
MALCOLM ♦ CISNEROS, A Law Corporation
2112 Business Center Drive, Second Floor
Irvine, California 92612
Phone: (949) 252-9400
Fax: (949) 252-1032
Email: nathan@mclaw.org

EXHIBIT 1

Lot 13 in Block 5 of Tract No. 1042, TWO RIVERS NORTH, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon.

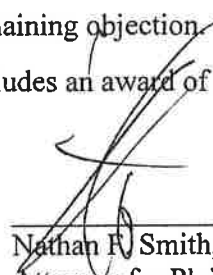
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CERTIFICATE OF READINESS

This proposed Order or Judgment is ready for judicial signature because:

- Service is not required pursuant to subsection (3) of UTCR 5.100, or by statute, rule or otherwise.
- 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.
- Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.
- Each opposing party affected by this order or judgment has approved the order or judgment, as shown by signature on the document being submitted or by written confirmation of approval sent to me.
- I have served a copy of this order or judgment on all parties entitled to service and:
 - No objection has been served on me.
 - I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
 - After conferring about objections, [role and name of opposing party] agreed to independently file any remaining objection.
- This is a proposed judgment that includes an award of punitive damages.

DATED: 5/9, 2017

By: 
 Nathan F. Smith, OSB #120112
 Attorney for Plaintiff
 MALCOLM ♦ CISNEROS, A Law Corporation
 2112 Business Center Drive, Second Floor
 Irvine, California 92612
 (949) 252-9400 (TELEPHONE)
 (949) 252-1032 (FAX)