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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.

THE UNKNOWN HEIRS AND DEVISEES
OF NANCY J. KERSH; FALCON HEIGHTS
CONDOMINIUM ASSOCIATION, INC.;
MELVIN K. EMERT; OCCUPANTS OF THE
PROPERTY,

Defendants.

Case No.: 16CV42630

WRIT OF EXECUTION IN
FORECLOSURE

TO THE KLAMATH COUNTY SHERIFF:

A Judgment of Foreclosure was entered and docketed in this case on 9/7/2017. A true copy of the Judgment is attached hereto. The Judgment was entered in favor of the Plaintiff:

BANK OF AMERICA, N.A.
c/o Brady Godbout
Attorney for Plaintiff

McCarthy & Holthus, LLP
920 SW 3rd Ave, 1st Floor
Portland, OR 97204

With the adjudicated amount due of \$93,510.71, plus post judgment interest at the statutory rate of 9.0% per annum from 9/7/2017 to 10/12/2017 in the amount of \$807.72, and continuing with a per diem of \$23.07, currently totaling \$94,318.43.

1 **NOW, THEREFORE, IN THE NAME OF THE STATE OF OREGON**, you are
2 hereby commanded to sell, in the manner prescribed by law for the sale of real property on
3 execution (subject to redemption of 180 days), all of the interest that the Defendant had on or
4 about 3/19/2010, the date of the Deed of Trust, and also the interest that the Defendant had
5 thereafter, in the real property described in attached Exhibit 1, APN/Parcel # R885970, and
6 commonly known as: 10727 Vincent Drive, Klamath Falls, OR 97603.

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



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15 Dated: 10/10/2017 and submitted by:

16 **McCarthy & Holthus, LLP**

17 s/ Brady Godbout

18 _____
19 _ John Thomas OSB No. 024691
20 _ Robert Hakari OSB No. 114082
21 _ Andreanna Smith OSB No. 131336
22 x Brady Godbout OSB No. 132708
23 _ Brian Kidder OSB No. 140459
24 _ Jeremy Clifford OSB No. 142987
25 _ Michael Scott OSB No. 973947
26 920 SW 3rd Ave, 1st Floor
27 Portland, OR 97204
28 Phone: (971) 201-3200
Fax: (971) 201-3202
bgodbout@mccarthyholthus.com
Of Attorneys for Plaintiff

EXHIBIT "1"

Unit 10727 (Vincent Drive), Tract 1365 – FALCON HEIGHTS CONDOMINIUM STAGE 2, according to the official plat thereof on file in the office of the County Clerk of 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,

v.

THE UNKNOWN HEIRS AND DEVISEES
OF NANCY J. KERSH; FALCON
HEIGHTS CONDOMINIUM
ASSOCIATION, INC.; MELVIN K.
EMERT; OCCUPANTS OF THE
PROPERTY,

Defendants.

Case No.: 16CV42630

GENERAL JUDGMENT OF
FORECLOSURE

1.

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

All defendants ("Defaulted Defendants") were duly served with process and failed to appear; the default has been entered against Defaulted Defendants, and it appearing that Defaulted Defendants are not incapacitated, protected persons, respondents as defined in ORS 125.005, minors, or in the military service of the United States;

2.

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

- a. The real property to which this judgment relates is located and situated in Klamath County, Oregon, and is commonly known as 10727 Vincent Drive, Klamath Falls, OR 97603 (the "Subject Property"), legally described as shown in the attached *Exhibit 1*, and having APN/Parcel No. R885970.
- b. Plaintiff is entitled to enforce the note dated March 19, 2010 and made, delivered, and executed by NANCY J. KERSH to UMPQUA BANK, ITS SUCCESSORS AND/OR

1 ASSIGNS in the amount of \$90,811.00 (the "Note"). The Note was transferred to Plaintiff
2 by delivery of possession and by indorsement set forth on the Note.

3 c. A deed of trust was made, executed, and delivered by Borrower NANCY J. KERSH on or
4 about March 19, 2010 (the "Deed of Trust"). The Deed of Trust was recorded on March 24,
5 2010 as Instrument No. 2010-003644 in the official records of Klamath County, Oregon.
6 The Deed of Trust is a valid and perfected lien against all of the Property for and securing the
7 Amount Due. The lien of the Plaintiff is superior to any interest, lien, or claim of the
8 Defendants and shall remain in effect until issuance of a Sheriff's Deed.

9 d. The Borrower failed to make the payment that was due for June 1, 2016 and has not cured
10 the default. The amount of debt secured by the Deed of Trust that is now due and owing is
11 comprised of the following amounts (the "Amount Due"):

12	a) Unpaid principal balance:	\$81,845.98
13	b) Prejudgment interest accruing from	
14	5/1/2016 through 8/29/2017 and	
15	continuing until the entry of	
16	judgment at the current Note rate of	
17	5.25%:	\$6,023.59
18	c) Additional amounts due under the	\$1,439.37
19	terms of the loan:	
20	d) Attorney fees and costs:	\$4,199.18
21	e) Prevailing party fee (ORS 20.190	\$85.00
22	(1)(a)):	
23	Total:	\$93,510.71

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

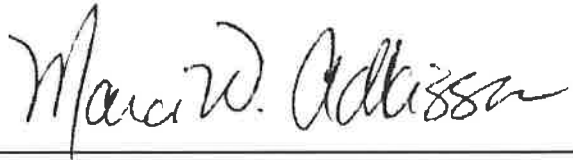
27 e. The interest of the Defendants and any successor in interest in the Subject Property is
28 foreclosed and terminated excepting only any statutory right of redemption as provided by
Oregon law.

- 1 f. The Defendants are not entitled to a homestead exception as against Plaintiff's judgment.
- 2 g. All right, title and interest in the Subject Property that Defendants THE UNKNOWN HEIRS
3 AND DEVISEES OF NANCY J. KERSH had as of the date of the Deed of Trust or
4 thereafter acquired is hereby ordered to be sold by the Klamath County Sheriff's Office in
5 accordance with the process for sale upon execution, and the proceeds of sale shall be
6 applied:
- 7 1) First, to the costs of sale not incurred by Plaintiff;
- 8 2) Second, to the Amount Due, plus post-judgment interest accruing from the date of
9 entry of judgment through the date of the sale and any incurred costs of sale;
- 10 3) Third, the surplus, if any, to the Defendants in the priority as their interest may
11 appear, described *infra*, or to the clerk of the court to be distributed by the Court to
12 such party or parties as they may establish their right thereto.
- 13 h. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS
14 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from
15 the date of entry of judgment through the date of the sale and any incurred costs of sale.
- 16 i. The purchaser at the sale is entitled to exclusive and immediate possession of the Subject
17 Property from and after the date of the sale and is entitled to such remedies as are available at
18 law or in equity to secure possession. The purchaser at the sale may apply to the Court for a
19 writ of assistance if any Defendant, other party, or other person shall refuse to surrender
20 possession to the purchaser immediately upon the purchaser's demand for possession.
- 21 j. In the event the proceeds of sale are insufficient to pay the Amount Due, Plaintiff shall not be
22 entitled to any further or other judgment, including a judgment for the deficiency.
- 23 k. If, before the sale, the Amount Due is brought into court and paid to the clerk, the execution,
24 if issued, shall be recalled and the effect of the judgment as to the Amount Due shall be
25 terminated.
- 26 l. Pursuant to ORS 18.950 (4), the apparent priority of liens subsequent and inferior to the
27 Deed of Trust are as follows:
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- 1) Defendant FALCON HEIGHTS CONDOMINIUM ASSOCIATION, INC. may claim a junior interest in Subject Property by virtue of bylaws recorded on 02/13/1998 as Instrument No.: M98, page 12596 in the official records of Klamath County, Oregon.
- 2) Defendant MELVIN K. EMERT may claim an interest in the Subject Property by virtue of intestate succession, devise, or other transfer of the interest.

Signed: 9/5/2017 04:26 PM



Circuit Court Judge Marci W. Adkisson

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

This proposed Judgment Of Foreclosure is ready for judicial signature because:

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

Dated: September 5, 2017 and submitted by:

McCarthy & Holthus, LLP
s/ Brady Godbout

Brady Godbout OSB No. 132708
920 SW 3rd Ave, 1st Floor
Portland, OR 97204
Phone: (971) 201-3200
Fax: (971) 201-3202
bgodbout@mccarthyholthus.com
Of Attorneys for Plaintiff

EXHIBIT "1"

Legal Description

Unit 10727 (Vincent Drive), Tract 1365 – FALCON HEIGHTS CONDOMINIUM STAGE 2,
according to the official plat thereof on file in the office of the County Clerk of Klamath County,
Oregon.