

I hereby certify this copy to be a true, full, and exact copy of the original now on file in my office.

Mary Keller
2-15-18



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

U.S. BANK TRUST, N.A., AS TRUSTEE
FOR LSF9 MASTER PARTICIPATION
TRUST,

Plaintiff,

vs.

THOMAS P. HYMES, an individual;
DARLA K. HYMES, an individual; HSBC
BANK NEVADA, NA, a national bank;
CITY OF HARRISBURG, a government
entity; HOUSEHOLD FINANCE II, a
corporation; RAY KLEIN, INC., a
corporation; OREGON AFFORDABLE
HOUSING ASSISTANCE CORPORATION,
a corporation; 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: 15CV30071

WRIT OF EXECUTION IN FORECLOSURE

RECEIVED
2018 MAR 15 PM 4:27
LINN COUNTY
SHERIFF'S OFFICE

TO: THE SHERIFF OF LINN COUNTY, OREGON:

1.

WHEREAS, on August 31, 2017, in the above-entitled Court, a General Judgment of Foreclosure ("Judgment") was entered and docketed in the above-entitled and numbered proceeding

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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 redemption, if applicable), all of the interest which the Defendants THOMAS P. HYMES, HSBC BANK NEVADA, NA, CITY OF HARRISBURG, HOUSEHOLD FINANCE II, RAY KLEIN, INC., and OREGON AFFORDABLE HOUSING ASSISTANCE CORPORATION ("Defendants") had on September 23, 2006, the date of the foreclosed Deed of Trust which was recorded on October 4, 2006, as Instrument No. 2006-24324 in the official records of the Linn County Recorder's Office, and/or all of the interest which Defendants had thereafter, in the real property described in the Judgment to satisfy the Judgment as follows:

<u>Lender's Principal Judgment:</u>	
Unpaid Principal Balance:	\$203,873.22
Pre-Judgment Interest from April 1, 2015 to February 2, 2017, the date set forth in the Judgment at 5.250%, per annum, (\$29.32 per diem):	\$19,652.22
Lender's Fees and Costs:	\$29,349.60
Attorney's Fees and Costs:	\$4,153.50
<i>Total Judgment Entered:</i>	<i>\$252,875.04</i>
<u>Additional Pre-Judgment Interest:</u>	
Accrued Interest from February 3, 2017, the day after the date set forth in the Judgment through August 31, 2017, the date of entry of the Judgment, at 5.250%, per annum (\$29.32 per diem):	\$6,127.88
<i>Total Judgment Entered Including Additional Pre-Judgment Interest:</i>	<i>\$263,156.42</i>

3.

Additionally, Plaintiff is entitled to the accrual of post-judgment interest on \$263,156.42 at the legal rate of interest of 9% per annum, \$64.88 per diem, from September 1, 2017 to the date the real property subject to the Judgment is sold by the County Sheriff at its foreclosure auction, plus

1 costs of this Writ, Sherriff's fees and sale costs, and all other recovered costs pursuant to law.

2 4.

3 The real property subject to this writ of execution is commonly known as 892 SMITH
4 STREET, HARRISBURG, OR 97446 ("Property") and described in Exhibit "1" attached hereto.

5 5.

6 The Judgment Creditor's name and address is:

7 U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust
8 c/o Caliber Home Loans
9 13801 Wireless Way
10 Oklahoma City, Oklahoma 73134-2500

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

12 U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust
13 c/o Malcolm & Cisneros, ALC (Attention: Nathan F. Smith)
14 2112 Business Center Drive
15 Irvine, CA 92612
16 949-252-9400

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

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

Signed: 2/12/2018 12:03 PM



Cynthia Mitchell

Cynthia Mitchell, Administrative Authority

Submitted by:

Nathan F. Smith

Dated:

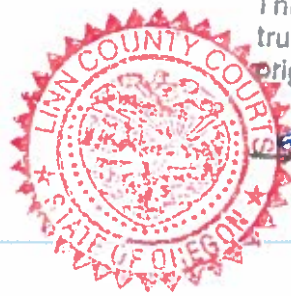
2/9/18

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

LEGAL DESCRIPTION

Lot 35, Ninth Street Meadows Subdivision Phase II, in the City of Harrisburg, Linn County, Oregon.



I hereby certify this copy to be a true, full, and exact copy of the original now on file in my office.
Trial Court Admin.
9/26/17

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

U.S. BANK TRUST, N.A., AS TRUSTEE
FOR LSF9 MASTER PARTICIPATION
TRUST,

CASE NUMBER: 15CV30071

Plaintiff,

**GENERAL JUDGMENT OF
FORECLOSURE AGAINST:**

vs.

THOMAS P. HYMES, an individual;
DARLA K. HYMES, an individual; HSBC
BANK NEVADA, NA, a national bank;
CITY OF HARRISBURG, a government
entity; HOUSEHOLD FINANCE II, a
corporation; RAY KLEIN, INC., a
corporation; OREGON AFFORDABLE
HOUSING ASSISTANCE CORPORATION,
a corporation; 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.

- (1) THOMAS P. HYMES
- (2) HSBC BANK NEVADA, NA
- (3) CITY OF HARRISBURG
- (4) HOUSEHOLD FINANCE II
- (5) RAY KLEIN, INC.
- (6) OREGON AFFORDABLE HOUSING ASSISTANCE CORPORATION

Defendants.

1.

THIS MATTER, coming on regularly before the Court, and it appearing from the record herein that Plaintiff, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust ("Plaintiff"), filed its Complaint for Foreclosure of Deed of Trust; that Defendants THOMAS P. HYMES, HSBC BANK NEVADA, NA, HOUSEHOLD FINANCE II, RAY KLEIN, INC., and

1 OREGON AFFORDABLE HOUSING ASSISTANCE CORPORATION ("Defendants") were duly
2 served with the Summons and Complaint as required by law; that Defendants failed to appear, that
3 an order of default has been entered against them on Plaintiff's Complaint, and that Plaintiff is
4 entitled to entry of a General Judgment foreclosing Plaintiff's deed of trust against the property
5 commonly known as 892 SMITH STREET, HARRISBURG, OR 97446 ("Property") and
6 extinguishing any and all interest of the Defendants in the Property.

7 2.

8 Plaintiff has entered into a stipulated limited judgment with Defendant CITY OF
9 HARRISBURG ("Stipulated Limited Judgment of Foreclosure"). The Stipulated Limited Judgment
10 of Foreclosure was entered in this matter on or about May 4, 2016. A copy of the Stipulated Limited
11 Judgment of Foreclosure is attached hereto as Exhibit "1."

12 3.

13 The Court being fully advised; it is hereby
14 ORDERED AND ADJUDGED that:

15 4.

16 Plaintiff is the holder of that certain Interest Only Adjustable Rate Note ("Note"), dated
17 September 23, 2006, in the amount of \$204,000.00, and executed by Defendant THOMAS P.
18 HYMES.

19 5.

20 The Note is secured by that certain deed of trust ("Deed of Trust") dated September 23, 2006
21 and executed by Defendants THOMAS P. HYMES and DARLA K. HYMES. The Deed of Trust
22 was recorded on October 4, 2006 under the recording number 2006-24324 of the Official Records of
23 Linn County, Oregon, against the Property, which is legally described as:

24 **Lot 35, Ninth Street Meadows Subdivision Phase II, in the City of Harrisburg, Linn County,**
25 **Oregon.**

26 ("Property") and constitutes a valid lien against the Property.

27 6.

28 The terms of the Note and Deed of Trust are in breach, therefore, Plaintiff has now declared

1 all sums due and owing under the Note and Deed of Trust as immediately due and payable.

2 7.

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

7 8.

8 A judgment of foreclosure in the amount of \$257,028.54 shall be granted in favor of Plaintiff,
9 and its successors and/or assigns, as further described below in the Declaration of Amount Owed –
10 Not a Money Award (“Amount Owed”).

11 9.

12 The Property is hereby ordered to be sold by law and the proceeds of sale applied toward the
13 satisfaction of Plaintiff’s Amount Owed herein; and the surplus, if any to the Clerk of the Court to be
14 disbursed to such party or parties as may establish their right thereto.

15 10.

16 Plaintiff is entitled to recover its reasonable attorney’s fees and all reasonable and necessary
17 costs and expenses incurred to enforcing the Note and Deed of Trust.

18 11.

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

24 12.

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

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13.

Defendant THOMAS P. HYMES is not entitled to a homestead exemption in the Property.

14.

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

15.

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

16.

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.

17.

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

18.

This suit does not constitute an attempt to collect the debt against Defendants THOMAS P. HYMES, HSBC BANK NEVADA, NA, CITY OF HARRISBURG, HOUSEHOLD FINANCE II, RAY KLEIN, INC. and OREGON AFFORDABLE HOUSING ASSISTANCE CORPORATION. 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)**

19.

Under the terms of the Deed of Trust and the Note dated September 23, 2006, in the original principal amount of \$204,000.00, there is now due and owing the following amounts, to be

1 hereinafter described as the Amount Due:

2
3 **DECLARATION OF AMOUNT OWED – NOT A MONEY AWARD**

- 4 **1. Judgment Creditor:** U.S. Bank Trust, N.A., as Trustee for LSF9
5 **Address:** Master Participation Trust
6 c/o MALCOLM ♦ CISNEROS,
7 A Law Corporation
8 2112 Business Center Drive, 2nd Floor
9 Irvine, California 92612
10 **Judgment Attorney:** Nathan F. Smith
11 **Address:** MALCOLM ♦ CISNEROS, A Law Corporation
12 2112 Business Center Drive, 2nd Floor
13 Irvine, California 92612
14 **Telephone Number:** (949) 252-9400
15 **2. Persons or Public Bodies Entitled to**
16 **a Portion the Judgment:** N/A
17 **3. Judgment Amount:** \$252,875.04
18 **4. Pre-Judgment Interest:** Simple interest to accrue on \$203,873.22 from
19 February 3, 2017 to the date the Judgment is
20 entered into the Court's register at 5.250% per
21 annum, \$29.32 per diem.
22 **5. Post-Judgment Interest:** Simple interest to accrue on \$257,028.54 plus
23 Pre-Judgment Interest from the day after the
24 General Judgment is entered to the date upon
25 which the Writ of Execution in Foreclosure is
26 levied at the legal rate of interest or 9% per
27 annum, whichever is greater.
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6. Periodic accrual:

N/A

7. Attorney's Fees and Costs:

An award of \$4,153.50 in attorney's fees and costs is made.

Signed: 8/30/2017 04:48 PM



Circuit Court Judge, Thomas A. McHill

Submitted by:

Dated: August 30, 2017

s/ Steve Bonfiglio

Steve Bonfiglio, OSB #051220
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)

EXHIBIT 1

ORIGINAL

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINN

HSBC MORTGAGE SERVICES INC,

CASE NUMBER: 15CV30071

Plaintiff,

vs.

**STIPULATED LIMITED JUDGMENT OF
FORECLOSURE AS TO CITY OF
HARRISBURG**

**THOMAS P. HYMES, an individual;
DARLA K. HYMES, an individual;
OREGON AFFORDABLE HOUSING
ASSISTANCE CORPORATION, a
corporation; HOUSEHOLD FINANCE II, a
corporation; HSBC BANK NEVADA, NA, a
national bank; RAY KLEIN, INC., a
corporation; CITY OF HARRISBURG, a
government entity; 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.

1.

**HSBC MORTGAGE SERVICES INC ("Plaintiff"), by and through its attorney of record,
Nathan F. Smith of Malcolm + Cisneros, A Law Corporation, and Defendant CITY OF
HARRISBURG ("Stipulating Defendant"), by and through its attorney of record Daniel Miller
Deputy City Attorney, hereby stipulate as follows:**

- 1. Plaintiff filed the Complaint for Judicial Foreclosure and Breach of Promissory Note on
November 5, 2016 in the Circuit Court of the State of Oregon for the County of Linn ("Complaint").**
- 2. Defendants THOMAS P. HYMES and DARLA K. HYMES are the record owners of the**

1 property located at 892 SMITH STREET, HARRISBURG, OR 97446, located in Linn, Oregon
2 ("Property").

3 3. Plaintiff is the holder of a note ("Note") executed by THOMAS P. HYMES. The Note is
4 secured by a duly recorded first priority deed of trust recorded with the Linn County Recorder's
5 Office on October 4, 2006 as Instrument Number 2006-24324 ("Deed of Trust") encumbering the
6 Property ("Lien").

7 4. The legal description of the Property is as follows:

8 **LOT 35, NINTH STREET MEADOWS SUBDIVISION PHASE II, IN THE CITY**
9 **OF HARRISBURG, LINN COUNTY, OREGON.**

10 5. Stipulating Defendant holds a junior judgment lien against the Property by virtue of a
11 City lien in the amount of \$131.14 plus interest and penalties, if any. Stipulating Defendant's lien
12 was effective as of September 23, 2015 relating to reference number 325.01 ("Defendant's Lien").

13 6. Plaintiff, by its Complaint seeks, inter alia, a judgment for foreclosure of its Deed of
14 Trust and a declaration that its Deed of Trust is superior to Defendant's Lien.

15 7. Plaintiff's Lien is a valid first priority lien encumbering the Property, and is superior to
16 any interest, lien or claim of Stipulating Defendant, including Defendant's Lien. The interest of
17 Stipulating Defendant in the Property, and all persons claiming by, through, or under it, as
18 purchasers, encumbrancers, or otherwise, is inferior and subordinate to Plaintiff.

19 8. No money award of any form shall be awarded to either Plaintiff or Stipulating
20 Defendant as against one another as a result of the entry of this Limited Judgment, including, but not
21 limited to, attorney's fees and costs.

22 9. Stipulating Defendant waives any and all of its rights, if any, to its statutory right of
23 redemption.

24 10. This Limited Judgment shall inure to the benefit of Plaintiff and Stipulating Defendant
25 the ("Parties"), their successors and/or assignees.

26 11. Upon entry of a General Judgment foreclosing the interests of the Borrower, the interest
27 of Stipulating Defendant and any successors in interest, in the Property shall be foreclosed and
28 terminated.

- 1 12. Stipulating Defendant shall be permitted to be a bidder at any foreclosure sale of the
2 Property and shall retain any rights to surplus funds from such a foreclosure sale which are in excess
3 of those distributed to senior liens.
- 4 13. The terms of this Limited Judgment contain the entire agreement between the Parties and
5 supersede any and all other agreements, either oral or written, between the Parties. However, the
6 Parties anticipate that a Supplemental and/or General Judgment, may be filed with the Court to
7 supplement terms and conditions to this Limited Judgment including but not limited to an updated
8 amount due and owing under the Note and Deed of Trust which the Parties consent to the Plaintiff
9 filing without further notice to Stipulating Defendants.
- 10 14. The Parties shall have the right to enforce the terms of this Limited Judgment by
11 Supplemental and/or General Judgment or motion for declaratory judgment.
- 12 15. The Parties shall each bear their own fees and costs as to the other.

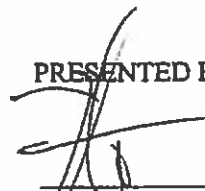
13 **IT IS SO ORDERED.**

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17 Signed: 5/4/2016 04:15 PM

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20 **Circuit Court Judge, Thomas A. McHill**

21
22 **PRESENTED BY:**

23 

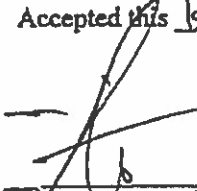
24 **Nathan F. Smith, OSB#120112**
25 **Attorney for HSBC MORTGAGE**
26 **SERVICES INC**

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Stipulated to by:

**APPROVED AND AGREED TO:
FOR HSBC MORTGAGE SERVICES INC**

Accepted this 15 day of March, 2016



Nathan F. Smith, OSB #120112

Richard J. Bayless, OSB #101826
Attorneys for Plaintiff
MALCOLM ♦ CISNEROS, A Law
Corporation
2112 Business Center Drive, Second Floor
Irvine, California 92612
(949) 252-9400 (TELEPHONE)
(949) 252-1032 (FAX)

**APPROVED AND AGREED TO:
FOR DEFENDANT CITY OF HARRISBURG**

Accepted this 23 day of February, 2016



Brian Latta
City Administrator
City of Harrisburg
120 Smith Street, 97446
541-995-6655

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CERTIFICATE OF READINESS

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

- Service is not required under UTCR 5.100 because the other party has been found in default or an order of default is being requested with this proposed Order or Judgment; because this Order or Judgment is submitted ex parte as allowed by statute or rule; or this Order or Judgment is being submitted in open court with all parties present.
- Each party affected by this Order or Judgment has stipulated to or approved the Order or Judgment, as shown by the signatures on the Order or Judgment.
- I have served a copy of this Order or Judgment and written notice of the objection period set out in UTCR 5.100 on all parties entitled to service and:
 - No objections have been served on me within that time frame;
 - I received objections that I could not resolve with the other party despite reasonable efforts to do so. I have filed with the Court a copy of the objections I received and indicated which objections remain unresolved.
 - After conferring about objections, the other party agreed to file any remaining objection with the Court.

1 **CERTIFICATE OF READINESS**

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

- 3 Service is not required pursuant to subsection (3) of UTCR 5.100, or by statute, rule
4 or otherwise.
- 5 The relief sought is against an opposing party who has been found in default.
- 6 An order of default is being requested with this proposed judgment.
- 7 Each opposing party affected by this order or judgment has stipulated to the order or
8 judgment, as shown by each opposing party's signature on the document being
9 submitted.
- 10 Each opposing party affected by this order or judgment has approved the order or
11 judgment, as shown by signature on the document being submitted or by written
12 confirmation of approval sent to me.
- 13 I have served a copy of this order or judgment on all parties entitled to service and:
14 No objection has been served on me.
15 I received objections that I could not resolve with the opposing party despite
16 reasonable efforts to do so. I have filed a copy of the objections I received and
17 indicated which objections remain unresolved.
18 After conferring about objections, [role and name of opposing party] agreed
19 to independently file any remaining objection.
- 20 This is a proposed judgment that includes an award of punitive damages.

21 DATED: August 30, 2017

22 By: s/ Steve Bonfiglio
23 Steve Bonfiglio, OSB #051220
24 Attorney for Plaintiff
25 MALCOLM ♦ CISNEROS, A Law Corporation
26 2112 Business Center Drive, Second Floor
27 Irvine, California 92612
28 (949) 252-9400 (TELEPHONE)
(949) 252-1032 (FAX)