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LANE COUNTY S.O. CIVIL  
03.19.18 RAS 411

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

CIT BANK, N.A.,

Plaintiff,

vs.

ESTATE OF KATHERINE ELEANORE  
NELSON, an estate; UNKNOWN HEIRS OF  
KATHERINE ELEANORE NELSON, heirs;  
ANDREW NELSON, an heir; 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: 16CV26481

WRIT OF EXECUTION IN FORECLOSURE

TO: THE SHERIFF OF LANE COUNTY, OREGON:

1.

WHEREAS, on July 5, 2017, in the above-entitled Court, a General Judgment of Foreclosure  
("Judgment") was entered and docketed in the above-entitled and numbered proceeding

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 ESTATE OF KATHERINE ELEANORE NELSON, UNKNOWN HEIRS OF KATHERINE ELEANORE NELSON, and ALL OTHER PERSONS, PARTIES, OR OCCUPANTS UNKNOWN ("Defendants") had on October 28, 2005, the date of the foreclosed Deed of Trust which was recorded on November 2, 2005, as Instrument No. 2005-087652 in the official records of the Lane 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:

**Lender's Principal Judgment:**

Unpaid Principal Balance:	\$149,314.32
Pre-Judgment Interest from November 3, 2005 to June 20, 2017, the date set forth in the Judgment at 2.500%, per annum, (\$13.90 per diem):	\$41,027.02
Lender's Fees and Costs:	\$17,442.50
Attorney's Fees and Costs:	\$2,770.00
<b>Total Judgment Entered:</b>	<b>\$210,553.84</b>

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1 **Additional Pre-Judgment Interest:**

2 Accrued Interest from June 21, 2017,  
3 the day after the date set forth in the  
4 Judgment through July 5, 2017, the date  
5 of entry of the Judgment, at 2.500%,  
6 per annum (\$13.90 per diem): \$194.60

7  
8 ***Total Judgment Entered Including***  
9 ***Additional Pre-Judgment***

10 ***Interest:*** \$210,748.44

11 3.

12 Additionally, Plaintiff is entitled to the accrual of post-judgment interest on \$210,748.44 at  
13 the legal rate of interest of 9% per annum, \$51.96 per diem, from July 6, 2017 to the date the real  
14 property subject to the Judgment is sold by the County Sheriff at its foreclosure auction, plus costs of  
15 this Writ, Sherriff's fees and sale costs, and all other recovered costs pursuant to law.

16 4.

17 The real property subject to this writ of execution is commonly known as 36874 WALLACE  
18 CREEK ROAD, SPRINGFIELD, OR 97478 ("Property") and described in Exhibit "1" attached  
19 hereto.

20 5.

21 The Judgment Creditor's name and address is:

22 CIT BANK, N.A.

23 c/o Financial Freedom

24 888 East Walnut Street

25 Pasadena, CA 91101-1895

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

27 CIT BANK, N.A.  
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c/o Malcolm & Cisneros, ALC (Attention: Nathan F. Smith)  
2112 Business Center Drive  
Irvine, CA 92612  
949-252-9400

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.

January 22, 2018

By: *Alicia*  
Court Clerk



Submitted by:

*[Handwritten signature]*

Dated: 1/19/18

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

Beginning at a point on the South line of the James A. Wallace Donation Land Claim No. 40, in Township 18, South, Range 2 West of the Willamette Meridian; East 704.64 feet from the Southwest corner of said claim, thence North 16° 28', East 819.38 feet; thence North 73° 13' West 97.00 feet to the center of the road; thence along the center line of a road to a point which bears South 19° 34' West 234.20 feet thence to a point which bears South 15° 21' West 225.00 feet; thence to a point which bears South 22° 20' West 100.00 feet; thence to a point which bears South 35° 38' West 121.85 feet; thence to a point which bears South 28° 05' West 100.00 feet; thence to a point which bears South 11° 57' West 98.79 feet (the last point named being on the South line of said claim) thence along the South line of said claim, East 175.60 feet to the point of beginning in Lane County, Oregon.

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

CIT BANK, N.A.,

Plaintiff,

vs.

ESTATE OF KATHERINE ELEANORE  
NELSON, an estate; UNKNOWN HEIRS OF  
KATHERINE ELEANORE NELSON, heirs;  
ANDREW NELSON, an heir; 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: 16CV26481

GENERAL JUDGMENT OF  
FORECLOSURE AGAINST:

1. ESTATE OF KATHERINE ELEANORE NELSON
2. UNKNOWN HEIRS OF KATHERINE ELEANORE NELSON; AND
3. ALL OTHER PERSONS, PARTIES, OR OCCUPANTS UNKNOWN

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1.

THIS MATTER, coming on regularly before the Court, and it appearing from the record herein that Plaintiff, CIT BANK, N.A. ("Plaintiff"), filed its Complaint for Foreclosure of Deed of Trust; that Defendants ESTATE OF KATHERINE ELEANORE NELSON, UNKNOWN HEIRS OF KATHERINE ELEANORE NELSON, and ALL OTHER PERSONS, PARITES, OR OCCUPANTS UNKNOWN ("Defendants") were duly served with the Summons and Complaint as required by law; that Defendants failed to appear, that an orders of defaults have been entered against them on Plaintiff's Complaint, and that Plaintiff is entitled to entry of a General Judgment foreclosing Plaintiff's deed of trust against the property commonly known as 36874 WALLACE CREEK ROAD, SPRINGFIELD, OREGON 97478 ("Property") and extinguishing any and all interest of the Defendants in the Property.

2.

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

3.

Plaintiff is the holder of that certain Adjustable Rate Note Home Equity Conversion ("Note"), dated October 28, 2005, in the amount of \$277,500.00, and executed by borrowers RICHARD JAMES NELSON and KATHERINE ELEANORE NELSON.

4.

The Note is secured by that certain deed of trust ("Deed of Trust") dated October 28, 2005 and executed by borrowers RICHARD JAMES NELSON and KATHERINE ELEANORE NELSON. The Deed of Trust was recorded on November 2, 2005 under the recording number 2005-087652 of the Official Records of Lane County, Oregon, against the Property, which is legally described as: See Exhibit "1" attached hereto. ("Property") and constitutes a valid lien against the Property.

5.

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



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6.

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

7.

A judgment of foreclosure in the amount of \$210,553.84 shall be granted in favor of Plaintiff, and its successors and/or assigns, as further described below in the Declaration of Amount Owed – Not a Money Award (“Amount Owed”).

8.

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

9.

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

10.

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

11.

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

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12.

Defendants ESTATE OF KATHERINE ELEANORE NELSON is not entitled to a homestead exemption in the Property.

13.

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.

14.

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.

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 KATHERINE ELEANORE NELSON. Rather, it is a suit to execute upon the Property as security for the Amount Owed.

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**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 28, 2005, in the original principal amount of \$277,500.00, 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:** CIT BANK, N.A.  
**Address:** c/o MALCOLM ♦ CISNEROS,  
A Law Corporation  
2112 Business Center Drive, 2<sup>nd</sup> Floor  
Irvine, California 92612
- Judgment Attorney:** Nathan F. Smith  
**Address:** MALCOLM ♦ CISNEROS, A Law Corporation  
2112 Business Center Drive, 2<sup>nd</sup> 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:** \$207,783.84
- 4. Pre-Judgment Interest:** Simple interest to accrue on \$149,314.32 from June 21, 2017 to the date the Judgment is entered into the Court's register at 2.500% per annum, \$13.90 per diem.

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**5. Post-Judgment Interest:**

Simple interest to accrue on \$210,553.84 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.

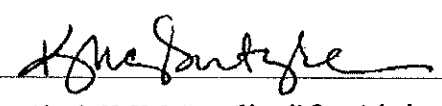
**6. Periodic accrual:**

N/A

**7. Attorney's Fees and Costs:**

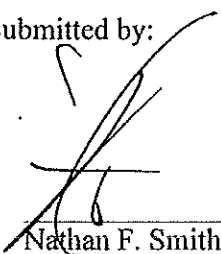
An award of \$2,770.00 in attorney's fees and costs is made.

Signed: 7/3/2017 01:46 PM



Karrie K. McIntyre, Circuit Court Judge

Submitted by:



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

Dated:

6/28/17

# Exhibit 1



## LEGAL DESCRIPTION

Beginning at a point on the South line of the James A. Wallace Donation Land Claim No. 40, in Township 18, South, Range 2 West of the Willamette Meridian; East 704.64 feet from the Southwest corner of said claim, thence North  $16^{\circ} 28'$ , East 819.38 feet; thence North  $73^{\circ} 13'$  West 97.00 feet to the center of the road; thence along the center line of a road to a point which bears South  $19^{\circ} 34'$  West 234.20 feet thence to a point which bears South  $15^{\circ} 21'$  West 225.00 feet; thence to a point which bears South  $22^{\circ} 20'$  West 100.00 feet; thence to a point which bears South  $35^{\circ} 38'$  West 121.85 feet; thence to a point which bears South  $28^{\circ} 05'$  West 100.00 feet; thence to a point which bears South  $11^{\circ} 57'$  West 98.79 feet (the last point named being on the South line of said claim) thence along the South line of said claim, East 175.60 feet to the point of beginning in Lane County, Oregon.

