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

DITECH FINANCIAL LLC,  
  
Plaintiff,  
  
vs.  
  
THE UNKNOWN HEIRS AND DEVISEES  
OF LAWRENCE E. KENDALL, MARLENE  
B. KENDALL; OREGON DEPARTMENT OF  
REVENUE; FIRST FINANCIAL  
INVESTMENT FUND; OCCUPANTS OF  
THE PROPERTY,  
  
Defendants.

Case No.: 17CV27964  
  
WRIT OF EXECUTION IN  
FORECLOSURE

**TO THE KLAMATH COUNTY SHERIFF:**

A Judgment of Foreclosure was entered and docketed in this case on January 31, 2018. A true copy of the Judgment is attached hereto. The Judgment was entered in favor of the Plaintiff:

DITECH FINANCIAL LLC  
c/o Robert Hakari, Attorney for Plaintiff  
McCarthy & Holthus, LLP  
920 SW 3rd Ave, 1st Floor  
Portland, OR 97204

With the adjudicated amount due of \$173,902.06, plus post judgment interest at the statutory rate of 9.0% per annum from January 31, 2018 to February 22, 2018 in the amount of \$943.36, and continuing with a per diem of \$42.88, currently totaling \$174,845.42.

**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 on execution (subject to redemption of 180 days), all of the interest that the Defendant had on or about June 5, 2007, the date of the Deed of Trust, and also the interest that the Defendant had

1 thereafter, in the real property described as shown in Exhibit 1, having APN/Parcel # R315910,  
2 and commonly known as: 23142 Birch St, Klamath Falls, OR 97601.

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

8  
9 Date: April 27, 2018



John M. Powell, TCA  
by: Maurice Henderson  
clerk

12 **McCarthy & Holthus, LLP**

13 s/ Robert B. Hakari 2/22/2018  
14 \_\_\_\_\_  
15 Robert Hakari OSB No. 114082  
16 920 SW 3rd Ave, 1st Floor  
17 Portland, OR 97204  
18 Phone: (971) 201-3200  
19 Fax: (971) 201-3202  
20 rhakari@mccarthyholthus.com  
21 Of Attorneys for Plaintiff

# EXHIBIT "1"

Lots 29, 40 and 41, ODESSA SUMMER HOME SITES, 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

DITECH FINANCIAL LLC,

Plaintiff,

vs.

THE UNKNOWN HEIRS AND DEVISEES  
OF LAWRENCE E KENDALL, MARLENE  
B. KENDALL; OREGON DEPARTMENT  
OF REVENUE; FIRST FINANCIAL  
INVESTMENT FUND; OCCUPANTS OF  
THE PROPERTY;

Defendants.

Case No.: 17CV27964

GENERAL JUDGMENT OF  
FORECLOSURE

1.

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

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 23142 Birch St, Klamath Falls, OR 97601 (the "Subject Property"), legally described as shown in *Exhibit 1*, and having APN/Parcel No. R315910.
- b. Plaintiff is entitled to enforce the note dated June 5, 2007 and made, delivered, and executed by Lawrence E Kendall and Marlene B Kendall ("Borrowers") to The Mortgage Outlet in the amount of \$146,250.00 (the "Note"). The Note was transferred to Plaintiff by delivery of

1 possession and by indorsement set forth on the Note.

- 2 c. A deed of trust was made, executed, and delivered by Defendants Lawrence E Kendall and  
3 Marlene B. Kendall on or about June 6, 2007 (the "Deed of Trust"). The Deed of Trust was  
4 recorded on June 11, 2007 as Instrument No. 2007-010438 in the official records of Klamath  
5 County, Oregon. The Deed of Trust is a valid and perfected lien against all of the Property  
6 for and securing the Amount Due. The lien of the Plaintiff is superior to any interest, lien, or  
7 claim of the Defendants and shall remain in effect until issuance of a Sheriff's Deed.
- 8 d. The Borrower failed to make the payment that was due for August 1, 2015 and has not cured  
9 the default. The amount of debt secured by the Deed of Trust that is now due and owing is  
10 comprised of the following amounts (the "Amount Due"):

- |    |                                       |                     |
|----|---------------------------------------|---------------------|
| 11 | a) Unpaid principal balance:          | \$137,976.48        |
| 12 | b) Prejudgment interest accruing from | \$22,688.87         |
| 13 | 7/1/2015 through 1/29/2018 and        |                     |
| 14 | continuing until the entry of         |                     |
|    | judgment at the rate of 6.375%:       |                     |
| 15 | c) Additional amounts due under the   | \$8,160.13          |
|    | terms of the loan:                    |                     |
| 16 | d) Attorney fees and costs:           | \$4,991.58          |
| 17 | e) Prevailing party fee (ORS 20.190   | \$85.00             |
| 18 | (1)(a)):                              |                     |
| 19 | <b>Total:</b>                         | <b>\$173,902.06</b> |

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

- 23 e. The interest of the Defendants and any successor in interest in the Subject Property is  
24 foreclosed and terminated excepting only any statutory right of redemption as provided by  
25 Oregon law.
- 26 f. The Defendants are not entitled to a homestead exception as against Plaintiff's judgment.
- 27 g. All right, title and interest in the Subject Property that Borrowers had as of the date of the

1 Deed of Trust or thereafter acquired is hereby ordered to be sold by the Klamath County  
2 Sheriff's Office in accordance with the process for sale upon execution, and the proceeds of  
3 sale shall be applied:

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

10 h. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS  
11 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from  
12 the date of entry of judgment through the date of the sale and any incurred costs of sale.

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

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

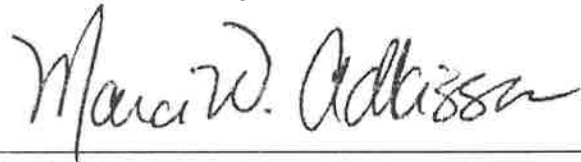
20 k. If, before the sale, the Amount Due is brought into court and paid to the clerk, the execution,  
21 if issued, shall be recalled and the effect of the judgment as to the Amount Due shall be  
22 terminated.

23 l. Pursuant to ORS 18.950 (4), the apparent priority of liens subsequent and inferior to the  
24 Deed of Trust are as follows:

- 25 a) Defendant OREGON DEPARTMENT OF REVENUE may claim a junior interest in  
26 Subject Property by virtue of a Notice of tax-deferral recorded on 07/01/2008 as  
27 Instrument No. 2008-009550 in the official records of Klamath County, Oregon.

1 b) Defendant FIRST FINANCIAL INVESTMENT FUND may claim a junior interest in  
2 Subject Property by virtue of a judgment entered on 06/01/2011 as Case No. 1101185CV  
3 in the official records of Klamath County, Oregon.  
4  
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Signed: 1/31/2018 11:05 AM

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10 **Circuit Court Judge Marci W. Adkisson**

11 I hereby certify that the requirements of UTCR 5.100 have been satisfied.  
12 This proposed Judgment Of Foreclosure is ready for judicial signature because:

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

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

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

20  No objection has been served on me.

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

24  After conferring about objections, \_\_\_\_\_ agreed to independently file  
25 any remaining objection.

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

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

28  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: \_\_\_\_\_



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**McCarthy & Holthus, LLP**

s/ Robert B. Hakari 1/29/18

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x Robert Hakari OSB No. 114082  
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