

FILED  
FT. SMITH DIST.

2021 NOV 16 P. 3 03  
*Cindy Stone*  
CIR. CLERK SEB. CO.

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS  
FORT SMITH DISTRICT  
CIVIL DIVISION VII

FIRST NATIONAL BANK OF  
FORT SMITH

PLAINTIFF

V. CASE NO: CV-2021-318

BOLDING CONSTRUCTION COMPANY, INC.;  
MAX A. RODRIGUEZ a/k/a MAXIMUS TYRANNUS  
AVERY, Individually;  
UNITED FEDERAL CREDIT UNION; and  
SRS DISTRIBUTION, INC. d/b/a SOUTHERN SHINGLES

DEFENDANTS

UNITED FEDERAL CREDIT UNION

V.

MAX A. RODRIGUEZ a/k/a  
MAXIMUS TYRANNUS AVERY, Individually;  
SRS DISTRIBUTION, INC.  
d/b/a SOUTHERN SHINGLES;  
FIRST NATIONAL BANK OF FORT SMITH;  
And FORWARD FINANCING, LLC.

CROSS/COUNTER-  
DEFENDANTS;  
THIRD-PARTY  
DEFENDANT

SEPARATE DEFENDANT, UNITED FEDERAL CREDIT UNION'S THIRD-PARTY  
COMPLAINT FOR FORECLOSURE, JUDGMENT, AND AFFIDAVIT OF  
POSSESSION

COMES NOW, the Separate Defendant/Cross-Counter and Third-Party Plaintiff, United Federal Credit Union, (the "Plaintiff" or "UFCU" herein), and for its cause of action against Forward Financing, LLC ("Forward Financing"); respectfully alleges and states:

I. Description of the Parties, Jurisdiction and Venue

1. The Plaintiff is a federal credit union organized and existing under the laws of the State of Michigan doing business throughout the State of Arkansas and, specifically, through a location in Fort Smith, Sebastian County, Arkansas.

2. Upon information and belief, the Defendant Avery is both a citizen and resident of Sebastian County, Arkansas.

3. Upon information and belief, the Defendant SRS is a for-profit corporation organized and existing under the laws of the State of Delaware.

4. Upon information and belief, the Third-Party Defendant, Forward Financing is a limited liability company organized and existing under the laws of the State of Delaware.

5. Upon information and belief, the Defendant First National is a national bank authorized and chartered under the laws of the United States engaged in business as a bank in Fort Smith, Sebastian County, Arkansas.

6. This lawsuit involves the default on a series of promissory notes secured by mortgage liens on a parcel of real property located in Sebastian County, Arkansas.

7. That the Soldiers and Sailors Relief Act of 1940, as amended, does not apply to any of the Defendants herein.

8. This Court has jurisdiction of the parties hereto and of the subject matter, including *in rem* jurisdiction over the real property subject hereof. Venue is proper in this Court pursuant to Ark. Code Ann. § 16-60-101.

## **II. Causes of Action**

9. On July 13, 2018, Maximus Tyrannus Avery fka Max Rodriguez (the “Borrowing Defendant”), for consideration received, executed and delivered that certain Promissory Note

(“Note 1”) in favor of the Plaintiff whereby the Plaintiff loaned the Borrowing Defendant the sum of Five Hundred Forty-Five Thousand and No/100 (\$545,000.00). A copy of Note 1 is attached hereto as Exhibit “A” and incorporated herein by reference as if set out word for word herein.

10. Under the terms of Note 1, the Borrowing Defendant was to pay UFCU the entire unpaid principal and accrued interest on demand, but if no demand was made, then the entire unpaid principal and accrued interest was due and payable on August 1, 2048.

11. That to secure the indebtedness evidenced by Note 1, Borrowing Defendant did execute, acknowledge and deliver that certain Mortgage to the Plaintiff on July 13, 2018 (“Mortgage 1”) on the following described real property situated in Sebastian County, Arkansas (the “Property”), to-wit:

**LOTS 11 AND 12 AND THE NORTH HALF OF LOT 10, BLOCK 1,  
FITZGERALD, AN ADDITION TO THE CITY OF FORT SMITH,  
SEBASTIAN COUNTY, ARKANSAS.**

12. Mortgage 1 was duly acknowledged and filed with the Office of the Ex-Officio Clerk and Recorder of Sebastian County, Arkansas, on July 19, 2018, in Book 2018 at Page 16049. A true copy of Mortgage 1 is attached hereto, marked as Exhibit “B” and is incorporated by reference as if set forth word for word herein.

13. Mortgage 1 contains a waiver by Borrowing Defendant of all rights of homestead exemption in, dower and curtesy, statutory redemption of, and right of appraisement relating to the Property under the laws of the State of Arkansas.

14. Mortgage 1 grants to the Plaintiff a first priority, perfected mortgage lien with respect to the Property.

15. On May 21, 2019, Borrowing Defendant, for consideration received, executed and delivered that certain Home Equity Credit Line Agreement and Truth-In-Lending Disclosure

Statement (“Note 2”) in favor of the Plaintiff whereby the Plaintiff allowed the Borrowing Defendant the sum of One Hundred Forty-One Thousand and No/100 (\$141,000.00) in credit. A copy of Note 2 is attached hereto as Exhibit “C” and incorporated herein by reference as if set out word for word herein.

16. Note 2 incorporates by reference, as an additional event of default, the Borrowing Defendants’ failure to comply with any term, obligation, covenant or condition contained in any agreement, including Agreement 2, between the Borrowing Defendants and the Plaintiff.

17. By the terms of Note 2, the Borrowing Defendants waived protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor. The Borrowing Defendants further agreed that they would pay all attorneys’ fees, costs and other expenses incurred by Pinnacle in the collection and enforcement of Note 2.

18. Under the terms of Note 2, the Borrowing Defendants were to pay Pinnacle the entire unpaid principal and accrued interest on demand, but if no demand was made, then the entire unpaid principal and accrued interest was due and payable on July 15, 2008.

19. That to secure the indebtedness evidenced by the Notes, Borrowing Defendant did execute, acknowledge and deliver that certain Revolving Credit Mortgage to the Plaintiff on May 21, 2019 (“Mortgage 2”) on the following Property situated in Sebastian County, Arkansas, to-wit:

**LOTS 11 AND 12 AND THE NORTH HALF OF LOT 10, BLOCK 1, FITZGERALD, AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS.**

**AND BEING the same property conveyed to Max Rodriguez from Linda Spicer, as Personal Representative of the Estate of David Spicer, Deceased by Fiduciary Deed dated December 11, 2017 and recorded December 13, 2017 in Instrument No. 2017-26973.**

**Tax Parcel No. 1276300120020900**

20. Mortgage 2 was duly acknowledged and filed with the Office of the Ex-Officio Clerk and Recorder of Sebastian County, Arkansas, on June 7, 2019, in Book 2019 at Page 11899. A true copy of Mortgage 2 is attached hereto, marked as Exhibit "D" and is incorporated by reference as if set forth word for word herein.

21. Mortgage 2 contains a waiver by Borrowing Defendant of homestead exemption, dower, and curtesy relating to the Property under the laws of the State of Arkansas.

22. Mortgage 2 grants to the Plaintiff a perfected mortgage lien with respect to the Property.

23. The Borrowing Defendant has defaulted under the Notes by, among other defaults, failing to make full payments in a timely manner, and upon UFCU's information and belief, by defaulting on obligations due other creditors. As a result thereof, a material adverse change has occurred in the financial conditions of the Borrowing Defendant and UFCU in good faith believes itself insecure in the payment and performance of said Borrowing Defendant's obligations.

24. That on September 14, 2021, UFCU made demand on Borrowing Defendant, through his counsel in this action, to pay UFCU the full amounts due and owing under Note 1 and Note 2.

25. Pursuant to the terms of Mortgage 1 and Mortgage 2, the Plaintiff elects to accelerate the indebtedness due it under the Notes and foreclose on the Property through judicial foreclosure proceedings.

26. Pursuant to the terms of the Notes, the Plaintiff demands all unpaid charges, interest and principal balances under the Notes immediately due and payable.

27. Pursuant to the terms of the Notes, the Borrowing Defendant is obligated to the Plaintiff for the accruing interest and all reasonable costs incurred to collect under the Notes, including attorneys' fees, court costs and other legal expenses.

28. There is now due thereon, pursuant to the Note 1 and Mortgage 1, the principal sum of \$542,024.60 as of September 9, 2021, plus interest due in the amount of \$22,671.24 as of September 9, 2021, accruing at the rate of \$72.39370 per day as of September 9, 2021, until paid, late charges and other contractual charges in the amount of \$1,539.83, plus costs and attorneys' fees.

29. There is now due thereon, pursuant to Note 2 and Mortgage 2, the principal sum of \$141,000.00 as of September 9, 2021, plus interest due in the amount of \$5,791.93 as of September 9, 2021, accruing at a rate of \$18.34931 per day as of September 9, 2021, until paid, late charges and other contractual charges in the amount of \$222.84, plus costs and attorneys' fees.

30. That on or about July 7, 2021, Third Party Defendant, Forward Financing LLC, was granted a Default Judgment against Max Avery in Circuit Court of Sebastian County, Fort Smith District, Case No. CV-2021-164.

31. That Third Party Defendant, Forward Financing LLC, may claim some interest in this property as a result of its Default Judgment. This claim is subject to and inferior to the Mortgage 1 and Mortgage 2 lien of the Plaintiff described above and should be both barred and foreclosed.

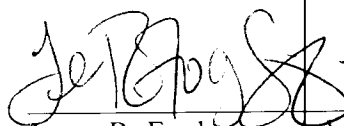
32. That the Plaintiff expressly and unequivocally reserves the right to amend and/or add parties to this present litigation should any other interests in the above-described Property be discovered.

WHEREFORE, the Third Party Plaintiff, United Federal Credit Union, prays that it have Judgment against the Third Party Defendant and that the judgment be adjudged and declared to be a first and paramount lien on the above-described Property together with all improvements thereon and all appurtenances, fixtures, and equipment thereunto belonging or pertaining prior and superior to any right, title, claim or interest of the Third Party Defendants or any of them or anyone claiming by through, or under them; that if the Judgment is not paid within a short time to be fixed by the Court that the above Property be sold by the Commissioner of the Court appointed for that purpose, the all right, title, and equity of the Third Party Defendant should be foreclosed and forever barred; that the purchaser at the sale of the Property be decreed to have a right to immediate possession thereof and be entitled to a writ of assistance to be executed by the Clerk of this Court to enforce delivery of possession and that UFCU be granted any and all other proper legal and equitable relief to which it may be entitled.

Respectfully submitted,

**UNITED FEDERAL CREDIT UNION,**  
*THIRD-PARTY PLAINTIFF*

**MILLER, BUTLER, SCHNEIDER,  
PAWLIK & ROZZELL, PLLC**  
224 South 2<sup>nd</sup> St.  
Rogers, AR 72756  
Telephone: (479) 621-0006  
Telecopier: (479) 631-6890

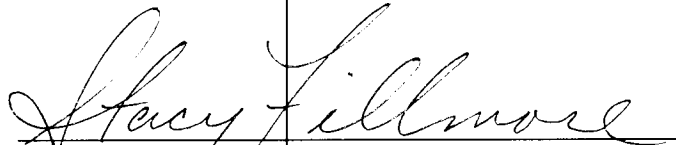


Jenna R. Fogleman, Ark Bar #2015150  
jfogleman@arkattorneys.com

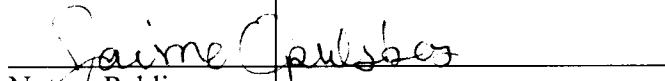
**VERIFICATION**

STATE OF Michigan )  
 )ss.  
COUNTY OF Berrien )

I, Stacy Fillmore, on oath state that I am the Chief Operating Officer, the Cross/Counter and Third-Party Plaintiff in the above-entitled case, and as such state that I have read the allegations and statements contained in the foregoing and that same are true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Stacy Fillmore

Subscribed and sworn to before me this 12<sup>th</sup> day of October, 2021.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

July 19 2023

Jaime Opulskas  
Notary Public Berrien County Michigan  
Acting In Berrien County Michigan  
My commission expires July 19, 2023

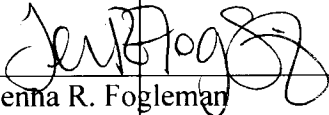


**CERTIFICATE OF SERVICE**

I, Jenna R. Fogleman, state that I have on this 12<sup>th</sup> day of November, 2021, served a true and correct copy of the above and foregoing Third Party Complaint by depositing a copy of same in the U.S. Mail, postage prepaid and addressed to:

***Rebecca D. Hattabaugh, Esq.***  
***LEDBETTER, COGBILL,***  
***ARNOLD & HARRISON, LLP***  
***P.O. Box 185***  
***Fort Smith, AR 72902-0185***

***Michael Collins***  
***4300 Rogers Ave., Suite 45***  
***Fort Smith, AR 72903***

  
\_\_\_\_\_  
Jenna R. Fogleman

LOAN #: 501700849217

**NOTE**

July 13, 2018  
[Date]

Saint Joseph,  
[City]

Michigan  
[State]

302-304 S 14th St, Fort Smith, AR 72901  
[Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. **\$545,000.00** (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **United Federal Credit Union, a Federal Credit Union**.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **4.875 %**.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the **1st** day of each month beginning on **September 1, 2018**. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on **August 1, 2048**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at **2807 South State Street  
St. Joseph, MI 49085**

or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. **\$2,884.18**.

**4. BORROWER'S RIGHT TO PREPAY**

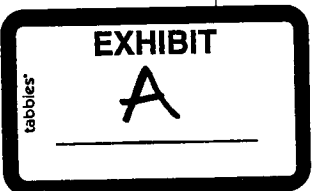
I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

**5. LOAN CHARGES**

If a law which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any

Initials: *MS*



LOAN #: 501700849217

sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

## 6. BORROWER'S FAILURE TO PAY AS REQUIRED

### (A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

### (B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

### (C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

### (D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

### (E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

## 7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

## 8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

## 9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

## 10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which

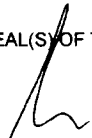
Initials: *MAE*



LOAN #: 501700849217

Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.




MAX RODRIGUEZ

(Seal)

Lender: United Federal Credit Union  
NMLS ID: 471962  
Loan Originator: Drew Waack  
NMLS ID: 1573539

[Sign Original Only]

Initials: 



eRECORDED  
2018-16049  
Certificate of Record  
FORT SMITH DISTRICT  
SEBASTIAN COUNTY, ARKANSAS  
SHARON BROOKS  
COUNTY CLERK & RECORDER  
07/19/2018 1:21:02 PM  
RECORDING FEE: 75.00  
Pages: 13

When recorded, return to:  
United Federal Credit Union  
Attn: Final Document Department  
2380 Pipestone Road  
Benton Harbor, MI 49022

This instrument was prepared by:  
Jennifer Venno  
United Federal Credit Union  
2380 Pipestone Rd  
Benton Harbor, MI 49022  
888-982-1400 4005

Title Order No.: BO18-449  
Escrow No.: BO18-449  
LOAN #: 501700849217

[Space Above This Line For Recording Data]

## MORTGAGE

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated July 13, 2018, together with all Riders to this document.

(B) "Borrower" is MAX RODRIGUEZ, SINGLE MAN.

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is United Federal Credit Union.

ARKANSAS—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT  
Elle Mae, Inc. Page 1 of 12

Form 3004 1/01

Initials: 

ARUDEL 0315  
ARUDEL (CLS)  
07/12/2018 08:15 AM PST

EXHIBIT

B



Lender is a Federal Credit Union,  
under the laws of The United States of America.  
2807 South State Street, St. Joseph, MI 49085.

LOAN #: 501700849217  
organized and existing  
Lender's address is

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated July 13, 2018. The Note states that Borrower owes Lender FIVE HUNDRED FORTY FIVE THOUSAND AND NO/100\* \* \* \* \* Dollars (U.S. \$545,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than August 1, 2048.

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider         | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] |
| <input type="checkbox"/> 1-4 Family Rider      | <input type="checkbox"/> Biweekly Payment Rider         |   |
| <input type="checkbox"/> V.A. Rider            |   |   |

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

**TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note.



LOAN #: 501700849217

For this purpose, Borrower irrevocably mortgages, grants and conveys to Lender the following described property located in the County [Type of Recording Jurisdiction] Of Sebastian

[Name of Recording Jurisdiction]:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS "EXHIBIT A".

which currently has the address of 302-304 S 14th St, Fort Smith,

[Street] [City]

Arkansas 72901

("Property Address"):

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its



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scheduled due date, then Lender need not pay interest on unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required





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to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such



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policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority



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over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:



