

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION

ARVEST BANK

PLAINTIFF

vs.

Case No. CV 14-454-4

H. DENNIS SMILEY; BOKF, NATIONAL ASSOCIATION;
THE BANK OF FAYETTEVILLE; BANK OF THE OZARKS,
LITTLE ROCK, AR; BENEFIT BANK, FORT SMITH, AR;
CHAMBERS BANK, DANVILLE, AR; CENTENNIAL BANK,
CONWAY, AR; DELTA TRUST & BANK, PARKDALE, AR;
FIRST BANK, HAMPTON, AR; FIRST FEDERAL BANK,
HARRISON, AR; FIRST NATIONAL BANK OF FORT SMITH;
INTEGRITY FIRST BANK, NATIONAL ASSOCIATION; FIRST
SECURITY BANK, SEARCY, AR; FIRST STATE BANK, LONOKE,
AR; FIRST STATE BANK OF DEQUEEN; FIRST STATE BANK OF
NWA, HUNTSVILLE, AR n/k/a TODAY'S BANK; FIRST STATE
BANK, RUSSELLVILLE, AR; FIRST WESTERN BANK,
BOONEVILLE, AR; LEGACY NATIONAL BANK, SPRINGDALE,
AR; and SUMMIT BANK, ARKADELPHIA, AR

DEFENDANTS

THE BANK OF FAYETTEVILLE

CROSS-PLAINTIFF

vs.

H. DENNIS SMILEY; BOKF, NATIONAL ASSOCIATION;
THE BANK OF FAYETTEVILLE; BANK OF THE OZARKS,
LITTLE ROCK, AR; BENEFIT BANK, FORT SMITH, AR;
CHAMBERS BANK, DANVILLE, AR; CENTENNIAL BANK,
CONWAY, AR; DELTA TRUST & BANK, PARKDALE, AR;
FIRST BANK, HAMPTON, AR; FIRST FEDERAL BANK,
HARRISON, AR; FIRST NATIONAL BANK OF FORT SMITH;
INTEGRITY FIRST BANK, NATIONAL ASSOCIATION; FIRST
SECURITY BANK, SEARCY, AR; FIRST STATE BANK, LONOKE,
AR; FIRST STATE BANK OF DEQUEEN; FIRST STATE BANK OF
NWA, HUNTSVILLE, AR n/k/a TODAY'S BANK; FIRST STATE
BANK, RUSSELLVILLE, AR; FIRST WESTERN BANK,
BOONEVILLE, AR; LEGACY NATIONAL BANK, SPRINGDALE,
AR; and SUMMIT BANK, ARKADELPHIA, AR

CROSS-DEFENDANTS

FILED
2014 APR 7 PM 4 22
BRENDA E. CUMMINGS
CLERK & RECORDER
BENTON COUNTY, AR

CONTROL AGREEMENT (Securities Account)

This Control Agreement is entered into by THE BANK OF FAYETTEVILLE ("Bank"),
HENRY DENNIS SMILEY (collectively "Borrower"), and
____ ("Broker"). The parties agree as follows:

SECURITY INTEREST. To secure debt(s) owed to Bank, Borrower granted Bank a security interest in that certain securities account which is styled HENRY DENNIS SMILEY, is numbered 28588, and is deposited with Broker ("Securities Account") (The term "Securities Account" as used herein includes all certificated and uncertificated securities currently on deposit in the afore styled and numbered Securities Account and includes future deposit(s) of securities thereto as well as all rights, title, interest and choses in action associated with the afore styled and numbered Securities Account.)

PERFECTION. To perfect Bank's security interest in the Securities Account, Bank, Borrower, and Broker are entering into this Control Agreement under which Broker, among other things, agrees to comply with Bank's instructions as to the Securities Account without the further consent of Borrower.

SECURITIES ACCOUNT. Broker represents and warrants to Bank that the Securities Account contains the securities described below:

10,74 share(s) of ARVEST BANK GROUP, INC. common/preferred stock

Broker further represents and warrants that Borrower is/are the only owner(s) of the Securities Account, and that, as of the date this Control Agreement is signed by Broker, the value of the Securities Account is \$ 299,811.50.

CONTROL. Broker acknowledges Bank's security interest in the Securities Account. Borrower directs Broker to, and Broker agrees to, obey and comply with orders of Bank concerning the Securities Account (including, but not limited to, orders directing disposition and liquidation of the securities and funds in the Securities Account) without the further consent of Borrower. Bank and Borrower direct Broker to, and Broker agrees to, not allow Borrower to withdraw from, pledge, dispose of, transfer, or otherwise deal with the Securities Account; except that, unless Bank has notified Broker in writing to the contrary, Borrower may conduct trades with respect to the securities in the Securities Account whereby such securities in the Securities Account are sold to purchase other securities of like value which shall be simultaneously placed in the Securities Account and subject to all the terms, conditions and restrictions of this Agreement. Borrower agrees to hold Broker and its directors, officers, employees and agents (hereinafter collectively called "Indemnitees") harmless from and against any and all claims, liabilities, obligations, losses, damages, actions, suits, arbitrations, penalties, judgments, and costs (including attorney fees) of any kind or nature whatsoever that directly or indirectly may be imposed on, incurred by, or asserted against Indemnitees as a result of Indemnitees, or any of them, (1) signing this Control Agreement, (2) performing obligations hereunder, and/or (3) complying with orders of Bank concerning the Securities Account; provided, however, that Borrower has no obligation to hold Indemnitees harmless for the gross negligence or willful misconduct of any Indemnitee.

ABSENCE OF CONFLICTING CLAIMS. Broker warrants to Bank that (1) Broker has not entered into any other control agreement with respect to Securities Account, (2) Broker has no knowledge of Borrower granting anyone (other than Bank) a security interest in the Securities Account, (3) Broker has no knowledge of the Securities Account being pledged to anyone (other than Bank), and (4) Broker has no knowledge of any claim to or interest in the Securities Account which is adverse to Bank's interest. Borrower directs Broker to, and Broker agrees to, (1) not enter into any other control agreement with regard to the Securities Account until Bank notifies Broker in writing that Bank has released its security interest in the Securities Account, (2) not agree to a pledge of the Securities Account to one other than Bank until Bank notifies Broker in writing that Bank has released its security interest in the Securities Account, (3) notify Bank of any and all adverse claims to the Securities Account, and (4) notify Bank if Borrower attempt(s) to pledge the Securities Account to any person or entity other than Bank. Broker hereby agrees to subordinate to Bank's security interest in the Securities Account any lien(s), security interest(s), claim(s) and right(s) of setoff which Broker has or may hereafter have in or against the Securities Account. Broker agrees not to exercise any right of set off or banker's lien in the Securities Account.

ADMINISTRATIVE PROCESSING OF ACCOUNT. Borrower directs Broker to, and Broker agrees to, (1) send Bank a copy of all correspondence with regard to Securities Account and (2) make reports to taxing authorities under Borrower's taxpayer identification number.

RELEASE OF INFORMATION. Borrower directs Broker to, and Broker agrees to, provide Bank (upon request) with information about the Securities Account

NOTICE. Any notice, order, instruction, request or other communication required or permitted to be given under this Control Agreement shall be in writing and shall be deemed to have been given if personally delivered, sent by facsimile (if the sender has written confirmation that the transmission was sent), or sent by certified mail, postage prepaid, return receipt requested to the following mailing address or fax number: Borrower- HENRY DENNIS SMILEY (fax _____)

); Bank- THE BANK OF FAYETTEVILLE, attention _____

Robert W. King, Mailing Address P.O. BOX 1728 (fax _____); Broker,

FAYETTEVILLE, AR 72702 (fax _____); Broker,

attention EUVA PHILLIPS, ARVEST BANK, INC.

(fax (479) 758-7078). A party, upon notice to other parties, may change his, her or its fax number and/or address; thereafter, notices are to be directed to the new address or fax number.

GENERAL PROVISIONS. Arkansas law governs this Control Agreement. This Control Agreement is the entire agreement between the parties on control of the Securities Account. If this Control Agreement conflicts with another agreement between Broker and Borrower, this Control Agreement governs. This Control Agreement may only be terminated by Bank giving notice to the other parties that Bank has released its security interest in the Securities Account. This Control Agreement may only be modified by a writing signed by all parties to this Control Agreement. No waiver is binding on a party unless the waiver is in writing and signed by the party against whom the waiver is asserted. A waiver of one term is not a waiver of any other term of this Control Agreement. No waiver creates a course of dealing or a commitment to a future waiver. This Control Agreement may be executed in counterparts, all of which shall constitute one document.

Bank: THE BANK OF FAYETTEVILLE

By: [Signature]
Robert W. King

Title: Executive Vice President

Date: 1-9-12

ARVEST BANK, INC.

Broker

By: [Signature]
EUVA PHILLIPS

Title: SVP OF OPERATIONS

Date: 01/10/2012

[Signature]
HENRY DENNIS SMILEY

Date

Date

Date

Date

Date

Date

ARVEST BANK

99147389 LOAN Stock Powers
Print Date: 01/11/2012 15:15:39

January 9, 2012

Mr. Bob King

Executive Vice President

Bank of Fayetteville

Dear Mr. King

This letter is to confirm that the Bank of Fayetteville holds a first and primary assignment of the stock account for Henry Dennis Smiley. This account 8586 has a secured hold placed on it and any distributions from this account would be made subject to your assignment. The current cash value of this account as of 9/30/11 is \$299,811.50 in Arvest Stock.

Please contact me should you have any questions.

Sincerely,



Eura Phillips

Senior Vice President, Operations Manager



Financing Statement - Initial

Date Filed: 1/17/2012 10:00 AM

Page(s): 1

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Document ID : 1971893001

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)	
(479) 444-4444	# 17509
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
THE BANK OF FAYETTEVILLE #120 P.O. BOX 1728 FAYETTEVILLE, AR 72702	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME				
OR				
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
SMILEY		HENRY	DENNIS	
1c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
P.O. BOX 6866		SPRINGDALE	AR	72766
1d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
			ARKANSAS	<input checked="" type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
2d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				<input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME				
THE BANK OF FAYETTEVILLE				
OR				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
P.O. BOX 1728		FAYETTEVILLE	AR	72702

4. This FINANCING STATEMENT covers the following collateral:

ASSIGNMENT OF ARVEST BANK GROUP, INC. EMPLOYEE STOCK PURCHASE PLAN ACCOUNT ASK IN THE NAME OF HENRY DENNIS SMILEY INCLUDING 0.74 SHARE(S) OF ARVEST BANK GROUP, INC. COMMON/PREFERRED STOCK; WHETHER ANY OF THE FOREGOING IS OWNED NOW OR ACQUIRED LATER; ALL ADDITIONS, REPLACEMENTS, AND SUBSTITUTIONS RELATING TO ANY OF THE FOREGOING; ALL RECORDS OF ANY KIND RELATING TO ANY OF THE FOREGOING; ALL PROCEEDS RELATING TO ANY OF THE FOREGOING (INCLUDING INSURANCE, GENERAL INTANGIBLES AND ACCOUNTS PROCEEDS).

5. ALTERNATIVE DESIGNATION (if applicable):		LESSOR/LESSOR	CONSIGNEE/CONSIGNOR	BAILEY/BAILO	SELLER/BUYER	A.G. UEN	NON-UCC FILING
6. THIS FINANCING STATEMENT is to be filed (for record) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)		7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)		All Debtors		Debtor 1	Debtor 2
8. OPTIONAL FILER REFERENCE DATA							

To be filed at the office of the Secretary of State of Arkansas

FILING OFFICE COPY - UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

BOF 0028

MODIFICATION, EXTENSION, CHANGE IN TERMS AGREEMENT

BORROWER:
HENRY DENNIS SMILEY

LENDER:
THE BANK OF FAYETTEVILLE

P.O. BOX 6866
SPRINGDALE, AR 72786

P.O. BOX 1728
FAYETTEVILLE, AR 72702

ORIGINAL NOTE INFORMATION

INTEREST RATE	PRINCIPAL AMOUNT	FUNDING DATE	MATURITY DATE	CUSTOMER NUMBER	LOAN NUMBER
6.009	\$125,000.00	10/29/2010	10/29/2011		806

Effective 11/02/2011, Borrower and Lender agree that the Note, identified above, is amended as follows:

☒ **EXTENSION:** The Maturity Date of the Note is extended to 11/02/2012.

☐ **INTEREST RATE:** The interest rate on the Note identified above shall be changed to:

☐ A fixed rate of _____ % per annum.

☐ A variable rate of _____ the Index Rate indicated below. Any change in the interest rate resulting from a change in the Index Rate will be effective on: _____

The Index Rate used for this Note shall be:

If the Index Rate is redefined or becomes unavailable, then Lender may select another index which is substantially similar.

The current Index Rate is _____ % per annum. The initial interest rate on this amended Note shall be _____ % per annum.

MINIMUM RATE/MAXIMUM RATE: Subject to applicable law, the minimum interest rate on this Note shall be _____ % per annum. The maximum interest rate on this Note shall not exceed _____ % per annum, or if less, or if a maximum rate is not indicated, the maximum interest rate Lender is permitted to charge by law.

RATE ADJUSTMENT LIMITATIONS: The maximum interest rate increase at any one time will be _____ %. The maximum rate decrease at any one time will be _____ %.

☐ **PRINCIPAL AMOUNT INCREASE:** The principal amount of the note shall be increased from _____ to _____.

☒ **PAYMENT SCHEDULE:** Borrower shall pay the principal and interest on the Note according to the following schedule:

THIS NOTE IS DUE ON DEMAND, IF NO DEMAND THEN:

This note is payable in 11 payments of all accrued interest monthly beginning December 02, 2011, plus a final payment consisting of the full amount of principal, all accrued interest, charges and fees remaining due and payable on November 02, 2012. a means estimated

☒ **ADDITIONAL TERMS:**

THIS IS AN OPEN-END CREDIT MULTIPLE ADVANCE LOAN. THE PRINCIPAL SUM SHOWN BELOW IS THE MAXIMUM AMOUNT OF PRINCIPAL I CAN BORROW UNDER THIS NOTE. AS OF THIS DATE I HAVE RECEIVED THE AMOUNT OF \$124,900.00 AND FUTURE PRINCIPAL ADVANCES ARE CONTEMPLATED. Interest will accrue on an Actual/360 day basis. All interest will be calculated on the basis of the actual number of days elapsed and a 360 day year.

INSURANCE: If Borrower has purchased credit life or credit accident and health insurance, this insurance may only cover payments made under the existing Note.

ADDITIONAL DOCUMENTS: Borrower agrees to execute any additional documents that Lender may request in connection with this Agreement.

RATIFICATION AND INCORPORATION: The terms definitions and conditions of the existing Note are incorporated by this reference. Except as expressly changed herein, the terms of the Note shall remain unchanged and in full force and effect with all collateral pledged to secure the Note remaining as security therefore. Consent by the Lender to the changes contained herein does not waive Lender's right to require strict performance of the Note as changed, nor obligate Lender to make any future changes or modifications. Nothing in this Agreement shall constitute a satisfaction of the Note.

RESERVATION OF RIGHTS: If a Borrower under the existing Note does not sign this Agreement, such Borrower will remain liable under the terms and conditions contained in the existing Note if not released from those obligations in a writing signed by Lender.

SECURITY: Borrower agrees that all collateral given to secure the original Note shall continue to serve as collateral for the Note as hereby modified, including all interest accrued at any increased rate.

GARANTEE: Guarantor(s) signing below specifically consent to the terms of this Extension and Amendment to Note, and agree that it shall not in any way prejudice Lender's rights under any guaranty given for the Note.

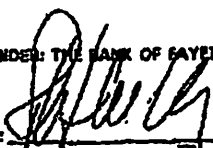
MODIFIED NOTE INFORMATION

INTEREST RATE	PRINCIPAL AMOUNT	EFFECTIVE DATE	MATURITY DATE	CUSTOMER NUMBER	LOAN NUMBER
6.009	\$125,000.00	11/02/2011	11/02/2012		...806

BORROWER WAIVES ALL KNOWN AND UNKNOWN, ABSOLUTE AND CONTINGENT, CLAIMS, DEFENSES, SETOFFS OR COUNTERCLAIMS AGAINST THE PAYMENT OF THE NOTE AND LENDER OR ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS AS OF THE DATE OF THIS AGREEMENT. BORROWER ACKNOWLEDGES THAT BORROWER HAS READ, UNDERSTANDS AND AGREES TO THE TERMS OF THIS AGREEMENT. BORROWER ACKNOWLEDGES RECEIPT OF AN EXACT COPY OF THIS AGREEMENT.

CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

LENDER: THE BANK OF SAYETTEVILLE

By: 
Robert W. King, Executive Vice President


HENRY DENNIS SMILEY

Date

Date

Date

Date

Date

Date

GUARANTORS

Date

Date

Date

Date

Date

Date



MULTIPURPOSE NOTE AND SECURITY AGREEMENT

HENRY DENNIS SMILEY P.O. BOX 6866 SPRINGDALE, AR 72764		THE BANK OF FAIRVIEWVILLE P.O. BOX 1728 FAIRVIEWVILLE, AR 72702	
Borrower's Address: P.O. Box 6866 Springdale, AR 72764 (479) 444-4444		Lender's Address: The Bank of Fairviewville P.O. Box 1728 Fairviewville, AR 72702 (479) 444-4444	
Loan Amount: \$125,000.00		Loan Date: October 29, 2010	
Maturity Date: October 29, 2011		Interest Rate: 5.937	
Borrower's Signature: _____		Lender's Signature: _____	

NOTES: For value received, I promise to pay to you, or to your order, at the address above, the principal sum of: Dollars \$125,000.00

Single Advance: I will receive all of the principal sum at one time. No additional advances will be made under this Note.

Multiple Advances: The principal sum shown above is the maximum amount of principal I can borrow under this Note. Future principal advances are contemplated.

Conditions: The conditions for future advances are:

- ☒ Open-End Credit: You and I agree that I may borrow up to the maximum amount of principal shown above from time to time. This option is subject to all other conditions and expires on later than October 29, 2011.
- ☐ Closed-End Credit: You and I agree that I may borrow up to the maximum amount of principal only one time (and subject to all other conditions).

INTEREST: Interest will accrue on a 360 day basis. I agree to pay interest on the principal balance owing from time to time as stated below. Each advance made to me under the terms of this Note will carry interest only from the date that I receive the advance, as provided for in this Note. The interest rate will apply to the outstanding principal balance (that I owe). The amount of interest charged by you will not exceed the maximum rate of interest permitted by law. Under no circumstances, whether by agreement or otherwise, shall the interest contracted for hereunder exceed the maximum amount payable by me. If interest would otherwise be payable in excess of the maximum lawful amount, the interest payable hereunder shall be reduced to the maximum amount permitted, and any amount paid in excess of the maximum lawful amount shall be applied to the principal of this Note and not to the payment of interest. If each advance of principal exceeds the unpaid balance of principal of the Note, such excess shall be refunded to you.

☒ Fixed Rate: I agree to pay interest at the simple rate of 5.937% per year, from 10/29/2010 until paid in full.

☐ Variable Rate: I agree to pay interest from _____ at the (initial) simple rate of _____ % per year. This rate may change as stated below.

PAYMENTS: I agree to pay the Note as follows:

THE NOTE IS DUE ON DEMAND, IF NO DEMAND THEN:

This note is payable in 11 payments of all accrued interest, charges and fees remaining due and payable on October 29, 2010, plus a final payment consisting of the full amount of principal, all accrued interest, charges and fees remaining due and payable on October 29, 2011. A payment schedule of the

POST PAYMENT INTEREST: Interest will accrue after maturity on the unpaid principal balance of this Note on the same basis as interest accrues prior to maturity, unless a specific post-maturity interest rate is agreed to in the next section.

☐ If checked, interest will accrue at the rate of _____ % per year on the unpaid principal balance of this Note not paid at maturity, including interest by acceleration. Borrower and Lender agree that any charges for failure to repay principal at maturity are not a penalty or interest, but are included to compensate the Lender for expenses arising from such delinquency or default.

☒ LATE CHARGE: IF MY PAYMENT IS MORE THAN 10 DAYS LATE, I WILL PAY A LATE CHARGE EQUAL TO 5.000 % OF THE PAYMENT AMOUNT OR \$5.00 WHICHEVER IS GREATER UP TO \$100.00.

☐ ADDITIONAL CHARGES: In addition to accrued interest, I agree to pay the following charges: _____ and these charges _____ are ☐ are ☐ are not included in the Loan Amount.

ADDITIONAL TERMS:

SECURITY: I give you a security interest in the following:

ASSIGNMENT OF HARVEST BANK GROUP, INC. EMPLOYEE STOCK PURCHASE PLAN ACCOUNT #2412888 IN THE NAME OF HENRY DENNIS SMILEY (including 358,77 shares) of HARVEST BANK GROUP, INC. (common/unregistered stock).

☐ If checked, this Note is secured by a security interest in the following:

☒ ALL DEBTS - THE ABOVE PROPERTY WILL ALSO SERVE AS SECURITY FOR ALL OF MY PRESENT AND FUTURE DEBTS TO YOU.

THE PURPOSE OF THE LOAN IS: TO REFINANCE MY

NO ESTABLISHED WORKING CAPITAL LINE OF CREDIT

ADDITIONAL TERMS THE NOTE AND SECURITY AGREEMENT

I ALSO AGREE TO THE FOLLOWING TERMS:

- 1. DEFINITION:** "Loan" means this Note, Security Agreement, and Truth in Lending Disclosure, regardless of whether provided as an integrated document or separate documents; and any document referred to in the Note, Security Agreement, or Truth in Lending Disclosure is hereby incorporated by reference and made a part of the Loan. It also means any extensions, renewals, modifications, or substitutions of this Loan.
- 2. PAYMENT:** Unless specifically stated otherwise in the payment of the Note, each payment I make will be applied first to any charges, costs, fees, or expenses I owe other than principal and interest, then to interest that is due, and finally to unpaid principal.
- 3. MY OBLIGATION:** I understand and agree that my obligation to pay this Loan is separate and independent of any other person's obligation to pay it. I will still be obligated to pay this Loan even if you release any other person who has agreed to pay, extend new credit or renew or modify this Loan, or relinquish any right(s) you may have against me or any other person obligated to pay this Loan.
- 4. MATURITY:** For purposes of this note the term "maturity" shall mean the following:
 - If the note is a "demand" note, the date you make your demand or the date that payment of the note is accelerated by you, whichever is earlier;
 - If the note is a "demand" note, with a stated alternate maturity date, the date of your demand or the alternative maturity date or the date that you accelerate payment of the note, whichever date is earlier; or
 - In all other cases, the date set for the last regularly scheduled payment of principal or the date that you accelerate payment of the note, whichever date is earlier.
- 5. SET-OFF:** You have the right to set-off my deposit accounts and any other rights that I may have to receive the payment of money from you. You may exercise your right of set-off without notice to me and without regard to the type or value of collateral or the existence of any guaranty or other agreement to pay this note. You will not be responsible for the dishonor of any check when that dishonor occurs as a result of your exercise of the right of set-off against my account.
- 6. PURCHASE MONEY SECURITY INTEREST:** With respect to purchase money security interest arising under this security agreement:
 - Payments made on non-purchase money loans secured by this agreement will not be deemed applicable to any purchase money loans, and
 - Payments made on any purchase money loan will be applied first to any non-purchase money portion of said loan, with the remaining balance to be applied to the purchase money obligations in the order in which the items of collateral were acquired. A purchase money loan means a loan used in whole or in part to acquire the collateral which secures the loan and any extension, renewal, consolidation or refinancing of such loans.
- 7. ADDITIONAL SECURITY AND INTERESTS:** In addition to the collateral described on the face hereof, this Loan is secured by any additions, repairs, replacements, accessories, products or proceeds, including proceeds of any insurance payable as a result of loss or damage to the collateral, and any similar acquired collateral of the type specified. However, the security interest shall not attach to household goods not purchased with the proceeds of this loan or to other after-acquired consumer goods, with the exception of accessories, where such after-acquired consumer goods are acquired within ten (10) days after you make this loan. Each present or future agreement securing debt I owe you will also secure the payment of this Loan, unless: (1) the property securing other debt is my principal dwelling and you fail to provide me and all other persons with ownership interest in the dwelling with a required notice of the right to record; or (2) the property securing other debt is in household goods.
- 8. WARRANTY OF TITLE:** I warrant to you that I own the collateral free and clear of liens or security interests, other than the security interest created hereunder and I will defend the collateral against any asserted claims or demands by other parties.
- 9. COLLATERAL INSURANCE:** I agree at all times to keep the collateral insured against all reasonable hazards to amounts equal to the full cash value of the collateral. Such insurance shall be in such companies as may be acceptable to you, with provisions satisfactory to you for payment of all losses thereunder to you as your interest may appear, and, if required by you, I will deposit the policies with you. Any money received by you under said policies may be applied to the payment of any indebtedness secured hereby, whether or not due and payable, or at your option may be delivered by you to me for the purpose of repaying or restoring the collateral. I hereby assign to you all right to receive proceeds of insurance not exceeding the amounts secured by my loan, direct any insurer to pay all proceeds directly to you, and appoint you as my attorney-in-fact to endorse any draft or check made payable to me in order to collect the benefit of any such insurance.
 - If I fail to keep the collateral insured as required by you, or if I fail to furnish to you evidence of such insurance, I will be in default, and you may, at your option and discretion, and in addition to your other remedies at law, in equity or by contract, purchase such insurance. Provided, however, you are not obligated to pay any insurance premiums or carry any form of insurance on the collateral. If you purchase such insurance, I agree to reimburse you for the premiums, plus accrued interest, my obligation to do so matures when you for the purchase of such insurance shall be secured by the collateral, and shall bear interest at the simple interest rate set forth in any loan documents or in effect at the time you purchase the insurance. At your option, I agree to either reimburse you on demand for the premium paid by you to purchase such insurance, to pay said sums in any manner of installments required by you in connection with the remaining payments outstanding pursuant to this my loan, to pay as a balloon payment at the maturity of my loan or to allow you to extend the security of my loan in order to provide for my reimbursement of you for the payment of the premium for such insurance. However, your option to postpone my payments to provide for reimbursement of the premium you paid for such insurance shall not create a new obligation or satisfy or replace my original obligation, but shall be simply a continuation of my original obligation.
 - I understand the insurance that you purchase WILL NOT provide any form of liability insurance for my benefit or anyone claiming through me. You may obtain this insurance through one or more companies, other than the insurance company used by me and such insurance will generally be more expensive than the insurance coverage I could voluntarily obtain from another insurance company.
 - If I obtain the required insurance on the collateral after you have purchased insurance hereunder, and I furnish to you satisfactory evidence that such insurance has been purchased, I will be entitled to a refund of the unused portion of the premium for the insurance you purchased, calculated from the effective date of the required insurance that I purchase on the collateral.
 - I authorize you to forward any information that you deem necessary to third parties performing services incidental to your rights and duties under this Loan, including but not limited to insurance monitoring and placement services.
- 10. PRESERVATION OF COLLATERAL:** I will preserve and maintain the collateral and keep the collateral in good condition and repair and will allow you to inspect the collateral at any time. If I fail to pay any charges that I am obligated to pay to preserve or protect the secured property, I authorize you to make these payments on my behalf and add these payments to the unpaid principal balance of this note. These payments will then be secured by the property.
- 11. TAXES:** I will pay all taxes and other encumbrances on the collateral promptly, and I will otherwise maintain the collateral free and clear of any liens, encumbrances or other security interests.
- 12. SALE OF COLLATERAL (AND ASSIGNMENT):** I will not sell, convey, lease or otherwise transfer the collateral or any part of it without first obtaining written consent from you. Unless you otherwise agree in writing, this Loan cannot be assumed by any person. If I attempt to transfer any interest in the collateral, including possession, I will be in default of this Loan.
- 13. DEFAULT:** I will be in default of this Loan if any of the following events occur:
 - I fail to make a required payment when due;
 - I breach any promise I have made to you under the terms of this note, the security agreement (if applicable) or any other loan or agreement with you;
 - Any representation, warranty, promise or statement that I have made as you proves to be for at the time it was made or given was materially false or incorrect;
 - I die, become insolvent, or initiate bankruptcy or similar proceedings, or am adjudged a bankrupt;
 - Any of my property in which you have lien or security interest is attached or otherwise taken by another creditor, including any garnishment of my accounts with you;
 - I fail to maintain insurance covering the collateral;
 - The maturity of any indebtedness I owe to others is accelerated as a result of the occurrence of a default under this or any other agreement;
 - You at any time believe that the prospect for repayment for any portion of the indebtedness secured hereby is significantly impaired.
- 14. LENDER'S REMEDIES:** Upon default, you may at your option, do one or more of the following:
 - You may, without notice, accelerate the maturity date of this note and require that all unpaid charges, interest and principal balances be immediately due and payable;
 - You may exercise your right of set-off against any right I have to receive payment of money from you;
 - You may exercise any rights or remedies you have under any other agreement which secures this note;
 - You may demand additional security or obligors to insure repayment of this note.
- 15. REMEDIES UNDER THE SECURITY AGREEMENT:** If I default, you may exercise all of the rights and remedies available to a secured creditor under the Uniform Commercial Code or other applicable federal or state law. I will be obligated to make the property available to you at a reasonably convenient place and time. I agree that you are then authorized to take possession of the collateral and sell it as provided under the terms of the Uniform Commercial Code or other applicable federal or state law. I agree that written notice sent to my address on the face of the note by first class mail ten (10) days in advance of any such sale will be reasonable notice.
- 16. WAIVER:** To the extent permitted by law, I waive presentment, demand for payment, protest and notice of dishonor. No waiver of a default shall be deemed a waiver of any other or later default. If under the terms of this Loan, a security interest would be created in a principal dwelling used by me or any other person as a home, you waive the security interest so created unless you have given an appropriate opportunity to record and the owner of the property has not exercised that right.
- 17. PURCHASE MONEY LOAN:** If this is a purchase money loan, you may include the name of the seller on the check or draft for this loan.
- 18. FINANCING STATEMENT:** I authorize you to file a financing statement describing the secured property and any other liens held by you. I represent and warrant that my exact legal name and address of legal residence is set forth on the first page of this Loan.
- 19. SECURED BY REAL ESTATE OR RESIDENCE:** If this Loan is secured by real estate or a residence that is personal property, a default and your remedies for default will be determined by the terms of any separate document ordering the security interest, applicable federal or state law, and, to the extent permitted by law and not contrary to the terms of the separate security document, by this Loan.
- 20. ATTORNEY'S FEES AND COLLECTION COSTS:** In the event of default, I agree to pay all reasonable costs you incur to collect on this Loan, including attorney's fees, court costs, and other legal expenses.
- 21. GOVERNING LAW:** This Loan shall be governed by the laws of the State of Arkansas and the United States of America.

Handwritten initials

THE BANK OF FAYETTEVILLE

COUNTER-PLAINTIFF

vs.

ARVEST BANK; HDS HOLDINGS, LLC; HENRY
DENNIS SMILEY, TRUSTEE OF THE HENRY DENNIS
SMILEY REVOCABLE TRUST u/t/d 9-29-94; and HENRY
DENNIS SMILEY

COUNTER-DEFENDANTS

ANSWER

Comes now the defendant, The Bank of Fayetteville ("BOF"), and for its Answer to the plaintiff's Interpleader it responds as follows:

1. The allegations in paragraphs 1-23 are admitted.
2. The allegations in paragraph 24 are denied due to a lack of knowledge. Pleading affirmatively, BOF states the referenced terms of the Stock Plan are irrelevant because Arvest Bank knowingly allowed Mr. Smiley to pledge his shares of ABGI common stock as collateral for loans from BOF to Mr. Smiley and HDS Holdings, LLC.
3. The allegations in paragraph 25 are denied as written. Mr. Smiley, with Arvest Bank's permission and assistance, did, in fact, pledge his shares of ABGI common stock as collateral for loans from BOF to Mr. Smiley and HDS Holdings, LLC. Absent Mr. Smiley's pledge of his stock as collateral and Arvest Bank's consent thereto, BOF would not have made the loans to Mr. Smiley or HDS Holdings, LLC. Arvest Bank is estopped from denying or contesting the validity of the stock pledge.
4. The allegations in paragraphs 26-27 are denied due to a lack of knowledge.
5. The allegations in paragraph 28 are admitted to the extent they relate to BOF and denied due to a lack of knowledge to the extent they relate to the other defendants.
6. The allegations in paragraphs 29-35 are denied due to a lack of knowledge.
7. In response to paragraph 36, BOF incorporates its responses to paragraphs 1-35.

8. The allegations in paragraphs 37-38 are denied.
9. The allegations in paragraph 39 are admitted.
10. The allegations in paragraph 40 are denied.
11. In response to paragraph 41, BOF incorporates its responses to paragraphs 1-40.
12. The allegations in paragraphs 42-45 are denied due to a lack of knowledge.
13. BOF asserts the defenses of waiver, laches, estoppel, unclean hands, and material breach of contract by the plaintiff.

CROSSCLAIM AND COUNTERCLAIM

For its Crossclaim and Counterclaim, BOF states and alleges as follows:

1. BOF is an Arkansas state chartered bank with its principal place of business in Washington County, Arkansas.
2. Arvest Bank is an Arkansas state chartered bank with its principal place of business in Benton County, Arkansas.
3. H. Dennis Smiley ("Smiley, Jr.") is a resident of Benton County, Arkansas. Until just very recently, Smiley, Jr. was an officer of Arvest Bank.
4. BOKF is a national bank with its principal place of business in Oklahoma.
5. Bank of the Ozarks is an Arkansas state chartered bank with its principal place of business in Arkansas.
6. Benefit Bank is an Arkansas state chartered bank with its principal place of business in Arkansas.
7. Chambers Bank is an Arkansas state chartered bank with its principal place of business in Arkansas.

8. Centennial Bank is an Arkansas state chartered bank with its principal place of business in Arkansas.

9. Delta Trust & Bank is an Arkansas state chartered bank with its principal place of business in Arkansas.

10. First Bank is an Arkansas state chartered bank with its principal place of business in Arkansas.

11. First Federal Bank is a federal savings bank with its principal place of business in Arkansas.

12. First National Bank of Fort Smith is a national bank with its principal place of business in Arkansas.

13. Integrity First Bank is a national bank with its principal place of business in Arkansas.

14. First Security Bank is an Arkansas state chartered bank with its principal place of business in Arkansas.

15. First State Bank is an Arkansas state chartered bank with its principal place of business in Arkansas.

16. First State Bank of DeQueen is an Arkansas state chartered bank with its principal place of business in Arkansas.

17. First State Bank of Northwest Arkansas n/k/a Today's Bank is an Arkansas state chartered bank with its principal place of business in Arkansas.

18. First State Bank, Russellville is an Arkansas state chartered bank with its principal place of business in Arkansas.

19. First Western Bank is an Arkansas state chartered bank with its principal place of business in Arkansas.

20. Legacy National Bank is a national bank with its principal place of business in Arkansas.

21. Summit Bank is an Arkansas state chartered bank with its principal place of business in Arkansas.

22. HDS Holdings, LLC ("HDS") is a limited liability company organized under Arkansas law with its principal place of business in Arkansas. Smiley, Jr. and the Trust are the only members of HDS.

23. Henry Dennis Smiley ("Smiley, Sr.") is a resident of Sevier County, Arkansas and the Trustee of the Henry Dennis Smiley Revocable Trust u/t/d 9-29-94 ("Trust"). Smiley, Sr. is obviously Smiley, Jr.'s father.

24. HDS, the Trust, and Smiley, Sr. are joined as parties to this action under Rules 13(g) and 20(a).

25. This Court has jurisdiction over the parties and subject matter of this case, and venue is proper in this Court.

Loan No. ~~XX~~8768 to Smiley, Jr.

26. On July 30, 2009, pursuant to the terms of a Multipurpose Note and Security Agreement and a Loan Agreement, BOF loaned Smiley, Jr. \$38,500 ("Loan No. XX5937"). The Note was due and payable in full on demand but, in the absence of a demand for payment, the Note was due and payable in full on January 30, 2010. See Exhibit A, pp. 57 and 61.

27. On February 24, 2010, BOF and Smiley, Jr. agreed to extend the maturity date of Loan No. XX5937 to August 30, 2010. See Exhibit A, p. 55.

28. On September 13, 2010, BOF and Smiley, Jr. agreed to extend the maturity date of Loan No. XX5937 to September 13, 2011. See Exhibit A, p. 47.

29. On October 29, 2010, pursuant to the terms of a Multipurpose Note and Security Agreement and a Loan Agreement, BOF loaned Smiley, Jr. \$125,000 ("Loan No. XXXX6806") for the purposes of refinancing Loan No. XX5937 and providing additional financing to Smiley, Jr. The Note was due and payable in full on demand but, in the absence of a demand for payment, the Note was due and payable in full on October 29, 2011. See Exhibit A, pp. 31 and 35.

30. To secure payment of Loan No. XXXX6806, Smiley, Jr. granted BOF a security interest in his Arvest Bank Group, Inc. Stock Purchase Plan ("Stock Plan"). See Exhibit A, p. 41. According to the express terms of the Security Agreement/Pledge Contract Smiley, Jr. executed, Smiley, Jr. granted BOF a security interest in his Stock Plan to secure payment to BOF of Loan No. XXXX6806 plus "b. any and all extensions, renewals, or re-financings of the above; . . . and e. any other indebtedness or liability of [Smiley, Jr.] to [BOF], whether direct or indirect, joint or several, absolute or contingent, now or hereafter existing while this Agreement is in effect, however created or arising or however evidenced." This security interest covers any and all debts for which Smiley, Jr. is personally responsible to BOF, whether as a maker or as a guarantor. Smiley, Jr. further agreed not to grant any additional security interests in his Stock Plan to anyone else.

31. In connection with Smiley, Jr. granting BOF a security interest in his Stock Plan, Smiley, Jr., Arvest Bank, and BOF entered into a Control Agreement on November 8, 2010. See Exhibit A, p. 43. Had Arvest Bank refused to enter into the Control Agreement, BOF would not

have extended Loan No. XXXX6806 or any additional loans to Smiley, Jr., and Arvest Bank was or should have been aware of that fact at the time it entered the Control Agreement.

32. Pertinent provisions of the Control Agreement provide as follows:

PERFECTION. To perfect [BOF's] security interest in the [Stock Plan], [BOF], [Smiley, Jr.], and [Arvest Bank] are entering into this Control Agreement under which [Arvest Bank], among other things, agrees to comply with [BOF's] instructions as to the [Stock Plan] without the further consent of [Smiley, Jr.].

CONTROL. [Arvest Bank] acknowledges [BOF's] security interest in the [Stock Plan]. [Smiley, Jr.] directs [Arvest Bank] to, and [Arvest Bank] agrees to, obey and comply with orders of [BOF] concerning the [Stock Plan] (including, but not limited to, orders directing disposition and liquidation of the securities and funds in the [Stock Plan]) without the further consent of [Smiley, Jr.]. [BOF] and [Smiley, Jr.] direct [Arvest Bank] to, and [Arvest Bank] agrees to, not allow [Smiley, Jr.] to withdraw from, pledge, dispose of, transfer, or otherwise deal with the [Stock Plan].

ABSENCE OF CONFLICTING CLAIMS. [Arvest Bank] warrants to [BOF] that (1) [Arvest Bank] has not entered into any other control agreement with respect to [Stock Plan], (2) [Arvest Bank] has no knowledge of [Smiley, Jr.] granting anyone (other than [BOF]) a security interest in the [Stock Plan], (3) [Arvest Bank] has no knowledge of the [Stock Plan] being pledged to anyone (other than [BOF]), and (4) [Arvest Bank] has no knowledge of any claim to or interest in the [Stock Plan] which is adverse to [BOF's] interest. [Smiley, Jr.] directs [Arvest Bank] to, and [Arvest Bank] agrees to, (1) not enter into any other control agreement with respect to the [Stock Plan] until [BOF] notifies [Arvest Bank] in writing that [BOF] has released its security interest in the [Stock Plan], (2) not agree to a pledge of the [Stock Plan] to one other than [BOF] until [BOF] notifies [Arvest Bank] in writing that [BOF] has released its security interest in the [Stock Plan], (3) notify [BOF] of any and all adverse claims to the [Stock Plan], and (4) notify [BOF] if [Smiley, Jr.] attempts to pledge the [Stock Plan] to any person or entity other than [BOF].

33. On March 7, 2011, pursuant to the terms of a Multipurpose Note and Security Agreement and a Loan Agreement, BOF loaned Smiley, Jr. \$75,000 ("Loan No. XX6930"). The Note was due and payable in full on demand but, in the absence of a demand for payment, the Note was due and payable in full on March 7, 2013. See Exhibit A, pp. 74 and 78. To secure payment of Loan No. XX6930, Smiley, Jr. executed a Security Pledge Agreement/Pledge Contract which granted BOF a security interest in his Stock Plan. See Exhibit A, p. 84.

34. On November 2, 2011, BOF and Smiley, Jr. agreed to extend the maturity date of Loan No. XXXX6806 to November 2, 2012. See Exhibit A, p. 29. In connection with that extension, Arvest Bank, BOF, and Smiley, Jr. signed a new Control Agreement dated 1-10-12 (Exhibit A, p. 25), and Arvest Bank sent BOF a letter dated 1-9-12 which stated as follows: "This letter is to confirm that [BOF] holds a first and primary assignment of the stock account for Henry Dennis Smiley. This account # XXXX8586 has a secured hold placed on it and any distributions from this account would be made subject to your assignment. The current cash value of this account as of 9/30/11 is \$299,811.50 in Arvest Stock." See Exhibit A, p. 27.

35. On January 9, 2012, pursuant to the terms of a Multipurpose Note and Security Agreement and a Loan Agreement, BOF loaned Smiley, Jr. \$170,000 ("Loan No. XXXX7509") for the purposes of refinancing Loan No. XXXX6806 and providing additional financing to Smiley, Jr. The Note was due and payable in full on demand but, in the absence of a demand for payment, the Note was due and payable in full on January 9, 2013. See Exhibit A, pp. 13 and 17. To secure payment of Loan No. XXXX7509, Smiley, Jr. executed another Security Pledge Agreement/Pledge Contract which granted BOF a security interest in his Stock Plan. See Exhibit A, p. 23.

36. On January 9, 2013, BOF and Smiley, Jr. agreed to extend the maturity date of Loan No. XXXX7509 to January 9, 2014. See Exhibit A, p. 6.

37. Also on January 9, 2013, BOF and Smiley, Jr. agreed to extend the maturity date of Loan XX6930 to January 9, 2016. See Exhibit A, p. 67.

38. On January 2, 2014, pursuant to the terms of a Promissory Note and Security Agreement, BOF loaned Smiley, Jr. \$264,847.15 ("Loan No. XX8768") for the purposes of refinancing Loan Nos. XXXX7509 and XX6930 and providing additional financing to Smiley,

Jr. The Note was due and payable in full on demand but, in the absence of a demand for payment, the Note was due and payable in full on January 2, 2017. See Exhibit A, p. 1. To secure payment of Loan No. XX8768, Smiley, Jr. granted BOF a security interest in his Stock Plan.

39. On March 19, 2014, BOF made demand upon Smiley, Jr. to pay in full the balance owed on Loan No. XX8768 in accordance with the loan documents. Smiley, Jr. has failed and refused to pay Loan No. XX8768 despite BOF's demand for payment.

40. On April 1, 2014, BOF notified Arvest Bank that Smiley, Jr. had failed and refused to pay in full the balance owed on Loan No. XX8768 despite BOF's demand for payment in accordance with the loan documents. Pursuant to the clear and unambiguous provisions of the Control Agreement, BOF instructed Arvest Bank to remit to it the sum of \$263,869.23 from Smiley, Jr.'s Stock Plan in order to pay off Loan No. XX8768. Despite the clear and unambiguous provisions of the Control Agreement requiring Arvest Bank to comply with BOF's instructions and despite receiving BOF's instructions on April 1, 2014, Arvest Bank interpleaded the entire amount of Smiley, Jr.'s Stock Plan into the Court Registry on April 2, 2014, in direct contradiction to BOF's instructions and in direct violation of the terms of the Control Agreement.

Loan No. XX5542 to HDS

41. On May 9, 2007, pursuant to the terms of a Multipurpose Note and Security Agreement, BOF loaned HDS \$50,000 ("Loan No. XXXX3421"). The Note was due and payable in full on demand but, in the absence of a demand for payment, the Note was due and payable in full on May 9, 2008. See Exhibit B, p. 146.

42. The Trust and Smiley, Jr. personally guaranteed the payment of Loan No. XX3563 as well as all of HDS's future indebtedness to BOF. See Exhibit B, p. 149.

43. On June 12, 2007, pursuant to the terms of a Multipurpose Note and Security Agreement, BOF loaned HDS \$42,000 ("Loan No. XX3563"). The Note was due and payable in full on demand but, in the absence of a demand for payment, the Note was due and payable in full on January 30, 2010. See Exhibit B, p. 138.

44. The Trust and Smiley, Jr. personally guaranteed the payment of Loan No. XX3563 as well as all of HDS's future indebtedness to BOF. See Exhibit B, pp. 142 and 144.

45. On October 3, 2007, pursuant to the terms of a Multipurpose Note and Security Agreement, BOF loaned HDS \$100,000 ("Loan No. XXX4002") for the purposes of refinancing Loan No. XXXX3421 and providing additional financing to HDS. The Note was due and payable in full on demand but, in the absence of a demand for payment, the Note was due and payable in full on October 3, 2008. See Exhibit B, p. 130.

46. The Trust and Smiley, Jr. personally guaranteed the payment of Loan No. XXXX4002 as well as all of HDS's future indebtedness to BOF. See Exhibit B, pp. 134 and 136.

47. On September 23, 2008, pursuant to the terms of a Multipurpose Note and Security Agreement, BOF loaned HDS \$45,393.32 ("Loan No. XX5164") for the purposes of refinancing Loan No. XX3563 and providing additional financing to HDS. The Note was due and payable in full on demand but, in the absence of a demand for payment, the Note was due and payable in full on September 23, 2012. See Exhibit B, p. 122.

48. The Trust and Smiley, Jr. personally guaranteed the payment of Loan No. XX5164 as well as all of HDS's future indebtedness to BOF. See Exhibit B, pp. 126 and 128.

49. Also on September 23, 2008, BOF, HDS, the Trust, and Smiley, Jr. agreed to extend the maturity date of Loan No. XXXX0022 to March 23, 2009. See Exhibit B, p. 120.

50. On February 13, 2009, pursuant to the terms of a Promissory Note and Security Agreement and Loan Agreement, BOF loaned HDS \$250,000 ("Loan No. XX5542") for the purposes of refinancing Loan Nos. XX5164 and XXXX4002 and providing additional financing to HDS. The Note was due and payable in full on demand but, in the absence of a demand for payment, the Note was due and payable in full on February 15, 2011. See Exhibit B, p. 102.

51. The Trust and Smiley, Jr. personally guaranteed the payment of Loan No. XX5542 as well as all of HDS's future indebtedness to BOF. See Exhibit B, pp. 116 and 118.

52. On February 15, 2011, BOF, HDS, the Trust, and Smiley, Jr. agreed to extend the maturity date of Loan No. XX5542 to February 15, 2013. See Exhibit B, p. 93.

53. On January 9, 2013, BOF, HDS, the Trust, and Smiley, Jr. agreed to extend the maturity date of Loan No. XX5542 to January 9, 2016. See Exhibit B, p. 86.

54. On March 19, 2014, BOF made demand upon HDS and Smiley, Jr. to pay in full the balance owed on Loan No. XX5542 in accordance with the loan documents. On March 31, 2014, BOF made demand upon the Trust to pay in full the balance owed on Loan XX5542 in accordance with the loan documents. HDS, Smiley, Jr., and the Trust have failed and refused to pay Loan No. XX5542 despite BOF's demands for payment.

55. On April 1, 2014, BOF notified Arvest Bank that HDS and Smiley, Jr. had failed and refused to pay in full the balance owed on Loan No. XX5542 despite BOF's demand for payment in accordance with the loan documents. Pursuant to the clear and unambiguous provisions of the Control Agreement, BOF instructed Arvest Bank to remit to it the sum of \$152,507.79 from Smiley, Jr.'s Stock Plan in order to pay off Loan No. XX5542. Despite the

clear and unambiguous provisions of the Control Agreement requiring Arvest Bank to comply with BOF's instructions and despite receiving BOF's instructions on April 1, 2014, Arvest Bank interpleaded the entire amount of Smiley, Jr.'s Stock Plan into the Court Registry on April 2, 2014, in direct contradiction to BOF's instructions and in direct violation of the terms of the Control Agreement.

Loan No. XX8214 to HDS

56. On August 15, 2012, pursuant to the terms of a Multipurpose Note and Security Agreement and Loan Agreement, BOF loaned HDS \$37,500 ("Loan No. XX7872"). The Note was due and payable in full on demand but, in the absence of a demand for payment, the Note was due and payable in full on August 15, 2014. See Exhibit C, pp. 160 and 164.

57. The Trust and Smiley, Jr. personally guaranteed the payment of Loan No. XX7872 as well as all of HDS's future indebtedness to BOF. See Exhibit C, p. 163.

58. On March 1, 2013, pursuant to the terms of a Promissory Note and Security Agreement and Commercial Loan Agreement, BOF loaned HDS \$75,000 ("Loan No. XX8214") for the purposes of refinancing Loan No. XX7872 and providing additional financing to HDS. The Note was due and payable in full on demand but, in the absence of a demand for payment, the Note was due and payable in full on March 1, 2018. See Exhibit C, pp. 150 and 155.

59. On March 19, 2014, BOF made demand upon HDS and Smiley, Jr. to pay in full the balance owed on Loan No. XX8214 in accordance with the loan documents. On March 31, 2014, BOF made demand upon the Trust to pay in full the balance owed on Loan XX8214 in accordance with the loan documents. HDS, Smiley, Jr., and the Trust have failed and refused to pay Loan No. XX8214 despite BOF's demands for payment.

60. On April 1, 2014, BOF notified Arvest Bank that HDS and Smiley, Jr. had failed and refused to pay in full the balance owed on Loan No. XX8214 despite BOF's demand for payment in accordance with the loan documents. Pursuant to the clear and unambiguous provisions of the Control Agreement, BOF instructed Arvest Bank to remit to it the sum of \$62,503.94 from Smiley, Jr.'s Stock Plan in order to pay off Loan No. XX8214. Despite the clear and unambiguous provisions of the Control Agreement requiring Arvest Bank to comply with BOF's instructions and despite receiving BOF's instructions on April 1, 2014, Arvest Bank interpleaded the entire amount of Smiley, Jr.'s Stock Plan into the Court Registry on April 2, 2014, in direct contradiction to BOF's instructions and in direct violation of the terms of the Control Agreement.

Loan No. XX8235 to Smiley, Sr.

61. On March 29, 2013, pursuant to the terms of a Promissory Note, BOF loaned Smiley, Sr. \$50,000 ("Loan No. XX8235"). The Note was due and payable in full on demand but, in the absence of a demand for payment, the Note was due and payable in full on June 27, 2013. See Exhibit D, p. 172.

62. On July 17, 2013, BOF and Smiley, Sr. agreed to extend the maturity date of Loan No. XX8235 to April 17, 2016. See Exhibit D, p. 170.

63. On March 31, 2014, BOF made demand upon Smiley, Sr. to pay in full the balance owed on Loan XX8235 in accordance with the loan documents. Smiley, Sr. has failed and refused to pay Loan No. XX8235 despite BOF's demands for payment.

Count I – Declaratory Judgment

64. BOF incorporates by reference the allegations in paragraphs 1-63.

65. A controversy exists between the parties as to the entitlement to Smiley, Jr.'s Stock Plan proceeds.

66. The Court should find and declare that BOF has a valid and properly perfected security interest in Smiley, Jr.'s Stock Plan that is paramount to and has priority over all claims thereto that might be asserted by any of the other parties in this case.

67. The Court should order the Clerk to turn over to BOF the proceeds of Smiley, Jr.'s Stock Plan that Arvest Bank interpleaded into the Court registry so that BOF can apply those proceeds to the debts Smiley, Jr. owes BOF.

Count II – Breach of Contract (Smiley, Jr.)

68. BOF incorporates by reference the allegations in paragraphs 1-63.

69. The actions of Smiley, Jr. as alleged herein constitute a breach of contract with respect to Loan Nos. XX8768, XX5542, and XX8214.

70. BOF is entitled to a judgment against Smiley, Jr. in the amount of \$479,177.14 plus pre-judgment interest, costs, attorney's fees, and post-judgment interest, all as allowed by the terms of the loan documents and Arkansas law.

Count III – Breach of Contract (HDS)

71. BOF incorporates by reference the allegations in paragraphs 1-63.

72. The actions of HDS as alleged herein constitute a breach of contract with respect to Loan Nos. XX5542 and XX8214.

73. BOF is entitled to a judgment against HDS in the amount of \$215,011.73 plus pre-judgment interest, costs, attorney's fees, and post-judgment interest, all as allowed by the terms of the loan documents and Arkansas law.

Count IV – Breach of Contract (Trust)

74. BOF incorporates by reference the allegations in paragraphs 1-63.

75. The actions of the Trust as alleged herein constitute a breach of contract with respect to Loan Nos. XX5542 and XX8214.

76. BOF is entitled to a judgment against the Trust in the amount of \$215,011.73 plus pre-judgment interest, costs, attorney's fees, and post-judgment interest, all as allowed by the terms of the loan documents and Arkansas law.

Count V – Breach of Contract (Smiley, Sr.)

77. BOF incorporates by reference the allegations in paragraphs 1-63.

78. The actions of Smiley, Sr. as alleged herein constitute a breach of contract with respect to Loan No. XX8235.

79. BOF is entitled to a judgment against Smiley, Sr. in the amount of \$42,005.95 plus pre-judgment interest, costs, attorney's fees, and post-judgment interest, all as allowed by the terms of the loan documents and Arkansas law.

Count VI – Breach of Contract (Arvest Bank)

80. BOF incorporates by reference the allegations in paragraphs 1-63.

81. The actions of Arvest Bank as alleged herein constitute a breach of contract with respect to the Control Agreement. On information and belief, BOF alleges that Arvest Bank also breached the express provisions of the Control Agreement (in addition to the breaches as set forth above) by (i) allowing Smiley, Jr. to pledge his Stock Plan as collateral for other loans, (ii) entering into additional control agreements with other banks, and (iii) failing to notify BOF of other banks' adverse claims to Smiley, Jr.'s Stock Plan.

82. Arvest Bank's breaches of the Control Agreement as alleged herein have proximately caused foreseeable damages to BOF which BOF is entitled to recover from Arvest Bank. BOF is entitled to a judgment against Arvest Bank in an amount to be proven at trial with said amount to exceed the amount required to invoke the diversity jurisdiction of federal courts and include pre-judgment interest, costs, attorney's fees, and post-judgment interest, all as allowed by the terms of the loan documents and Arkansas law.

83. BOF requests a jury trial.

WHEREFORE, BOF prays for an Order:

- A. Dismissing with prejudice the plaintiff's Interpleader;
- B. Finding and declaring that BOF has a valid and properly perfected security interest in Smiley, Jr.'s Stock Plan that is paramount to and has priority over all claims thereto that might be asserted by any of the other parties in this case.
- C. Awarding BOF all of the proceeds from Smiley, Jr.'s Stock Plan;
- D. Awarding BOF a judgment against Smiley, Jr. in the amount of \$479,177.14 plus pre-judgment interest, costs, attorney's fees, and post-judgment interest;
- E. Awarding BOF a judgment against HDS in the amount of \$215,011.73 plus pre-judgment interest, costs, attorney's fees, and post-judgment interest;
- F. Awarding BOF a judgment against the Trust in the amount of \$215,011.73 plus pre-judgment interest, costs, attorney's fees, and post-judgment interest;
- G. Awarding BOF a judgment against Smiley, Sr. in the amount of \$42,005.95 plus pre-judgment interest, costs, attorney's fees, and post-judgment interest;
- H. Awarding BOF a judgment against Arvest Bank in an amount to be proven at trial

with said amount to exceed the amount required to invoke the diversity jurisdiction of federal courts and include pre-judgment interest, costs, attorney's fees, and post-judgment interest, all as allowed by the terms of the loan documents and Arkansas law; and

I. Awarding BOF all other relief to which it may prove itself entitled.

THE BANK OF FAYETTEVILLE,
Defendant/Cross-Plaintiff/Counter-Plaintiff

By: _____

Jason H. Wales, # 97191
EVERETT, WALES & COMSTOCK
P.O. Box 8370
Fayetteville, AR 72703
(479) 443-0292

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing pleading has been served on Mr. Craig Campbell, Attorney at Law, 119 S. 2nd St., Rogers, AR 72756 via first class mail on this 7 day of April, 2014.

Jason H. Wales