

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	
COUNTY OF MARION	)	CAUSE NO. _____
ELEMENTS FINANCIAL	)	
FEDERAL CREDIT UNION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
LITZ II LLC,	)	
BRADLEY R. LITZ, and	)	
CATHLEEN E. LITZ	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT TO ENFORCE COMMERCIAL NOTE, LOAN AGREEMENT AND GUARANTIES AND FORECLOSE ON MORTGAGE**

Elements Financial Federal Credit Union (“Elements”), by counsel, for its *Complaint to Enforce Commercial Note, Loan Agreement and Guaranties and Foreclose on Mortgage* (the “Complaint”) against Defendants Litz II LLC (“Borrower”), Bradley R. Litz (“Mr. Litz”), and Cathleen E. Litz (“Mrs. Litz”) (Mr. Litz and Mrs. Litz collectively are the “Guarantors”) (Borrower and Guarantors collectively are the “Defendants”), alleges and states:

**Parties:**

1. Elements is federal credit union which maintains an office at 225 South East Street, Suite 300, Indianapolis, Indiana 46202.
2. The Borrower is an Indiana limited liability company with a last known place of business of 1101 North Central Avenue, Indianapolis, Indiana 46202.
3. According to the Indiana Secretary of State website, Mr. Litz is the registered agent for the Borrower and the registered agent’s address is 1101 North Central Avenue, Indianapolis, Indiana 46202.

4. Mr. Litz is a resident of Marion County, Indiana. Mr. Litz's last known address was 25 W. 75<sup>th</sup> Street, Indianapolis, Indiana 46260.

5. Mrs. Litz is a resident of Marion County, Indiana. Mrs. Litz's last known address was 25 W. 75<sup>th</sup> Street, Indianapolis, Indiana 46260.

### **Loan Documents**

6. On June 29, 2018, the Borrower executed and delivered to Elements a *Promissory Note* dated June 29, 2018, in the original principal amount of \$500,000.00 (the "Note"). A true, correct and authentic copy of the Note is attached hereto as Exhibit A and by reference made a part hereof.

7. In connection with the Note, on June 29, 2018, the Borrower executed and delivered to Elements a *Business Loan Agreement* which established further terms and conditions to the Note (the "Loan Agreement"). A true, correct and authentic copy of the Loan Agreement is attached hereto as Exhibit B and by reference made a part hereof.

8. In order to secure the obligations of the Borrower to Elements under the Note and Loan Agreement, on June 29, 2018, Mr. Litz executed and delivered to Elements a *Commercial Guaranty* (the "Mr. Litz Guaranty"). A true, correct and authentic copy of the Mr. Litz Guaranty is attached hereto as Exhibit C and by reference made a part hereof.

9. In order to secure the obligations of the Borrower to Elements under the Note and Loan Agreement, on June 29, 2018, Mrs. Litz executed and delivered to the Bank a *Commercial Guaranty* (the "Mrs. Litz Guaranty") (the Mr. Litz Guaranty and Mrs. Litz Guaranty collectively are the "Guaranties"). A true, correct and authentic copy of the Mrs. Litz Guaranty is attached hereto as Exhibit D and by reference made a part hereof.

10. In order to secure the obligations of Mr. Litz and Mrs. Litz to Elements under the

Guaranties, on June 29, 2018, Mr. Litz and Mrs. Litz executed and delivered to Elements a *Mortgage* (the "Mortgage") which granted Elements a security interest in the following described real estate, which is commonly known as 25 W. 75<sup>th</sup> Street, Indianapolis, Indiana 46260, and more particularly described as follows:

Part of the East Half of the Southwest Quarter of Section 26, Township 17 North, Range 3 East, Marion County, Indiana, described as follows:

Beginning at a point on the North line of said Half Quarter Section, 725.48 feet West of the Northeast corner thereof; thence West upon and along the North line of said Half Quarter Section, 299.15 feet more or less, to the East line of Lot 1, extended in Buddenbaum's Meridian Hills Addition, an Addition to the Town of Meridian Hills, Marion County, Indiana, as per plat thereof recorded in Plat Book 28, page 9; thence South upon and along the East line of said Lot 1 extended and Lot 1 to the Northwest corner of Lot 3 in said Addition; thence East upon and along the North line of said Lot 3 to the West line of Tract A, in Stout's Meridian Hills Addition, now in the Town of Meridian Hills, as per plat thereof recorded in Plat Book 24, page 345; thence North upon and along the West line of said Tract A and Tract A extended 174.44 feet to the place of beginning, except 25 feet by parallel lines off the entire North side of said Tract for 75<sup>th</sup> Street.

Also: Tract A in Stout's Meridian Hills Addition, an Addition to the City of Indianapolis, now in the Town of Meridian Hills, Marion County, Indiana, as per plat thereof, recorded in Plat Book 24, Page 345, in the Office of the Recorder of Marion County, Indiana, except 175 feet by parallel lines off the entire South end thereof.

(the "Real Estate") together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock utilities with ditch of irrigation rights); and all other rights, royalties, and profits relating to the Real Estate, including without limitation all minerals, oil, gas, geothermal and similar matters (the "Improvements") (the Real Estate and the Improvements collectively are the "Mortgaged Property"). The Mortgage was recorded on June

29, 2018, as Instrument No. A201800064486 in the Office of the Marion County Recorder. A true, correct and authentic copy of the Mortgage is attached hereto as Exhibit E and by reference made a part hereof.

11. The Loan, Note, Mr. Litz Guaranty, Mrs. Litz Guaranty, and Mortgage collectively are the “Loan Documents”.

12. By virtue of the chain of title set forth above, and there being no further transfers of the Loan Documents, Elements is a “person entitled to enforce” the Note within the meaning of Ind. Code § 26-1-3.1-301(3), and is entitled to enforce the Note and thus the related Mortgage, the Mr. Litz Guaranty, and the Mrs. Litz Guaranty under the provisions of Ind. Code § 26-1-3.1-309.

13. This is an action to foreclose a mortgage.

14. The underlying indebtedness relates to a commercial loan. *See* Exhibit B, p. 1.

15. Elements is not required to comply with Ind. Code. §§ 32-30-10.5-1, *et seq.*

### **Count I - Enforcement of the Note**

Elements, for Count I of its Complaint to enforce the Note against the Borrower, states:

16. Elements incorporates by reference the preceding paragraphs of its Complaint as if fully repeated herein.

17. The Borrower is in default under the Note for failure to make pay the Note at maturity (the “Default”).

18. All amounts owed with regard to the Note are due and payable in full by the Borrower to Elements.

19. As of October 24, 2019, the outstanding balance due by the Borrower under the Note was \$536,935.63, including principal in the amount of \$500,000.00, interest in the amount

of \$11,370.01, late fees in the amount of \$25,403.12, collection costs (including costs, expenses, and attorneys' fees) in the amount of \$162.50, plus interest which continues to accrue from and after October 24, 2019, at the *per diem* rate of \$83.33. Elements expressly reserves the right to additional default interest, additional late fees and additional collection costs (including costs, expenses, and attorneys' fees) to the outstanding balance due by the Borrower under the Note.

20. All conditions precedent to Elements' claims on the Note have been performed, have occurred or have been excused.

21. Elements has incurred costs, expenses, and attorneys' fees and will incur additional attorneys' fees and costs prior to and subsequent to judgment in this action.

22. All costs, expenses, and attorneys' fees in this action are recoverable from the Borrower by Elements pursuant to the terms of the Note.

**WHEREFORE**, Elements, respectfully requests that the Court:

- A. Enter judgment in favor of Elements against the Borrower, with regard to the Note as of October 24, 2019, in the amount of \$536,935.63, including principal in the amount of \$500,000.00, interest in the amount of \$11,370.01, late fees in the amount of \$25,403.12, collection costs (including costs, expenses, and attorneys' fees) in the amount of \$162.50, plus interest which continues to accrue from and after October 24, 2019, at the *per diem* rate of \$83.33, plus additional costs and expenses of collection and reasonable attorneys' fees, all without relief from valuation and appraisal laws; and
- B. Grant Elements such other relief as may be just and proper.

**Count II – Enforcement of the Mr. Litz Guaranty**

Elements, for Count II of its Complaint to enforce the Mr. Litz Guaranty against Mr. Litz, states:

23. Elements incorporates by reference the preceding paragraphs of its Complaint as if fully repeated herein.

24. The Borrower has defaulted on its obligations due to Elements under the Loan Documents due to the Default.

25. As a result of the Default, the entire amount of the Mr. Litz Guaranty is due and payable in full.

26. As of October 24, 2019, the outstanding balance owed by Mr. Litz to Elements under the Mr. Litz Guaranty was \$536,935.63. Elements expressly reserves the right to additional default interest, additional late fees and additional collection costs (including costs, expenses and attorneys' fees) to the outstanding balance due by Mr. Litz under the Mr. Litz Guaranty.

27. Elements has incurred costs, expenses and attorneys' fees and will incur additional attorneys' fees and costs prior to and subsequent to judgment in this action.

28. All costs, expenses and attorneys' fees incurred by Elements in recovering on the Mr. Litz Guaranty are recoverable pursuant to the terms of the Mr. Litz Guaranty.

29. All conditions precedent to Elements' enforcement of the Mr. Litz Guaranty against Mr. Litz have been performed, have occurred or have been excused.

**WHEREFORE**, Elements respectfully requests that the Court:

A. Enter judgment in favor of Elements against Mr. Litz on the Mr. Litz Guaranty as of October 24, 2019, in the amount of \$536,935.63, plus interest which continues

to accrue from and after October 24, 2019, at the per diem rate of \$83.33, plus additional costs and expenses of collection and reasonable attorneys' fees, all without relief from valuation and appraisal laws; and

B. Grant Elements such other relief as may be just and proper.

**Count III – Enforcement of the Mrs. Litz Guaranty**

Elements, for Count III of its Complaint to enforce the Mrs. Litz Guaranty against Mrs. Litz, states:

30. Elements incorporates by reference the preceding paragraphs of its Complaint as if fully repeated herein.

31. The Borrower has defaulted on its obligations due to Elements under the Loan Documents due to the Default.

32. As a result of the Default, the entire amount of the Mrs. Litz Guaranty is due and payable in full.

33. As of October 24, 2019, the outstanding balance owed by Mrs. Litz to Elements under the Mrs. Litz Guaranty was \$536,935.63. Elements expressly reserves the right to additional default interest, additional late fees and additional collection costs (including costs, expenses, and attorneys' fees) to the outstanding balance due by Mrs. Litz under the Mrs. Litz Guaranty.

34. Elements has incurred costs, expenses and attorneys' fees and will incur additional attorneys' fees and costs prior to and subsequent to judgment in this action.

35. All costs, expenses and attorneys' fees incurred by Elements in recovering on the Mrs. Litz Guaranty are recoverable pursuant to the terms of the Mrs. Litz Guaranty.

36. All conditions precedent to Elements' enforcement of the Mrs. Litz Guaranty

against Mrs. Litz have been performed, have occurred or have been excused.

**WHEREFORE**, Elements respectfully requests that the Court:

- A. Enter judgment in favor of Elements against Mrs. Litz on the Mrs. Litz Guaranty as of October 24, 2019, in the amount of \$536,935.63, plus interest which continues to accrue from and after October 24, 2019, at the per diem rate of \$83.33, plus additional costs and expenses of collection and reasonable attorneys' fees, all without relief from valuation and appraisal laws; and
- B. Grant the Bank such other relief as may be just and proper.

**Count IV - Foreclosure of the Mortgage**

Elements for Count IV of its Complaint to foreclose the Mortgage against Mr. and Mrs. Litz, states:

37. Elements incorporates by reference the preceding paragraphs of its Complaint as if fully repeated herein.

38. Mr. Litz and Mrs. Litz are in default under the Mortgage due to the Default.

39. Pursuant to the terms and conditions of the Mortgage, Elements is entitled to foreclose its interest in the Mortgaged Property.

40. All conditions precedent to Elements' enforcement of the Mortgage against Mr. Litz and Mrs. Litz have been performed, have occurred, or have been excused.

41. Elements has incurred costs, expenses, and attorneys' fees in its efforts to collect on the Mortgage, and additional attorneys' fees will be incurred prior and subsequent to judgment in this matter.

42. All costs, expenses, and attorneys' fees incurred by Elements in this action are recoverable from Mr. Litz and Mrs. Litz, pursuant to the terms and conditions of the Mortgage.

43. The lien and mortgage interests of Elements are superior to all claims, liens, and interests with respect to the Mortgaged Property asserted by the Defendants or any party claiming an interest, by, through or under the Defendants and all other claims of the Defendants or any party claiming an interest, by, through or under the Defendants are junior, inferior and subordinate to the liens and security interest of Elements, which liens and security interest Elements hereby requests be foreclosed, and that the Mortgaged Property be sold by the Sheriff of Marion County, Indiana in accordance with all applicable laws, or via auction pursuant to Indiana Code § 32-29-7-4, at Elements' election, in order to satisfy any judgment rendered herein in favor of Elements and against the Mr. Litz and Mrs. Litz.

**WHEREFORE**, Elements respectfully requests that the Court:

- A. Enter judgment declaring that Elements' security interest in the Mortgaged Property is a valid, perfected lien on the Mortgaged Property;
- B. Entered judgment against Mr. Litz and Mrs. Litz that the Mortgage and all security interests of Elements in the Mortgaged Property be foreclosed against the Mortgaged Property in favor of Elements and declared superior to all right, title, and interest in and to the Mortgaged Property claimed by Mr. Litz and Mrs. Litz and anyone claiming by, through, or under Mr. Litz and/or Mrs. Litz;
- C. Enter judgment foreclosing the liens and security interests of the Mortgage in favor of Elements, foreclosing and barring Mr. Litz's and/or Mrs. Litz's right of redemption and anyone claiming an interest in the Mortgaged Property by, through, or under Mr. Litz and/or Mrs. Litz;
- D. Enter judgment directing the sale of the Mortgaged Property by the Sheriff of Marion County, Indiana, or via auction pursuant to Ind. Code § 32-29-7-4, at

Elements' election, with Elements permitted to bid in its judgment in this action, with the proceeds of such sale or auction to be applied to the cost of sale, then to the judgment of Elements, with the surplus, if any, to be paid as ordered by the Court and with the deficiency, if any, to be paid by Mr. Litz and/or Mrs. Litz;

- E. Enter judgment directing Mr. Litz and Mrs. Litz and all parties herein to surrender full and peaceful possession of the Mortgaged Property to the holder of such deed, bill of sale, or a copy thereof as results from the Sheriff's sale or auction of the Mortgaged Property and that if Mr. Litz and Mrs. Litz do not surrender full and peaceful possession of the Mortgaged Property, then an Order directing the Sheriff of Marion County, Indiana to enter the Mortgaged Property and eject and remove therefrom Mr. Litz and Mrs. Litz or any other persons who may be in unlawful possession of the Mortgaged Property; and
- F. Grant Elements such other relief as may be just and proper.

Dated: October 29, 2019

Respectfully submitted,

/s/ Kay Dee Baird

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