

**LOST ASSIGNMENT OF MORTGAGE AFFIDAVIT AND  
INDEMNIFICATION AGREEMENT**

**STATE OF ALABAMA                    )  
COUNTY OF SHELBY                )**

**MORTGAGOR NAME:                               JEFFERY T. SCROGGINS and DIANE  
SCROGGINS**

**ORIGINAL MORTGAGEE:                           FIRST FRANKLIN FINANCIAL  
CORPORATION**

**DATED:                                           April 2, 2001**

**RECORDED:                                       INSTRUMENT NUMBER 2001-12713**

THIS LOST ASSIGNMENT OF MORTGAGE AFFIDAVIT AND INDEMNIFICATION AGREEMENT (this "Agreement") is made by BANK ONE CORPORATION, FKA FIRST NATIONAL BANK, AS TRUSTEE to and for the benefit of FIRST AMERICAN TITLE INSURANCE COMPANY and its partners, directors, officers, agents, and employees referred to herein collectively as "First American".

**WITNESSETH**

**WHEREAS**, Bank One Corporation, FKA First National Bank, As Trustee is the owner and holds all of the right, title and interest in, to and under that certain Promissory Note executed by Jeffery T. Scroggins and Diane Scroggins, husband and wife in favor of First Franklin Financial Corporation and dated April 2, 2001 (hereafter the "Note");

**WHEREAS**, an Assignment of Mortgage is used to memorialize the transfer of interest to Bank One Corporation, FKA First National Bank, As Trustee, or to a predecessor in interest of Bank One Corporation, FKA First National Bank, As Trustee, and is customarily caused to be recorded in the office of the Judge of Probate of the county where the subject property is located;

**WHEREAS**, in this instance, the Assignment of the beneficial interest of the Mortgage (hereafter the "Assignment"), as herein defined, to Bank One Corporation, FKA First National Bank, As Trustee, or to a predecessor in interest of Bank One Corporation, FKA First National Bank, As Trustee was not recorded in the office of the Judge of Probate of the county where the subject property is located;

**WHEREAS**, Bank One Corporation, FKA First National Bank, As Trustee does not have possession of the Assignment, nor does Bank One Corporation, FKA First National Bank, As Trustee have knowledge regarding the whereabouts of the

Assignment, and furthermore Bank One Corporation, FKA First National Bank, As Trustee has used due diligence and its best efforts to locate this Assignment.

**NOW THEREFORE**, Bank One Corporation, FKA First National Bank, As Trustee represents, warrants and covenants as follows:

**1. Bank One Corporation, FKA First National Bank, As Trustee's Representations.**

- (a.) That MICHAEL VESTAL, VICE PRESIDENT, executing this Agreement on behalf of Bank One Corporation, FKA First National Bank, As Trustee, is the \_\_\_\_\_ of Bank One Corporation, FKA First National Bank, As Trustee and has the power and authority to enter into this Agreement and to execute same on behalf of Bank One Corporation, FKA First National Bank, As Trustee;
- (b.) That as of the date hereof, Bank One Corporation, FKA First National Bank, As Trustee is the sole owner of the Note, which is secured by that certain Mortgage recorded in Instrument Number 2001-12713 in the Office of the Judge of Probate of Shelby County (hereafter the "Mortgage");
- (c.) That the Assignment was duly executed and delivered by Bank One Corporation, FKA First National Bank, As Trustee's predecessor in interest but has been lost or misplaced, and Bank One Corporation, FKA First National Bank, As Trustee has been unable to locate the Assignment despite diligent efforts to do so;
- (d.) That if the Assignment is located at any time hereafter Bank One Corporation, FKA First National Bank, As Trustee shall immediately forward the Assignment to First American;
- (e.) That Bank One Corporation, FKA First National Bank, As Trustee warrants it has not assigned, pledged, sold, endorsed, or in any way transferred or hypothecated the Note or any interest therein.

- 2. Indemnity.** Bank One Corporation, FKA First National Bank, As Trustee shall indemnify, defend and hold harmless First American from and against any and all liability, claims, demands, losses, damages or expenses, including but not limited to, reasonable attorney's fees and costs, suffered by, incurred by or asserted against First American, or any of them, by reason of any claim by anyone that the representations and warranties set forth in Paragraph 1 hereof are false or inaccurate in any respect, or by reason of any claim that the Mortgage is unenforceable, insufficient, or impaired.

3. **First American's Attorneys.** In the event of any litigation brought against First American which is covered by Paragraph 2 above, Bank One Corporation, FKA First National Bank, As Trustee agrees that First American shall have the right, in its sole discretion, to select and retain any attorneys to advise or defend them against said litigation, and Bank One Corporation, FKA First National Bank, As Trustee shall pay the reasonable attorney's fees and cost, as provided in Paragraph 2 above.
4. **Joint and Several Liability** The obligations Bank One Corporation, FKA First National Bank, As Trustee hereunder shall be joint and several.
5. **Attorney's Fees.** In the event of any litigation between Bank One Corporation, FKA First National Bank, As Trustee and First American arising out of the parties' respective rights and/or obligations under the Agreement, or concerning the meaning or interpretation of any provision contained herein, the losing party shall pay the prevailing party's cost and expenses of such litigation, including, without limitation, reasonable attorney's fees and cost.
6. **Construction.** This Agreement, or any instrument to be drafted in the future, shall be construed without regard to any presumption or rule requiring construction against the party drafting said Agreement.
7. **Successors and Assigns.** This Agreement shall be binding on Bank One Corporation, FKA First National Bank, As Trustee, their respective heirs, executors, administrators, successors and assigns, and shall inure to the benefit of First American and its respective heirs, executors, administrators, successors and assigns.

**IN WITNESS WHEREOF**, Countrywide Home Loans, Attorney in Fact for Bank One Corporation, FKA First National Bank, As Trustee has caused this instrument to be executed by MICHAEL VESTAL, VICE PRESIDENT an officer of Countrywide Home Loans, as attorney-in-fact for Bank One Corporation, FKA First National Bank, As Trustee to that certain Power of Attorney attached hereto as Exhibit A. This instrument is executed on this the 28<sup>th</sup> day of MARCH, 2003.

Bank One Corporation, FKA First National Bank, As Trustee

By: Michael D. Vestal

Its MICHAEL VESTAL, VICE PRESIDENT

Countrywide Home Loans, Attorney in Fact for Bank One Corporation, FKA First National Bank, As Trustee



ACKNOWLEDGEMENT

STATE OF Texas

COUNTY OF Collin

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that MICHAEL VESTAL, VICE PRESIDENT, whose name as \_\_\_\_\_ of Bank One Corporation, FKA First National Bank, As Trustee, as Attorney in Fact for Bank One Corporation FKA First National Bank, as Trustee, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation, acting in its capacity as Attorney in Fact as aforesaid.

Given under my hand and official seal, this the 28 day of March, 2003.

Gary A. Fulsom  
NOTARY PUBLIC  
My Commission expires: 4/11/05  
AFFIX SEAL

