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



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Shelby Cnty Judge of Probate, AL
04/15/2003 14:18:00 FILED/CERTIFIED

STATE OF ALABAMA
COUNTY OF SHELBY

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)

MORTGAGOR NAME: RICHARD L. DAKIN AND DIANE E. DAKIN

ORIGINAL MORTGAGEE: FOX FINANCING, INC.

DATED: 10TH DAY OF JANUARY, 1994

RECORDED: INSTRUMENT NO. 1994-01507

THIS LOST ASSIGNMENT OF MORTGAGE AFFIDAVIT AND INDEMNIFICATION AGREEMENT (this "Agreement") is made by GMAC MORTGAGE CORPORATION 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, GMAC Mortgage Corporation is the owner and holds all of the right, title and interest in, to and under that certain Promissory Note executed by Richard L. Dakin and Diane E. Dakin, Husband and Wife in favor of Fox Financing, Inc. and dated the 10th day of January, 1994 (hereafter the "Note");

WHEREAS, an Assignment of Mortgage is used to memorialize the transfer of interest to GMAC Mortgage Corporation, or to a predecessor in interest of GMAC Mortgage Corporation, 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 GMAC Mortgage Corporation, or to a predecessor in interest of GMAC Mortgage Corporation was not recorded in the office of the Judge of Probate of the county where the subject property is located;

WHEREAS, GMAC Mortgage Corporation does not have possession of the Assignment, nor does GMAC Mortgage Corporation have knowledge regarding the whereabouts of the Assignment, and furthermore GMAC Mortgage Corporation has used due diligence and its best efforts to locate this Assignment.

NOW THEREFORE, GMAC Mortgage Corporation represents, warrants and covenants as follows:

1. GMAC Mortgage Corporation's Representations.

- (a.) That Debi Pond, executing this Agreement on behalf of GMAC Mortgage Corporation, is the Limited Signing Officer of GMAC Mortgage Corporation and has the power and authority to enter into this

Agreement and to execute same on behalf of GMAC Mortgage Corporation;

- (b.) That as of the date hereof, GMAC Mortgage Corporation is the sole owner of the Note, which is secured by that certain Mortgage recorded in Instrument No. 1994-01507 in the Office of the Judge of Probate of Shelby County (hereafter the "Mortgage");
 - (c.) That it is the understanding of GMAC Mortgage Corporation that the Assignment was duly executed and delivered by GMAC Mortgage Corporation's predecessor in interest but has been lost or misplaced, and GMAC Mortgage Corporation has been unable to locate the Assignment despite diligent efforts to do so;
 - (d.) That if the Assignment is located at any time hereafter GMAC Mortgage Corporation shall immediately forward the Assignment to First American;
 - (e.) That GMAC Mortgage Corporation warrants it has not assigned, pledged, sold, endorsed, or in any way transferred or hypothecated the Note or any interest therein.
- 2. **Indemnity.** GMAC Mortgage Corporation 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, GMAC Mortgage Corporation 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 GMAC Mortgage Corporation shall pay the reasonable attorney's fees and cost, as provided in Paragraph 2 above.
 - 4. **Joint and Several Liability** The obligations GMAC Mortgage Corporation hereunder shall be joint and several.
 - 5. **Attorney's Fees.** In the event of any litigation between GMAC Mortgage Corporation 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 GMAC Mortgage Corporation, 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, GMAC Mortgage Corporation has executed this Agreement on this 1st day of March, 2003.

GMAC Mortgage Corporation

By: [Signature]

Its Debi Pond Limited Signing Officer

ACKNOWLEDGEMENT

STATE OF Pennsylvania)

COUNTY OF Montgomery)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Debi Pond, whose name as Limited Signing Officer of GMAC Mortgage Corporation, is signed to the foregoing Agreement, 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.

Given under my hand and official seal this 1st day of April, 2003.

William L. Watson

NOTARY PUBLIC

My commission Expires: _____

