

**00048865338MN35**

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

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

**MORTGAGOR NAME:                   GARY W. UPTON AND MARY**  
**CHRISTINE UPTON**

**ORIGINAL MORTGAGEE:               BEST RATE FUNDING CORP.**

**DATED:                               8TH DAY OF OCTOBER, 2003**

**RECORDED:                           INSTRUMENT # 20031215000806870**

THIS LOST ASSIGNMENT OF MORTGAGE AFFIDAVIT AND INDEMNIFICATION AGREEMENT (this "Agreement") is made by DEUTSCHE BANK NATIONAL TRUST COMPANY, TRUSTEE, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 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**, Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 is the owner and holds all of the right, title and interest in, to and under that certain Promissory Note executed by Gary W. Upton and Mary Christine Upton in favor of Best Rate Funding Corp. and dated the 8th day of October, 2003 (hereafter the "Note");

**WHEREAS**, an Assignment of Mortgage is used to memorialize the transfer of interest to Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2, or to a predecessor in interest of Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2, 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 Deutsche Bank National

Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2, or to a predecessor in interest of Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 was not recorded in the office of the Judge of Probate of the county where the subject property is located;

**WHEREAS**, Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 does not have possession of the Assignment, nor does Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 have knowledge regarding the whereabouts of the Assignment, and furthermore Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 has used due diligence and its best efforts to locate this Assignment.

**NOW THEREFORE**, Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 represents, warrants and covenants as follows:

**1. Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 represents:**

**KIMBERLY DAWSON VICE PRESIDENT**

- (a.) That \_\_\_\_\_, executing this Agreement on behalf of Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2, is the \_\_\_\_\_ of Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 and has the power and authority to enter into this Agreement and to execute same on behalf of Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 ;
- (b.) That as of the date hereof, Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 is the sole owner of the Note, which is secured by that certain Mortgage recorded in



Instrument # 20031215000806870 in the Office of the Judge of Probate of Shelby County (hereafter the "Mortgage");

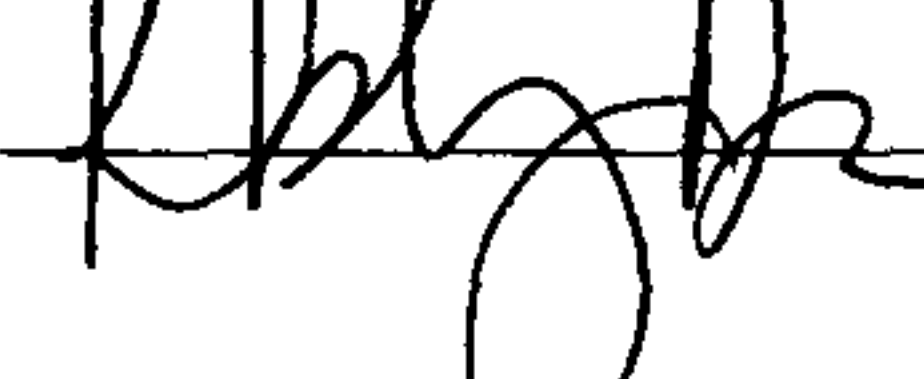
- (c.) That it is the understanding of Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 that the Assignment was duly executed and delivered by Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2's predecessor in interest but has been lost or misplaced, and Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 has been unable to locate the Assignment despite diligent efforts to do so;
  - (d.) That if the Assignment is located at any time hereafter Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 shall immediately forward the Assignment to First American;
  - (e.) That Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 warrants it has not assigned, pledged, sold, endorsed, or in any way transferred or hypothecated the Note or any interest therein.
2. **Indemnity.** Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 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, Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 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 Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 shall pay the reasonable attorney's fees and cost, as provided in Paragraph 2 above.

4. **Joint and Several Liability** The obligations Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 hereunder shall be joint and several.
5. **Attorney's Fees.** In the event of any litigation between Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 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 Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2, 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**, Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2 has executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2

By:  \_\_\_\_\_  
Its \_\_\_\_\_ **KIMBERLY DAWSON VICE PRESIDENT**



ACKNOWLEDGEMENT

STATE OF Texas )

COUNTY OF Cotton )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that KIMBERLY DAWSON VICE PRESIDENT, whose name as of Deutsche Bank National Trust Company, Trustee, on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC2, Mortgage Pass-Through Certificates, Series 2004-NC2, 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 18 day of August, 2004.

Ryan A Lett  
NOTARY PUBLIC

My commission Expires:

June 10, 2008

This instrument prepared by:

Jerry E. Held

Sirote & Permutt, P.C.

P.O. Box 55727

Birmingham, AL 35255

