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Doc#: 0730217113 Fee: \$36.50
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/29/2007 01:49 PM Pg: 1 of 7

Recording Requested By:

BNC National Bank

When Recorded Return To:

BNC National Bank
17045 N. Scottsdale Road
Scottsdale, AZ 85255

Attention: Tracey Lundahl

SPACE ABOVE THIS LINE FOR RECORDER'S USE

COLLATERAL ASSIGNMENT OF MORTGAGE

This Collateral Assignment of Mortgage (this "Collateral Assignment") is made and delivered as of the 5th day of October, 2007, by Brett A. Johnston and Patricia J. Johnston, husband and wife, ("Johnstons"), who have an address of 19176 N. 95th Street, Scottsdale, AZ 85255, and **BNC National Bank**, a national banking corporation ("Lender"), which has an address of 17045 North Scottsdale Road, Scottsdale, Arizona 85255.

I. RECITALS.

1.1 Lender and Concord Mortgage Company ("Concord") entered into a *Mortgage Loans In-Transit Agreement (Loan Participation Agreement)* dated as of April 8, 2004, which was replaced on or about April 10, 2006 by an *Amended and Restated Mortgage Loans In-Transit Agreement (Loan Participation Agreement)* (the "LPA"), again executed by Lender and Concord, pursuant to which Lender purchased participation interests in certain residential real estate loans originated by Concord ("Loans"). Under the LPA, Concord was responsible for servicing (that is, ensuring payments on the Loans are correctly and timely made, allocated and disbursed to the appropriate parties), liquidating and repurchasing the Loans and tendering to Lender the amounts payable under the LPA.

1.2 Approximately concurrently with the recordation of this Collateral Assignment, Lender, Johnstons, and Concord, entered into a separate agreement styled *Debt Restructure and Settlement Agreement* (the "Settlement Agreement"). The Settlement Agreement requires the Johnstons, among other things, to pledge to Lender the Johnstons' interest under certain instruments, either mortgages or deeds of trust, in which they hold a beneficial interest, as mortgagee or beneficiary, as partial security for payment of the debt and performance of the obligations owed by Johnstons to Lender under the Settlement Agreement ("Debt Obligation").

1.3 Among the security instruments to be assigned by the Johnstons as collateral to Lender under the terms of the Settlement Agreement is that certain Mortgage, together with the debt and Note thereby, in the original principal sum of Eighty Five Thousand Dollars (\$85,000.00), executed by Eamiel Beck, an unmarried man, and Amos Kuykendoll, an unmarried man, each as to an undivided ½ interest, as tenants in common, and bearing the date of April 25, 2007 and recorded on the date of April 27, 2007

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in the office of the Recorder of Cook County, IL as Document No. 0711705286 in Book N/A, beginning on Page N/A ("Mortgage"), encumbering the following-described real property:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

as the same may have been amended from time to time; together with the Note and indebtedness secured thereby. The Johnstons acquired the interest of Lender as beneficiary under the Mortgage pursuant to that certain Assignment Of Mortgage, dated as of October 5, 2007 and recorded immediately before this Collateral Assignment.

II. OPERATIVE COVENANTS AND AGREEMENTS.

2.1 Collateral Assignment. For the purpose of securing the payment and performance of the Johnstons under the Settlement Agreement, the Johnstons, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby assign, convey, grant, bargain, sell, transfer and set over to Lender, with power of sale, and grant to Lender a security interest in, all of the Johnstons' present and future right, title and interest in and to the Mortgage, together with the proceeds thereof (collectively, the "Collateral").

2.2 Representations and Warranties. The Johnstons represent and warrant to Lender that:

(a) The recitals set forth in Article I of this Collateral Assignment are true and correct.

(b) The Johnstons have full power, right and authority to execute and deliver this Collateral Assignment.

2.3 Covenants of the Johnstons with Respect to Real Property and Collateral. The Johnstons agree that:

(a) They shall continue to service the Loan secured by the Mortgage and, if necessary, liquidate the collateral securing the repayment to Lender of such Loan.

(b) Without the prior written consent of Lender, the Johnstons shall not agree or enter into any change, amendment or modification to (or any other agreement that would have the effect of changing, amending or modifying) the Mortgage, the Loan secured thereby or this Collateral Assignment.

2.4 Prior Liens and Assignments. Prior to the payment and performance in full of their obligations, the Johnstons will allow no lien or assignment of any kind, other than current real property taxes and general assessments and this Collateral Assignment, to be imposed upon the Johnstons' interest in the Collateral or on the Real Property.

2.5 Lender's Right to Pay or Perform Obligations. If the obligor under the Loan secured by the Mortgage fails or neglects to pay when due any taxes, assessments, insurance or other charges that they are obligated to pay under such Loan, and the Johnstons do not make a protective advance for such

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purpose, or if the Johnstons fail or neglect to pay or perform any obligations of the lender under such Loan, then Lender shall have the right, but not the obligation, to advance any amount necessary to protect the collateral subject to the Mortgage or to pay or perform any such obligations in the place and stead of the Johnstons. The rights of Lender hereunder shall be coupled with the power of attorney, from the Johnstons to Lender, granted in paragraph 2.7 below.

2.6 Default Under Collateral Assignment. Any default in the performance of the Johnstons hereunder shall constitute a separate default under the Settlement Agreement.

2.7 Power of Attorney. The Johnstons hereby make, constitute and appoint Lender and its successors and assigns as the true and lawful attorneys-in-fact of the Johnstons, in the name, place and stead of the Johnstons or otherwise, upon the occurrence of any default under this Collateral Assignment or the Settlement Agreement

(a) To do all acts and to execute, acknowledge, obtain and deliver any and all instruments, documents, items or things necessary, proper or required as a term, condition or provision of the Mortgage, or in order to exercise any rights of the Johnstons under the Mortgage, or to receive and enforce any payment or performance due under the Mortgage.

(b) To give any notices, instructions or other communications to the obligor under the Loan secured by the Mortgage or to any other person or entity in connection with the Mortgage or the property encumbered thereby.

(c) To demand and receive all payments and performances due under or with respect to the subject Loan, and to take all lawful steps for the enforcement thereof and to compromise and settle any claim or cause of action of the Johnstons arising from or related to the subject Loan or the Mortgage and to give acquittances and other discharges relating thereto.

(d) To file any claim or proceeding or to take any other action, in its own name, in that of its nominee, in the name of the Johnstons or otherwise, to enforce any payment or performance due under or related to the said Loan, or to protect and preserve the right, title and interest of Lender in the Mortgage and the property encumbered thereby.

The power of attorney contained herein shall not be affected by the disability of the principal, is a power coupled with an interest and shall be irrevocable as long as any part of Loans remains unpaid or unperformed. Lender shall have no obligation to exercise any of the foregoing rights and powers in any event. For purposes of A.R.S. § 14-5501.E, the Johnstons acknowledges that this power of attorney forms a part of two contracts (this Collateral Assignment and the Settlement Agreement) and is security for money or for the performance of a valuable act. Lender hereby discloses that it may exercise the foregoing power of attorney for Lender's benefit, and such authority need not be exercised for the Johnston's best interest; the Johnstons hereby separately initials this provision pursuant to A.R.S. 14-5506.B. [Johnstons' Initials: JD JD Witness Initials: JD]

2.8 Termination of Assignment. Upon payment and performance in full of the Johnstons' obligations, this Collateral Assignment shall have no further force or effect and the Johnstons shall

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thereafter hold its interest in the Real Property and the rest of the Collateral free and clear of any right, title, claim, lien or interest of Lender.

III. GENERAL AND MISCELLANEOUS.

3.1 Amendments. No change, amendment or modification shall be made to the Mortgage or this Collateral Assignment without Lender's prior written approval.

3.2 No Assumption of Liability. Lender, by accepting this Collateral Assignment, shall be subject to no obligation or liability under the Loans, or any of them, including any duty to perform any of the terms, conditions, provisions or agreements made by the Johnstons, and any and all such obligations or liabilities shall continue to rest upon the Johnstons as if this Collateral Assignment had not been executed and delivered.

3.3 Further Documents and Acts. Upon the request of Lender, the Johnstons shall, and shall cause all persons with which they are affiliated to, execute and deliver such further documents and take such further actions as may be reasonably necessary to correct clerical errors or omissions in any documentation related to the subject Loan or other matter related to the Settlement Agreement or to carry out the intent of the Settlement Agreement and this Collateral Assignment and to perfect and preserve the rights, interests and priority of Lender hereunder.

3.4 Time of the Essence; Successors and Assigns. Time is of the essence hereof. This Collateral Assignment shall be binding upon the Johnstons and their successors and assigns and shall inure to the benefit of Lender and its successors and assigns. However, this Collateral Assignment shall not confer any rights or remedies upon any person other than the parties hereto and their respective successors and assigns.

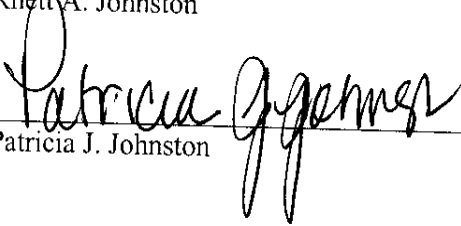
3.5 Governing Law and Venue. This Collateral Assignment and the rights and obligations of parties hereto shall be governed by and construed in accordance with federal law and the laws of the state where the Mortgage has been recorded. However, in the event that the enforceability or validity of any provision of this Collateral Assignment is challenged or questioned, such provision shall be governed by whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision.

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IN WITNESS WHEREOF, the undersigned parties have executed this Collateral Assignment as of the date first written above.



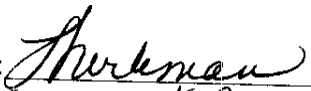
Rhett A. Johnston



Patricia J. Johnston

APPROVED AND ACCEPTED:

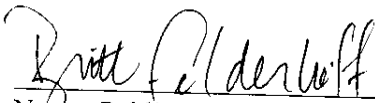
BNC National Bank

By: 
Its: LYNNE KIRKMAN

STATE OF ARIZONA)
) ss.
County of Maricopa)



The foregoing was acknowledged before me this 5th day of October, 2007, by **Rhett A. Johnston**, an individual, on behalf thereof.



Notary Public

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STATE OF ARIZONA)
) ss.
County of Maricopa)



The foregoing was acknowledged before me this 5th day of October, 2007, by **Patricia J. Johnston**, an individual, on behalf thereof.

Britt Felderhoff

Notary Public

STATE OF ARIZONA)
) ss.
County of Maricopa)



The foregoing was acknowledged before me this 5th day of October, 2007, by Lynne Kirkman, of BNC National Bank, on behalf thereof.

Britt Felderhoff

Notary Public

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EXHIBIT A (Legal Description of Premises):

LOT 43 IN BLOCK 2 IN W.F. KAISER AND COMPANY'S MICHIGAN AVENUE SUBDIVISION, BEING A SUBDIVISION OF THE SOUTHWEST ¼ OF SECTION 10, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL ID # 25-10-315-010

PROPERTY ADDRESS: 15 EAST 101ST STREET, CHICAGO, IL 60628

Property of Cook County Clerk's Office