

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

PNC Bank, National Association, as successor in interest to  
National City Bank of Michigan/Illinois,

Plaintiff,

v.

Kevin Foss; Bonnie Foss; Smith-Greeley, LLC; Colfax  
Condominium Association,

Defendants.

No. 13-cv-3029

Honorable Judge:  
Matthew F. Kennelly

**AFFIDAVIT IN SUPPORT OF PNC BANK, NATIONAL ASSOCIATION'S MOTION  
FOR JUDGMENT OF FORECLOSURE AND SALE**

I, Arlene Foster, being first duly sworn on oath, am over the age of eighteen years old, and state that the following are true and correct statements based on my personal knowledge:

1. I am a Vice President of the Commercial Banking - Asset Resolution Team, for PNC Bank, National Association ("PNC"). I have authority to make this statement on PNC's behalf because I am a person familiar with the business and its mode of operation.

2. Through regular training and my work activity, I am familiar with the general manner in which payments are received and applied. I have received training on and am familiar through regular use with the computer systems that reflect the terms of the loan, the payments made, and additional fees and charges associated with the account. I have also been trained on the scanning processes used to convert the information contained within documents into electronic data associated with the account and to store electronic images of the documents. I regularly access images of mortgages and notes to confirm the accuracy of the data stated in affidavits as to accounts. If called

to testify at the trial of the above entitled case, I could competently testify as to the facts contained within this affidavit.

3. PNC Bank, National Association is the Plaintiff in this matter.

4. Kevin Foss and Bonnie Foss ("Borrowers") are borrowers on a promissory note secured by a mortgage given by Kevin Foss and Bonnie Foss (together "Defendants"). As evidenced by a note dated October 31, 2002 (the "Note"), National City Bank of Michigan/Illinois ("National City Bank"), loaned money to Borrower in the original principal amount of \$177,650.00 (the "Loan"). PNC is the successor in interest by merger to National City Bank of Michigan/Illinois. A true and accurate copy of the Note is attached hereto as **Exhibit 1**.

5. As security for the Note, Defendants executed a Mortgage dated October 31, 2002 (the "Mortgage"), pledging the property commonly known as 334-B Colfax, Palatine, Illinois 60067 (the "Property") as security for the Note. The Mortgage was recorded with the Cook County Recorder of Deeds on November 18, 2002, as Document Number 0021270577. A true and accurate copy of the Mortgage is attached hereto as **Exhibit 2**.

6. Upon merger with National City Bank of Michigan/Illinois, PNC acquired physical possession of the Note and Mortgage and has had possession of the Note and Mortgage throughout this litigation.

7. Pursuant to the terms of the Note, Borrowers were to make regular monthly payments as set forth in the Note beginning on November 30, 2002, and on the same calendar day monthly thereafter until October 30, 2017, and all unpaid amounts became due and owing.

8. The amounts stated herein are based on my review of the following records: Advanced Commercial Banking System ("ACBS") and Automated Financial Systems ("AFS"). I

use ACBS to confirm the amounts due. Records from National City Bank are typically housed in AFS, whereas PNC's records are housed in ACBS. I rely on these records in my daily work activity.

9. A true and accurate copy of the payment history for the Loan ("Loan History") and screen shots of the computer records of the above-listed systems that I reviewed and used to personally calculate the amount due are attached hereto as **Exhibit 3**.

10. PNC uses ACBS to automatically record and track mortgage payments. This type of record-keeping system is recognized as standard in the industry. When a mortgage payment is received by check, the following procedure is used to process and apply the payment, and to create the records I reviewed: a human payment processor manually enters the payment information and application into ACBS at or near the time of receipt of the payment. When a mortgage payment is received electronically, the following procedure is used to process and apply the payment, and to create the records I reviewed: the data concerning when the payment was received and how it was applied is automatically entered into ACBS at or near the time of receipt of the payment and is then viewable by me either in ACBS. The payment history is generated from ACBS data depending on the age of the records. The payment information and application records are therefore created simultaneously in ACBS at the same time as the entry of the data. The entries are made at or near the time that the payment is received.

11. National City Bank used AFS to automatically record and track mortgage payments. This type of record-keeping system is recognized as standard in the industry. When a mortgage payment is received by check, the following procedure is used to process and apply the payment, and to create the records I reviewed: a human payment processor manually enters the payment information and application into AFS at or near the time of receipt of the payment. When a mortgage payment is received electronically, the following procedure is used to process and apply

the payment, and to create the records I reviewed: the data concerning when the payment was received and how it was applied is automatically entered into AFS at or near the time of receipt of the payment and is then viewable by me either in AFS. The payment history is generated from ACBS data depending on the age of the records. The payment information and application records are therefore created simultaneously in AFS at the same time as the entry of the data. The entries are made at or near the time that the payment is received.

12. The record-making process described in the preceding paragraph is done in the regular course of PNC's business. The payment data is kept in the above-listed databases for purposes of referring to the information at a later date. The above-listed databases accurately record mortgage payments when properly operated. My review of the records related to the Loan did not show that the process for tracking and recording payments worked improperly with respect to this Loan.

13. Borrowers defaulted under the terms of the Note by failing to make required payments of the unpaid principal amount, plus accrued interest, costs and other amounts under the terms of the Note. To date, the Note remains unpaid, no payments have been made by or on behalf of Borrowers to satisfy all amounts due Plaintiff under the terms of the Note.

14. Based on my review of PNC's records related to the Loan and the Loan History, the amount due and owing as of August 28, 2013 is:

Principal	\$85,938.91
Interest	\$ 7,910.07
Late Fees	<u>\$ 1,200.84</u>
NET AMOUNT DUE	\$94,949.82

FORECLOSURE COSTS:

Service	\$ 1,100.00
Recorder	\$ 8.00
Minutes of Foreclosure	\$ 325.00
Total	\$ 1,433.00

SUBTOTAL LOAN BALANCE AND COSTS \$96,382.82

Attorney Fees – Crowley & Lamb, P.C. \$ 2,420.00

TOTAL \$98,802.82

15. Said net amount due may be increased by \$20.05 per day for interest subsequent to August 28, 2013, and in addition thereto under the terms of the Note and Mortgage, the net amount due will be increased for any subsequent Court costs to be taxed in this cause and for any subsequent necessary advancements.

AFFIANT STATES NOTHING MORE.

By: Arlene Foster, V.P.  
Arlene Foster Affiant

Dated: 8-13-13

Sworn to before me and subscribed in my presence this 13<sup>th</sup> day of August, 2013.

My commission expires, August 19 2017.

SEAL  
Tonya M. Allen  
Notary Public  
State of [ OHIO ]  
Personally Known  OR Produced Identification \_\_\_\_\_  
Type of Identification Produced: \_\_\_\_\_



TONYA M. ALLEN  
NOTARY PUBLIC  
STATE OF OHIO  
Comm. Expires  
August 19, 2017  
Recorded in  
Cuyahoga County

James M. Crowley (ARDC#6182597)  
James D. Major (ARDC#6295217)  
CROWLEY & LAMB, P.C.  
221 North LaSalle Street, Suite 1550  
Chicago, Illinois 60601

# **EXHIBIT 1**



PROMISSORY NOTE

Borrower: Kevin Foss
Bonnie Foss
11 S. Greenwood
Buffalo Grove, IL 60089

Lender: National City Bank of Michigan/Illinois
Libertyville Office
325 North Milwaukee Avenue
Libertyville, IL 60048

Principal Amount: \$177,650.00

Initial Rate: 6.500%

Date of Note: October 31, 2002

PROMISE TO PAY. Kevin Foss and Bonnie Foss ("Borrower") jointly and severally promise to pay to National City Bank of Michigan/Illinois ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Hundred Seventy-seven Thousand Six Hundred Fifty & 00/100 Dollars (\$177,650.00), together with interest on the unpaid principal balance from October 31, 2002, until paid in full.

PAYMENT. Subject to any payment changes resulting from changes in the Index, Borrower will pay this loan in 179 payments of \$1,556.51 each payment and an irregular last payment estimated at \$1,555.09. Borrower's first payment is due November 30, 2002, and all subsequent payments are due on the same day of each month after that. Borrower's final payment will be due on October 30, 2017, and will be for all principal and all accrued interest not yet paid. Payments include principal and interest. Unless otherwise agreed or required by applicable law, payments will be applied first to accrued unpaid interest, then to principal, and any remaining amount to any unpaid collection costs and late charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an index which is the Cost of Funds plus 2.75%. "Cost of Funds" means that interest rate per annum determined by Lender in its sole discretion as its cost of funds, as quoted by Lender to Borrower as the fixed rate of interest effective on the date of this Note and continuing at such rate until adjusted to another fixed rate on each Repricing Date (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each succeeding five-year anniversary of the date of this Note during the term hereof (each a "Repricing Date"). Borrower understands that Lender may make loans based on other rates as well. The Index currently is 3.750% per annum. The interest rate to be applied to the unpaid principal balance of this Note will be at a rate of 2.750 percentage points over the Index, resulting in an initial rate of 6.500% per annum. NOTICE: Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law. Whenever increases occur in the interest rate, Lender, at its option, may do one or more of the following: (A) increase Borrower's payments to ensure Borrower's loan will pay off by its original final maturity date, (B) increase Borrower's payments to cover accruing interest, (C) increase the number of Borrower's payments, and (D) continue Borrower's payments at the same amount and increase Borrower's final payment.

PREPAYMENT PENALTY. Upon prepayment of this Note, Lender is entitled to the following prepayment penalty: Borrower may prepay the outstanding principal balance of this loan, in whole or in part, at any time provided that (i) Borrower shall provide three (3) business days' prior written notice to Lender and (ii) concurrently with such prepayment Borrower shall pay to Lender the accrued interest on the principal amount being prepaid and a premium equal to the greater of (a) 1% of the principal amount prepaid or (b) \$30, unless such prepayment is made on the date of a Rate Adjustment or on the maturity of this note. Except for the foregoing, Borrower may pay all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: National City Bank of Michigan/Illinois, Libertyville Office, 325 North Milwaukee Avenue, Libertyville, IL 60048.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$20.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the variable interest rate on this Note to 7.750 percentage points over the Index. The interest rate will not exceed the maximum rate permitted by applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The death of Borrower or the dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.



PROMISSORY NOTE  
(Continued)

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount; provided, however that in the case of an Event of Default of the type described in the "Insolvency" subsection above, such acceleration shall be automatic and not optional.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

**JURY WAIVER.** Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

**GOVERNING LAW.** This Note will be governed by, construed and enforced in accordance with federal law and the laws of the State of Illinois. This Note has been accepted by Lender in the State of Illinois.

**CHOICE OF VENUE.** If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Sangamon County, State of Illinois.

**CONFESSION OF JUDGMENT.** Borrower hereby irrevocably authorizes and empowers any attorney-at-law to appear in any court of record and to confess judgment against Borrower for the unpaid amount of this Note as evidenced by an affidavit signed by an officer of Lender setting forth the amount then due, attorneys' fees plus costs of suit, and to release all errors, and waive all rights of appeal. If a copy of this Note, verified by an affidavit, shall have been filed in the proceeding, it will not be necessary to file the original as a warrant of attorney. Borrower waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. No single exercise of the foregoing warrant and power to confess judgment will be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be invalid, voidable, or void; but the power will continue undiminished and may be exercised from time to time as Lender may elect until all amounts owing on this Note have been paid in full.

**DISHONORED ITEM FEE.** Borrower will pay a fee to Lender of \$25.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

**COLLATERAL.** Borrower acknowledges this Note is secured by any and all other mortgages, security agreements, assignments, loan agreements, pledge agreements and any other document or instrument evidencing a security interest or other lien in favor of Bank and executed and delivered by Borrower or any third party as security for payment of this Note and/or all indebtedness of Borrower to Bank, whether contemporaneous with the execution of this Note or at any other time. Collateral securing other obligations of Borrower to Bank may also secure this Note.

**SHARING INFORMATION.** Borrower hereby authorizes Lender to share all credit and financial information relating to Borrower with Lender's parent company and with any subsidiary or affiliate of Lender or of Lender's company.

**FINANCIAL INFORMATION.** Borrower will furnish to Lender, at Borrower's expense, promptly upon each request of Lender, such information in writing regarding Borrower's financial condition, income taxes, properties, business operations, if any, and pension plans, if any, as Lender may from time to time reasonably request, prepared, in the case of financial information, in accordance with generally accepted accounting principles consistently applied and otherwise in form and detail satisfactory to Lender.

**FINAL AGREEMENT.** This Note and the Related Writings set forth the entire agreement between the parties regarding the transactions contemplated hereby and supercede all prior agreements, commitments, discussions, representations and understandings, whether written or oral, and any and all contemporaneous oral agreements, commitments, discussions, representations and understandings between the parties relating to the subject matter hereof.

**DIRECT DEBIT.** The following is applicable if checked by Borrower:

Payments shall be paid by the Borrower by debiting the Borrower's \_\_\_\_\_ account, number \_\_\_\_\_ on the due date.

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

**GENERAL PROVISIONS.** Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Each Borrower understands and agrees that, with or without notice to Borrower, Lender may with respect to any other Borrower (a) make one or more additional secured or unsecured loans or otherwise extend additional credit; (b) alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms any indebtedness, including increases and decreases of the rate of interest on the indebtedness; (c) exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any security, with or without the substitution of new collateral; (d) apply such security and direct the order or manner of sale thereof, including without limitation, any non-judicial sale permitted by the terms of the controlling security agreements, as Lender in its discretion may determine; (e) release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; and (f) determine how, when and what application of payments and credits shall be made on any other indebtedness owing by such other Borrower. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

**ILLINOIS INSURANCE NOTICE.** Unless Borrower provides Lender with evidence of the insurance coverage required by Borrower's agreement with Lender, Lender may purchase insurance at Borrower's expense to protect Lender's interests in the collateral. This insurance may, but need not, protect Borrower's interests. The coverage that Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the collateral. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by their agreement. If Lender purchases insurance for the collateral, Borrower will be responsible for the costs of that insurance, including interest and any other charges Lender may impose in connection with the


PROMISSORY NOTE  
(Continued)

placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Borrower's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on Borrower's own.

PRIOR TO SIGNING THIS NOTE, EACH BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. EACH BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

X   
Kevin Foss, Individually

X   
Bonnie Foss, Individually