

LOST ASSIGNMENT OF MORTGAGE AFFIDAVIT AND
INDEMNIFICATION AGREEMENT

STATE OF ALABAMA)

COUNTY OF SHELBY)

MORTGAGOR NAME:

**JAMES E.
ABERNATHY AND
LEE ANN
ABERNATHY**

ORIGINAL MORTGAGEE: MORTGAGESTAR, INC.

DATED: JULY 20, 2001

RECORDED: INST. #2002-12505

THIS LOST ASSIGNMENT OF MORTGAGE AFFIDAVIT AND INDEMNIFICATION AGREEMENT (this "Agreement") is made by Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. 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, Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. is the owner and holds all of the right, title and interest in, to and under that certain Promissory Note executed by James E. Abernathy and Lee Ann Abernathy, in favor of Mortgagestar, Inc., and dated July 20, 2001 (hereafter the "Note");

WHEREAS, an Assignment of Mortgage is used to memorialize the transfer of interest to Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc., or to a predecessor in interest of Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc., 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 Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc., or to a predecessor in interest of Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. was not recorded in the office of the Judge of Probate of the county where the subject property is located;

WHEREAS, Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. does not have possession of the Assignment, nor does Mortgage

Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. have knowledge regarding the whereabouts of the Assignment, and furthermore Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. has used due diligence and its best efforts to locate this Assignment.

NOW THEREFORE, Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. represents, warrants and covenants as follows:

1. Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc.'s Representations.

- (a.) That _____, executing this Agreement on behalf of Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc., is the _____ [Insert title] of Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. and has the power and authority to enter into this Agreement and to execute same on behalf of Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc.;
- (b.) That as of the date hereof, Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. is the sole owner of the Note, which is secured by that certain Mortgage recorded in Inst. #2002-12505 in the Office of the Judge of Probate of Shelby County (hereafter the "Mortgage");
- (c.) That the Assignment was duly executed and delivered by Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc.'s predecessor in interest but has been lost or misplaced, and Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. has been unable to locate the Assignment despite diligent efforts to do so;
- (d.) That if the Assignment is located at any time hereafter Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. shall immediately forward the Assignment to First American;
- (e.) That Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. warrants it has not assigned, pledged, sold, endorsed, or in any way transferred or hypothecated the Note or any interest therein.

2. **Indemnity.** Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. 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, Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. 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 Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. shall pay the reasonable attorney's fees and cost, as provided in Paragraph 2 above.
4. **Joint and Several Liability.** The obligations of Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. hereunder shall be joint and several.
5. **Attorney's Fees.** In the event of any litigation between Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. 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 Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc., 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, Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc. has executed this Agreement on this _____ day of _____, 2002.

Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Countrywide Home Loans, Inc

By: Michael D. Vestal

MICHAEL VESTAL, VICE PRESIDENT

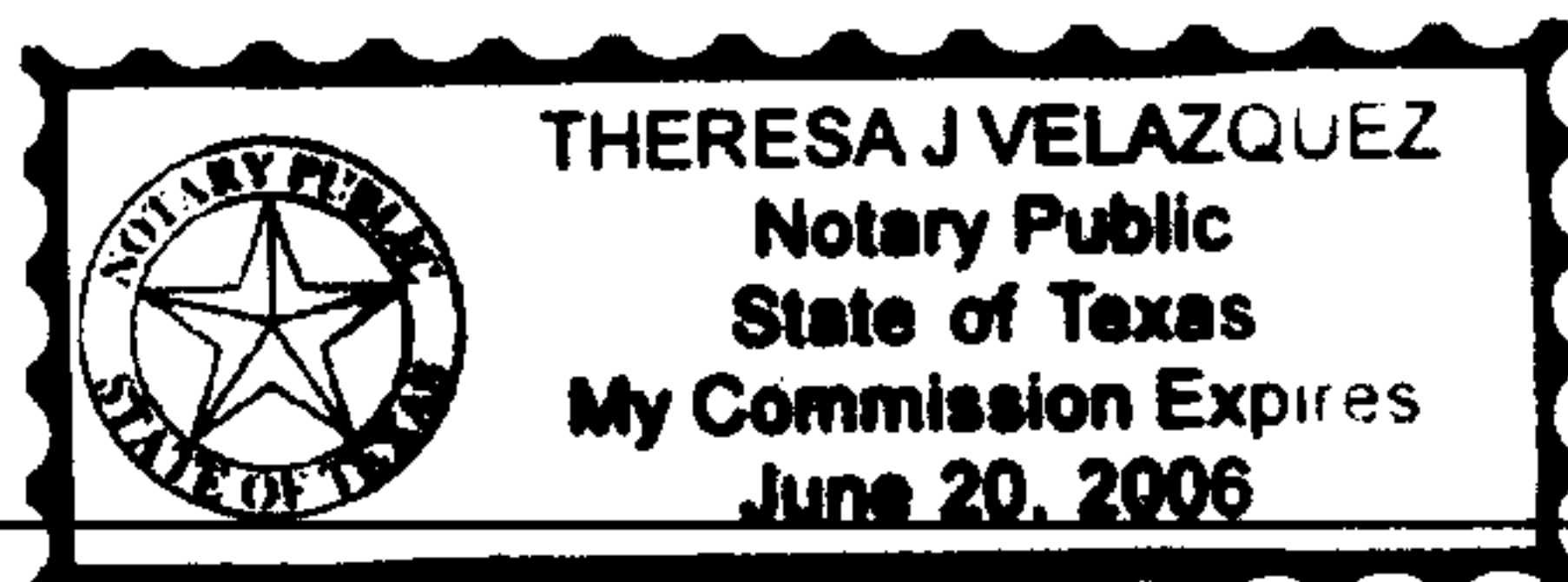
Its _____

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 _____, 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 19 day of September, 2002.



NOTARY PUBLIC

My commission Expires:
