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LOST ASSIGNMENT OF MORTGAGE AFFIDAVIT AND INDEMNIFICATION AGREEMENT

STATE OF ALABAMA)
COUNTY OF SHELBY)



20040610000313020 Pg 1/5 23.00
Shelby Cnty Judge of Probate, AL
06/10/2004 09:45:00 FILED/CERTIFIED

**MORTGAGOR NAME: GLENNIS D. SMITH AND WIFE
MARY E. SMITH**

ORIGINAL MORTGAGEE: **HUSTON-ELROD MORTGAGE CORPORATION**

DATED: 26TH DAY OF MARCH, 2001

RECORDED: INSTRUMENT # 2001-20365

THIS LOST ASSIGNMENT OF MORTGAGE AFFIDAVIT AND INDEMNIFICATION AGREEMENT (this "Agreement") is made by BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS of CWMBS Series 2004-R1 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, Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 is the owner and holds all of the right, title and interest in, to and under that certain Promissory Note executed by Glennis D. Smith and wife Mary E. Smith in favor of Huston-Elrod Mortgage Corporation and dated the 26th day of March, 2001 (hereafter the “Note”);

WHEREAS, an Assignment of Mortgage is used to memorialize the transfer of interest to Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 , or to a predecessor in interest of Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 , 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 Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 , or to a predecessor in interest of Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 was not recorded in the office of the Judge of Probate of the county where the subject property is located;

WHEREAS, Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 does not have possession of the Assignment, nor does Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 have knowledge regarding the whereabouts of the Assignment, and furthermore Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 has used due diligence and its best efforts to locate this Assignment.

NOW THEREFORE, Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 represents, warrants and covenants as follows:

1. Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 represents:

- (a.) That Kimberly Dawson, executing this Agreement on behalf of Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1, is the Vice president of Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 and has the power and authority to enter into this Agreement and to execute same on behalf of Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 ;
- (b.) That as of the date hereof, Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 is the sole owner of the Note, which is secured by that certain Mortgage recorded in Instrument # 2001-20365 in the Office of the Judge of Probate of Shelby County (hereafter the "Mortgage");
- (c.) That it is the understanding of Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 that the Assignment was duly executed and delivered by Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1's predecessor in interest but has been lost or misplaced, and Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 has been unable to locate the Assignment despite diligent efforts to do so;
- (d.) That if the Assignment is located at any time hereafter Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 shall immediately forward the Assignment to First American;
- (e.) That Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 warrants it has not assigned, pledged, sold, endorsed, or in any way transferred or hypothecated the Note or any interest therein.

2. **Indemnity.** Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 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, Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 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 Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 shall pay the reasonable attorney's fees and cost, as provided in Paragraph 2 above.
4. **Joint and Several Liability** The obligations Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 hereunder shall be joint and several.
5. **Attorney's Fees.** In the event of any litigation between Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 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 Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1, 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, Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 has caused this instrument to be executed by Kimberly Dawson an officer of Countrywide Home Loans, as attorney-in-fact for Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1 to

that certain Power of Attorney attached hereto as Exhibit A. This instrument is executed on this the 27 day of May, 2004.

Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1
By: [Signature]

Its KIMBERLY DAWSON VICE PRESIDENT

Countrywide Home Loans

Attorney in Fact for Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1

This instrument prepared by:

Jerry E. Held

Sirote & Permutt, P.C.

P.O. Box 55727

Birmingham, AL 35255

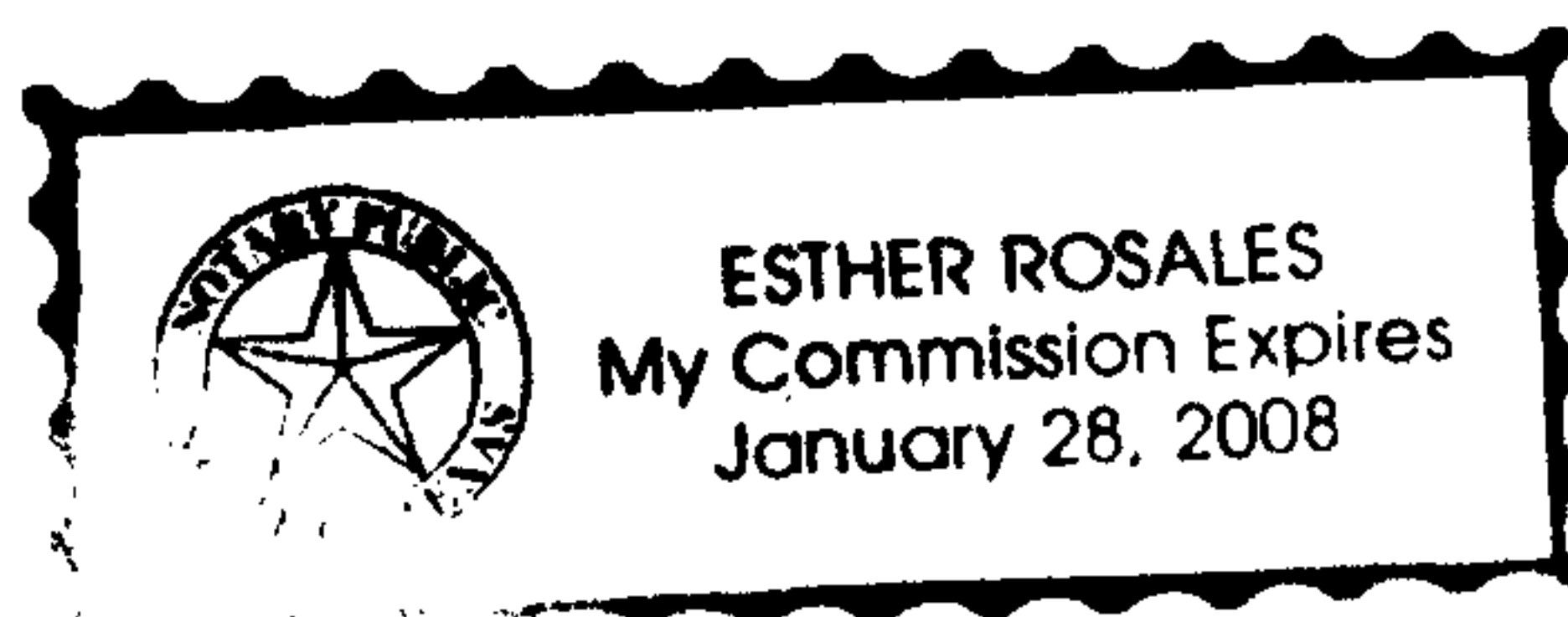
ACKNOWLEDGEMENT

STATE OF Texas

COUNTY OF Collin

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that KIMBERLY DAWSON VICE PRESIDENT, whose name as Vice President of Countrywide Home Loans, as Attorney in Fact for Bank of New York, as trustee for the Certificateholders of CWMBS Series 2004-R1, a corporation, is signed to the foregoing conveyance, 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, action in its capacity as Attorney in Fact as aforesaid.

Given under my hand and official seal, this the 27 day of May, 2004.



[Signature: Esther Rosales]
NOTARY PUBLIC
My Commission expires:
AFFIX SEAL

POWER OF ATTORNEY

The undersigned, as Trustee under the Pooling and Servicing Agreements (as defined below) hereby constitutes and appoints Countrywide Home Loans Servicing LP and its authorized officers (collectively, "CHL Servicing") and each of them, its true and lawful attorneys-in-fact and agents, with full powers of substitution and resubstitution, for and in its name, place and stead, in any and all capacities, for the limited purpose of executing and recording any and all documents necessary to effect (i) a foreclosure of a Mortgage Loan, (ii) the disposition of an REO Property, (iii) an assumption agreement or modification agreement or supplement to the Mortgage Note, Mortgage, or deed of trust, and (iv) a reconveyance, deed of reconveyance or release or satisfaction of mortgage or such instrument releasing the lien of a Mortgage in connection with the transactions contemplated in those certain Pooling and Servicing Agreements (the "Pooling and Servicing Agreement") by and among the undersigned, CHL Servicing, CHL, and CWMBS, Inc. The undersigned also grants unto said attorneys-in-fact and agents, and each of them, the full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as might or could be done in person to effect items (i), (ii) and (iii) above, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their substitutes, may lawfully do or cause to be done by virtue hereof. Any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the Pooling and Servicing Agreements.

THE BANK OF NEW YORK, as Trustee

By: Courtney A. Bartholomew

Its: Vice President

On the 24th of July, 2003, before me, John Richardson, personally appeared Courtney A. Bartholomew, Vice President of The Bank of New York, as Trustee personally known to me to be the person who name is subscribed hereon and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature hereon, is authorized to execute this instrument on behalf of The Bank of New York, as Trustee.

Witness my hand and official seal.

[Signature]
Notary Public

