

Loan # 591-4868895

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

STATE OF ALABAMA)
COUNTY OF SHELBY)

MORTGAGOR NAME: JAMES F. FITCH III, AN UNMARRIED
MAN

ORIGINAL MORTGAGEE: NEW SOUTH FEDERAL SAVINGS
BANK

DATED: 27TH DAY OF OCTOBER, 1998

RECORDED: INSTRUMENT NUMBER 1998-45551

THIS LOST ASSIGNMENT OF MORTGAGE AFFIDAVIT AND INDEMNIFICATION AGREEMENT (this "Agreement") is made by WELLS FARGO BANK, N.A. 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, Wells Fargo Bank, N.A. is the owner and holds all of the right, title and interest in, to and under that certain Promissory Note executed by James F. Fitch III, an unmarried man in favor of New South Federal Savings Bank and dated the 27th day of October, 1998 (hereafter the "Note");

WHEREAS, an Assignment of Mortgage is used to memorialize the transfer of interest to Wells Fargo Bank, N.A., or to a predecessor in interest of Wells Fargo Bank, N.A., 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 Wells Fargo Bank, N.A., or to a predecessor in interest of Wells Fargo Bank, N.A. was not recorded in the office of the Judge of Probate of the county where the subject property is located;

WHEREAS, Wells Fargo Bank, N.A. does not have possession of the Assignment, nor does Wells Fargo Bank, N.A. have knowledge regarding the whereabouts of the Assignment, and furthermore Wells Fargo Bank, N.A. has used due diligence and its best efforts to locate this Assignment.

NOW THEREFORE, Wells Fargo Bank, N.A. represents, warrants and covenants as follows:

1. **Wells Fargo Bank, N.A. represents:**

- (a.) That BRIAN WITHEREL, executing this Agreement on behalf of Wells Fargo Bank, N.A., is the Vice President Loan Documentation of Wells Fargo Bank, N.A. and has the power and authority to enter into this Agreement and to execute same on behalf of Wells Fargo Bank, N.A.;
- (b.) That as of the date hereof, Wells Fargo Bank, N.A. is the sole owner of the Note, which is secured by that certain Mortgage recorded in Instrument Number 1998-45551 in the Office of the Judge of Probate of Shelby County (hereafter the "Mortgage");
- (c.) That it is the understanding of Wells Fargo Bank, N.A. that the Assignment was duly executed and delivered by Wells Fargo Bank, N.A.'s predecessor in interest but has been lost or misplaced, and Wells Fargo Bank, N.A. has been unable to locate the Assignment despite diligent efforts to do so;
- (d.) That if the Assignment is located at any time hereafter Wells Fargo Bank, N.A. shall immediately forward the Assignment to First American;
- (e.) That Wells Fargo Bank, N.A. warrants it has not assigned, pledged, sold, endorsed, or in any way transferred or hypothecated the Note or any interest therein.

2. **Indemnity.** Wells Fargo Bank, N.A. 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, Wells Fargo Bank, N.A. 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 Wells Fargo Bank, N.A. shall pay the reasonable attorney's fees and cost, as provided in Paragraph 2 above.

4. **Joint and Several Liability** The obligations Wells Fargo Bank, N.A. hereunder shall be joint and several.
5. **Attorney's Fees.** In the event of any litigation between Wells Fargo Bank, N.A. 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 Wells Fargo Bank, N.A., 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, Wells Fargo Bank, N.A. has executed this Agreement on this 3rd day of August, 2004.

Wells Fargo Bank, N.A.

By:  _____

Its Vice President Loan Documentation

ACKNOWLEDGEMENT

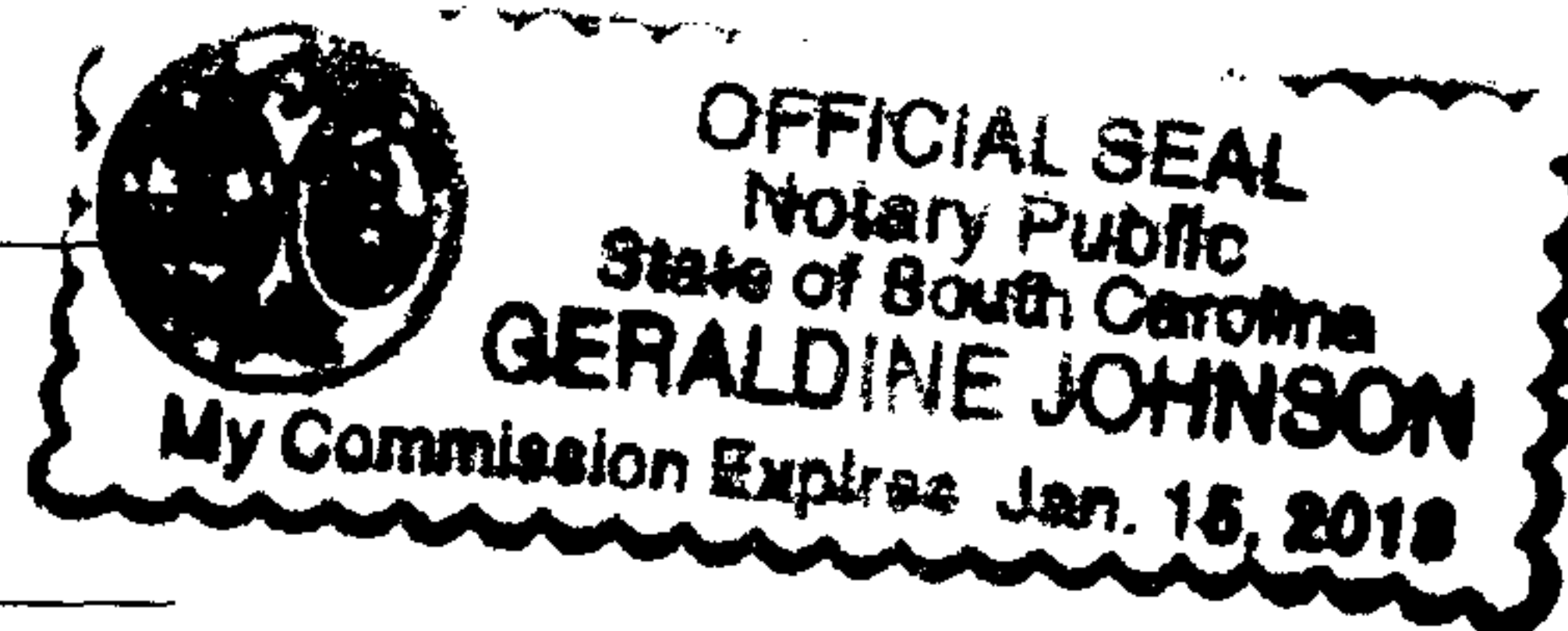
STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Brian Witherel, whose name as Vice President Loan Documentation of Wells Fargo Bank, N.A., 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 3rd day of August, 2004.

Geraldine Johnson
NOTARY PUBLIC
My commission Expires:



This instrument prepared by:
Jerry E. Held
Sirote & Permutt, P.C.
P.O. Box 55727
Birmingham, AL 35255