

Loan #0357302098

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

STATE OF ALABAMA)
COUNTY OF SHELBY)

MORTGAGOR NAME: JUDD M. ESTES AND KIM ESTES
 HUSBAND AND WIFE

ORIGINAL MORTGAGEE: CHARTER ONE MORTGAGE CORP.

DATED: 9TH DAY OF NOVEMBER, 2001

RECORDED: INSTRUMENT NO. 2001-49976

THIS LOST ASSIGNMENT OF MORTGAGE AFFIDAVIT AND INDEMNIFICATION AGREEMENT (this "Agreement") is made by GMAC MORTGAGE, LLC to and for the benefit of FIDELITY NATIONAL TITLE INSURANCE COMPANY and its partners, directors, officers, agents, and employees referred to herein collectively as "Fidelity".

WITNESSETH

WHEREAS, GMAC Mortgage, LLC is the owner and holds all of the right, title and interest in, to and under that certain Promissory Note executed by Judd M. Estes and Kim Estes husband and wife in favor of Charter One Mortgage Corp. and dated the 9th day of November, 2001 (hereafter the "Note");

WHEREAS, an Assignment of Mortgage is used to memorialize the transfer of interest to GMAC Mortgage, LLC, or to a predecessor in interest of GMAC Mortgage, LLC, 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 GMAC Mortgage, LLC, or to a predecessor in interest of GMAC Mortgage, LLC was not recorded in the office of the Judge of Probate of the county where the subject property is located;

WHEREAS, GMAC Mortgage, LLC does not have possession of the Assignment, nor does GMAC Mortgage, LLC have knowledge regarding the whereabouts of the Assignment, and furthermore GMAC Mortgage, LLC has used due diligence and its best efforts to locate this Assignment.

NOW THEREFORE, GMAC Mortgage, LLC represents, warrants and covenants as follows:

1. **GMAC Mortgage, LLC represents:**

- (a.) That _____, executing this Agreement on behalf of GMAC Mortgage, LLC, is the _____ of GMAC Mortgage, LLC and has the power and authority to enter into this Agreement and to execute same on behalf of GMAC Mortgage, LLC;
- (b.) That as of the date hereof, GMAC Mortgage, LLC is the sole owner of the Note, which is secured by that certain Mortgage recorded in Instrument No. 2001-49976 in the Office of the Judge of Probate of Shelby County (hereafter the "Mortgage");
- (c.) That it is the understanding of GMAC Mortgage, LLC that the Assignment was duly executed and delivered by GMAC Mortgage, LLC's predecessor in interest but has been lost or misplaced, and GMAC Mortgage, LLC has been unable to locate the Assignment despite diligent efforts to do so;
- (d.) That if the Assignment is located at any time hereafter GMAC Mortgage, LLC shall immediately forward the Assignment to Fidelity;
- (e.) That GMAC Mortgage, LLC warrants it has not assigned, pledged, sold, endorsed, or in any way transferred or hypothecated the Note or any interest therein.

2. **Indemnity.** GMAC Mortgage, LLC shall indemnify, defend and hold harmless Fidelity 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 Fidelity, 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. **Fidelity's Attorneys.** In the event of any litigation brought against Fidelity which is covered by Paragraph 2 above, GMAC Mortgage, LLC agrees that Fidelity shall have the right, in its sole discretion, to select and retain any attorneys to advise or defend them against said litigation, and GMAC Mortgage, LLC shall pay the reasonable attorney's fees and cost, as provided in Paragraph 2 above.

4. **Joint and Several Liability** The obligations of GMAC Mortgage, LLC hereunder shall be joint and several.

5. **Attorney's Fees.** In the event of any litigation between GMAC Mortgage, LLC and Fidelity 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 GMAC Mortgage, LLC, their respective heirs, executors, administrators, successors and assigns, and shall inure to the benefit of Fidelity and its respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, GMAC Mortgage, LLC has executed this Agreement on this 5 day of March, 2009

GMAC Mortgage, LLC

By: _____

Its _____

Jeffrey Stephan
Limited Signing Officer

ACKNOWLEDGEMENT

STATE OF Pa)

COUNTY OF Montgomery)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Jeffrey Stephan, whose name as LSO of GMAC Mortgage, LLC, 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 5 day of March, 2009

Mary Lynch
NOTARY PUBLIC

My commission Expires: _____

This instrument prepared by:
Colleen McCullough
Sirote & Permutt, P.C.
P.O. Box 55727
Birmingham, AL 35255

