

26th Judicial District Court

Williamson County, Texas

405 M.L.K. Street,

Georgetown, TX 78626

In Re: A Purported Lien or Claim Against

Alvie Campbell and Julia Campbell

Cause No. 11-341-C26

Honorable Billy Ray Stubblefield, Judge

Amicus

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March 20, 2010

26th Judicial District Court

Williamson County, Texas
405 M.L.K. Street,
Georgetown, TX 78626

Honorable Billy Ray Stubblefield, Judge

Re: Cause No. 11-341-C26

James McGuire respectfully submits this Amicus to aid in providing a clear understanding of some of the hidden facts so elusively avoided by the financial sector so that America may once again stand tall in the light of Truth and Justice.

Background

I retired from nearly 40 years in Mechanical Engineering and Design. Approximately a decade and a half has passed since my first becoming involved in understanding the homeowner's Mortgage Note and Security Instrument being used in securitization governed by the Uniform Commercial Code or the states equivalence, E-SIGN (Electronic Signatures in Global and National Commerce Act, 2000), UETA (Uniform Electronic Transaction Act, 1999), state recordation statutes (specifically for Texas and a general understanding in other states). I have no graduate degree in either the legal or financial field and such a degree is not necessary or required to comprehend the fraud committed; further, I do not desire to have such accreditation.

What is possessed: an engineer's mentality to comprehend and apply present day facts to current laws as written. The last number of years I operated under the oversight of several legal counselors in researching the depth of the deception. My conversations with others regarding

this subject are with very learned persons in the academic area and with multiple legal counselors.

I have posted on <http://www.scribd.com/alviec> over a hundred documents that explain in great detail the faults within the current securitization process. A recent article by Neil Garfield stated that what was “fringe”¹ only a couple of months ago is here today. Neil Garfield also noted that my Amicus to the New Jersey court was “Required Reading.”² Others skilled in law have commented that my writings are so far out on the front edge of the curve that only a few academics can fully comprehend them. The information presented in this Amicus is in this front edge of the curve; the “fringe” today may at first look like an iceberg, but it is more like an ice cube in a punch bowl. In addition, Professor Randall Wray noted my Amicus in an article³ published in the Huffington Post, which in part stated:

I have relied on my perusal of reported evidence, plus a discussion with James McGuire who has put together an entirely convincing argument that the securitizations of mortgages resulted in securities that are not backed by mortgages. I urge interested readers to go to [his website](#)⁴.

1. The Creation of the Mortgage Note and Security Instrument

Uniform Commercial Code and state recordation requirements

The Homeowner (Obligor) signs a Mortgage Note and a Security Instrument. Upon signing of the Security Instrument and by operation of law, the Security Instrument is automatically attached to the Mortgage Note and temporary perfection is established. The

¹ <http://livinglies.wordpress.com/2010/12/19/the-pools-are-empty-and-the-sec-is-coming/>

² <http://livinglies.wordpress.com/?s=amicus+curiae>

³ http://www.huffingtonpost.com/l-randall-wray/why-mortgagebacked-securi_b_802600.html

⁴ <http://www.scribd.com/alviec>

Security Instrument when filed in public records transforms a temporary perfection into a permanent perfection and is notice to the world. Regardless of whether the Mortgage Note is sold to a subsequent purchaser, recordation of the Security Instrument is required to permanently perfect the lien. The Security Instrument affects title to Real Property, and as such, the laws of local jurisdiction govern and such requirement to comply with local laws of jurisdiction is contained within the Security Instrument itself. The filing of record serves a second and distinctive purpose: it creates the priority of perfection among subsequent purchasers of the Mortgage Note and is not addressed further in this document. Upon attachment and perfection of the Security Instrument to the Mortgage Note, the Mortgage Note becomes an indebtedness that is “Secured.”

2. Tangible – Personal Property versus Real Property

Failure to Maintain Continuous Perfection

The Mortgage Note and the Security Instrument are Tangibles and Personal Property and we shall consider the two items in tandem to be called the “Mortgage” and such “Mortgage” is Tangible and Personal Property. One must not forget the terms contained within the Security Instrument affect an interest in Real Property and these terms require compliance with all applicable, federal, state and local laws and the language contained within the Security Instrument itself. Failure to comply with the laws governing the contents of the Security Instrument or language within the Security Instrument would render the Security Instrument a nullity. If such Security Instrument becomes a nullity, then the classification of the Mortgage Note is reduced in status from “Secured” to “Unsecured” and as a result of the Security

Instrument becoming a nullity the “Power of Sale Clause” contained within the Security Instrument would also be nullity.

The Mortgage being a Payment Intangible can be negotiated by possession and the security for this Payment Intangible is the right to collect monies from the (Mortgage Note secured by the Security Instrument as collateral). Thus, the (Mortgage Note and Security Instrument as collateral) is security for the Payment Intangible and it is this security that follows the Mortgage (Payment Intangible) where the Mortgage is the owner of the Mortgage Note and what should be a valid perfected Security Instrument. Again, the Mortgage is nothing more than a Payment Intangible (Personal Property) and the security for this Payment Intangible is the right to collect monies noted in the Payment Intangible’s security, the Mortgage Note. The Payment Intangible’s security also consists of a valid perfected Security Instrument along with any valid Assignment of Mortgage filed of record to transfer lien rights in accordance with laws that govern the Security Instrument.

Regardless of the hierarchy of ownership of the Payment Intangible, Mortgage, Mortgage Note or Security Instrument, the terms contained within the Security Instrument must be complied with, and this author has not seen a Security Instrument that does not itself require compliance with federal, state or local laws. Failure to comply with the laws of local jurisdiction that govern the terms within the Security Instrument would render the Security Instrument a nullity and the Mortgage Note would then be reduced to “Unsecured” and the Mortgage (Payment Intangible) would then be left without a valid perfected lien to allow foreclosure of the Real Property. Additionally, if the Security Instrument was rendered a nullity by failure to comply with the laws or the terms contained within the Security Instrument, the secondary market has not purchased a “Secured” indebtedness and any claim made by a subsequent

purchaser including Trusts are without rights to enforce the “Power of Sale Clause” and no foreclosure is possible. This failure to provide a complete Mortgage to the secondary market is the real fraud that the financial institutions are trying to conceal.

Even with a nullified Security Instrument, if a valid Mortgage Note with a complete Chain of Indorsement is proved, the Holder/Owner with right as Holder in Due Course could sue for equity in a court of jurisdiction.

So when it is said the Mortgage follows the Note, one must remember that the Security for the Payment Intangible follows the Payment Intangible without filing of record, and therefore, the underlying Mortgage Note would be followed by a valid continuous perfected Security Instrument if there were compliance with applicable laws to maintain perfection of the Security Instrument.

3. Original Obligee (Lender) Takes Possession of the Secured Mortgage Note

Proper Parties

Original Obligee takes possession of the Mortgage Note and permanently perfects the Security Instrument by filing of record in the Original Obligee’s name. Failure to name the correct parties could possibly be a fatal to the enforcement of the terms in the Mortgage Note or Security Instrument.

4. Original Obligee (Lender) Sells The Secured Mortgage Note

Obligee Indorses Mortgage Note to “In Blank” Indorsee

The Original Obligee sells the Mortgage to a subsequent purchaser. Proper procedure is to negotiate the Mortgage Note under cover of a Bailee's Letter to the subsequent purchaser and then transfer the rights to the Security Instrument by filing of record the name of the subsequent purchaser who purchased the Mortgage Note and completing the Mortgage Note negotiation by noting the owner name in the blank.

Original Obligee indorses the Mortgage Note and delivers the same to the subsequent purchaser (Second Obligee). Second Obligee then completes the negotiation by filling in the blank, if negotiated in blank, then files of record an assignment of the mortgage to transfer and perfect the Security Instrument's lien into the Second Obligee's name. If the Second Obligee fails to complete the negotiation by noting ownership in the "blank," then the Second Obligee may have become the possessor of the note but has not become the holder of the note and has not achieved holder in due course with rights to enforce the Mortgage Notes terms or the terms within the Security Instrument. Additionally, failure to file of record the Assignment of the Security Instrument fails to transfer lien rights and this failure to transfer lien rights has rendered a once secured Mortgage Note to "Unsecured."

5. Original Obligee (Lender) Sells an Unsecured Mortgage Note

(MERS as Nominee)

MERS Hides the Fraud

Where MERS is filed of record as the Mortgagee as Nominee for a lender and lender's assigns, and where the first negotiation of the Mortgage Note is executed "In Blank," one has to inquire how MERS would represent an unidentified Indorsee. In most cases this unidentified

Indorsee ceases to exist after the creation of the security trust and may not have existed upon the closing of the loan. This unidentified Indorsee and subsequent unidentified Indorsee's would constitute a break in the "Chains." There are two distinct Chains. One chain is that of indorsements noted on the face of the Mortgage Note and the publicly recorded chain of title that transfers lien perfection. This Paper will not dwell into to the details of the "Chains." As MERS claims to be the Mortgagee of record for lender and lender's assigns and as the Mortgage Note is negotiated in blank through a number of unidentified endorsees, it is clearly observable from the facts that continuous perfection of the Security Instrument has not been in compliance with the laws of local jurisdiction which govern the Security Instrument. The chain of indorsements use of "In Blank" is also fatal as an "IN BLANK" unidentified party cannot negotiate the Mortgage Note.

6. CONFUSION

Hiding the Fraud

Wall Street is buying a Payment Intangible (Personal Property) and as such is the owner and holder of that Payment Intangible and the laws that govern the Payment Intangible allow for negotiation by possession. The Payment Intangible's security is the Mortgages (Personal Property) contained within the collateral pool. Remember, the Mortgage actually consists of two parts, the Mortgage Note and a lawfully continuously perfected Security Instrument. So it is now safe to say the security follows the note, yep, but the security that follows the note may in fact be a nullity by the hierarchy ownership's failure to comply with laws that govern the Security Instrument. Bottom line, the Mortgage Note maybe proved up with a proper chain of indorsements years after the trust creation but loss of perfection can never be proved up once lost

and therefore Wall Street may have only bought an unsecured Mortgage Note. The author will not comment on REMIC IRS tax issues. To further complicate the issue, multiple purchases by Wall Street may have not been that of the Mortgage Notes but that of a Transferable Record which is registered within the MERS system.

7. Why the Investor

Does Not Own the Mortgage Note and Security Instrument

*The Mortgage Note Does Not Identify the Subsequent
Owner & Holder of the Mortgage Note or the Security Instrument*

As stated, the Mortgage Note and the Security Instrument is Personal Property and is commonly called the “Mortgage.” This Mortgage which is personal property is offered up as collateral to the Payment Intangible in the formation of the Trust. To explain, we must present the Trust in reverse order. Investors purchase a beneficial interest in Trust Certificates. The Trust owns the right to the monies collected from the Payment Intangible. The Payment Intangible owns the right to collect monies owed under the Mortgage Note(s). The Certificates and Payment Intangibles are personal property; the local laws of jurisdiction that affect real estate do not apply in a direct manner. The Trust documents provide a precise mechanism for negotiating the Mortgage Note and Security Instrument into the Mortgage (Payment Tangible) Pool. The majority of notes this author has reviewed reflect a single indorsement in blank from the Original Obligee, which raises severe concerns that a chain of indorsements is missing from the Mortgage Note to show a complete chain of negotiation that is required by law to be within public records to show a true “Chain of Title”. The “Chain of Title,” an Assignment of Mortgage (The Security Instrument)) that is properly filed of record would be notice of a perfected lien and the priority of

those subsequent purchasers of the Mortgage Note. Filing for transferring perfection of the lien (Security Instrument) and filing for notice of priority to subsequent purchasers of the Mortgage Note to establish who has priority lien rights is not one in the same. Failure to properly negotiate does not transfer “Holder in Due Course” (ownership/status/rank/qualification/legal status etc., according to the UCC governing law) to a subsequent party not named on the Mortgage Note.

8. The First Negotiation in Blank

Or How Not To

Where the Mortgage Note was being used as collateral in a Mortgage Backed Security (MBS), and an unknown “Indorsee in Blank” would need to be the first entity in the MBS creation, thus the “In Blank” should contain the identity of that party to allow additional negotiation of the Mortgage Note to further the creation of the Trust. Additionally, we must question the means and the methods employed by MERS to be a Mortgagee of record as “Nominee” for an unidentified “In Blank” or any type of agency relationship to an unidentifiable “In Blank.” Currently, one example, the only means offered to identify an unidentified “In Blank” is contained within a Pooling and Servicing Agreement (PSA). The PSA identifies all the parties that would need to appear in the chain of indorsements and chain of title, this required chain of indorsement is not what is usually found on the face of the Mortgage Note. The Mortgage Note being negotiated by a single “In Blank” through multiple unidentified indorsee’s is not in compliance with the PSA, the UCC or the states equivalence of the UCC, and the failure to file of record the named party Indorsee , “In Blank” party also creates a break in the chain of title in public records. The frog’s bottom: the parties that can be identified on the face of the

Mortgage Note, chain of indorsements, does not match the chain of title filed of record. “Rivet, Rivet,” add an allonge and affix it.

9. WHY THE CHAINS DO NOT MATCH

“MERS”

How would one record of record an unidentified Indorsee “In Blank”? The unidentified Indorsee “In Blank” is not a real person, not a company; in fact, the unidentified Indorsee “In Blank” is a non-existent party, or is it? As the author has noted, the evidence offered to identify the Indorsee “In Blank” appears in third party contracts used in the creation of the investment vehicle and this unidentified “In Blank” Indorsee by admission of MERS can be located within the MERS system and would appear in a MERS’ Audit Trail. As it can be seen, MERS can track an unidentified Indorsee “In Blank;” but can an unidentified Indorsee “In Blank” be named as a party and filed of record? This is one reason the Chain of Indorsements on the face of the Mortgage Note does not match the Chain of Title filed in public records which filing of record would note the legal party entitled to a continuous perfected lien. The Security Instrument filed of record converts a temporary perfection and attachment into a permanent perfected lien, while the filing of record of an unidentified Indorsee “In Blank” transfers nothing. In the author’s opinion, MERS alludes that they are the Mortgagee of Record as a means to avoid the problems with filing of record an unidentified Indorsee “In Blank.” The process of indorsing in blank raises one serious question, how does an unidentified Indorsee “In Blank” indorse a note in blank to a subsequent unidentified Indorsee “In Blank” and comply with local laws of jurisdiction governing the Security Instrument that was to secure the Mortgage Note? Failure to follow the terms within the Security Instrument would breach the Security Instrument contract and render

the Mortgage Note unsecured. Not only was the Mortgage Note not properly negotiated to the Wall Street trusts through multiple unidentified “In Blank” Indorsees’, but there was also a failure to transfer a perfected lien to the Wall Street trust. Note: these conditions also apply to Fannie Mae, Freddie Mac and certain private investments and also affect Commercial Mortgage Backed Securities.

10. The Second Negotiation in Blank

Unidentified Indorsee “In Blank” Indorses “In Blank”

Still Using the First “In Blank” Indorsement-Failure to Negotiate

The second negotiation in the Mortgage Note negotiation would be from the creator of the trust to the depositor of the trust, but in actuality the “First Indorsement in Blank” is utilized for this negotiation. Again, there is an unknown party alleging to be the Holder and Owner of the Mortgage Note by a negotiation “In Blank.” This negotiation is usually indorsed “In Blank” utilizing the “In Blank” from the Original Indorser and no record is filed of record to transfer lien rights to the second “In Blank” Indorsee.

11. MERS and Transferable Records

15 USC 7003, Excludes Negotiable Instruments When UCC Governs

For a moment we have to step back to the “Original Obligee” to understand the movement of the Mortgage Note. This author has noted some commentators are adamant that the Mortgage Notes are not destroyed at any step in the process and we shall follow that reasoning for the moment. In concession of conversation it is somewhat agreed that the Mortgage Notes are

placed within custody of a Document Custodian. With that said, we have to address many court filings of copies of the Mortgage Notes submitted by the financial institutions where the originals cannot be found and it is common to only see an “Indorsement in Blank” from the Original Obligee. One has to ask why and how this possibly occurred. Simply, if the Original Obligee placed the Mortgage Loan package within the custody of a custodian and the MERS system tracked a “Transferable Record” alleging to be the lawful negotiation of the Mortgage Note and if a need was required for proof, the current entity claiming rights would retrieve whatever documents resided with the original custodian.

12. The Third and Fourth Negotiation in Blank

*Subsequent Negotiation by an Unidentified Subsequent Indorsee “In Blank” to additional
Subsequent Purchasers “In Blank”*

The third step in the Mortgage Note negotiation would be from the depositor of the trust to the Trustee of the Trust, but again, in actuality the “First Indorsement in Blank” is utilized for this negotiation. Again, there is an unknown party alleging to be the Holder and Owner of the Mortgage Note by a negotiation “In Blank.”

The fourth step in the Mortgage Note negotiation would be from the trustee of the trust to the Trust, but again, in actuality the “First Indorsement in Blank” is utilized for this negotiation. Again, there is an unknown party alleging to be the Holder and Owner of the Mortgage Note by a negotiation “In Blank.”

13. Holder, Owner and Holder in Due Course, Innocent Purchaser

(A) One can be the holder of the Mortgage Note

and not be the owner or have rights as holder in due course.

Servicers and trustees possibly could become the possessor of the note and claim they represent the owner and the holder in due course, however, if proper negotiation of the Mortgage Note was not followed as required, the trusts that these trustees represent do not hold sufficient legal rights to enforce the terms in the Mortgage Notes, much less enforce the terms in a nullified Security Instruments.

(B) One can be the owner of the note

and not be the holder or have rights as holder in due course.

The trust may claim to own the Mortgage Note but this would be a misconception. The trust where MERS is involved owns the rights to a “Transferable Record” where that record reflects who has control over a custodian that holds the Mortgage Note, if and when a vaulted copy does exist, and control over MERS as a so called mortgagee of record.

(C) Holder in Due Course

Holder in Due course where proper negotiation was not followed would still reside with the Original Obligee, but issues still exist as to a continuous perfected Security Instrument.

Under the Uniform Commercial Code a subsequent purchaser could not achieve “Holder In Due Course” where fraud was committed by one of the Unidentified “In Blank” Indorsee’s as it affected the Mortgage Note.

(D) Innocent Purchaser

As to an innocent purchaser, a party to the creation of the trust where MERS is involved and named in the PSA or other documents of incorporation has actual notice of MERS's involvement and therefore cannot claim to be an innocent purchaser.

14. Judicial Review Under Texas Government Code 51.903

The Assignment of Note and Transfer of Liens document executed by MERS on September 20, 2008 attached to the plaintiff's motion IS asserted against real or personal property or an interest in real or personal property and:

Not Applicable

(1) IS provided for by specific state or federal statutes or constitutional provisions;

“Assignment of Note and Deed of Trust”, (Exhibit B), identified in public records as instrument #2008075222 as filed is noted to be two (2) pages. On the face of the instrument, the Assignor is identified as “Mortgage Electronic Registration Systems, Inc. as Nominee for Lender and Lenders Successors and Assigns”. The Assignee is noted to be Wells Fargo Bank, N.A., additionally the Payee is identified as Mortgage Electronic Registration Systems, Inc. as Nominee for Lender and Lenders Successors and Assigns.

The Assignment of Note and Deed of Trust references “Deed of Trust” filed as instrument #2004086763 (Exhibit A) in Williamson County records note the Lender to be American Mortgage Network, Inc. d/b/a Amnet Mortgage.

Williamson County public records contain no filing(s) that legally transfers ownership of the Mortgage Note from “American Mortgage Network, Inc. d/b/a Amnet Mortgage” to “Mortgage Electronic Registration Systems, Inc. as Nominee for Lender and Lenders Successors and Assigns”.

Additionally, the “Assignment of Note and Deed of Trust” is a misleading caption name. The instrument clearly defines that it is attempting to assign the rights to the Deed of Trust that does not reflect a memorialization of negotiation of the Mortgage Note.

Therefore, the “Assignment of Note and Deed of Trust” is not instrument that is in the proper chain of title and IS NOT provided for by specific state or federal statutes or constitutional provisions.

Not Applicable

(2) IS created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by consent of an agent, fiduciary, or other representative of that person; or

Assignment of Note and Deed of Trust executed by MERS on September 30, 2008 does not involve an action of the obligor, debtor, or the owner of the real property.

Not Applicable

(3) IS an equitable, constructive, or other lien imposed by a court of competent jurisdiction created or established under the constitution or laws of this state or of the United States.

This subsection is not applicable to the Assignment of Note and Transfer of Liens document executed by MERS on September 30, 2008.

The “Assignment of Note and Transfer of Liens” document executed by MERS on September 30, 2008 attached to the motion herein:

Applicable

(1) IS NOT provided for by specific state or federal statutes or constitutional provisions;

“Assignment of Note and Deed of Trust”, (Exhibit B), identified in public records as instrument #2008075222 as filed is noted to be two (2) pages. On the face of the instrument, the Assignor is identified as “Mortgage Electronic Registration Systems, Inc. as Nominee for Lender and Lenders Successors and Assigns”. The Assignee is noted to be Wells Fargo Bank, N.A., additionally the Payee is identified as Mortgage Electronic Registration Systems, Inc. as Nominee for Lender and Lenders Successors and Assigns.

The Assignment of Note and Deed of Trust references “Deed of Trust” filed as instrument #2004086763 (Exhibit A) in Williamson County records note the Lender to be American Mortgage Network, Inc. d/b/a Amnet Mortgage.

Williamson County public records contain no filing(s) that legally transfers ownership of the Mortgage Note from “American Mortgage Network, Inc. d/b/a Amnet Mortgage” to “Mortgage Electronic Registration Systems, Inc. as Nominee for Lender and Lenders Successors and Assigns”.

Therefore, the “Assignment of Note and Deed of Trust” IS NOT an instrument that is in the proper chain of title and IS NOT provided for by specific state or federal statutes or constitutional provisions.

Additionally, the “Assignment of Note and Deed of Trust” is a misleading caption name. The instrument clearly defines that it is attempting to assign the rights to the Deed of Trust that does not reflect a memorialization of negotiation of the Mortgage Note.

Applicable

(2) IS NOT created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the law of this state or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;

Subsequent negotiation of the Note and Memorialization is not an action whereas the obligor, debtor, or the owner of the real property is a party.

Applicable

(3) IS NOT an equitable, constructive, or other lien imposed by a court of competent jurisdiction created by or established under the constitution or laws of this state or the United States; or

This subsection is not applicable to the Assignment of Note and Transfer of Liens document executed by MERS on September 30, 2008.

Applicable

(4) IS NOT asserted against real or personal property or an interest in real or personal property.

There is no valid lien or claim created by this documentation or instrument.

15. Facts

The “Assignment of Note and Transfer of Liens” document executed by MERS on September 30, 2008, states in part:

“Assignor: MERS, Mortgage Electronic Registration Systems, Inc., as nominee for Lender and Lenders Successors and Assigns.

Assignee: Wells Fargo Bank, N.A.

A complete chain of indorsements from the originator of the Note (American Mortgage Network, Inc. d/b/a Amnet Mortgage) to MERS, Mortgage Electronic Registration Systems, Inc., as nominee for Lender and Lenders Successors and Assigns is devoid from the face of the Note.

Public records are devoid a timely filing of notice of lien rights being perfected in the alleged subsequent Note holder’s name, “Mortgage Electronic Registration Systems, Inc., as nominee for Lender and Lenders Successors and Assigns” as noted by the lack of indorsements on the face of the Mortgage Note.

16. ARGUMENT

A true sale of the Mortgage Note, with accompanying indorsements and filing of record an “Assignment of Deed of Trust” where such Assignment MUST be recorded per Texas Local Government Code 192.007, was required to effectively transfer beneficial rights. Neither the face of the Note nor the transfer of lien rights filed of record in the public records shows a complete chain by which such transfer of beneficial ownership of the Mortgagee Note or lien rights to the Deed of Trust has occurred. To proceed with the Assignment of Note and Deed of Trust claim, there would be unknown Indorsers and unknown Indorsees in the Note ownership chain. Where MERS is not the owner of the Note, because the Note was never indorsed in MERS name, MERS cannot be a Holder in Due Course of the Note. Additionally, where MERS claims an agency relationship, no such agency relationship is possible with an unknown party. An instrument filed in the public records showing that MERS is named as a nominee for such

unidentified party is a nullity. An indorsement from an identified Indorser to an unidentified Indorsee fails to confer Holder in Due Course status and breaks the Holder in Due Course chain, making it impossible to confer Holder in Due Course status to additional downstream unidentified Indorsees. Attempts to file of record a transfer of lien rights and/or an assignment of mortgage (the security) to a party identified as “MERS as nominee for an unidentified parties” should be treated as void ab initio. One cannot assign the security without being the owner of the debt. Any subsequent owner or purported assignor of the security who has not achieved rights as Holder in Due Course of the Note, or any subsequent owner or purported assignor of the security who is not an agent of the Holder in Due Course of the Note, cannot assign the security to any assignee. Any notice thereof would be ineffective notice even if filed of record.

Texas Property Code, Title 3 Sec. 13.001 states in part:

VALIDITY OF UNRECORDED INSTRUMENT. (a) A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

Texas Local Government Code, Chapter 192, section 007 states in part:

RECORDS OF RELEASES AND OTHER ACTIONS. (a) To release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, a person must file, register, or record another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded.

As the Deed of Trust has been filed of record to perfect the lien under Texas Local Government Code, Chapter 192, section 001, the “Assignment of Note and Transfer of Liens” document executed by Mortgage Electronic Registration Systems, Inc. (“MERS”) on September 30, 2008

is not in the proper chain of title to assign lien rights to subsequent purchasers of the Note. Failure to memorialize Note negotiation(s) to unidentified subsequent purchaser(s) in public records as required by law, Texas Local Government Code, Chapter 192, section 007, and applying Texas Property Code, Title 3 Sec. 13.001 notices that such failure to record renders the mortgage or deed of trust void as to a creditor or to a subsequent purchaser for value without notice.

17. Required Procedures to Establish

Holder in due course of a Secured Indebtedness

Referencing the “Assignment of Note and Transfer of Liens” document executed by MERS on September 30, 2008, it states in part;

“Assignor: MERS, Mortgage Electronic Registration Systems, Inc., as Nominee for Lender and Lenders Successors and Assigns.

Assignee: Wells Fargo Bank, N.A.

For Mortgage Electronic Registration Systems, Inc., as Nominee for Lender and Lenders Successors and Assigns to have achieved Holder in due course with enforcement rights to the Note and to also allow the Power of Sale to be enforceable required Mortgage Electronic Registration Systems, Inc., as Nominee for Lender and Lenders Successors and Assigns to be in the chain of indorsements on the face of the Mortgage Note or have that of a proper agent/agency relationship.

Whereas Mortgage Electronic Registration Systems, Inc., as Nominee for Lender and Lenders Successors and Assigns claims to hold only legal title under the Deed of Trust would be under question whereas Mortgage Electronic Registration Systems, Inc., as Nominee for Lender and Lenders Successors and Assigns would not be able to identify who they are an agent of.

18. Application of Texas Government Code § 51.903

A. The September 30, 2008 Assignment IS NOT Provided for by Specific State or Federal Statutes or Constitutional Provisions.

The September 30, 2008 Assignment attempts to memorialize an alleged negotiation of the Note from American Mortgage Network, Inc. d/b/a Amnet Mortgage to Wells Fargo Bank, N.A. Under Texas law, Chapter 3 of the Business and Commerce Code governs the procedure by which said alleged negotiation must occur if it is to be legitimate. Chapter 3 of the Business and Commerce Code allows for negotiation by special indorsement or by indorsement in blank. However, to allow for MERS to be an agent of the subsequent unidentified Indorsee, that Indorsee must be identified; therefore, indorsement in blank is not available as a method to subsequently negotiate the Note. Because MERS could not be an agent for an unidentified subsequent purchaser or assignee of the Note, any attempt to perfect an assignment of the lien to an unidentified subsequent purchaser or assignee of the Note by filing the purported assignment in the public records also fails.

Failure to properly record the transfer of lien rights (Deed of Trust) renders the original perfected lien a nullity. For the Note to be negotiated and for lien perfection to be transferred to Defendants in public records, negotiation could be only by special indorsement.

B. The September 30, 2008 Assignment IS NOT Created by Implied or Express Consent or Agreement of the Obligor, Debtor, or the Owner of the Real or Personal Property or an Interest in the Real or Personal Property, if Required Under the Law of this State or by Implied or Express Consent or Agreement of an Agent, Fiduciary, or Other Representative of That Person

Under Texas law, and under Chapter 3 of the Texas Business and Commerce Code in particular, the obligor, debtor, owner of the real property, or their agents, fiduciaries, or representatives are not involved in or a party to the subsequent negotiation of the Note and memorialization thereof. Plaintiff's closing documents provide notice that the Note and Deed of Trust is subject to purchase without notice to the Plaintiff. Accordingly, the consent of Plaintiff or Plaintiff's agents, fiduciaries, or other representatives to the September 30, 2008. Assignment, whether implied or express, was not requested, provided, or relevant.

C. The September 30, 2008 Assignment IS NOT an Equitable, Constructive, or Other Lien Imposed by a Court of Competent Jurisdiction Created by or Established Under the Constitution or Laws of this State or the United States

The Assignment in this instant case IS NOT an Equitable, Constructive, or Other Lien Imposed by a Court of Competent Jurisdiction Created by or Established Under the Constitution or Laws of this State or the United States

D. The September 30, 2008 Assignment IS NOT Asserted Against Real or Personal Property or an Interest in Real or Personal Property. There is no Valid Lien or Claim Created by this Documentation or Instrument.

MERS cannot be an agent for an unidentified subsequent purchaser. The filing of record to perfect the assignment of lien in MERS name as an agent to unidentified subsequent purchaser of the Note in public records also fails, thus renders the original perfected lien a nullity by failing to maintain continuous perfection. For the Note to be negotiated and for lien perfection to be transferred to Defendants in public records, negotiation could be only by special indorsement. The failure to file all Assignment of

Mortgage of alleged subsequent Memorialization(s) to unidentified purchaser/Indorsee created a break in the chain of title; as such, the “Assignment of Note and Transfer of Liens” document executed by Mortgage Electronic Registration Systems, Inc. (“MERS”) on September 30, 2008 is fraudulent and *void ab initio*.

19. Recitations

To aid in providing a precise understanding of recording laws attention is directed to:

TITLE EXAMINATION OF FEE LANDS INTRODUCTION

This paper is the third on this subject. The first was authored by Thomas J. Nance entitled "Title Examination of Fee Lands Including Severed Mineral Interests" and was delivered at the first Mineral Title Examination Institute in Denver in November 1977. The second was prepared by Phillip Wm. Lear and Robert P. Hill entitled "Examination of Title to "Fee" Lands" and was delivered at the Institute on Mineral Title Examination II at Tucson, Arizona, in April of 1982. Both papers discussed the process or the procedural aspects of examining title to fee lands. The prior articles intentionally did not include a substantive discussion of the recording acts and recording laws. This author's challenge was to discuss the subject of "constructive notice" substantively and to provide practical information concerning the examination of fee land records in the Western United States.

...

All recording acts examined require that an instrument which is not recorded in the county records of the proper county is void as to subsequent purchasers for value. Obviously, the instrument or conveyance must be in writing in order to be recorded. Thus, all recording acts require, among other things, that the instrument conveying land or affecting land be in writing.

...

The following instruments are either void or voidable:

1. Forgery - a forged instrument is void and is a nullity, as if it never existed. All persons claiming under a forged instrument own nothing, no matter how innocent they were or how much consideration they paid.

Usually, possession under a forged deed is not considered possession pursuant to the statutes of limitation.

2. Mistaken identity - the execution of an instrument by the grantor having the same name as the owner of the land conveys no interest and is void.

3. Agent without authority - an instrument executed by a person purporting to be an agent but not authorized pursuant to a written instrument is treated the same as a forgery. *Woodward v. Ortiz*, 150 Tex. 75, 237 S.W.2d 286 (1951)

4. Minority - an instrument executed by a minor is voidable by him until either a statutorily determined time or a reasonable time after the minor reaches majority.

5. Incapacity - an instrument executed by a person lacking legal capacity, such as a minor, or a person lacking mental capacity is voidable until the minor becomes an adult or until the incompetent person's mental capacity is restored.

...

"Chain of title" is defined as the successive conveyances, commencing with the patent from the government, each being a perfect conveyance of the title, down to and including the conveyance to the present owner.

A purchaser or creditor is required by law to look only for conveyances that may have been made prior to his purchase by his immediate Grantor

The process of indorsing in blank and the requirement for transfer of the instrument was precisely stated in re:

Court of Appeals, Ninth District of Texas at Beaumont, Cause No. 09-03-504 CV, *First National Acceptance Company v Floyd Dixon*,

Negotiation of an instrument not payable to bearer requires transfer of possession of the instrument and indorsement by the holder. *Tex. Bus. & Com. Code Ann. 3.201(b)*

20. Comments to Motion of Judicial Review

The Motion of Judicial Review is a “narrow scope of review” to determine the validity of the Assignment of Mortgage. To understand and provide for clarity for the court to rule on the narrow scope required the introduction of documents the purported Assignment referenced.

There is not a dispute under Texas law, a lawfully filed Deed of Trust, Assignment and Substitute Trustee’s Deed documents may be filed of record and thus be enforceable. However, the Note, Deed of Trust where required to be of reference notice and appear not to be subject of review.

The chain of precise Indorsements would require memorialization of each True Sale of the Mortgage Note to be recorded of record under Texas law to maintain and transfer continuous lien perfection. Any Assignment recorded outside of the required chain of indorsement is not a true memorialization of a negotiation(s) of the Note.

III. Conclusions

The (“September 30, 2008 Assignment”) attempts to reestablish lost perfected lien rights and is outside of the chain of negotiation of the Note and is a fabrication.

21. Closing Statement

The lack of indorsements on the face of the Note and failure to timely file an assignment of lien in public records establishes:

1. The lien that was allegedly perfected in MERS name as nominee has been rendered a nullity.

2. The “Assignment of Note and Transfer of Liens” document executed by MERS on September 30, 2008 is without effect and fraudulent.

If by chance, Mortgage Electronic Registration Systems, Inc., as nominee is determined to be lawful, there is still a failure to properly negotiate the note and failure to follow state recording requirements. Under the Hypothetical scenario the results are the same:

1. The lien that was allegedly perfected in MERS name as nominee has been rendered a nullity.

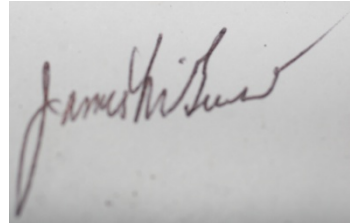
2. The “Assignment of Note and Transfer of Liens” document executed by MERS on September 30, 2008 is without effect and fraudulent.

3. It may be, just may be possible to prove up the Mortgage Note but you can “NEVER” prove up a lost “Perfection of Lien.” Regardless of the number of Affidavits filed with public the courts and regardless of the number of Assignment of Mortgages filed of record, none of these actions will perfect a lien once perfection has been lost.

4. Proper procedure for default recovery of an unsecured note is an equitable suit for monies under the Note: “but you cannot foreclose.” “THEY ARE FORECLOSING USING A NULLIFIED DEED OF TRUST AND THE PROPER PARTY IS NOT EXECUTING THE COLLECTION ACTION.”

5. Nobody, will have gotten anything for free, the home is without a lien secured to the Mortgage Note and the bank can still sue under the default on the Mortgage

Note if such note has not been discharged by willful intentional act as noted in the UCC.

A rectangular image showing a handwritten signature in dark ink on a light-colored background. The signature is cursive and appears to read "James McGuire".

James McGuire
P O Box 1352
Bedford, Texas 76095-1352
j.mcguire@swbell.net
817 420-4151

09
366114



DT
9 PGS

2004086763

After recording, please mail to:
AMERICAN MORTGAGE NETWORK, INC.

ATTN: POST CLOSING
P.O. BOX 85463
SAN DIEGO, CA 92186

Prepared by:
SHANKS, BUTLER & ASSOCIATES, P.C.
ATTORNEYS AT LAW
1455 WEST LOOP SOUTH, SUITE 200
HOUSTON, TX 77027

After Recording Return To:
First American Title
3811 Bee Caves Road, Ste. 105
Austin, TX 78746

Parcel Identification Number: R-383383

[Space Above This Line For Recording Data]

State of Texas

DEED OF TRUST

FHA Case Number
495-711138-703

MIN: 1001310-2040769205-0

Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: Your social security number or your driver's license number.

THIS DEED OF TRUST ("Security Instrument") is made on OCTOBER 29, 2004. The Grantor is ALVIE CAMPBELL, AND JULIA CAMPBELL, HUSBAND AND WIFE.

("Borrower"). The trustee is GEORGE M. SHANKS, JR.
1455 WEST LOOP SOUTH, SUITE 200, HOUSTON, TX 77027

("Trustee"). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS"), a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is organized and existing under the laws of Delaware and has an address and telephone number of P. O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS; and AMERICAN MORTGAGE NETWORK, INC. DBA AMNET MORTGAGE

which is organized and existing under the laws of DELAWARE, and whose address is P.O. BOX 85463
SAN DIEGO, CA 92186

("Lender"). Borrower owes Lender the principal sum of ONE HUNDRED THIRTY-SEVEN THOUSAND EIGHT HUNDRED THIRTY-SEVEN AND 00/100 Dollars (U.S. \$ 137,837.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on NOVEMBER 01, 2024. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower

Loan Number: 204-769205
FHA TEXAS - DEED OF TRUST

Initials: *W* *JP*

irrevocably grants and conveys to the Trustee, in trust, with power of sale, the following described property located in WILLIAMSON County, Texas:
LOT 3, DOVE MEADOW NORTH, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN CABINET X, SLIDE 293, OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS.

which has the address of 250 PR 947
TAYLOR

[Street, City],

Texas 76574 [Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds".

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for anticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

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FIA TEXAS - DEED OF TRUST

Initials: 

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. **Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows: First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. **Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines this requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to

provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. **Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to the Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. **Fees.** Lender may collect fees and charges authorized by the Secretary.

9. **Grounds for Acceleration of Debt.**

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) **Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) **Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within sixty days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to sixty days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any

Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property

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NHA TEXAS - DEED OF TRUST

Initials: 

shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender or Trustee shall give notice of the time, place and terms of sale by posting and recording the notice at least 21 days prior to sale as provided by applicable law. Lender shall mail a copy of the notice of sale to Borrower in the manner prescribed by applicable law. Sale shall be made at public venue between the hours of 10 a.m. and 4 p.m. on the first Tuesday of the month. Borrower authorizes Trustee to sell the Property to the highest bidder for cash in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying indefeasible title to the Property with covenants of general warranty. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Property is sold pursuant to this paragraph 18, Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at that sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. Substitute Trustee. Lender, at its option and with or without cause, may from time to time remove Trustee and appoint, by power of attorney or otherwise, a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

21. Subrogation. Any of the proceeds of the Note used to take up outstanding liens against all or any part of the Property have been advanced by Lender at Borrower's request and upon Borrower's representation that such amounts are due and are secured by valid liens against the Property. Lender shall be subrogated to any and

all rights, superior titles, liens and equities owned or claimed by any owner or holder of any outstanding liens and debts, regardless of whether said liens or debts are acquired by Lender by assignment or are released by the holder thereof upon payment.

22. **Partial Invalidity.** In the event any portion of the sums intended to be secured by this Security Instrument cannot be lawfully secured hereby, payments in reduction of such sums shall be applied first to those portions not secured hereby.

23. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.


[Check applicable box(es)]


- | | |
|--|---|
| <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Growing Equity Rider |
| <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Planned Unit Development Rider |
| <input type="checkbox"/> Other(s) [specify] | |

24. **Purchase Money; Vendor's Lien; Renewal and Extension.** [Complete as appropriate]

The funds advanced to Borrower under the Note were used to pay all or part of the purchase price of the Property. The Note also is primarily secured by the vendor's lien retained in the deed of even date with this Security Instrument conveying the Property to Borrower, which vendor's lien has been assigned to Lender, this Security Instrument being additional security for such vendor's lien.

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.


ALVIE CAMPBELL (Seal)
-Borrower


JULIA CAMPBELL (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

INDIVIDUAL ACKNOWLEDGMENT

STATE OF TEXAS)
) SS
COUNTY OF TRAVIS)

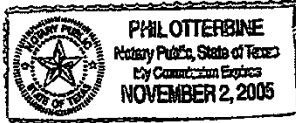
This instrument was acknowledged before me on October 29, 2004, by
ALVIE CAMPBELL, JULIA CAMPBELL

(name or names of person or persons acknowledging)

[Handwritten Signature]

Signature of Officer

(Seal)



Phil Otterbine

Printed Name

Notary Public

Title of Officer

My Commission Expires: _____

Loan Number: 204-769205
HIA TEXAS - DEED OF TRUST

Page 9 of 9

A30069

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS 2094085753

Nancy E. Rister

11/05/2004 01:07 PM

HILLER \$30.00

NANCY E. RISTER, COUNTY CLERK
WILLIAMSON COUNTY, TEXAS

AD



ASSN 2008075222
2 PGS

ASSIGNMENT OF NOTE
AND DEED OF TRUST

BDFTE No.: 20080169805737
Investor/Loan Type: FHA



Date of Assignment: Effective August 22, 2008
Assignor: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR
LENDER AND LENDERS SUCCESSORS AND ASSIGNS

Assignee: WELLS FARGO BANK, N.A.

Assignee's Mailing Address: 3476 STATEVIEW BLVD.
(including county) MAC# X7801-014
FT. MILL, SC 29715
YORK

NOTE and DEED OF TRUST--

Maker/Grantor: ALVIE CAMPBELL
JULIA CAMPBELL
Date: October 29, 2004
Original Amount: \$ 137,837.00
Payee: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
INC. AS NOMINEE FOR LENDER AND LENDERS SUCCESSORS AND ASSIGNS

Trustee: GEORGE M. SHANKS, JR.
Recording Information: CLERK'S FILE NO. 2004086763
(including county) (WILLIAMSON)

Property (including any improvements) Subject to Deed of Trust:
LOT 3, DOVE MEADOW NORTH ACCORDING TO MAP OR PLAT THEREOF RECORDED IN CABINET X,
SLIDE 293 OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS.

After Recording Return To:
Barrett Daffin Frappier Turner and Engel, L.L.P.
15000 Surveyor Blvd., Suite 100
Addison, TX 75001 - 9413
Attn: NDEx Title Services, L.L.C.



ASSG20080169805737



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS 2008075222

Nancy E. Rister

09/30/2008 03:54 PM

KFOSTER \$20.00

NANCY E. RISTER, COUNTY CLERK
WILLIAMSON COUNTY, TEXAS

Multistate

NOTE

2961237

FHA Case No.
495-7111138-703

MIN: 1001310-2040769205-0

OCTOBER 29, 2004
[Date]

250 PR 947, TAYLOR, TX 76574

[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means AMERICAN MORTGAGE NETWORK, INC. DBA AMNET MORTGAGE

and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of ONE HUNDRED THIRTY-SEVEN THOUSAND EIGHT HUNDRED THIRTY-SEVEN AND 00/100 Dollars (U.S. \$ 137,837.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of Six and One-Quarter percent (6.250 %) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on DECEMBER, 2004. Any principal and interest remaining on the first day of NOVEMBER, 2024, will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at PO BOX 85462, SAN DIEGO, CA 92186

or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$ 1,007.49. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

Graduated Payment Allonge Growing Equity Allonge Other [specify]

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

Initials: *WJ*



6. BORROWER'S FAILURE TO PAY

(A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of Four percent (4.000 %) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

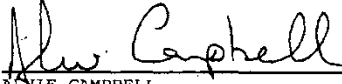
Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE


If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

Initials: 

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.



ARVIE CAMPBELL (Seal)
-Borrower



JULIA CAMPBELL (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]