



20180803000149120 D/T
Bk:RB6504 Pg:103
 08/03/2018 03:30:55 PM 1/10

FILED Mark Chilton
 Register of Deeds, Orange Co., NC
 Recording Fee: \$64.00
 NC Real Estate TX: \$.00

JB

9845-40-8074 ABC

Prepared by and Return: Annette M. Moore, Staff Attorney Orange County Attorney's Office, Post Office
 Box 8181, Hillsborough, North Carolina 27278

**NORTH CAROLINA
 ORANGE COUNTY**

DEED OF TRUST AND SECURITY AGREEMENT

THIS DEED OF TRUST, AND SECURITY AGREEMENT ("Deed of Trust") is made as of this 2nd day of August, 2018 by and among **Gerardo and Ilail Tengono** whose address is 320 Schoolhouse Road, Efland, NC 27243 ("Borrower"), John Roberts whose address is 200 S. Cameron Street, Hillsborough North Carolina, 27278 ("Trustee"), and Orange County. whose street address is 200 S. Cameron Street, Hillsborough, North Carolina 28278 ("Lender").

WHEREAS, Borrower owes Lender for money advanced or to be advanced in the principal sum of **THIRTEEN THOUSAND DOLLARS AND 00/100 (U.S. \$13,000.00)** (the "Loan") evidenced by a promissory note of even date herewith (the "Note"), the final payment of which is due, together with interest thereon, as provided in the Note; and

WHEREAS, it has been agreed that the Loan will be made subject to the terms and Conditions and in reliance upon the covenants contained in the Note, this Deed of Trust, and, the following documents: *(Check those which apply) (Hereinafter referred to either singularly or collectively, as the "Loan Documents")*

- X Development Agreement between Habitat for Humanity and Lender dated June 1, 2017.
- X Declaration of Restrictive Covenants between Habitat for Humanity dated June 1, 2017.
- X Promissory Note to **Gerardo and Ilail Tengono** dated the same date as this Deed of Trust.



This Deed of Trust secures to Lender: (a) The repayment of the debt evidenced by the Note, with interest as provided in the Note, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums with interest as provided in the Note, advanced to protect the security of this Deed of Trust; and (c) performance of Borrower's covenants and agreements under the Loan Documents.

NOW, THEREFORE, in consideration of the Loan, and other valuable consideration, the receipt of which is hereby acknowledged. Borrower hereby grants and conveys to Trustee his successors and assigns all buildings, improvements, the equipment and all other real and personal property, of every kind and nature now or hereafter attached to or used in connection with the premises situated on real property located in Orange County, North Carolina, said real property being more particularly described in Exhibit "A", attached hereto and made a part hereof by this reference, including by way of example and not limitation, all plumbing, heating, lighting and air conditioning fixtures, refrigerators, ranges, hot water heaters, draperies and carpets (hereinafter collectively referred to as the "Premises").

TO HAVE AND TO HOLD said Premises with all privileges and appurtenances thereunto belonging to Trustee, his successors and assigns, upon the trusts, terms and conditions and for the purposes hereinafter set out. Borrower covenants with Trustee that Borrower is seized of and has the right to convey the Premises, in fee simple; that the Premises are free and clear of all encumbrances, except as described on Exhibit "B" attached hereto and made a part hereof by this reference; and that Borrower will warrant and defend title to the Premises against the lawful claims of all persons whomsoever.

Upon payment in full of all sums secured by this Deed of Trust, Lender shall cancel this Deed of Trust, of record at the request and cost of Borrower.

If, however, there shall be a default in any of the terms, covenants or conditions of the Loan Documents or any advance secured hereby, and such default is not made good within any cure period specifically granted in the Loan Documents, if any, all sums owing to Lender under the Loan Documents shall immediately become due and payable, without notice, at the option of Lender; and, on request of Lender, Trustee shall foreclose this Deed of Trust by judicial proceedings or, at Lender's election, Trustee shall sell (and is hereby empowered to sell) the Premises at public sale to the last and highest bidder for cash (free of any equity of redemption, homestead, dower, curtesy or other exemption, all of which are expressly waived by Borrower) after compliance with applicable North Carolina laws relating to foreclosure sales under power of sale and shall execute a conveyance in fee simple to the successful purchaser at said sale. The proceeds of any such sale shall be applied in the manner and in the order prescribed by applicable North Carolina laws. The Trustee's commission shall be five percent (5%) of the gross sales price for completed sale for all services performed by him hereunder. Lender may bid and become the purchaser at any sale under this Deed of Trust. At any such sale, Trustee may at its election require the successful bidder to immediately deposit with Trustee cash or certified check in an amount equal to all or any part of the successful bid and notice of such requirement need not be



included in the advertisement of the notice of such sale.

Borrower covenants with Trustee and Lender (and their respective heirs, successors and assigns) as follows:

1. Taxes. Borrower shall pay all taxes, charges and assessments which may become a lien upon the Premises before any penalty or interest accrues thereon and shall promptly deliver to Lender official receipts evidencing payment thereof.

2. Insurance. Borrower shall continually maintain insurance against loss by fire, hazards included within the term "extended coverage", and such other hazards, as Lender may require, including flood, rent loss and business Interruption, in such manner and in such companies as Lender may from time to time require on the improvements now or hereafter located on the Premises and in such amounts satisfactory to Lender, but at no time less than the outstanding indebtedness secured by this Deed of Trust and any other lien against the Premises, plus an amount sufficient to prevent any co-insurance liability of the Borrower or Lender, Borrower shall promptly pay all premiums when due and deliver official receipts to Lender evidencing such payment.

All insurance policies and renewals thereof shall be held by, Lender and have attached thereto a loss payable clause in favor of and in form acceptable to Lender, and provide that no such policy can be canceled without ten (10) days' prior notice to Lender or materially amended (including any reduction in the scope or limits of coverage) without Lender's prior written approval. All policies of insurance shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act of negligence of Borrower which might otherwise result in forfeiture of such insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against the Borrower.

In the event of loss, Borrower shall give immediate notice by mail to Lender, who may make proof of loss if not made promptly by Borrower. Each insurance company is hereby directed to make payment for such loss directly to Lender (instead of to Borrower and Lender jointly). Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied, at Lender's option, to the debt secured by this Deed of Trust or to the repair or restoration of the Premises.

If the insurance proceeds are applied to the debt, it may be applied upon the portion last falling due or in such other manner as Lender may desire.

In the event of foreclosure of this Deed of Trust or other transfer of title to or assignment of the Premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Lender in any such insurance policies then in force shall pass to the grantee of the Premises.

3. Condemnation Award. Any award for the taking of or damages to all or any part of the premises or any' interest therein upon the lawful exercise of power of eminent domain shall be



payable to Lender, who may apply the sums so received to the portion of the debt hereby secured last falling due or in such other manner as Lender may desire, subject to applicable law.

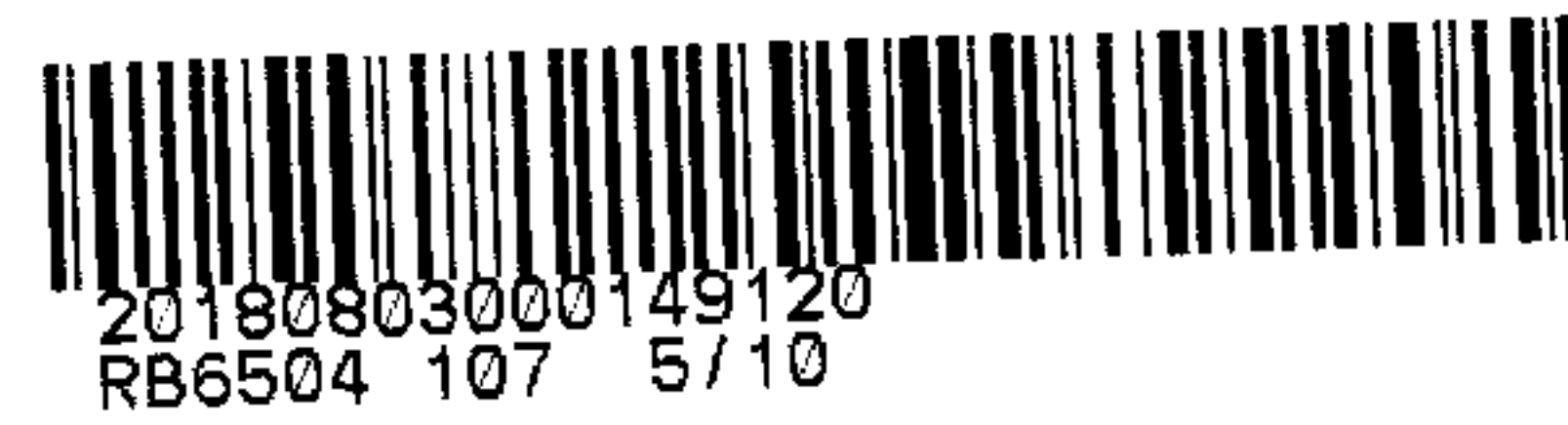
4. Repairs. Borrower will keep the Premises in good order and repair (reasonable wear and tear excepted) and will not commit or permit any waste or other loss whereby the value of the Premises might be impaired.

5. Compliance with Laws. Borrower shall promptly comply with any applicable legal requirements of the State of North Carolina or other governmental entity, agency or instrumentality relating to the use or condition of the Premises.

6. Advancements by Lender. If Borrower shall be in default in the timely payment or performance of any obligation under the Loan Documents, Lender, at its option, may pay the sums for which Borrower is obligated. Further, Lender, at its option, may advance, pay or expend such sums as may be proper and necessary for the protection of the Premises and the maintenance of this trust, including but not limited to sums to satisfy taxes or other levies, and assessments and/or liens, to maintain insurance (including title insurance) and to make repairs. Any amounts so advanced, paid or expended shall be deemed principal advances secured by this Deed of Trust (even though when added to other advances the sum thereof may exceed the face amount of the Note), shall bear interest from the time advanced, paid or expended at the rate of ten percent per year or such higher rate as may be prescribed in the Note, and be secured by this Deed of Trust and its payment enforced as if it were a part of the original debt. Any sum expended, paid or advanced under this paragraph shall be at Lender's sole option, shall be due and payable on demand and shall not constitute a waiver of any default or right arising from the breach by Borrower or any covenant or agreement contained in the Loan Documents.

7. Attorney's Fees. Borrower shall default in its obligations under the Loan Documents and in the opinion of Lender it becomes necessary or proper to employ an attorney to assist in the enforcement or collection of the indebtedness owed by Borrower to Lender, or to enforce compliance by Borrower with any of the provisions of the Loan Documents, or in the event Lender or Trustee voluntarily or otherwise shall become a party or parties to any suit or legal proceeding (including a proceeding conducted under the Bankruptcy Act), then in order to protect the Premises herein conveyed, to protect the lien of this Deed of Trust, to enforce collection of the indebtedness owed by Borrower to Lender, or to enforce compliance by Borrower with any of the provisions of the Loan Documents, Borrower agrees to pay reasonable attorney's fees and all the costs that may reasonably be incurred, and such fees and costs, shall be secured by this Deed of Trust and its payment enforced as if it were a part of the original debt, Borrower shall be liable for such reasonable attorney's fees and costs whether or not any suit or proceeding is commenced. Reasonable attorney's fees shall be limited to fees for expenses actually incurred and time actually spent at standard hourly rates.

8. Substitute Trustees. Lender shall have the unqualified right to remove Trustee and to appoint one or more substitute or successor trustees by instruments filed for registration in the Office of the Register of Deeds where this Deed of Trust is recorded, Any such removal or appointment may be made at any time without notice, without specifying any reason therefore, and without any court approval. Any such appointee shall become vested with title to the



Premises and with all rights, powers and duties conferred upon the Trustee herein in the same manner and to the same effect as though he were named herein as the original Trustee.

9. Anti-Marshalling Provision. The right is hereby given by Borrower to Trustee and Lender to make partial release or releases of security hereunder (whether or not such releases are required by agreement among the parties) agreeable to Trustee and Lender without notice to or the consent, approval or agreement of other names and interest, including junior lienors and purchasers subject to this which partial release or releases shall not impair in any manner the validity of or priority of this Deed of Trust on the Premises remaining hereunder, nor release Borrower from liability for the indebtedness hereby secured. Notwithstanding the existence of any other security interests in the Premises held by Lender or by any other party. Lender shall have the right to determine the order in which any or all of the Premises shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower and any party who consents to this who has actual or constructive notice hereof hereby waives any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

10. Additional Financing Prohibited. Borrower may not pledge or encumber the Premises herein conveyed without first obtaining Lender's written consent.

11. Uniform Commercial Code Security Agreement. This Deed of Trust is intended to be a security agreement with respect to items referred to herein which may be subject to a security, interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Deed of Trust as a financing statement, and at Lender's request agrees to execute such financing statements, extensions or amendments as Lender may require to perfect a security interest with respect to said items. In the event of default, Lender shall have, in addition to its other remedies, all rights and remedies provided for in the Uniform Commercial Code as enacted in North Carolina.

12. Events of Default. Any of the following shall constitute an "Event of Default" hereunder:

- a. the failure to make when due any payment, whether of principal or interest under the Note;
- b. the failure to make any other payment to Lender required by the Loan Documents within ten (10) days after notice from Lender directing Borrower to make the payment, but in any event before the same is past due;
- c. any covenant, representation, warranty made by Borrower or material Information supplied to the Lender proves to be materially false or misleading when made or given; the transfer of all or part of the Premises (including a beneficial interest) without Lender's prior written consent;
- d. the death, dissolution, merger, consolidation or termination of existence of Borrower or any guarantor hereof or (the transfer of any beneficial interest in Borrower without Lender's prior written consent;

- e. the application for the appointment of a receiver for Borrower or any guarantor; or the filing of a petition under any provisions of the Bankruptcy Code or Act by Borrower or any guarantor; or the filing of a petition under any provisions of the Bankruptcy Code or Act against Borrower or guarantor which is not dismissed within 30 days; or the filing of an answer in an involuntary proceeding admitting insolvency or inability to pay debts; or any assignment for the benefit of creditors by or against Borrower or any guarantor; or the attachment, execution or other judicial seizure of any portion of Borrower's or any guarantor's assets which is not discharged within ten (10) days; or
- f. the failure of any Borrower to perform any other non-monetary obligation or condition of the Loan Documents within 30 days after notice from Lender; provided that if such default cannot reasonably be cured within 30 days, it shall not constitute an Event of Default as long as Borrower is diligently pursuing such cure unless it is not cured within 180 days after the original notice of default from Lender.

Upon any Event of Default, the entire principal sum evidenced by the Note and accrued but unpaid interest hereon may, at the sole option of Lender, be declared at once due and payable, time being of the essence of this obligation. Failure of Lender to exercise this option in the event of any Event of Default shall not constitute a waiver of the right of Lender to exercise the same in the event of a subsequent Event of Default.

13. Use of Premises. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Premises was intended at the time this Deed of Trust was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Premises without Lender's prior written consent.

14. Inspection. To assure and protect its rights under this Deed of Trust, Lender shall have the right to access and inspection of the Premises at reasonable times and upon reasonable notice to Borrower.

15. Application of Payments. All payments and other sums of money received by Lender shall be applied by Lender first to amounts due Lender for Advancements or Attorney's Fees pursuant to this Deed of Trust, then to interest payable of the Note, then to the principal of the Note.

16. Environmental Issues. Borrower warrants that, (i) to the best of Borrower's knowledge, the Premises and the land described in Exhibit A attached hereto (the "Land") are free of Hazardous Materials, (ii) neither Borrower, nor to the best of Borrower's knowledge, anyone else connected with the Premises or the Land has received any notice from any governmental agency, entity or other person with regard to Hazardous Materials, from or affecting the Premises or the Land, and (iii) to the best of Borrower's knowledge, there is not now pending or threatened any action, suit, investigation or proceeding against Borrower relating to the Premises or the Land (or against any other party relating to the Premises or the Land)



seeking to enforce any right or remedy under any of the Environmental Laws.

Borrower covenants and agrees that (i) the Premises shall be kept free of Hazardous Materials, (ii) Borrower shall not cause nor permit the presence, use, disposal, installation, generation, manufacture, transportation, storage, release or treatment of Hazardous Materials in or on the Premises of the land and (iii) Borrower shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws relating to or affecting the Premises and the Land and shall keep the Premises and the Land free and clear of any liens imposed pursuant to any applicable Environmental Laws. The preceding sentence shall not apply to the presence, use or storage on the Premises of small quantities of Hazardous Materials that are generally recognized to be appropriate to normal residential use and to maintenance of the Premises.

Borrower shall immediately give Lender written notice of any investigation, claim, demand, lawsuit or other action by any party involving the Premises or the Land and any Hazardous Materials of 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 Materials affecting the Premises or the Land is necessary, Borrower shall promptly take all necessary remedial actions in accordance with all applicable Environmental Laws.

Borrower hereby agrees to indemnify Lender and hold Lender harmless from and against any and all losses, liabilities, damages and claims of any and every kind whatsoever paid, incurred or suffered by or asserted against Lender for, with respect to, or as a direct or indirect result of

- (i) the presence on or release from the Premises or the Land prior to the cancellation of this Deed of Trust of any Hazardous Material, regardless of whether or not caused by or within the control of Borrower,
- (ii) the violation of any Environmental Laws prior to the cancellation of this Deed Of Trust relating to or affecting the Premises or the Land, whether or not caused by or within the control of Borrower,
- (iii) the failure of Borrower to comply fully with the terms and provisions of this section, or
- (iv) any warranty or representation made by Borrower in this section being false or untrue in any material respect.

For purposes of this Deed of Trust, "Hazardous Material" means petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous material defined as such in or for the purpose of the Environmental Laws.

For purposes of this Deed of Trust, "Environmental Laws" means the Comprehensive



Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any "Superfund" or "Superlien" law, or any other federal state or local law, regulation or decree regulating relating to or imposing liability standards of conduct concerning any petroleum products, any flammable explosives, radioactive materials, asbestos or ally material containing asbestos, and/or hazardous, toxic or dangerous material, as may now or at any time hereafter be in effect.

The obligations and liabilities of Borrower under this section shall survive the foreclosure of the Deed of Trust, the delivery of a deed in lieu of foreclosure, the cancellation of the Note, or the sale or alienation of any part of the Premises or the Land.

17. Statute Inapplicable. The provisions of Section 45-45.1 of the North Carolina General Statutes, or any similar statute hereafter enacted in replacement or substitution thereof shall be inapplicable to this Deed of Trust.

18. Definition. As used herein, the terms "Borrower," "Trustee", "Lender" other terms shall refer to the singular, plural, neuter, masculine and feminine as the context may require and shall include, be binding upon, and inure to the benefit of their respective heirs, successors, legal representatives, and assigns.

19. Future Advances (Check if applicable). If this paragraph is checked, this Deed of Trust is given wholly or partially to secure furore obligations which may be incurred hereunder pursuant to the provisions of Sections 45-67, et seq., of the North Carolina General Statutes; the amount of present obligations secured hereunder is _____ and _____/100 Dollars (\$_____); the maximum amount (including present as well as future advances) to be advanced hereunder shall not exceed the face amount of the Note, provided such future obligations are incurred not later than _____ (_____) years after the date of the Note; and no execution of a written instrument or notation shall be necessary to evidence or secure any future advances made hereunder.

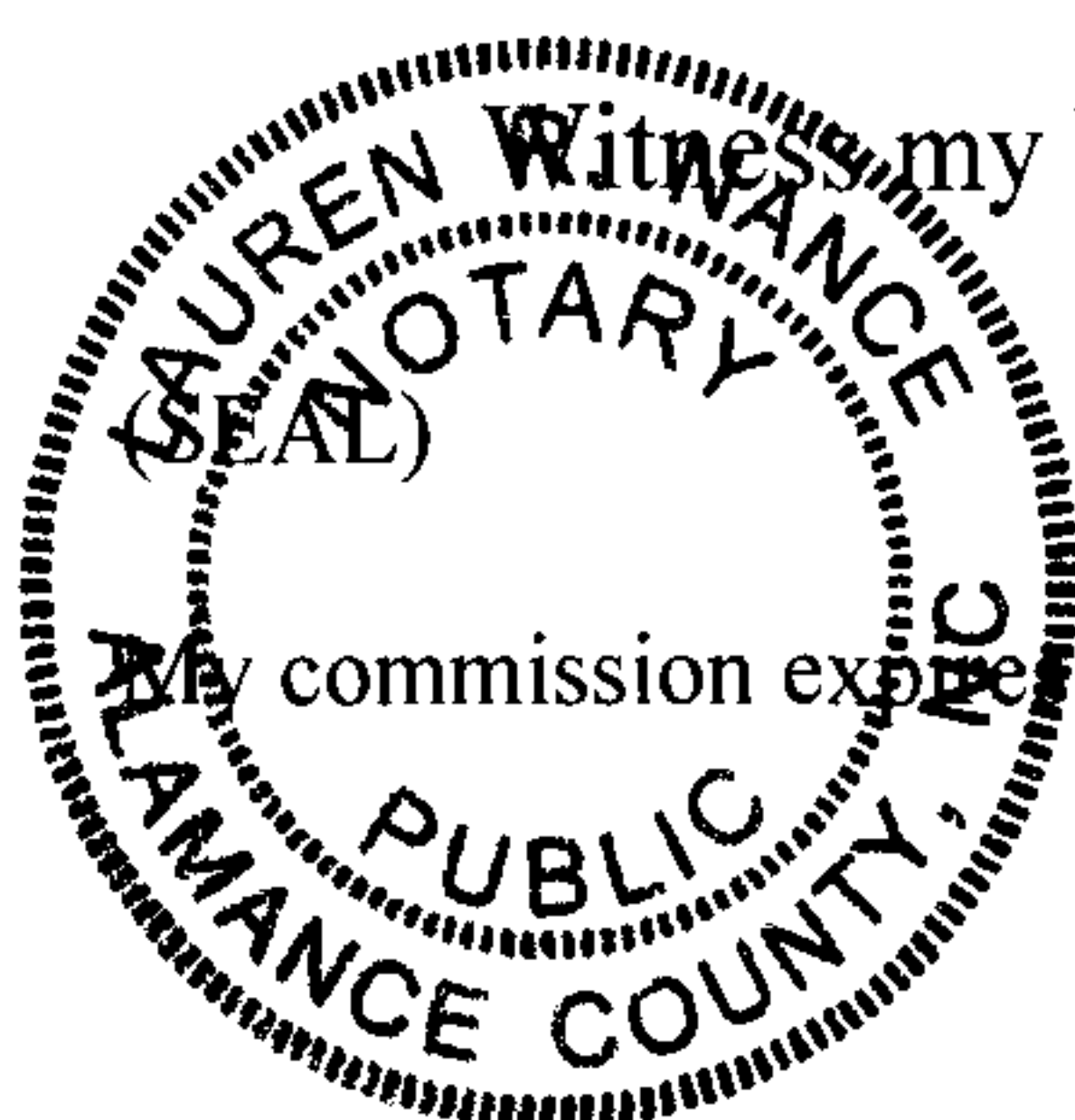
IN WITNESS WHEREOF, Borrower has executed this instrument under seal on the date first above written.

NORTH CAROLINA
ORANGE COUNTY

Gerardo Tengono

Gerardo Tengono

I, Lauren R. Nance, Notary Public in and for the above named County and State, do hereby certify that GERARDO TENGONO personally appeared before me this day and acknowledged the due execution of the foregoing instrument.



Witness my hand and notarial seal, this the 2nd day of August 2018.

Lauren R. Nance

Notary Public

Ilail Tengono



NORTH CAROLINA
ORANGE COUNTY

Ilail Tengono
Ilail tengono

I, Lauren R. Nance, Notary Public in and for the above named County and State, do hereby certify that ILAIL TENGONO personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 2nd day of August 2018.

(SEAL)

Lauren R. Nance
Notary Public

My commission expires: 5/5/2021

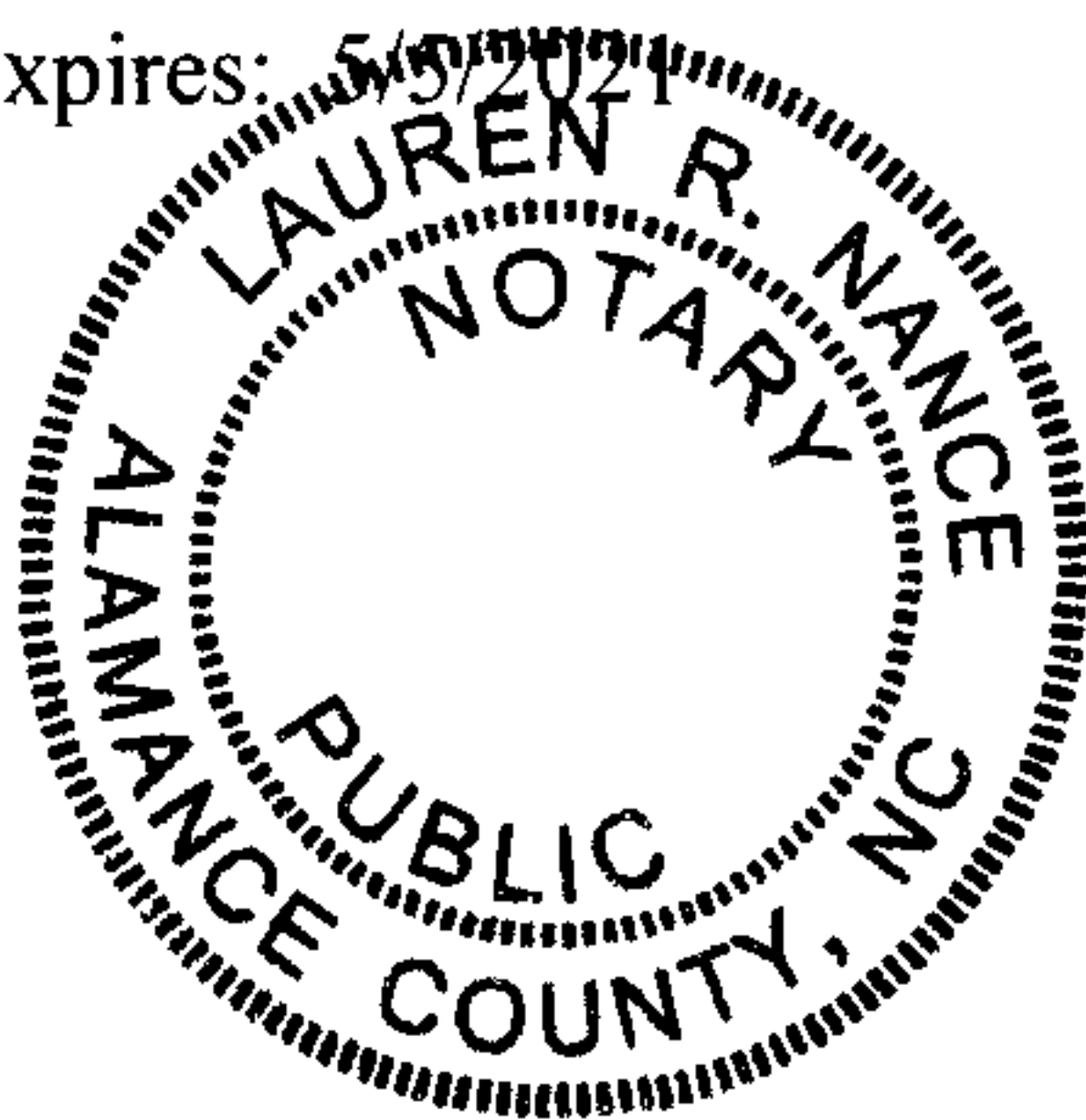




EXHIBIT A

BEING all of Lot 21, TINNIN WOODS SUBIDVISION, as shown on plat recorded in Plat Book 113, Page 100, Orange County Registry, reference to which is hereby made for a more particular description of same.

PIN: 9845-40-8074