

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SUBORDINATION AGREEMENT

This Subordination Agreement ("Agreement") is hereby made this 15th day of April 2021, by and between **Texas Capital Bank, National Association** ("Bank") whose address is 2000 McKinney Avenue, Suite 700, Dallas, Texas 75201, **Birmingham LD, LLC, an Alabama limited liability company**, and **Rausch Coleman Homes Birmingham, LLC, an Alabama limited liability company** (collectively "Borrower") whose address is 4058 North College Avenue, Suite 300, Fayetteville, Arkansas 72703 and **Birmingham LD, LLC, an Alabama limited liability company** ("Creditor").

RECITALS:

A. Borrower wishes to obtain financing in the amount of \$400,000,000.00 (the "Loan") from Bank to refinance the construction of improvements on the Property (the "Property") described as:

SEE EXHIBIT "A"

B. Bank has agreed to provide such refinancing to Borrower on the condition that Creditor subordinates to Bank any and all rights that Creditor has pursuant to the following:

Purchase Money Mortgage and Security Agreement, dated January 21, 2021 securing the principal sum of \$722,756.19, from Rausch Coleman Homes Birmingham, LLC, an Alabama limited liability company, to Birmingham LD, LLC, an Alabama limited liability company, filed of record on February 2, 2021, in Instrument 20210202000053330, in the Probate Office of Shelby County, Alabama.

C. Creditor is willing to subordinate its lien and right of payment under the Note in accordance with the terms of this Agreement. Now, therefore, in order to induce Bank to extend refinancing to Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Bank and Creditor hereby agree as follows:

1. Borrower is indebted to Creditor at this time in the sum not stated therein in principal, plus accrued and unpaid interest.

2. Creditor hereby subordinates any and all claims now or hereafter owing to Creditor by Borrower to any and all claims of Bank, and agrees that, except as provided below, all claims of Bank shall be paid in full before any principal payment may be made on the debt of the Creditor.

or receive payment of, and Borrower agrees not to pay to Creditor, any such claim or claims. In furtherance of the foregoing, Creditor hereby assigns all of its claims of any nature against Borrower, together with the proceeds thereof to Bank to secure the performance of this Agreement. Creditor and Borrower agree that Borrower shall not make, and Creditor shall not accept, any principal prepayments on the Note without Bank's prior written consent. Creditor further agrees that in the event of any default under any indebtedness of Borrower to Bank, all payments of principal and interest under the Note shall cease until such time, if at all, that all such default(s) have been cured to Bank's satisfaction.

3. Furthermore, any lien created to secure the Note shall remain secondary and inferior to the first lien created by the deed of trust securing the Loan from Bank to the Borrower with the Bank hereby further agreeing that said Loan shall not be increased without the Creditor's express prior written consent thereto.

4. Any insolvency, receivership or bankruptcy of Borrower shall not affect this Agreement and the same shall remain in full force and effect and constitute an assignment by Creditor to the Bank of any funds or property payable to the Creditor from the Borrower's assets not previously assigned to the Bank; subject to the prior rights and interests, if any, of third parties. Bank covenants to account for and pay over to the Creditor any excess thereof in its hands when its own claims shall have been paid in full.

5. This Agreement shall extend to and bind the respective successors, assigns, heirs, executors, and administrators of the parties hereto, and the covenants of Creditor and Borrower respecting subordination of the claims of Creditor in favor of Bank shall extend to, include, and be enforceable by any transferee or endorsee of Bank of any of its claim or claims.

6. If Borrower violates any of the provisions of this Agreement, or if any subordinated indebtedness is involuntarily accelerated, Bank may elect by notice in writing delivered to Borrower and Creditor to cause all indebtedness of Borrower to Bank to become immediately due and payable. The obligations of Borrower hereunder shall continue irrespective of, and Borrower hereby waives, so far as the law permits, any existing or any future statute of limitations applicable thereto or applicable to the enforcement of indebtedness and liability of Borrower, and any collateral therefor or guarantees thereof.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

8. This Agreement embodies the entire agreement between Borrower, Creditor and Bank and supersedes all prior proposals, agreements and understandings relating to the subject matter hereof.

9. Borrower further acknowledges and agrees that any review of plans or inspections by the Creditor and/or its representatives are being conducted solely for the benefit and protection of Creditor and may not in any way be relied upon by Borrower nor the Bank as a warranty or

representation regarding the quality, workmanship and/or construction procedure of Borrower, with respect to the construction of the pool. BORROWER HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CREDITOR FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, CAUSES OF ACTIONS, LOSSES, COSTS, CHARGES, FEES, TAXES, PENALTIES, FINES, DAMAGES, EXPENSES OR LIABILITIES OF ANY WHATSOEVER KIND AND CHARACTER, INCLUDING, WITHOUT LIMITATION, REASONABLE AND DOCUMENTED ATTORNEYS' FEES AND EXPENSES, WHICH CREDITOR SHALL OR MAY, AT ANY TIME, SUFFER, SUSTAIN OR INCUR BY REASON OF, OR ARISING DIRECTLY OR INDIRECTLY OUT OF BORROWER'S CONSTRUCTION OF IMPROVEMENTS ON THE PROPERTY. BORROWER WILL PAY ON CREDITOR'S BEHALF, ANY JUDGMENT RENDERED AGAINST CREDITOR ARISING OUT OF ANY CLAIMS INDEMNIFIED PURSUANT TO THIS SECTION OR ANY SUM THAT CREDITOR AGREES TO PAY IN SETTLEMENT OF ANY CLAIMS INDEMNIFIED PURSUANT TO THIS SECTION.

THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

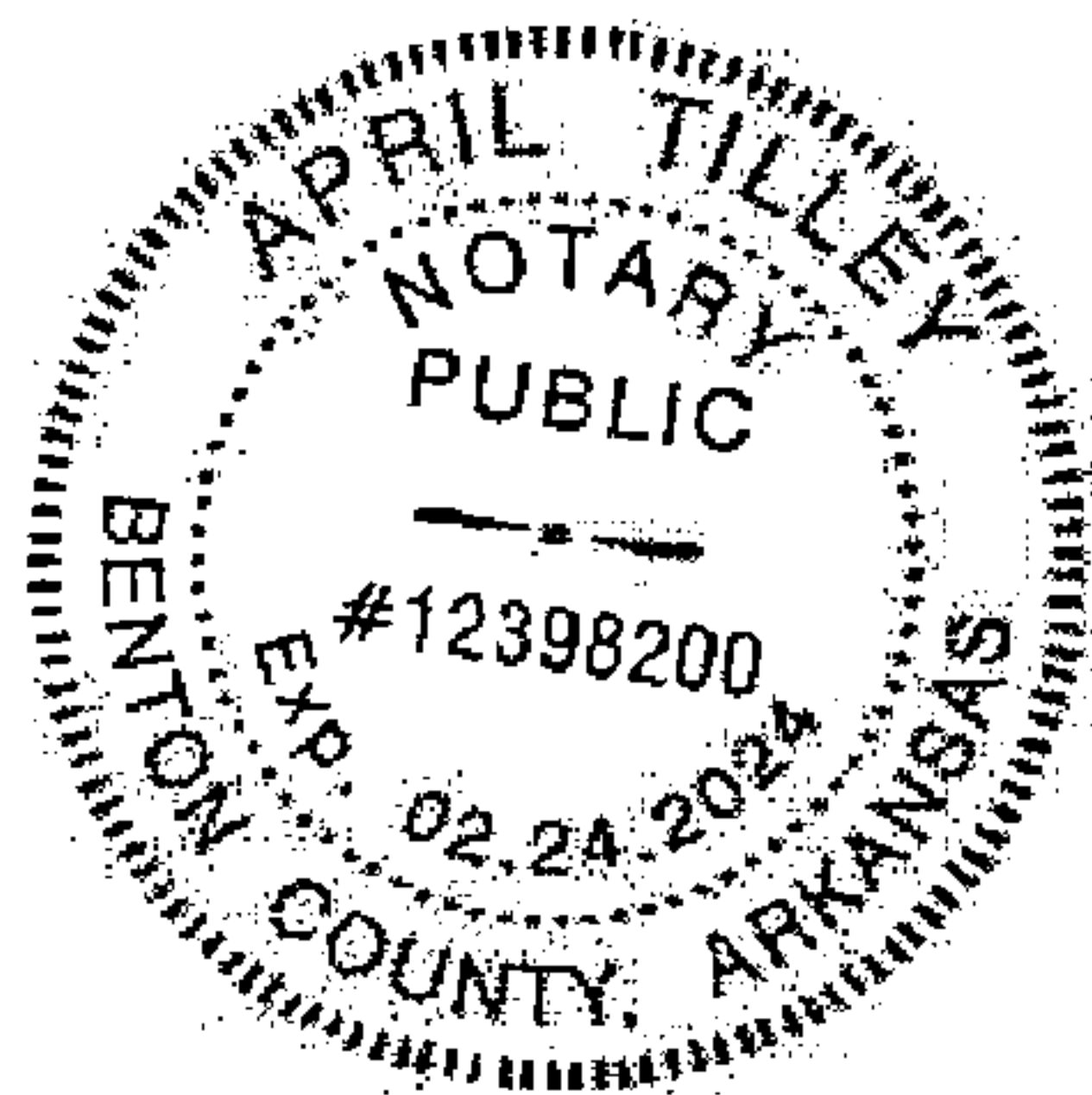
CREDITOR:

Birmingham LD, LLC,
an Alabama limited liability company

By: Scott A. Peters
Name: Scott A. Peters
Title: MANAGER

THE STATE OF Arkansas §
COUNTY OF Benton §

The foregoing instrument was acknowledged before me on this the 14 day of April 2021 by Scott A. Peters, as MANAGER of **Birmingham LD, LLC, an Alabama limited liability company**, on behalf of said limited liability company.



April Tilley
Notary Public in and for the State of Arkansas

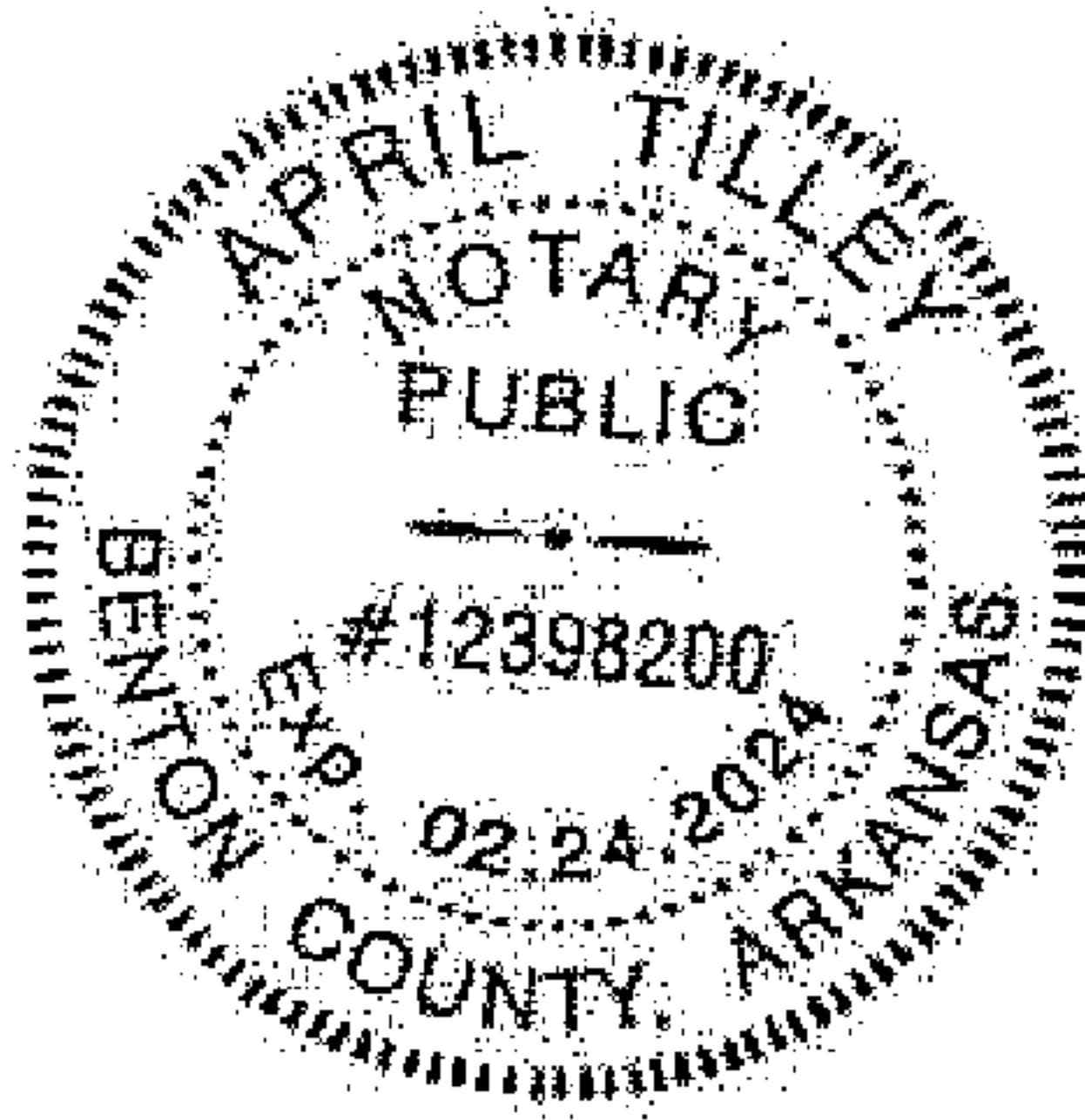
BORROWER:

**Birmingham LD, LLC,
an Alabama limited liability company**

By: Scott A Peters
Name: Scott A Peters
Title: MANAGER

THE STATE OF Arkansas §
COUNTY OF Benton §
§

The foregoing instrument was acknowledged before me this 14 day of April 2021, by Scott A. Peters, as Manager of **Birmingham LD, LLC, an Alabama limited liability company**, on behalf of said limited liability company.



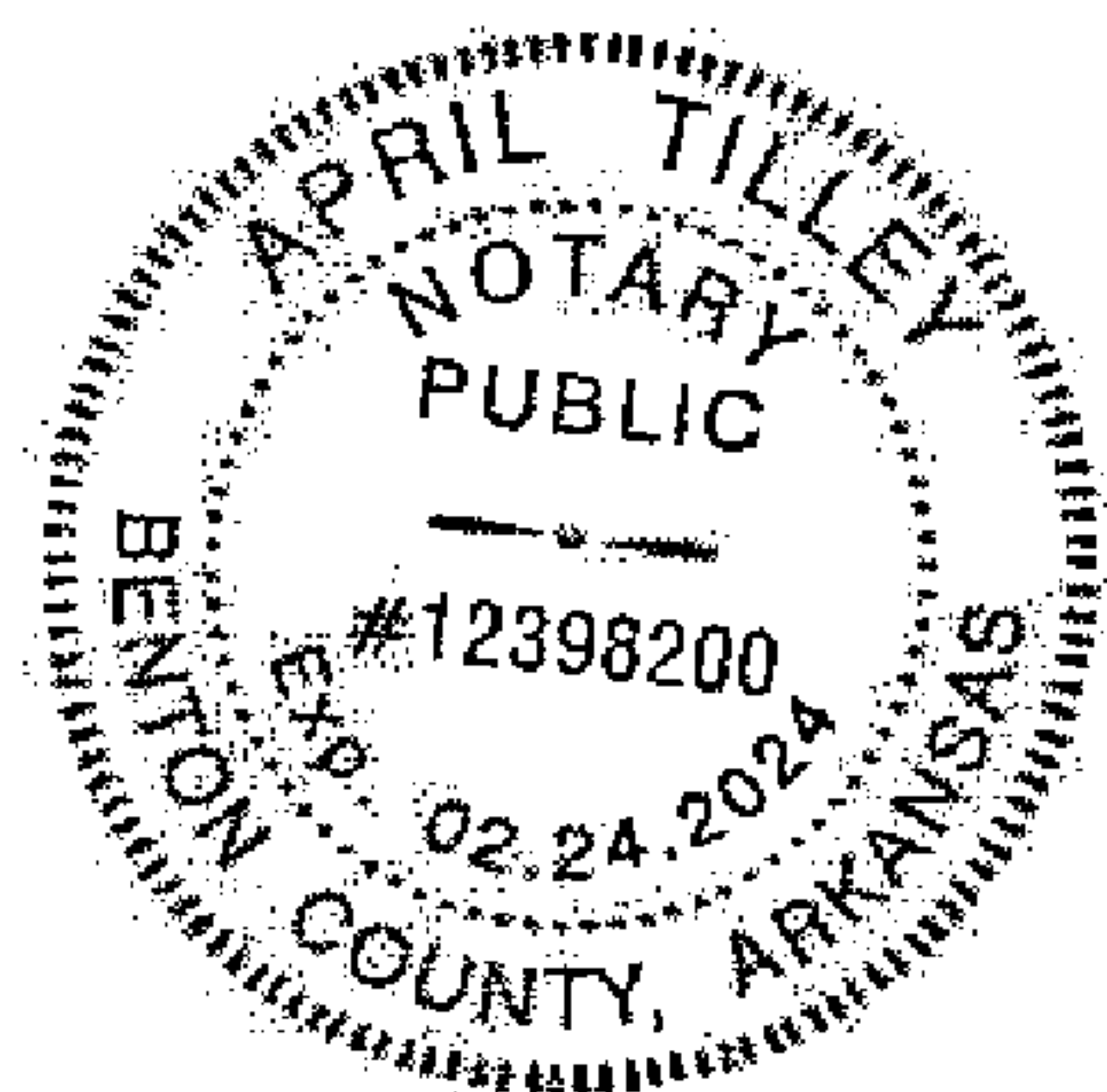
April Tilley
Notary Public, State of Arkansas

**Rausch Coleman Homes Birmingham, LLC,
an Alabama limited liability company**

By: Scott A Peters
Name: Scott A Peters
Title: MANAGER

THE STATE OF Arkansas §
COUNTY OF Benton §
§

The foregoing instrument was acknowledged before me this 14 day of April 2021, by Scott A. Peters, as Manager of **Rausch Coleman Homes Birmingham, LLC, an Alabama limited liability company**, on behalf of said limited liability company.



April Tilley
Notary Public, State of Arkansas

BANK:

Texas Capital Bank, National Association

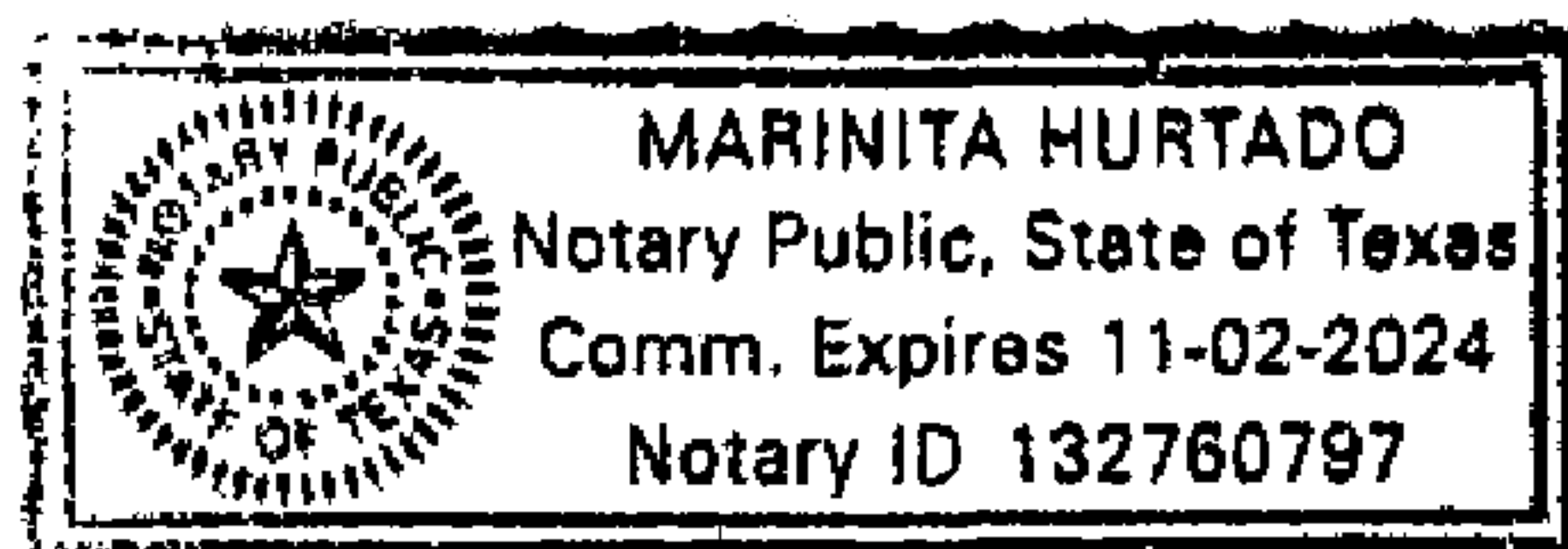
By: Misty Lieb-Bannatyne
Name: Misty Lieb-Bannatyne
Title: Senior Vice President

THE STATE OF TEXAS

COUNTY OF Harris

§
§
§

The foregoing instrument was acknowledged before me this 22 day of April 2021 by Misty Lieb-Bannatyne, as senior vice of **Texas Capital Bank, National Association**, on behalf of said national banking association. President



[Signature]
Notary Public in and for the State of Texas

EXHIBIT "A"

LEGAL DESCRIPTION

Lots, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 125 and 126, according to the Final Plat of Camden Park, Phase One, Sector One, as recorded in Map Book 53, pages 65 A & B in the Probate Office of Shelby County, Alabama.



**Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
10/13/2021 01:38:46 PM
\$38.00 JOANN
20211013000498710**

Allen S. Bayl