

BK 2032 PG 446 - 453

Prepared By & Return to:
Robert Bradley Staley
Nexsen Pruet, PLLC
4141 Parklake Avenue, Suite 200
Raleigh, NC 27612

STATE OF NORTH CAROLINA)
)
COUNTY OF FRANKLIN)

**ENCROACHMENT
EASEMENT AGREEMENT**

THIS ENCROACHMENT EASEMENT AGREEMENT (this “Agreement”) is made and entered into as of the 5th day of March, 2016, by and between VERTA MCKNIGHT ALLEN (“Adjacent Owner”), and Bank of America, N.A. (“Bank of America”). Adjacent Owner and Bank of America are sometimes collectively referred to herein as the “Parties,” and each a “Party.”

WITNESSETH:

WHEREAS, Bank of America is the owner of that certain parcel of real property located in the Township of Franklinton, Franklin County, North Carolina bearing a Franklin County PIN number of 1896-36-3715, and having a street address of 302 Hodges Road, Franklinton, North Carolina (the “Grantee Property”);

WHEREAS, Adjacent Owner is the owner of that certain parcel of real property located in the Township of Franklinton, Franklin County, North Carolina bearing a Franklin County PIN number of 1896-37-5232, and having a street address of 299 Hodges Road, Franklinton, North Carolina (the “Grantor Property”);

WHEREAS, the Grantor Property lies adjacent and contiguous to, and runs along the entire northern boundary of, the Grantee Property;

WHEREAS, located on Grantee Property is an existing building, which building encroaches approximately 10.5 feet at its furthest point into the Grantor Property, as shown on

Submitted electronically by "Nexsen Pruet LLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Franklin County Register of Deeds.

that survey prepared by William T. Dement, Jr., P.A., dated August 19, 2014, and attached as **Exhibit A** hereto (the "Encroachment");

WHEREAS, Bank of America has requested that Adjacent Owner grant to Bank of America an encroachment easement over the Grantor Property to allow the Encroachment to remain in its existing location, subject to the terms and provisions set forth herein; and

WHEREAS, Adjacent Owner is agreeable to granting Bank of America the requested encroachment easement over the Grantor Property, such easement to constitute 10.5 feet at its furthest point running along a portion of the boundary between the Grantee Property and the Grantor Property and as shown more specifically in **Exhibit A**, subject to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged by the Parties, it is hereby agreed as follows:

1. Grant of Encroachment Easement. Subject to the termination rights reserved in Section 5, Adjacent Owner hereby grants, bargains, sells and conveys unto Bank of America, for the benefit of the Grantee Property, a non-exclusive easement over the Grantor Property for the purpose of permitting the continued existence of the Encroachment, which encroachment shall constitute 10.5 feet at its furthest point running along a portion of the northern boundary between the Grantee Property and the Grantor Property. The easement is granted to Bank of America together with an easement for access, ingress and egress upon, over and across a portion of the Grantor Property adjacent to or within the encroachment area, as reasonably necessary to allow Bank of America access to and from, and use of the encroachment area for the purpose of maintaining the improvements located thereon.

2. Maintenance of Encroachment Easement. Bank of America agrees to fully and properly maintain and keep the Encroachment in good repair and shall be responsible for all repairs to the Encroachment. Bank of America shall do nothing to increase the size of the Encroachments or to change the location or in any way alter or modify the Encroachment. Adjacent Owner shall have no obligation to maintain, protect or safeguard the Encroachment, and has no financial responsibility or other duties regarding the Encroachment. If the building, which constitutes the Encroachment, is destroyed or substantially damaged, such building may be rebuilt or replaced, but such building must be replaced in the exact same location and orientation as the Encroachments now exist.

3. Legal Effect. The easements and rights created by this Agreement are appurtenant and may not be transferred, assigned, or encumbered except as an appurtenant easement. Each covenant contained in this Agreement constitutes a covenant running with the land, binds the Parties and any successor or assign now having or hereafter acquiring an interest in the Grantor Property or Grantee Property, and will inure to the benefit of the Parties, and their respective successors, assigns and mortgagees. Each Party agrees that on conveyance of all or any part of the Grantor Property or the Grantee Property, the grantee, by accepting such conveyance will thereby become a new party to and be bound by this Agreement.

4. No Dedication. Nothing contained in this Agreement will be deemed to constitute a gift, grant or dedication of any portion of the easement area to the general public or for any public purpose whatsoever, it being the intention of the Parties that this Agreement will be strictly limited to the private use of the Parties named or described herein, their respective successors, assigns and mortgagees, and is not intended to confer upon any person who is not named or described herein any rights as a third party beneficiary hereunder or to give any such person any rights whatsoever.

5. Condemnation. In the event the whole, or any part, of the Grantor Property is taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, a Party benefitted by an easement created by this Agreement will not share in any award, compensation or other payment made by reason of such taking of a portion of the Grantor Property which is subject to such easement, and such award, compensation or other payment will belong entirely to the Party owning the taken property in fee, and such Party will have no further liability to the other Party for the loss of such easement, or portion thereof, located on the portion of the property so taken.

6. Indemnity. Bank of America shall defend, indemnify and hold harmless Adjacent Owner from and against any and all claims, damages, losses, liabilities and expenses, including without limitation reasonable attorneys' fees, which arise out of the exercise by Bank of America of any of its or their rights under this Agreement, but only to the extent that the same does not arise out of the gross negligence and willful misconduct of Adjacent Owner. So long as this Agreement shall be in force and effect, Bank of America shall, at its own cost and expense, keep, or cause to be kept, in force comprehensive general liability insurance in such commercially reasonable amounts as reasonably necessary to fully insure its indemnity obligations arising hereunder. The indemnification obligations of Bank of America under this subparagraph shall survive any termination of the Easement for a period of 3 years.

7. No Impairment. The Parties acknowledge and agree that the easement granted hereunder shall not in any way impair or restrict Adjacent Owner's rights of ingress, egress, regress, and access to and on the Grantor Property, or to any adjoining property owned by the Adjacent Owner (or an affiliate of the Adjacent Owner) and shall not impair or restrict Adjacent Owner's complete utilization of the Grantor Property. To this end, Bank of America agrees that no improvements may be constructed or installed within the encroachment area that would prohibit or impair vehicular access over and any roadway located upon the Grantor Property.

8. Severability. If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect to which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

9. Governing Law. This Agreement will be construed in accordance with the laws of the State of North Carolina.

10. Binding Effect. The provisions of this Agreement will be binding on the Parties and their respective successors, assigns and mortgagees to the extent herein provided.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

[SIGNATURE PAGES ATTACHED]

SIGNATURE PAGE OF ENCROACHMENT EASEMENT AGREEMENT

IN WITNESS WHEREOF, Adjacent Owner has caused this Agreement to be signed, sealed, and delivered to be effective as of the day and year first above written.

VERTA MCKNIGHT ALLEN

Verta McKnight Allen

STATE OF New Jersey
COUNTY OF Middlesex

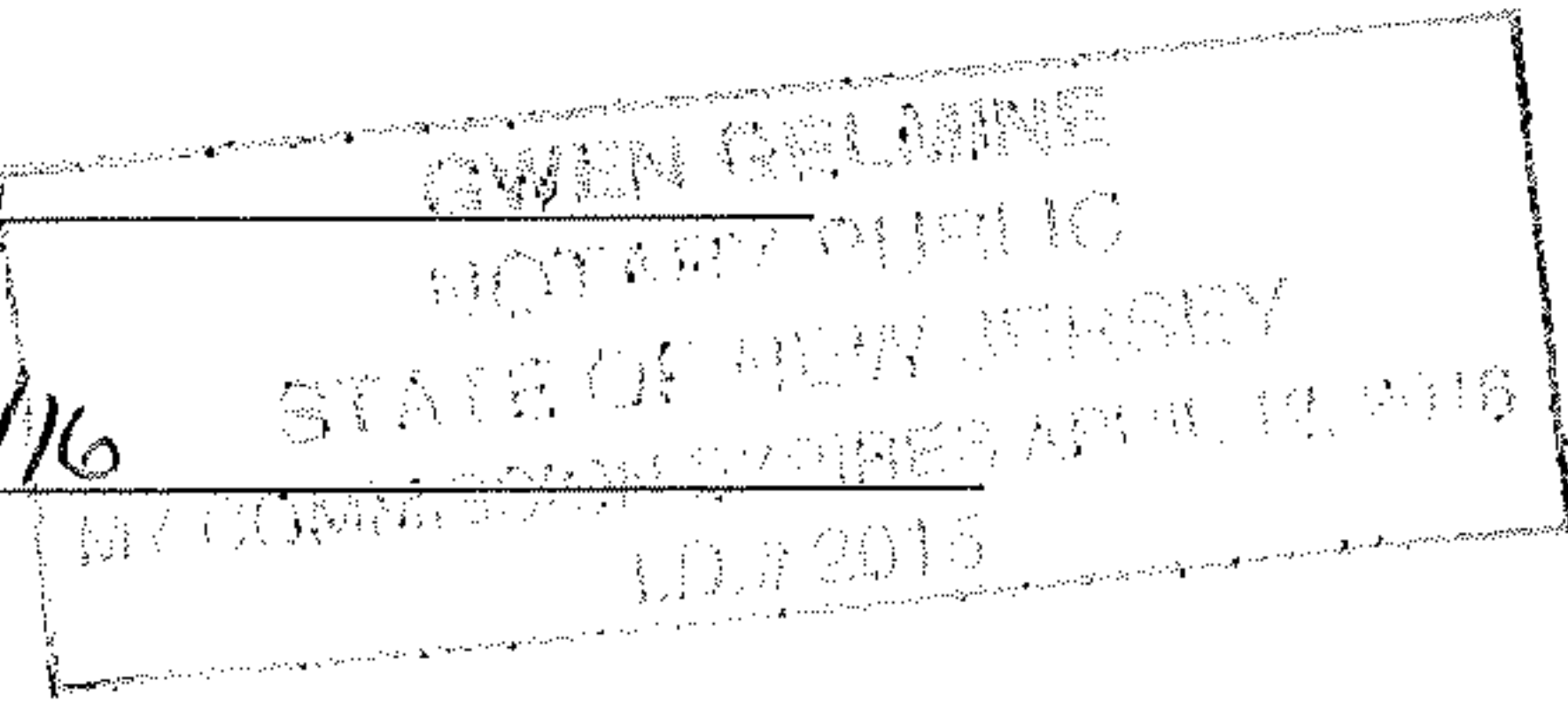
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) ACKNOWLEDGMENT

I, Gwen Gelmine, a notary public for Middlesex County, State ~~of North Carolina~~ NJ, do hereby certify that VERTA MCKNIGHT ALLEN personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 14 day of October, 2015.

Gwen Gelmine
Official Signature of Notary
Print Name: Gwen Gelmine

My Commission Expires: 4/12/16



[affix seal]



SIGNATURE PAGE OF ENCROACHMENT EASEMENT AGREEMENT

IN WITNESS WHEREOF, Bank of America has caused this Agreement to be signed, sealed, and delivered to be effective as of the day and year first above written.

Bank of America, N.A.,

By: Duane Thomas 3-4-16 (SEAL)
Name: Duane Wells Thomas
Title: Assistant Vice President (AVP)

STATE OF Texas

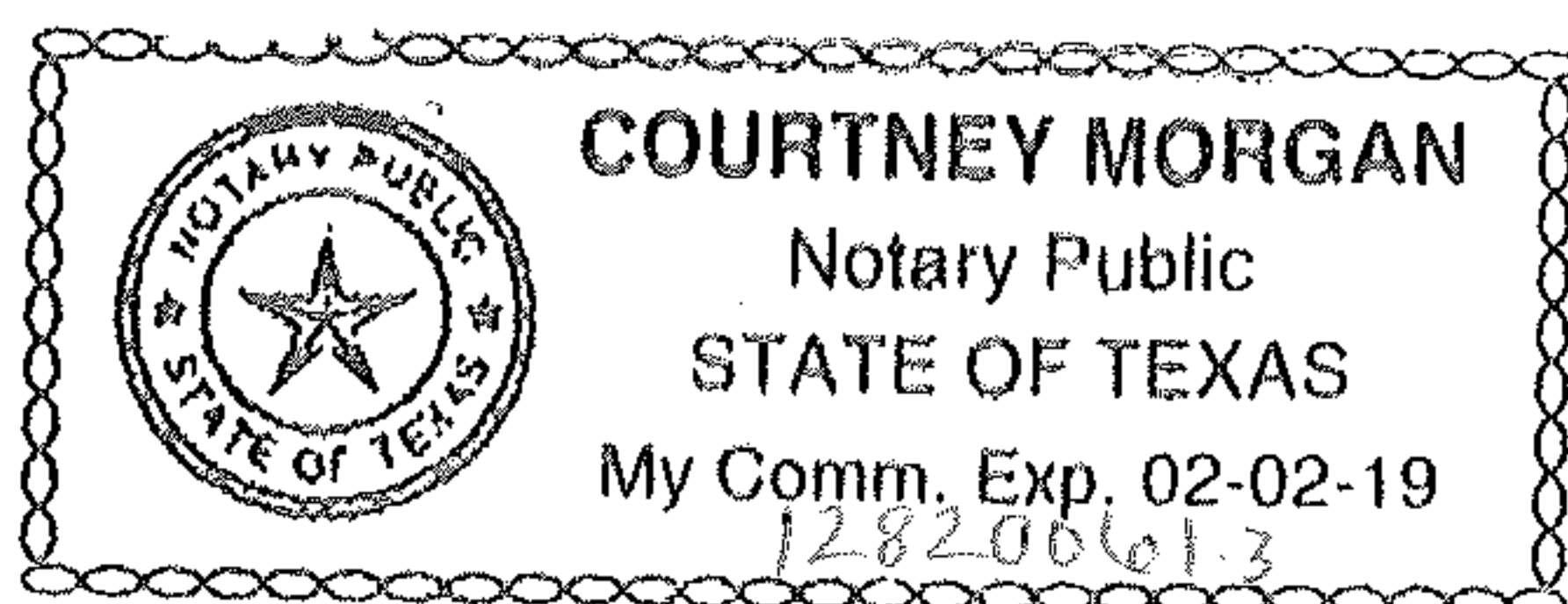
COUNTY OF Dallas

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) ACKNOWLEDGMENT
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I, Courtney Morgan, a notary public for the State of Texas, do hereby certify that Duane Wells Thomas, personally appeared before me this day and acknowledged that he is the AVP [insert title] of Bank of America N.A., and that he/she as AVP [insert title] being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official seal this 4 day of March, 2016 ^{ad}_{cm} ~~2015~~.

Courtney Morgan
Official Signature of Notary
Print Name: Courtney Morgan



My Commission Expires: 02-02-2019

[affix seal]

EXHIBIT A

See Attached

