

Prepared by and hold after recording for (without title examination):
Weatherspoon & Voltz, LLP (Box 36)

**NORTH CAROLINA
WAKE COUNTY**

ENCROACHMENT AGREEMENT

13th **THIS ENCROACHMENT AGREEMENT (the "Agreement")**, made and entered into this day of April, 2018, by and between Carlton Square Homeowners Association, a North Carolina non-profit corporation c/o York Properties, Inc. of Raleigh, whose address is 2108 Clark Avenue, Raleigh, NC 27605 (hereinafter "Grantor"), and Alton L. Smith and wife, Katherine B. Smith whose address is 3529 Carlton Square Place, Raleigh, NC 27612 (hereinafter "Grantees").

WITNESSETH:

THAT WHEREAS, Grantor is the record owner of property recorded in Book 10815, Page 1197 of the Wake County Registry, with said property being all the "Common Area" as shown on Book of Maps 1996, Page 343, Wake County Registry (hereafter referred to as the "Grantor's Property") and said Grantor's Property is the subject of this Agreement; and

WHEREAS, Grantees are the record owners of the property recorded in Book 10815, Page 1200 of the Wake County Registry, with said property being all of Lot 15, as shown on Book of Maps 1996, Page 343, Wake County Registry (hereafter referred to as the "Grantees' Property"); and

WHEREAS, the Grantor's Property and the Grantees' Property lie adjacent to one another; and

WHEREAS, Turning Point Surveying surveyed the Grantees' Property on March 23, 2018, and a copy of said survey is attached hereto as EXHIBIT A (the "Survey"); and

WHEREAS, the Survey shows an encroachment of a fence from the Grantees' Property onto the Grantor's Property; and

WHEREAS, Grantor has been notified of said encroachment and has stated that the encroachment is not adverse; and

WHEREAS, neither Grantees nor their predecessors in interest have ever tried to adversely possess any portion of the Grantor's Property.

NOW, THEREFORE, the Grantees, for valuable consideration, the receipt and sufficiency of which is acknowledged, do agree as follows:

1. That the encroachment of the fence is by permissive use only. Grantees do hereby waive any and all rights to claim any portion of the Grantor's Property by adverse possession.
2. Grantees also hereby acknowledge that the permissive use could at any time in the future be revoked with notice by Grantor, or its successors, assigns, or subsequent record owners of the Grantor's Property. If Grantor requires removal of the fence encroachment in the future, Grantees shall remove the encroachment of the fence within ninety (90) days of receipt of written notice from Grantor. Additionally, any expense for the removal or relocation of the fence shall be borne by Grantees, to include repair and restoration of the Grantor's Property.
3. Grantees shall maintain that portion of the Grantor's Property that lies within the fence and shall have Grantor named as an additional insured on Grantee's homeowner's insurance policy for so long as Grantee keeps the fence in place.
4. Grantees do hereby agree to indemnify and hold Grantor harmless for any and all liabilities arising out of the location, use or misuse of the fence encroachment as shown on the Survey. Such indemnity includes any claims by the City of Raleigh for maintenance of the fence or any landscaping installed by Grantees along the fence line on Grantor's Property.
5. If the fence is ever damaged or removed, it may not be rebuilt to encroach on the Grantor's Property.

The designations Grantor and Grantees as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context. It is intended that the agreements granted herein and the covenants, rights and obligations set forth in this Agreement shall run with the land in favor of the parcel benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties to this Agreement, and their successors, assigns, heirs, and personal representatives for so long as the encroachment of the fence is in existence.

This Agreement may be executed in counterpart originals, and together all signatures shall create one integrated document.

This Agreement shall be interpreted and enforced in accordance with the laws of the State of North Carolina.

[the remainder of this page intentionally blank – signatures and notaries follow]

Signed this the 13th day of April, 2018.

GRANTOR:

CARLTON SQUARE HOMEOWNERS ASSOCIATION, (SEAL)
a North Carolina non-profit corporation

By: Elizabeth W. Voltz
Printed Name: Elizabeth W. Voltz
Title: President

STATE OF NORTH CAROLINA
COUNTY OF WAKE

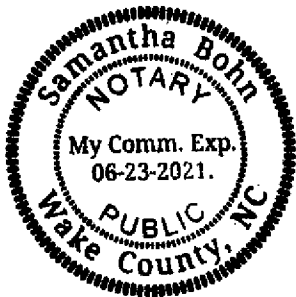
I, Samantha Bohn, a Notary Public of the County and state aforesaid, certify that Elizabeth W. Voltz, President of Carlton Square Home Owners Association, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 13th day of April, 2018.

Samantha Bohn
Notary Public

My Commission Expires: 6/23/2021

[Notary Seal]



Signed this the 10 day of April, 2018.

GRANTEES

Alton L. Smith (SEAL)
Alton L. Smith

Katherine B. Smith (SEAL)
Katherine B. Smith

STATE OF NORTH CAROLINA
WAKE COUNTY

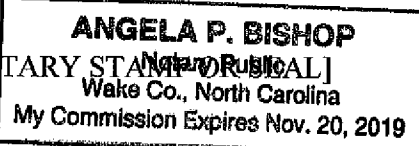
I, Angela P. Bishop, a Notary Public for the County of Wake and State of North Carolina, do hereby certify that ALTON L. SMITH, either being personally known to me or proven by satisfactory evidence (said evidence being MED), personally appeared before me this day, and acknowledged the voluntary due execution of the foregoing instrument by them for the purposes stated therein.

WITNESS my hand and notarial seal, this 10 day of April, 2018.

My Commission Expires: 11-20-19

Angela P. Bishop
Notary Public

[AFFIX NOTARY STAMP OR SEAL]



ANGELA P. BISHOP
Notary Public
Wake Co., North Carolina
My Commission Expires Nov. 20, 2019

STATE OF NORTH CAROLINA
WAKE COUNTY

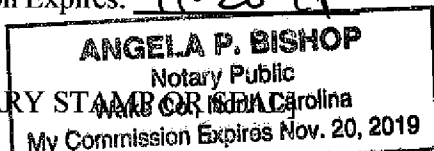
I, Angela P. Bishop, a Notary Public for the County of Wake and State of North Carolina, do hereby certify that KATHERINE B. SMITH, either being personally known to me or proven by satisfactory evidence (said evidence being MED), personally appeared before me this day, and acknowledged the voluntary due execution of the foregoing instrument by them for the purposes stated therein.

WITNESS my hand and notarial seal, this 10 day of April, 2018.

My Commission Expires: 11-20-19

Angela P. Bishop
Notary Public

[AFFIX NOTARY STAMP OR SEAL]

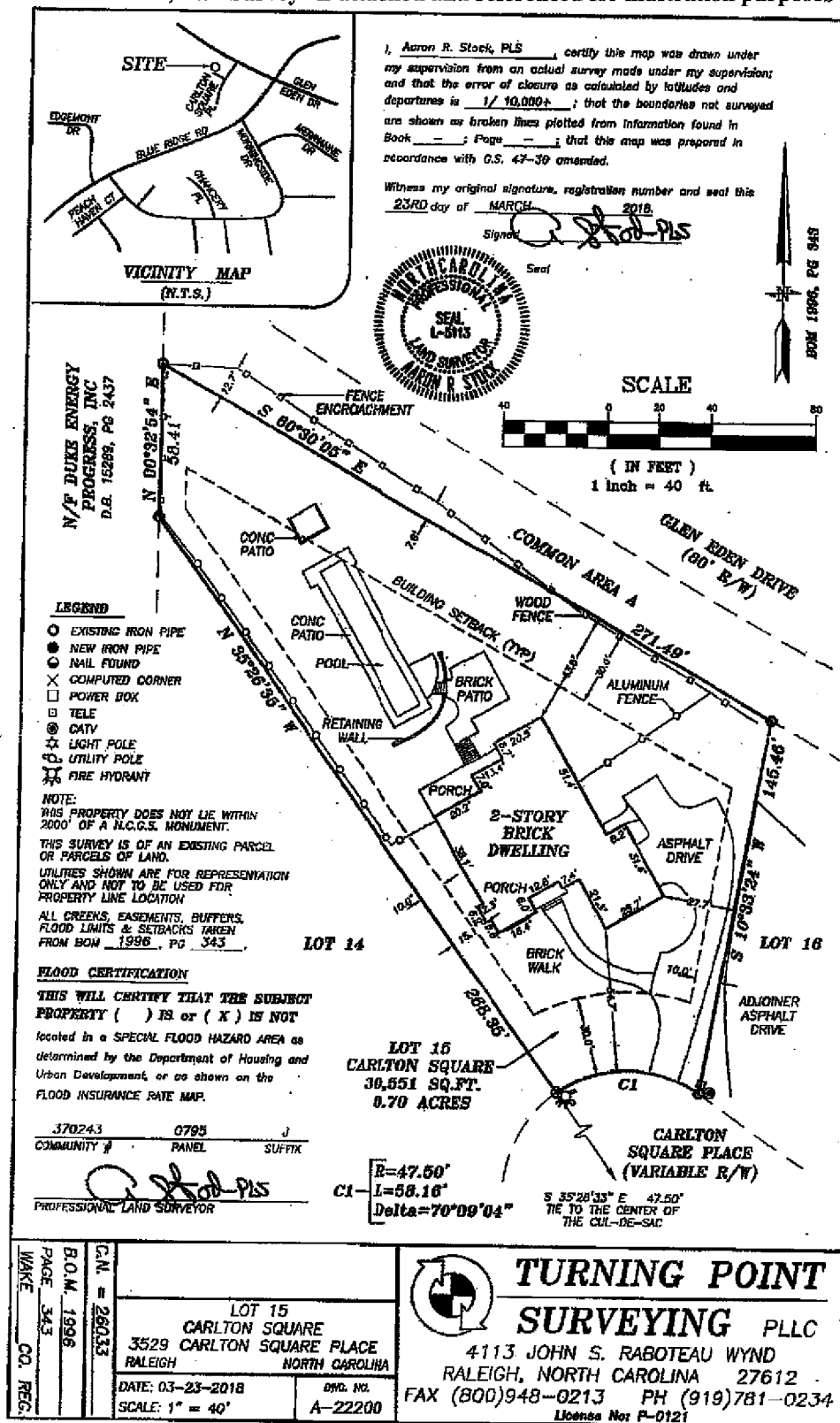


ANGELA P. BISHOP
Notary Public
Wake Co., North Carolina
My Commission Expires Nov. 20, 2019

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EXHIBIT A

"Exhibit A", the "Survey" is attached and referenced for illustration purposes only.



This map may not be a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations and has not been reviewed for compliance with recording requirements for plats.