

FOR REGISTRATION  
Willie L. Covington  
REGISTER OF DEEDS  
Durham County, NC  
2015 MAY 15 02:07:58 PM  
BK:7702 PG:544-551  
DEED  
FEE:\$26.00  
EXCISE TAX: \$12,981.00  
INSTRUMENT # 2015014694  
APRILJ



**NORTH CAROLINA  
GENERAL WARRANTY DEED**

Excise Tax: \$12,981.00

Recording Time, Book and Page

Parcel Reference No. 103362

Parcel Identifier No. 0821-12-95-0598

Mail after recording to: GRANTEE

This instrument was prepared by: Hedrick Murray Bryson Kennett & Mauch, PLLC, PO Box 52394, Durham NC 27717  
Brief Description for the Index: Lots 1 through 4 Plat Book 59, page 78.

DEED made this 13 day of May, 2015 by and between

**GRANTOR:**

E & L REALTY, LLC  
3517 Donnigale Avenue  
Durham, NC 27705

**GRANTEE:**

VAN ALEN ASSOCIATES, LLC  
807 East Main Street, Suite 2-140  
Durham, NC 27701

The designation Grantor and Grantee 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.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land and more particularly described as follows:

**BEING ALL OF Lots 1, 2, 3 and 4 as shown on plat and survey thereof recorded in Plat Book 59, page 78 of the Durham County Registry, as more completely described in EXHIBIT A attached to this Deed (hereinafter referred to as the "Property").**

The Property was acquired by Grantor by instrument recorded in Book 3476, Page 225, Durham County Registry.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated.

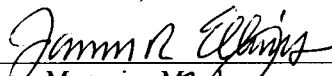
The Property is being conveyed by Grantor to Grantee "as is" in regard to the condition of any and all improvements located on the Property.


Title to the property hereinabove described is subject to the following exceptions:

1. Ad valorem taxes for 2015 which are the sole responsibility of Purchaser, not yet due and payable as of the date of recordation of this Deed, and for all subsequent years;
2. Matters shown on plat recorded in Plat Book 59, page 78 of the Durham County Registry; but the Declaratory Statement of Covenants recorded in Deed Book 322, page 561 as referenced on the plat, and the 25' setbacks established by those Covenants and shown on the plat, are no longer of any effect, having been terminated by Durham City Council Resolution 8897, adopted August 19, 2002, terminating those Covenants.
3. Easement recorded in Book 423, Page 248, Durham County Registry.
4. The provisions of **EXHIBIT B** attached to this Deed.
5. All zoning and land use laws, regulations, and ordinances of municipal and/or other governmental authorities.
6. Such matters and conditions as would be revealed by a current, accurate survey of the Property.
7. The rights of tenants in possession under leases or subleases to or from Grantee.
8. Any liens for work performed or materials furnished to the Property by Grantee or others acting through or on behalf of Grantee.

IN WITNESS WHEREOF, Grantor, acting through its managing members, has executed this deed the day and year above written.

**GRANTOR: E & L REALTY, LLC**

By:   
Managing Member

By:   
Managing Member

STATE OF NORTH CAROLINA

Durham COUNTY

I, certify that the following persons personally appeared before me this day, and (check one):

I have personal knowledge of the identity of the principals;

I have seen satisfactory evidence of the principals' identity by current state or federal identifications with the principals' photographs in the form of NC Drivers License ;

a credible witness has sworn to the identity of the principals,

and each acknowledged that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

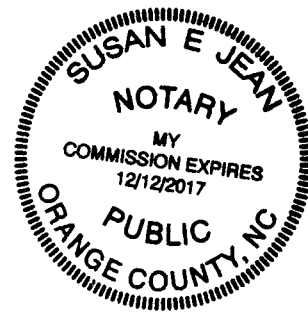
Principal(s): James R. Lowe and James R. Elkins, as managing members of E & L Realty, LLC.

Date: 13<sup>th</sup> May, 2015.

Susan E. Jean, Notary Public

Printed or Typed Name: Susan E. Jean

My commission expires: 12/12/2017



**EXHIBIT A**  
**DESCRIPTION OF THE PROPERTY**

Parcel 1: BEGINNING at a concrete monument in the Western right-of-way line of South Roxboro Street, said concrete monument being located South 30-18-00 West 20.80 feet from the point of intersection of the South line of Dillard Street and the West line of South Roxboro Street, and running thence along and with the West line of South Roxboro Street, South 30-18-00 West 211.50 feet to a concrete monument in the West line of South Roxboro Street along and with the North line of Lot 4, North 59-14-35 West 285.61 feet to an iron stake; thence along the East line of Lot 2, North 28-13-33 East 218.65 feet to an iron stake in the South line of Dillard Street; thence along the South line of Dillard Street along a curve to the right, the radius of which is 1,879.86, and arc distance of 30.00 feet to the point of tangency of said curve; thence continuing along the South line of Dillard Street South 61-57-00 East 242.95 feet to a concrete monument, the point of curvature of Curve C-50 to the right; thence along said curve C-50, the radius of which is 20.00 feet, an arc distance of 32.20 feet to the place and point of BEGINNING, containing 65,233 square feet, more or less, and being all of Lot 1, Block L, Project 1, or N.C. R-16, of the Property of the Redevelopment Commission of the City of Durham as surveyed by George C. Love, Jr. R.I.S. dated November 4, 1967, Job No. 32401 and being recorded

Job No. 3240J, which is recorded in the office of the Register of Deeds of Durham County in Plat Book 59, on Page 78, to which reference is hereby made for a more particular description.

Parcel 4: BEGINNING at a concrete monument in the West line of South Roxboro Street at the Southeast corner of Lot 1, Block L, and running thence along and with the West line of South Roxboro Street, South 27-28-00 West 211.92 feet to a concrete monument, the point of curvature of Curve No. C-69 to the right; thence along said Curve C-69 to right, the radius of which is 20.00 feet, an arc length of 29.73 feet to a concrete monument, the point of tangency of said curve; thence along and with the North right-of-way line of the East-West Expressway North 67-22-00 West 240.00 feet to an iron stake; thence along and with the East line of Lot 3, Block L, North 21-25-41 East 269.29 feet to an iron stake, the Southwest corner of Lot 1, and the Southeast corner of Lot 2; thence along and with the South line of Lot 1, South 59-14-35 East 285.61 feet to the place and point of BEGINNING, and containing 67,536.5 square feet, more or less, and being all of Lot 4, Block L, Project 1, or N.C. R-16, or the Property of the Redevelopment Commission of the City of Durham as prepared by George C. Love, Jr., R.L.S., dated November 4, 1967, Job No. 3240J and recorded in the office of the Register of Deeds of Durham County in Plat Book 59, on Page 78, to which reference is hereby made for a more particular description.

The above-described property is hereby conveyed subject to the construction easement and twenty-five foot storm sewer easement as shown of record on the Plat of the above-described property, which Plat is duly recorded in Plat Book 59, at Page 78, of the Durham County Registry, reference to which is hereby made for a more accurate description and location of the foregoing encumbrances.

**EXHIBIT B****RESTRICTIVE COVENANT, LIEN and PURCHASE PRICE INCREASE ADDENDUM**  
**To the DEED from**  
**E & L REALTY, LLC to VAN ALEN ASSOCIATES, LLC**  
**DATED MAY 13, 2015.**

Paragraph 3 (a) of Amendment 6 to the Purchase Agreement dated October 12, 2006 between E & L Realty, LLC, as Seller, and Van Alen Associates, LLC, as Purchaser, provides that:

“The Purchase Agreement is amended to provide that there shall be an adjustment to the Purchase Price not only for Building Permits obtained by Purchaser prior to the date of Closing, but also for Building Permits obtained by Purchaser at any time prior to the date twelve (12) years from the Effective Date [May 27, 2010] of this Amendment. The square footage thresholds at which the Purchase Price shall be adjusted, as well as the amount of the incremental increases, shall remain as set out in the Purchase Agreement. Purchaser, and any assigns or transferees or such entities to which its interest in the subject Property is transferred or assigned, shall be bound by this potential post-Closing Purchase Price adjustment obligation; and at Closing the parties shall record an instrument, as an addendum to the deed, providing record notice of this obligation. In the event that the Property is subdivided or one or more condominium regime established on the Property following Closing but prior to the expiration of the above referenced twelve (12) year period, Purchaser shall allocate the responsibilities as between the divided parcels, by recorded instrument, as to the payment obligations under this provision. Purchaser shall remain fully obligated to Seller with respect to the supplemental payments and no portion of Property owned by Seller shall be released from obligations with respect to supplemental payments. Any condominium unit(s) and/or portions of the Property sold to a third party shall be released from the obligation provided above at the time of the transfer so long as (A) Purchaser has paid to Seller any supplemental payments due through the date of such transfer, and (B) if Purchaser has transfers [sic] more than fifty percent (50%) of the Property, then Purchaser at its option either (i) provides Seller with security (such as, without limitation, a lien on some portion(s) of transferred property) necessary to secure the remaining obligations with respect to the Purchase Price adjustment, or (ii) retains assets in Purchaser necessary to satisfy remaining obligations with respect to the Purchase Price adjustment and provides Seller with reasonable evidence of such assets (such as verification from Purchaser’s accounting firm). The deed restriction referenced above shall provide greater detail as to the system of post-Closing Purchase Price Adjustment.”

By way of clarification to the above language, and superseding any provision to the contrary in this **EXHIBIT B**:

Grantor shall release, from the restrictions and reservation of liens created by this Deed and this **EXHIBIT B**, the first 3.0795 acres of the Property transferred to any unrelated third party in one or more conveyances by NWR or its successor in title to the Property, so long as Grantor has received any Purchase Price adjustments due and payable through the date of any such conveyance. Grantor’s release shall be in writing and shall be in recordable form for recording in the Durham County Registry. Grantor shall execute and deliver any such release to the closing agent identified by NWR or its successor in title in sufficient time to be recorded at closing after receiving a written notice that some or all of such 3.0795 acres of the Property will be transferred to any third party. Delivery of such release shall be contingent upon the conveyance to the third party. If the conveyance does not close as

scheduled, the unrecorded release will be returned to Grantor by the closing agent. Grantor's address for such notices is the address set forth on the first page of this Deed. Grantor may change such address by written notice delivered to the address then on file with the Durham County Tax Collector for the owner of the largest remaining portion of the Property at that time not yet transferred to any third party by NWR or its successor in title.

The adjustments to the purchase price will be based on Building Permits obtained at any time on or before May 26, 2022, that will increase the Net Rentable Square Feet that can be constructed on the Property to 650,000 square feet or more, which will increase the Purchase Price as follows:

- At least 650,000 -- \$1,000,000 increase
- At least 675,000 -- additional \$250,000
- At least 700,000 -- additional \$250,000
- At least 725,000 -- additional \$250,000
- At least 750,000 -- additional \$250,000
- At least 775,000 -- additional \$250,000
- At least 800,000 -- additional \$250,000
- At least 825,000 -- additional \$250,000
- At least 850,000 -- additional \$250,000.

The maximum adjustment (increase) in the Purchase Price is \$3,000,000. Payment of each additional amount is due and payable to Seller immediately upon the issuance of one or more building permits that increase the Net Rentable Square Feet to a number that exceeds one or more of the thresholds stated above. Purchaser and its successors and assigns shall notify Seller in writing of any and all conveyances, transfers and/or assignments of an interest in the Property at least 15 days prior to the closing of any such transaction and shall also promptly notify Seller in writing of any and all applications for building permits and of the issuance of any and all building permits issued for the improvement of the Property.

"Net Rentable Square Feet" as used in this **EXHIBIT B** for multi-unit residential buildings and amenities to be constructed on the Property means the Unit Net Area contained in all living units to be constructed, as measured under 2010 BOMA Multi-Unit Residential Standard, Method B (Net) multiplied by a factor of 1.08. For example, if a structure contained 100,000 square feet of Unit Net Area using the above defined standard, the Net Rentable Square Feet of the structure would be 108,000 square feet. Unit Net Area does not include the following: balconies, patios and decks; common use corridors, hallways and lobbies; common use vertical penetrations such as stairwells (unless located in a living unit), elevator shafts, and electrical, plumbing and ductwork shafts; common amenities such as recreational areas, fitness areas and swimming pools (whether located in, on or above the ground, or on rooftop areas); mechanical rooms; building management and operational areas, janitorial closets and the like; parking areas, driveways and drive aisles; areas in parking decks; and public space, open space, and landscaped space. As used in this **EXHIBIT B**, "multi-unit residential buildings and amenities" means apartment, condominium and hotel projects.

"Net Rentable Square Feet" as used in this **EXHIBIT B** for commercial buildings and amenities (such as office, retail, and the non-residential portions of mixed use commercial projects) to be constructed on the Property means all Rentable Area within air conditioned structures, as Rentable Area is measured under 2010 BOMA Office Building Standard, Method B. Rentable Area is measured to the inside dominant face of the building, and does not include vertical penetrations such

as stairwells, elevator shafts, and electrical, plumbing and ductwork shafts. "Net Rentable Square Feet" does not include exterior balconies, patios and decks; parking areas, driveways and drive aisles; areas in parking decks; and public space, open space, and landscaped space. Net Rentable Square Feet does include all interior: corridors, hallways, lobbies, fitness and other amenity areas, bathrooms, management and operational offices and spaces, janitorial closets, tenant storage areas and the like.

Purchaser has disclosed its intention to transfer the Property in its entirety to NWR Development, LLC or its assignee (such actual transferee of the Property hereafter referred to as "NWR") immediately following Closing, and it is expressly agreed that the obligation to pay the additional Purchase Price will be assumed and undertaken by NWR and by any and all parties to whom NWR transfers or assigns an interest in the Property and that the obligation to pay the additional purchase price will be secured by a lien upon the Property in the amount of \$3,000,000 that shall run with the title to the land until such time as this obligation is satisfied and/or this lien is released by Seller as to any part or all of the Property. In addition, this lien will expire at 11:59 PM EDT on May 26, 2022, if there are no amounts due and payable to Seller in respect to this obligation that accrued and became due and payable on or prior to such date. In Purchaser's deed conveying the Property to NWR, title to the Property shall be conveyed expressly subject to the terms of this Exhibit B, and with a statement that the terms of this Exhibit B constitute a first lien encumbrance against the Property. Upon the transfer of the Property by Purchaser to NWR, Purchaser shall be released from all liability under the provisions of this **EXHIBIT B**.

ANY AND ALL DEEDS AND OTHER DOCUMENTS HEREAFTER CONVEYING AN INTEREST IN THE PROPERTY DESCRIBED IN THE SPECIAL WARRANTY DEED TO WHICH THIS ADDENDUM IS ATTACHED SHALL BE SUBJECT TO THIS RESTRICTIVE COVENANT AND THE LIEN CREATED HEREUNDER, WHETHER OR NOT SUCH DEEDS OR DOCUMENTS CONTAIN LANGUAGE REFERENCING THE COVENANT OR THE LIEN, AND ANY AND ALL GRANTEEES WHO RECEIVE AND RECORD A DEED OR OTHER INSTRUMENT CONVEYING AN INTEREST IN THE PROPERTY SHALL ACQUIRE SUCH INTEREST SUBJECT TO THE LIEN CREATED BY THIS COVENANT AND SHALL BE DEEMED TO ASSUME THE OBLIGATION TO PAY THE ADDITIONAL COMPENSATION TO SELLER ARISING HEREUNDER JOINTLY AND SEVERALLY WITH ALL OTHER GRANTEEES WHO RECEIVE AN INTEREST IN THE PROPERTY, EXPRESSLY INCLUDING WITHOUT LIMITATION NWR AND ITS SUCCESSORS AND ASSIGNS, WHICH JOINT AND SEVERAL OBLIGATION SHALL CONTINUE UNTIL THE OBLIGATION IS SATISFIED OR RELEASED BY SELLER OR EXPIRES ON MAY 26, 2022 AS PROVIDED HEREINABOVE.