

  
**2009049493 00175**  
 FORSYTH CO, NC FEE \$34.00  
**GOVERNMENT**  
 PRESENTED & RECORDED:  
 11-13-2009 04:15:00 PM  
 C. NORMAN HOLLEMAN  
 REGISTER OF DEEDS  
 BY: PATSY RUTH DAVIS  
 DPTY  
**BK: RE 2921**  
**PG: 309-314**

Prepared By: Charles C. Green, Jr.

NORTH CAROLINA )

Blanco Box 52  
(DLM)

FORSYTH COUNTY )

WARRANTY DEED

THIS DEED made this 13<sup>th</sup> day of November, 2009, by and between the CITY OF WINSTON-SALEM, a municipal corporation, situate in Forsyth County, North Carolina, hereinafter called GRANTOR; and Y-STAIR APARTMENTS, LLC, a North Carolina limited liability company, of Forsyth County, North Carolina, hereinafter called GRANTEE;

W I T N E S S E T H :

THAT GRANTOR, for and in consideration of the sum of TEN DOLLARS AND OTHER VALUABLE CONSIDERATION (\$10.00 & OVC) to it in hand paid by GRANTEE, the receipt whereof is hereby acknowledged, hath given, granted, bargained and sold, and by these presents doth give, grant, bargain, sell, convey and confirm unto GRANTEE and its successors and assigns, premises in Winston Township, Forsyth County, North Carolina, described as follows:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

UPON CONDITION and provided always that if, subsequent to this conveyance and prior to GRANTOR'S issuance of its certificate of completion of improvements as is hereinafter specified:

(1) GRANTEE shall default in or violate his obligation with respect to the construction of the improvements (including the nature and the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and any such default, violation, abandonment or suspension shall not be cured, ended or remedied within three (3) months [six (6) months, if the default is with respect to the date for completion of the improvements] after written demand by GRANTOR so to do; or

(2) GRANTEE shall fail to pay ad valorem taxes or assessments on the property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by the contract between GRANTOR and GRANTEE, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provisions satisfactory to GRANTOR made for such payment, removal, or discharge, within ninety (90) days after written demand by GRANTOR so to do; or

(3) There is, in violation of the contract between GRANTOR and GRANTEE, any transfer of the property or any part thereof, or any change in the ownership or distribution of the stock of the GRANTEE, or with respect to the identity of the parties in control of the GRANTEE or the degree thereof, and such violation shall not be cured within sixty (60) days after written demand by GRANTOR to the GRANTEE, then GRANTOR shall have the right to re-enter and take possession of the property and to terminate (and revert in GRANTOR) the estate herein conveyed, it being the intent of this provision, together with other provisions of the contract between GRANTOR and GRANTEE, that this conveyance be made upon a condition subsequent to the effect and in the event of any default or failure or violation or other action or inaction by GRANTEE as specified in subdivisions (1), (2) and (3), above, failure on the part of GRANTEE to remedy or end or abrogate

such default or failure or violation or other action or inaction, within the period and in the manner stated in such subdivisions, GRANTOR at its option may declare a termination in favor of GRANTOR of the title, and of all rights and interests in and to the property herein conveyed, and that such title and all rights and interests of GRANTEE, and his successors and assigns to and in the property, shall revert to GRANTOR: Provided, that such condition subsequent and any revesting of title as a result thereof in GRANTOR

(1) Shall always be subject to and limited by and shall not defeat, render invalid or limit in any way, (i) the lien of any mortgage authorized by the contract between GRANTOR and GRANTEE and (ii) any rights or interests provided in the contract between GRANTOR and GRANTEE for the protection of the holders of such mortgages; and

(2) Shall not apply to individual parts or parcels of the property (or, in the case of parts or parcels leased, the leasehold interest) on which the improvements to be constructed have been completed in accordance with the contract between GRANTOR and GRANTEE and for which a certificate of completion is issued therefor.

This conveyance is made subject to those Amended and Corrected Declaration of Restrictive and Protective Covenants and Conditions recorded in Book 2707, at Page 760, Forsyth County Registry, the same being incorporated herein by reference.

This conveyance is also made subject to the following restrictive covenants and conditions: (1) The property may be used only for residential (including multifamily residential) purposes; (2) Unfinished concrete block or similar materials shall not be permitted above the finished grade; (3) All driveways and aisles shall be a hard, all-weather surface of either bituminous asphalt or concrete; (4) Landscaping shall include the following: (a) Entire lawn area shall be seeded and strawed as required to provide a good stand of grass; (b) At least two trees, with a minimum height of eight feet and a minimum caliper of two inches are required in the yard on interior lots; and three on corner lots; (c) At least six shrubs with a minimum height of eighteen inches are required in the front yard; and (5) there shall be no fence across the front or any side of the property except as may be approved by the City as to its design, height, and material (i.e., picket fence of limited height).

All such conditions and restrictions and covenants attaching to and running with the land.

This property is also conveyed subject to all the terms of a contract entered into between GRANTOR and GRANTEE with respect to the use to which the said property will be put, the nature of the improvements to be constructed thereon, and the time within which such construction will be commenced, this contract, together with supporting plans for improvement, being on file in the offices of GRANTOR in the offices of its Neighborhood Services Department, 100 East 1st Street, Winston-Salem, N.C. 27101. Promptly after completion of the improvements in accordance with the said contract, GRANTOR shall furnish GRANTEE an appropriate instrument certifying to the satisfactory completion of the improvements and to the fact of GRANTEE'S having fully acquitted itself of its said contractual obligation to redevelop the said property in accordance with the contract as aforesaid. Such certification shall be in a form recordable in the office of the Register of Deeds of Forsyth County. Such certificate and release deed shall nullify the condition subsequent and right of re-entry created hereinabove.

**\* \* \* THE SAID CONTRACTUAL OBLIGATION TO REDEVELOP SHALL BE, UNTIL IT IS PERFORMED AND UNTIL THE GRANTOR'S CERTIFICATE AS AFORESAID IS ISSUED, AN ENCUMBRANCE ON THE LAND HEREIN CONVEYED \* \* \***

GRANTEE agrees with reference to the above-described property or any part thereof that GRANTEE shall:

(1) Not discriminate upon the basis of race, color, creed or national origin in the sale, lease, or rental, or in the use or occupancy of the property or any improvements erected or to be erected thereon or on any part thereof; and this covenant shall be a covenant running with the land and shall be binding to the full extent permitted by law and equity for the benefit and in favor of and enforceable by (a) GRANTOR, its successors and assigns; (b) the owner of any other land or of any interest in such land within the Old Cherry #2 Redevelopment Area, and (c) the United States,

against GRANTEE and all successors in interest thereto, as to the property or any part thereof or any interest therein, and as to any party in possession or occupancy of the property or any part thereof; and

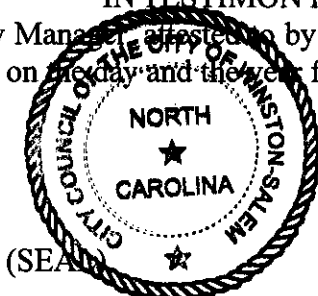
(2) Acknowledge that, in amplification and not in restriction of the foregoing provisions, it is intended and agreed that GRANTOR and its successors and assigns shall be deemed beneficiaries of the covenants, restrictions and conditions hereinabove referred to, and the United States shall be deemed a beneficiary of the covenant provided in the preceding paragraph, both for and in their or its own right, and also for the purpose of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such covenants have been provided. Such covenants shall run in favor of GRANTOR and the United States for the entire period during which such covenants shall be in force and in effect without regard to whether GRANTOR or the United States has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such covenants relate. GRANTOR shall have the right, in the event of any breach of any such covenants, and the United States shall have the right, in the event of any breach of the covenants provided in the preceding paragraph, to exercise all the rights and remedies and to maintain any action or suits at law or in equity or other proper proceedings to enforce the curing of such breach of covenant to which it or any other beneficiary of such covenant may be entitled.

Authority for the undersigned officers of GRANTOR to execute this deed was conferred by resolution of its City Council at a legal meeting of the said body held on the 17th day of August, 2009, and is in accord with the redevelopment plan approved by the City of Winston-Salem sometimes designated as the Old Cherry #2 Redevelopment Area, full details of which are on file in the offices of City-County Planning Board, City Hall, Winston-Salem, North Carolina 27101.

TO HAVE AND TO HOLD the above-described premises, with all of the appurtenances thereunto belonging or anywise appertaining, unto GRANTEE and its successors and assigns forever. And GRANTOR doth covenant that it is seized of the said premises in fee and hath the right to convey the same in fee simple on condition subsequent, as hereinbefore specified; that the said premises are free from encumbrances (with the exceptions herein stated); and that it will warrant and defend the said title to the same against the lawful claims of all persons whomsoever.

LIMITATIONS ON WARRANTIES. No warranties are made by this deed except to the extent they are expressly and unambiguously set forth herein. The Grantor specifically disclaims and excludes all implied warranties, including any implied warranties of merchantability and fitness for a particular purpose. Grantor specifically disclaims any warranty or representation regarding the condition of the property conveyed herein and any building or other structure thereon [collectively, the "Property"]; accordingly, Grantee accepts the Property in AS IS/WHERE IS AND WITH ALL FAULTS. Grantee acknowledges that the Grantor has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, concerning (i) the value, nature, quality or condition of the Property; and (ii) the suitability of the Property for any and all activities and uses which the Grantee may conduct thereon. Without limiting the scope of the foregoing, the Grantor has not made, does not make, and specifically disclaims any representation that the Property is free of or from: (1) any material or substance which detrimentally affects the value, nature, quality or condition of the Property; (2) unsuitable soil conditions; (3) flooding; (4) stormwater drainage problems; (5) unsuitable topography; (6) unknown utility lines and their unrecorded easements; and (7) zoning regulations adversely affecting the intended use of the Property.

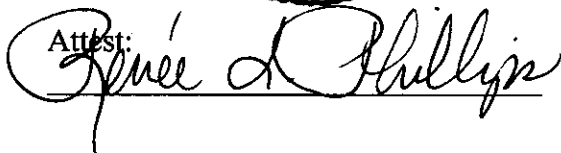
IN TESTIMONY WHEREOF, GRANTOR has caused these presents to be signed by its City Manager, attested to by its City Secretary, and has caused its corporate seal to be affixed hereto, on the day and the year first hereinabove written.



CITY OF WINSTON-SALEM

By:   
Lee Garrity, City Manager

Attest:



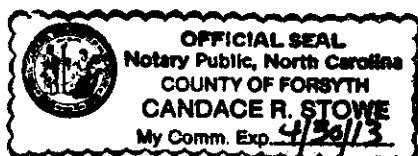
City Secretary

NORTH CAROLINA )

) FORSYTH COUNTY )

I, Candace R. Stowe, a notary public, certify that Renée L. Phillips, personally came before me this day and acknowledged that she is the City Secretary of the City of Winston-Salem, a municipal corporation, and that by authority duly given and as the act of the municipal corporation, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal, and attested by her as its City Secretary.

Witness my hand and notarial seal, this the 13 day of November, A.D., 2009.



Candace R. Stowe  
Notary Public

My commission expires: April 30, 2013

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#### AFFIDAVIT AND ACKNOWLEDGMENT

GRANTEE acknowledges that it takes the property subject to the foregoing deed's conditions, including the condition subsequent. Consistent with GRANTOR'S condition subsequent and with the terms and conditions of the Bid and Purchase Contract entered into between the GRANTOR and the GRANTEE, GRANTEE hereby makes constitutes and appoints the GRANTOR, with full power of substitution, as GRANTEE'S true and lawful attorney-in-fact, for it and in its name, place, and stead, and for its use and benefit, to sign and acknowledge a deed transferring the property (conveyed by the foregoing deed) from GRANTEE to GRANTOR, and to file said deed in the Forsyth County Registry to evidence that GRANTOR has exercised its rights pursuant to the condition subsequent in the foregoing deed. The foregoing power of attorney is a special and durable power of attorney coupled with an interest, is irrevocable, and shall survive a declaration of GRANTEE as incompetent or bankrupt or an assignment made for the benefit of GRANTEE'S creditors or the appointment of a receiver, guardian, or trustee for GRANTEE'S property or any other action affecting the status of GRANTEE. This power of attorney may be exercised by listing the name of the GRANTEE and executing any instrument over the signature of the attorney-in-fact acting for the GRANTEE.

IN WITNESS WHEREOF, Y-stair Apartments, LLC has caused these presents to be executed by its duly authorized Managing Member under seal, the day and year first above written.

GRANTEE:

Y-STAIR APARTMENTS, LLC  
By: Blackpine Development Corporation, its  
Managing Member

(SEAL)

By: DeWayne H. Anderson, Jr.  
Name: DeWayne H. Anderson, Jr.  
Title: President

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NORTH CAROLINA)

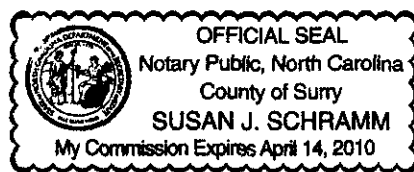
FORSYTH COUNTY)

I, Susan J. Schramm, a Notary Public of <sup>Surry</sup>~~Forsyth~~ County, North Carolina, do hereby certify that DeWayne H. Anderson, Jr. personally came before me this day and acknowledged that he is the President of Blackpine Development Corporation, a North Carolina corporation, the Managing Member of Y-stair Apartments, LLC, a North Carolina limited liability company, and that, by authority duly given, and as the act of the limited liability company, the foregoing instrument was signed in its name by the President of its Managing Member under Seal.

WITNESS my hand and notarial seal, this the 13<sup>th</sup> day of November, A.D., 2009.

My Commission Expires: April 14, 2010

Susan J. Schramm  
Notary Public



**EXHIBIT A**

BEING all those certain tracts or parcels of land lying and between located in Winston-Salem, Forsyth County, North Carolina, and being more particularly described as follows:

**TRACT 1**

BEGINNING at a ¼" existing iron pipe located in the western right-of-way of North Cherry Street, said iron pipe also being the northeast corner of Lot No. 16 as shown on the revised map of Lots No. 8 to No. 17, Block 14, N. Cherry St. Dev'p. Co., as recorded in Plat Book 6, Page 66, Forsyth County Registry; thence leaving said right-of-way South 84°55'25" West, a distance of 146.49 feet to a ¼" existing iron pipe in the eastern margin of a 10 foot alley; thence along the eastern margin of said 10 foot alley North 03°52'06" East, a distance of 123.17 feet to a ¼" existing iron pipe; thence continuing along the eastern margin of said 10 foot alley North 03°51'21" East, a distance of 35.35 feet to a ½" existing iron pipe; thence leaving said margin South 85°39'12" East, a distance of 126.40 feet to a ½" existing iron pipe located in the western right-of-way of North Cherry Street; thence along said right-of-way South 02°14'37" East, a distance of 34.73 feet to a ¼" existing iron pipe; thence South 02°29'30" East, a distance of 18.88 feet to a ¼" existing iron pipe, said iron pipe being located North 76°04'22" West, a distance of 29.95 feet from a pk nail located in the intersection of the centerlines of North Cherry Street and Pittsburg Avenue; thence continuing along said right-of-way South 04°05'05" East, a distance of 40.13 feet to a ¼" existing iron pipe; thence continuing along said right-of-way South 05°38'10" East, a distance of 42.22 feet to a ¼" existing iron pipe, said existing iron pipe being the point and place of BEGINNING, as more particularly shown on a survey entitled "Map for: Y-stair Apartments, LLC" by Daniel Walter Donathan, United Limited Engineering & Land Surveying, P.A., dated October 9, 2009, and containing 0.4547 acres, more or less.

Together with

**TRACT 2**

BEGINNING at a ¼" existing iron pipe located in the western right-of-way of North Cherry Street (50 foot right-of-way), said point being the northeastern corner of Lot 9 in Block 15, as shown on the map of North Cherry Street Development Company recorded in Plat Book 4, Page 55, Forsyth County Register of Deeds; thence from said point of BEGINNING leaving said right-of-way North 84°07'21" West, a distance of 132.90 feet to a point in the eastern margin of a 10 foot alley; thence along the eastern margin of said alley North 03°51'56" East, a distance of 49.82 feet to a ¾" existing iron pipe; thence leaving said margin South 84°09'48" East, a distance of 142.34 feet to a ½" existing iron pipe in the western right-of-way of North Cherry Street; thence along said right-of-way South 14°41'36" West, a distance of 50.49 feet to a ¼" existing iron pipe, being the point and place of BEGINNING, as shown more particularly on a survey entitled "Map for: Y-stair Apartments, LLC" by Daniel Walter Donathan, United Limited Engineering & Land Surveying, P.A. dated October 9, 2009, containing 0.157 acres, more or less.