

2014028582 00137

FORSYTH CO. NC FEE \$66.00

PRESENTED & RECORDED

08/07/2014 02:47:32 PM

C. NORMAN HOLLEMAN

REGISTER OF DEEDS

BY: S. GRIFFITH

DPTY

BK: RE 3191

PG: 1452 - 1476

DECLARATION OF EASEMENTS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS AND RESTRICTIONS (this **"Declaration"**), dated August 7, 2014, is made by **PAVILION WINSTON-SALEM, LLC**, a North Carolina limited liability company (**"Pavilion"**), **J. TRACY WILKERSON** and **PAUL B. GLENN** (collectively, the **"Trustees"**), co-trustees of the E. Vernon Ferrell, Jr. Revocable Trust, dated December 21, 2011, and **DOUGLAS DILLARD** (**"Dillard,"** and together with the Trustees, collectively, **"Seller"**). Pavilion and Seller are collectively hereinafter referred to as the **"Declarants"**.

RECITALS

A. Seller is the owner of Anchor Parcel C (as defined below), Outparcel 1 (as defined below), Outparcel 2 (as defined below), Outparcel 3 (as defined below), and Outparcel 5 (as defined below) (collectively, the **"Seller Property"**) as reflected on that certain subdivision plat (the **"Plat"**) entitled "Final Subdivision Plat For: Pavilion Winston-Salem," prepared by Stantec Consulting Services Inc., dated May 16, 2014, and recorded in Plat Book 62, Pages 104-106 in the Registry (as defined below).

B. Pavilion is the owner of "Parcel A," "Parcel B," and "Outparcel 4" as described on the Plat (collectively, the **"Pavilion Property"**). Pursuant to a contract by and between Pavilion and Seller evidenced by that certain Memorandum of Purchase and Sale Agreement recorded contemporaneously with this Declaration, Pavilion intends to acquire the Seller Property prior to December 31, 2014.

C. Pavilion intends to develop the Pavilion Property and the Seller Property (collectively, the **"Shopping Center"**) for commercial development.

D. As shown on the Plat, the Shopping Center has been subdivided into eight (8) parcels: (1) "Parcel A" (7.626 acres) (**"Anchor Parcel A"**); (2) "Parcel B" (3.424 acres) (**"Anchor Parcel B"**); (3) "Parcel C" (4.972 acres) (**"Anchor Parcel C"**); (4) "Outparcel 1" (0.954 acres) (**"Outparcel 1"**); (5) "Outparcel 2" (1.850 acres) (**"Outparcel 2"**); (6) "Outparcel 3" (0.713 acres) (**"Outparcel 3"**); (7) "Outparcel 4" (0.996 acres) (**"Outparcel 4"**); and (8) "Outparcel 5" (1.122 acres) (**"Outparcel 5"**).

**PREPARED BY AND
AFTER RECORDING, MAIL TO:**

Robinson, Bradshaw & Hinson, P.A.
Attention: William K. Packard

In this Declaration, Anchor Parcel A, Anchor Parcel B and Anchor Parcel C are individually referred to as an **“Anchor Parcel”** and collectively referred to as the **“Anchor Parcels.”** In this Declaration, Outparcel 1, Outparcel 2, Outparcel 3, Outparcel 4 and Outparcel 5 are individually referred to as an **“Outparcel”** and collectively referred to as the **“Outparcels.”**

E. Anchor Parcel A is being developed with a free-standing store building and other improvements, to be leased to Hobby Lobby Stores, Inc., an Oklahoma corporation (**“Hobby Lobby”**), pursuant to a Lease Agreement between Pavilion and Hobby Lobby dated February 21, 2014, as amended by First Amendment to Lease Agreement dated May 6, 2014 (as further amended from time to time, the **“Hobby Lobby Lease”**).

F. Outparcel 3 is being developed with a free-standing store building and other improvements, to be leased to Merchant’s, LLC, a Delaware limited liability company (**“Merchant’s”**), pursuant to a Land and Building Lease Agreement between Pavilion and Merchant’s dated June 30, 2014 (as amended from time to time, the **“Merchant’s Lease”**).

G. The Declarants intend to convey, lease or develop each remaining Parcel (as defined below) for commercial development consistent with this Declaration and in accordance with that certain Special Use District Permit issued by the City of Winston-Salem (Zoning Docket W-3204; Ordinance Z-2706) (as the same may be amended, supplemented, replaced or restated from time to time, the **“SUP”**), which encumbers the Shopping Center.

H. The Declarants desire that the various Parcels comprising the Shopping Center be developed in conjunction with one another as an integrated commercial development in substantial accordance with the site plan of the Shopping Center attached hereto as Exhibit A (the **“Site Plan”**), the various governmental approvals obtained (or to be obtained) for the project, and the SUP. The Declarants are attaching the Site Plan for illustrative purposes only, and shall not be deemed to be obligated to construct any of the building improvements shown on the Site Plan, to subdivide the Parcels in the precise manner shown on the Site Plan, or to develop the Property in precise accordance with the Site Plan.

I. In connection with the development of the Property, (a) Developer (as defined below) desires to construct certain Roadway Improvements (as defined below) within the Roadway Easement Areas (as defined below) and Declarants desire to grant each Owner (as defined below) non-exclusive, reciprocal easements over the same; (b) Developer desires to construct certain Storm Water Detention Facilities (as defined below) within the Drainage Areas (as defined below) and the Ashley Furniture Parcel (as defined below) to serve the Shopping Center and Declarants desire to grant each Owner non-exclusive, reciprocal easements to use the same; and (c) the Declarants desire to grant each Owner non-exclusive reciprocal easements over certain portions of the Shopping Center that are designed for the common use of all Owners.

J. The Declarants also desire to establish uniform development restrictions, design requirements, use restrictions, maintenance requirements, and obligations to pay assessments for the maintenance of the Designated Maintenance Items (as defined below) in order to ensure that the Parcels are developed and maintained in a uniform manner.

K. In order to accomplish the foregoing and other matters described in this Declaration, the Declarants are executing and recording this Declaration.

NOW, THEREFORE, the Declarants, by this Declaration, hereby declare that the Shopping Center is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, all of which shall run with the

Shopping Center and be binding on any Person (as defined below) owning any right, title or interest in any Parcel, and its heirs, successors and assigns, and all of which shall inure to the benefit of each Owner (as defined below) of any Parcel, and its heirs, successors, designees and assigns.

ARTICLE I

DEFINITIONS

In addition to the terms defined elsewhere in this Declaration, the following terms shall have the meaning given below for purposes of this Declaration:

Section 1. **“Ashley Furniture Parcel”** shall mean that certain parcel of land adjacent to the eastern boundary of Anchor Parcel A that currently contains an Ashley Furniture store.

Section 2. **“Ashley Furniture REA”** shall mean that certain Reciprocal Easement and Restrictive Covenant Agreement by and between the Declarants and KG NC Holdings, L.L.C., the current fee owner of the Ashley Furniture Parcel, to be recorded in the Registry immediately subsequent to the recordation of this Declaration, as the same may be amended, supplemented or restated from time to time. The Ashley Furniture REA provides, among other things, that (a) the Declarants grant the owner and occupants of the Ashley Furniture Parcel access easements across certain portions of the Roadway Easement Areas, and (b) the fee owner of the Ashley Furniture Parcel agrees to pay the Designated Maintenance Owner an annual fee for the rights to use certain Designated Maintenance Items granted therein.

Section 3. **“Building Areas”** shall mean all areas within each Parcel of the Shopping Center that are not located within: (a) the Roadway Easement Areas; (b) the Drainage Areas; (c) the one hundred twenty eight foot (128') electrical transmission line easement in favor of Duke Power reflected on the Plat; (d) the twenty foot (20') private drainage easement areas reflected on the Plat; and (e) any building setback or other areas in which vertical improvements would be prohibited under applicable law, code or ordinance.

Section 4. **“Common Area Costs”** shall mean the costs of operating, maintaining and insuring the Designated Maintenance Items, as more particularly described in Article V, Section 2, pursuant to and in accordance with this Declaration.

Section 5. **“Common Areas”** shall mean all facilities and Improvements located on the Shopping Center that are designed, constructed and intended for the general use, in common, of the Occupants of the Shopping Center, including, but not limited to, internal private roadways, sidewalks, walkways, entrances and exits, traffic control devices, retaining walls, streetscape improvements, plants and landscaped areas, benches, shelters, signs, banners, flags, lighting facilities (including light poles, fixtures, bulbs, tubes, ballasts, wiring and all equipment related thereto), common private utility lines (including sewer, water, electric, gas and telecommunication lines), common storm drainage facilities, fountains and related plumbing, and sprinkler and irrigation systems. The term **“Common Areas”** also shall include all the real property and Improvements located within the Roadway Easement Area and the Drainage Easement Area. The determination of whether a particular facility or Improvement (outside of the Roadway Easement Area and the Drainage Easement Area) constitutes a Common Area shall be made from time to time by Designated Maintenance Owner.

Section 6. **“Developer”** shall mean Pavilion Winston-Salem, LLC, or any successor entity. The Developer may assign all of its rights and obligations as Developer to another Owner under the terms of this Declaration by recording a written instrument in the Registry signed by both the transferor and the

transferee in which the transferee agrees to assume all of the rights and obligations of the Developer. If Pavilion Winston-Salem, LLC, or any successor entity, is no longer an Owner and no assignment has occurred as provided in the immediately preceding sentence, the Developer shall be the Designated Maintenance Owner.

Section 7. **“Designated Maintenance Items”** shall mean the following portions of the Common Areas, to the extent not maintained (or not properly maintained to Developer’s standards) by a municipal authority or public utility, which shall be maintained by the Designated Maintenance Owner: (a) the Roadway Improvements within the Roadway Access Easement Areas; and (b) all Improvements within the Drainage Areas. The cost of operating, maintaining and insuring the Designated Maintenance Items shall be assessed against some or all Owners in the manner provided in Article V.

Section 8. **“Designated Maintenance Owner”** shall be the Owner responsible for maintenance of the Designated Maintenance Items and associated responsibilities more particularly described in Article V. The initial Designated Maintenance Owner shall be Pavilion Winston-Salem, LLC or any successor entity. The Designated Maintenance Owner may assign all of its rights and obligations as Designated Maintenance Owner to another Owner under the terms of this Declaration by recording a written instrument in the Registry signed by both the transferor and the transferee in which the transferee agrees to assume all of the rights and obligations of the Designated Maintenance Owner. If Pavilion Winston-Salem, LLC, or any successor entity, is no longer an Owner and no assignment has occurred as provided in the immediately preceding sentence, the Designated Maintenance Owner shall be the Owner of Anchor Parcel B.

Section 9. **“Drainage Areas”** shall mean that portion of the Shopping Center that is identified as “Drainage Area” on the Site Plan and any additional areas identified as a “Drainage Area” pursuant to a Supplemental Declaration, within which will be constructed underground storm drainage lines and related facilities, including but not limited to the Storm Water Detention Facilities. The initial Drainage Area is more particularly described as the “Wet Detention Easement” on the Plat.

Section 10. **“English Parcel”** shall mean that certain real property, containing, in the aggregate, approximately 2.16 acres, currently owned by Mark A. and Catherine E. English that is adjacent to the western boundary of Anchor Parcel C, which property consists of Forsyth County Tax Parcel Numbers 6804-76-0643.00 and 6804-76-0458.00.

Section 11. **“Excluded Areas”** shall mean the portions of the Shopping Center that are not subject to assessment under this Declaration. The Excluded Areas shall initially mean the Drainage Areas and the Roadway Easement Areas, but additional Excluded Areas may be established by Developer by executing and recording a Supplemental Declaration in accordance with Article II, Section 3.

Section 12. **“Improvements”** shall mean all buildings, outbuildings, underground utility and irrigation installations, slope alterations, roads, driveways, parking areas, sidewalks, boardwalks, fences, screening walls and barriers, retaining walls, stairs, decks, windbreaks, plants, trees, shrubs, poles, signs, loading areas and all other structures or landscaping improvements of every type and kind located on the Shopping Center.

Section 13. **“Management Firm”** shall mean the property management firm, if any, engaged by the Designated Maintenance Owner in accordance with Article V, Section 4.

Section 14. **“Occupant”** shall mean and refer to any Person in possession of a Parcel, including Owners, and tenants and subtenants of Owners.

Section 15. **"Owner"** shall mean any record owner of fee simple title to any Parcel, excluding any Mortgagee (in which event the grantor shall remain the Owner). Notwithstanding the foregoing, (a) if a Parcel is owned by more than one person or entity as tenants in common, those parties shall designate one person or entity to act as **"Owner"** of that Parcel for purposes of this Declaration; absent such a designation, the owner of the largest undivided interest shall be deemed the **"Owner"** of that Parcel; and (b) in a deed of conveyance executed in connection with a sale/leaseback transaction, the grantor/lessee may specify that it remains an **"Owner"** for purposes of this Declaration, and that designation shall be binding upon all other Owners so long as such grantor/lessee, or its successor or assignee, retains a leasehold interest in its Parcel.

Section 16. **"Parcel"** shall mean any portion of the Shopping Center which has been properly subdivided for any purpose, including conveyancing or ground leasing, or for real property tax purposes. As of the date of recording of this Declaration, the Parcels are as shown on the Plat and the Site Plan, but the term **"Parcel"** shall, in the future, also refer to any smaller Parcels into which the Parcels shown on the Plat may be legally subdivided, or any Parcels into which one or more Parcels may be recombined.

Section 17. **"Person"** shall mean any natural person, corporation, partnership, trust or other legal or commercial entity, or any combination thereof.

Section 18. **"Registry"** shall mean the Office of the Register of Deeds for Forsyth County, North Carolina.

Section 19. **"Roadway Easement Areas"** shall mean those portions of the Shopping Center that are shaded and identified as the **"Roadway Easement Areas"** on the Site Plan and any additional areas identified as a **"Roadway Easement Area"** pursuant to a Supplemental Declaration, which will be subject to the easements created by Article III of this Declaration and on which Developer will construct paved roadways, curbs and gutters and related improvements. The initial Roadway Easement Areas are reflected on the Plat as follows: (a) forty-five foot (45') private access easement called **"Oxford Station Way"** on Anchor Parcel C, Outparcel 1, Outparcel 2, Outparcel 3, Outparcel 4, Outparcel 5 and Anchor Parcel A; (b) twenty-six and one-half foot (26.5') private access easement called **"Oxford Station Way"** on Anchor Parcel A; (c) sixty-one foot (61') private access easement called **"Oxford Station Lane"** on Outparcel 1 and Outparcel 2; and (d) ninety-one foot (91') private access easement called **"Old English Court"** on Outparcel 5 and Anchor Parcel A.

Section 20. **"Roadway Improvements"** shall mean the roadways (not less than twenty-four [24] feet wide), sidewalks, entrances, exits, gutters, curbs and curb cuts within the Roadway Easement Areas.

Section 21. **"Shared Sign"** shall mean the pylon sign located on Anchor Parcel C to be shared by Anchor Parcel B and Anchor Parcel C in accordance with that certain Declaration of Sign Easement executed by Declaration dated as of the date hereof and recorded after this Declaration in the Registry.

Section 22. **"Sign Areas"** shall mean those areas identified as on the Site Plan as **"Sign Area"** within each Parcel of the Shopping Center.

Section 23. **"Storm Water Detention Facilities"** shall mean the storm water detention facilities serving the Improvements on the Shopping Center, including without limitation one or more storm water detention ponds and related facilities located (or to be constructed) within the Drainage Areas.

Section 24. **“Stormwater Facilities Maintenance Agreement”** shall mean that certain Stormwater Operation and Maintenance Agreement and Grant of Easement by and between the Declarants and the City of Winston-Salem recorded in Book 3187, Page 2334 of the Registry, which addresses maintenance of the Storm Water Detention Facilities.

Section 25. **“Third Party CAM Contributions”** shall mean any payments actually received by the Designated Maintenance Owner to offset the Common Area Costs from either (a) the fee owner or any occupant of the Ashley Furniture Parcel pursuant to the Ashley Furniture REA or (b) the fee owner or any occupant of the English Parcel pursuant to an instrument recorded in the Registry.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. **Shopping Center.** The Shopping Center shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens created by this Declaration. This Declaration shall not encumber any other real property owned by the Declarants, or by affiliates of the Declarants, outside the boundaries of the Shopping Center.

Section 2. **Binding Effect.** The terms and conditions of this Declaration: (a) shall run with title to each Parcel, (b) shall be binding on any Person owning any right, title or interest in any Parcel, and its heirs, successors and assigns, and (c) shall inure to the benefit of each Owner of any Parcel, and its heirs, successors, designees and assigns.

Section 3. **Annexation of Adjacent Parcels.** Developer shall have the unilateral right, from time to time, to subject any real property owned or subsequently acquired by Developer to the provisions of this Declaration, so long as the property being annexed is contiguous to the Shopping Center (including any portions of the Shopping Center that previously have been annexed). Each such annexation shall be accomplished by recording in the Registry a Supplemental Declaration describing the real property being annexed, and shall be effective upon recording. The Supplemental Declaration may contain such complementary additions, deletions, and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary, in the judgment of Developer, to reflect the different character of the additional property. In addition, the Supplemental Declaration may designate portions of the real property being annexed as additional Common Areas, Drainage Areas, Roadway Easement Areas or Designated Maintenance Items, and the Common Area Costs may increase as a result thereof. Any Supplemental Declaration shall not require the consent of any party other than Developer.

ARTICLE III

EASEMENTS AND COMMON AREAS

Section 1. **Roadway Easement.** Subject to the terms of this Declaration, each Owner shall have a perpetual non-exclusive easement over the Roadway Easement Areas to use all of the Roadway Improvements within the Roadway Easement Areas for the purpose of providing pedestrian and vehicular access between each Parcel and the public rights-of-way surrounding the Shopping Center. In addition, Developer shall have the unilateral right to connect or extend the Roadway Improvements within the Roadway Easement Areas to the Ashley Furniture Parcel and the English Parcel.

Section 2. **Drainage Easements.** Subject to the terms of this Declaration, each Owner shall have a perpetual non-exclusive easement over the Drainage Areas to drain surface water from its Parcel into the underground storm water pipes and related drainage facilities (including but not limited to the

Storm Water Detention Facilities) within the Drainage Areas. In addition, Developer shall have the unilateral right to permit the owners and occupants of the Ashley Furniture Parcel and the English Parcel to utilize the Storm Water Detention Facilities within the Drainage Areas, provided that such action does not cause the Storm Water Detention Facilities or any Parcel to be in violation of any applicable laws or ordinances.

Section 3. Other Access Easements. Subject to the terms of this Declaration, each Owner shall have a perpetual non-exclusive easement to use all of the roadways, entrances and exits, drive aisles, sidewalks and similar Improvements designed for common use located within the Shopping Center, but outside of the Roadway Easement Areas, for pedestrian and vehicular ingress and egress, and other purposes for which those common Improvements are designed, without payment of any fee therefor, subject to the right of each Owner to relocate the Common Areas on its Parcel from time to time, so long as such Common Areas continue to comply with the provisions of Article VII. No barriers, fences or other obstructions shall be erected within the Shopping Center so as to interfere with the free flow of pedestrian and vehicular traffic between those portions of the Shopping Center from time to time devoted to vehicular roadways, pedestrian sidewalks or paved parking areas; provided, however, that the foregoing provisions shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes. In addition, each Owner may block traffic on its Parcel for the time necessary to prevent the creation of prescriptive easement rights, or as may be reasonably required for the purpose of repairing or replacing the roadways, sidewalks and parking areas on its Parcel. If possible, however, such action shall be taken on a day or at a time when the building Improvements on the Shopping Center would not otherwise be open for business.

Nothing in this Article III, Section 3 or other provisions of this Declaration shall be deemed to grant to the Owner of any Parcel any rights to use the parking areas located on the Shopping Center outside of its Parcel for the parking of motor vehicles, or to grant to the owner of any property outside of the Shopping Center any rights to use the parking areas located on its Parcel or other portions of the Shopping Center for the parking of motor vehicles, nor shall it be deemed to grant to any Person the right to park motor vehicles on any portion of the Shopping Center not striped with parking spaces, such as roadways, entrances and exits, fire lanes and parking aisles.

Section 4. Utility Easements. Subject to the terms of this Declaration, each Owner shall have a perpetual non-exclusive easement to install, use, maintain and replace all storm drainage, sanitary sewer, domestic water, fire protection water, natural gas, electric, telephone and other utility lines and facilities located or to be located within the Shopping Center to serve or benefit the Improvements on its Parcel, subject to the following limitations:

(a) All utility installations shall be underground, except for equipment like junction boxes, meters, transformers and backflow preventers.

(b) The initial location of any utility lines and facilities shall be subject to the prior written approval of the Owner of the Parcel under or across which the utility lines and facilities are to be installed, and in no event shall any utility line be installed under any building Improvements constructed (or proposed to be constructed) within the Shopping Center.

(c) Each Owner shall have the right to pave and landscape the surface within its Parcel over any underground utility lines, and to grant additional easements to third parties within the areas in which those utility lines are located, so long as such actions do not unreasonably interfere with the use and enjoyment of the easement rights created hereby.

(d) To the extent that responsibility for such maintenance is not assumed by the appropriate public utility, (1) the maintenance of any utility line or facility located within the Shopping Center that serves only a single Parcel shall be the responsibility of the Owner of the Parcel served by that utility line or facility, regardless of the location of that line or facility; and (2) and the maintenance of any utility line or facility located on the Shopping Center that serves multiple Parcels shall be the responsibility of the Owner on whose Parcel the line or facility is located.

(e) Any Owner going onto the Parcel of another Owner to install or maintain utility lines or facilities shall perform such work in a manner to minimize any disruption of business on the Parcel on which the utility lines or facilities are located, and shall promptly repair at its expense any damage (including damage to paved or landscaped areas) caused by such installation or maintenance, so as to restore such Parcel to its original condition.

(f) Each Owner shall have the right to relocate the utility lines and facilities located on its Parcel at its expense if necessary for the development of Improvements on its Parcel, so long as the approval of the appropriate municipal utility department or public utility, if applicable, is obtained and arrangements are made for continued utility service to all other Owners benefitted by the utility being relocated, and provided that no such relocation shall be undertaken during the months of November or December.

Notwithstanding the foregoing, each Owner (the “**Dominant Owner**”) who installs, uses, maintains or replaces any utility lines or facilities under or across the Parcel of another Owner (the “**Servient Owner**”) shall indemnify and hold the Servient Owner harmless from and against any and all claims, damages, losses, costs and expenses that may be caused or occasioned by the Dominant Owner, its tenants, contractors, agents or employees, in connection with its installation or maintenance work under this Article III, Section 4, and the Dominant Owner shall promptly discharge or bond (within thirty (30) days after receipt of notice of filing) any and all liens filed against the Servient Owner’s Parcel or any portion thereof as a result of or relating to any installation or maintenance undertaken by or on behalf of the Dominant Owner. In addition each Dominant Owner shall indemnify and hold the Servient Owner and its successor in title harmless from and against all claims, damages, losses, costs and expenses that may arise as a direct result of any toxic or hazardous substance that the Dominant Owner causes by its action or the actions of its tenants, contractors, agents or employees.

Section 5. Construction Easements. Developer shall have full rights of ingress and egress to and through, over and about the portions of the Drainage Areas and the Roadway Easement Areas during such period of time as Developer is engaged in any construction or improvement work on or within the Shopping Center. Developer further shall have an easement over such Common Areas for the purpose of the storage of materials, vehicles, tools, and equipment which are being utilized in such construction. No Owner, or its guests or invitees, shall in any way interfere or hamper Developer, its employees, successors or assigns in connection with such construction. In addition, to the extent required by the City of Winston-Salem or another governmental authority, each Owner shall join in the execution of any permit applications or requests for dedication relating to the Common Areas on the Shopping Center being installed by Developer, and shall return any such items to Developer in a timely manner.

Section 6. Easement for Maintenance. The Designated Maintenance Owner, or any person authorized by it (including but not limited to the Management Firm), shall have the right of access over the Common Areas to the extent necessary for performance of its obligations of maintenance, repair, or replacement of the Designated Maintenance Items, as provided in Article V.

Section 7. Delegation of Use. The easements granted to every Owner in this Article III may be delegated by each Owner, in connection with its development and use of its Parcel, to its tenants, employees, contract purchasers, agents, contractors and invitees.

Section 8. Easements and Shopping Center Rights Appurtenant to Parcel. All easements and other property rights of Owners created in this Article III shall be appurtenant to each Parcel and shall run and pass with the title to such Parcel.

ARTICLE IV

GENERAL MAINTENANCE STANDARDS

Section 1. Maintenance Prior to Development. Until such time as buildings or other Improvements are constructed on its Parcel, each Owner shall maintain its Parcel (other than the Designated Maintenance Items) as a seeded or landscaped area, shall keep the grass mowed to a height of six (6) inches or less, shall promptly remove all trash and debris and generally shall maintain its Parcel in a safe, neat and clean condition at all times.

Section 2. Maintenance Following Development. Following construction of Improvements on its Parcel, each Owner shall maintain or cause to be maintained its Parcel in a safe, clean and attractive condition, and shall maintain and repair at its expense all Improvements and Common Areas on its Parcel (other than the Designated Maintenance Items) in order to keep the same in good condition and repair in compliance with then current zoning laws (including, without limitation, the SUP), building codes and other governmental regulations and in a condition substantially similar to that existing upon the initial completion of the Improvements. Such maintenance obligation shall include, without limitation, the following:

- (a) Keeping and maintaining the exterior of all buildings and all sidewalks, walkways, roadways and paved parking surfaces in a good, safe, clean and sightly condition.
- (b) Removing promptly, to the extent reasonably practicable, snow, ice, surface water and debris from paved areas.
- (c) Keeping all directional signs, pavement signs and striping of paved areas distinct and legible.
- (d) Maintaining all utility lines or facilities located within its Parcel, to the extent not maintained by the applicable public utility.

If any Owner, or a ground lessee acting on its behalf, fails to maintain or cause to be maintained its Parcel in good order and condition in accordance with the standards set forth in this Article IV, and such failure continues for a period of thirty (30) days after that Owner (the “**Responsible Owner**”) has been given written notice specifying the nature of the default (provided, however, that no notice shall be required in an emergency), then the Owner of any other Parcel (the “**Maintaining Owner**”) shall have the right to go on the Parcel of the Responsible Owner and perform the necessary repairs or maintenance at the expense of the Responsible Owner. In that event, the Maintaining Owner shall be deemed to have contracted with the Responsible Owner to perform that work, and shall be entitled to file a mechanic’s lien against the interest of the Responsible Owner in its Parcel for the reasonable cost of that work, together with interest thereon at the lesser of twelve percent (12%) per annum or the highest rate of interest permitted by law, and to recover that cost in an action at law against the Responsible Owner, all in accordance with the applicable laws of the State of North Carolina.

Any liens provided for in this Article IV, Section 2 shall be subordinate to the lien of any mortgage on any Parcel, and also shall be subordinate to any tax lien or special assessment on a Parcel made by lawful governmental authority. The sale or transfer of any Parcel shall not affect the lien. However, the sale or transfer of any Parcel by foreclosure of any mortgage, or any proceeding in lieu thereof, shall extinguish the lien as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve the Owner of such Parcel from liability for any amount thereafter becoming due or from the lien thereof.

ARTICLE V

MAINTENANCE OF DESIGNATED MAINTENANCE ITEMS

Section 1. Maintenance of Designated Maintenance Items. The maintenance of the Designated Maintenance Items shall be the responsibility of the Designated Maintenance Owner in the manner provided in this Article V. In particular, the Designated Maintenance Owner shall be responsible for maintaining all Storm Water Detention Facilities in accordance with applicable requirements of the City of Winston-Salem under the Stormwater Facilities Maintenance Agreement. Notwithstanding the foregoing,

(a) During the period of construction and/or installation of any Designated Maintenance Item by Developer, Developer shall be responsible, at its expense, for the construction, installation and ongoing maintenance of such Designated Maintenance Item, and upon completion, Developer shall cause such Designated Maintenance Item to be turned over to the Designated Maintenance Owner for maintenance in good condition and repair, and in compliance with all applicable governmental ordinances and regulations; and

(b) During the period of any construction warranty applicable to any Designated Maintenance Item by Developer, Developer shall use commercially reasonable good faith efforts to enforce such warranty against the applicable contractor or vendor on behalf of the Designated Maintenance Owner. To the extent assignable, Developer shall assign to Designated Maintenance Owner all warranties received by it with respect to any Designated Maintenance Items.

Section 2. Definition of Common Area Costs. As used in this Declaration, the term “Common Area Costs” shall mean all of those costs associated with the maintenance and operation of the Designated Maintenance Items, including, but not limited to, the following:

(a) The cost and expense of maintaining, repairing and replacing the Roadway Improvements within the Roadway Access Easement Areas.

(b) The cost and expense of maintaining, repairing and replacing all Improvements within the Drainage Areas, including but not limited to the Storm Water Detention Facilities and any expenses incurred in connection with compliance with the Stormwater Facilities Maintenance Agreement.

(c) The cost and expense of maintaining, repairing and replacing any private utility line or facility located on the Shopping Center that exclusively serves the Designated Maintenance Items.

(d) The cost of all utility services (such as electricity and water) used in connection with the operation of the Designated Maintenance Items.

(e) The payment of ad valorem real property taxes on the Drainage Areas and the Roadway Easement Areas, but only to the extent the same are ever separately assessed for tax purposes.

(f) The payment of insurance premiums for any insurance policies maintained by the Designated Maintenance Owner with respect to the Designated Improvements.

(g) The establishment of reserves in accordance with Article V, Section 5.

(h) The cost of attorneys and accountants employed to represent the Designated Maintenance Owner when appropriate and when done exclusively in connection with the satisfaction of the obligations of the Designated Maintenance Owner under this Article V.

(i) If the Designated Maintenance Owner does not engage a Management Firm, an administrative fee in an amount equal to fifteen percent (15%) of all other Common Area Costs, exclusive of real estate taxes and insurance premiums.

(j) If the Designated Maintenance Owner engages a Management Firm, a management fee to the Management Firm in an amount not to exceed fifteen percent (15%) of all other Common Area Costs, exclusive of real estate taxes and insurance premiums.

(k) If the Designated Maintenance Owner engages a Management Firm, all other expenses reimbursable to the Management Firm under the terms of the management agreement, including but not limited to travel expenses and an hourly charge for personnel of the Management Firm for services exclusively dedicated to the Shopping Center, such as property inspections or preparation of financial statements.

Section 3. Sharing of Maintenance Costs. The Owner of each Parcel shall pay the Designated Maintenance Owner its proportionate share, calculated as provided below, of the Common Area Costs; provided, however, the Common Area Costs assessed to the Owner pursuant to this Article V, Section 3 shall be reduced by any Third Party CAM Contributions. The proportionate share of the Common Area Costs payable by the Owner of each Parcel shall be a fraction, the numerator of which is the total square footage of such Parcel less any Excluded Areas, and the denominator of which is the total square footage of the Shopping Center less the Excluded Areas. If the square footage of any Parcel or the Excluded Areas within any Parcel changes by a subdivision plat or amendment to this Declaration, the proportionate share of each Parcel shall be recalculated as of such date. As reflected on the Site Plan or the Plat, the proportionate share of each Parcel as of the date hereof is set forth in the table below:

<u>PARCEL</u>	<u>TOTAL SQUARE FOOTAGE</u>	<u>EXCLUDED AREA</u>	<u>SQUARE FOOTAGE FOR CALCULATING PROPORTIONATE SHARE</u>	<u>PROPORTIONATE SHARE OF COMMON AREA COSTS</u>
Anchor Parcel A	332,199	20,582	311,611	39.74%
Anchor Parcel B	149,156	0	149,154	19.02%
Anchor Parcel C	216,596	71,689	144,902	18.48%

Outparcel 1	41,571	18,007	23,564	3.00%
Outparcel 2	80,597	19,424	61,173	7.80%
Outparcel 3	31,034	5,085	25,949	3.31%
Outparcel 4	43,377	6,860	36,517	4.66%
Outparcel 5	48,884	17,568	31,316	3.99%
TOTALS	943,401	159,215	784,186	100.00%

Each Owner shall pay to the Designated Maintenance Owner its proportionate share of the Common Area Costs in each calendar year, in accordance with the provisions below. The obligation of the Owner of each Parcel to pay its proportionate share of the Common Area Costs shall begin on the date that the buildings on each Parcel have been completed and opened to the public for business, and such obligation shall not be affected by the subsequent closing of the buildings on such Parcel; provided, however, that if all buildings on any Parcel are destroyed or demolished, the obligation of that Owner to pay its proportionate share of the Common Area Costs shall terminate until one or more buildings has been rebuilt and re-opened for business.

On or before January 1 of each year, the Designated Maintenance Owner (or the Management Company hired by the Designated Maintenance Owner) shall prepare a budget of the estimated Common Area Costs for the ensuing calendar year, and shall furnish a copy of that budget to the Owner of each Parcel, together with a calculation of that Owner's estimated proportionate share of Common Area Costs for the ensuing calendar year. This estimated annual charge shall be paid to the Designated Maintenance Owner (or the Management Company hired by the Designated Maintenance Owner) in twelve (12) equal monthly installments, in advance on or before the first day of each calendar month. Within ninety (90) days after the end of each calendar year, the Designated Maintenance Owner (or the Management Company hired by the Designated Maintenance Owner) will furnish to the Owner of each Parcel a statement showing in reasonable detail the actual amount of Common Area Costs incurred in the preceding calendar year, and the actual proportionate share of Common Area Costs payable by the Owner of each Parcel. If the estimated monthly payments made by an Owner of a Parcel in that calendar year are less than its actual proportionate share of Common Area Costs, the Owner of such Parcel shall pay the deficit within thirty (30) days after the annual statement. If the estimated monthly payments made by an Owner of a Parcel in that calendar year are greater than its actual proportionate share of Common Area Costs, any surplus will, at the election of the Designated Maintenance Owner (or the Management Company hired by the Designated Maintenance Owner), either be refunded to the Owner of such Parcel, or credited against the monthly estimated payments thereafter coming due.

Section 4. Management Firm. The Designated Maintenance Owner may, from time to time, engage a qualified property management firm, properly licensed in the State of North Carolina (the "**Management Firm**"), to oversee and coordinate the operation, maintenance, repair and replacement of the Designated Maintenance Items, and to act on behalf of the Designated Maintenance Owner in the performance of its duties and obligations under this Declaration, including but not limited to the preparation of budgets, the collection of assessments, the maintenance of insurance policies, the payment of taxes and the enforcement of the covenants set forth in this Declaration. The Management Firm as so designated shall contract for and supervise such work, and shall pay the taxes assessed against the Drainage Areas and the Roadway Easement Areas, in each case to the extent separately assessed for tax

purposes. Any management and other agreements entered into by the Designated Maintenance Owner shall provide that such agreements may be cancelled, with or without cause, upon no more than ninety (90) days' notice and without penalty at any time. The Management Firm shall at all times be answerable to the Designated Maintenance Owner and subject to its direction.

Section 5. Reserve Funds. From and after the recording of this Declaration, the Designated Maintenance Owner may establish and maintain a reasonable reserve fund or funds for replacement and maintenance of the Designated Maintenance Items. In that event, the Designated Maintenance Owner shall allocate revenues from assessments to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board. The reserve fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in certificates of deposit or similar obligations issued by a bank or savings and loan association or the obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund or funds shall be used for the purpose of repairing, replacing and maintaining any facilities owned by the Association, and for such other purposes as may be determined by the Board.

ARTICLE VI

PERMITTED USES

Section 1. Permitted Uses. The Shopping Center shall be used only for commercial purposes compatible with the operation of a first-class retail development, and in particular no portion of the Shopping Center shall be used for any purpose except (a) retail stores selling, at retail, merchandise normally carried in other quality shopping centers, (b) financial institutions, (c) service shops, (d) professional or medical offices, provided that a government owned or operated healthcare clinic, Planned Parenthood, abortion clinic or other similar uses shall constitute a Prohibited Use, (e) restaurants with alcohol sales that do not exceed more than 40% of its gross sales, (f) a nationally branded hotel user such as Holiday Inn, Marriott, Hilton or Sheraton on Anchor Parcel B or Anchor Parcel C, but not both Anchor Parcel B and Anchor Parcel C, (g) a gas station and/or convenience store, but only on Outparcel 2 or Outparcel 5, but not on both Outparcel 2 and Outparcel 5, and (h) parking areas.

Section 2. Prohibited Uses. No portion of the Shopping Center shall be used for any of the following purposes: (a) stores selling liquor, beer, or wine, provided that (i) incidental sales of such items by a quality convenience store such as Murphy Oil, Sheetz, Circle K and The Pantry shall be permitted only on Outparcel 2 or Outparcel 5, but not on both Outparcel 2 and Outparcel 5, and (ii) incidental sales of such items by a retail supermarket or grocery store such as Harris Teeter, Publix and Whole Foods shall be permitted; (b) bowling alley, billiard parlor, arcade, or other place of amusement or recreation; (c) "second hand" store whose principal business is selling used merchandise such as Goodwill, provided that quality second hand stores such as Half Price Books, Play It Again Sports, Once Upon A Child, GameStop or Plato's Closet are permitted; (d) pawn shop; (e) head shop or store selling marijuana; (f) payday loan or check cashing provider; (g) child care center; (h) funeral home or mortuary; (i) school, church, or other place of worship; (j) flea market; (k) tattoo parlor or body piercing establishment; (l) theater; (m) adult video store and adult book store; (n) adult entertainment club; (o) night club; (p) health club, exercise studio, spa or massage parlor, provided, that such uses shall be incidentally permitted in conjunction with a nationally branded hotel on Anchor Parcel B; (q) place of betting, gambling, bingo, or other gaming; (r) self-service laundry facility; (s) on-site dry cleaner, but a location permitting drop-off and pick-up for offsite cleaning shall not be prohibited; (t) hotel, motel, or other place of residence except as permitted in Article VI, Section 1(f) above; (u) car wash, auto body shop, auto rental business, or junk yard, provided that a business that engages primarily in the sale of tires such as Tire Kingdom shall be permitted only on Outparcel 1 or Outparcel 2, but not on both Outparcel 1 and

Outparcel 2; (v) animal facility; (w) manufacturing operation; or (x) anything constituting a public or private nuisance.

Section 3. Exclusives. In addition to the use restrictions set forth above, the Shopping Center shall be subject to the following exclusive use covenants:

(a) During the term of the Hobby Lobby Lease, no portion of the Shopping Center outside of the store building leased to Hobby Lobby shall be leased, used or occupied for the sale art supplies, craft supplies, fabrics, photo frames, frames, framed art, wall art, and wall decor (the **"Hobby Lobby Exclusive"**). Notwithstanding the preceding sentence, incidental sales by other tenants or occupants of the Shopping Center of items included in the Hobby Lobby Exclusive in amounts not to exceed the lesser of (i) two hundred fifty (250) square feet of such occupant's gross sales area measured from the center of the aisles, or (ii) five percent (5%) of such occupant's gross sales area measured from the center of the aisles, shall not be deemed to violate the Hobby Lobby Exclusive.

(b) During the term of the Merchant's Lease, no Outparcel other than Outparcel 3 shall be leased, used or occupied as a retail tire and automotive repair service center (the **"Merchant's Exclusive"**).

(c) Provided that Conn Appliances, Inc., a Texas corporation or an affiliate thereof executes a lease for Anchor Parcel C within six (6) months of the date this Declaration is recorded in the Registry (the **"Conn's Lease"**), during the term of the Conn's Lease, no portion of the Shopping Center shall be leased, used or occupied for the sale of audio equipment, televisions, household appliances, furniture, mattresses, and any substitutes for or items which are a technological evolution of the listed items (the **"Conn's Exclusive"**). Notwithstanding the preceding sentence, the Conn's Exclusive shall not apply to: (i) Anchor Parcel A or (ii) the use by a tenant or occupant within the Shopping Center of the lesser of (A) ten percent (10%) of its floor area or (B) five hundred (500) square feet for the sale of any of the foregoing product categories shall not be deemed a violation of the Conn's Exclusive.

Section 4. Compliance with Laws. Each Owner shall comply with all laws, regulations, ordinances (including without limitation, applicable environmental laws, building codes, the SUP and zoning ordinances) and other governmental rules and restrictions applicable to its Parcel. Without limiting the foregoing, each Owner shall make, at its expense, any alterations, improvements, or additions to the Common Areas on its Parcel that are necessary to comply with the Americans with Disabilities Act or similar state or municipal law in effect where the Shopping Center is located.

ARTICLE VII

BUILDING AND DEVELOPMENT RESTRICTIONS

Section 1. General Standards. All Improvements on the Shopping Center shall comply with the terms of applicable laws and ordinances, the SUP and site plans for the Shopping Center that have been approved by the City of Winston-Salem.

Section 2. Site Improvement Restrictions. Site Improvements (as distinguished from building Improvements) constructed on any Parcel shall comply with the following requirements and restrictions:

(a) There shall be constructed on each Parcel, prior to opening for business or commencing any other use thereon, and maintained thereon at all times, at a minimum, the number of paved parking spaces required for the actual use of that Parcel under the SUP and any other applicable zoning ordinances. The foregoing parking requirement must be satisfied independently as to each Parcel, without taking into account the number of parking spaces on any other Parcel.

(b) All curbs and gutters shall be poured in place standard-sized concrete type curbs.

(c) All utility lines and equipment shall be entirely underground, except for equipment like junction boxes, meters, transformers and backflow preventers.

(d) No on-site septic system or sanitary sewer treatment facility will be permitted on any Parcel.

(e) Pavement markings, directional signs, and other traffic indicators upon each Parcel shall be in accordance with the *Manual on Uniform Traffic Control Devices*, and shall provide for a reasonable traffic flow scheme consistent with that shown on the Site Plan.

(f) All buffer strips and other undeveloped land areas shall be landscaped with trees, shrubs, or suitable ground cover (which includes grass) in a uniform manner.

Section 3. Site Plan. The Roadway Improvements and the Drainage Ponds initially constructed on the Shopping Center shall be located within the Roadway Easement Areas and the Drainage Areas, respectively, as shown on the Subdivision Plat. Following such initial development, and subject to the terms of the following sentence, each Owner shall have the right to alter, demolish or relocate any improvements located on its Parcel without the consent of any other Owner or Occupant, so long as all of the provisions of this Declaration, including without limitation the building and development restrictions set forth in this Article VII, are complied with in all respects. Notwithstanding the foregoing, without the prior written consent of the Designated Maintenance Owner, no Owner shall have the right to alter, demolish, remove or relocate (a) any Roadway Improvements within the Roadway Easement Area on its Parcel, and (b) the Storm Water Detention Facilities within the Drainage Areas serving the Shopping Center unless such alteration, demolition, removal or relocation has no material adverse effect on the capacity of such Storm Water Detention Facilities to accept and retain surface water runoff from the balance of the Shopping Center, in compliance with all applicable governmental requirements.

Section 4. Building Restrictions. No building shall be constructed on any Parcel outside of the Building Areas. No building or other structure placed on the Outparcels shall exceed twenty-four feet (24') in height, as measured from the finished floor elevation of that building; provided, however, that any non-structural decorative protrusion or appurtenance, such as a cupola, parapet or false façade (an “**Architectural Feature**”), may extend up to twenty-eight feet (28') in height, so long as the width of such Architectural Feature does not exceed fifty percent (50%) of the width of the building along the elevation (front, back or side) of the building that contains such Architectural Feature.

Section 5. General Building Standards. No building located on the Shopping Center shall have a metal exterior, but a decorative metal roof shall be permitted subject to compliance with the SUP and other applicable laws. No structure of a temporary nature shall be allowed on any Parcel at any time, except that of an Owner's contractors and subcontractors during the period of construction of Improvements. Each building located on the Shopping Center shall be equipped with adequate roof drainage, and no downspout water shall be permitted to be deposited directly into landscaped areas or

open ditches. All buildings constructed upon the Shopping Center shall conform to the minimum standards specified by the applicable governmental building codes in effect at the time of such construction, as well as to all other rules, regulations, requirements, ordinances and laws of any local, state or federal governmental unit(s) or authorities having jurisdiction thereof.

Section 6. Construction Standards. Each Owner, throughout the entire period of construction on its Parcel, shall:

(a) Store all construction materials within a temporary staging and/or storage area located wholly within its Parcel, at a location that will not unreasonably interfere with access between any other Parcel and the Roadway Easement Area.

(b) Install and maintain effective erosion control measures that meet or exceed code requirements, in order to prevent the runoff of sediment, dirt and debris from its Parcel. To the extent that any such runoff occurs, the Owner shall promptly clean and wash any affected improvements, such as paving, located outside of its Parcel.

(c) Cause trucks, construction equipment or machinery to park only within the boundaries of its Parcel, and cause construction vehicles and traffic to follow the routes that may be designated by the Designated Maintenance Owner for construction traffic.

(d) Not permit mud, dirt, construction materials, trash or debris to accumulate or remain outside of the building site on its Parcel, or within the Roadway Easement Area, or on any other portion of the Shopping Center outside of its Parcel.

(e) Not permit construction to proceed in a manner that interferes with the visibility of, access to or the operation of any other permitted use being conducted on the Shopping Center.

(f) Repair any damage to (including without limitation damage to paving and landscaping), and promptly remove any trash or construction debris from, the public rights-of-way adjoining the Shopping Center, the Roadway Easement Area, the Drainage Areas, or other portions of the Shopping Center outside of its Parcel, caused by the activities of such Owner's contractors, subcontractors or agents.

Section 7. Sign Standards. No signs shall be erected or installed on any Parcel which violates any of the following prohibitions:

(a) The content and wording of all exterior signs (with the exception of directional, traffic control, and parking signs, and signs advertising property for sale or lease) shall be restricted to setting forth the name of a business operating on the Parcel, and its logo or trade name. Slogans, mottoes or other text shall not be permitted on any exterior sign, and underwriters' or sign fabricators' labels and permits shall be located so as to be inconspicuous.

(b) There shall be no signs advertising businesses that are not located on the Parcel.

(c) No sign shall be painted on the exterior surface of any building, or mounted on the roof of any building.

(d) All building-mounted signs shall be individually cut and mounted letters, or raised letters on panels, and shall be either backlighted or internally illuminated, and there shall

be no “box” type signs , neon signs or Da-Lite or Da-Glo fluorescent plastic signs on the exterior of any building.

(e) All sign cabinets, conductors, transformers, ballasts, attachment devices, wiring and other equipment shall be concealed.

(f) There shall be no flashing, blinking, moving, animated or audible signs.

(g) There shall be no sign trailers, hot air balloons, or motor vehicles used to display signage, and there shall be no signs made of cloth, paper or cardboard material.

(h) There shall be no-freestanding signs located on any Parcel except for traffic control signs and, to the extent permitted by applicable sign ordinances, (1) “coming soon” signs not in excess of eight (8) feet in height, (2) one free-standing monument identification sign located within the Sign Area on each Outparcel identifying only the Occupant of such Outparcel, (3) one free-standing monument or pylon identification sign located within the Sign Area on Anchor Parcel A identifying only the Occupant of Anchor Parcel A, and (4) the Shared Sign located on Anchor Parcel C identifying only the Occupants of Anchor Parcel C and Anchor Parcel B.

(i) All signs shall comply with the relevant sign control ordinances of the City of Winston-Salem and/or Forsyth County, North Carolina, as well as the SUP.

Section 8. Landscaping and Irrigation Standards. Each Owner shall provide landscaping for all parking lot areas, buffer areas, and parking lot perimeters, and foundation plantings around buildings, all in compliance with the terms of this Declaration, any governmental site plan approvals, and applicable ordinances of Forsyth County, North Carolina. Any areas not covered by buildings or paving shall be landscaped with trees, shrubs, ground covers, or irrigated lawn areas. Any landscaping on any Parcel shall not materially and adversely affect the visibility of, or access to, any building located on any other Parcel, unless such landscaping is required by applicable law or ordinance.

Section 9. Shared Sign. The Owner of Anchor Parcel B and the Owner of Anchor Parcel C agree that the Shared Sign shall be subject to the terms and conditions of a separate agreement recorded in the Registry in additions to the terms and conditions of this Declaration.

ARTICLE VIII

INSURANCE, CONDEMNATION AND REBUILDING

Section 1. Property Insurance and Rebuilding. Each Owner shall obtain and maintain in force a policy of property insurance (ISO Special Form or its equivalent), covering all Improvements on its Parcel in an amount equal to the full replacement cost thereof, less the cost of any non-destructible items such as paving, foundations and footings, and less a commercially reasonable deductible amount. If the building Improvements on any Parcel are destroyed or damaged by fire or other casualty, the Owner of that Parcel shall elect to rebuild or not to rebuild the damaged building Improvements. If the Owner elects not to rebuild, it shall promptly demolish the damaged building Improvements, remove or clean up all rubbish and debris, grade and landscape or pave the area, and thereafter maintain the building pad on its Parcel in accordance with the provisions of Article IV, Section 1. If the Owner elects to rebuild, it shall proceed with due diligence to repair or restore the building Improvements to as good a condition as existed before such damage or destruction, and shall comply in all respects with the provisions of Article VI. If the Common Areas on any Parcel are destroyed or damaged by fire or other casualty, then

regardless of whether the Owner of that Parcel shall elect to rebuild the damaged building Improvements, it shall promptly restore the Common Areas on its Parcel to as good a condition as existed before such damage or destruction, and thereafter maintain such Common Areas on its Parcel in accordance with the provisions of Article IV, Section 2.

Section 2. Release of Claims. Each Owner releases each other Owner from any and all liability for any loss or damage to property, or for lost rents or profits, caused by fire or other casualty, even if the fire or other casualty was caused by the fault or negligence of the Owner being released, or by any other party for whom that Owner may be responsible.

Section 3. Condemnation. In the event of a taking by condemnation or otherwise by governmental authority which damages any part of Improvements, the Owner of the damaged portion of the Improvements shall immediately use the condemnation proceeds and other funds, to the extent needed, to repair and restore the Improvements to an integrated and architecturally complete building or structure, if the remaining portion of the Improvements is capable of being so repaired and restored in the discretion of the Owner of those Improvements. If the remaining portion of the Improvements is not capable of being repaired and restored, then the Owner of that Parcel shall promptly demolish the damaged Improvements, remove or clean up all rubbish and debris from the Parcel, grade and landscape or pave the area, and thereafter maintain its Parcel in accordance with the provisions of Article IV, Section 1.

In the event of a taking by condemnation or otherwise of any Parcel, the entire award or purchase price shall belong to the Owner of that Parcel. Notwithstanding the foregoing, any Owner may file a separate claim with the condemning authority over and above the value of the Parcel being taken in fee simple to the extent of any damage suffered by that Owner as a result of the loss of easement or other rights; provided, however, that such claim does not reduce the claim payable to the Owner of fee simple title to the Parcel being taken.

Section 4. Liability Insurance. Each Owner at all times shall obtain and maintain in force a policy of commercial general liability insurance (current ISO Form or its equivalent) covering the Common Areas on its Parcel, with a combined single limit of at least \$3,000,000.00 per occurrence, which minimum limit may be increased from time to time in the reasonable discretion of the Designated Maintenance Owner.

Section 5. Indemnity. Each Owner shall indemnify, defend and hold harmless each other Owner against all loss, liability, expense and damage, including reasonable attorneys' fees and other litigation costs, arising from death, bodily injury or property damage that occurs on the Parcel of the indemnifying Owner; provided, however, that this indemnification shall not extend to any claims caused in whole or in part by any act or omission of the Owner being indemnified.

Section 6. Blanket Policies and Certificates. Any policy of insurance required to be carried by any Owner under this Article VIII shall be carried with a reputable insurance company licensed to do business in the State of North Carolina on an admitted basis, and may be provided as part of a so-called blanket policy of insurance covering other locations, as long as the coverage limits set forth in this Article VIII are satisfied as to its Parcel. Each Owner shall deliver to each other Owner, within thirty (30) days after written request therefor, a certificate of insurance evidencing that the policies of insurance required to be maintained by it under this Article VIII are in full force and effect.

Section 7. Self-Insurance. Any Owner may elect to self-insure all or any portion of the risks required to be insured under Section 1 or Section 4 of this Article VIII, so long as: (a) such Owner has a tangible net worth, determined in accordance with generally accepted accounting principles,

consistently applied, in excess of One Hundred Million and No/100 Dollars (\$100,000,000.00), as determinable from such Owner's public disclosures and/or regularly maintained corporate balance sheets which are generally available to shareholders (no right of audit or conduct independent investigations being implied by this provision), or if such Owner is not a public company, as determinable from either (i) a current audited financial statement evidencing its compliance with the net worth requirement or (ii) if Owner's policies would prohibit the circulation of such audited financial statement, a certificate from an authorized officer certifying that it meets such minimum tangible net worth requirements; and (b) such Owner delivers to each other Owner, within thirty (30) days after written request therefor, a written notice of self-insurance, specifying the risks it has elected to self-insure, accompanied, if such Owner is not a public company, by a current audited financial statement evidencing its compliance with the net worth requirement set forth above. For purposes of this Article VIII, Section 7 only, the term "Owner" shall be deemed to include any entity that ground leases an entire Parcel and maintains the insurance required under this Article VIII, Section 7 on behalf of the Party owning fee simple title to such Parcel, so long as such ground lessee expressly assumes the indemnification obligations of such Party under Article VIII, Section 5.

Section 8. Insuring Occupants. Any policy of insurance required to be carried by an Owner under this Article VIII may be carried by an Occupant of such Parcel if such Occupant possesses the entire Parcel (each, an **"Insuring Occupant"**) provided that (a) such insurance otherwise meet all of the requirements of this Article VIII, and (b) each Insuring Occupant shall be required to comply with all of the obligations of an Owner under this Article VIII, including, without limitation, the indemnification obligations under Article VIII, Section 5 above, and the requirement to deliver certificates of insurance under Article VIII, Section 6 above. For clarity, an Insuring Occupant may also elect to (a) carry insurance coverage pursuant to a blanket policy in compliance with Article VIII, Section 6 above, and (b) self-insure such coverage provided that such Insuring Occupant complies with the provisions of Article VIII, Section 7 above.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. Any Owner (and Hobby Lobby, during the term of the Hobby Lobby Lease) shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any such party to enforce any covenant or restriction contained in this Declaration shall not be deemed a waiver of the right to do so thereafter.

Section 2. Exculpation. Notwithstanding any provision to the contrary contained in this Declaration, each Owner shall look solely to the Parcel owned by any defaulting Owner, the Improvements located thereon and any insurance or condemnation proceeds related thereto, for the satisfaction of any remedy of the non-defaulting Owner resulting from the breach of any of the obligations or covenants of this Declaration by the defaulting Owner; provided, however, that this provision shall be not deemed to affect the right of any Owner to seek injunctive relief or to bring suit for specific performance. If any Owner conveys its fee simple interest in its Parcel, that Owner shall be relieved from all obligations under this Declaration accruing after the date of the conveyance.

Section 3. Force Majeure. If any Owner is delayed in the performance of any obligation under this Declaration as a result of an act of God, labor dispute, shortage of materials or supplies or other event beyond its reasonable control (it being agreed that the financial inability of any Owner to perform any obligation shall never be deemed an event beyond its reasonable control), the time for performance of that obligation shall be extended for the reasonable period of that delay.

Section 4. Estoppel Certificates. The Developer shall, within thirty (30) days after the written request of any other Owner, certify by a written instrument, duly executed and acknowledged, to any purchaser or proposed purchaser, or mortgagee or proposed mortgagee, or any other party specified in the request: (a) whether this Declaration has been supplemented or amended, and if so, the nature of the supplement or amendment; (b) whether, to its knowledge, there exists any default under this Declaration, and if so, a description of that default; (c) whether, to its knowledge, there exists any offset, defense or counterclaim on the part of the certifying party as to the performance of its obligations under this Declaration, and if so, a description of the nature and amount of any such offset, defense or counterclaim; and (d) such other matters as may reasonably be requested. If the Developer and the Designated Maintenance Owner are not the same Person, the Designated Maintenance Owner shall, within thirty (30) days after the written request of any other Owner, certify by a written instrument, duly executed and acknowledged, to any purchaser or proposed purchaser, or mortgagee or proposed mortgagee, or any other party specified in the request: (a) whether, to its knowledge, there exists any default under this Declaration, and if so, a description of that default; (b) whether, to its knowledge, there exists any offset, defense or counterclaim on the part of the certifying party as to the performance of its obligations under this Declaration, and if so, a description of the nature and amount of any such offset, defense or counterclaim; and (c) such other matters as may reasonably be requested.

Section 5. No Partnership. The provisions of this Declaration are not intended to create, and shall not be interpreted to create, a joint venture, a partnership or any similar relationship between the Owners.

Section 6. Severability. Invalidity of any covenant or restriction contained in this Declaration by judgment or court order shall not affect any other provisions of this Declaration all of which shall remain in full force and effect.

Section 7. Duration. The covenants and restrictions contained in this Declaration shall run with and bind the Shopping Center for a period of ninety-nine (99) years from the date this Declaration is recorded, unless the Owners of at least seventy-five percent (75%) of the Shopping Center elect not to extend the term of this Declaration. Notwithstanding the foregoing, the perpetual easements created in Article III of this Declaration shall not be affected by the expiration or termination of this Declaration.

Section 8. Amendment. This Declaration may be amended only by a written agreement executed by Owners that comprise at least seventy-five percent (75%) of the obligations to pay the Common Area Costs; provided, that (a) the Designated Maintenance Owner shall be required to execute any amendment to this Declaration, and (b) no such amendment shall impose any materially greater obligation or restriction on any Parcel, or materially impair any right or easement appurtenant to any Parcel, without the prior written consent of the Owner of that Parcel.

Section 9. Governing Law. This Declaration has been entered into under, and shall be construed in accordance with, the laws of the State of North Carolina.

Section 10. Private Agreement. This Declaration shall not be construed to grant any rights to the public in general.

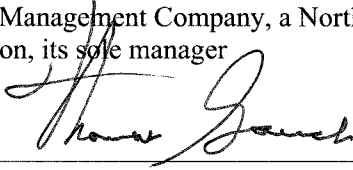
Section 11. Reasonable Consent/Approval. Whenever the consent or approval of a party is required by the terms of this Declaration, such consent or approval shall not be unreasonably withheld, delayed or conditioned.

[Signature on following page]

IN WITNESS WHEREOF, the Declarants have executed this Declaration as of the day and year first above written.

PAVILION WINSTON-SALEM, LLC, a North Carolina limited liability company

By: Pavilion Management Company, a North Carolina corporation, its sole manager

By: 

Name: Thomas Gauch

Vice President

Title: _____

STATE OF NORTH CAROLINA

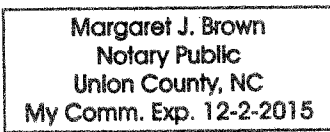
COUNTY OF MECKLENBURG

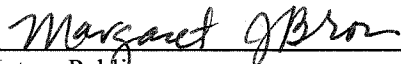
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document:

THOMAS GAUCH

(insert name(s) of those signing)

Witness my hand and official stamp or seal this 5 day of AUGUST, 2014.




Notary Public

Margaret J. Brown
Notary's printed or typed name

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 12-2-2015

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

IN WITNESS WHEREOF, the Declarants have executed this Declaration as of the day and year first above written.


 J. TRACY WILKERSON, as Co-Trustee of the E.
 Vernon Ferrell, Jr. Revocable Trust dated December 21,
 2011

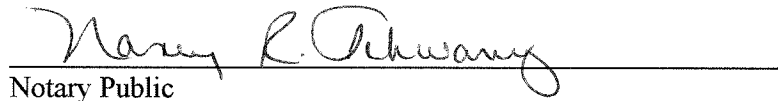
STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

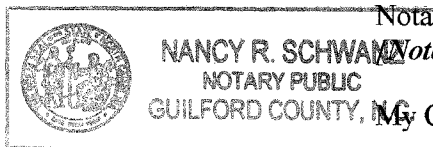
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document:

J. Tracy Wilkerson
 (insert name(s) of those signing)

Witness my hand and official stamp or seal this 30th day of July, 2014.


 Notary Public

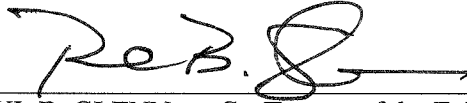
Nancy R. Schwanz
 Notary's printed or typed name



Note: Notary Public must sign exactly as on notary seal]
 My Commission Expires: 4/1/2017

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

IN WITNESS WHEREOF, the Declarants have executed this Declaration as of the day and year first above written.



PAUL B. GLENN, as Co-Trustee of the E. Vernon
Ferrell, Jr. Revocable Trust dated December 21, 2011

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document:

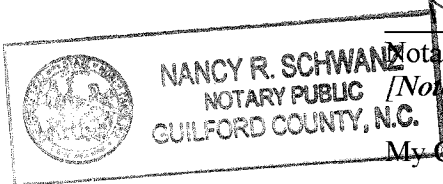
Paul B. Glenn
(insert name(s) of those signing)

Witness my hand and official stamp or seal this 30th day of July, 2014.



Notary Public

Nancy R. Schwanz
Notary's printed or typed name
[Note: Notary Public must sign exactly as on notary seal]
My Commission Expires: 4/1/2017



[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

IN WITNESS WHEREOF, the Declarants have executed this Declaration as of the day and year first above written.


DOUGLAS DILLARD

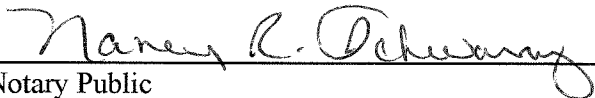
STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document:

Douglas Dillard
(insert name(s) of those signing)

Witness my hand and official stamp or seal this 30th day of July, 2014.


Notary Public

Nancy R. Schwanz
Notary's printed or typed name
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 4/1/2017

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

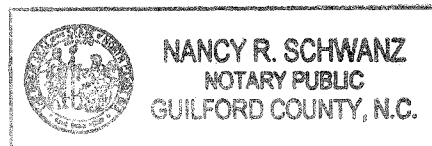


EXHIBIT A

