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FORSYTH CO. NC FEE \$26.00

PRESENTED & RECORDED

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LYNNE JOHNSON

REGISTER OF DEEDS

BY: OLIVIA DOYLE

ASST

**BK: RE 3409**

**PG: 2185 - 2195**

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Space Above Line for Processing Data

**Prepared by and Return to:**

Neal Cook

Parker Poe Adams & Bernstein, LLP

Three Wells Fargo Center

401 South Tryon Street Suite 3000

Charlotte, North Carolina 28202

**ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT OF LEASES AND RENTS made by **Y&O WS LLC**, a Delaware limited liability company (hereinafter "**Assignor**"), in favor of **FIELDPOINT PRIVATE BANK & TRUST** (hereinafter "**Assignee**").

**WITNESSETH:**

A. Assignor is owner of that certain parcel of real property more particularly described on the attached Exhibit A (the "**Property**").

B. Assignor leases the Property to CONN's Appliance, Inc., d/b/a CONN's Home Plus, (hereinafter "**tenant**" or "**CONN**") pursuant to that certain Lease Agreement (as the same may be amended, supplemented, renewed or replaced from time to time, the "**Lease**") dated September 26, 2014 between Pavilion Winston-Salem, LLC and CONN, as assigned to Assignor on or about February 8, 2018.

C. Assignee has agreed to make a loan for the benefit of the Assignor, the proceeds of which will be used by Assignor to refinance debt relating to the Property.

D. Assignee's agreement to make the loan and make the proceeds available to Assignor is pursuant to that certain Term Loan Agreement dated of even date herewith (as the same may be amended, supplemented, renewed or replaced from time to time, the "**Loan Agreement**"), which is evidenced by that certain Promissory Note of even date herewith made by the Assignor in favor of the Assignee (as the same may be amended, supplemented, renewed or replaced from time to time, the "**Note**"), and the obligations thereunder are secured by this Assignment of Leases and Rents (as the same may be amended, supplemented, renewed or replaced from time to time, the "**Assignment**") assigning to Assignee all of Assignor's interests in leases and rents attributable to the Property. Terms not otherwise defined herein shall have the meaning assigned to them in the Loan Agreement.

Submitted electronically by "Craig Jenkins Liipfert & Walker LLP"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Forsyth County Register of Deeds.

FOR VALUE RECEIVED, Assignor does hereby assign to Assignee the Lease, all future leases (including subleases of any thereof), and any and all modifications, extensions, renewals, and replacements thereof, upon all or any part of the Property. The Lease, all future leases, subleases, and tenancies are hereinafter referred to as the "**Leases**."

TOGETHER WITH all rights of Assignor with respect to the Leases and any and all guaranties of tenants' performance under the Leases.

TOGETHER WITH the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, and profits (hereinafter the "**Rents**") now due or which may become due or to which Assignor may now or shall hereafter become entitled or which it may demand or claim, including those Rents coming due during any redemption period, arising or issuing from or out of the Leases or from or out of the Property or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents, and liquidated damages following default, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property, together with any and all rights and claims of any kind that Assignor may have against any tenant under the Leases or any subtenants or occupants of the Property, excepting therefrom any sums which by the express provisions of any of the Leases are payable directly to any governmental authority or to any other person, firm, or corporation other than the landlord under the Lease.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, until termination of this assignment as hereinafter provided.

SUBJECT, HOWEVER, to a license, limited as hereinafter provided, granted by Assignee to Assignor to collect and receive all of the rents.

FOR THE PURPOSE of securing the payment of the indebtedness evidenced by the Loan Agreement and all other documents executed by Assignor associated therewith and all renewals, extensions, modifications, substitutions or increases thereof.

In order to protect the security of the assignment, Assignor covenants and agrees as follows:

1. Assignor's Warranties Concerning Leases and Rents. Assignor represents and warrants that:

a. It has good title to the Leases and Rents hereby assigned and good right to assign them, and no other person, firm, or corporation has any right, title, or interest therein;

b. Assignor has duly and punctually performed all the terms, covenants, conditions, and warranties of the Leases that were to be kept, observed, and performed by it;

c. The existing Leases are valid and unmodified and in full force and effect, except as indicated herein;

d. Assignor has not previously sold, assigned, transferred, mortgaged, or pledged any part of the Rents from the Property, whether they are due now or become due hereafter;

e. Any of the Rents due and issuing from the Property or from any part thereof for any period subsequent to the date hereof has not been collected, and payment thereof has not otherwise been anticipated, waived, released, discounted, set off, or compromised;

f. Assignor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents;

g. The tenants under all existing Leases are not in default of any of the terms thereof; and

h. Assignor has not subordinated its rights under any Lease to the rights or claims of any other party, including any mortgagee of any part of the Property.

2. Assignor's Covenants of Performance. Assignor covenants and agrees to:

a. Observe, perform, and discharge, duly and punctually, all the obligations, terms, covenants, conditions, and warranties of the Loan Agreement, the Leases affecting the Property that Assignor is to keep, observe, and perform, and give prompt notice to Assignee of any failure on the part of Assignor to observe, perform, and discharge same;

b. Give prompt notice to Assignee of any notice, demand, or other document received by Assignor from any tenant or subtenant under the Leases specifying any default claimed to have been made by Assignor under the Leases;

c. Notify in writing each and every present or future tenant or occupant of the Property or of any part thereof that any security deposit or other deposit heretofore delivered to Assignor has been retained by Assignor or assigned and delivered to Assignee, as the case may be;

d. Enforce or secure in the name of Assignee, upon notice to Assignee, the performance of each and every obligation, term, covenant, condition, and agreement in the Leases to be performed by any tenant, and notify Assignee of the occurrence of any default under the Leases;

e. Appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties, or liabilities of Assignor and any tenant thereunder, and upon request by Assignee, do so in the name and on behalf of Assignee, but in all cases at the expense of Assignor;

f. Pay all costs and expenses of Assignee, including attorneys' fees in a reasonable sum, in any action or proceeding in which Assignee may appear in connection herewith; and

g. Neither create nor permit any lien, charge, or encumbrance upon its interest as lessor of the Leases, except for the lien of the Loan Agreement or as provided in any loan documents executed in connection therewith.

3. Prior Approval for Actions Affecting Leases. Assignor further covenants and agrees not to, without the prior written consent of Assignee:

a. Receive or collect any Rents, in cash or by promissory note, from any present or future tenant of the Property or any part thereof for a period of more than one (1) month in advance of the date on which such payment is due, or pledge, transfer, mortgage, or otherwise encumber or assign future payments of Rents;

b. Waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any tenant under any Lease of the Property of and from any obligations, covenants, conditions, and agreements to be kept, observed, and performed by the tenant, including the obligation to pay the Rents thereunder in the manner and at the place and time specified therein;

c. Cancel, terminate, or consent to any surrender of any of the Leases, permit any cancellation, termination, or surrender, commence an action of ejectment or any summary proceedings for dispossession of the tenant under any of the Leases, exercise any right of recapture provided in any Leases, or modify or in any way alter the terms of any Lease;

d. Subordinate its rights under any Lease to the rights or claims of any party, including any mortgagee of any part of the Property;

e. Lease any part of the Property, or renew or extend the term of any Lease of the Property, unless an option therefor was originally reserved by the tenant in the Lease for a fixed and definite rental; and

f. Relocate or expand the floor space of any tenant within the Property, or consent to any modification of the express purposes for which the Property have been leased, any subletting of the Property or any part thereof, any assignment of the Leases by any tenant thereunder, or any assignment or further subletting of any sublease.

4. Rejection of Leases. In the event any lessee under any of the Leases should be the subject of any proceeding under the Federal Bankruptcy Code or any other federal, state, or local statute which provides for the possible termination or rejection of any of the Leases assigned hereby, Assignor covenants and agrees that if any of the Leases is so rejected, no settlement for damages shall be made without the prior written consent of Assignee, and, if such rejection occurs prior to any default by Assignor hereunder or under the Loan Agreement, any check in payment of damages for rejection of any such Lease will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to whatever portion of the indebtedness secured by this Agreement Assignee may elect.

5. Default Deemed Default Under Loan Agreement. In the event any representation or warranty of Assignor made herein shall be found to be untrue, or Assignor shall default in the observance or performance of any obligation, term, covenant, condition, or warranty herein, each such instance shall constitute and be deemed to be a default under the Loan Agreement, thereby entitling Assignee to declare all sums secured thereby and hereby immediately due and payable and to exercise any and all of the rights and remedies provided thereunder and herein, as well as by law.

6. License to Collect Rents. As long as there shall exist no default by Assignor in the payment of any indebtedness secured hereby or in the observance and performance of any other obligation, term, covenant, condition, or warranty contained herein, in the Loan Agreement, or in the Leases, Assignor shall have the right under a license granted hereby, but limited as provided in the following paragraph, to collect, but not prior to accrual, all of the Rents arising from or out of said Leases or any renewals, extensions, and replacements thereof, or from or out of the Property or any part thereof. Assignor shall receive such Rents and shall hold them as a trust fund to be applied as required by Assignee, and Assignor hereby covenants to so apply them before using any part of the same for any other purposes, firstly, to the payment of taxes and assessments upon said Property before penalty or interest is due thereon; secondly, to the cost of insurance, maintenance, and repairs required by the terms of said Loan Agreement; thirdly, to the satisfaction of all obligations specifically set forth in the Leases; and fourthly, to the payment of interest and principal becoming due under the Loan Agreement.

7. Transfer of License. Upon the conveyance by Assignor and its successors and assigns of the leasehold title of the Property, all right, title, interest, and powers granted under the license aforesaid shall automatically pass to and may be exercised by each such subsequent owner, provided Assignee shall first have consented in writing to such conveyance.

8. Enforcement and Termination of License. Upon or at any time after default in the payment of any indebtedness secured hereby or in the observance or performance of any obligation, term, covenant, condition, or warranty contained herein, in the Loan Agreement, or in the Leases, Assignee, at its option and without notice, shall have the complete right, power, and authority to exercise and enforce any or all of the following rights and remedies at any time:

a. To terminate the license granted to Assignor to collect the Rents without taking possession, and to demand, collect, receive, sue for, attach, and levy against the Rents in Assignee's own name; to give proper receipts, releases, and acquittance therefor; and after deducting all necessary and proper costs and

expenses of operation and collection as determined by Assignee, including reasonable attorneys' fees, to apply the net proceeds thereof, together with any funds of Assignor deposited with Assignee, upon any indebtedness secured hereby and in such order as Assignee may determine;

b. To declare all sums secured hereby immediately due and payable and, at its option, exercise all or any of the rights and remedies contained in the Loan Agreement;

c. Without regard to the adequacy of the security or the solvency of Assignor, with or without any action or proceeding through any person, by agent, or by a receiver to be appointed by a court, and without regard to Assignor's possession, to enter upon, take possession of, manage, and operate the Property or any part thereof; make, modify, enforce, cancel, or accept surrender of any Leases now or hereafter in effect on said Property or any part thereof; remove and evict any lessee; increase or decrease rents; terminate without penalty or obligation any management agreement(s) in effect with respect to all or any part of the Property; decorate, clean and repair; otherwise do any act or incur any costs or expenses that Assignee shall deem proper to protect the security hereof, as fully and to the same extent as Assignor could do if in possession; and apply the rents so collected in such order as Assignee shall deem proper to the operation and management of said Property, including the payment of reasonable management, brokerage, and attorneys' fees and the indebtedness under the Loan Agreement, and payment for replacements to a reserve fund that shall not bear interest; and

d. Require Assignor to transfer all security deposits to Assignee, together with all records evidencing these deposits.

Provided, however, that the acceptance by Assignee of this Assignment, with all of the rights, powers, privileges, and authority so created, shall not, prior to entry upon and taking possession of said Property by Assignee, be deemed or construed to constitute Assignee a "Mortgagee in Possession," nor thereafter or at any time or in any event obligate Assignee to appear in or defend any action or proceeding relating to the Leases or to the Property, to take any action hereunder, to expend any money, incur any expenses, or perform or discharge any obligation, duty, or liability under the Leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any lessee thereunder and not assigned and delivered to Assignee. Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm, or corporation in or about the Property.

Provided further, that the collection of the Rents and their application as aforesaid and/or the entry upon and taking possession of the Property shall not cure or waive any default; waive, modify, or affect any notice of default required under the Loan Agreement; or invalidate any act done pursuant to such notice. The enforcement of any right or remedy by Assignee, once exercised, shall continue until Assignee shall have collected and applied enough Rents to cure, for the time, the original default.

Although the original default be cured and the exercise of any right or remedy be discontinued, the same or any other right or remedy hereunder shall not be exhausted and may be reasserted at any time and from time to time following any subsequent default. The rights and powers conferred on Assignee hereunder are cumulative and not in lieu of any other rights and powers otherwise granted Assignee.

9. Appointment of Attorney. Assignor hereby constitutes and appoints Assignee its true and lawful attorney, coupled with an interest of Assignor, so that in the name, place, and stead of Assignor, Assignee can subordinate, at any time and from time to time, any Leases affecting the Property or any part thereof or easement or right-of-way in connection therewith to the lien of the hereinbefore described Loan Agreement, any other mortgage encumbering the Property, or any ground lease of the Property, and request or require such subordination where such option or authority was reserved to Assignor under any such Leases, or in any case where Assignor otherwise would have the right, power, or privilege so to do. This appointment is to be irrevocable and continuing, and these rights, powers, and privileges shall be exclusive in Assignee, its successors, and assigns as long as any part of the indebtedness secured hereby or by the Loan Agreement shall remain unpaid. Assignor hereby warrants that it has not, at any time prior to the date hereof, exercised any right to subordinate any such Lease to the Loan Agreement or to any other mortgage or ground lease, and further covenants not to exercise any such right.

10. Indemnification. Assignor hereby agrees to indemnify and hold Assignee harmless from any and all liability, loss, damage, or expense that Assignee may incur under, or by reason or in defense of, any and all claims and demands whatsoever which may be asserted against Assignee arising out of the Leases, including, but not limited to, any claims by any tenants of credit for rental for any period under any Leases more than one (1) month in advance of the due date thereof paid to and received by Assignor but not delivered to Assignee. Should Assignee incur any such liability, loss, damage, or expense, the amount thereof, including reasonable attorneys' fees, with interest thereon at the maximum rate permitted by law shall be payable by Assignor immediately without demand, and shall be secured as a lien hereby and by the Loan Agreement.

11. Records. Until the indebtedness secured hereby shall have been paid in full, Assignor shall deliver to Assignee executed copies of any and all renewals of existing leases and all future leases upon all or any part of the Property, and will transfer and assign such Leases upon the same terms and conditions as herein contained. Assignor hereby covenants and agrees to make, execute, and deliver to Assignee upon demand and at any time any and all assignments and other records and instruments, including, but not limited to, rent rolls and books of account sufficient for the purpose, that Assignee may deem to be advisable for carrying out the purposes and intent of this Assignment.

12. No Waiver. The failure of Assignee to avail itself of any of the terms, covenants, and conditions of this Assignment for any period of time or at any time shall not be construed or deemed to be a waiver of any such right, and nothing herein contained nor anything done or omitted to be done by Assignee pursuant hereto shall be deemed a waiver by Assignee of any of its rights and remedies under the Loan Agreement or the laws of the state in which the said Property are situated. The rights of Assignee to collect the said indebtedness, to enforce any other security therefor, or to enforce any other right or remedy hereunder may be exercised by Assignee either prior to, simultaneously with, or subsequent to, any other action taken hereunder and shall not be deemed an election of remedies.

13. Primary Security. This Assignment of Leases and Rents is primary in nature to the obligation evidenced and secured by the Loan Agreement and any other document given to secure and collateralize the indebtedness. Assignor further agrees that Assignee may enforce this Assignment without first resorting to or exhausting any other security or collateral; however, nothing herein contained shall prevent Assignee from suing on the Loan Agreement or exercising any other right under any other document collateralizing the Loan Agreement.

14. Merger. (i) The fact that the Leases or the leasehold estates created thereby may be held, directly or indirectly, by or for the account of any person or entity which shall have an interest in the fee estate of the Property, (ii) the operation of the law, or (iii) any other event shall not merge any Leases or the leasehold estates created thereby with the fee estate in the Property as long as any of the indebtedness evidenced by the Loan Agreement and secured hereby shall remain unpaid, unless Assignee shall consent in writing to such merger.

15. Termination of Assignment. Upon payment in full of all of the indebtedness evidenced by the Loan Agreement and all sums payable hereunder, this Assignment shall be void and of no effect. No judgment or decree entered as to said indebtedness shall operate to abrogate or lessen the effect of this assignment until the indebtedness has actually been paid. The affidavit, certificate, letter, or statement of any officer of Assignee showing that any part of said indebtedness has remained unpaid shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment. Any person, firm, or corporation may, and is hereby authorized to, rely on such affidavit, certificate, letter, or statement. A demand by Assignee of any tenant for payment of Rents by reason of any default claimed by Assignee shall be sufficient direction to said tenant to make future payments of Rents to Assignee without the necessity for further consent by, or notice to, Assignor.

16. Notice. All notices, demands, or documents of any kind that Assignee may be required or may desire to serve upon Assignor hereunder shall be sufficiently served by delivering them personally to Assignor, by leaving a copy addressed to Assignor at the address set forth below, or by depositing a copy in the United States mail, postage prepaid, certified or registered mail, addressed to Assignor at the address set forth below.

17. Successors. The terms, covenants, conditions, and warranties contained herein and the powers granted hereby shall run with the land and shall inure to the benefit of, and bind, all parties hereto and their respective heirs, successors, and assigns, all tenants and their subtenants and assigns, and all subsequent owners of the Property and subsequent holders of the Loan Agreement.

18. Additional Rights and Remedies. In addition to, but not in lieu of, any other rights hereunder, Assignee shall have the right to institute suit and obtain a protective or mandatory injunction against Assignor to prevent a breach or default, or to enforce the observance, of the agreements, covenants, terms, and conditions contained herein, as well as the right to ordinary and punitive damages occasioned by any breach or default by Assignor.

19. Severability. If any provision of this Assignment or the application thereof to any entity, person, or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of its provisions to other entities, persons, or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

20. Third Party Beneficiaries. It is expressly agreed by Assignor that this Assignment shall not be construed or deemed made for the benefit of any third party or parties.

21. Entire Agreement. This document, as supplemented by the Loan Agreement, contains the entire agreement concerning the assignment of rents and leases between the parties hereto. No variations, modifications, or changes herein or hereof shall be binding upon any party hereto, unless set forth in a document duly executed by, or on behalf of, such party.

22. Construction. Whenever used herein and the context requires it, the singular number shall include the plural, the plural the singular, and any gender shall include all genders. If there is more than one Assignor hereunder, the liability of such Assignors hereunder shall be joint and several.

23. Governing Law. The parties agree that the law of the State of North Carolina shall govern the performance and enforcement of this Assignment.

24. Financing Statement. A carbon, photographic or other copy of this Assignment may be filed by Assignee as a financing statement in any public office.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the duly authorized member/manager of Assignor has executed this Assignment this 11<sup>th</sup> day of June, 2018.

**ASSIGNOR:**

**Y&O WS LLC**, a Delaware limited liability company

By: 

Name: Steven I. Holm

Its: Authorized Signatory

Name and address of Assignee:  
(Secured Party)

Fieldpoint Private Bank & Trust  
100 Field Point Road  
Greenwich, CT 06830



Name and address of Assignor:  
(Debtor Party)

Y&O WS LLC  
c/o Y&O Group, LLC  
366 North Broadway, Suite 406  
Jericho, NY 11753

STATE OF New York

COUNTY OF New York

I Marc S. Brodsky, a Notary Public for the County and State aforesaid, do hereby certify that Steven I. Holm personally came before me this day and acknowledged that she/he is the Authorized Signatory of Y&O WS LLC and, as such, she/he, being authorized to do so, executed the foregoing on behalf of Y&O WS LLC.

Witness my hand and official seal, this the

7<sup>th</sup>

day of June, 2018.

My Commission Expires:

Notary Public  
(Affix Notary Seal)

Marc S. Brodsky  
Notary Public  
Marc S. Brodsky  
Print Name

**MARC S. BRODSKY**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
**No. 02BR6320019**  
**Qualified in New York County**  
**My Commission Expires February 23, 2019**

**EXHIBIT A**

Legal Description

All that tract or parcel of land lying and being in the City of Winston-Salem, Forsyth County, North Carolina, and being shown and designated as Parcel "C", containing approximately 4.972 acres, on that certain subdivision plat entitled "Final Subdivision Plat For: Pavilion Winston-Salem", and recorded in Plat Book 62, pages 104-106 in the Office of the Register of Deeds for Forsyth County, North Carolina.

**EXHIBIT B**

The Lease

Lease Agreement dated September 26, 2014 between Pavilion Winston-Salem, LLC and CONN Appliances, Inc., a memorandum of which is recorded in Book 3200, page 613 in the Office of the Register of Deeds for Forsyth County, North Carolina, and assigned to Alamance Associates, LLC as evidenced by a Memorandum of Assignment and Assumption of Lease recorded in Book 3249, page 3852, and further assigned to Y&O WS LLC as evidenced by Memorandum of Assignment and Assumption of Lease recorded in Book 3390, page 330.