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FORSYTH CO, NC FEE \$26.00  
PRESENTED & RECORDED

10-07-2014 03:42:37 PM

C. NORMAN HOLLEMAN  
REGISTER OF DEEDS  
BY: LORI HOLLOWAY  
DPT

BK: RE 3200

PG: 579-587

### FIRST AMENDMENT TO DECLARATION OF EASEMENTS AND RESTRICTIONS

**THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS AND RESTRICTIONS** (this "**Amendment**") is made as of October 7, 2014, 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; **DOUGLAS DILLARD** ("**Dillard**," and together with the Trustees, collectively, "**Seller**"); and **BPR WINSTON SALEM, LLC**, a North Carolina limited liability company ("**BPR**").

### RECITALS

A. Pavilion and Seller (collectively, "**Declarant**") entered into that certain Declaration Of Easements and Restrictions (the "**Original Declaration**") dated August 7, 2014, and recorded in Book 3191, Page 1452 of the Office of the Register of Deeds for Forsyth County, North Carolina (the "**Registry**"). All capitalized terms not defined herein shall have the meaning ascribed to such terms in the Original Declaration.

B. As of the date of this Amendment, Pavilion owns Anchor Parcel A and Outparcel 4; Seller owns Anchor Parcel C, Outparcel 1, Outparcel 2, Outparcel 3 and Outparcel 5; and BPR owns Anchor Parcel B.

C. Pavilion, Seller and BPR (collectively, the "**Owners**") have agreed to amend the Original Declaration as set forth below.

**NOW, THEREFORE**, in consideration of the covenants set forth in the Original Declaration and for the purposes set forth in this Amendment, Owners, for themselves, and their successors and assigns, amend the Original Declaration as follows:

1. **Prohibited Use**. Article VI, Section 2(u) of the Original Declaration is hereby deleted in its entirety and replaced with the following:

"(u) car wash, auto body shop, auto rental business, or junk yard, provided that  
(i) a business that engages primarily in the sale of tires such as Merchant's Tire shall be permitted only on Outparcel 3 and (ii) a car wash shall be permitted only on Outparcel 1;"

Return to: Wyatt Early Harris Wheeler, LLP (David N. Woods) PO Drawer 2086, High Point, NC 27261

**ENVELOPE**

5575590v2 16477.00407

**Drawn By and Return To:**

**Robinson, Bradshaw & Hinson, P.A.**  
**Attention: William K. Packard**  
101 N. Tryon Street, Suite 1900  
Charlotte, NC 28246

2. **Conn's Exclusive.** Because Conn Appliances, Inc. has (i) executed a lease for Anchor Parcel C within the timeframe required by Article VI, Section 3(c) of the Original Declaration to validate the Conn's Exclusive and (ii) agreed to permit the sale of mattresses on Outparcel 5, Article VI, Section 3(c) of the Original Declaration is hereby deleted in its entirety and replaced with the following:

"(c) During the term of that certain Lease dated September 26, 2014 (as further amended from time to time, the "**Conn's Lease**"), by and between Pavilion and Conn Appliances, Inc. ("**Conn's**") for Anchor Parcel C, no portion of the Shopping Center outside of the building leased to Conn's within Outparcel C 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; (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; or (iii) the sale of mattresses on Outparcel 5."

3. **Sign Standards.** Article VII, Section 7(a) of the Original Declaration is hereby deleted in its entirety and replaced with the following:

"(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, the logo or trade name of a business operating on the Parcel, and words describing the primary goods or services sold by the business operating on the Parcel."

4. **Conn's Enforcement Rights.** In order to grant Conn's the right to enforce the terms of the Declaration, Article IX, Section 1 is hereby deleted in its entirety and replaced with the following:

"Section 1. **Enforcement.** Any Owner, Hobby Lobby (during the term of the Hobby Lobby Lease) and Conn's (during the term of the Conn's 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."

5. **Ratification.** Except as specifically amended and modified by this Amendment, the Original Declaration shall continue in full force and effect in accordance with its terms, and is hereby ratified.

6. **Counterparts.** This Amendment may be executed in a number of identical counterparts, each of which shall be deemed an original and all of which, collectively, shall constitute one agreement.

IN WITNESS WHEREOF, the Owners have executed this Amendment 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: \_\_\_\_\_

Title: \_\_\_\_\_

**Thomas Gauch**  
**Vice President**

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 the he or she voluntarily signed the foregoing document:

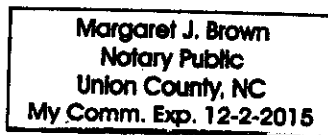
Thomas Gauch

(insert name(s) of those signing)

Witness my hand and official stamp or seal this 3 day of October, 2014.

Margaret J. Brown

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 Owners have executed this Amendment 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 FORESYTH

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that the 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 6<sup>th</sup> day of OCTOBER, 2014.

  
 Notary Public

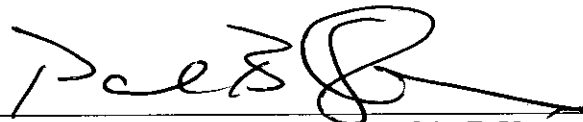


Patti C Huffman  
 Notary's printed or typed name  
 [Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 1-4-2016

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

IN WITNESS WHEREOF, the Owners have executed this Amendment 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

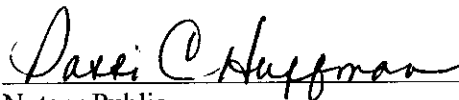
COUNTY OF FORSYTH

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

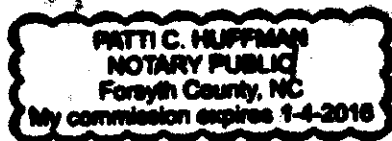
Paul B. Glenn

(insert name(s) of those signing)

Witness my hand and official stamp or seal this 6<sup>th</sup> day of October, 2014.



Notary Public



Patti C. Huffman

Notary's printed or typed name

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

My Commission Expires: 1-4-2016

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

IN WITNESS WHEREOF, the Owners have executed this Amendment 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 the 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 6<sup>th</sup> day of OCTOBER, 2014.

  
Notary Public

Patti C. Huffman  
Notary's printed or typed name  
[Note: Notary Public must sign exactly as on notary seal]


My Commission Expires: 1-4-2016

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)



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

**BPR WINSTON SALEM, LLC**, a North Carolina limited liability company

By:   
 Name: BHUPENDRA PATEL  
 Title: MANAGER

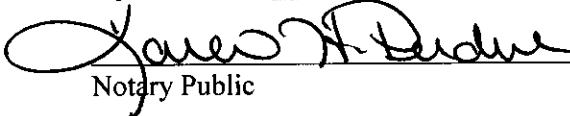
STATE OF North Carolina

COUNTY OF Guilford

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

Bhupendra Patel  
*(insert name(s) of those signing)*

Witness my hand and official stamp or seal this 2nd day of October, 2014.

  
 Notary Public

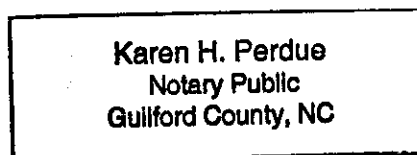
Karen H. Perdue

Notary's printed or typed name

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

My Commission Expires: 12/5/17

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)



**CONSENT AND SUBORDINATION TO  
FIRST AMENDMENT TO DECLARATION OF EASEMENTS AND RESTRICTIONS**

Bank of North Carolina, as holder of that certain Deed of Trust, Assignment of Rents and Leases and Security Agreement recorded in Book 3191, Page 1666 of the Office of the Register of Deeds for Forsyth County, North Carolina (the "**Deed of Trust**") which encumbers that portion of the Shopping Center owned by Pavilion, does hereby (i) consent to, approve and acknowledge the execution, delivery and recording of the foregoing First Amendment to Declaration Of Easements and Restrictions (the "**First Amendment**"), (ii) subordinate the lien of the Deed of Trust to the original Declaration Of Easements and Restrictions recorded in Book 3191, Page 1452 of the Office of the Register of Deeds for Forsyth County, North Carolina and the First Amendment (as amended, the "**Declaration**"), and (iii) agree that in the event of foreclosure of said Deed of Trust it shall not disturb the Declaration.

2 IN WITNESS WHEREOF, the undersigned has executed this Consent and Subordination, this day of October, 2014.

BANK OF NORTH CAROLINA

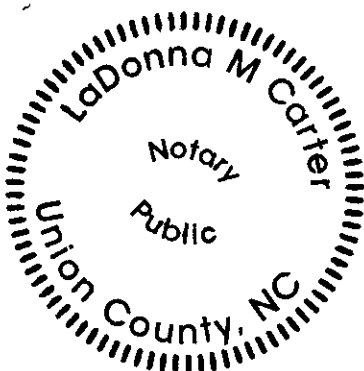
By: Chase Allen  
Name: Chase Allen  
Title: VP

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 the he or she voluntarily signed the foregoing document:

Chase Allen  
(insert name(s) of those signing)

Witness my hand and official stamp or seal this 2 day of October, 2014.



LaDonna M. Carter  
Notary Public

LaDonna M. Carter  
Notary's printed or typed name  
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 10/1/2017

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)



**CONSENT AND SUBORDINATION TO  
FIRST AMENDMENT TO DECLARATION OF EASEMENTS AND RESTRICTIONS**

High Point Bank and Trust Company, as holder of that certain Deed of Trust recorded in Book 3193, Page 1287 of the Office of the Register of Deeds for Forsyth County, North Carolina (the "**Deed of Trust**") which encumbers Anchor Parcel B of the Shopping Center, does hereby (i) consent to, approve and acknowledge the execution, delivery and recording of the foregoing First Amendment to Declaration Of Easements and Restrictions (the "**First Amendment**"), (ii) subordinate the lien of the Deed of Trust to the original Declaration Of Easements and Restrictions recorded in Book 3191, Page 1452 of the Office of the Register of Deeds for Forsyth County, North Carolina and the First Amendment (as amended, the "**Declaration**") , and (iii) agree that in the event of foreclosure of said Deed of Trust it shall not disturb the Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Subordination, this  
2nd day of October, 2014.

HIGH POINT BANK AND TRUST COMPANY

By: *Rick Gabriel*  
Name: Rick Gabriel  
Title: First Vice President

STATE OF North Carolina

COUNTY OF Guilford

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

Rick Gabriel  
(insert name(s) of those signing)

Witness my hand and official stamp or seal this 2nd day of October, 2014.

*Karen H. Perdue*  
Notary Public

**Karen H. Perdue  
Notary Public  
Guilford County, NC**

Karen H. Perdue  
Notary's printed or typed name  
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 12/5/17

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)