

**2018004830 00266**

FORSYTH CO. NC FEE \$26.00

PRESENTED &amp; RECORDED

02/09/2018 03:40:44 PM

LYNNE JOHNSON

REGISTER OF DEEDS

BY: EVELYN R. DIXON

DPTY

**BK: RE 3390****PG: 337 - 344**

Prepared by and return to:

Steven I. Holm, Esq.

Levy Holm Pellegrino &amp; Drath LLP

950 Third Avenue, Suite 3101

New York, New York 10022

**PERMITTED USES AGREEMENT**

**THIS AGREEMENT** (this "**Agreement**"), made as of this 8<sup>th</sup> day of February, 2018 by and between BAYROCK INVESTMENT CO., a North Carolina general partnership ("**BayRock**"), and Y&O WS LLC, a Delaware limited liability company ("**Y&O**"), (collectively, BayRock and Y&O referred to as the "**Parties**").

**RECITALS:**

**WHEREAS**, BayRock is the owner of Anchor Parcel A ("**Anchor Parcel A**") with a free-standing store building and other improvements leased to Hobby Lobby Stores, Inc., an Oklahoma corporation ("**Hobby Lobby**"), pursuant to that certain Lease, dated February 21, 2014, between Pavilion-Winston Salem, LLC ("**Pavilion**"), as assigned to BayRock, and Hobby Lobby (the "**Hobby Lobby Lease**");

**WHEREAS**, Y&O is the owner of Anchor Parcel C ("**Anchor Parcel C**") with a free-standing store building and other improvements leased to Conn Appliances, Inc., a Texas corporation ("**Conn's**"), pursuant to that certain Lease, dated September 26, 2014, between Pavilion, as ultimately assigned to Y&O, and Conn's (the "**Conn's Lease**", together with the Hobby Lobby Lease, collectively, the "**Leases**");

**WHEREAS**, Anchor Parcel A and Anchor Parcel C are subject to that certain Declaration of Easements and Restrictions dated August 7, 2014 and recorded in Book 3191, page 1452 executed by Pavilion, J. Tracy Wilkerson and Paul B. Glenn (collectively, the "**Trustees**") and Douglas Dillard ("**Dillard**") (the "**Original Declaration**"), as amended by that certain First Amendment to Declaration of Easements and Restrictions dated October 7, 2014

<sup>043</sup> 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.

and recorded in Book 3200, page 579 executed by Pavilion, the Trustees, Dillard and BPR (the “**First Amendment**”), and further amended by that certain Second Amendment to Declaration of Easements and Restrictions dated May 25, 2016 and recorded in Book 3289, page 1370 executed by Pavilion, BPR Winston Salem, LLC, BayRock, Alamance Associates, LLC, Bayrock Naples/Merchants Exchange, LLC, Bartmart, LLC, Papadia Properties, LLC and WSNC-4, LLC (the “**Second Amendment**”, together with the Original Declaration and the First Amendment, collectively, the “**Declaration**”) in connection with certain premises located in Winston-Salem, Forsyth County, North Carolina (the “**Premises**”). Unless otherwise stated herein, all capitalized terms used in this Agreement shall have the meanings specified in the Declaration, subject to modification as provided herein;

**WHEREAS**, The Declaration provides for certain Permitted Uses, Prohibited Uses and Exclusives (collectively, the “**Permitted Uses**”) for the Premises as more particularly provided therein;

**WHEREAS**, the Declaration may be amended only by a written agreement (“**Amendment**”) executed by the Owners that comprise at least seventy-five (75%) of the obligations to pay Common Area Costs; provided, that (a) the Designated Maintenance Officer shall be required to execute any amendment to the 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;

**WHEREAS**, the Parties desire to take certain measures to insure that the Parties unanimously agree in writing and vote for any future Amendment with respect to the Permitted Uses so long as the Amendment does not violate any exclusives, permitted use, prohibited use, cause a default or violate any covenant now or in the future contained in any of the Leases or any future lease:

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals**. The forgoing recitals are true and correct and incorporated as if fully set forth herein.
2. **Agreement**. The Parties agree that any future proposed Amendment to the Declaration with respect to Permitted Uses shall be unanimously agreed in writing and voted upon by the Parties so long as the Amendment (or a Party’s execution thereof) does not: (a) violate any exclusives, permitted use or prohibited use, or (b) otherwise cause a default or violate any covenant, now or in the future contained in any of the Leases or any future lease affecting the Parties’ respective Premises (collectively, a “**Default**”). If either party does not unanimously agree and vote upon such proposed Amendment, such party shall provide the other party with supporting evidence of a Default under any of the Leases or any future lease. Notwithstanding anything herein to the contrary, this Agreement shall not be deemed to be an amendment to the Declaration.

3. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors, permitted assigns.
4. **Invalidity.** The invalidity of any provision of this Agreement shall not impair nor affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Agreement.
5. **Counterpart Execution.** This Agreement may be executed in multiple counterparts and via facsimile or email (via pdf format), each of which shall be an original and all of which, together, shall constitute one agreement.
6. **Authorization.** The persons signing this Agreement below represent that they are duly authorized to execute this Agreement on behalf of either the BayRock or Y&O respectively, and with full force and biding effect upon such party.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year above written.

**BAYROCK:**

**BAYROCK INVESTMENT CO.,**  
a North Carolina general partnership

By Bayrock Investment Co., LLC  
Its General Partner

By: Thomas L. Hammons  
Name: Thomas L. Hammons  
Its: Manager

**Y&O:**

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

By: \_\_\_\_\_  
Name:  
Its:

STATE OF FLORIDA

COUNTY OF Sarasota

I, a Notary Public of the County and State aforesaid, certify that Thomas L. Hammons personally came before me on this day and acknowledged that he is the Manager of Bayrock Investment Co., LLC which is the General Partner of BayRock Investment Co., and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed in the name of the general partnership by the manager of the limited liability company in its capacity as the general partner of the general partnership, under seal.

Date: 2-7-18


Official Signature of Notary  
**GINA M. BLAIR**

\_\_\_\_\_  
Notary Public's printed or typed name

My Commission expires: \_\_\_\_\_

(Official Stamp or Seal)



**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year above written.

**BAYROCK:**

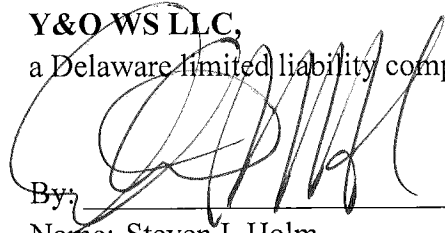
**BAYROCK INVESTMENT CO.,**  
a North Carolina general partnership

By Bayrock Investment Co., LLC  
Its General Partner

By: \_\_\_\_\_  
Name: Thomas L. Hammons  
Its: Manager

**Y&O:**

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

By:  \_\_\_\_\_  
Name: Steven I. Holm  
Its: Authorized Signatory

STATE OF NEW YORKCOUNTY OF NEW YORK

I, a Notary Public of the County and State aforesaid, certify that Steven I. Holm personally came before me on this day and acknowledged that (s)he is the Authorized Signatory of Y&O WS LLC, a Delaware limited liability company, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed in the name of limited liability company by the Authorized Signatory of the limited liability company, under seal.

Date: February 6, 2018

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

*Marc S. Brodsky*  
 \_\_\_\_\_  
 \_\_\_\_\_ Official Signature of Notary

(Official Stamp or Seal)

Notary Public's printed or typed name

My Commission expires:

**"Anchor Parcel A"**

**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 A," containing approximately 7.626 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 (the "Registry").**

**"Anchor Parcel C"**

**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.**