

Register of Deeds
Sharon A. Davis
Durham County, NC

10/27/2022 12:17:37PM

BT: OPR B: 9808 P: 245 Pages: 4

AMD - AMENDMENT

Fee: \$26.00 Excise Tax: \$0

INSTRUMENT #2022041680

Sharon Marsh

Cross Reference:

Book 8700, Page 477 (Instrument No. 2019023955);
Book 8755, Page 576 (Instrument No. 2019034204);
Book 8861, Page 827 (Instrument No. 2020004105);
Book 9033, Page 948 (Instrument No. 2020032746); and
Book 9503, Page 401 (Instrument No. 2021053940)

**PREPARED BY (Without Title Examination)
AND WHEN RECORDED RETURN TO:**

David J. Duncan
Scannell Properties
8801 River Crossing Blvd., Suite 300
Indianapolis, IN 46240

**FIFTH AMENDMENT TO DECLARATION OF
EASEMENTS, COVENANTS AND RESTRICTIONS FOR
REGIONAL COMMERCE CENTER**

THIS FIFTH AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR REGIONAL COMMERCE CENTER (this "Fifth Amendment") is made and entered into as of the 27th day of October, 2022, by SCANNELL PROPERTIES #502, LLC, an Indiana limited liability company ("SP #502"), having its address at c/o Scannell Properties, 8801 River Crossing Blvd., Suite 300, Indianapolis, Indiana 46240.

RECITALS:

WHEREAS, Scannell Properties #320, LLC, an Indiana limited liability company ("SP #320"), Scannell Properties #350, LLC, an Indiana limited liability company ("SP #350"), and SP #383 entered into that certain Declaration of Easements, Covenants and Restrictions for Regional Commerce Center, dated June 26, 2019, and recorded July 12, 2019, at Book 8700, Page 477 (Instrument No. 2019023955), as amended by that certain First Amendment to Declaration of Easements, Covenants and Restrictions for Regional Commerce Center, dated September 12, 2019, and recorded September 20, 2019, at Book 8755, Page 576 (Instrument No. 2019034204) (the "First Amendment"), and as further amended by that certain Second Amendment to Declaration of Easements, Covenants and Restrictions for Regional Commerce Center, dated January 31, 2020, and recorded January 31, 2020, at Book 8861, Page 827 (Instrument No. 2020004105) (the "Second Amendment") and as further amended by that certain Third Amendment to Declaration of Easements, Covenants and Restrictions for Regional Commerce Center, dated August 12,

submitted electronically by "Scannell Properties"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Durham County Register of Deeds.

2020, and recorded August 12, 2020, at Book 9033, Page 948 (Instrument No. 2020032746) (the “Third Amendment”, and as further amended by that certain Fourth Amendment to Declaration of Easements, Covenants and Restrictions for Regional Commerce Center, dated October 13, 2021, and recorded October 21, 2020, at Book 9503, Page 401 (Instrument No. 2021053940) (the “Fourth Amendment”), and together with the First Amendment, the Second Amendment and the Third Amendment, collectively hereinafter referred to as the “Declaration”), in the Register of Deeds for Durham County, North Carolina (the “Land Records”), concerning the real property located in the City of Durham, County of Durham, State of North Carolina, and commonly known as Regional Commerce Center.

WHEREAS, SP #320 assigned all of its rights, title, and interest as the Developer under the Declaration to SP #502 (hereinafter, the “Developer”) pursuant to that certain Assignment of Developer’s Rights under Declaration of Easements, Covenants and Restrictions for Regional Commerce Center dated October 11, 2021 between SP #320 and Developer recorded October 22, 2021, at Book 9503, Page 584 (Instrument No. 2021053970) in the Land Records.

WHEREAS, as of the date of this Amendment, Developer no longer owns any Tract, and as such, the Developer Control Period has ended as of the date of this Amendment.

WHEREAS, Developer is executing this Amendment to memorialize the end of the Developer Control Period in accordance with Section 5.4(B) of the Declaration.

NOW, THEREFORE, in consideration of the above Recitals and the covenants contained in this Fifth Amendment, the Declaration is hereby amended by this Fifth Amendment and the Park shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the terms and conditions set forth in the Declaration, which shall run with the Park for the term hereof and shall be binding upon the Park and all successors, assigns, tenants, occupants, subtenants, licensees, concessionaires, invitees or other parties permitted within the Park:

1. **Defined Terms; Recitals.**

(a) Except as otherwise specifically defined herein, all capitalized terms shall have the meanings assigned to such terms in the Declaration.

(b) The Recitals are hereby incorporated herein by this reference.

2. **Developer Control Period.** Pursuant to the terms of the Declaration, by virtue of Developer no longer owning any Tract, the Developer Control Period has expired as of the date of this Amendment.

4. **General Provisions.**

(a) **Binding Effect.** The obligations, burdens and benefits created by this Fifth Amendment shall bind and inure to the benefit of all parties having any right, title or interest in the Park, or any portion thereof, and their respective successors, assigns and transferees. This Fifth Amendment and its terms and conditions shall become a part of the chain of title and shall run with the land until terminated, as more particularly set forth in the Declaration and this Fifth Amendment.

(b) **Headings and Captions.** The headings and captions of the paragraphs of this Fifth Amendment are for convenience of reference only and shall not affect the meaning or interpretation of this Fifth Amendment or any provision thereof.

(c) **Gender and Number.** As used in this Fifth Amendment, the neuter shall include the feminine and masculine, the singular shall include the plural, and the plural shall include the singular, except where expressly provided to the contrary.

(d) **Severability.** In the event that a paragraph, section, sentence, clause or phrase contained in this Fifth Amendment becomes or is held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining paragraphs, sections, sentences, clauses or phrases contained in this Fifth Amendment shall not be affected thereby.

(e) **Full Force and Effect.** Except as expressly amended hereby, the Declaration remains unaltered and in full force and effect.

(f) **Governing Law.** This Fifth Amendment and all questions concerning the performance of this Fifth Amendment will be interpreted, construed and enforced in all respects in accordance with applicable laws of the State of North Carolina, without reference to rules relating to choice of law.

(g) **Counterparts.** This Fifth Amendment and any amendment to this Fifth Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument.

(h) **Covenants Run with the Land.** Each and every declaration, covenant, condition, easement, right, privilege and restriction made, declared, granted or assumed in this Fifth Amendment shall be an equitable servitude on the Park, and shall run with the land and shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns and grantees who acquire fee simple title to all or any portion of the Park, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure or otherwise, but not including the holder of any lien or encumbrance on such real property.

(i) **No Rights Conferred.** Except as expressly stated to the contrary herein, this Fifth Amendment shall confer no rights on any parties other than the Parties and the Permittees.

IN WITNESS WHEREOF, Developer has caused this Fifth Amendment to be executed effective as of the day and year first above written.

[SIGNATURES ON FOLLOWING PAGES]

**SIGNATURE PAGE TO
FIFTH AMENDMENT TO DECLARATION OF EASEMENTS,
COVENANTS AND RESTRICTIONS FOR
REGIONAL COMMERCE CENTER**

“SP #502” or “Developer”

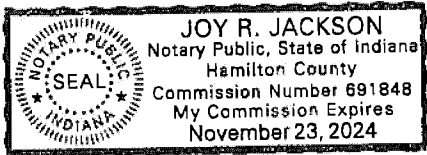
SCANNELL PROPERTIES #502, LLC,
an Indiana limited liability company


By: 
Marc D. Pflieger, Manager

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE ME, a Notary Public in and for said County and State personally appeared the above named SCANNELL PROPERTIES #502, LLC, an Indiana limited liability company, by Marc D. Pflieger, in his capacity as the Manager, and who acknowledged that he did sign the foregoing instrument for and on behalf of said limited liability company and that the same is the free act and deed of said limited liability company and his free act and deed individually and as such manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Indianapolis, Indiana, this 27th day of October, 2022.




NOTARY PUBLIC
My Commission Expires: 11/23/24
My Commission Number: 691848