

For Registration Sharon A. Davis

Register of Deeds

Durham County, NC

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Instrument Number: 2019034204

AMD

Cross Reference: Instrument No. 2019023955

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

Michael J. Ovsievsky, Esq.
Morningstar Law Group
421 Fayetteville Street, Suite 350
Raleigh, NC 27601

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

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR REGIONAL COMMERCE CENTER (this "First Amendment") is made and entered into as of the 12th day of September, 2019, by SCANNELL PROPERTIES #320, LLC, an Indiana limited liability company ("Developer"), having its address at c/o Scannell Properties, 8801 River Crossing Blvd., Suite 300, Indianapolis, Indiana 46240, SCANNELL PROPERTIES #350, LLC, an Indiana limited liability company ("SP #350"), having its address at c/o Scannell Properties, 8801 River Crossing Blvd., Suite 300, Indianapolis, Indiana 46240, and SCANNELL PROPERTIES #383, LLC, an Indiana limited liability company ("SP #383"), having its address at c/o Scannell Properties, 8801 River Crossing Blvd., Suite 300, Indianapolis, Indiana 46240.

RECITALS:

WHEREAS, Developer, SP #350 and SP #383 entered into the 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) (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 (the "Park").

WHEREAS, Developer is the fee simple owner of certain real property located in the Park, which is more particularly described on Exhibit A attached hereto (the "Developer Property"), and depicted on that plat dated May 22, 2019, entitled "Final Subdivision Plat of Regional Commerce Center" and prepared by Bass, Nixon & Kennedy, Inc. (the "Plat"), recorded on May 31, 2019, in Plat Book No. 201, Pages 9-13 in the Land Records.

WHEREAS, SP #350 is the fee simple owner of certain real property also located in the Park, which is more particularly described on Exhibit B attached hereto (the “SP #350 Property”), having acquired the SP #350 Property by that certain North Carolina Special Warranty Deed, dated June 6, 2019, and recorded June 12, 2019, at Book 8677, Page 628 (Instrument No. 2019019690) in the Land Records.

WHEREAS, SP #383 is the fee simple owner of certain real property also located in the Park, which is more particularly described on Exhibit C attached hereto (the “SP #383 Property”), having acquired the SP #383 Property by that certain North Carolina Special Warranty Deed, dated June 6, 2019, and recorded June 12, 2019, at Book 8677, Page 633 (Instrument No. 2019019692) in the Land Records, and re-recorded June 13, 2019, at Book 8678, Page 830 (Instrument No. 2019019909) in the Land Records and subject to that certain Correction Deed, dated July 18, 2019, and recorded July 22, 2019, at Book 8707, Page 117 (Instrument No. 2019025198) in the Land Records.

WHEREAS, Section 9.9(E) of the Declaration provides that the Declaration may be amended by the approval of the Approving Parties (as defined in the Declaration) and shall be effective only when recorded in the official records of the Land Records.

WHEREAS, Developer, SP #350 and SP #383 collectively own all of the Tracts in the Park and, accordingly and pursuant to the terms of the Declaration, Developer, SP #350 and SP #383, collectively, are Approving Parties under the Declaration.

WHEREAS, Developer, SP #350 and SP #383 now desire to amend the Declaration upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above Recitals and the covenants contained in this First Amendment, Developer, SP #350 and SP #383 hereby declare that the Declaration is hereby amended by this First Amendment and that 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. **Definition of Park.** Section 1.35 of the Declaration is hereby deleted in its entirety and replaced with the following:

1.35 **Park.** “Park” shall mean and refer to that certain real property described on Exhibit A, Exhibit B-1 and Exhibit B-2 and depicted on Exhibit C, together with all Improvements located thereon, subject to the right of Developer to otherwise change, expand, reconfigure, or otherwise alter any Common Area within the Park, subject only to the limitations set forth in this Declaration. The cemetery depicted on the Plat is not a part of the Park.

3. **Dissolution of the Association.** Section 5.8 of the Declaration is hereby deleted in its entirety and replaced with the following:

5.8. **Dissolution of the Association.** The Association may be dissolved at a duly held meeting at which a quorum is present upon the affirmative vote, in person or by proxy, of more than seventy-five percent (75%) of the votes cast by the Membership (herein, collectively referred to as the "Approving Parties"), provided that each and all such Approving Parties have procured the consent of any Mortgagee of the respective Approving Parties' Tracts within the Park. Prior to dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be granted, conveyed and assigned to another nonprofit corporation, association, trust or other organization devoted to similar purposes. A technical or administrative termination of the Association for failure to pay annual assessments to the Secretary of State of North Carolina shall not trigger the dissolution of the Association and the provisions of this Section.

4. **Subordination of Lien to Mortgages.** Section 6.8 of the Declaration is hereby deleted in its entirety and replaced with the following:

6.8. **Subordination of Lien to Mortgages.** Notwithstanding any provision hereof to the contrary, the lien upon each of the Tracts securing the payment of the Assessments shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on such Tracts, (ii) liens and encumbrances recorded prior to this Declaration, and (iii) the liens of any Mortgage encumbering a Tract, whether or not such Mortgage is recorded prior to or after this Declaration or any sums under such Mortgage are advanced before or after the filing of the Lien Notice as to such Assessments. The sale or transfer of any Tract pursuant to foreclosure of a Mortgage or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer; otherwise, no sale or transfer shall relieve such Tract from liability for any Assessments thereafter becoming due or from the lien thereof.

5. **General Provisions.**

(a) **Binding Effect.** The obligations, burdens and benefits created by this First 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 First 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 First Amendment.

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

(c) **Gender and Number.** As used in this First 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 First 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 First 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 First Amendment and all questions concerning the performance of this First 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 First Amendment and any amendment to this First 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 First Amendment shall be an equitable servitude on Park, and shall run with the land and shall be binding upon and inure to the benefit of the Parties (as defined in the Declaration) 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 First Amendment shall confer no rights on any parties other than the Parties and the Permittees (as defined in the Declaration).

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Developer, SP #350 and SP #383 have caused this First Amendment to be executed effective as of the day and year first above written.

“Developer”

SCANNELL PROPERTIES #320, LLC,
an Indiana limited liability company

By: 
Marc D. Pflieger, Manager

“SP #350”

SCANNELL PROPERTIES #350, LLC,
an Indiana limited liability company

By: 
Marc D. Pflieger, Manager

“SP #383”

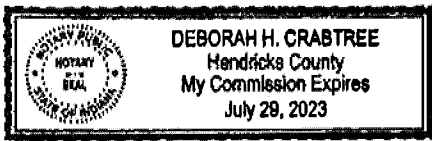
SCANNELL PROPERTIES #383, LLC,
an Indiana limited liability company

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 #320, 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 12th day of September, 2019.

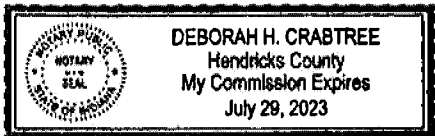


Deborah H. Crabtree
NOTARY PUBLIC
My Commission Expires: 7/29/23
My Commission Number: 670003

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 #350, 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 12th day of September, 2019.



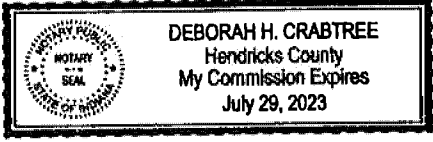
Deborah H. Crabtree
NOTARY PUBLIC
My Commission Expires: 7/29/23
My Commission Number: 670003

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 #383, 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 12th day of September, 2019.

Deborah H. Crabtree



NOTARY PUBLIC
My Commission Expires: 7/29/23
My Commission Number: 670003

EXHIBIT A

Legal Description of Developer Property

BEING ALL OF LOT 2, LOT 3 AND LOT 4 OF THE FINAL SUBDIVISION PLAT OF REGIONAL COMMERCE CENTER, AS SHOWN ON THAT PLAT RECORDED IN PLAT BOOK 201, PAGES 9 THROUGH 13, DURHAM COUNTY REGISTRY, AS PREPARED BY DAN GREGORY, P.L.S.L. LAND SURVEYING.

EXHIBIT B

Legal Description of SP #350 Property

BEING ALL OF LOT 1 OF THE FINAL SUBDIVISION PLAT OF REGIONAL COMMERCE CENTER, AS SHOWN ON THAT PLAT RECORDED IN PLAT BOOK 201, PAGES 9 THROUGH 13, DURHAM COUNTY REGISTRY, AS PREPARED BY DAN GREGORY, P.L.S.L. LAND SURVEYING.

EXHIBIT C

Legal Description of SP #383 Property

BEING ALL OF LOT A OF THE FINAL SUBDIVISION PLAT OF REGIONAL COMMERCE CENTER, AS SHOWN ON THAT PLAT RECORDED IN PLAT BOOK 201, PAGES 9 THROUGH 13, DURHAM COUNTY REGISTRY, AS PREPARED BY DAN GREGORY, P.L.S.L.

LENDER'S CONSENT AND SUBORDINATION
(“Subordination”)

The undersigned, **DELAWARE LIFE INSURANCE COMPANY**, a Delaware insurance company (“**Lender**”), holder of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “**Mortgage**”), executed by **SCANNELL PROPERTIES #383, LLC**, an Indiana limited liability company (“**Grantor**”), for the benefit of Lender and recorded August 19, 2019, in Book 8730, Page 304, as Instrument Number 2019029460 in the records of the Office of the Register of Deeds, Durham County, North Carolina, hereby (i) consents to that certain First Amendment to Declaration of Easements, Covenants and Restrictions for Regional Commerce Center, dated September 12, 2019 (the “**Easement**”), affecting the collateral premises located in Durham, Durham County, North Carolina, by and among Grantor, Scannell Properties #320, LLC and Scannell Properties #350, LLC, to which this Subordination is attached, and (ii) subordinates the lien of said Mortgage to the Easement and agrees that the foreclosure of the Mortgage shall not terminate, impair or extinguish said Easement.

The relationship between Lender and Grantor is that of a lender and a borrower only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party. The consent granted herein is expressly limited to the matters described herein and shall not be deemed a consent to or as a waiver of any other conditions or requirements in the Mortgage or in the other loan documents executed in connection therewith (collectively, the “**Loan Documents**”).

Notwithstanding anything to the contrary herein, Lender does not subordinate the lien of the Mortgage or other Loan Documents to any claims, damages or other liabilities that arise against Grantor pursuant to the terms of the Easement.

[SIGNATURE AND ACKNOWLEDGMENT ON NEXT PAGE]

LENDER'S CONSENT AND SUBORDINATION
(“Subordination”)

The undersigned, **DELAWARE LIFE INSURANCE COMPANY**, a Delaware insurance company (“**Lender**”), holder of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “**Mortgage**”), executed by **SCANNELL PROPERTIES #350, LLC**, an Indiana limited liability company (“**Grantor**”), for the benefit of Lender and recorded July 12, 2019, in Book 8700, Page 557, as Instrument Number 2019023962 in the records of the Register of Deeds of Durham County, North Carolina, hereby (i) consents to that certain First Amendment to Declaration of Easements, Covenants and Restrictions for Regional Commerce Center, dated September 12, 2019 (the “**Easement**”), affecting the collateral premises located in Durham, Durham County, North Carolina, by and among Grantor, Scannell Properties #320, LLC and Scannell Properties #383, LLC, to which this Subordination is attached, and (ii) subordinates the lien of said Mortgage to the Easement and agrees that the foreclosure of the Mortgage shall not terminate, impair or extinguish said Easement.

The relationship between Lender and Grantor is that of a lender and a borrower only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party. The consent granted herein is expressly limited to the matters described herein and shall not be deemed a consent to or as a waiver of any other conditions or requirements in the Mortgage or in the other loan documents executed in connection therewith (collectively, the “**Loan Documents**”).

Notwithstanding anything to the contrary herein, Lender does not subordinate the lien of the Mortgage or other Loan Documents to any claims, damages or other liabilities that arise against Grantor pursuant to the terms of the Easement.

[SIGNATURE AND ACKNOWLEDGMENT ON NEXT PAGE]

