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

Prepared by and return to:

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

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

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR REGIONAL COMMERCE CENTER (this "Declaration") is made and entered into as of the 26th day of June, 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 is the fee simple owner of certain real property located in the City of Durham, County of Durham, State of North Carolina, 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 as Instrument No. 2019018179, Instrument No. 2019018180, Instrument No. 2019018181, Instrument No. 2019018182 and Instrument No. 2019018183 in the Register of Deeds for Durham County, North Carolina (the "Land Records"), Developer having acquired the Developer Property by: (i) that certain North Carolina Special Warranty Deed, dated February 12, 2018, and recorded February 13, 2018, as Instrument No. 2018004754 among the Land Records; (ii) that certain Special Warranty Deed, dated February 12, 2018, and recorded February 13, 2018, as Instrument No. 2018004755 among the Land Records; (iii) that certain North Carolina Special Warranty Deed, dated February 12, 2018, and recorded February 13, 2018, as Instrument No. 2018004757 among the Land Records; (iv) that certain North Carolina Non-Warranty Deed, dated February 12, 2018, and recorded February 13, 2018, as Instrument No. 20180004758 among the Land Records; and (v) that certain North Carolina Special Warranty Deed, dated November 16, 2018, and recorded November 21, 2018, as Instrument No. 2018040499 among the Land Records;

WHEREAS, SP #350 is the fee simple owner of certain real property also located in the City of Durham, County of Durham, State of North Carolina, which is more particularly described on Exhibit B-1 attached hereto (the "SP #350 Property"), as depicted on the Plat, having acquired the SP #350 Property by that certain North Carolina Special Warranty Deed, dated June 6, 2019, and recorded June 12, 2019, as Instrument No. 2019019690 among the Land Records;

WHEREAS, SP #383 is the fee simple owner of certain real property also located in the City of Durham, County of Durham, State of North Carolina, which is more particularly described on Exhibit B-2 attached hereto (the "SP #383 Property"), as depicted on the Plat, having acquired the SP #383 Property by that certain North Carolina Special Warranty Deed, dated June 6, 2019, and recorded June 12, 2019, as Instrument No. 2019019692 among the Land Records, and re-recorded June 13, 2019, as Instrument No. 2019019909 among the Land Records;

WHEREAS, prior to the recording of the Plat, Developer entered into that certain Stormwater Facility Agreement and Covenants (the “Stormwater Agreement”) with the City of Durham, dated May 20, 2019, and recorded June 5, 2019, as Instrument No. 2019018775 among the Land Records;

WHEREAS, the Developer Property, the SP #350 Property and the SP #383 Property shall hereinafter be collectively referred to as the “Property”;

WHEREAS, the Developer Property, the SP #350 Property and the SP #383 Property are contiguous and adjacent to each other as shown on the Plat;

WHEREAS, Developer, SP #350 and SP #383 desire to develop the Park as an integrated business park; and

WHEREAS, Developer, SP #350 and SP #383 desire to create certain easements and impose certain restrictive covenants and conditions upon the Park (as defined hereinafter), upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above Recitals and the covenants contained in this Declaration, Developer, SP #350 and SP #383 hereby declare that the Park shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the terms and conditions set forth in this 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.

ARTICLE I **DEFINITIONS**

1.1 **Affiliate of Developer.** “Affiliate of Developer” shall mean any entity directly or indirectly controlled by or under common control with Developer, whether through the ownership of voting securities or by contract, partnership agreement, trust agreement or otherwise.

1.2 **Applicable Legal Requirements.** “Applicable Legal Requirements” means all laws, rules, regulations, orders, permits, judgments, directives and other requirements imposed by federal, state, local, and other authorities having competent jurisdiction over the subject matter thereof, including but not limited any applicable Environmental Laws and any site requirements imposed by governmental authority during the approval process.

1.3 **Approving Parties.** “Approving Parties” shall have the meaning set forth in Section 5.8, below.

1.4 **Architectural Review Board or ARB.** “Architectural Review Board” or “ARB” shall mean the Architectural Review Board created pursuant to Article IV.

1.5 **Assessments.** “Assessments” shall mean, collectively, the General Assessments and the Special Assessments.

1.6 **Association or Property Owners Association.** “Association” or “Property Owners Association” shall mean the property owners association now or hereafter established pursuant to Article V. All references to the Association shall mean the Developer if the Association has not yet been established.

1.7 **Association Board or Board of Directors.** “Association Board” or “Board of Directors” shall mean the Board of Directors of the Association. All references to the Association Board or Board of Directors shall mean the Developer if the Association has not yet been established.

1.8 **Building.** “Building” shall mean any enclosed structure placed, constructed, or located on a Tract, including any appurtenant canopies, supports, loading docks, truck ramps, and other outward extensions (such as, but not limited to, trash compactors).

1.9 **Building Area.** “Building Area” shall mean the areas of the Park upon which Buildings are constructed, placed or located.

1.10 **Common Area.** “Common Area” shall mean (i) all areas within the Park including non-dedicated streets, access drives, landscaping, easements for Common Utility Facilities, drainage areas, and detention ponds that have been improved with Common Area Improvements, as the same may be altered or modified by Developer, but subject to the limitations on such alterations or modifications as set forth in this Declaration, and excluding any Building Area; (ii) any common area that is designated on a Plat for all or any portion of the Park; and (iii) any other real property within the Park that is now or hereafter owned by the Association that is otherwise expressly designated to be Common Area in a recorded instrument; provided, however, that Common Area shall not include any portion of the Park that is now or hereafter dedicated to any Governmental Entity and accepted for maintenance by such Governmental Entity. The cemetery depicted on the Plat is not a part of the Park and as such is not a part of the Common Area. As of the date of execution of this Declaration, the Common Area is depicted on Exhibit D attached hereto. Subject to the terms of this Declaration, additional Common Area may be established by Developer and/or the Association during the Development Control Period.

1.11 **Common Area Improvements.** “Common Area Improvements” shall mean all improvements, excluding Buildings, which have been, will be or may be constructed or installed under the terms of this Declaration, within the Common Area, including any perimeter driveways, service drives, detention ponds, swales and basins, landscaping areas and all other improvements and installations located within the Common Area, and all improvements constructed and installed from time to time in replacement of the same or in such redesign of the same as may be determined by Developer. “Common Area Improvements” shall include all Common Utility Facilities. “Common Area Improvements” do not include any improvements, including driveways, parking areas, landscaped areas and other improvements constructed on a Tract that are intended for the use and benefit solely of the Occupants of such Tract. To the extent that any Common Area Improvements are subsequently dedicated to and accepted by any Governmental Entity, such Common Area Improvements shall, upon acceptance by such Governmental Entity, no longer constitute Common Area Improvements under this Declaration.

1.12 **Common Area Maintenance Costs and Park Expenses.** “Common Area Maintenance Costs and Park Expenses” shall mean and include, without limitation, all costs and

expenses incurred in the operation, management, maintenance, insurance, repair, replacement and restoration of the Common Areas, the Common Area Improvements and offsite infrastructure and improvements that directly or indirectly benefit the Park, all in accordance with the standards of other first class business park developments of comparable size in the greater Durham metropolitan area of North Carolina, including, but not limited to, costs of supplies; licenses, fees, permits and inspections; security for the Common Areas (and not any Building within the Park); sign maintenance and replacement; costs of equipment or rental thereof; fence and landscaping maintenance repair and replacement; maintenance and repair of curbing, traffic island and traffic signal repair and replacements, (unless dedicated to the a Governmental Entity), and other off-site improvements serving the Park (unless dedicated to a Governmental Entity); construction, maintenance, and repair of turn lanes located within or providing access to the Park; road and traffic impact fees; costs, expenses and assessments (or payments in lieu of assessments) required pursuant to any assessment agreement and/or development contract for or related to the Park; insurance premiums and deductibles for property insurance covering the Common Area Improvements and for general liability insurance covering activities occurring in the Common Areas; and all costs incurred by the Association or Developer in performing their obligations under Article VII hereof.

1.13 **Common Utility Facilities.** “Common Utility Facilities” shall mean utility systems and facilities (or portions thereof) from time to time situated on or serving the Park for use or service in common by more than one (1) of the Parties and/or Tracts or for the exclusive service of the Common Area, including, but not limited to access or circulation driveways serving multiple Tracts, storm drainage, detention and retention ponds, basins swales and related storm water control facilities, disposal facilities, sanitary sewer systems, pipelines, connections, pumps and appurtenances thereto, manholes, domestic and fire protection water systems, natural gas systems, electric power cables and systems, telephone and other telecommunication cables and systems, and all other utility systems and facilities for such common use or service, including, without limitation, those installed under the provisions of this Declaration and as replacements thereto. Common Utility Facilities shall include, but shall not be limited to the facilities and systems located within: (i) the SCM Access and Maintenance Easement, the Private Storm Bypass Easement and the Private Utility Easement all as depicted on the Plat; and (ii) the Shared Access Easement as shown on Exhibit E attached hereto. Common Utility Facilities shall not include any utility systems and facilities (or portions thereof) that exclusively serve one (1) Tract, and the Party that is benefitted by any such utility systems and facilities shall be solely responsible for repair, maintenance, and replacement of such utility systems and facilities located within and exclusively serving such Tract (including, without limitation, any lateral lines from the point of connection to the Common Utility Facilities).

1.14 **Default Interest Rate.** “Default Interest Rate” shall mean five percent (5%) per annum in excess of the prime rate from time to time as quoted in the “Money Rates” section of the Wall Street Journal or similar financial publication.

1.15 **Defaulting Party.** “Defaulting Party” shall have the meaning set forth in Section 9.1, below.

1.16 **Developer Control Period.** “Developer Control Period” shall mean the period during which the Class B membership exists.

1.17 **Development Guidelines.** “Development Guidelines” shall have the meaning set forth in Section 4.1(B), below.

1.18 **Environmental Laws.** “Environmental Laws” shall mean the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 USC §§ 9601 **et seq.**; the Resource Conservation and Recovery Act (“**RCRA**”), 42 USC §§ 6901 **et seq.**, and any other state, federal or local law, regulation, rule, ordinance or other, whether currently in existence or hereafter enacted which governs: (i) the existence, cleanup and remedy of contamination on property; (ii) the protection of the environment and the health and safety of the public from soil, air or water pollution, or from spilled, deposited or otherwise emplaced contamination; or (iii) the control of hazardous wastes.

1.19 **Estoppel Certificate.** “Estoppel Certificate” shall have the meaning set forth in Section 9.3, below.

1.20 **Exempt Property.** “Exempt Property” shall have the meaning set forth in Section 6.10, below.

1.21 **General Assessments.** “General Assessments” shall mean the annual assessments provided for in Section 6.2, below.

1.22 **Governmental Entity.** “Governmental Entity” shall mean any federal, state or local legislature, official, judge, administrator, agency, authority, or any other governmental or quasi-governmental entity, agency or official.

1.23 **Hazardous Materials.** “Hazardous Materials” shall mean shall mean (A) any flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, chemicals or pollutants; (B) asbestos in any form which is or could become friable; (C) urea formaldehyde dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (D) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority; and (E) any petroleum, gasoline, oil, fuel oil, diesel fuel, petroleum solvents, or any fraction thereof.

1.24 **Improvements.** “Improvements” shall mean any Building, underground installation, slope alteration, stormwater drainage facility (including swales and detention ponds), equipment, and lines, utility facility, light, road, driveway, sidewalk, traffic signal, sign or control device, parking area, fence, satellite dish, rooftop installation, screening wall or barrier, retaining wall, stairs, deck, windbreak, planting, planted tree or shrub, pole, sign, loading area and all other structures or landscaping improvements of every type and kind.

1.25 **Indemnitor.** “Indemnitor” shall have the meaning set forth in Section 8.4(B), below.

1.26 **Indemnitees.** “Indemnitees” shall have the meaning set forth in Section 8.4(B), below.

1.27 **Landlord.** “Landlord” shall have the meaning set forth in Section 6.9, below.

1.28 **Lease.** “Lease” shall have the meaning set forth in Section 6.9, below.

- 1.29 **Lien Notice.** “Lien Notice” shall have the meaning set forth in Section 6.7, below.
- 1.30 **Member.** “Member” shall have the meaning set forth in Section 5.3, below.
- 1.31 **Mortgage.** “Mortgage” shall mean a mortgage, deed of trust or other written security instrument securing any indebtedness held by a Mortgagee.
- 1.32 **Mortgagee.** “Mortgagee” shall mean any financial institution or other holder of a Mortgage encumbering a Tract or any portion thereof.
- 1.33 **Non-Defaulting Party.** “Non-Defaulting Party” shall have the meaning set forth in Section 9.1(A)(ii), below.
- 1.34 **Occupant.** “Occupant” shall mean each Party and any Person from time to time entitled to the use and occupancy of any portion of a Building in the Park under an ownership right or any lease, sublease, license, concession, or other similar agreement.
- 1.35 **Park.** “Park” shall mean and refer to that certain real property described on Exhibit A and as 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.
- 1.36 **Party.** “Party” shall mean each signatory hereto and, after compliance with the notice requirements set forth below, their respective successors and assigns, each of whom become a fee simple owner of any portion of the Park or their respective successors to the fee simple interest of such Party as a result of acquisition of such Party’s Tract, whether transferred voluntarily or involuntarily, by foreclosure or other remedy pursuant to any Mortgage of such Tract. No tenant, lessee, sublessee or other holder of any estate less than that of a fee simple estate will be considered to be a Party for purposes of this Declaration; however, use and occupancy of any Tract in the Park by any Occupant will be subject to this Declaration. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to its Tract which accrue during the period that such Party is the “Party” for its Tract, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party’s personal liability for unaccrued obligations shall terminate. A Party transferring all or any portion of its interest in the Park shall give notice to the Association of such transfer and shall include therein at least the following information: (i) the name and address of the new Party; and (ii) a copy of the legal description of the portion of the Park transferred.
- 1.37 **Person.** “Person” shall mean any individual, partnership, limited liability company, firm, association, corporation, trust or any other form of business or government entity.
- 1.38 **Permittee.** “Permittee” shall mean all Parties and all Occupants and the officers, directors, members, managers, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of all Parties and Occupants insofar as their activities relate to the intended development, use and occupancy of the Park.

1.39 **Plans**. “Plans” shall mean the designs, drawings, elevations, plans, plats, specifications and other information required to be submitted by a Party to the ARB pursuant to Section 4.3.

1.40 **Purchaser**. “Purchaser” shall have the meaning set forth in Section 6.9, below.

1.41 **Releasing Party**. “Releasing Party” shall have the meaning set forth in Section 8.4(E), below.

1.42 **Released Party**. “Released Party” shall have the meaning set forth in Section 8.4(E), below.

1.43 **Special Assessments**. “Special Assessments” shall mean the assessments provided for in Section 6.3, below.

1.44 **Tenant**. “Tenant” shall have the meaning set forth in Section 6.9, below.

1.45 **Tract**. “Tract” shall mean that portion of the Park owned by a Party; provided, however, that each Party may include within any “Tract” such separate parcels as such Party in its sole discretion may elect, whether or not the same constitute a separate tax parcel. For purposes of this Declaration, each Party shall have the right, upon written notice to the Association, from time to time, to designate the portion of the Park owned by such Party either (a) as a single Tract (which may include one or more separate tax parcels) or (b) as consisting of one (1) or more Tracts. As of the date of execution of this Declaration, the initial “Tracts” are as designated on the Park Plan.

1.46 **Utility Lines**. “Utility Lines” shall mean those facilities and systems for the transmission of utility services, including but not limited to drainage and storage of surface water, sanitary sewers, storm sewers and drains, water (fire and domestic), gas, electrical, telephone and communication lines.

1.47 **Zoning Changes**. “Zoning Changes” shall have the meaning set forth in Section 8.1(B), below.

Other terms not specifically defined above shall have the meanings ascribed to them as provided herein.

ARTICLE II **EASEMENTS**

2.1 **Definitions and Documentation**. For the purposes of this Article, the following will apply:

(A) A Party granting an easement is called the “Grantor”, it being intended that the grant shall thereby bind and include not only such Party but also its successors, assigns and Permittees.

(B) A Party to whom the easement is granted is called the “Grantee”, it being intended that the grant shall benefit and include not only such Party but its successors,

assigns, and Permittees; although not for the direct benefit of Permittees, the Grantee may permit from time to time its Permittees to use such easements.

(C) The word “in” with respect to an easement granted “in” a particular Tract means, as the context may require, “in”, “to”, “on”, “over”, “through”, “upon”, “across”, and “under”, or any one or more of the foregoing.

(D) All easements granted herein are non-exclusive and are irrevocable and perpetual.

(E) All easements herein shall be easements appurtenant and not easements in gross, and shall benefit only the Tract for which such easements are granted herein.

(F) All easements granted hereunder shall exist by virtue of this Declaration, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Tract, in accordance with the terms hereof, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of a Party, the other Parties whose Tracts are benefited and burdened by any easement herein will sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is approved by the other Parties, such approval not to be unreasonably withheld, conditioned, or delayed. No grant of an easement pursuant to this Article II shall impose any greater obligation on any Party to construct or maintain its Building except as expressly provided in this Declaration.

2.2 **Common Area Access Easements.** Each Party hereby grants to the other Parties and their Permittees non-exclusive, perpetual easements in the Common Area on its (Grantor’s) Tract for:

(A) reciprocal ingress to and egress from and between each Tract and all adjacent dedicated public streets and grants or easements providing access to the Park;

(B) the passage of vehicles; and

(C) the passage and accommodation of pedestrians.

Provided, however, that such easements are limited to such portions of the Common Area of the Grantor’s Tract as are now or hereafter from time to time set aside or intended to be set aside, maintained and authorized for such use under this Declaration as evidenced by a separate recorded instrument (including, without limitation, a Plat) identifying the specified area as a Common Area under this Section of the Declaration.

Enjoyment of the easements granted by this Section shall commence on the date the Common Area in question is substantially completed. Each Grantor agrees not to obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the sidewalks and roadways which comprise such Common Area, except to the extent necessary for reasonable repair

and maintenance, traffic regulation and control, and to prevent a dedication thereof or the accrual of any prescriptive rights therein.

2.3 **Common Area Utility Easements.** Each Party hereby grants to the other Parties and their Permittees non-exclusive perpetual easements in the Common Area on its (Grantor's) Tract for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the benefitted Party's Tract; provided, however, that such easements are limited to such portions of the Common Area of the Grantor's Tract as are now or hereafter from time to time set aside or intended to be set aside, maintained and authorized for such use under this Declaration as evidenced by a separate recorded instrument (including, without limitation, a Plat) identifying the specified area as a Common Area under this Section of the Declaration or otherwise establishing such area as a Drainage and Utility Easement on a Plat.

Except as otherwise provided herein or agreed to by Grantor and Grantee, any Party installing Utility Lines pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith to be completed as quickly as possible and in a manner so as to minimize interference with the use of the Common Area.

The relocation of any Utility Line shall be subject to the prior written approval of the Party whose Common Area is to be burdened thereby, such approval not to be unreasonably withheld, conditioned or delayed.

Each Party shall have the perpetual right and easement to discharge surface storm drainage and runoff from such Party's Tract over, upon and across the Common Area of an adjacent Party's Tract, provided that no Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention/detention system constructed on its Tract if such alteration would materially increase the flow of surface water onto an adjacent Tract either in the aggregate or by directing the flow of surface water to a limited area or adversely affects any drainage/retention/detention system on any other Tract. The surface water collection, retention, detention and distribution facilities shall be deemed a Common Utility Facility. As of the date hereof, the Park Plan depicts the proposed drainage areas for the Park, which proposed drainage areas are subject to further revisions, modification and relocation as determined by Developer.

The rights of the Parties under this Section may not be exercised in any manner that materially and adversely affects the use and occupancy of any Tract by any Occupant of the Tract.

2.4 **Construction Easements.** Each Party hereby grants to the other Parties and their Permittees easements in the Common Area of its (Grantor's) Tract, for the following:

(A) The right of ingress and egress to and from the streets located in the Park as the case may be for purposes of the initial construction of the improvements contemplated within this Declaration.

(B) The sloping and grading of fresh dirt dumped or exposed on a Tract to meet any contiguous Tract within the Park or roadways. Any such dirt shall be smoothed in a level manner consistent with the contours of the adjoining Tract or in accordance with a grading plan approved by the ARB (the easements created under this Subsection (B) shall

expire and no longer encumber any portion of a Tract at such time as all grading work applicable to such portion of said Tract has been completed). The location of all easements under this Section 2.4 shall be subject to the approval of Grantor, which approval shall not be unreasonably withheld, conditioned or delayed, and to the extent possible, all construction traffic on a Party's Tract shall be limited to access points on such Tract.

Notwithstanding anything contained in this Section 2.4, the easements created under this Section 2.4 shall expire and no longer encumber any portion of a Tract at such time as the final topcoat of asphalt paving is placed on such portion of said Tract upon completion of the original construction of Buildings and/or Improvements on such Tract.

Each Grantee agrees to use due care in the exercise of the rights granted under this Section 2.4 and, in the event the exercise of the rights granted under this Section 2.4 requires Grantee to enter upon the Tract of Grantor, to first obtain the consent of Grantor as to the methods and timing in the exercise of such rights. In addition, prior to exercising the rights provided herein, the Grantee shall provide to Grantor all certificates of insurance required under Section 8.4 below and Grantee shall otherwise comply with Article III herein.

Each Party covenants and agrees, respectively, that its exercise of the easements set forth herein shall not result in damage or injury to the Buildings or other Improvements of any other Party, and shall not unreasonably interfere with or interrupt the business operation conducted by any other Party (or its Permittees) in the Park. In addition, each Grantee, at its sole cost and expense, shall promptly repair, replace or restore any and all Improvements of Grantor (and its Permittees) which have been damaged or destroyed in the exercise by Grantee (or its Permittees) of the easements granted under this Section 2.4 and shall defend, indemnify and hold Grantor (and its Permittees) harmless from and against all liens, losses, liabilities, costs or expenses (including reasonable attorneys' fees) incurred in connection with or arising out of Grantee's exercise of said easements, except to the extent occasioned by Grantor's (and its Permittees') negligent or wrongful act or omission to act.

2.5 Rights of Developer. Notwithstanding the grant of easements set forth in Sections 2.2 - 2.4 above, Developer has the right to expand, contract, alter, reconfigure, modify, and make such other changes in and to the Park and Common Area as Developer, in its sole discretion, may determine, and to execute and record any necessary documentation in connection therewith. In such event, Developer shall have the right to relocate, reconfigure, and replace any or all of the easements granted pursuant to Sections 2.2 - 2.4 above. Notwithstanding the foregoing, the rights of Developer under this Section may not be exercised in a manner that materially and adversely affects the use and occupancy of any Tract by any Occupant of that Tract.

2.6 Other Easements. Developer shall have the right to grant any easements for any purpose set forth in this Article to any Person (including, without limitation, adjacent property owners, governmental authorities or agencies, and public utility companies) for such purposes as Developer in its sole discretion may determine, provided that in no event shall the grant of any such easements materially and adversely affect the easement rights permitted to be exercised by a Party under this Article. Notwithstanding the foregoing, the rights of Developer under this Section may not be exercised in a manner that materially and adversely affects the use and occupancy of any Tract by any Occupant of that Tract.

2.7 **Duration and Abandonment of Easements.** The duration of the easements granted under this Article II shall be coterminous with the respective provisions of the Declaration which give Grantee the right or the obligation to perform the work described in this Section. After the expiration of the term of this Declaration, the perpetual easements granted in this Article II, or all or any part or parts thereof, may be abandoned and terminated, if such termination is contemplated in the applicable recorded instrument and the use thereof shall have ceased and cessation thereof continues for a continuous period of two (2) years. Thereafter the then owner of the Tract burdened with such easement may give written notice to the then owner of the Tract benefited by such easement (and the then record owner, if any, of any leasehold interest in such benefited Tract), stating that such easement has been abandoned and may place of record in the Land Records, an affidavit that such abandonment has taken place and that such notice has been properly given. If the then owner of the benefited Tract fails to place of record in the Land Records within ninety (90) days after the giving of such notice, an affidavit that such easement has not ceased to be used for such continuous two (2) year period, such easement shall thereupon be conclusively deemed abandoned and any person having or thereafter acquiring an interest in the Tract previously burdened shall hold and take such interest free of and unencumbered by such easement.

ARTICLE III **CONSTRUCTION**

3.1 **General Requirements.**

(A) All construction activities performed by any Party (or by any Permittee) within the Park shall be performed in compliance with this Declaration and in all respects with all Applicable Legal Requirements, use new materials, and shall be performed in a good and workmanlike manner, free and clear of any mechanics' or materialmen's liens.

(B) Any construction activities by any Party (or by any Permittee) shall not:

(i) cause any unreasonable increase in the cost of constructing improvements upon any Tract;

(ii) unreasonably interfere with construction work being performed on any other part of the Park;

(iii) unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Park by any Party, Occupant or its Permittees;

(iv) restrict pedestrian access to the cemetery identified on the Plat; or

(v) cause any building located on another Tract to be in violation of any Applicable Legal Requirements or in violation of the Stormwater Agreement or the "General Conditions of Approval" or the "Public Works Conditions of Approval" set forth in the Plat.

(C) All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Party's Tract, and all laborers,

suppliers, contractors and others connected with such construction activities shall use only the access points located upon the constructing Party's Tract. Upon completion of such work, the constructing Party shall restore the affected Common Area to a condition equal to or better than that existing prior to commencement of such work.

(D) Each Party and its respective Permittees, contractors, materialmen and laborers shall have a temporary license for access and passage over and across the Common Area of each Tract as shall be reasonably necessary for such Party to construct and maintain improvements upon such Party's Tract; provided, however, that such license shall be in effect only during periods when actual construction and maintenance is being performed and provided further that the use of such license shall not unreasonably interfere with the use and operation of the Common Area by others. Any Party (and its respective Permittees) availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean and restore and repair the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

3.2 **Common Area.**

(A) No fence or other barrier which would prevent or unreasonably obstruct the passage of pedestrian or vehicular travel shall be erected or permitted within or across the Common Area, exclusive of the curbing and other forms of traffic control, or permitted staging and storage areas. Except as may be required as a result of Applicable Legal Requirements and as otherwise provided herein, no Party and no Permittee shall construct or permit any structures or improvements in the Common Area which would adversely impede or prohibit the use of the Common Area Improvements as intended by this Declaration. Developer shall have the right, in its sole discretion, to perform, or cause to be performed, and approve all construction standards and specifications, materials, and other work performed in the construction, modification, alteration, change, or other work with respect to any Common Area. No Party shall make any change to the improved Common Area on its Tract without the prior written approval of Developer which may be withheld in Developer's sole discretion.

(B) All lighting systems within each Tract shall produce a minimum lighting intensity which is acceptable to the ARB, in its sole discretion.

(C) All sidewalks and pedestrian aisles shall be concrete or other materials approved by the ARB in its sole discretion. Each Party shall use commercially reasonable efforts to cause sidewalks on such Party's Tract to be designed in a manner that promotes interconnection to any public sidewalks along adjacent public right-of-way.

(D) Parking within each Tract shall comply with all Applicable Legal Requirements, without reliance upon parking contained within any other Tract.

3.3 **Building Improvements.** While no Party (or Occupant) shall have an obligation to commence construction of any Building on its Tract, once construction has been commenced,

such Building shall be completed in accordance with Applicable Legal Requirements and the provisions of this Declaration.

ARTICLE IV
ARCHITECTURAL REVIEW AND PLAN APPROVAL

4.1 Architectural Review Board.

(A) **Appointment.** Developer shall have the right, during the Developer Control Period, to appoint an Architectural Review Board to review and, as appropriate, approve or disapprove Plans submitted by Parties or Permittees in accordance with this Article. Members of the ARB may be employees of Developer or its Affiliates. During the Developer Control Period, Developer shall have the right to act unilaterally as the ARB and if Developer elects to act in this capacity, Developer will take all action and have all of the rights and obligations herein described and for the ARB. At the conclusion of the Developer Control Period, the ARB shall consist of three (3) persons, at least one (1) of whom shall have architectural or building design experience. After the expiration of the Developer Control Period, the Association Board shall have the right to appoint the members of the ARB. The members of the ARB shall serve for such terms as Developer or the Association Board, depending on who appoints the members, shall determine.

(B) **Authority and Rights.** The ARB shall have the authority to adopt, amend, modify, revise and supplement, from time to time, certain development guidelines designed to implement the purpose and objectives of this Declaration (the “Development Guidelines”) so long as such amendments, modifications, revisions or supplements are reasonable and non-discriminatory. No provision of any such Development Guidelines shall be deemed to create or imply a negative reciprocal easement or covenant in favor of any Person or as to any portion of the Park and none of the Developer, the Association or the ARB will be entitled to retroactively enforce any Development Guidelines on any Party with respect to that Party’s Tract without that Party’s written consent. In addition to the responsibilities provided in this Article, the ARB shall have such other rights, authority and responsibilities as may be provided elsewhere in this Declaration or in any duly authorized amendment to this Declaration.

4.2 Plan Approval Required. No Improvement shall be constructed, erected, altered, repainted a different color, or added to until the Plans therefor have been submitted to and approved in writing by the ARB as provided in this Article; provided however, that these approval requirements shall not apply to Developer or an Affiliate of Developer with respect to (i) development of Common Areas, (ii) the installation of streets, walkways, utilities and other public facilities to serve the Park, or (iii) any Improvements under construction by Developer, SP #350 or SP #383 as of the date hereof or for which on the date hereof Developer, SP #350 or SP #383 has submitted building plans to, or received a building permit from, the applicable Governmental Entity.

4.3 Submission of Plans.

(A) **Required Submissions.** A Party or its designated representative shall prepare and submit to the ARB preliminary and final Plans as set forth below prior to, or concurrently with the submittal of any such Plans to the applicable Governmental Entity.

(B) **Preliminary Plans.** For its preliminary submission, the Party or its designated representative shall submit at least the following: (i) a site plan and schematic design of area proposed for immediate development which shows the location of all Improvements, easements, street rights-of-way, set-back lines, walks, parking areas, off-street loading areas, driveways and outside storage areas; (ii) building elevation drawings of each building face; (iii) a description of the proposed uses; (iv) material(s) and color(s) of exterior finishes; and (v) exterior signage.

(C) **Final Plans.** After the ARB has approved a Party's preliminary submission, the Party or its designated representative shall prepare and submit to the ARB such Party's proposed final Plans including detailed information in writing regarding the proposed use of the Tract, copies of all applications for permits and any accompanying correspondence, site plans, erosion and sedimentation control plans and other plans to be submitted for governmental approval, three (3) full sets of final construction drawings and specifications showing or stating all aspects of the proposed development and such other information as the ARB, in its reasonable discretion, shall require. The final construction drawings and specifications shall include, without limitation, the following:

(i) location of all Buildings, easements, street rights-of-way, set-back lines, walks, driveways and curb lines;

(ii) layout and location of all parking areas (including location and dimensions of all spaces, circulation aisles, curbs and bumpers), off-street loading areas and all outside storage areas including identification and size of the material to be stored and location and dimensions of all fencing and screening;

(iii) all landscaping, including location, height, spread, type and number of trees and shrubs, location and type of all ground cover and lawn material, existing trees and limits of clearing and grading and irrigation system;

(iv) location, height, intensity and fixture type of all exterior lighting;

(v) location, size and type of all pipes, lines, conduits and appurtenant equipment and facilities for the transmission of sanitary sewage, storm water, potable water and other utility services;

(vi) location, size, and type of all fencing;

(vii) architectural floor plans, building elevations, wall sections and details of each Building, exterior building material(s) and color(s) information, including samples;

(viii) temporary construction sign design and permanent sign design;

(ix) site coverage data and calculations, parking data and calculations, including base data for projected needs and site drainage data and calculations including finished contour lines and spot elevations; and

(x) such other data as may be specified in the Development Guidelines or reasonably required by the ARB.

4.4 **Approval of Plans.**

(A) The ARB shall have the right to disapprove the Plans submitted to it if (i) the Plans are incomplete, (ii) the Plans are not in accordance with this Declaration or the Development Guidelines, (iii) the Plans do not comply with Applicable Legal Requirements, or (iv) the ARB determines, in its reasonable discretion, that the Plans, or any part thereof, are contrary to the best interests of the Park and the Parties. The ARB may base its approval or disapproval on, among other things, the architectural design concept, the adequacy of Tract dimensions, conformity and harmony of external design with neighboring Tracts and types of operations and uses thereof, relation to topography, grade and finished ground elevation of the Tract being improved to that of neighboring Tracts, proper facing of main elevation with respect to nearby streets, conformity to the overall plans for the development of the Park, conformity of the Plans to the purpose and general plan and intent of this Declaration and such other factors as the ARB, in its sole reasonable discretion, deems relevant. The foregoing notwithstanding, nothing in this Declaration shall require the ARB to approve the Plans for Improvements on a Tract on the grounds that the layout, design and/or other aspects of such Improvements are the same or substantially the same as the layout, design and other aspects of Improvements approved for another Tract and nothing in this Declaration shall require the ARB to critique the interior dimensions or interior finishes of a Building nor require any Party to submit such interior dimensions or interior finishes as part of its Plans.

(B) In any case where the ARB shall disapprove any Plans submitted hereunder or shall approve the same only as modified or upon specified conditions, notice of such disapproval or qualified approval shall be given to the Party submitting such Plans within thirty (30) calendar days after the ARB declares the submission complete by written notice to the Party, and such notice of disapproval or qualified approval shall be accompanied by a statement of the specific reasons therefor.

(C) The ARB shall not be required to review any Plans unless and until the submitted Plans contain all the items required by this Article IV, and such thirty (30) calendar day review period shall not commence until the ARB declares the submission complete by written notice to the submitting Party. In the event that a submission is deemed incomplete by the ARB, the ARB shall provide written notice to the submitting Party within thirty (30) calendar days after the receipt of Plans. If the ARB fails to approve, disapprove or request any additions or supplemental information relating to any preliminary or final Plans within thirty (30) calendar days after the ARB declares the submission complete by written notice to the Party, then such Plans shall be deemed to have been approved, but only to the extent that such Plans comply with this Declaration and the Development Guidelines, if any.

(D) If work is not commenced within nine (9) months from the date the ARB approves the Plans for such work, then such approval shall be deemed revoked by the ARB, unless the ARB, in its sole discretion, extends the time for commencing work. All work covered by such approval shall be completed within two (2) years after the commencement thereof, except for such period of time as such completion is rendered impossible or would result in great hardship due to strikes, fires, national emergencies, critical materials shortages, or other intervening forces beyond the control of the Party or Permittee, unless the ARB, in the exercise of commercially reasonable discretion, extends the time for completion. For the purposes of this Declaration, work on an Improvement shall be deemed to have “commenced” when the Improvement site has been graded and, in the case of Buildings, footings or foundations have been poured or otherwise installed. Notwithstanding the foregoing, to the extent construction is delayed as a result of matters of “force majeure” or due to a Party’s default under a construction loan (which results in a stoppage of funding) then in such event extensions of time for completion of construction will be granted upon request.

(E) The approval by the ARB of any Plans, and any requirement by the ARB that the Plans be modified, shall not constitute a warranty or representation by the ARB of the adequacy, technical sufficiency or safety of the Improvements described in such Plans, as the same may be modified, and the ARB shall have no liability whatsoever for the failure of the Plans or the Improvements to comply with Applicable Legal Requirements or to comply with sound engineering, architectural or construction practices. In addition, in no event shall the Association, Developer or the ARB or its members or any agent of either of the foregoing have any liability whatsoever to a Party, a contractor or any other Person for any costs or damages (consequential or otherwise) that may be incurred or suffered on account of the ARB’s approval, disapproval or conditional approval of any Plans or the granting of any variance or for any defects in any work performed according to any approved Plans.

(F) If the ARB has the Plans reviewed by an architect or other design professional (including, without limitation, a member of the ARB who is an architect or other design professional), then the Party submitting such Plans for approval shall pay the reasonable costs actually incurred by the ARB in the exercise of its commercially reasonable discretion in obtaining such professional review.

4.5 **Compliance with Plans.** After approval by the ARB of the Plans for an Improvement, such Improvement shall be constructed, erected, maintained, altered and/or enlarged substantially in accordance with the approved Plans. No construction or use that is materially inconsistent with, in addition to, or different from the approved Plans as determined in the sole discretion of the ARB, shall be commenced or permitted until Plans reflecting such change or addition have been submitted to and approved by the ARB in accordance with this Article.

4.6 **Liability for Violation.** In addition to other remedies provided for in this Declaration, any Person violating any provisions of this Article shall be liable for all costs incurred by the Association, Developer or the ARB or any other Party who seeks to enjoin or otherwise remedy such violations, including, but not limited to, reasonable and actual attorneys’ fees and court costs.

4.7 **Building Permit.** A Party shall not apply for a building permit for a substantial or material exterior Improvement, until after the Party has received approval from the ARB in accordance with this Article.

ARTICLE V
ASSOCIATION, MEMBERSHIP, DUTIES AND POWERS, AND ADMINISTRATION

5.1 **Authority.** This Declaration shall be administered by the Association Board. Upon the establishment of the Property Owners Association and the Association Board, the Association Board shall take such steps as necessary to assume the rights and responsibilities of Developer under the Stormwater Agreement. Commencing upon the establishment of the Association Board, the Association Board and the Association shall indemnify, protect, defend and hold harmless Developer from and against all claims, suits, actions, demands, costs, damages and losses of any kind arising from the Stormwater Agreement.

5.2 **Property Owners Association.** At any time prior to the conveyance of the final Tract in the Park, Developer may establish the Property Owners Association which shall be a North Carolina non-profit corporation for the purposes set forth herein. The Association will be governed by the Association Board pursuant to this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, and the rules and regulations, if any, adopted by the Association Board with respect to the use and enjoyment of the Common Areas.

5.3 **Parties as Members.** Every Party including Developer shall be a member of the Association (each a "Member"). Membership shall not be separated from ownership of any Tract. Upon the recordation in the Land Records of a deed to a Tract, the membership of the selling Party shall cease, and the purchasing Party shall become a member of the Association.

5.4 **Membership and Voting Rights.** Developer and every Party, for so long as it owns a Tract, will be a Member of the Association; and any Person owning more than one Tract will have a Membership in the Association with respect to each Tract owned. In the event that a Tract is owned by more than one Person, voting and use rights applicable to the Tract will be as provided in this Declaration. The rights and privileges of a Membership may be exercised by the Party. The Association will have two (2) classes of Membership: Class "A" and Class "B", as follows:

(A) The Class "A" Members will be the owners of Tracts other than Developer, for so long as Developer is the Class "B" Member. Class "A" Members will be entitled to one (1) vote for each one hundredth (1/100th) (rounded to the next full one hundredth (1/100th)) of an acre or fraction thereof comprising the Tract(s) that it owns. Where a Tract is owned by more than one Person, the vote with respect to such Tract will be exercised as determined by the owners of such Tract as certified in writing to the Secretary of the Association prior to any vote; and in the absence of such certification, the vote of such Tract will be suspended if more than one person seeks to exercise such voting rights.

(B) The Class "B" Member will be Developer, and any single successor or assignee of Developer which is designated as such in a recorded instrument executed by Developer. The Class "B" Member will be entitled to ten (10) votes for each one hundredth (1/100th) (rounded to the next full one hundredth (1/100th)) of an acre within the Park that

it owns. For so long as Developer's Class B membership exists and to the extent not otherwise provided by Applicable Legal Requirements, this Declaration or the Association's Bylaws or Articles of Incorporation (as they may be amended and restated), the vote of the Class B member shall be required for any vote of the membership to pass. The Class B membership shall terminate on the earliest of the following:

- (i) the date on which Developer ceases to own any Tract;
- (ii) the date on which Developer executes and records in the Land Records an amendment to this Declaration terminating the Class B membership (which amendment shall not require the consent of any other Party); or
- (iii) December 31, 2049.

Upon termination of the Class B membership, the Class "B" Member shall become a Class "A" Member with respect to any Tracts owned by such Member.

5.5 **Board of Directors.** The Association Board shall consist of three (3) Directors unless otherwise provided in the Bylaws of the Association. Notwithstanding the voting rights set forth in Section 5.4, during the period of Developer's Class "B" membership, Developer shall be entitled to appoint all of the members of the Association Board (and such members may be affiliates or employees of Developer). Any vacancy in the Association Board created by the death, resignation or removal of a director shall be filled by a person appointed by Developer if such vacancy occurs during the period of Developer's Class "B" membership or by the remaining directors if the vacancy occurs after the period of Developer's Class "B" membership.

5.6 **Sanctions.** The Association Board may suspend the voting rights of any Member that is subject to any Assessment under this Declaration during any period in which any such Assessment shall be past due; provided, however, that upon payment of such Assessment the voting rights of such Member shall automatically be restored prospectively but not retroactively. The Association Board may, as a Special Assessment, assess charges against any Party for any violation of this Declaration or the rules and regulations by the Party or any Permittee of the Party's Tract, provided that the Party shall be given an opportunity to be heard and to be represented by counsel before the Association Board. Notice of the hearing, including the charges or other sanctions that may be imposed, shall be given in the manner notices are given to Members under the Bylaws of the Association at least ten (10) business days before the hearing.

5.7 **Articles and Bylaws to Govern.** Except to the extent expressly provided in this Declaration, all of the rights, powers and duties of the Association and the Members, including the Member's voting rights, shall be governed by the Articles of Incorporation and the Bylaws of the Association. However, in the event of any conflict or inconsistency between the provisions of this Declaration and the provisions of such Articles of Incorporation or Bylaws, this Declaration shall control.

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 Class "A" members and the Class "B" member (if existing) (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.

ARTICLE VI **ASSESSMENTS**

6.1 **Covenant for Assessments.** The Parties covenant and agree to pay, and each subsequent Party by acceptance of a deed to any portion of the Park (other than Exempt Property) is deemed to covenant and agree to pay, as applicable, General Assessments and Special Assessments as provided in this Declaration and in the Bylaws.

6.2 **General Assessments.** General Assessments shall be assessed annually and shall be paid annually or in more frequent intervals as shall be specified by the Association Board. General Assessments shall be assessed to cover the anticipated annual Common Area Maintenance Costs and Park Expenses; any cost and expense incurred in carrying out the duties of the Association under this Declaration, including the establishment of reasonable reserves for the Association's duties under this Declaration; and for such other purposes as may be authorized by or pursuant to the Articles of Incorporation or Bylaws of the Association. Until the Association is formed, Developer shall adopt an annual budget for each fiscal year, which budget shall provide for the annual level of General Assessments (including provision for reserves and physical damage insurance deductibles). A copy of that budget, along with written notice of the General Assessments and due dates shall be sent to every Party subject thereto. General Assessments shall be established and increased or decreased from time to time by the Association Board pursuant to the Bylaws.

6.3 **Special Assessments.** In addition to the General Assessments, the Association Board may levy a periodic Special Assessment if the purpose in doing so is found by the Association Board to be required in order to permit the Association to perform its duties and responsibilities under this Declaration and the proceeds of such assessment are used for the payment of extraordinary Common Area Maintenance Costs and Park Expenses including capital expenditures. Other than a Special Assessment assessed against an individual Party for violation of this Declaration or a failure to pay a Special Assessment, in the event that any Special Assessment is in an amount greater than the General Assessment for the same year, then no such Special Assessment shall be levied without the approval of a majority of the votes, in person or by proxy, cast by the Class "A" members and the Class "B" member (if existing) at a meeting duly called for such purpose; provided however, for the purposes of a Special Assessment greater than the General Assessment for any one year, the Class A Members and the Class B Member shall each be entitled to one (1) vote for each one hundredth (1/100th) of an acre or fraction thereof of an acre owned by the Class A or Class B member; otherwise, any such reasonable Special Assessment may be established by the Association Board without a vote of the Members. The foregoing notwithstanding, any Special Assessment may be rescinded by a majority of the votes, in person or by proxy, cast by the Class "A" members and the Class "B" member (if existing) who

are voting in person at a meeting duly called for such purpose, convened in accordance with the Bylaws within sixty (60) calendar days after receipt of the notice of such assessment. Written notice of Special Assessments and due dates shall be sent to each Party. The amount of any Special Assessment, or the limit on Special Assessments, established by this Section shall not apply to any charge, fee, penalty, or other sum which may be levied on or due and payable by any Party or Occupant under any other provision of this Declaration, even if such charge, fee, penalty or other sum is termed a Special Assessment.

6.4 **Reconciliation.** Within one hundred twenty (120) days after the end of each calendar year, the Association shall provide each Party with a statement certified by the Association setting forth the actual Common Area Maintenance Costs and Park Expenses, and such Party's share thereof. If the amount paid by a Party for such calendar year shall have exceeded its share, the Association shall refund the excess to such Party at the time such certified statement is delivered, or if the amount paid by a Party for such calendar year shall be less than its share, such Party shall pay the balance of its share to the Association within thirty (30) days after receipt of such certified statement.

Within six (6) months after receipt of any such certified statement, each Party shall have the right to review the books and records of the Association pertaining to the operation and maintenance of the Common Area for the calendar year covered by such certified statement. The Party reviewing such books and records shall notify the Association of such proposed review at least fifteen (15) days prior to the designated review date. Each Party shall have the right to review each calendar year's expenses only once. In the event that such review shall disclose any error in the determination of the Common Area Maintenance Costs and Park Expenses, or in the allocation thereof to a Tract, an appropriate adjustment shall be made forthwith unless the Association disputes the results of the review, in which event the Association and such Party shall in good faith attempt to resolve the dispute prior to seeking judicial determination. The cost of any review shall be assumed by the reviewing Party unless such Party shall be entitled to a refund in excess of five percent (5%) of the amount calculated as such Party's annual share of Common Area Maintenance Costs and Park Expenses for the calendar year, in which case the Association shall pay the reasonable cost of such review.

6.5 **Apportionment.**

(A) Assessments will be allocated and assessed by the Association among the Class "A" members presumptively based upon a percentage obtained from a calculation where the numerator is the gross acreage of a Party's Tract, and the denominator is the gross acreage of all Tracts in the Park.

(B) Notwithstanding the presumption set forth above, the allocation and assessment set forth above shall be subject to the following:

(i) Where feasible, no Owner shall be obligated to pay a share of the Common Area Maintenance Costs and Park Expenses attributable to any access drive and/or Common Utility Facility that such Tract does not connect to or is otherwise not benefitted by (directly or indirectly), as reasonably determined by Developer and/or the Association, and the Parties whose Tracts are benefitted by such access drives and/or Common Utility Facility shall be obligated to pay for all

Common Area Maintenance Cost and Park expenses in connection therewith based on the allocation set forth in Section 6.5(A) above solely with respect to the Party's Tract(s) that are benefitted thereby (or in such other manner as the Parties benefitted thereby may determine by written agreement delivered to the Association and Developer).

(ii) If Developer and/or the Association determines, in its reasonable discretion, that the allocation of the Common Area Maintenance Costs and Park Expenses on the basis set forth in Section 6.5(A) above is inequitable or will not reimburse Developer or the Association for all Common Area Maintenance Costs and Park Expenses incurred, then Developer and/or the Association, in its reasonable discretion, shall calculate each Party's share of the Common Area Maintenance Costs and Park Expenses based on a formula or other process of allocation that Developer and/or the Association determines to be more equitable or appropriate, taking into account the proportionate use of the Common Areas that Developer or the Association determines to be attributable to each Tract (including, by way of example, taking into account the amount of impervious surfaces and/or parking areas constructed on any Tract and the related impact on the Common Utility Facilities and Common Area Improvements).

6.6 **Liability for Assessments.** The Assessments and other charges provided in this Declaration, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Tracts and Improvements thereon and shall be a continuing lien upon the Tract(s) against which each such Assessment is made. Each such Assessment, together with late charges, interest, costs and reasonable and actual attorneys' fees, shall also be the personal obligation of the Person who was the owner of such Tract at the time when the Assessment fell due. No Party may waive or otherwise avoid liability for the payment of the Assessments provided for herein by non-use of the Common Area or abandonment of its Tract(s). Notwithstanding the foregoing, the managers, members, partners, officers, directors, employees or shareholders of a Party which is an entity will have no personal liability for the Assessment obligations of the entity Party.

6.7 **Remedies in Event of Default.** If any Party fails to pay an Assessment when due and payable, the Assessment shall be subject to a late charge in the amount of five percent (5%) of the delinquent Assessment and shall bear interest from the due date at the Default Interest Rate, but in no event greater than the highest rate allowed by law. If an Assessment is not paid by the due date, it shall become delinquent and the Association may thereafter send a notice of such delinquency to the Party, in conformity with the provisions of Section 9.4, stating that if the delinquent Assessment is not paid in full within thirty (30) calendar days after the date of such notice the Association may thereafter file a written notice of such delinquency (the "Lien Notice") in the Land Records to evidence the lien upon the Tract against which such Assessment was made. Such Lien Notice, setting forth the amount of such unpaid Assessment, the name of the owner of the Tract and the legal description of the Tract shall be signed by an officer of the Association and shall be recorded in the Land Records. Subject to the provisions of Sections 6.8 and 6.9 hereof, the Association may foreclose the lien for the Assessments provided for in this Declaration in the same manner as provided for the foreclosure of mortgages, vendor's liens and liens of similar nature. The Association may also secure and collect Assessments by any other means permitted

by Applicable Legal Requirements. In addition, either in the first instance or for deficiency following foreclosure, the Association may bring an action at law to collect such indebtedness against the owner personally obligated to pay the same. Interest, late charges, costs and reasonable and actual attorneys' fees of any such action, including the cost of filing the Lien Notice, shall be added to the amount of the Assessments due and shall be secured by the Assessment lien.

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 including Mortgage liens recorded prior to this Declaration, and (iii) liens and encumbrances for sums unpaid on and owing under any Mortgage, whether or not such sums 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.

6.9 **Non-disturbance and Attornment.** In the event the Association forecloses on any portion of the Park to enforce its lien(s) as provided in Section 6.7 above, with respect to any bona fide written lease (herein a "Lease") of all or any portion of such foreclosed property, provided the tenant under any such Lease (herein a "Tenant") attorns to the Purchaser (as defined below), the Lease shall not be terminated, nor shall the Tenant's use, possession, or enjoyment of the leased premises be interfered with, nor shall the leasehold estate be affected in any other manner, in any foreclosure or any action or proceeding instituted under or in connection with this Declaration or in the case the Association takes possession of the leased premises pursuant to any provisions of the Declaration. Any foreclosure action or proceeding so instituted shall be expressly subject to any such Lease.

If the interest of the landlord under any such Lease (herein a "Landlord") shall be transferred by reason of foreclosure or other proceedings for enforcement of this Declaration, the Tenant shall be bound to the person or entity acquiring the interest of Landlord as a result of any such action or proceeding as described in the first paragraph of this Section 6.9 (herein a "Purchaser"), and the Purchaser shall be bound to Tenant under all of the terms, covenants, and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be affected in accordance with any option therefore in the Lease, with same force and effect as if the Purchaser were the Landlord under the Lease, and attornment to be effective and self-operative without the execution of any further instruments, upon Purchaser succeeding to the interest of Landlord under the Lease. Subject to the provisions of subparagraph (a) above, the respective rights and obligations of Tenant and Purchaser upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as set forth in the Lease.

6.10 **Exempt Property.** The following property shall be exempt from the Assessments and liens created herein: (i) any Tract so long as the same is owned by Developer except for any Tract owned by Developer on which a Building has been constructed, in which case the Assessments shall commence on the first day of the month following the date on which the applicable Governmental Entity issues a certificate of occupancy (temporary or permanent) for the

Building; (ii) all properties dedicated to and accepted for maintenance by a Governmental Entity; and (iii) all Common Area. Collectively, the property referred to in clauses (i), (ii) and (iii) of the preceding sentence shall constitute the “Exempt Property.”

ARTICLE VII **MAINTENANCE AND REPAIR**

7.1 Utility Lines and Common Areas.

(A) Subject to the joint maintenance provision set forth in Sections 7.2 and 7.3 below, each Party shall maintain and repair, or cause to be maintained and repaired, in a good state of repair and safe condition, all Utility Lines separately serving its Tract regardless of where located. Any maintenance and repair of non-dedicated utilities located on another Party’s Tract shall be performed: after two (2) weeks’ notice to such other Party (except in an emergency the work may be initiated with reasonable notice); after normal business hours whenever possible; and in such a manner as to cause as little disturbance in the use of such other Party’s Tract as is practicable under the circumstances. Any Party (and Occupant) performing or causing to be performed maintenance or repair work shall promptly pay all costs and expenses associated therewith, shall diligently complete such work as quickly as possible, and shall promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to the commencement of such work.

(B) Subject to the joint maintenance provision set forth in Sections 7.2 and 7.3 below, each Party shall perform general day-to-day maintenance, repair and restoration of the Common Area located on its Tract, with such Common Area being kept in a sightly, safe condition and good state of repair. The unimproved Common Area shall be seeded with grass and landscaped, and then mowed and maintained and kept litter free. The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other first class business park developments of comparable size in the greater Durham metropolitan area of North Carolina, and in all cases in compliance with all Applicable Legal Requirements, and the provisions of this Declaration. All Common Area Improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Park as a whole. Each Party shall operate, manage and maintain the Common Area on its Tract, and shall maintain the sidewalk areas in front of all Buildings on its Tract, in good condition and repair, clean and free from water, snow and ice, litter and debris, and adequately drained, in a manner which is consistent with the custom and practice employed in similar business park developments of comparable size in North Carolina. Each Party shall also maintain and repair, at its sole cost, any exterior shipping/receiving dock area, any truck ramp or truck parking area, and any refuse, compactor, or dumpster area located on its Tract.

7.2 Association Maintenance of Common Area.

(A) Subject to a Party’s obligations under Section 7.1 above, the Association (or Developer prior to establishment of the Association) shall operate, maintain, repair and replace the Common Area of the Park. The Association or Developer, and their

respective agents and employees shall have a license to enter upon each Tract to discharge the duties to operate, maintain, repair and replace the Common Area. The Association or Developer may delegate its responsibility under this Section 7.2 to a third-party property manager. The costs incurred by the Association or Developer pursuant to this Section 7.2 shall be included in the Common Area Maintenance Cost.

(B) In the event any of the Common Area is damaged or destroyed during the term of this Declaration, the Association shall repair or restore such Common Area and include such cost and expense as Common Area Maintenance Cost, unless such damage or destruction was caused by a Party, and then in such case, such Party shall repair or restore such Common Area at its sole cost and expense with all due diligence whether or not such Common Area is located on such Party's Tract.

7.3 **Building Improvements.**

(A) After completion of construction, each Party covenants and agrees to maintain and keep all Buildings located on its Tract in first-class condition and state of repair, in compliance in all respects with all Applicable Legal Requirements, and in compliance with the provisions of this Declaration. Each Party further agrees to store all trash and garbage in enclosed dumpster containers and to arrange for regular removal of such trash or garbage.

(B) In the event any Buildings are damaged by fire or other casualty (whether insured or not), the Party upon whose Tract such Buildings are located shall, subject to Applicable Legal Requirements and insurance adjustment delays, immediately remove the debris resulting from such event and provide a slightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the Building so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this Declaration, (ii) erect another Building in such location, such construction to be performed in accordance with all provisions of this Declaration, or (iii) in the event of a complete loss to a Building, raze any remaining portion of the Building, remove all debris and cause the affected areas to be graded and seeded and maintained by the Party in a clean and safe condition and in accordance with this Declaration and all Applicable Legal Requirements. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one of such alternatives.

7.4 **General Maintenance Obligation.** Any maintenance or repair made pursuant to this Article VII or otherwise in this Declaration shall be made in compliance with the Stormwater Agreement and the "General Conditions of Approval" and the "Public Works Conditions of Approval" set forth in the Plat.

ARTICLE VIII OPERATION OF THE PARK

8.1 **Uses.**

(A) The Park shall be used for all uses permitted under any applicable zoning codes for the City of Durham, Durham County, North Carolina.

(B) No Party shall seek to change a zoning classification for any Tract, or to secure a zoning variance, special use exception or variance, or exception from applicable building standards, setbacks, other use restrictions, or subdivision control ordinances (collectively, the "Zoning Change(s)") for any Tract (unless Developer and/or the Association approves in writing the proposed Zoning Change). If Developer seeks a Zoning Change for a Tract that Developer owns, or if Developer, in its sole discretion, approves in writing any Party's proposal to seek a Zoning Change, then (unless the Zoning Change involves a material change in the use of the Tract that unreasonably will interfere with the lawful and intended use of another Tract) each Party shall: (i) be deemed to have consented to the Zoning Change; and (ii) execute any and all documents that Developer, in its sole discretion, determines to be necessary or appropriate, stating, representing, certifying, or acknowledging that the Party consents to the Zoning Change.

(C) The following uses shall not be permitted within the Park:

(i) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

(ii) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);

(iii) Any living quarters or sleeping apartments;

(iv) Any veterinary hospital or animal raising facilities, provided that a veterinarian's office shall be permitted and the provision of veterinary services as part of a typical pet store operation shall also be permitted;

(v) Any establishment primarily selling or exhibiting pornographic materials or drug-related paraphernalia;

(vi) Any flea market or dance hall; or

(vii) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall.

(D) No Party (or Occupant) shall use, treat, dispose, release, store, generate, or install any Hazardous Materials on, about, under or in any Tract, or the Park, except in the ordinary course of its usual business operations conducted thereon and in compliance in all respects with Applicable Legal Requirements, and any such use shall at all times be in compliance with all Environmental Laws. Notwithstanding the terms of the immediately preceding sentence, a Party (and/or any Occupant) may use, store and distribute from any Tract in the Park: (a) ordinary office supplies, and (b) common industrial and household cleaning solvent and lubricant materials used in the ordinary course of business, all or any of which may be classified as Hazardous Materials, so long as each such use, storage and distribution is in compliance with all Environmental Laws. Each Party shall indemnify,

protect, defend and hold harmless the other Parties from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including but not limited to costs of investigation, litigation and remedial response, arising out of any Hazardous Material used or permitted to be used by such Party, whether or not in the ordinary course of business. Nothing contained in this Subsection (D) shall be binding upon any "Party" which is a mortgagee of any Tract and which has become a "Party" as a result of the foreclosure of its mortgage or the conveyance of such Tract to such mortgagee in lieu of such foreclosure.

8.2 **Lighting.** Each Party shall keep any exterior building security lights on from dusk until dawn. During the term of this Declaration, each Party shall have an irrevocable license from each other Party for the purpose of permitting the lighting from one Tract to incidentally shine on the adjoining Tract.

8.3 **Occupant Signs.**

(A) No freestanding sign shall be permitted within the Park except as approved by the ARB in its sole discretion. The ARB shall have the right, in its sole discretion, to approve the design and size of all freestanding signs, including the panel inserts.

(B) All building signs erected within the Park shall be subject to all Applicable Legal Requirements and the prior written approval of the ARB, which may be withheld by Developer in its sole discretion.

(C) If Developer or the Association erects a pylon or a monument sign at the Park, then each Party who maintains a sign panel on such pylon or monument sign shall pay its prorata share of the costs associated with the maintenance, repair, or replacement or reconstruction of such sign, and of all costs with respect to the insurance and operation of such sign, all of which costs shall be paid to Developer or the Association, as applicable, on a monthly basis together with such Party's share of Common Area Maintenance Costs and Park Expenses under Article VII above. Such prorata share shall be a fraction, the numerator which shall be the square footage of such Party's panel, and the denominator which shall be the aggregate square footage of all Occupants sign panels maintained on such sign. Each Party who maintains a sign panel on such sign shall also be responsible for the maintenance, repair and replacement of such sign panel. Developer shall have the right, in Developer's sole discretion, to determine which Parties are permitted to maintain a sign panel on such sign, and otherwise change or relocate any existing sign panels on such sign (including the right to subdivide any such sign panels).

8.4 **Insurance.**

(A) Each Party (and its Occupants) shall maintain or cause to be maintained in full force and effect commercial general liability insurance in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence, and excess liability insurance in an amount of not less than Five Million Dollars (\$5,000,000.00).

(B) Each Party ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Party and its respective mortgagees and Occupants

(together, “Indemnitees”) from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney’s fees and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person occurring anywhere within the Park to the extent caused by the negligence or willful act or omission of such Indemnitor or its Occupants or Permittees.

(C) Effective upon the commencement of construction of any Building on its Tract and so long as such Building exists, a Party (or the Occupant of such Building or any contractor performing construction activities) shall carry, or cause to be carried, casualty insurance (including, without limitation, builder’s risk insurance during the period of any construction activities) with “extended” or “all-risk” coverage, in the amount of 100% of full replacement cost thereof (excluding footings, foundations or excavations).

(D) Prior to commencing any construction activities within the Park, each Party (or its Occupants or Permittees) (it being the responsibility of the Party on whose Tract such work is to be performed to ensure that coverage is obtained) shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

- (i) Workers’ Compensation – statutory limits;
- (ii) Employers’ Liability – \$500,000;
- (iii) Comprehensive General/Commercial General Liability and Business Auto Liability as follows:
 - (a) Bodily Injury – \$1,000,000 per occurrence;
 - (b) Property Damage – \$1,000,000 per occurrence;
 - (c) Independent Contractors Liability; same coverage as set forth in 8.4(A) and (B) above;
 - (d) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work;
 - (e) “Broad Form” Property Damage Endorsement;
 - (f) “Personal Injury” Endorsements; and
 - (g) “Blanket Contractual Liability” Endorsement.

If the construction activity involves the use of another Party’s Tract, then such other Party (and its respective mortgagees, if any, and Occupants) shall be an additional insured and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Declaration, without at least thirty (30) days prior written notice to the named insureds and each additional insured. If such insurance is canceled or expires then the constructing Party shall immediately stop all work on or use

of the other Party's Tract until either the required insurance is reinstated or replacement insurance obtained.

(E) Each Party (the "Releasing Party") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party (and its Occupants and Permittees) (the "Released Party") from any liability for any loss or damage to all property located upon the Releasing Party's Tract, which loss or damage is of the type covered by the insurance (including deductible, coinsurance, and self-insurance portions) required to be maintained by the Releasing Party under this Declaration or otherwise insured against, irrespective either of any negligence on the part of the Released Party (or its Occupants or Permittees) which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible, coinsurance, or self insurance reserve. Each Party agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given. For purposes of this Subsection, to the extent that any Party may have elected to not insure the risks required to be insured against hereunder (including deductible portions and coinsurance amounts), then said Party shall be deemed to have carried such insurance.

(F) All insurance required by this Section 8.4 shall be procured from companies licensed in the State of North Carolina and shall be rated by Best's Insurance Reports not less than A VIII. All insurance may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such insuring Person; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$20,000,000, then such insuring Person shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$20,000,000, or (iii) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Person in compliance with this Section 8.4, such Person shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$50,000.00. Each Party (and its Occupants and Permittees) shall furnish to any Party requesting the same, a certificate(s) of insurance evidencing that the insurance required to be carried hereunder is in full force and effect.

The insurance required pursuant to Sections 8.4(A) - (D) above shall include the following provisions:

(i) shall provide that the policy may not be canceled or reduced in amount or coverage below the requirements of this Declaration, without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured;

(ii) shall provide for severability of interests;

(iii) shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other named insureds; and

(iv) shall provide for contractual liability coverage with respect to the indemnity obligation set forth herein.

8.5 **Taxes and Assessments.**

(A) Each Party shall pay, or cause to be paid, prior to delinquency, all taxes and assessments (both general and special) with respect to its Tract, the Buildings, and Improvements located thereon and any personal property owned or leased by such Party in the Park (including, without limitation, rental taxes), provided that if the taxes or assessments or any part thereof may be paid in installments, the Party may pay each such installment as and when the same becomes due and payable. Notwithstanding anything of the contrary contained herein, "taxes and assessments" shall mean and include all service payments to be made in lieu of taxes pursuant to any Applicable Legal Requirements. Nothing contained in this Subsection shall prevent any Party from contesting at its cost and expense any such taxes and assessments with respect to its Tract in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time as such contest is concluded (allowing for appeal to the highest appellate court), the contesting Party shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

(B) In addition, each Party shall pay its prorata share of all taxes and assessments (both general and special) with respect to the Common Areas serving the Park. Each Party's prorata share shall be determined in accordance with Section 6.5 above, and shall become payable with respect to each Tract in the same manner as set forth in Section 6.5 above.

8.6 **Liens.** In the event any mechanic's lien is filed against the Tract of one Party as a result of services performed or materials furnished for the use of another Party (or its Occupants), the Party (or Occupant) permitting or causing such lien to be so filed agrees to cause such lien to be discharged (or bonded off) within thirty (30) days after receipt of notice of filing and further agrees to indemnify, defend, and hold harmless the other Party and its Tract against liabilities, losses, damages, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. Nothing herein shall prevent a Party (or Occupant) permitting or causing such lien from contesting the validity thereof in any manner such Party (or Occupant) chooses so long as such contest is pursued with reasonable diligence and the lien is bonded off in accordance with Applicable Legal Requirements.

8.7 **Compliance.** Each Party shall comply with (or cause compliance with) all Applicable Legal Requirements relating to its Tract.

ARTICLE IX
MISCELLANEOUS

9.1 Default.

(A) The occurrence of any one or more of the following events shall constitute a material default and breach of this Declaration by the non-performing Party (the “Defaulting Party”):

(i) The failure to make any payment required to be made hereunder within ten (10) days of receipt of written demand therefor, or

(ii) The failure to observe or perform any of the covenants, conditions or obligations of this Declaration, other than as described in (i) above, within thirty (30) days after the issuance of a notice by another Party (the “Non-Defaulting Party”) specifying the nature of the default claimed or if such default cannot be cured within such thirty (30) day period, then the failure to commence to cure such default within such thirty (30) day period and to diligently pursue such cure to completion thereafter.

(B) With respect to any default above, any Non-Defaulting Party shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event the default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Tract of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants and Permittees. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus interest as provided herein, within ten (10) days of receipt of demand, together with reasonable documentation supporting the expenditures made.

(C) No waiver by any Party of any default under this Declaration shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Declaration.

(D) Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this

Declaration, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

(E) Any Mortgagee shall have the right (within the time period set out for curing a default) to cure any default by the owner of the Tract subject to its Mortgage.

9.2 **Interest.** Any time a Party shall not pay any sum payable hereunder to another within five (5) days of the due date, such delinquent Party shall pay interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the lesser of:

(A) The highest rate permitted by law to be paid on such type of obligation by the Person obligated to make such payment or the Person to whom such payment is due; or

(B) the Default Interest Rate.

9.3 **Estoppel Certificate.** Upon the request of a Party or a Party's Mortgagee, the Developer or the Association Board shall prepare and deliver a certificate (the "Estoppel Certificate") that certifies the amount of unpaid Assessments, if any, applicable to the Tract owned by such Party, the next date on which Assessments are payable and the amount of Assessments that are payable on such date, whether the Association Board has notified the owner of such Tract of any violations of the provisions of this Declaration with respect to such Tract, and, if so, the steps, if any, taken by such owner to address and remedy such violations, and whether the ARB (or Developer acting as the ARB) has approved the Plans for the Improvements on that Party's Tract.

Such statement shall act as a waiver of any claim by the Association (or the Developer prior to the establishment of the Association) to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. The issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability for the negligent or inadvertent failure of such Person to disclose correct and relevant information.

9.4 **Notices.** Any notice or demand required or permitted to be given by or to any of the parties hereto and every alleged breach of any Party shall be made in writing and shall be deemed to have been given or delivered, as the case may be, when delivered by: (a) hand delivery; (b) express overnight delivery service; or (c) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon: (i) receipt, if hand delivered; (ii) the next

business day, if delivered by express overnight delivery service; or (iii) the third business day following the first attempted delivery of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to Developer, SP #350 and SP #383 as specified below:

If to Developer: Scannell Properties #320, LLC
c/o Scannell Properties
8801 River Crossing Blvd., Suite 300
Indianapolis, Indiana 46240
Attn: General Counsel

If to SP #350: Scannell Properties #350, LLC
c/o Scannell Properties
8801 River Crossing Blvd., Suite 300
Indianapolis, Indiana 46240
Attn: General Counsel

If to SP #383: Scannell Properties #383, LLC
c/o Scannell Properties
8801 River Crossing Blvd., Suite 300
Indianapolis, Indiana 46240
Attn: General Counsel

Any notice from any Party to any other Party may be given in the manner contemplated above to any address that such Party reasonably believes to be the respective Party's address for legal notices, including, without limitation, the address of any registered agent, or the address for any Party specifically contained herein. Upon at least ten (10) days prior written notice, each Party shall have the right to change its address to any other address within the United States of America.

9.5 **Approval Rights.**

(A) Nothing contained in this Declaration shall limit the right of a Party to exercise its business judgment, or act, in a subjective manner, with respect to any matter as to which it has specifically been granted such right, or the right to act in its sole discretion or sole judgment whether "objectively" reasonable under the circumstances, and any such exercise shall not be deemed inconsistent with any covenant of good faith and fair dealing otherwise implied by law to be part of this Declaration; and this Declaration sets forth all terms, covenants, conditions and standards pursuant to which the obligations of the Parties are to be judged and their performance measured.

(B) Unless provision is made for a specific time period, each response to a request for an approval or consent shall be given by the Person to whom directed within thirty (30) days of receipt. Each disapproval shall be in writing and, subject to (A) above, the reasons shall be clearly stated. If a response is not given within the required time period, the requested Party shall be deemed to have given its approval or consent.

9.6 **Condemnation.** In the event any portion of the Park shall be condemned, the award shall be paid to the Party owning the land or the improvement taken, except that (i) if the taking includes improvements belonging to more than one Party, such as Utility Lines or signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this Declaration, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this Declaration which does not reduce or diminish the amount paid to the Party owning the land or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof. Notwithstanding anything contained herein to the contrary, in the event any portion of the Common Area shall be condemned, the award shall be paid solely to the Developer and it shall be obligated to repair and restore such Common Area within a reasonable period of time after receipt of the condemnation award to the condition, as close as possible, that existed prior to the taking.

9.7 **Binding Effect.** The terms of this Declaration and all easements granted hereunder shall constitute covenants running with the land and shall bind the Property and inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns. This Declaration is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

9.8 **Park Modifications.** Developer shall have the sole right to alter, enlarge, diminish, relocate or modify the Park areas based upon the further subdivision and development of the Tracts in the Park so long as such alteration, enlargement, relocation or modification shall not cause a material adverse effect upon the use of any existing Tract. In such event, this Declaration shall continue in full effect upon each Tract, and any calculations or formulas provided for herein which are based upon the size of a Tract shall be adjusted accordingly.

9.9 **Construction and Interpretation.**

(A) This Declaration and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements are superseded in total by this Declaration and Exhibits hereto. The provisions of this Declaration and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

(B) Whenever required by the context of this Declaration, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.

(C) The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

(D) Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

(E) This Declaration may be amended by, and only by, a written agreement which has received the approval of the Approving Parties and shall be effective only when recorded in the official records of the Land Records; provided, however, that no such amendment shall impose any materially greater obligation, or materially impair any right of, a Party or its Tract without the consent of such Party. No consent to the amendment of this Declaration shall ever be required of any Occupant or Person other than the Parties, nor shall any Occupant or Person other than the Parties have any right to enforce any of the provisions hereof, unless the Party having the right to enforce any of the provisions hereof shall have assigned such right of enforcement to such Occupant or Person, and evidence of such assignment shall have been delivered to the Person against whom such enforcement is prosecuted. Each Party may consider, approve or disapprove any proposed amendment to this Declaration in its sole and absolute discretion without regard to reasonableness or timeliness.

(F) This Declaration may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Declaration may be executed and notarized on separate pages, and when attached to this Declaration shall constitute one complete document.

9.10 **Negation of Partnership.** None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

9.11 **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Park or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

9.12 **Excusable Delays.** Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, adverse or inclement weather, war, civil commotion, riots, strikes, picketing

or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section shall not operate to excuse any Person from the prompt payment of any monies required by this Declaration.

9.13 **Mitigation of Damages.** In all situations arising out of this Declaration, all Parties shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party hereto shall take all reasonable measures to effectuate the provisions of this Declaration.

9.14 **Declaration Shall Continue Notwithstanding Breach.** It is expressly agreed that no breach of this Declaration shall (i) entitle any Party to cancel, rescind, or otherwise terminate this Declaration, or (ii) defeat or render invalid the lien of any mortgage or deed of trust or the leasehold interest of any lease made in good faith and for value as to any part of the Park. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

9.15 **Time.** Time is of the essence of this Declaration.

9.16 **No Waiver.** The failure of any Party to insist upon strict performance of any of the terms covenants of conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

9.17 **Assignment of Developer's Rights and Duties.** Any and all of the rights, powers and reservations of Developer herein contained may be assigned by Developer from time to time, in its discretion, to any Person (including, without limitation, the Association) who will assume the duties of Developer pertaining to the particular rights, powers and reservations assigned; provided, however, that the rights, powers and reservations of Developer herein contained may only be transferred (i) in whole, and not in part, and therefore may only be exercised by one Person, and (ii) to a Person that holds title to some portion of the Property unless such assignment is to the Association. Upon such assignment, any such Person assuming such duties (and its heirs, successors and assigns) shall have, to the extent of such assignment, the same rights and powers and shall be subject to the same obligations and duties as are given to and assumed by Developer in this Declaration. Any assignment made under this Section shall be in recordable form and shall be recorded in the Land Records. Notwithstanding any provision of this Declaration to the contrary, Developer may, at any time and from time to time without the consent of the Parties, temporarily or permanently relieve itself of all or a portion of its rights and obligations under this Declaration by filing in the real estate records of the County in which the Development is located a notice stating that Developer has surrendered the rights and obligations specified therein.

9.18 **Limitation of Liability.** Except as specifically provided below, there shall be absolutely no personal liability of persons, firms, corporations or entities who constitute a Party hereto, including, but not limited to, officers, directors, members, managers, employees or agents of a party hereto with respect to any of the terms, covenants, conditions, and provisions of this Declaration. In the event of default by a Defaulting Party hereunder (as defined in Section 9.1) any Non-Defaulting Party (as defined in Section 9.1 hereof) who seeks recovery from a Defaulting

Party hereto shall look solely to the interest of such Defaulting Party, its successors and assigns, in the Defaulting Party's Tract for the satisfaction of each and every remedy of the Non-Defaulting Party; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Party:

(A) to pursue equitable relief in connection with any term, covenants or condition of this Declaration, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance; and

(B) to recover from another Party (or its guarantor) all losses suffered, liabilities incurred or costs imposed arising out of or in connection with, or on account of, such Party (or its guarantor) not funding its self-insurance obligations which were assumed pursuant to 8.4 above.

ARTICLE X

TERM

10.1 **Term of this Declaration**. This Declaration shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on December 31, 2049, and then shall automatically extend for five (5) year increments, unless the Approving Parties elect in a written and recorded instrument to terminate this Declaration within sixty (60) days of such automatic extension; provided, however, that the easements referred to in Article II hereof which are specified as being perpetual or as continuing beyond the term of this Declaration shall continue in force and effect as provided therein. Upon termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.

[Remainder of page intentionally left blank; signature pages follow.]

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

“Developer”

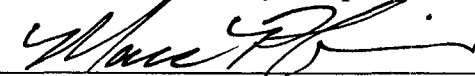
SCANNELL PROPERTIES #320, LLC,
an Indiana limited liability company

By: 

Marc D. Pflieger, Manager

“SP #350”

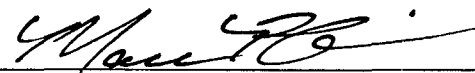
SCANNELL PROPERTIES #350, LLC,
an Indiana limited liability company

By: 

Marc D. Pflieger, Manager

“SP #383”

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

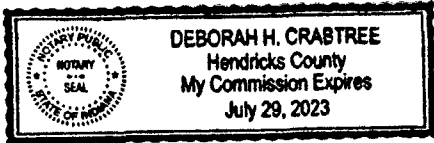
By: 

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. Pflging, 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 26th day of June, 2019.

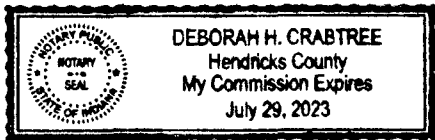


Deborah H. Crabtree
NOTARY PUBLIC
My Commission Expires: 7/29/23

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. Pflging, 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 26th day of June, 2019.

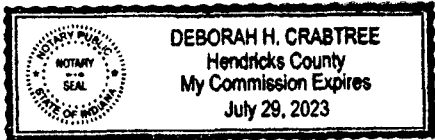


Deborah H. Crabtree
NOTARY PUBLIC
My Commission Expires: 7/29/23

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. Pflaging, 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 26th day of June, 2019.



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

Instrument Prepared By, And
After Recording Return To:

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

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-1

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 B-2

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. LAND SURVEYING.

EXHIBIT C

Depiction of Regional Commerce Center

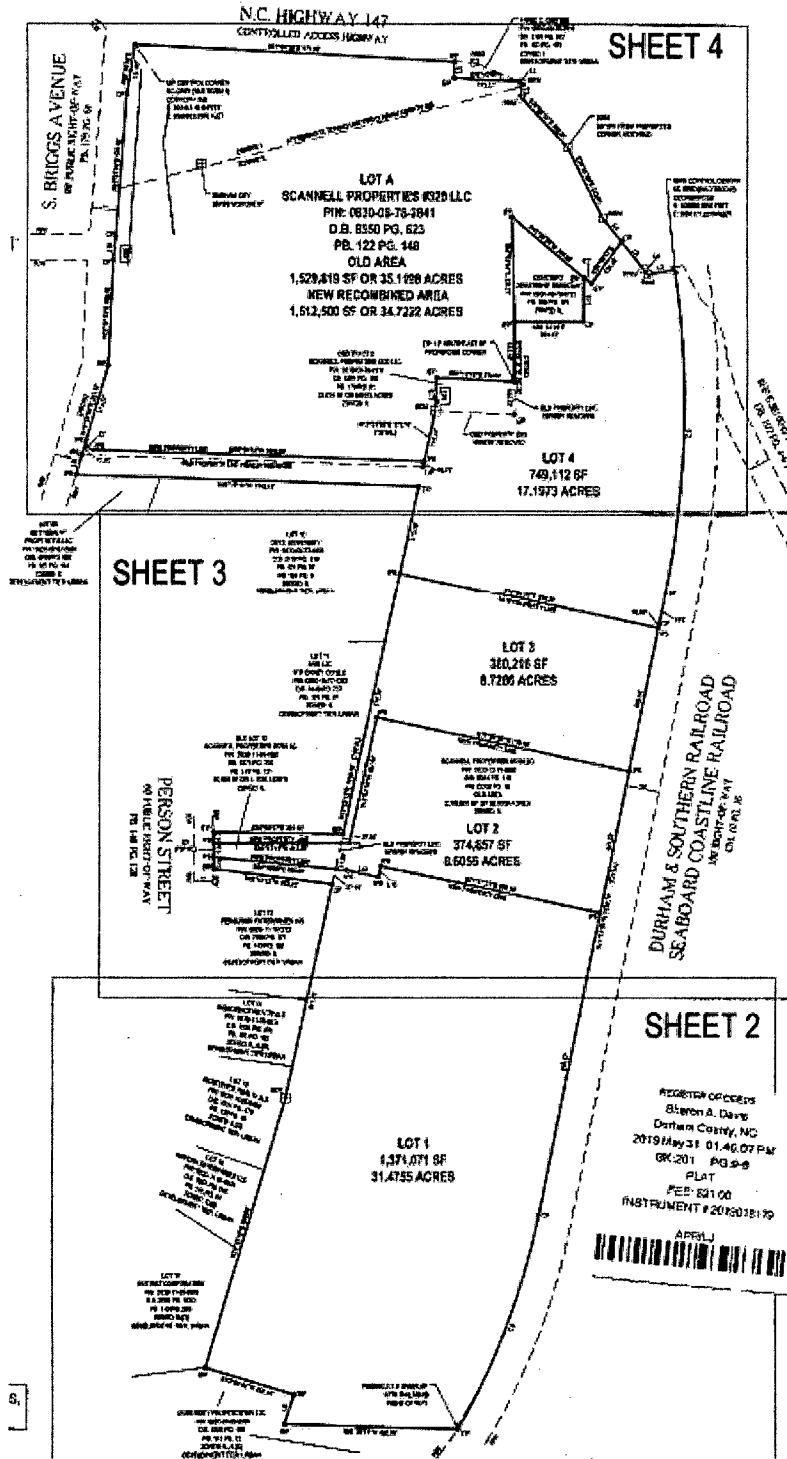
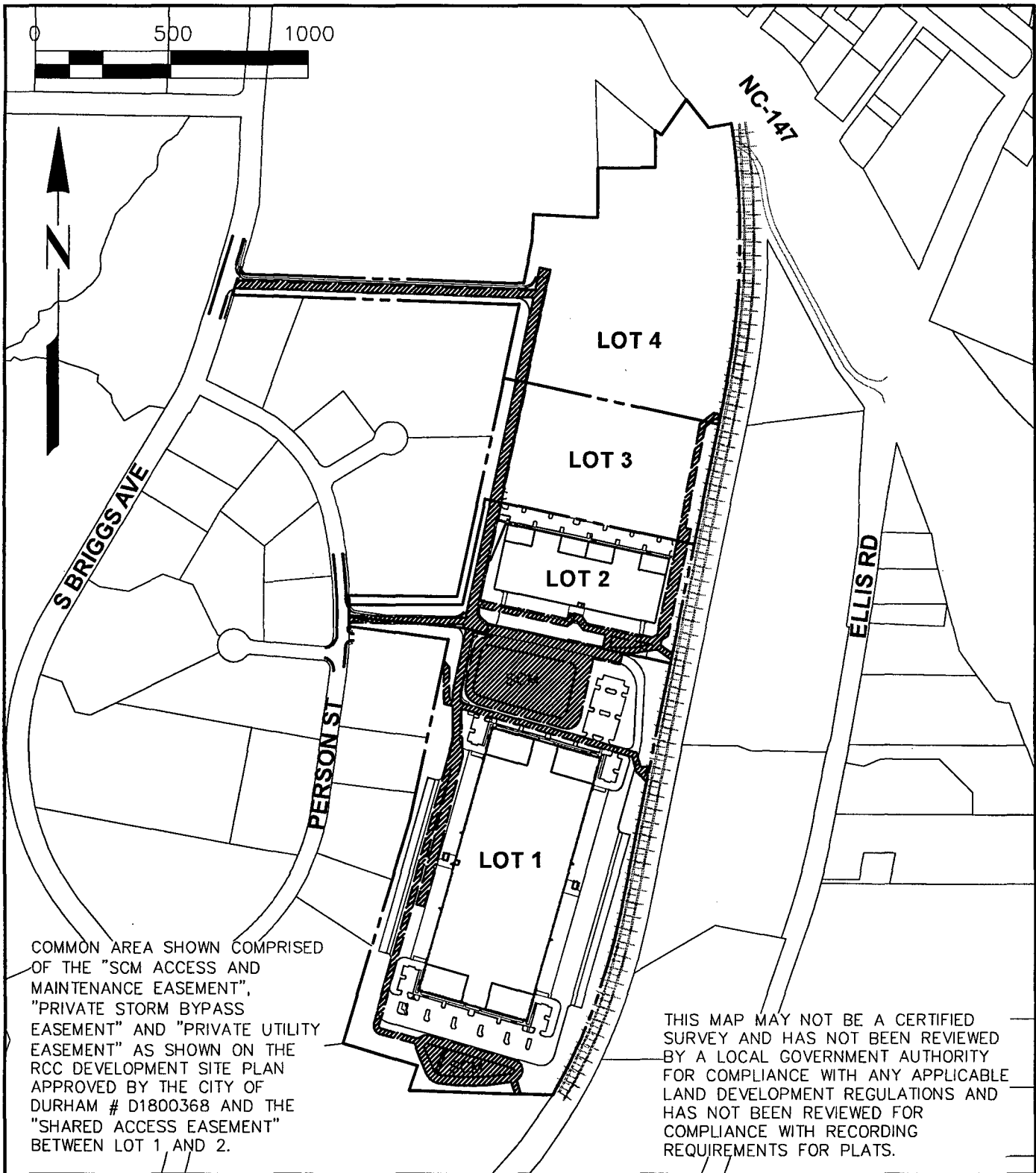


EXHIBIT D

Depiction of Common Area

[SEE ATTACHED]



- CAPITAL CIVIL ENGINEERING -

1011 PEMBERTON HILL RD, STE 203, APEX, NC 27502
 PH 919 249-8587 FX 919 590-1687
 COPYRIGHT 2019 CAPITAL CIVIL ENGINEERING, PLLC P-0809

EXHIBIT 'D'

COMMON AREA

FOR RCC DEVELOPMENT

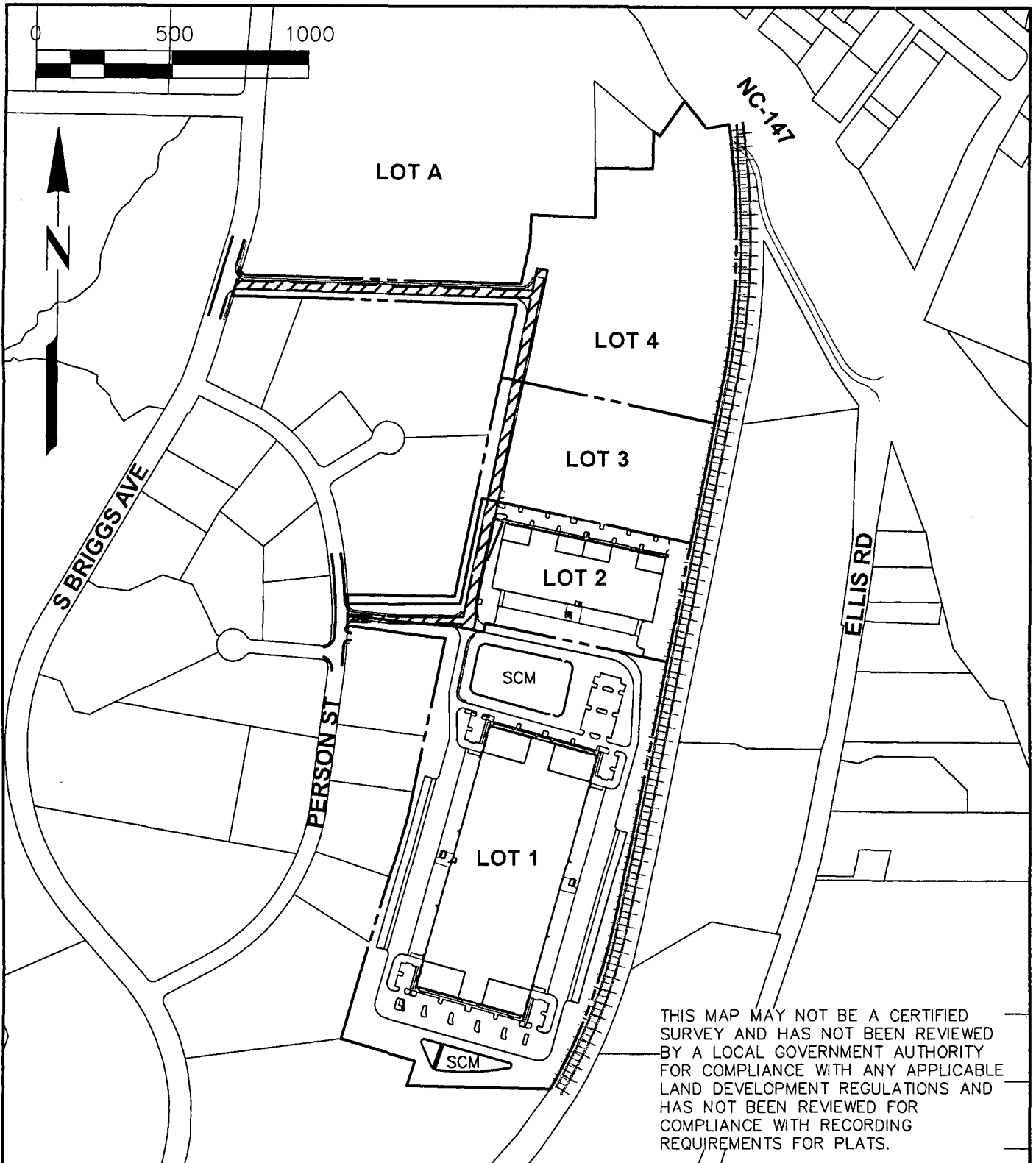
DATE
 JUNE 27, 2019

FILE
 41-12exh-esmts.dwg

EXHIBIT E

Depiction of Shared Access Easement

[SEE ATTACHED]



THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AUTHORITY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS.



- CAPITAL CIVIL ENGINEERING -

1011 PEMBERTON HILL RD, STE 203, APEX, NC 27502
 PH 919 249-8587 FX 919 590-1687
 COPYRIGHT 2019 CAPITAL CIVIL ENGINEERING, PLLC P-0809

EXHIBIT 'E'

SHARED ACCESS EASEMENT

FOR RCC DEVELOPMENT

DATE
 JULY 11, 2019

FILE
 41-12exh-esmts.dwg