

For Registration Sharon A. Davis  
Register of Deeds  
Durham County, NC  
Electronically Recorded

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Book: 8861 Page: 827

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Instrument Number: 2020004105

AMD

**Cross Reference:** Instrument No. 2019023955; Instrument No. 2019034204

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

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

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

**THIS SECOND AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR REGIONAL COMMERCE CENTER** (this "Second Amendment") is made and entered into as of the 31<sup>st</sup> day of January, 2020, by SCANNELL PROPERTIES #320, LLC, an Indiana limited liability company ("Developer"), having its address at c/o Scannell Properties, 8801 River Crossing Blvd., Suite 300, Indianapolis, Indiana 46240, SCANNELL PROPERTIES #350, LLC, an Indiana limited liability company ("SP #350"), having its address at c/o Scannell Properties, 8801 River Crossing Blvd., Suite 300, Indianapolis, Indiana 46240, and SCANNELL PROPERTIES #383, LLC, an Indiana limited liability company ("SP #383"), having its address at c/o Scannell Properties, 8801 River Crossing Blvd., Suite 300, Indianapolis, Indiana 46240.

**RECITALS:**

WHEREAS, Developer, SP #350 and SP #383 entered into the Declaration of Easements, Covenants and Restrictions for Regional Commerce Center, dated June 26, 2019, and recorded July 12, 2019, at Book 8700, Page 477 (Instrument No. 2019023955), as amended by that certain First Amendment to Declaration of Easements, Covenants and Restrictions for Regional Commerce Center, dated September 12, 2019, and recorded September 20, 2019, at Book 8755, Page 576 (Instrument No. 2019034204) (collectively, the "Declaration") in the Register of Deeds for Durham County, North Carolina (the "Land Records"), concerning the real property located in the City of Durham, County of Durham, State of North Carolina, and commonly known as Regional Commerce Center (the "Park").

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

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

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

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

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

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

**NOW, THEREFORE**, in consideration of the above Recitals and the covenants contained in this Second Amendment, Developer, SP #350 and SP #383 hereby declare that the Declaration is hereby amended by this Second Amendment and that the Park shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the terms and conditions set forth in the Declaration, which shall run with the Park for the term hereof and shall be binding upon the Park and all successors, assigns, tenants, occupants, subtenants, licensees, concessionaires, invitees or other parties permitted within the Park:

1. **Defined Terms; Recitals.**

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

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

2. **Definition of Common Area Maintenance Costs and Park Expenses.** Section 1.12 of the Declaration is hereby deleted in its entirety and replaced with the following:

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; all costs and expenses related to the CSX Improvements and the CSX Lease; and all costs incurred by the Association or Developer in performing their obligations under Article VII (Maintenance and Repair) hereof.

3. **Definition of Improvements.** Section 1.24 of the Declaration is hereby deleted in its entirety and replaced with the following:

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, all other structures or landscaping improvements of every type and kind and the CSX Improvements.

4. **Definition of CSX Lease.** A new Section 1.48 is hereby added to the Declaration and shall read as follows:

1.48 **CSX Lease.** “CSX Lease” shall mean that certain Land Lease, dated September 1, 1994, by and between CSX Transportation, Inc. (“CSX”), as lessor, and Developer, as lessee, as amended and assigned. Developer may, in Developer’s sole discretion, assign the CSX Lease to the Association and otherwise amend or terminate the CSX Lease in accordance with its terms.

5. **Definition of CSX Lease Improvements.** A new Section 1.49 is hereby added to the Declaration and shall read as follows:

1.49 **CSX Lease Improvements.** “CSX Lease Improvements” shall mean the fencing, retaining wall, drainage ditch and all other improvements of every type and kind permitted under the CSX Lease.

6. **Amendment of Declaration.** Section 9.9(E) of the Declaration is hereby deleted in its entirety and replaced with the following:

(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. Notwithstanding the foregoing, this Declaration may not be amended to remove or modify the CSX Lease obligations without the prior written consent of Developer. 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.

7. **General Provisions.**

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

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

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

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

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

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

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

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

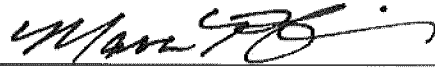
(i) **No Rights Conferred.** Except as expressly stated to the contrary herein, this Second Amendment shall confer no rights on any parties other than the Parties and the Permittees (as defined in the Declaration).

[SIGNATURES ON FOLLOWING PAGE]

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

“Developer”

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

By:   
Marc D. Pflieger, Manager

“SP #350”

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

By:   
Marc D. Pflieger, Manager

“SP #383”

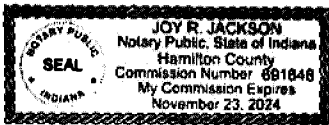
**SCANNELL PROPERTIES #383, LLC**,  
an Indiana limited liability company

By:   
Marc D. Pflieger, Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE ME, a Notary Public in and for said County and State personally appeared the above named SCANNELL PROPERTIES #320, LLC, an Indiana limited liability company, by Marc D. Pflieger, in his capacity as the Manager, and who acknowledged that he did sign the foregoing instrument for and on behalf of said limited liability company and that the same is the free act and deed of said limited liability company and his free act and deed individually and as such manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Indianapolis, Indiana, this 31<sup>st</sup> day of January, 2020.

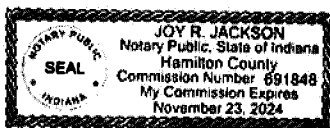


Joy R. Jackson  
NOTARY PUBLIC  
My Commission Expires: 11/23/24  
My Commission Number: 691848

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

BEFORE ME, a Notary Public in and for said County and State personally appeared the above named SCANNELL PROPERTIES #350, LLC, an Indiana limited liability company, by Marc D. Pflieger, in his capacity as the Manager, and who acknowledged that he did sign the foregoing instrument for and on behalf of said limited liability company and that the same is the free act and deed of said limited liability company and his free act and deed individually and as such manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Indianapolis, Indiana, this 31<sup>st</sup> day of January, 2020.

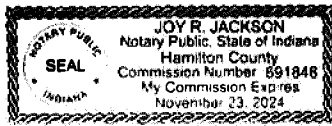


Joy R. Jackson  
NOTARY PUBLIC  
My Commission Expires: 11/23/24  
My Commission Number: 691848

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. Pfleging, 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 31<sup>st</sup> day of January, 2020.



*Joy R. Jackson*  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: 11/23/24  
My Commission Number: 691848



**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..

**EXHIBIT B**

Legal Description of SP #350 Property

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

**EXHIBIT C**

Legal Description of SP #383 Property

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