

WHEN RECORDED, RETURN TO:

300 WEST SALT LAKE LLC
c/o Miller Real Estate Investments LLC
6900 E. Belleview Avenue, Suite 300
Greenwood Village, CO 80111

12705612
1/26/2018 2:04:00 PM \$32.00
Book - 10642 Pg - 687-696
ADAM GARDINER
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE INS CO
BY: eCASH, DEPUTY - EF 10 P.

DECLARATION OF RESTRICTIVE USE COVENANT

THIS DECLARATION OF RESTRICTIVE USE COVENANT (this "Declaration") is made as of the 26th day of January, 2018 (the "Effective Date"), by and between POCO LOCOS HOLDINGS, LLC, a Utah limited liability company ("POCO LOCOS"), and 300 WEST OP II LLC, a Delaware limited liability company ("OP II").

WHEREAS, 300 WEST SALT LAKE LLC, a Delaware limited liability company (formerly known as WEINGARTEN MILLER EQUIWEST SALT LAKE LLC, a Colorado limited liability company), AMERIFORK 300 WEST OP HOLDINGS LLC, a Delaware limited liability company and MAGDALENA PROPERTIES, LLC, a California limited liability company, are the owners of certain parcels of real property located in Salt Lake County, Utah, the legal descriptions of which are attached hereto as Exhibit A and incorporated herein by this reference (collectively, the "Benefitted Property");

WHEREAS, POCO LOCOS is the owner of certain real property located in Salt Lake County, Utah, the legal description of which is attached hereto as Exhibit B and incorporated herein by this reference (the "Burdened Property"); and

WHEREAS, contemporaneously with the execution of this Declaration, OP II conveyed the Burdened Property to POCO LOCOS and as part of and as a condition to such conveyance, the parties agreed to fix and establish certain use restrictions regarding the Burdened Property, as set forth in this Declaration.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and conditions herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby make and declare the following restrictions:

1. POCO LOCOS covenants and agrees that no portion of the Burdened Property shall be used for any use that is reserved as an exclusive use by any tenant of the Benefitted Property as of the Effective Date (each a "Tenant" and collectively, the "Tenants"), as such Tenants and corresponding exclusive uses are listed on Exhibit C attached hereto and incorporated herein by this reference. When a Tenant ceases to be a tenant of the Benefitted Property, the restriction on using the Burdened Property, or any portion thereof, for the exclusive use reserved by such Tenant shall terminate. Such use restrictions shall apply to the owner of the Burdened Property and to all tenants or occupants of the Burdened Property.

Tax Parcel IDs 15-12-404-008-0000; 15-12-380-011-0000; 15-12-404-007-0000;
1439299.5 15-12-331-006-0000; 15-12-404-006-0000

2. POCO LOCOS, as the owner of the Burdened Property, acknowledges that any breach of the use restrictions contained in this Declaration shall cause irreparable harm to the affected owner of the Benefited Property, and the affected owner of the Benefited Property shall have the right to enforce the terms and conditions of this Declaration and shall have the right to seek temporary and permanent injunctive relief against the offending party to prevent a threatened or then current violation of this Declaration. The affected owner of the Benefited Property shall also be entitled to seek damages for breach of this Declaration. All of the remedies permitted or available to the owners of the Benefited Property under this Declaration shall be cumulative and not alternative to any other remedies available at law or in equity, and an 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.

3. This Declaration and the restrictions contained herein shall be appurtenant to and for the benefit of the Benefited Property and shall burden the Burdened Property and all portions thereof, and subject to Section 1 above, shall run with the land in perpetuity. This Declaration and the restrictions contained herein shall inure to the benefit of and be binding upon all owners and ground lessors, and their successors, transferees and assigns.

4. POCO LOCOS and OP II confirm and ratify the matters contained and referred to in the recitals to this Declaration.

5. If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion hereof shall remain in full force and effect, to the maximum extent permitted by law.

6. If an owner of the Benefited Property or the owner or occupant of the Burdened Property against whom the rights of this Declaration are being asserted shall deem it necessary to commence any action or proceeding or to employ an attorney to enforce or defend its rights hereunder, the substantially prevailing party shall be entitled to its fees and costs in connection therewith, including, without limitation, attorneys' fees and court costs.

7. Unless otherwise expressly stated herein, this Declaration may not be modified, amended or terminated as to any portion of the Benefitted Property without the prior written consent of (a) the owner of such portion of the Benefitted Property and (b) the owner of the Burdened Property, or their respective successors and assigns.

8. This Declaration shall be in addition to and shall supplement any covenants, conditions and restrictions affecting the Burdened Property as of the Effective Date.

9. Any notice required or permitted under the terms of this Declaration shall be in writing and shall be delivered either by: (a) personal delivery, (b) a nationally-recognized overnight courier, or (c) registered or certified mail, return receipt requested, postage prepaid. Overnight delivery or mailed notices shall be addressed to the parties at the addresses listed below. The addresses of the parties are as follows:

If to POCO LOCOS: POCO LOCOS HOLDINGS, LLC
14765 Main Street
Hesperia, California 92345
Attn: Lee Alvarez, Jr.

If to OP II: 300 WEST OP II LLC
c/o Miller Real Estate Investments LLC
6900 E. Belleview Avenue, Suite 300
Greenwood Village, CO 80111

With copies to: 300 WEST OP II LLC
c/o Fortress Investment Group LLC
One Market Plaza, Spear Tower, 42nd Floor
San Francisco, CA 94105
Attn: General Counsel – Credit Funds

300 WEST OP II LLC
c/o CF Amerifork 300 West Holdings LLC
c/o Fortress Investment Group LLC
5221 N. O'Connor Blvd, Suite 700
Irving, Texas 75039
Attention: Andrew Osborne

Any notice shall be deemed properly given and received: (i) when actually given and received, if delivered by personal delivery, (ii) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit, or (iii) three (3) business days after the same is deposited in the United States Mail, as evidenced by a return receipt. Any party may change its address for the giving of notice by notice hereunder.

10. This Declaration shall be construed and interpreted in accordance with the laws of the State of Utah.

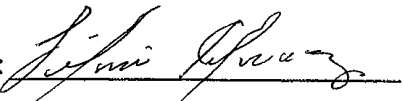
11. This Declaration may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one (1) and the same instrument.

[Signatures appear on following pages]

IN WITNESS WHEREOF, POCO LOCOS HOLDINGS and OP II have executed this Declaration of the Effective Date.

POCO LOCOS HOLDINGS, LLC:

POCO LOCOS HOLDINGS, LLC
a Utah limited liability company

By: 

Name: LIBORIO ALVAREZ

Title: C.F.O

CALIFORNIA ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness accuracy or validity of that document.

State of California
County of San Bernardino

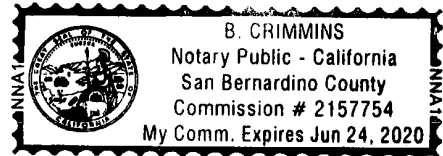
On 12/29/17 before me, B. Crimmins

Notary Public, personally appeared Liborio Alvarez who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)
My commission expires: 6/24/20



OP II:

300 WEST OP II LLC,
a Delaware limited liability company

By: Amerifork 300 West Holdings LLC,
a Delaware limited liability company,
its sole member

By: CF Amerifork 300 West LLC,
a Delaware limited liability company,
its managing member

By: _____
Name: **Andrew Osborne**
Title: **Authorized Signatory**

STATE OF Texas
COUNTY OF Dallas) ss.

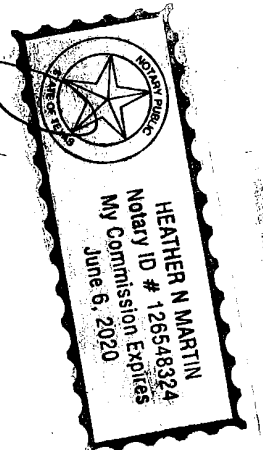
The foregoing instrument was acknowledged before me this 15 day of December, 2017, by Andrew Osborne, as Authorized Signatory of CF AMERIFORK 300 WEST LLC, a Delaware limited liability company, as managing member of AMERIFORK 300 WEST HOLDINGS LLC, a Delaware limited liability company, as the sole member of 300 WEST OP II LLC, a Delaware limited liability company, on behalf of such limited liability company.

My commission expires: _____

Witness my hand and official seal.

(SEAL)

Heather N Martin
Notary Public



[Signature Page to Declaration of Restrictive Use Covenant]

**EXHIBIT A
TO
DECLARATION OF RESTRICTIVE USE COVENANT**

Legal Description of Benefited Property

LOTS 2, 3, 5, AND 6, 300 WEST TOWN CENTER SUBDIVISION, SALT LAKE COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT RECORDED OCTOBER 14, 2009, AS ENTRY NO. 10816796 IN PLAT BOOK 2009P, AT PAGE 148

**EXHIBIT B
TO
DECLARATION OF RESTRICTIVE USE COVENANT**

Legal Description of Burdened Property

LOT 7, 300 WEST TOWN CENTER SUBDIVISION, SALT LAKE COUNTY, UTAH,
ACCORDING TO THE OFFICIAL PLAT RECORDED OCTOBER 14, 2009, AS ENTRY NO.
10816796 IN PLAT BOOK 2009P, AT PAGE 148

**EXHIBIT C
TO
DECLARATION OF RESTRICTIVE USE COVENANT**

Tenants and Exclusive Uses

Benefitted Property	Tenant	Exclusive Use
Lot 2	Cash & Carry Stores LLC	No portion of the Burdened Property may be used for (i) a grocery store, meat or seafood market, produce market or ethnic grocery store, (ii) the sale of groceries for off-premises consumption with a focus on wholesale or business customers or (iii) the sale of restaurant supplies or janitorial and cleaning supplies and equipment. As used herein, the term "groceries" includes, but is not limited to, fresh meats, fresh produce, canned, frozen or smoked foodstuffs, and dairy products (" <u>Exclusive Use</u> "). Notwithstanding the foregoing, the Exclusive Use does not prohibit or restrict (and the Burdened Property may be used for) (A) the operation of a convenience store whose gross sales of groceries does not exceed 60% of its total gross sales, (B) tenants occupying less than 2,500 square feet of space, or (C) the sale of groceries or the products listed in subpart (ii) above on an "incidental basis," which shall be defined as utilizing less than twenty percent (20%) of the sales floor area for sales of all such Exclusive Use items combined. The Exclusive Use shall terminate if the Premises are not used for the operation of a Cash & Carry store, a supermarket or grocery store for a continuous one (1) year period (unless due to fire or other casualty, condemnation, remodeling or strikes, labor disputes, acts of God, war, civil commotion or other causes beyond Tenant's reasonable control (excluding financial inability).
Lot 3	General Nutrition Corporation	No portion of the Burdened Property may be used by any business occupying less than 8,000 square feet that devotes more than thirty percent (30%) of its premises to the sale of vitamins, mineral supplements or sports nutrition supplements.
Lot 3	Sally Beauty Supply LLC	No portion of the Burdened Property may be used for the retail sale or wholesale of beauty supply products or related merchandise or the retail sale of human or synthetic hair, wigs or hair extensions, hereinafter referred to as "Hair Products" (a " <u>Competing Business</u> "). Notwithstanding the foregoing: the Burdened Property may be so used (i) by any tenant who occupies more than 15,000 square feet, (ii) by any tenant operating under

		the trade name "Beauty First," (iii) any tenant, present or future, operating as a drug store, or (iv) any tenant, present or future, who may sell beauty products or Hair Products on an "incidental" basis, meaning that: (A) the total floor area devoted to the display and sale of the items identified in the definition of Competing Business shall not exceed ten percent (10%) of such tenant's total premises and (B) the aggregate revenue generated from the sale of items identified in the definition of Competing Business shall not exceed ten percent (10%) of such tenant's total sales in any year.
Lot 3	Payless Shoesource, Inc.	No portion of the Burdened Property may be used by any occupancy whose primary business (<i>i.e.</i> , more than fifty percent (50%) of gross sales) will be the retail sale of shoes.
Lot 5	Wendy's Old Fashioned Hamburgers of New York, Inc.	No portion of the Burdened Property may be used for a "fast-food" or "quick service" restaurant with drive through service that primarily sells hamburgers and cheeseburgers (the " <u>Exclusive</u> "). Notwithstanding the foregoing, the Exclusive shall not be applicable to: (i) any full-service restaurant (such as, by way of example and not limitation, Chili's, Logan's Steakhouse/Roadhouse, IHOP restaurant, Texas Roadhouse); or (ii) any user that sells hamburgers and/or cheeseburgers on an incidental basis and not as that user's primary business (for purposes hereof, a user shall be deemed to sell hamburgers and/or cheeseburgers on an "incidental" basis so long as the user derives no more than twenty percent (20%) of its total revenue from the sale of hamburgers and/or cheeseburgers).
Lot 6	Key Bank	No portion of the Burdened Property may be used for the primary purpose of operation of a retail banking facility or financial services, including operation of a bank, credit union, check-cashing, lending, or mortgage company, but not including a stock brokerage or investment firms or services.