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Book - 10652 Pg - 9790-9798
ADAM GARDINER
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE AZ
BY: eCASH, DEPUTY - EF 9 P.

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

DECLARATION OF RESTRICTIVE USE COVENANT

THIS DECLARATION OF RESTRICTIVE USE COVENANT (this "Declaration") is made as of the 2nd day of March, 2018 (the "Effective Date"), by and between 300 WEST SALT LAKE LLC, a Delaware limited liability company (formerly known as WEINGARTEN MILLER EQUIWEST SALT LAKE LLC, a Colorado limited liability company) ("3WSL"), 300 WEST OP II LLC, a Delaware limited liability company ("3WOPII"), and COLE CC SALT LAKE CITY UT, LLC, a Delaware limited liability company ("COLE").

WHEREAS, COLE is the owner of that certain parcel of real property located in Salt Lake County, Utah, the legal description of which is attached hereto as Exhibit A and incorporated herein by this reference (the "Benefited Property");

WHEREAS, 3WSL and 3WOPII 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 B and incorporated herein by this reference (collectively, the "Burdened Property"); and

WHEREAS, contemporaneously with the execution of this Declaration, AMERIFORK 300 WEST OP HOLDINGS LLC, a Delaware limited liability company and an affiliate of each of 3WSL and 3WOPII, conveyed the Benefitted Property to COLE 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. 3WSL covenants and agrees that no portion of the Burdened Property owned by 3WSL, and 3WOPII covenants and agrees that no portion of the Burdened Property owned by 3WOPII, shall be used for (a) a grocery store, meat or seafood market, produce market or ethnic grocery store, (b) the sale of groceries for off-premises consumption with a focus on wholesale or business customers or (c) 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 ("Exclusive Use"). Notwithstanding the foregoing, the Exclusive Use does not prohibit or restrict (and the Burdened Property may be used for) (i) the operation of a convenience store whose gross sales of groceries does not exceed 60% of its total gross sales, (ii) tenants occupying less than 2,500 square feet of

space, or (iii) the sale of groceries or the products listed in subpart (b) 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 Benefited Property is 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 the operator’s reasonable control (excluding financial inability). The restrictions contained herein shall not apply to any existing tenants of the Burdened Property as of the Effective Date provided, however, that such existing tenants shall not be exempt from these restrictions if (A) an owner of the Burdened Property, as the landlord under the lease with any such tenant, permits or agrees to an expansion of the tenant’s premises for any such permitted use which violates the Exclusive Use if such landlord may avoid granting or agreeing to such change, or (B) such landlord permits or agrees to the change of a permitted use by any such tenant or its successors or assigns if such landlord may avoid granting or agreeing to such change, or (C) such landlord permits or agrees to an assignment or sublease of such existing lease if such landlord may avoid the granting of such permission. 3WSL, for itself, and 3WOPII, for itself, each agree that all leases at the Burdened Property entered into by 3WSL or 3WOPII after the Effective Date hereof shall put such tenants on notice of this Exclusive Use.

2. 3WSL and 3WOPII, as the owners of the Burdened Property, acknowledge that any breach of the Exclusive Use restriction contained in this Declaration shall cause irreparable harm to the owner of the Benefited Property, and the 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 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 owner 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 Exclusive Use restriction 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 Exclusive Use restriction contained herein shall inure to the benefit of and be binding upon all owners and ground lessors, and their successors, transferees and assigns.

4. COLE, 3WSL and 3WOPII 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 the owner of the Benefitted Property or the owner or occupant of any portion 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 the Benefitted Property or any portion of the Burdened Property without the prior written consent of (a) the owner of the Benefitted Property and (b) the owner of such portion 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 COLE:

c/o VEREIT, Inc.
2325 E. Camelback Road, Suite 1100
Phoenix, Arizona 85016
Attn: P. Graham Singer, Esq. and Geri Wellner
Tel: (602) 778-8700
Email: gsinger@VEREIT.com and gwellner@VEREIT.com

If to 3WSL or 3WOPII:

300 WEST SALT LAKE LLC / 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 SALT LAKE LLC / 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 SALT LAKE LLC / 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.

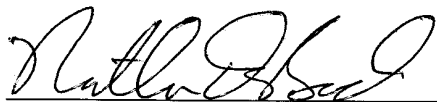
[Signatures appear on following pages]

IN WITNESS WHEREOF, COLE, 3WSL and 3WOPII have executed this Declaration as of the Effective Date.

COLE:

COLE CC SALT LAKE CITY UT, LLC,
a Delaware limited liability company

By: Cole REIT Advisors V, LLC,
a Delaware limited liability company,
its Manager

By: 
Nathan DeBacker
Vice President

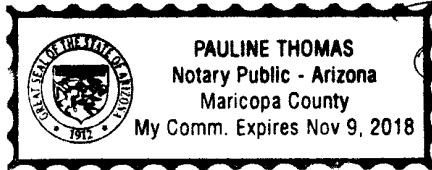
STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

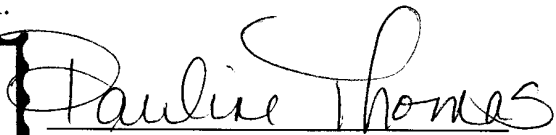
The foregoing instrument was acknowledged before me this 28th day of February, 2018, by Nathan DeBacker, as Vice President of Cole REIT Advisors V, LLC, a Delaware limited liability company, as Manager of COLE CC SALT LAKE CITY UT, LLC, a Delaware limited liability company, on behalf of such limited liability company.

My commission expires: 11/9/18

Witness my hand and official seal.

(SEAL)




Notary Public

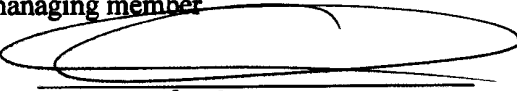
[Signature Page to Declaration of Restrictive Use Covenant]

3WSL:

300 WEST SALT LAKE 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

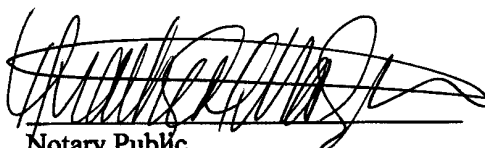
STATE OF Texas)
COUNTY OF Dallas)ss.

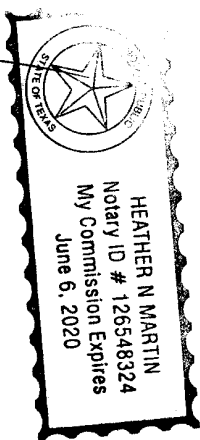
The foregoing instrument was acknowledged before me this 15 day of December, 2017, by Andrew Osborne, as Authorized Signatory of CF Amerifork 300 West LLC, a Delaware limited liability company, as managing member of Amerifork 300 West Holdings LLC, a Delaware limited liability company, as the sole member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

My commission expires: _____

Witness my hand and official seal.

(SEAL)


Notary Public



[Signature Page to Declaration of Restrictive Use Covenant]

3WOPII:

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: [Signature]
Name: Andrew Osborne
Title: Authorized Signatory

STATE OF TEXAS)
COUNTY OF DALLAS)ss.

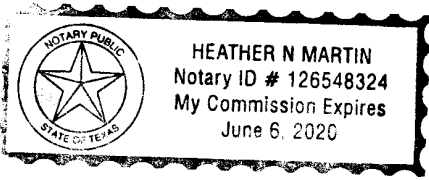
The foregoing instrument was acknowledged before me this 15 day of December, 2017, by Andrew Osborne as Authorized Signatory of CF Amerifork 300 West LLC, a Delaware limited liability company, as managing member of Amerifork 300 West Holdings LLC, a Delaware limited liability company, as the sole member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

My commission expires: June 6, 2020

Witness my hand and official seal.

(SEAL)

[Signature]
Notary Public



[Signature Page to Declaration of Restrictive Use Covenant]

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

Legal Description of Benefited Property

[Note to Draft: This legal description will be confirmed following recordation of the Lot Line Adjustments]

Lot 2 Adjusted Parcel (Tax ID No. 15-12-380-011): ALL OF LOT 2 OF 300 WEST TOWN CENTER SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT RECORDED OCTOBER 14, 2009, AS ENTRY NO. 10816796 IN PLAT BOOK 2009P, AT PAGE 148 AND A 30.00 FOOT PORTION OF LOT 1 OF SAID SUBDIVISION IMMEDIATELY EAST AND ADJACENT TO SAID LOT 2 ALONG THE EAST AND A PORTION OF LOT 4 OF SAID SUBDIVISION ALSO TO THE EAST, SAID PROPOSED LOT 2 BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2, AND RUNNING THENCE ALONG THE WEST AND NORTH LINES AND THE EASTERLY EXTENSION OF SAID NORTH LINE THE FOLLOWING FOUR (4) COURSES: 1) NORTH 0°13'50" EAST 134.00 FEET, 2) SOUTH 89°49'12" EAST 23.12 FEET, 3) NORTH 0°10'48" EAST 9.33 FEET, 4) SOUTH 89°49'12" EAST 246.29 FEET TO A POINT ON THE WEST LINE OF SAID LOT 4, SAID POINT ALSO BEING ON THE ARC OF A 126.44 FOOT NON TANGENT CURVE TO THE LEFT; THENCE NORTHERLY ALONG SAID WEST LINE THE FOLLOWING TWO (2) COURSES: 1) NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 1°16'30" A DISTANCE OF 2.81 FEET, CHORD BEARS NORTH 0°49'03" EAST 2.81 FEET, 2) NORTH 0°10'48" EAST 0.99 FEET; THENCE SOUTH 89°48'35" EAST 128.80 FEET; THENCE SOUTH 0°01'16" WEST 77.31 FEET; THENCE NORTH 89°48'57" EAST 9.04 FEET; THENCE SOUTH 0°03'37" WEST 69.86 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 4; THENCE NORTH 89°49'12" WEST ALONG THE SOUTH LINE OF SAID LOTS 2 & 4 A DISTANCE OF 407.76 FEET TO THE POINT OF BEGINNING. CONTAINS 58,017 S.F. OR 1.332 ACRES.

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

Legal Description of Burdened Property

Lots 6 and 7:

LOTS 6 AND 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

Lot 3 Adjusted Parcel (Tax ID No. 15-12-331-006):

BEGINNING AT THE SOUTHWEST CORNER OF LOT 3 OF 300 WEST TOWN CENTER SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT RECORDED OCTOBER 14, 2009, AS ENTRY NO. 10816796 IN PLAT BOOK 2009P, AT PAGE 148, AND RUNNING THENCE ALONG THE WEST AND NORTH LINES OF SAID LOT 3 THE FOLLOWING TWO (2) COURSES: 1) NORTH 0°06'06" EAST 246.91 FEET, 2) SOUTH 89°49'12" EAST 395.39 FEET; THENCE SOUTH 0°33'55" WEST 98.17 FEET; THENCE SOUTH 89°50'17" WEST 8.99 FEET; THENCE SOUTH 0°01'49" WEST 161.09 FEET TO THE SOUTH LINE OF SAID LOT 3; THENCE WESTERLY ALONG SAID SOUTH LINE THE FOLLOWING SEVEN COURSES: 1) NORTH 89°49'12" WEST 79.76 FEET, 2) SOUTH 0°10'48" WEST 61.72 FEET, 3) NORTH 89°49'12" WEST 187.68 FEET, 4) NORTH 0°10'48" EAST 9.33 FEET, 5) NORTH 89°49'12" WEST 25.57 FEET, 6) NORTH 0°13'50" EAST 64.98 FEET, 7) NORTH 89°56'16" WEST 92.87 FEET TO THE POINT OF BEGINNING. CONTAINS 112,691 S.F. OR 2.58 ACRES.

[Note to Draft: The legal description of Lot 3 will be confirmed following recordation of the Lot Line Adjustments]