

When Recorded, Return to:  
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Clark Hill PLC  
14850 North Scottsdale Road, Suite 500  
Scottsdale, Arizona 85254

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10/1/2021 8:13:00 AM \$40.00  
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RASHELLE HOBBS  
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FIFTH AMENDMENT TO CONSTRUCTION,  
OPERATION AND RECIPROCAL EASEMENT AGREEMENT

THIS FIFTH AMENDMENT TO CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT (this "Amendment") is made and entered into as of the 7<sup>th</sup> day of September, 2021, by CF III SH VALLEY FAIR, LLC, a Delaware limited liability company ("Developer") and COSTCO WHOLESALE CORPORATION, a Washington corporation ("Costco").

RECITALS

A. VFM-ALC LC, a Utah limited liability company ("VFM-ALC"), VFM-CPZ LC, a Utah limited liability company ("VFM-CPZ"), River Ridge VFM, L.L.C., a Utah limited liability company ("River Ridge"), Hill Field Holding VFM, L.L.C., a Utah limited liability company ("Hill Field") and Costco previously executed and delivered that certain Construction, Operation and Reciprocal Easement Agreement dated July 14, 2006 and recorded July 17, 2006 in the official records of Salt Lake County, Utah at Book 9322, Pages 7622-7670 (the "Original COREA"), as amended by a First Amendment to Construction, Operation and Reciprocal Easement Agreement dated June 12, 2009 and recorded June 30, 2009 in the official records of Salt Lake County, Utah at Book 9741, Pages 6810-6819 (the "First Amendment"), as amended further by an Amendment to Construction, Operation and Reciprocal Easement Agreement dated June 6, 2011 and recorded June 9, 2011 in the official records of Salt Lake County, Utah at Book 9929, Page 9110 (the "Second Amendment"), as amended further by an Amendment to Construction, Operation and Reciprocal Easement Agreement dated October 31, 2018 and recorded December 14, 2018 in the official records of Salt Lake County, Utah at Book 10741, Page 888 (the "Third Amendment"), as amended by a Fourth Amendment to Construction, Operation and Reciprocal Easement Agreement dated as of October 21, 2019 and recorded October 23, 2019 in the official records of Salt Lake County, Utah at Book 10849, pages 5496-5509 (the "Fourth Amendment"). The Original COREA, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment are collectively referred to herein as (the "REA").

B. Developer is the successor in interest to VFM-ALC, VFM-CPZ, River Ridge and Hill Field.

C. Developer, and Costco wish to amend the REA, subject to and in accordance with the further terms, covenants and provisions of this Amendment.

NOW, THEREFORE, in consideration of the execution and delivery of the REA, the foregoing Recitals, the mutual agreements, covenants and promises contained in this Amendment and other good and valuable considerations, the receipt, sufficiency and validity of which are hereby acknowledged, Developer and Costco agree as follows:

1. Definitions. Capitalized terms used without definition in this Amendment shall have the meanings assigned to such terms in the REA, unless the context expressly requires otherwise.

2. Parking Ratio. Section 4.5(c) of the REA is hereby amended and restated in its entirety as follows:

“(c) There shall be maintained at all times on the Remaining Developer Parking Area within the Developer Parcel as a whole (without regard to future subdivisions of the Developer Parcel), a number of parking spaces at least equal to the number of spaces which would be legally required for the Building sizes and uses on the Developer Parcel as a whole (without regard to future subdivisions of the Developer Parcel), as if the Developer Parcel were not benefited by any parking rights over any other parcels and no variances or exemptions from legal requirements were applicable. The “Remaining Developer Parking Area” means that portion of the Parking Area within the Developer Parcel which excludes the Excluded Parking. The “Excluded Parking” means, collectively: (i) the Parking Areas located on the Church Parcel (as that term is defined in the Fourth Amendment), it being acknowledged that parking on the Church Parcel is governed by the Fourth Amendment, and (ii) the Costco Control Area, it being acknowledged that parking for the Costco Control Area is governed by Section 4.5(d) below. There shall be maintained at all times on the Parking Area on the Costco Parcel as a whole (without regard to future subdivisions of the Costco Parcel), a number of parking spaces at least equal to the number of spaces which would be legally required for the Building sizes and uses on the Costco Parcel as if the Costco Parcel were not benefited by any parking rights over any other parcels and no variances or exemptions from legal requirements were applicable.”

In addition, Section 4.5(d) is amended and restated in its entirety as follows:

“(d) Notwithstanding the preceding subsection or anything contained herein to the contrary, there shall be maintained at all times on the Costco Parcel and the Developer Parcel (excluding, however, the Church Parcel, the parking on which is governed by the Fourth Amendment), to the extent the Parking is located within the Costco Control Area, not less than four (4) parking spaces for each one thousand (1,000) square feet of Floor Area utilized on such Parcel.”

3. Notices. Section 11.1 of the REA is hereby deleted and replaced in its entirety with the following:

“All notices herein provided for shall be given by registered mail or certified mail, postage prepaid, return receipt requested, or sent by overnight express carrier (e.g., Federal Express or Express Mail) for guaranteed next business day delivery. Notice shall be deemed given when so mailed and addressed. Either party may change such address by written notice to the other party as provided for herein. Notice shall be delivered as follows:

To Tenant: Costco Wholesale Corporation  
999 Lake Drive  
Issaquah, WA 98027  
Attn: Legal Dept/Property Management  
Re: Location #622 (West Valley UT)

To Landlord: Coventry Real Estate Advisors  
Attention: Legal Notices  
1 East 52nd Street, 4th Floor  
New York, New York 10022

With a copy to:

CF III SH Valley Fair, LLC  
c/o Vestar  
2425 East Camelback Road, Suite 750  
Phoenix, Arizona 85016  
Attention: President – Management Services

With a copy to:

David L. Lansky, Esq.  
Clark Hill PLC  
14850 North Scottsdale Road, Suite 500  
Scottsdale, Arizona 85254

4. Full Force and Effect. Except as expressly modified by this Amendment, the REA remains unmodified and in full force and effect. All references in the REA to “this REA” shall be deemed references to the REA as modified by this Amendment.

5. Conflict or Inconsistency. In the event any conflict or inconsistency between the terms and conditions of this Amendment and the terms and conditions of the REA, the terms and conditions of this Amendment shall control and govern.


6. Counterparts. This Amendment may be signed in any number of counterparts with the same effect as if the signatures to any counterpart were upon the same instrument.

7. Effect of this Amendment. Except as modified by the terms of this Amendment, all the provisions of the REA shall remain unmodified and binding on and running with the land subject to the REA.

IN WITNESS WHEREOF, Developer and Costco have executed and delivered this Amendment as of the date and year first above written.

**DEVELOPER:**

**CF III SH VALLEY FAIR, LLC,**  
a Delaware limited liability company

By:   
Name: Brian Moss  
Its: SVP

**COSTCO:**

**COSTCO WHOLESALE CORPORATION,**  
a Washington corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

DEVELOPER ACKNOWLEDGMENT

STATE OF   New York    
County of   Kings   ) ss.

On September   13  , 2021, before me,   VASHU PATEL  , a Notary Public in and for said state, personally appeared   Brian Moss  , personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



\_\_\_\_\_  
Notary Public in and for said State

VASHU PATEL  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01PA6334587  
Qualified in KINGS County  
Commission Expires 12/21/2023

IN WITNESS WHEREOF, Developer and Costco have executed and delivered this Amendment as of the date and year first above written.

**DEVELOPER:**

**CF III SH VALLEY FAIR, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**COSTCO:**

**COSTCO WHOLESALE CORPORATION,**  
a Washington corporation

By: Carl E. Touben  
Name: Carl E. Touben  
Its: AVP / Assistant Secretary



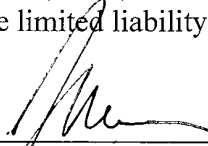
CONSENT AND SUBORDINATION

PFP IV Sub I, LLC, a Delaware limited liability company ("Lender"), is the beneficiary under that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, recorded on February 5, 2015 as Instrument No. 11987744; Book 10293, Page 7917-7943 in the official records of Salt Lake County, Utah (the "Mortgage"). Lender hereby consents to and approves this Fifth Amendment to Construction, Operation and Reciprocal Easement Agreement to which this consent is attached (the "Fifth Amendment") and hereby acknowledges and agrees that the Mortgage and any other security instruments securing Lender's loan shall be subject to the terms and conditions of the Fifth Amendment.

DATED this \_\_\_\_ day of September, 2021.

LENDER:

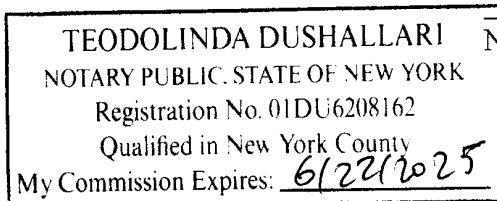
PFP IV SUB I, LLC,  
a Delaware limited liability company

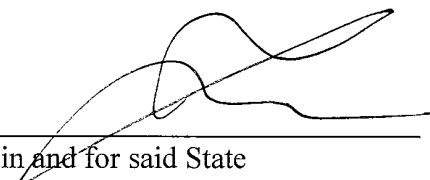
By:   
Name: Jon W. Brayshaw  
Its: Authorized Signatory

STATE OF New York )  
County of New York ) ss.

On September 13<sup>th</sup>, 2021, before me, Teodolinda Dushallari, a Notary Public in and for said state, personally appeared Jon W. Brayshaw, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



  
Notary Public in and for said State