

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

12705613
1/26/2018 2:04:00 PM \$34.00
Book - 10642 Pg - 697-706
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 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"), AMERIFORK 300 WEST OP HOLDINGS LLC, a Delaware limited liability company ("A3WOPH"), and POCO LOCOS HOLDINGS, LLC, a Utah limited liability company ("POCO LOCOS").

WHEREAS, POCO LOCOS 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 A3WOPH 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, 300 WEST OP II LLC, a Delaware limited liability company and an affiliate of each of 3WSL and A3WOPH, conveyed the Benefited 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. 3WSL covenants and agrees that no portion of the Burdened Property owned by 3WSL, and A3WOPH covenants and agrees that no portion of the Burdened Property owned by A3WOPH, shall be used for the purpose of operating a fast food restaurant which sells prepared chicken, such as, but not limited to, Kentucky Fried Chicken, Church's, Popeye's and Chik-Fil-A, unless 3WSL or A3WOPH, as the case may be, first obtains the approval of POCO LOCOS, which approval may be withheld in POCO LOCOS's sole discretion (the "Restrictive Covenant"). Notwithstanding the foregoing, the Burdened Property may be used for the purpose of operating (a) Asian restaurants; (b) restaurants that sell prepared chicken on an incidental basis, where "incidental basis" is defined as sales of prepared chicken constituting less than thirty percent (30%) of the restaurant's total gross sales; and (c) sit-down restaurants with waiters and table service that are not

1445817.3 Tax Parcel I.D. 15-12-404-008-0000; 15-12-380-011-0000; 15-12-404-007-0000;
15-12-331-006-0000

considered “fast food restaurants.” The Restrictive Covenant shall not apply to 3WSL’s or A3WOPH’s present tenants (*i.e.*, tenants whose leases have been signed prior to the Effective Date), or such tenants’ assignees or sublessees, whose leases permit any lawful use or permit the operation of a business that otherwise would violate the Restrictive Covenant; provided, however, that if the consent of 3WSL or A3WOPH, as the landlord under any such lease, is required for such competing use and 3WSL or A3WOPH, as the case may be, is entitled to withhold its consent without affecting the term of the applicable lease or the rent to be paid thereunder, then 3WSL or A3WOPH, as the case may be, shall not consent to such competing use. Notwithstanding anything to the contrary contained in this Declaration, if at any time following the Effective Date, the Benefitted Property ceases to be operated as an El Pollo Loco restaurant, then the Restrictive Covenant shall be immediately rendered null and void and this Declaration shall terminate; provided, however, that temporary cessations due or related to any one or more of the following events or circumstances will not trigger such a termination: (i) legal holidays; (ii) compliance with applicable legal requirements or those of El Pollo Loco’s franchisor, (iii) union agreements and labor restrictions; (iv) orders of any duly constituted authority having jurisdiction over the Benefitted Property or business conducted thereon; (v) the need to make necessary repairs, improvements or renovations, including those which may be required by El Pollo Loco’s franchisor (provided that closure for voluntary remodeling shall not exceed one hundred twenty (120) days every five (5) years); and (vi) periods when the operator of the El Pollo Loco restaurant is prevented from operating the Benefitted Property due to casualty, condemnation or other events of “force majeure.”

2. 3WSL and A3WOPH, as the owners of the Burdened Property, acknowledge that any breach of the Restrictive Covenant shall cause irreparable harm to POCO LOCOS, as the owner of the Benefitted Property, and POCO LOCOS 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. POCO LOCOS shall also be entitled to seek damages for breach of this Declaration. All of the remedies permitted or available to POCO LOCOS 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 Restrictive Covenant contained herein shall be appurtenant to and for the benefit of the Benefitted 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 Restrictive Covenant 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, 3WSL and A3WOPH 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 3WSL or A3WOPH:

300 WEST SALT LAKE LLC / AMERIFORK 300 WEST OP HOLDINGS 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 / AMERIFORK 300 WEST OP HOLDINGS 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 / AMERIFORK 300 WEST OP HOLDINGS 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

If to POCO LOCOS:

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

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]

If to POCO LOCOS HOLDINGS:

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

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.

IN WITNESS WHEREOF, POCO LOCOS HOLDINGS and 3WSL and A3WOPH have executed this Declaration as of the Effective Date.

POCO LOCOS HOLDINGS, LLC:

POCO LOCOS HOLDINGS, LLC
a Utah limited liability company

By: 

Name: LEE ALVAREZ

Title: C.F.O.

CALIFORNIA ACKNOWLEDGMENT

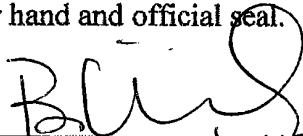
A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness accuracy or validity of that document.

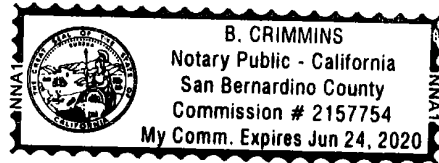
State of California
County of San Bernardino

On 12/20/17, 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  (Seal)
My commission expires: 6/24/20



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 5 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)

[Signature]
Notary Public



[Signature Page to Declaration of Restrictive Use Covenant]

A3WOPH:

AMERIFORK 300 WEST OP HOLDINGS 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.

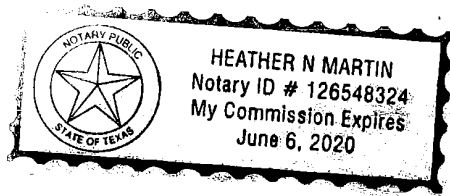
The foregoing instrument was acknowledged before me this 15 day of December, 2017, by Andrew Osborne, as Authorized Signatory of CF Amerifork 300 West LLC, a Delaware limited liability company, as managing member of Amerifork 300 West Holdings LLC, a Delaware limited liability company, as the sole member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

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 B
TO
DECLARATION OF RESTRICTIVE USE COVENANT**

Legal Description of Burdened Property

LOTS 2, 3 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