

WHEN RECORDED, RETURN TO:

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APN: 15-33-251-008, 15-33-251-011, 15-33-201-015-2000,
15-33-251-007, 15-33-201-013, 15-33-201-006

CT-148093-CA07

**FIRST AMENDMENT TO SUPPLEMENTAL DECLARATION OF
COVENANTS AND RESTRICTIONS**

This **FIRST AMENDMENT TO SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS** (the "**Amendment**") is made and entered into as of the 15 day of February, 2022 by **CF III SH VALLEY FAIR LLC**, a Delaware limited liability company ("**Developer**") and **AGTL West Valley Owner, L.L.C.**, a Delaware limited liability company ("**AGTL**").

RECITALS

A. Developer and **STAY VFM, LLC**, a Utah limited liability company ("**SC**") previously executed and delivered that certain Supplemental Declaration of Covenants and Restrictions date October 25, 2019 and recorded on October 25, 2019 in the official records of Salt Lake County, Utah in Book 10850, Page 7940 (the "**Supplemental Declaration**")

B. **AGTL** is the current owner of the **SC Parcel**, as described on Exhibit A attached hereto, and has succeeded to all of the right, title, interest, duties and obligations of **SC** in, to and under the Supplemental Declaration as to the **SC Parcel**.

C. Developer and **AGTL** have agreed to amend the Supplemental Declaration, 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 Supplemental Declaration, 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 **AGTL** agree as follows:

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

2. **Status of AGTL.** **AGTL** represents that it is the successor to all of the right, title, interest, duties and obligations of **SC** in, to and under the Supplemental Declaration with respect to the **SC Parcel**. As such, **AGTL** hereby assumes all of the duties and obligations of **SC** under

the Supplemental Declaration with respect to the SC Parcel. As a result, all references in the Supplemental Declaration to SC (as distinguished from references to the SC Parcel) shall be deemed references to AGTL.

3. **Construction Timing.**

a. The last two (2) sentences of **Paragraph B** of the Supplemental Declaration are amended and restated in their entirety as follows:

AGTL shall commence construction of the building(s) and improvements to be located on the SC Parcel for the Initial Use on or before October 1, 2022 and SC shall cause construction of such building(s) and improvements to be completed and open for business for the Initial Use not later than September 30, 2024 (the "**Construction Deadline**"). AGTL shall diligently prosecute such construction to completion without interruption. Notwithstanding the foregoing, all parties agree that if delayed due to a Force Majeure Event (defined below), the Construction Deadline shall be extended according to the nature of the event, but only if the following conditions have been met: (1) construction shall have commenced on or prior to October 1, 2022 and (2) the project shall be at least seventy-five percent (75%) complete by the original Construction Deadline.

b. The first sentence of **Paragraph D.1** of the Supplemental Declaration is hereby amended to replace "within thirty-six (36) months following the Record Date" with "within the time period set forth in Paragraph B above".

4. **Force Majeure Event.** Whenever performance is required of a party (or its contractor(s)) under this Supplemental Declaration the obligation for such performance shall be extended only as provided in this paragraph and then, only to the extent such performance is delayed despite such party (or its contractor(s)) having taken all commercially reasonable measures and used all due diligence to perform in accordance with this Supplemental Declaration. If completion of performance shall be delayed at any time by reasons of (i) acts of God, (ii) war, (iii) civil commotion, (iv) riots, (v) epidemics or pandemics (or pandemic-related material shortages for which there is no reasonable substitute), (vi) strikes, (vii) picketing or other labor disputes, (viii) damage to work in progress by reason of fire or other casualty or (ix) other causes beyond the reasonable control of a party (or its contractor(s)) (other than unavailability of labor or materials (except as expressly provided in clause (v) above), financial reasons or default by the general contractor or any other contractor(s)) (each a "**Force Majeure Event**") then, provided the party (or its contractor(s)) claiming a delay due to a Force Majeure Event advises the other party of the circumstances supporting such claim within fifteen (15) days after the event, the time for performance as specified in this Supplemental Declaration shall be appropriately extended by the period of the delay actually caused; provided, however, the failure to timely provide notice of a Force Majeure Event shall be deemed a waiver of the additional time claim. The provisions of this paragraph shall not operate to excuse any party from the prompt payment of any monies required to be paid by this Supplemental Declaration.

5. **No Repurchase Notice.** Developer hereby affirms that as of the date of this Amendment it has not sent an Election Notice pursuant to **Paragraph D** of the Supplemental Declaration or otherwise previously elected to exercise the right to repurchase the SC Parcel.

6. **Pedestrian Connectivity.** Developer and AGTL acknowledge and agree that in connection with Developer's approval of the Initial Use for the SC Parcel and in connection with the approval of the City of West Valley City, Utah to the Initial Use, SC agrees to construct and install, at its sole cost and expense, pedestrian connectivity from the SC Parcel to the entrance to the Shopping Center (all as more particularly described on **Exhibit D** to the Development Agreement between SC and the City of West Valley City, Utah). For the avoidance of doubt, AGTL expressly assumes the obligation of SC to install such pedestrian connectivity and such pedestrian connectivity shall be constructed as a component of the building(s) and improvements on the SC Parcel and completion of such pedestrian connectivity, in accordance with plans and specifications approved by Developer pursuant to **Paragraph B** of the Supplemental Declaration and in accordance with plans and specifications approved by the City of West Valley City, Utah shall be a condition to completion of the building(s) and improvements on the SC Parcel for the purposes of **Paragraph B** of the Supplemental Declaration.

7. **Full Force and Effect.** Except as expressly modified by this Amendment, the Supplemental Declaration remains unmodified and in full force and effect. All references in the Supplemental Declaration to "**this Supplemental Declaration**" shall be deemed references to the Supplemental Declaration as modified by this Amendment.

8. **Address for Notices.** Notices to AGTL shall be transmitted to the following address:

c/o Timberlane Partners
1816 11th Avenue, Unit C
Seattle, WA 98122
Attn: Dave Enslow
Email: dave@timberlanepartners.com

With a copy to:

Stoel Rives LLP
201 S Main St., Suite 1100
Salt Lake City, UT 84111
Attn: Melanie Clark
Email: melanie.clark@stoel.com

With a copy to:

c/o Angelo, Gordon & Co., L.P.
245 Park Avenue, 24th Floor
New York, New York 10167
Attention: Scott Glassberg
Email: sglassberg@angelogordon.com

With a copy to:

Duval & Stachenfeld LLP
555 Madison Avenue, 6th Floor
New York, New York 10022
Attention: Terri L. Adler, Esq. and File Manager
File No.: 2009.2474
Email: tadler@dslip.com

Notice to AGTL shall be in lieu of notices to SC.

9. **Mutual Estoppel.** As of the date this Amendment is recorded in the official records of Salt Lake County, Utah, Developer and AGTL confirm for each other as follows:

- (a) The Supplemental Declaration, as amended by this Amendment, is in full force and effect;
- (b) Neither AGTL nor Developer has transmitted a notice of breach or default to the other; and
- (c) No state of facts exist or event has occurred that, with the giving of notice or the passage of time, or both, would constitute a breach or default by Developer or AGTL under the Supplemental Declaration, as amended by this Amendment.

[Signatures on Following Page(s)]

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

DEVELOPER:

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

By: *Brian Moss*
Name: Brian Moss
Its: V.P.

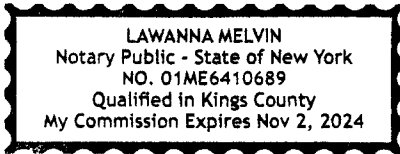
STATE OF NEW YORK)
County of KINGS) ss.

On FEBRUARY 15TH 2022, before me, LAWANNA MELVIN, a
Notary Public in and for said state, NY 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.

LAWANNA MELVIN

Notary Public in and for said State
My commission expires: 11.2.2024



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

EXHIBIT A
SC PARCEL

Beginning at a point on the North line of 3800 South Street which is 396 feet North 89°56'00" East along the Quarter Section line and North 30.00 feet from the center of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 630.31 feet (measured North 0°00'44" East 630.36 feet to a point on the South line of that property defined by a Special Warranty Deed found in Book 9555, Page 7461), thence East 253.08 feet (measured North 89°57'20" East 252.93 feet along said line to a point on the West property line as defined by said Special Warranty Deed), thence South 0°04'00" East 630.01 feet along an existing fence to the North right of way line of 3800 South Street (measured the following three calls as defined by said Special Warranty Deed South 0°04'00" East 330.16 feet, thence East 1.11 feet, thence South 0°04'00" East 300.83 feet), thence South 89°56'00" West 253.81 feet (measured 254.10 feet) along the North line of 3800 South Street to the point of beginning.

Tax Parcel Numbers: 15-33-251-008-0000 & 15-33-251-011-0000

Street Address: 2600 West 3800 South, West Valley City, UT 84119