

RECORDED

JAN 03 2020

CITY RECORDER

When recorded, mail to:

Redevelopment Agency of Salt Lake City  
ATTN: Executive Director  
451 South State Street, Room 418  
PO Box 145518  
Salt Lake City, Utah 84114-5518

CT-110915-CAF

TIN 15-12-277-021

13204214

2/27/2020 1:17:00 PM \$40.00

Book - 10902 Pg - 3114-3125

RASHELLE HOBBS

Recorder, Salt Lake County, UT

COTTONWOOD TITLE

BY: eCASH, DEPUTY - EF 12 P.

### INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this "Agreement") is made and entered into as of December 9, 2019, by and among the REDEVELOPMENT AGENCY OF SALT LAKE CITY, a public entity ("Agency"), MOUNTAIN WEST DEBT FUND, LP, a Delaware limited partnership ("Bank"), and CW THE CHARLI PARTNERSHIP, LP, a Delaware limited partnership ("Borrower"), collectively referred to herein as the "Parties" or individually as a "Party".

### RECITALS

- A. Bank has agreed to make a loan to Borrower in the original principal amount of up to Nineteen Million Six Hundred Thirty Thousand and No/100ths Dollars (\$19,630,000) (together with any increases, renewals, modifications or extensions thereof, and any interest thereon, and all costs of collecting the same, the "Senior Loan") which will be disbursed pursuant to the terms and conditions of a loan agreement executed by Bank and Borrower (the "Senior Loan Agreement") to provide Borrower with a portion of the funds necessary to renovate and new construction of a residential project (collectively, the "Construction Work"). The Building is situated on certain real property located at approximately 55 West 800 South, Salt Lake City, Utah and more particularly described on Exhibit A attached hereto and incorporated herein by reference (together with the Building, the "Property").
- B. The Senior Loan will be secured by a deed of trust and other related security instruments, all or some of which will encumber the Property (collectively, the "Senior Security Documents").
- C. Agency has agreed to make a loan to Borrower in the original principal amount of up to Two Million Three Hundred Thirty-five Thousand and No/100ths Dollars (\$2,335,000.00) (together with any increases, renewals, modifications or extensions thereof, and any interest thereon, and all costs of collecting the same, the "Agency Loan") which will be disbursed to Borrower pursuant to the terms and conditions of a loan agreement executed by Agency and Borrower (the "Agency Loan Agreement") to provide Borrower with a portion of the funds necessary to pay the costs of the Construction Work.

- D. The Agency Loan will be secured by a deed of trust and other security instruments, all or some of which will encumber the Property (collectively, the "**Agency Security Documents**").
- E. Upon the recordation of the Senior Security Documents and the Agency Security Documents, both Bank and Agency will have a lien against the Property to secure repayment of their respective loans; and
- F. This Agreement sets forth the rights and obligations of the Parties with respect to the Senior Loan and the Agency Loan and the disbursement of proceeds thereof.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bank and Agency hereby agree as follows:

1. **Recitals Incorporated.** The recitals set forth hereinabove are incorporated herein by reference to the same extent and with the same force and effect as if fully set forth hereinbelow, *provided, however*, that such recitals shall not be deemed to modify the express provisions hereinafter set forth.

2. **Definitions.** As used herein, the following terms shall have the meanings given them below.

(a) "**Agency Loan Documents**" means the Agency Loan Agreement, the Agency Security Documents, and all other documents which evidence, guaranty or secure repayment of the Agency Loan.

(b) "**Bankruptcy Code**" means Title 11, United States Code, as amended from time to time, any successor statute thereto, and any rules promulgated pursuant thereto.

(c) "**Condominium Declaration**" means the Condominium Declaration to be recorded against a portion of the Property in accordance with Utah Code Ann. § 57-8-10.

(d) "**Enforcement Action**" means the commencement by Bank or Agency of any enforcement action against, or the taking of possession or control of, or the exercise of any remedies with respect to Borrower or any Guarantor.

(e) "**Guarantor**" means any guarantor of the obligations of Borrower under the Senior Loan Documents or the Agency Loan Documents.

(f) "**Senior Loan Documents**" means the Senior Loan Agreement, the Senior Security Documents, and all other documents which evidence, guaranty or secure repayment of the Senior Loan.

3. **Effectiveness of Agreement.** This Agreement shall be effective immediately upon the execution hereof by the parties hereto and shall remain in effect so long as both the Senior Loan and the Agency Loan remain outstanding.

4. **Commitment to Lend.** Bank acknowledges and agrees for the benefit of Agency that as of the date of this Agreement, the Senior Loan has been committed and will be available for disbursement to pay costs of the Construction Work on and subject to the terms and conditions of the Senior Loan Documents and this Agreement. Agency acknowledges and agrees for the benefit of Bank that as of the date of this Agreement, the Agency Loan has been committed and will be available for disbursement to pay costs of the Construction Work on and subject to the terms of the Agency Loan Documents and this Agreement. Borrower, Bank, and Agency agree that Agency Loan funds shall not be disbursed until the Borrower's equity is fully drawn down, and that any disbursement of Agency Loan funds and Senior Loan funds shall be drawn on a basis of 88% Senior Loan funds and 12% Agency Loan funds until Agency Loan funds are fully disbursed then 100% Senior Loan funds.

5. **Consents to Loans and Loan Documents.**

(a) **Consent to Senior Loan.** Agency hereby (i) consents to the making of the Senior Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Senior Loan Documents, and (ii) acknowledges and agrees that neither the execution and delivery of the Senior Loan Documents nor the performance by Borrower of its obligations thereunder will constitute a Default under the Senior Loan Documents.

(b) **Consent to Agency Loan.** Bank hereby (i) consents to the making of the Agency Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Agency Loan Documents, and (ii) acknowledges and agrees that neither the execution and delivery of the Agency Loan Documents nor the performance by Borrower of its obligations thereunder will constitute a Default under the Agency Loan Documents.

6. **Subordination of Agency Loan and Security Documents.** Upon the execution of this Agreement, some or all of the Senior Security Documents and the Agency Security Documents will be recorded against the Property. By execution of this Agreement, Agency hereby agrees that:

(a) Subject to Section 7 hereof, the Agency Loan Documents, as well as all of Agency's rights and remedies under the Agency Loan Documents and in and to the Property, are hereby expressly made subject and subordinate in all respects to the Senior Loan (including, without limitation, any future advances by Bank to protect the Property or Bank's lien thereon or rights thereto), and to all of Bank's rights and remedies under the Senior Loan Documents and in and to the Property and to all of the terms and conditions of the Senior Loan Documents. Agency hereby agrees that it will not, without Bank's express prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, accept any payments on account of the Agency Loan until such time as the Senior Loan has been satisfied in full; provided, however, Borrower shall be permitted to make, and Agency may accept, regularly scheduled payments of accrued interest owing under the Agency Loan Documents so long as a default shall not have occurred under the Senior Loan Documents.

(b) Subject to Section 7 hereof, regardless of the order of recording, the Senior Security Documents encumbering the Property and any modifications, renewals or extensions thereof, shall unconditionally be and at all times remain a lien or charge on the Property prior and superior to the Agency Security Documents encumbering the Property.

(c) No Party shall object to or contest, or support any other person in contesting or objecting to the validity, perfection, priority or enforceability of any security interest in the Property granted pursuant to the Senior Security Documents or the Agency Security Documents. Notwithstanding anything to the contrary in the Senior Loan Documents or the Agency Loan Documents, or the failure of either Bank or Agency to perfect any security interest in the Property granted pursuant to the Senior Loan Documents or the Agency Loan Documents, respectively, the priority and rights with respect to the Property as between Bank and Agency shall be as set forth herein.

7. **Subordination of Senior Loan Documents and Agency Loan Documents to Condominium Declaration.** By executing this Agreement, each of Agency and Bank hereby agrees that, regardless of the order of recording, both (a) the Senior Loan Documents and all of Bank's rights and remedies thereunder and (b) the Agency Loan Documents and all of Agency's rights and remedies thereunder shall be, and are hereby expressly made, subject and subordinate in all respects to the terms, conditions and provisions of the Condominium Declaration. In addition, each of the Agency and Bank hereby agrees to execute such further documents and agreements with respect to any and all of the Condominium Documents (as defined in the Agency Loan Agreement) as may be appropriate in order to effectuate the foregoing subordination of the Senior Loan Documents and the Agency Loan Documents to the Condominium Documents.

8. **Disbursements.**

(a) **Senior Loan Disbursements.** Concurrently with Borrower's delivery to Bank of each request for a disbursement from the Senior Loan, Borrower shall provide to Agency a copy of such disbursement request, together with copies of all supporting documents required to be submitted by Borrower as a condition to funding of such disbursement request in accordance with the terms and conditions of the Senior Loan Documents.

(b) **Agency Loan Disbursements.** Concurrently with Borrower's delivery to Agency of each request for disbursement from the Agency Loan, Borrower shall provide to Bank a copy of such disbursement request, together with copies of all supporting documents required to be submitted by Borrower as a condition to funding of such disbursement request in accordance with the terms and conditions of the Agency Loan Documents.

9. **Cross Default.** The Parties agree that the existence of a default under either of the Senior Loan Documents or the Agency Loan Documents will, at the option of Bank or Agency, as applicable, constitute a default under the Senior Loan Documents or the Agency Loan Documents. Bank and Agency may rely on any written notice of default received from any Party as conclusive evidence of a default under the Agency Loan or the Senior Loan, respectively.

10. **Certain Actions Regarding Agency Loan.** Until such time as the Senior Loan shall have been paid in full, together with any and all other amounts which shall be due and payable under the terms of the Senior Loan Documents, Agency shall not commence any legal proceedings against Borrower or any Guarantor or commence any Enforcement Action without the prior written consent of Bank, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, in the event that Bank should declare a default under the Senior Loan Documents, Agency shall have the right to declare a default under the Agency Loan and to accelerate all indebtedness under the Agency Loan.

11. **Modification of Loans.** This Agreement shall be a continuing agreement, and subject to the consent of Borrower, either Bank or Agency may amend, modify or make other changes to the Senior Loan Documents or Agency Loan Documents, respectively, of whatever nature without any prior written notice to or consent from the other, except that (a) that neither Bank nor Agency may, without prior written notice to and consent of the other, reduce the loan proceeds committed by such lender for the Construction Work, and (b) Bank may not increase the principal amount of the Senior Loan or the interest rate payable thereon without the prior written consent of Agency. Bank and Agency shall each exercise reasonable discretion in either accepting or rejecting any proposed modifications that would require consent.

12. **Default Notices; Agency's Cure Rights.**

(a) Concurrently with the delivery by Bank to Borrower of any written notice of default under the Senior Loan Documents, Bank will deliver to Agency a copy of such notice of default. Concurrently with the delivery by Agency to Borrower of any written notice of default under the Agency Loan Documents, Agency will deliver to Bank a copy of such notice of default.

(b) Upon delivery to Agency of a notice of default under the Senior Loan Documents, Agency shall have the right, but not the obligation, to cure (i) any monetary default under the Senior Loan Documents within five (5) business days after the later of (1) the receipt of the default notice by Agency, or (2) the expiration of Borrower's cure period for such monetary default, if any, provided in the Senior Loan Documents; and (ii) any non-monetary default under any of the Senior Loan Documents within thirty (30) days after the later of (A) the receipt of the default notice by Agency, or (B) the expiration of Borrower's cure period for such non-monetary default, if any, provided in the Senior Loan Documents; provided, however, that if such non-monetary default cannot be cured within such thirty (30) day period, the cure period shall be extended for a period reasonably necessary (but not more than one hundred twenty days (120) days) to cure such default, as long as Agency commences such cure within such thirty (30) day period and pursues such cure with reasonable diligence. During any such cure period, Bank shall forbear from exercising its remedies under the Senior Loan Documents, except for any remedy that is necessary to preserve or protect the Property from and against waste or deterioration in value if failing to exercise such remedy would result in a material adverse effect on the value of the Property.

13. **Bankruptcy.** This Agreement shall be applicable and enforceable both before and after the commencement, whether voluntary or involuntary, of any case by or against Borrower or

any Guarantor under the Bankruptcy Code, and all references herein to Borrower or any Guarantor shall be deemed to apply to Borrower or any Guarantor as a debtor-in-possession and to any trustee in bankruptcy for the estate of Borrower or any Guarantor.

14. **Notices.** All notices, demands, or other communications under this Agreement shall be in writing and shall be delivered to the appropriate Party at the address set forth below (subject to change from time to time by written notice to all other parties to this Agreement). All communications shall be deemed served upon delivery of, or if mailed, upon the first to occur of receipt or the expiration of three (3) days after the deposit in the United States Postal Service mail, postage prepaid and addressed to the address of the Party at the address specified; provided, however, that non-receipt of any communication as the result of any change of address of which the sending Party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

If to Bank: Mountain West Debt Fund, LP  
c/o Taylor Derrick Capital, L.L.C.  
357 West 200 South, Ste. 200  
Salt Lake City, Utah 84101  
Attn: Andrew Menlove

If to Agency: Redevelopment Agency of Salt Lake City  
Room 418, City and County Building  
451 South State Street  
Salt Lake City, Utah 84111  
Attn: Chief Operating Officer

If to Borrower: CW The Charli Partnership, LP  
c/o CW Urban  
1222 Legacy Crossing Boulevard #6  
Centerville, UT 84014  
Attn:

15. **Costs and Attorneys' Fees.** In the event any Party commences a Proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party or Parties, to be fixed by the court in the same action. The term "Proceeding" shall include appeals from a lower court judgment as well as proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters.

16. **Further Assurances.** Borrower agrees that, within three (3) days after request by Bank or Agency, Borrower shall do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances and instruments as Bank or Agency may request for the better assuring and evidencing of the foregoing agreements, including, but not limited to, the execution and delivery of documents to confirm the foregoing agreements upon and with respect to any refinancing or replacement of the Senior Loan or the Senior Loan Documents or the Agency Loan or the Agency Loan Documents.

17. Miscellaneous.

(a) Agreement Binding. All of the covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. This Agreement may not be changed, modified, or discharged except by a writing signed by the Parties.

(b) Relationship of the Parties. Except as expressly provided in this Agreement, nothing herein shall be deemed or construed by the Parties or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the Parties, it being understood and agreed that no provision herein, nor any acts of the Parties, shall be deemed to create any such relationship between the Parties.

(c) Remedies Not Exclusive. The various rights and remedies herein contained and reserved to each of the Parties, except as herein otherwise expressly provided, are not exclusive of any other right or remedy of such Party, but are cumulative and in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy by either Party, shall impair any such right, power or remedy by either Party, or be construed as a waiver of any default or non-performance or as acquiescence therein.

(d) No Presumption. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against any Party. Each Party represents and warrants to the other Parties that they have been represented by, and have had the opportunity to consult with, legal counsel in connection with the review, negotiation and execution of this Agreement.

(e) No Other Agreements. The terms set forth in this Agreement are intended by the Parties as a final expression of their agreement with respect to such terms and may not be contradicted or supplemented by evidence of any prior agreement or of any contemporaneous oral agreement. This Agreement is intended to be a complete and exclusive statement of the terms of the agreement between the Parties and the terms of this Agreement may not be explained or supplemented by evidence of consistent additional terms.

(f) Authority. The individuals who execute this Agreement represent and warrant that they are duly authorized to execute this Agreement on behalf of Bank, Agency and Borrower, as the case may be, that the Parties named are all the necessary and proper Parties, and that no other signature, act or authorization is necessary to bind such entity to the provisions of this Agreement.

(g) Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of Utah.

(h) Jury Waiver. THE PARTIES VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN ANY PARTIES HERETO

ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

(i) Representation by Parties Regarding Ethical Standards. Each of Bank and Borrower represents that it has not (1) provided an illegal gift or payoff to an Agency or a Salt Lake City officer or employee or former Agency or Salt Lake City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business as more particularly set forth herein; (3) knowingly breached any of the ethical standards set forth in Salt Lake City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, an Agency or a Salt Lake City officer or employee or former Agency or Salt Lake City officer or employee to breach any of the ethical standards set forth in Salt Lake City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

(j) Acknowledgement. Agency acknowledges that it is an agency of the State of Utah and as such is subject to and bound by the provisions of the Utah Governmental Immunity Act, *Utah Code Annotated* Section 63-30-1 *et. seq.* (the "Act"). No covenant, provision, or agreement contained in the Agency Loan Documents or this Agreement shall be deemed to be a waiver of any of the rights of Agency under the Act.

(k) Invalidity. If any term, covenant, condition or agreement of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant, condition or agreement to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition or agreement of this Agreement shall be valid and shall be enforced to the extent permitted by law.

(l) Counterparts. To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

*[Signature Page Follows]*





**BANK SIGNATURE PAGE:**

MOUNTAIN WEST DEBT FUND, LP,  
a Delaware limited partnership

By: \_\_\_\_\_

Name: Rocky Derrick  
Title: Managing Partner

STATE OF UTAH )  
COUNTY OF Salt Lake ) : ss

The foregoing Intercreditor Agreement was acknowledged before me this 8<sup>th</sup> day of JANUARY, 2020 by Rocky Derrick, a Managing Partner of MOUNTAIN WEST DEBT FUND, LP, a Delaware limited partnership.

\_\_\_\_\_  
Notary Public

Residing at: SALT LAKE CITY, UTAH

My commission expires: 09/07/2021





**EXHIBIT A**

**Legal Description of Property**

That certain real property located in Salt Lake County, Utah, more particularly described as follows:

Beginning at the Northwest corner of Lot 11, Walkers Subdivision of Block 4, Plat "A", Salt Lake City Survey; said point being on the south right-of-way line of 800 South Street; said point also being North 89°56'40" East, along the monument line, 222.87 feet and North 00°03'20" West, 723.61 feet from a Salt Lake City Survey Monument located in the intersection of 900 South Street and West Temple Street; and running thence South 89°55'15" East, along the south right-of-way line of 800 South Street, 141.00 feet to a point on the west right-of-way line of Richards Street; thence South 00°01'41" East, along said west right-of way line of Richards Street, 245.00 feet to a point on the north line of Lot 13 of said Walkers Subdivision; thence North 89°55'15" West, along said north line of Lot 13, 141.00 feet; thence North 00°01'48" West, 245.00 feet to the point of beginning.

HB #74457

Exhibit A to Intercreditor Agreement

PROPERTY OF SALT LAKE  
CITY RECORDER'S OFFICE  
P.O. BOX 145515  
SALT LAKE CITY, UTAH 84114-5515  
*BK 10902 PG 3125*