

WHEN RECORDED MAIL TO:

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

File No.: 105176-DMP

12954845
3/22/2019 3:17:00 PM \$36.00
Book - 10763 Pg - 690-703
RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 14 P.

OPTION TO REPURCHASE AGREEMENT

In Reference to Tax ID Number(s):

08-36-205-047

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

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

(Above space for recorder's use only)

OPTION TO REPURCHASE AGREEMENT

This Option to Repurchase Agreement ("**Agreement**") is made and entered into as of the 20 day of March, 2019 ("**Effective Date**"), by and between the Redevelopment Agency of Salt Lake City, a public agency ("**RDA**"), and WW SLC Owner VIII, L.L.C., a Delaware limited liability company ("**Owner**"), both of whom are collectively referred to herein as the "**Parties**", and individually as a "**Party**."

RECITALS

- A. In accordance with the terms of that certain Purchase and Sale Agreement dated as of August 25, 2016, as amended, ("**Purchase Agreement**"), and pursuant to that Special Warranty Deed which was recorded on the Effective Date ("**Deed**"), the RDA sold and the Owner purchased certain real property located at approximately 553 N. 300 W., Salt Lake City, Utah (as more particularly described in Exhibit "A" attached hereto, the "**Property**").
- B. Also pursuant to the Purchase Agreement, on the Effective Date, the RDA and the Owner entered into that certain Development Agreement, which was recorded immediately before this Agreement ("**Development Agreement**"; capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed to such terms in the Development Agreement), in accordance with which the Owner agreed to develop the Property as provided therein.
- C. To provide assurances to the RDA that the Owner shall construct the Developer Improvements as provided in the Development Agreement, the RDA and the Owner have agreed to enter into this Agreement providing the RDA with an exclusive option to repurchase the Property from the Owner, subject to the terms, conditions and provisions set forth herein.
- D. The Owner has executed this Agreement as a material inducement and condition precedent to the RDA to close on the sale of the Property in accordance with the terms, conditions and provisions of the Option Agreement and, *but for* the execution of this Agreement, the RDA would not have agreed to sell the Property to the Owner.

NOW, THEREFORE, the Parties agree as follows:

1. Incorporation of Recitals; Definition. The recitals set forth above are hereby incorporated into this Agreement and the matters therein are acknowledged by the Parties hereto to be true and correct in all material respects.

The following terms shall have the meanings set forth below:

“**Developer Improvements**” shall have the meaning set forth in the Development Agreement.

“**Repurchase Price**” shall mean actual out-of-pocket expenses suffered or incurred by Owner and any Subsequent Owner (as hereinafter defined) in connection with the Developer Improvements as of the date of the RDA’s Option Notice, including, without limitation, the following: (a) if, as of the Closing Date, any Mortgage Loan is outstanding, such costs and expenses shall include the outstanding principal balance (together with all accrued but unpaid interest thereon) of such Mortgage Loan together with all other amounts then due and owing by Owner under the loan documents evidencing and/or securing such Mortgage Loan (collectively, the “**Obligations**”) in each case as of the Closing Date; or (b) to the extent that (i) BMO, any other Mortgagee, or any designee of BMO or such other Mortgagee (each a “**Subsequent Owner**”) has taken title to the Project as of the Closing Date (whether through foreclosure, exercise of any power of sale, acceptance by such Mortgagee of a deed or assignment in lieu of foreclosure or otherwise (each a “**Foreclosure Action**”)) and (ii) the underlying Event of Default permitting the RDA to deliver the RDA’s Option Notice pursuant to Section 3 did not first arise from any breach by such Subsequent Owner of the Developer’s obligations under the Development Agreement, such costs and expenses shall include an amount equal to the sum of (x) the amount of the Obligations as of the date that such Subsequent Owner takes title to the Project as a result of a Foreclosure Action (such date, the “**Foreclosure Action Completion Date**”), plus (y) any actual out-of-pocket expenses in connection with the construction of the Developer Improvements (but specifically not including taxes, insurance premiums and attorneys’ fees and expenses) suffered or incurred by any Subsequent Owner from the period from and after the Foreclosure Action Completion Date to and including the Closing Date.

2. Purchase Option. Subject to Section 3, upon the occurrence and during the continuance of a default (beyond the expiration of applicable notice and/or cure periods) by Owner of its obligations under the Development Agreement (an “**Event of Default**”) the RDA shall have an exclusive option to elect to repurchase the Property (“**Option**”) from the Owner or a Subsequent Owner, if applicable, on the terms and conditions specified herein.

3. Exercise of Option. The RDA may exercise the Option by giving written notice to the Owner or a Subsequent Owner, if applicable (“**RDA’s Option Notice**”), at any time after the date which is thirty days following the date on which an Event of Default occurs. Notwithstanding anything to the contrary contained in this Agreement or the Development Agreement, so long as any Mortgage Loan encumbers the Project (or any portion thereof), it shall be a condition precedent to the RDA’s exercise of the Option and the delivery of the RDA’s Option Notice that each of the following conditions shall have been satisfied:

(a) the RDA shall provide such Mortgagee with a copy of any written notice, including any default notice, required to be served on Owner under the Development Agreement, at the address for such Mortgagee set forth in its deed of trust (or other security instrument evidencing and securing its Mortgage Loan) recorded against title to the Project; and

(b) if an Event of Default shall occur, such Mortgagee shall have the right, but not the obligation, to cure any such Event of Default (or to cause any such Event of Default to be cured) within the time periods set forth in the Development Agreement, plus a period of thirty (30) additional Business Days; provided, that so long as such Mortgagee is proceeding in a commercially reasonable manner to exercise its remedies to obtain title to the Project (*i.e.*, such Mortgagee is diligently pursuing a Foreclosure Action) such cure period shall automatically be extended for a reasonable period of time to enable such Mortgagee to (i) obtain title to the Project and (ii) either (x) retain a substitute developer approved by the RDA to assume responsibility to construct the Project or (y) enter into new contract documents with a new contractor to complete construction of the Project (collectively, the “**Mortgagee’s Exercise of Remedies**”). Notwithstanding the foregoing, in the event that the Mortgagee’s Exercise of Remedies take more than one year from the date Mortgagee begins curing an Event of Default, Mortgagee shall provide notice to RDA and RDA shall have the right to consent, which consent shall not be unreasonably withheld, to extend the period for Mortgagee’s Exercise of Remedies for an additional one year period.

Notwithstanding anything to the contrary contained in this Agreement or the Development Agreement, if a Subsequent Owner shall become the Developer under the Development Agreement: (A) such Subsequent Owner may assign, subject to the RDA’s consent, not to be unreasonably withheld, its interest in the Development Agreement to the entity acquiring title to the Project from such Subsequent Owner, and such Subsequent Owner shall be released from all liability for performing or observing the covenants and conditions contained in the Development Agreement (or in such new development agreement) from and after the date of such assignment; provided, that such assignee shall have expressly assumed the Development Agreement (or such new development agreement) in writing and written evidence thereof shall have been submitted to the RDA; and (B) such Subsequent Owner shall not be liable for any act or omission of Owner under the Development Agreement (or subject to any claims, offsets or defenses which the RDA may have against Owner as a result thereof) occurring prior to the Foreclosure Action Completion Date.

Furthermore, notwithstanding anything to the contrary contained in this Agreement or the Development Agreement, in case of (i) the termination of the Development Agreement by reason of any default by Owner, or for any reason or (ii) rejection of the Development Agreement in a bankruptcy proceeding, prior to the exercise of any rights and remedies under the Development Agreement, the RDA shall serve upon such Mortgagee written notice that the Development Agreement has been terminated together with a written statement of any and all payment and performance obligations which would be due under the Development Agreement but for such termination, and all other defaults under the Development Agreement. Provided that such payment and performance obligations are satisfied and all defaults are cured (other than those defaults which cannot be reasonably cured by such Mortgagee, including, by way of example, not limitation, Owner’s bankruptcy), such Mortgagee or its designee (upon written request within thirty (30) days after receipt of notice that the Development Agreement has been terminated) shall then have the option to obtain a new agreement for the Property from the RDA on the same terms and conditions as the Development Agreement, but subject to the cure period described in (b) above.

4. Termination of Option. The Option shall terminate on the date that the RDA shall issue the Certificate of Completion as provided in the Development Agreement.

5. Repurchase Price. If the RDA shall exercise the Option, then it shall be obligated to pay the Owner or a Subsequent Owner, if applicable, the Repurchase Price.

6. Closing Date. If the RDA elects to exercise the Option, the closing of the RDA's repurchase of the Property ("**Closing**") shall occur on a date specified in writing by the RDA to the Owner or Subsequent Owner, which date shall not be later than thirty (30) days following the date of the RDA's delivery of the RDA's Option Notice ("**Closing Date**").

7. Conveyance of the Property. The Owner or Subsequent Owner shall convey the Property by means of a special warranty deed, subject to all matters of record except for liens and monetary encumbrances created by the Owner, the intent of the Parties being that the RDA shall again hold fee title to the Property, subject only to such exceptions as existed immediately prior to the date on which the RDA and the Owner executed the Option Agreement. The Owner or Subsequent Owner shall cause any financing against the Property to be released and satisfied, unless the RDA assumes such financing.

8. Title Insurance and Closing Costs. In the event the RDA shall exercise its Option, the RDA shall have the right to procure from a title company of its choice, an owner's policy of title insurance that insures marketable fee title to the Property, subject only to matters of record as of the date the Owner purchased the Property (and excluding all liens and monetary encumbrances created by the Owner), together with such endorsements as the RDA may require. The Owner shall pay for the cost of the standard coverage owner's title insurance policy, and the RDA shall pay for the additional cost related to the issuance of an extended coverage owner's title insurance policy, as well as the cost of any endorsements thereto (except for endorsements related to mechanic's liens as set forth below). The Owner agrees to cooperate in causing the Owner's policy of title insurance to issue, and it shall remove or cause to be removed those mechanic's liens or monetary encumbrances that it has created or permitted, or, in the case of mechanic's liens, to cause (at the Owner's expense) an endorsement to be issued by the title company. The RDA shall pay all recording fees. The Owner shall pay all documentary or transfer taxes, if any. The RDA and the Owner shall equally share escrow fees. All unpaid ad valorem taxes shall be prorated between the RDA and the Owner as of the date of Closing. No brokers or real estate agents shall be utilized in such transaction and no commissions will be due any broker or agent. Each party shall indemnify the other from any liability for any such fees or commissions incurred by it. At Closing, the Owner shall also execute and deliver any affidavit or lien waiver reasonably requested by the RDA's title insurer and a non-foreign affidavit.

9. Default. If the RDA exercises its Option, and the sale and purchase of the Property is not timely consummated on account of a default by the Owner under any of its obligations in this Agreement, the RDA shall be entitled to pursue any and all available remedies at law or in equity, including the remedy of specific performance of the Owner's obligations hereunder. Additionally, the Owner shall reimburse the RDA for its out-of-pocket expenses incurred in connection with the exercise of the Option, or the enforcement of its rights under this Agreement.

10. Other Agreements.

(a) Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be given by (i) Federal Express (or other established express delivery which

maintains delivery records), (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or other such addresses as the Parties may designate from time to time by written notice in the above manner:

If to the Owner: WW SLC Owner VIII, L.L.C.
 c/o Walton Street Capital, L.L.C.
 900 North Michigan Avenue, Suite 1900
 Chicago, Illinois 60611
 Attn: Angela Lang, Doug Welker and James Holmes

With a copy to: Clearwater Homes, LLC
 336 West Broadway, #110
 Salt Lake City, Utah 84101
 Attn: Micah W. Peters

And a copy to: Greenberg Traurig, LLP
 77 West Wacker Drive
 Chicago, Illinois 90067
 Attn: Michael J. Baum

If to the RDA: Redevelopment Agency of Salt Lake City
 451 South State Street, Room 418
 P.O. Box 145518
 Salt Lake City, UT 84114-5518
 Attention: Chief Operating Officer

With a copy to: Salt Lake City Attorney's Office
 451 South State Street, Room 501
 Salt Lake City, UT 84114-5518
 Attn: City Attorney

Notices shall be deemed effective on receipt, or upon attempted delivery thereof if delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means for accomplishing delivery.

(b) References. All references to "Section" or "Sections" contained herein are, unless specifically indicated otherwise, references to Sections of this Agreement. All references to "Exhibits" contained herein are references to Exhibits attached hereto, all of which are made a part hereof for all purposes.

(c) Captions; Headings. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

(d) Number and Gender of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

(e) Governing Law. This Agreement and all transactions contemplated hereunder and/or evidenced hereby shall be governed by, construed under, and enforced in accordance with the internal laws of the State of Utah without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than Utah.

(f) Venue. The Parties hereby agree that all actions to enforce the terms and provisions of this Agreement shall be brought and maintained only within the State of Utah and the Owner hereby consents to the exclusive jurisdiction of any court within the State of Utah.

(g) Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

(h) Multiple Counterparts. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(i) Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed and delivered by the Parties, the Parties agree to perform, execute and deliver or cause to be performed, executed, and delivered at the Closing or after the Closing any and all such further acts, deeds and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

(j) Survival. Except as otherwise provided for herein, all agreements, covenants, representations and warranties contained herein shall survive the expiration or termination of this Agreement and the performance by the Owner of its obligations hereunder.

(k) Representation Regarding Ethics. The Owner represents and warrants that neither it nor any of its members, managers, employees, or officers has: (1) provided an illegal gift or payoff to a City officer or employee, or former 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; (3) knowingly breached any of the ethical standards set forth in the 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, a City officer or employee, or former City officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

(l) Binding Effect. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns. If Owner is now or is ever composed of more than one party, the obligations and warranties contained herein and arising therefrom are and shall be joint and several as to each such party.

(m) No Relationship. Nothing contained in this Agreement, nor any acts of the Parties shall be deemed or construed to create the relationship of principal and agent or of limited or general partnership or of joint venture or of any other similar association between the RDA, its successors or assigns, or the Owner, its successors or assigns.

(n) 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 either Party.

(o) Days. Unless otherwise specified in this Agreement, a reference to the word “**days**” shall mean calendar days. The term “**business days**” shall mean each day of the week except weekends and federal holidays during which the United States mail is not delivered.

(p) Merger; Time of the Essence. This Agreement supersedes all prior agreements, and constitutes the entire agreement between the Parties with respect to the subject matter hereof and no modification or waiver will be effective unless in writing and signed by the Party to be charged. All documents and other matters to be furnished by the Owner will be satisfactory in form and substance to counsel for the RDA. Time is of the essence hereof.

(q) Assignability and Enforcement. The RDA may, without any notice whatsoever to anyone, sell, assign, or transfer its interest in the Property and/or the Development Agreement, and in that event, each and every immediate and successive assignee, transferee, or holder of all or any part of the Property and the Development Agreement, as the case may be, shall have the right to enforce this Agreement, by suit or otherwise, for the benefit of such assignee, transferee, or holder as fully as if such assignee, transferee, or holder were herein by name specifically given such rights, powers, and benefits, provided that notice of transfer and/or proof of ownership of this Agreement is provided to the Owner or any Subsequent Owner prior to the enforcement of this Agreement.

(r) Recording. This Agreement or a memorandum of this Agreement shall be recorded in the office of the Salt Lake County Recorder.

(s) Waiver. The RDA shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by the RDA. No delay or omission on the part of the RDA in exercising any right shall operate as a waiver of such right or any other right.

(t) Nonappropriation. All financial commitments by RDA shall be subject to the appropriation of funds approved by the Salt Lake City Redevelopment Agency Board of Directors and the limitations on future budget commitments provided under applicable Utah law.

(u) Third Party Beneficiary. Any Mortgagee and Subsequent Owner are intended third party beneficiaries of this Agreement and the terms contained herein shall be enforceable by such

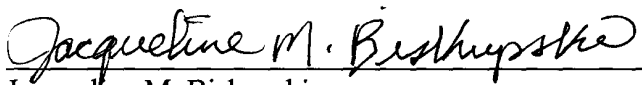
parties against the RDA notwithstanding the termination or rejection of this Agreement or the Development Agreement, all as though this Agreement had originally been executed by the RDA and such other parties (and not the Owner).

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

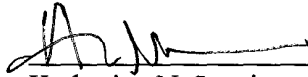
RDA:

Redevelopment Agency of Salt Lake City, a public entity



Jacqueline M. Biskupski
Executive Director

Approved as to form:
Salt Lake City Attorney's Office



Katherine N. Lewis

OWNER:

Name: _____

Its: _____

OWNER:

WW SLC OWNER VIII, L.L.C.,
a Delaware limited liability company

By: WW SLC Partners VIII, L.L.C.,
a Delaware limited liability company,
its Sole Member

By: WW SLC Holdings VIII, L.L.C.,
a Delaware limited liability company,
a Member

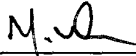
By: W SLC Investors VIII, L.L.C.,
a Delaware limited liability company,
a Member

By: Walton Acquisition Holdings VIII, L.L.C.,
a Delaware limited liability company,
its Sole Member

By: Walton Street Real Estate Fund VIII, L.P.,
a Delaware limited partnership,
its Managing Member

By: Walton Street Managers VIII, L.P.,
a Delaware limited partnership,
its General Partner

By: WSC Managers VIII, Inc.,
a Delaware corporation,
its General Partner

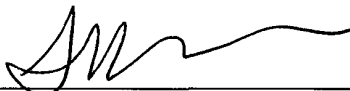
By: 
Name: Douglas J. Welker
Title: Vice President

STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

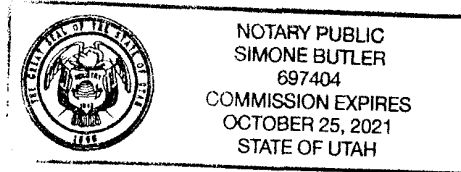
On the 19th day of March, 2019, personally appeared before me Jacqueline M. Biskupski, who being by me duly sworn did say she is the Executive Director of the Redevelopment Agency of Salt Lake City, and that the foregoing instrument was signed on behalf of the RDA.



NOTARY PUBLIC

Residing at: ~~1000 1st Ave~~ Salt Lake County

My Commission Expires: 10/25/2021



STATE OF UTAH)

: ss.

COUNTY OF SALT LAKE)

On the _____ day of _____, 20__, personally appeared before me _____, who being by me duly sworn did say he/she is the _____ of _____, and that the foregoing instrument was signed on behalf of the entity.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

STATE OF ~~UTAH~~ Illinois)

: ss.

COUNTY OF ~~SALT LAKE~~ Cook)

On the 6 day of March, 2019, personally appeared before me Douglas Walker, who being by me duly sworn did say he/she is the VP of W&M Holdings VIII, and that the foregoing instrument was signed on behalf of the entity.

Michelle Meywes
NOTARY PUBLIC

Residing at: Chicago, IL

My Commission Expires:



Exhibit A to Option to Repurchase Agreement

Legal Description of Property

PARCEL 1:

A parcel of land lying and situate in the Northeast quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, being more particularly described as follows:

Beginning at a point on the East line of 300 West Street and the Southwest corner of Lot 2, Marmalade District, recorded January 15, 2014 in Book 2014P at Page 9, in the office of the Salt Lake County Recorder; thence North 00°01'28" East 513.17 feet along the East right of way line of 300 West Street; thence North 89°59'33" East 201.90 feet along the South right of way line of 600 North Street; thence South 00°01'15" West 177.50 feet; thence North 89°59'33" East 7.71 feet; thence South 00°01'15" West 161.36 feet; thence North 89°56'19" West 90.22 feet; thence South 00°14'04" West 174.74 feet; thence North 89°51'18" West 118.76 feet to the point of beginning.

PARCEL 1A:

Easements as disclosed in that certain Master Declaration of Covenants, Conditions and Restrictions of Marmalade Block Development, recorded August 4, 2014 as Entry No. 11892206 in Book 10250 at Page 5468.

PARCEL 1B:

Easements as disclosed in that certain Easement recorded March 23, 2017, as Entry No. 12501445, in Book 10540, at Page 8110.

PARCEL 1C:

Easements as disclosed in that certain Easement Agreement recorded February 24, 2014 as Entry No. 11808936 in Book 10213 at Page 1795.

Tax Id No.: 08-36-205-047