LOAN AGREEMENT

By and Between

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California

and

Double Rock Ventures, LLC, a California limited liability company

for

Alice Griffith Replacement Projects Phase 3B
$2,444,900 or

Dated as of
April 1, 2014
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AMENDED AND RESTATED LOAN AGREEMENT
(Tax Increment Funds)
OCII Low Moderate Income Housing Fund Balance

(Alice Giffith Replacement Projects Phase 3B)

THIS LOAN AGREEMENT ("Agreement") is entered into as of April 1, 2014, ("Effective Date") by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereafter referred to as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State of California ("OCII"), and Double Rock Ventures, LLC, a California limited liability company ("Borrower").

RECITALS

A. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 et seq., the "CRL"), the former San Francisco Redevelopment Agency ("Former Agency") would undertake programs for the reconstruction and construction of blighted areas in the City and County of San Francisco (the "City").

B. In accordance with the CRL, the City, acting through its Board of Supervisors, approved a Redevelopment Plan for the Bayview Hunters Point Redevelopment Project Area (the "Project Area") by Ordinance No. 113-06, adopted on May 16, 2006. In cooperation with the City, OCII is responsible for implementing the Bayview Hunters Point Redevelopment Plan (the "Redevelopment Plan").

C. Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-12, first Extraordinary Session) ("AB 26"), as amended by California State Assembly Bill No. 1484 ("AB 1484") (together the "Dissolution Laws") the Former Agency dissolved as a matter of law on February 1, 2012. On October 2, 2012 the San Francisco Board of Supervisors, acting as legislative body of OCII as the successor to the Agency, passed Ordinance 215-12, which outlined the rights and responsibilities of OCII as the Agency’s successor agency, including but not limited to certain retained existing enforceable obligations for the development of affordable housing. Accordingly, under Ordinance 215-12 and Dissolution Law, OCII has the obligation and authority to enter into this Agreement to allow for the development of the Project as defined in Recital D below.

D. The Hunters Point Shipyard/Candlestick Point Project (the "Shipyard Development") is one of San Francisco's three critical redevelopment legacy projects that OCII must continue to implement under the Dissolution Law. The Project is divided into two related parts, called Phase 1 and Phase 2, each with a separate disposition and development agreement. The disposition and development agreements, together with a number of related binding agreements attached to or referenced in the text of the disposition and development agreement, establish a comprehensive set of enforceable obligations that collectively govern the completion of the Shipyard Development. The disposition and development agreements are binding contractual agreements that provide for the transfer of land from OCII to developers, the developers' and
OCII's rights and obligations relating to the construction of specified improvements, and the financing mechanisms for completing these projects. Phase 1 covers approximately 75 acres and Phase 2 is significantly larger, covering over 700 acres at the Shipyard and at the adjacent Candlestick Point. The Alice Griffith Replacement Project is a key component of Phase 2 of the Shipyard Development. All 256 public housing units currently on site will be replaced and 248 new affordable units will be added on the current site and two adjacent parcels (“Development” or “AG”).

E. In connection with the Candlestick Point and Phase 2 of Hunters Point Shipyard project, the Former Agency and CP Development Co., LP (“CP Dev Co”) entered into a Disposition and Development Agreement (Candlestick Point and Phase 2 of the Hunters Point Shipyard), dated June 3, 2010 (the “DDA”). The DDA includes a Below Market-Rate Housing Plan (“Housing Plan”). The Housing Plan defines the roles and responsibilities of the Former Agency and CP Dev Co regarding the development of up to 10,500 housing units, an important part of which is the revitalization of the Alice Griffith public housing development as a mixed-income, service-enriched community, developed according to the principles of the City’s HOPE SF Program. On December 14, 2012 the California Department of Finance (“DOF”) recognized the DDA as an Enforceable Obligation under the Dissolution Law. The Dissolution Law, in particular California Health and Safety Code Section 34177, provides that OCII is required to (1) perform obligations required pursuant to any Enforceable Obligation, and (2) continue to oversee development of properties until the contracted work has been completed.

F. Based on the requirements of the DDA, McCormack Baron Salazar (“MBS”) was selected by CP Dev Co to be the Alice Griffith Developer based upon their extensive experience revitalizing public housing across the country. Additional development team members include, the San Francisco Housing Authority (“SFHA”) and Urban Strategies, Inc., which will be implementing the social services program at AG. The Borrower is the development entity for the overall redevelopment of Alice Griffith Public Housing and is an affiliate of MBS. Each financing phase of development will have a separate development entity affiliate of MBS. The current public housing site is bordered roughly by Hawes, Carroll, and Gilman Streets and vacant land owned by the State Parks Department and OCII (Exhibit B). AG will include the adjacent State and OCII lands and be comprised of Blocks 1,2,4,5,8,9, and 14 (as shown in Exhibit B). Block 2, 4 1A, or 1B is the subject of this document (the “Site”), and is divided into the following phases: Block 2 is “AG Phase 1”, Block 4 is “AG Phase 2”, Block 1A is “AG Phase 3A”, and Block 1B is “AG Phase 3B”.

G. The Former Agency and Borrower entered into a Tax Increment Loan Agreement for $3,000,000 for master planning and initial predevelopment work for the first phases of AG on March 29, 2011. Of this loan $1,916,750 was allocated to predevelopment of the first two phases of the AG; of this amount $958,375 was allocated to each of the first two phases. The remaining balance of $1,083,250 has been allocated to site-wide master planning.

H. In August 2011, McCormack Baron Salazar as lead applicant and SFHA as co-applicant were awarded a U.S. Department of Housing and Urban Development (“HUD”) Choice Neighborhoods Initiative Implementation (“CNI”) Grant in the amount of $30,500,000, of which $21,500,000 is to be used for housing development at AG. The CNI program supports...
locally driven strategies to address struggling neighborhoods with distressed public or HUD-assisted housing through a comprehensive approach to neighborhood transformation. Local leaders, residents, and stakeholders, such as public housing authorities, cities, schools, police, business owners, nonprofits, and private developers, come together to create and implement a plan that transforms distressed HUD housing and addresses the challenges in the surrounding neighborhood. The program is designed to catalyze critical improvements in neighborhood assets, including vacant property, housing, services and schools. The CNI funding comes with a variety of deadlines and deliverables, the most important of which is a statutory obligation that grants funds be expended and units delivered by September 2016 for the portion of the funds associated with Phases 1 and 2 and September 2017 for the portion of the funds to be used for Phase 3. Therefore, CNI funds and associated funding deadlines will apply to the first three phases of AG.

I. Borrower has requested funds in the amount of $2,444,900 in predevelopment funding (“Funds or the “Funding Amount”) for AG Phase 3B (the “Project”). On December 20, 2013 the Citywide Affordable Housing Loan Committee approved this request for funding.

J. On September 23, 2013 the Oversight Board of the City and County of San Francisco approved an expenditure of up to $18,310,070 for funding for the Development including the Project through Item No. 161 of the Recognized Obligation Payment Schedule for the period of January 1, 2014 through June 30, 2014 (“ROPS 13-14B”), and the Funding Amount consists of a portion of the $7,856,717 in reserves and a portion of the $8,927,014 in taxable bond proceeds approved by DOF shown on that Item. The reserves for Item 161 consist of funds approved by DOF to be retained through the Low and Moderate Income Housing Funds Due Diligence Reserve for the Alice Griffith Replacement Project. The California Department of Finance provided final approval of the expenditure for Item No. 239 through its letter dated December 17, 2013.

J. On April 1, 2014, OCII Commission approved the Borrower’s request for predevelopment funds for the Project.

K. Upon completion of the Project, OCII intends to transfer the affordable housing loan obligation, asset, and ground lease to MOHCD as the designated Successor Housing Agency of the City and County of San Francisco under Board Resolution 11-12, as required by Dissolution Law.

L. OCII wishes to make a predevelopment loan to Developer in the amount of $2,444,900 in predevelopment funding for the Project, pursuant to the terms of this Agreement.
AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1 DEFINITIONS.

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings:

"Accounts" means all depository accounts, including reserve and trust accounts, required or authorized under this Agreement or otherwise by the OCII in writing. All Accounts must be maintained in accordance with Section 2.3.

"AG" has the meaning set forth in Recital D.

"Agreement" means this Loan Agreement.

"Agreement Date" means the date first written above.

"Assignment of Work Product" means the assignment of work product executed by Borrower granting OCII a security interest in the Work Product to secure Borrower's performance under this Agreement and the Note prior to the Loan Closing Date, in substantially the form and substance attached hereto as Exhibit P.

"Authorizing Resolutions" means: (a) in the case of a corporation, a certified copy of resolutions adopted by its board of directors; (b) in the case of a partnership (whether general or limited), a certificate signed by all of its general partners; and (c) in the case of a limited liability company, a certified copy of resolutions adopted by its board of directors or members, satisfactory to the City and evidencing Borrower's authority to execute, deliver and perform the obligations under the OCII Documents to which Borrower is a party or by which it is bound.

"Borrower" means: Double Rock Ventures, LLC, a California limited liability company, and its authorized successors and assigns.

"CFR" means the Code of Federal Regulations.

"Charter Documents" means: (a) in the case of a corporation, its articles of incorporation and bylaws; (b) in the case of a partnership, its partnership agreement and any certificate or statement of partnership; and (c) in the case of a limited liability company, its operating agreement and any LLC certificate or statement. The Charter Documents must be delivered to OCII in their original form and as amended from time to time and be accompanied by a certificate of good standing for Borrower issued by the California Secretary of State and, if Borrower is organized under the laws of a state other than California, a certificate of good standing issued by the Secretary of State of the state of organization, issued no more than ninety (90) days before the Agreement Date.
"City" means the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through MOHCD. Whenever this Agreement provides for a submission to the City or an approval or action by the City, this Agreement refers to submission to or approval or action by MOHCD unless otherwise indicated.

"CNA" means a 20-year capital needs assessment or analysis of replacement reserve requirements.

“Control of the Site” means Borrower’s acquisition of fee ownership or a leasehold interest in the Site (or a portion thereof).

“Conversion Date” means the date upon which Borrower’s institutional construction financing converts to a permanent phase requiring payments of principal amortized over the remaining term of such loan.

“CP Dev Co” has the meaning set forth on Recital E.

“CRL” has the meaning set forth in Recital A.

“DDA” has the meaning set forth in Recital E.

“Department of Building Inspection” has the meaning set forth in Section 5.2.

"Developer Fees" has the meaning set forth in Section 15.1.

"Disbursement" means the disbursement of all or a portion of the Funding Amount by OCII as described in Article 4.

“Dissolution Law” has the meaning set forth in Recital C.

"Distributions" has the meaning set forth in Section 13.1.

“DOF” has the meaning set forth in Recital E.

"Environmental Activity" means any actual, proposed or threatened spill, leak, pumping, discharge, leaching, storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Site.

"Environmental Laws" means all present and future federal, state, local and administrative laws, ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and requirements relating to health and safety, industrial hygiene or the environment or to any Hazardous Substance or Environmental Activity, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund" law)

"Escrow Agent" means the escrow agent for the title company issuing the Title Policy.

"Event of Default" has the meaning set forth in Section 19.1.

"Expenditure Request" means a written request by Borrower for a Disbursement from the Funding Amount, which must certify that the Project costs covered by the Expenditure Request have been paid or incurred by Borrower.

“Former Agency” has the meaning set forth in Recital G.

"Funding Amount" has the meaning set forth in Recital I and in Exhibit C-1.

"Funds" has the meaning set forth in Recital I means money that has been borrowed from OCII pursuant to the terms of this Agreement.

"GAAP" means generally accepted accounting principles in effect on the date of this Agreement and at the time of any required performance.

"Governmental Agency" means: (a) any government or municipality or political subdivision of any government or municipality; (b) any assessment, improvement, community facility or other special taxing district; (c) any governmental or quasi-governmental agency, authority, board, bureau, commission, corporation, department, instrumentality or public body; or (d) any court, administrative tribunal, arbitrator, public utility or regulatory body.

"Hazardous Substance" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Agency to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes any material or substance listed, defined or otherwise identified as a "hazardous substance," "hazardous waste," "hazardous material," "pollutant," "contaminant," "pesticide" or is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as "hazardous" or "toxic" under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls and any materials containing any of them, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity normally used in the construction, operation or maintenance of developments similar to the Project will not be deemed "Hazardous Substances" for the purposes of this Agreement if used in compliance with applicable Environmental Laws.
"HUD" means the United States Department of Housing and Urban Development acting by and through the Secretary of Housing and Urban Development and any authorized agents.

"Indemnify" means, whenever any provision of this Agreement requires a person or entity (the "Indemnitor") to Indemnify any other entity or person (the "Indemnitee"), that the Indemnitor will be obligated to defend, indemnify and protect and hold harmless the Indemnitee, its officers, employees, agent, constituent partners, and members of its boards and commissions harmless from and against any and all Losses arising directly or indirectly, in whole or in part, out of the act, omission, event, occurrence or condition with respect to which the Indemnitor is required to Indemnify an Indemnitee, whether the act, omission, event, occurrence or condition is caused by the Indemnitor or its agents, employees or contractors, or by any third party or any natural cause, foreseen or unforeseen: provided that no Indemnitor will be obligated to Indemnify any Indemnitee against any Loss arising or resulting from the gross negligence or intentional wrongful acts or omissions of the Indemnitee or its agents, employees or contractors. If a Loss is attributable partially to the grossly negligent or intentionally wrongful acts or omissions of the Indemnitee (or its agents, employees or contractors), the Indemnitor must Indemnify the Indemnitee for that part of the Loss not attributable to its own grossly negligent or intentionally wrongful acts or omissions or those of its agents, employees or contractors.

"Indemnitee" has the specific meaning set forth in Section 23.1 and the general meaning set forth in the definition of "Indemnify."

"Indemnitor" has the meaning set forth in the definition of "Indemnify."

"Laws" means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or Governmental Agency, including the CRL.

"Loan" has the meaning set forth in Recital L.

"Loan Closing" means the date on which all conditions to closing of the loan under Section 4.3 have been met and Borrower and OCII authorize recordation of the Deed of Trust and Declaration of Restrictions.

"Loan Committee" has the meaning set forth in Recital I.

"Loss" or "Losses" includes any loss, liability, damage, cost, expense or charge and reasonable attorneys' fees and costs, including those incurred in a proceeding in court or by mediation or arbitration, on appeal or in the enforcement of OCII’s or the City's rights or in defense of any action in a bankruptcy proceeding.

"Maturity Date" has the meaning set forth in Section 3.1.

"MBS" has the meaning set forth in Recital F.
"Median Income" means area median income as determined by HUD for the San Francisco area, adjusted solely for household size, but not high housing cost area.

"MOHCD" means the Mayor's Office of Housing and Community Development or its successor.

"Note" means the promissory note executed by Borrower in favor of OCII in the principal amount of the Funding Amount.

“Oversight Board” has the meaning set forth in Recital E.

“OCII” means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, known as the Office of Community Investment and Infrastructure.

“OCII Documents" means this Agreement, the Note, , the Assignment of Work Product and any other documents executed or, delivered in connection with this Agreement.

“OCII Monthly Project Update” has the meaning set forth in Section 10.2.

“Official Records” has the meaning set forth in Article 3.

"Operating Reserve Account" has the meaning set forth in Section 12.2.

"Opinion" means an opinion of Borrower's California legal counsel, satisfactory to OCII and its legal counsel, that Borrower is a duly formed, validly existing California limited partnership in good standing under the laws of the State of California, has the power and authority to enter into the OCII Documents and will be bound by their terms when executed and delivered, and that addresses any other matters OCII reasonably requests.

"Payment Date" means the first May 1st following the Completion Date and each succeeding until the Maturity Date.

"Permitted Exceptions" means liens in favor of OCII, real property taxes and assessments that are not delinquent, and any other liens and encumbrances OCII expressly approves in writing in its escrow instructions.

"Project" means the development described in Recital E. If indicated by the context, "Project" means the Site and the improvements developed on the Site.

“Public Benefit Purposes” means activities or programs that primarily benefit low-income persons, are implemented by one or more nonprofit 501(c)3 public benefit organizations, or have been identified by OCII, a City agency or a community planning process as a priority need in the neighborhood in which the Project is located.

"Publication" means any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, webpage, audio or visual material or other
communication for public dissemination, which relates to all or any portion of the Project or is paid for in whole or in part using the Funding Amount.

“Schedule of Performance” means the schedule attached hereto as Exhibit M that sets forth Project tasks and milestones and the dates by which they will be completed.

"Section 8" means rental assistance provided under Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. § 1437f) or any successor or similar rent subsidy programs.

"Senior Lien" has the meaning set forth in Section 24.1.

"SFHA" means the San Francisco Housing Authority.

"Site" means the real property described in Recital F of this Agreement.

"Table" means the Table of Sources and Uses.

"Table of Sources and Uses" means a table of sources and uses of funds attached hereto as Exhibit C-1, including a line item budget for the use of the Funding Amount, which table may not be adjusted without OCII’s prior written approval.

"TCAC" means the California Tax Credit Allocation Committee.

"Tenant" means any residential household in the Project.

“Tenant Selection Plan” has the meaning set forth in Section 6.1.

"Title Policy" means an ALTA extended coverage lender’s policy of title insurance in form and substance satisfactory to OCII, issued by an insurer selected by Borrower and satisfactory to OCII, together with any endorsements and policies of coinsurance and/or reinsurance required by OCII, in a policy amount equal to the Funding Amount, insuring the Deed of Trust and indicating the Declaration of Restrictions as valid liens on the Site, each subject only to the Permitted Exceptions.

"Unit" means a residential rental unit within the Project.

“Work Product” has the meaning set forth in Section 24.21.

1.2 Interpretation. The following rules of construction will apply to this Agreement and the other OCII Documents.

(a) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. The word "include(s)" means "include(s) without limitation" and "include(s) but not limited to," and the word "including"
means "including without limitation" and "including but not limited to" as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. References to days, months and years mean calendar days, months and years unless otherwise specified. References to a party mean the named party and its successors and assigns.

(b) Headings are for convenience only and do not define or limit any terms. References to a specific OCII Document or other document or exhibit mean the document, together with all exhibits and schedules, as supplemented, modified, amended or extended from time to time in accordance with this Agreement. References to Articles, Sections and Exhibits refer to this Agreement unless otherwise stated.

(c) Accounting terms and financial covenants will be determined, and financial information must be prepared, in compliance with GAAP as in effect on the date of performance. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time.

(d) The terms and conditions of this Agreement and the other OCII Documents are the result of arms'-length negotiations between and among sophisticated parties who were represented by counsel, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not apply to the construction and interpretation of the OCII Documents. The language of this Agreement must be construed as a whole according to its fair meaning.

1.3 Websites for Statutory References. The statutory and regulatory materials listed below may be accessed through the following identified websites.

(a) CFR provisions: www.access.gpo/nara/cfr

(b) OMB circulars: www.whitehouse.gov/OMB/circulars

(c) S.F. Administrative Code: www.sfgov.org/site/government_index.asp#codes

1.4 Contracting Requirements. Borrower shall use the OCII contract compliance requirements for procurement activities, as further set forth in Exhibit F of this Agreement.

ARTICLE 2 FUNDING.

2.1 Funding Amount. OCII agrees to lend to Borrower a maximum principal amount equal to the Funding Amount in order to finance predevelopment costs associated with the Project. The Funding Amount will be disbursed according to the terms and subject to the conditions set forth in this Agreement.
2.2 **Use of Funds.** Borrower acknowledges that the OCII's agreement to make the Loan is based in part on Borrower's agreement to use the Funds solely for the purpose set forth in **Section 2.1** and agrees to use the Funds solely for that purpose in accordance with the approved Table of Sources and Uses.

2.3 **Accounts; Interest.** Each Account to be maintained by Borrower under this Agreement must be held in a bank or savings and loan institution acceptable to OCII as a segregated account that is insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program. With the exception of tenant security deposit trust accounts, any interest earned on funds in any Account must be used for the benefit of the Project.

2.4 **Records.** Borrower must maintain and provide to the OCII upon request records that accurately and fully show the date, amount, purpose and payee of all expenditures from each Account authorized under this Agreement or by the OCII in writing and keep all estimates, invoices, receipts and other documents related to expenditures from each Account. In addition Borrower must provide to the OCII promptly following Borrower's receipt, complete copies of all monthly bank statements, together with a reconciliation, for each Account until all funds (including accrued interest) in each Account have been disbursed for eligible uses.

2.5 **Conditions to Additional Financing.** The OCII may grant or deny any application by Borrower for additional financing for the Project in its sole discretion.

**ARTICLE 3  TERMS.**

Borrower's repayment obligations with respect to the Funding Amount will be evidenced and governed by the Note, which will govern in the event of any conflicting provision in this Agreement.

3.1 **Maturity Date.** Borrower must repay all amounts owing under the OCII Documents on the date that is the earliest to occur of: (i) the close of construction financing for the Project, or (ii) the date the Borrower, or its approved successors or assigns, and OCII execute a permanent loan agreement that incorporates the Loan Amount and all accrued interest, or (iii) three (3) years from the Effective Date (the "Maturity Date"). Notwithstanding the forgoing, if Borrower's failure to close the construction financing or execute a permanent loan agreement with OCII by the Maturity Date that is not caused by Borrower's acts or omissions, whether direct or indirect, and if Borrower has acted in good faith and is not in default under any of the OCII Documents at the time, then in such an event, Borrower shall deliver to OCII all of the Work Product, the Note shall be deemed satisfied in full and Borrower shall be deemed to be released from all obligation or liability with respect to this Agreement and the Loan. If (i) additional financing for the Project from OCII in the form of a construction and permanent loan is subsequently approved by OCII Commission (the “Construction/Permanent Loan”), (ii) forms of Construction and Permanent Loan documents are executed by OCII and the Borrower, and (iii) all or any portion of the Construction/Permanent Loan is funded; then (a) this Agreement shall be terminated; (b) the Note shall be cancelled, and (c) the outstanding balance of this Loan, including all accrued interest, shall be combined with the Construction/Permanent Loan for
purposes of repayment and thereafter shall bear interest and be repaid in accordance with the terms of the Construction/Permanent Loan.

3.2 Intentionally Omitted

3.3 Interest. The outstanding principal balance of the Loan will bear simple interest at a rate of zero percent (0%) per annum, as provided in the Note.

3.4 Default Interest Rate. Upon the occurrence of an Event of Default under any OCII Document, the principal balance of the Loan will bear interest at the default interest compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, with such default interest rate commencing as of the date an Event of Default occurs and continuing until such Event of Default is fully cured. In addition, the default interest rate will apply to any amounts to be reimbursed to the OCII under any OCII Document if not paid when due or as otherwise provided in any OCII Document.

3.5 Repayment of Principal and Interest. Subject to Section 3.1 above, the outstanding principal balance of the Loan will be due and payable on the Maturity Date according to the terms set forth in full in the Note.

3.6 Changes In Funding Streams. OCII's agreement to make the Loan on the terms set forth in this Agreement and the Note is based in part on Borrower's projected sources and uses of all predevelopment activities associated with the Project, as set forth in the Table of Sources and Uses. Borrower covenants to give written notice to the OCII within thirty (30) days of any significant changes in budgeted funding or income set forth in documents previously provided to the OCII. Examples of significant changes include loss or adjustments (other than regular annual adjustments) in funding under Shelter + Care, Section 8 or similar programs. OCII reserves the right to modify the terms of this Agreement based upon any substantial reductions in Borrower’s projected sources or substantial increase in Borrower’s uses of all funds for the Project to the extent Borrower has not provided additional Project sources sufficient to cover any reductions in sources or increase in uses, which sources shall be acceptable to the OCII in its reasonable discretion.

3.7 Additional OCII Approvals. Borrower understands and agrees that OCII is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Borrower understands and agrees that neither entry by OCII into this Agreement nor any approvals given by OCII under this Agreement shall be deemed to imply that Borrower will obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Property. By entering into this Agreement, OCII is in no way modifying or limiting the obligations of Borrower to develop the Property in accordance with all local laws. Borrower understands that any development of the Property shall require approvals,
authorizations and permits from governmental agencies with jurisdiction over the Property, which may include, without limitation, the San Francisco City Planning Commission and the San Francisco Board of Supervisors. Notwithstanding anything to the contrary in this Agreement, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Project, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project.

ARTICLE 4 CLOSING; DISBURSEMENTS

4.1 Generally. Subject to the terms of this Agreement, OCII will make Disbursements in an aggregate sum not to exceed the Funding Amount to or for the account of Borrower in accordance with this Agreement and the approved line item budget contained in the Table of Sources and Uses.

4.2 Closing. In the event Borrower does not satisfy all of the conditions to Loan Closing contained in Section 4.3 (b) within twenty-four (24) months of the date of this Agreement, OCII may declare this Agreement to be null and void.

4.3 Conditions Precedent to Closing. OCII will authorize the close of the Loan upon satisfaction of the conditions in this Section.

(a) Borrower must have delivered to OCII fully executed (and for documents to be recorded, acknowledged) originals of the following documents, in form and substance satisfactory to the OCII: (i) the Note; (ii) this Agreement (in triplicate); (iii) the Opinion; (iv) the Authorizing Resolutions; and (v) any other OCII Documents reasonably requested by OCII.

(b) Borrower must have delivered to OCII Borrower's Charter Documents.

(c) Borrower must have delivered to OCII insurance endorsements and, if requested by OCII, copies of policies for all insurance required under Exhibit G of this Agreement.

4.4 Intentionally Omitted.

4.5 Disbursements.
The Funding Amount is available for disbursement. OCII’s obligation to approve the expenditure of Predevelopment Funds prior to the Loan Closing Date is subject to Borrower’s satisfaction of the following conditions precedent:

(i) Borrower must have delivered to OCII (an Expenditure Request in form and substance satisfactory to OCII, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. Any request from Borrower to reallocate Funds between the line items or to change the budget limits for a line item from what is shown in the Table of Sources and Uses must be approved as follows: (i) except for funds moved from the contingency line item to another line item, a requested reallocation of Funds in an amount up to ten percent (10%) of the Loan Amount in the aggregate may be made with the express written approval of OCII’s Executive Director or his/her designee; and (ii) except for funds moved from the contingency line item to another line item, a requested reallocation of Funds in an amount that exceed ten percent (10%) of the Loan Amount may be made only with the express written approval of the OCII Executive Director. Reallocations of Funds from contingency line items to other line items shall not require the consent of OCII.

(ii) No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, may have occurred that remains uncured as of the date of the Expenditure Request.

(iii) With respect to any Expenditure Request that covers rehabilitation or construction costs, Borrower must have certified to OCII that the Project complies with the labor standards set forth in Exhibit F, Section 1, if applicable.

(iv) Borrower must have complied with the following loan conditions, as required by the Citywide Affordable Housing Loan Committee through its approval of the Project’s Loan Evaluation on December 6, 2013 Loan Evaluation which include:

1. OCII and MOHCD must review and approve the investor and lender Requests for Proposals for the Project. Borrower must allow OCII staff and its financial advisor, with borrower participation in such communication, to communicate directly with prospective and selected lenders/investors (Notwithstanding anything to the contrary contained herein, the foregoing shall not be a condition to disbursement of Loan Funds prior to the issuance of the Request for Proposals.)

2. Borrower will collaborate with OCII/MOHCD staff to determine the most appropriate financial plan for the Project that conforms to the DDA, MOHCD Underwriting Guidelines, CNI and applicable HUD regulations, and HOPE SF principles.
(b) OCII shall endeavor to either approve or disapprove such Expenditure Request within 10 business days of receipt. In the event OCII disapproves an Expenditure Request OCII shall provide written notice thereof to Borrower specifying the reason for such disapproval. OCII shall endeavor to fund all approved expenditure requests within five (5) business days of approval.

4.6 Schedule of Performance. Borrower must perform in accordance with the Schedule of Performance (Exhibit M). The Schedule of Performance may be modified at the request of the Borrower; however, any modification to the Schedule of Performance shall be at the reasonable discretion of the OCII Executive Director.

4.7 Intentionally Omitted.

4.8 Limitations on Approved Expenditures. OCII may refuse to approve any expenditure: (a) during any period in which an event that, with notice or the passage of time or both, would constitute an Event of Default remains uncured; or (b) for disapproved, unauthorized or improperly documented expenses. OCII is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all Funds disbursed to Borrower under this Agreement exceed the Funding Amount.

ARTICLE 5 INTENTIONALLY OMITTED.

ARTICLE 6 INTENTIONALLY OMITTED.

ARTICLE 7 INTENTIONALLY OMITTED.

ARTICLE 8 INTENTIONALLY OMITTED.

ARTICLE 9 GOVERNMENTAL REQUIREMENTS.

9.1 Borrower Compliance. Borrower must comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of Funds for the construction, rehabilitation and/or operation of the Project, including the requirements of the CRL, and those requirements set forth in Exhibit F. Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Subject to Section 23.1, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.
ARTICLE 10 PROJECT MONITORING, REPORTS, BOOKS AND RECORDS.

10.1 Generally.

(a) Borrower understands and agrees that it will be monitored by OCII from time to time to assure compliance with all terms and conditions in this Agreement and all Laws. Borrower acknowledges that, if and after Borrower acquires Control of the Site, OCII may also conduct periodic on-site inspections of the Project provided access to the interior of any residential unit is preceded by no less than 48 hours’ prior notice. Borrower must cooperate with the monitoring by OCII and ensure full access to the Project and all information related to the Project as reasonably required by OCII.

(b) Borrower must keep and maintain books, records and other documents relating to the receipt and use of all Funds. Borrower must maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility and condition of the Project. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

(c) Borrower must provide written notice of the replacement of: the member or manager of its administrative general partner or the executive director, director of housing development, director of property management and/or any equivalent position within the sole member of the managing general partner, within thirty (30) days after the effective date of such replacement.

10.2 Monthly Reporting. Commencing upon the Loan Closing Date, Borrower must submit monthly reports (the “OCII Monthly Project Update”) describing progress toward developing the Project with respect to obtaining necessary approvals from other City departments, procuring architects, consultants and contractors, changes in scope, cost or schedule and significant milestones achieved in the past month and expected to be achieved in the coming month. The OCII Monthly Project Update must be submitted by email in substantially the form attached hereto as Exhibit N through submission of Forms 8609.

10.3 Response to Inquiries. At the request of OCII, its agents, employees or attorneys, Borrower must respond promptly and specifically to questions relating to the income, expenditures, assets, liabilities, contracts, operations and condition of the Project, the status of any mortgage encumbering the Project and any other requested information with respect to Borrower or the Project.

10.4 Delivery of Records. At the request of OCII, made through its agents, employees, officers or attorneys, Borrower must provide OCII within a reasonable period of time of no less than sixty (60) days from request therefor with copies of each of the following documents, certified in writing by Borrower to be complete and accurate:
(a) all tax returns filed with the United States Internal Revenue Service, the California Franchise Tax Board and/or the California State Board of Equalization on behalf of Borrower and any general partner or manager of Borrower;

(b) all previously prepared certified financial statements of Borrower and, if applicable, its general partner or manager, the accuracy of which must be certified by an auditor satisfactory to OCII; and

(c) any other records related to Borrower's ownership structure and the use and occupancy of the Site.

10.5 Access to Other Project Books and Records. In addition to Borrower's obligations under Sections 2.4, 10.1, 10.2, and 10.3, any other obligations to provide reports or maintain records in this Agreement or any other OCII Document, Borrower agrees that duly authorized representatives of OCII (which shall include but not be limited to MOHCD staff) will have access to and the right to inspect, copy, audit and examine all books, records and other documents Borrower is required to keep at all reasonable times, following reasonable notice, for the retention period required under Section 10.6.

10.6 Records Retention. Borrower must retain all records required for the periods required under applicable Laws.

ARTICLE 11 INTENTIONALLY OMITTED.

ARTICLE 12 INTENTIONALLY OMITTED.

ARTICLE 13 INTENTIONALLY OMITTED.

ARTICLE 14 INTENTIONALLY OMITTED.

ARTICLE 15 DEVELOPER FEES.

15.1 Amount. OCII has approved the payment of fees in an amount not to exceed Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) to Developer during the term of this Agreement (“Developer Fees”), to be paid in accordance with the Developer Fee Schedule attached hereto as Exhibit O.

ARTICLE 16 TRANSFERS.

16.1 Permitted Transfers/Consent. Borrower may not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Site or Project or of any ownership interests in Borrower, or lease or permit a sublease on all or any part of the Project, other than: (a) transfers of the general partnership or manager's interest in Borrower to a nonprofit public benefit corporation approved in advance by OCII; or (b) removal of a general partner of
Borrower in accordance with the terms of Borrower’s limited partnership agreement. Any other transfer, assignment, encumbrance or lease without OCII’s prior written consent will be voidable and, at OCII’s election, constitute an Event of Default under this Agreement. OCII's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of OCII's rights under this Agreement.

ARTICLE 17 INSURANCE AND BONDS.

17.1 Borrower's Insurance. Commencing on the date hereof, Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as set forth in Exhibit G throughout the term of this Agreement at no expense to OCII.

ARTICLE 18 GOVERNMENTAL APPROVALS.

18.1 Compliance. Borrower covenants that it has obtained or will obtain in a timely manner and comply with all federal, state and local governmental approvals required by Law to be obtained for the Project. Subject to Section 23.1, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 19 DEFAULT.

19.1 Event of Default. Any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the OCII Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any OCII Document will constitute an "Event of Default," including the following:

(a) Borrower fails to make any payment required under this Agreement within fifteen (15) days after the date when due; or

(b) Intentionally omitted; or

(c) Borrower fails to perform or observe any other term, covenant or agreement contained in any OCII Document, and the failure continues for thirty (30) days after Borrower's receipt of written notice from OCII to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by OCII, provided that Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(d) Any representation or warranty made by Borrower in any OCII Document proves to have been incorrect in any material respect when made; or

(e) Intentionally omitted; or

(f) Borrower is dissolved or liquidated or merged with or into any other entity; or, if Borrower is a corporation, partnership, limited liability company or trust, Borrower
ceases to exist in its present form (unless otherwise approved pursuant to Article 16) and (where applicable) in good standing and duly qualified under the laws of the jurisdiction of formation and California for any period of more than ten (10) days; or, if Borrower is an individual, Borrower dies or becomes incapacitated; or all or substantially all of the assets of Borrower are sold or otherwise transferred except as permitted under Section 16.1; or

(g) Without OCII’s prior written consent as required under the terms of this Agreement, Borrower assigns or attempts to assign any rights or interest under any OCII Document, whether voluntarily or involuntarily, except as permitted under Section 16.1; or

(h) Without OCII's prior written consent, Borrower voluntarily or involuntarily assigns or attempts to sell, lease, assign, encumber or otherwise transfer all or any portion of the ownership interests in Borrower except as permitted under Article 16; or

(i) Without OCII’s prior written consent, Borrower transfers, or authorizes the transfer of, funds in any Account required or authorized under this Agreement; or

(j) Intentionally omitted; or

(k) Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for ninety (90) days); or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undischarged and unstayed for more than ninety (90) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, the improvements or any other property of Borrower and is not released, vacated or fully bonded within ninety (90) days after its issue or levy; or

(l) Any material adverse change occurs in the financial condition or operations of Borrower, such as a loss of services funding or rental subsidies, that has a material adverse impact on the Project; or

(m) Intentionally omitted; or

(n) Intentionally omitted; or

(o) Borrower is in default of its obligations with respect to any funding obligation (other than the Loan) for the Project, and the default remains uncured following the expiration of any applicable cure periods; or
(p) Borrower is in default of its obligations under any other agreement entered into with OCII or the City and County of San Francisco, and the default remains uncured following the expiration of any applicable cure periods.

19.2 Remedies. During the pendency of an uncured Event of Default, OCII may exercise any right or remedy available under this Agreement or any other OCII Document or at law or in equity. All of OCII’s rights and remedies following an Event of Default are cumulative, including:

(a) OCII at its option may declare the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other OCII Documents, immediately due and payable without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which Borrower expressly waives.

(b) OCII at its option may terminate all commitments to make Disbursements, or, without waiving the Event of Default, OCII may determine to make further Disbursements upon terms and conditions satisfactory to OCII in its sole discretion.

(c) OCII may perform any of Borrower's obligations in any manner, in OCII's reasonable discretion.

(d) OCII may terminate this Agreement.

(e) OCII, either directly or through an agent or court-appointed receiver, may take possession of the Project and enter into contracts and take any other action OCII deems appropriate to complete or construct all or any part of the improvements, subject to modifications and changes in the Project OCII deems appropriate.

(f) OCII may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct Borrower's noncompliance with this Agreement.

(f) Upon the occurrence of an Event of Default described in Section 19.1(k), the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other OCII Documents, will become due and payable automatically.

(g) All costs, expenses, charges and advances of OCII in exercising its remedies or to protect the Project will be deemed to constitute a portion of the principal balance of the Note, even if it causes the principal balance to exceed the face amount of the Note, unless Borrower reimburses OCII within ten (10) days of OCII’s demand for reimbursement.

19.3 Force Majeure. The occurrence of any of the following events will excuse performance of any obligations of OCII or Borrower rendered impossible to perform while the event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials
or reasonable substitutes for either; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotion; fire or other casualty and other causes beyond the control of the party obligated to perform. The occurrence of a force majeure event will excuse Borrower's performance only in the event that Borrower has provided notice to OCII within thirty (30) days after the occurrence or commencement of the event or events, and Borrower's performance will be excused for a period ending thirty (30) days after the termination of the event giving rise to the delay.

ARTICLE 20  REPRESENTATIONS AND WARRANTIES.

20.1  Borrower Representations and Warranties. As a further inducement for OCII to enter into this Agreement, Borrower represents and warrants as follows:

(a)  The execution, delivery and performance of the OCII Documents will not contravene or constitute a default under or result in a lien upon assets of Borrower under any applicable Law, any Charter Document of Borrower or any instrument binding upon or affecting Borrower, or any contract, agreement, judgment, order, decree or other instrument binding upon or affecting Borrower.

(b)  When duly executed, the OCII Documents will constitute the legal, valid and binding obligations of Borrower. Borrower hereby waives any defense to the enforcement of the OCII Documents related to alleged invalidity of the OCII Documents.

(c)  No action, suit or proceeding is pending or threatened that might affect Borrower or the Project adversely in any material respect.

(d)  Borrower is not in default under any agreement to which it is a party, including any lease of real property.

(e)  None of Borrower, Borrower's principals or Borrower's general contractor has been suspended or debarred by the Department of Industrial Relations or any Governmental Agency, nor has Borrower, any of its principals or its general contractor been suspended, disciplined or prohibited from contracting with any Governmental Agency.

(f)  The Loan is in balance, and the Funding Amount, together with all other committed sources of financing for the Project, are sufficient to complete the Project in accordance with this Agreement.

(g)  All statements and representations made by Borrower in connection with the Loan remain true and correct as of the date of this Agreement.
ARTICLE 21  NOTICES.

21.1  Written Notice. All notices required by this Agreement must be made in writing and may be communicated by personal delivery, overnight delivery service, facsimile (if followed within one (1) business day by first class mail) or by United States certified mail, postage prepaid, return receipt requested. Delivery will be deemed complete as of the earlier of actual receipt (or refusal to accept proper delivery) or five (5) days after mailing, provided that any notice that is received after 5 p.m. on any day or on any weekend or holiday will be deemed to have been received on the next succeeding business day. Notices must be addressed as follows:

To OCII:  
Office of Community Investment and Infrastructure  
Successor Agency to the San Francisco Redevelopment Agency  
1 South Van Ness, 5th Floor  
San Francisco, CA  94103  
Attn: Executive Director

With a copy to:  
Mayor’s Office of Housing and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, CA  94103  
Attn: Director

To Borrower:  
McCormack Baron Salazar, Inc.  
720 Olive Street, Suite 2500  
St. Louis, MO  63101  
Attn: Hillary Zimmerman

With a copy to:  
Bocarsly Emden Cowan Esmail& Arndt  
633 W. 5th Street, 70th Floor  
Los Angeles CA  90071  
Attn: Lance Bocarsly

With a copy to:  
McCormack Baron Salazar, Inc.  
50 California Street, Suite 1500  
San Francisco, California 94111  
Attn: Yusef Freeman

or any other address a party designates from time to time by written notice sent to the other party in manner set forth in this Section.

21.2  Required Notices. Borrower agrees to provide notice to OCII in accordance with Section 21.1 of the occurrence of any change or circumstance that: (a) will have an adverse
effect on the physical condition or intended use of the Project; (b) causes the Loan to be out of balance; or (c) will have a material adverse effect on Borrower's operation of the Site or ability to repay the Loan.

ARTICLE 22  HAZARDOUS SUBSTANCES.

22.1  Borrower's Representations. Unless OCII otherwise consents in writing, at all times from and after the date of this Agreement, at its sole expense, Borrower must: (a) comply with all applicable Environmental Laws relating to the Site and the Project, and not engage in or otherwise permit its agents to cause the occurrence of any Environmental Activity in violation of any applicable Environmental Laws or that is not customary and incidental to the intended use of the Site, provided that nothing contained in this Section will prevent Borrower from contesting, in good faith and by appropriate proceedings, any interpretation or application of Environmental Laws; and (b) deliver to OCII notice of the discovery by Borrower of any Environmental Activity on the Site promptly following Borrower's discovery.

ARTICLE 23  INDEMNITY.

23.1  Borrower's Obligations. Borrower must Indemnify OCII, the City, and their respective officers, agents and employees (individually or collectively, an "Indemnitee") against any and all Losses arising out of: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the OCII Documents (including those covenants set forth in Article 22 above); (b) any failure of any representation by Borrower to be correct in all respects when made; (c) injury or death to persons or damage to property or other loss occurring on or in connection with the Site or the Project, whether caused by the negligence or any other act or omission of Borrower (or its agents) or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise, but only to the extent such event arises directly or indirectly from Borrower’s (or its agents) activities on the Site; (d) any claim of any surety in connection with any bond relating to the construction or rehabilitation of any improvements or offsite improvements performed by Borrower or its agents; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the OCII Documents, the Loan, Borrower’s (or its agents) activities on the Site or the Project, or any transaction contemplated by, or the relationship between Borrower and OCII or Borrower and the City or any action or inaction by OCII or the City under, the OCII Documents; (f) the occurrence, before the expiration of the term of this Agreement, of any Environmental Activity caused or permitted by Borrower on the Site or any failure of Borrower (or its agents) to comply with all applicable Environmental Laws relating to Borrower’s (or its agents) activities on the Project or the Site; (g) the occurrence, after the termination of this Agreement, of any Environmental Activity resulting directly or indirectly from any Environmental Activity occurring from the date of this Agreement until the termination of this Agreement relating directly or indirectly to Borrower’s (or its agents) activities on the Project or the Site; (h) any liability of any nature arising from Borrower’s contest of or relating to the application of any Law, including any contest permitted under Sections 9.1, 18.1 and 22.2; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or
other proceeding by or before any Governmental Agency, whether meritorious or not, that
directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of
the matters described in clauses (a) through (h) above, provided that no Indemnitee will be
entitled to indemnification under this Section for matters caused solely by its own gross
negligence or willful misconduct. In the event any action or proceeding is brought against an
Indemnitee by reason of a claim arising out of any Loss for which Borrower has indemnified the
Indemnitees, upon written notice, Borrower must answer and otherwise defend the action or
proceeding using counsel approved in writing by the Indemnitee at Borrower's sole expense.
Each Indemnitee will have the right, exercised in its sole discretion, but without being required
to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or
judgment against the Indemnitee in connection with the matters covered by this Agreement. The
provisions of this Section will survive the repayment of the Loan and/or termination of this
Agreement.

23.2 No Limitation. Borrower's obligations under Section 23.1 are not limited by the
insurance requirements under this Agreement.

ARTICLE 24 GENERAL PROVISIONS.

24.1 Intentionally Omitted

24.2 No Third Party Beneficiaries other than City. Nothing contained in this
Agreement, nor any act of OCII, may be interpreted or construed as creating the relationship of
third party beneficiary, limited or general partnership, joint venture, employer and employee, or
principal and agent between OCII and Borrower or Borrower's agents, employees or contractors.
Notwithstanding the foregoing, OCII and Borrower hereby acknowledge and agree that as the
intended assignee of OCII’s rights under the OCII Documents, the City is a third party
beneficiary under the OCII Documents.

24.3 No Claims by Third Parties. Nothing contained in this Agreement creates or
justifies any claim against OCII by any person or entity with respect to the purchase of materials,
supplies or equipment, or the furnishing or the performance of any work or services with respect
to the Project. Borrower must include this requirement as a provision in any contracts for the
development of the Project.

24.4 Entire Agreement. This Agreement and its Exhibits incorporate the terms of all
agreements made by OCII and Borrower with regard to the subject matter of this Agreement. No
alteration or variation of the terms of this Agreement will be valid unless made in writing and
signed by the parties hereto. No oral understandings or agreements not incorporated herein will
be binding on OCII or Borrower.

24.5 OCII Obligations. OCII’s sole obligation under this Agreement is limited to
providing the Funds as described in this Agreement, up to the Funding Amount. Under no
circumstances, including breach of this Agreement, will OCII be liable to Borrower for any
special or consequential damages arising out of actions or failure to act by OCII in connection
with any of the OCII Documents.
24.6 **Borrower Solely Responsible.** Borrower is an independent contractor with the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance contemplated under this Agreement. Borrower is solely responsible for: (a) its own acts and those of its agents, employees and contractors and all matters relating to their performance, including compliance with Social Security, withholding and all other Laws governing these matters and requiring that contractors include in each contract that they will be solely responsible for similar matters relating to their employees; (b) any losses or damages incurred by Borrower, any of its contractors or subcontractors and OCII and its officers, representatives, agents and employees on account of any act, error or omission of Borrower in the performance of this Agreement or any other OCII Document and the development and operation of the Project; and (c) all costs and expenses relating to Borrower's performance of obligations under the OCII Documents, the delivery to OCII of documents, information or items under or in connection with any of the OCII Documents and taxes, fees, costs or other charges payable in connection with the execution, delivery, filing and/or recording of any OCII Document or document required under any OCII Document.

24.7 **No Inconsistent Agreements.** Borrower warrants that it has not executed and will not execute any other agreement(s) with provisions materially contradictory or in opposition to the provisions of this Agreement.

24.8 **Inconsistencies in OCII Documents.** In the event of any conflict between the terms of this Agreement and any other OCII Document, the terms of this Agreement control unless otherwise stated; provided, however, that any provision in this Agreement in conflict with any Law will be interpreted subject to that Law.

24.9 **Governing Law.** This Agreement is governed by California law without regard to its choice of law rules.

24.10 **Joint and Several Liability.** If more than one person or entity signs this Agreement as Borrower, the obligations of such persons and entities shall be joint and several.

24.11 **Successors.** Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors and assigns. This provision does not relieve Borrower of its obligation under the OCII Documents to obtain OCII's prior written consent to any assignment or other transfer of Borrower's interests in the Loan, the Site or the ownership interests in Borrower.

24.12 **Attorneys' Fees.** If any legal action is commenced to enforce any of the terms of this Agreement or rights arising from any party's actions in connection with this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of suit from the other party, whether incurred in a judicial, arbitration, mediation or bankruptcy proceeding or on appeal. For the purposes of this Agreement, reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney's services were rendered, who practice in the
City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. An award of attorneys' fees and costs will bear interest at the default rate under the Note from the date of the award until paid.

24.13 Severability. The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

24.14 Time. Time is of the essence in this Agreement. Whenever the date on which an action must be performed falls on a Saturday, Sunday or federal holiday, the date for performance will be deemed to be the next succeeding business day.

24.15 Further Assurances. Borrower agrees to: (a) pursue in an effective and continuous manner; (b) use best efforts to achieve; and (c) take all actions reasonably required by OCII from time to time to confirm or otherwise carry out the purpose of this Agreement.

24.16 Binding Covenants. The provisions of the OCII Documents constitute covenants running with the land and will be binding upon Borrower and Borrower's successors and assigns, and all parties having or acquiring any right, title or interest in whatever form, including leasehold interests (other than Tenants and approved commercial tenants), in or to any part of the Site, except that the same will terminate and become void automatically at the expiration of the term of this Agreement. Any attempt to transfer any right, title or interest in the Site in violation of these covenants will be void.

24.17 Consent. Except as expressly provided otherwise, whenever consent or approval of a party is required in any OCII Document, that party agrees not to withhold or delay its consent or approval unreasonably.

24.18 Counterparts. This Agreement may be executed in any number of counterparts, all of which will constitute but one agreement.

24.19 Borrower’s Personnel. The Project shall be implemented only by competent personnel under the direction and supervision of Borrower.

24.20 Borrower’s Board of Directors. Borrower or its managing general partner (or managing member of its general partner) shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in its bylaws and other governing documents, and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Said board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Borrower of its obligations under this Agreement.

24.21 Ownership of Results. Any interest of Borrower or any sub-borrower, in drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents or Publications prepared by or on behalf of Borrower or any sub-borrower in connection with this Agreement, the implementation of the Project, the
services to be performed under this Agreement, or acquired through the use of any Loan proceeds ("Work Product"), is hereby pledged to OCII as security for Borrower's obligations under this Agreement and the Note, and upon an Event of Default, subject to all applicable notice and cure periods, shall become the property of and be promptly transmitted by Borrower to OCII. Notwithstanding the foregoing, Borrower may retain and use copies for reference and as documentation of its experience and capabilities.

This Agreement constitutes a security agreement under the California Uniform Commercial Code, as it may be amended from time to time, and Borrower authorizes OCII to file any financing statements OCII elects and deems necessary to perfect its security interest in the Work Product.

24.22 Works for Hire. If, in connection with this Agreement or the implementation of the Project, Borrower or any sub-borrower creates artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship or Publications, such creations shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such creations shall be the property of OCII. If it is ever determined that any such creations are not works for hire under applicable law, Borrower hereby assigns all copyrights thereto to OCII, and agrees to provide any material, execute such documents and take such other actions as may be necessary or desirable to effect such assignment. With the prior written approval of OCII, Borrower may retain and use copies of such creations for reference and as documentation of its experience and capabilities. Borrower shall use commercially reasonable efforts to obtain all releases, assignments or other agreements from sub-borrowers or other persons or entities implementing the Project to ensure that OCII obtains the rights set forth in this Section.

24.23 Recourse. OCII's recourse against Borrower following an Event of Default is limited as set forth more specifically in the Note.

24.24 Assignment. OCII and Borrower hereby acknowledge and agree that, effective upon the date of issuance of the Certificate of Completion, all of OCII’s rights, interests and obligations under the OCII Documents shall be assigned to the City. No further instruments shall be necessary to effectuate this assignment, but if requested by MOHCD, OCII and Borrower hereby agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Section 24.24. Upon assignment to the City, all references herein to OCII shall be deemed references to the City.

24.25 Exhibits. The following exhibits are attached to this Agreement and incorporated by reference:

EXHIBITS
A Intentionally Omitted
B Site Description
C-1 Table of Sources and Uses of Funds
C-2 Intentionally Omitted
C-3 Intentionally Omitted
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>D</td>
<td>Intentionally Omitted</td>
</tr>
<tr>
<td>E</td>
<td>Bayview Hunters Point Employment and Contracting Policy</td>
</tr>
<tr>
<td>F</td>
<td>Contract Compliance Policies</td>
</tr>
<tr>
<td>G</td>
<td>Insurance Requirements</td>
</tr>
<tr>
<td>H</td>
<td>Lobbying/Debarment Certification Form</td>
</tr>
<tr>
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<tr>
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<td>L</td>
<td>Intentionally Omitted</td>
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<tr>
<td>M</td>
<td>Schedule of Performance</td>
</tr>
<tr>
<td>N</td>
<td>OCII Monthly Project Update Form</td>
</tr>
<tr>
<td>O</td>
<td>Developer Fee Schedule</td>
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<tr>
<td>P</td>
<td>Assignment of Work Product</td>
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<tr>
<td>Q</td>
<td>Consent to Assignment of Work Product</td>
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</table>
IN WITNESS WHEREOF, the parties hereto have executed this Agreement at San Francisco, California as of the date first written above.

**OCII:**
Office of Community Investment
And Infrastructure, Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California

By: ________________________________
Tiffany Bohee
Executive Director

**BORROWER:**
Double Rock Ventures, LLC, a limited liability company

By: McCormack Baron Salazar, Inc., a Missouri corporation, its sole member

By: ________________________________
Heidi J. Gewertz
Deputy City Attorney

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: ________________________________
Heidi J. Gewertz
Deputy City Attorney
## Phase 3B

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EXHIBIT C-2
Intentionally Omitted
EXHIBIT C-3
Intentionally Omitted
EXHIBIT D
Intentionally Omitted
EXHIBIT E
Bayview Hunters Point Employment and Contracting Policy
EXHIBIT F
Contract Compliance Policies

1. **Equal Opportunity Policies.** Borrower shall comply with OCII’s Equal Opportunity Policies attached hereto as part of this Exhibit E which includes: Small Business Enterprise Agreement, Construction Workforce Agreement, and Prevailing Wage Provisions (Labor Standards):

   (i) **Small Business Enterprise (SBE) Policy** (adopted by Resolution No. 82-2009, July 27, 2009) attached as Exhibit F-1;

   (ii) **Construction Workforce**, attached as set forth in Exhibit F-2; and

   (iii) **Prevailing Wage Policy** (adopted by Resolution No. 327-1985 Nov. 12, 1985) attached as Exhibit F-3.

   (iv) **Nondiscrimination in Contracts and Benefits** (adopted by Resolution No. 175-1997) attached as Exhibit F-4.

   (v) **Health Care Accountability Policy** (adopted by Resolution No. 168-2001) attached as Exhibit F-5.


3. **Conflict of Interest.**

   (a) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of Borrower or OCII who exercises or has exercised any function or responsibilities with respect to activities assisted by Funds, in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter. In order to carry out the purpose of this Section, Borrower must incorporate, or cause to be incorporated, in all contracts, subcontracts and agreements relating to activities assisted under the Agreement, a provision similar to that of this Section. Borrower will be responsible for obtaining compliance with conflict of interest provisions by the parties with whom it contracts and, in the event of a breach, Borrower must take prompt and diligent action to cause the breach to be remedied and compliance to be restored.
(b) Borrower represents that it is familiar with the provisions of Sections 1090 through 1097 and 87100 et seq. of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. Borrower certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify OCII immediately if Borrower at any time obtains knowledge of facts constituting a violation.

(c) In the event of any violation of the conflict of interest prohibitions, Borrower agrees that OCII may refuse to consider any future application for funding from Borrower or any entity related to Borrower until the violation has been corrected to OCII's satisfaction, in OCII's sole discretion.

4. Disability Access. Borrower must comply with all applicable disability access Laws, including the Americans With Disabilities Act (42 U.S.C. §§ 1201 et seq.), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 et seq.). Borrower is responsible for determining which disability access Laws apply to the Project, including those applicable due to the use of Funds. In addition, before occupancy of the Project, Borrower must provide to OCII a written reasonable accommodations policy that indicates how Borrower will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

5. Lead-Based Paint. Borrower must satisfy the requirements of Chapter 36 of the San Francisco Building Code ("Work Practices for Exterior Lead-Based Paint") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 et seq.) and implementing regulations at 24 CFR part 35. Borrower must also comply with the provisions contained in 17 CCR 350000 et seq., and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.


7. Non-Discrimination in OCII Contracts and Benefits Policy.

(a) Borrower May Not Discriminate. In the performance of this Agreement, Borrower agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Borrower, in any of Borrower's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social or other establishments or organizations operated by Borrower.
(b) Non-Discrimination in Benefits. Borrower does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for OCII or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a Governmental Agency under state or local law authorizing such registration, subject to the conditions set forth in the Agency’s Nondiscrimination in Contracts Policy, adopted by Agency Resolution 175-97, as amended from time to time.


(a) Borrower understands and agrees that under the State Public Records Law (Cal. Gov. Code §§ 6250 et seq.), this Agreement and any and all records, information and materials submitted to OCII or the City hereunder are public records subject to public disclosure. Borrower hereby authorizes OCII and the City to disclose any records, information and materials submitted to OCII or the City in connection with this Agreement as required by Law.

9. Compliance with Minimum Compensation Policy and Health Care Accountability Policy. Borrower agrees, as of the date of this Agreement and during the term of this Agreement, to comply with the provisions of the Agency's Minimum Compensation Policy and Health Care Accountability Policy (the "Policies"), adopted by Agency Resolution 168-2001, as such policies may be amended from time to time. Such compliance includes providing all "Covered Employees," as defined under Section 2.7 of the Policies, a minimum level of compensation and offering health plan benefits to such employees or to make payments to the City's Department of Public Health, or to participate in a health benefits program developed by the City's Director of Health.

10. Limitations on Contributions. Through execution of this Agreement, Borrower acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Agency for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Borrower acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Borrower further
acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Borrower's board of directors; Borrower's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Borrower; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Borrower. Additionally, Borrower acknowledges that Borrower must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

Finally, Borrower agrees to provide to OCII the names of each member of Borrower's general partners’ (or, if applicable, general partners’ managing members) board of directors; Borrower's general partners’ (or, if applicable, general partners’ managing members) chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Borrower’s general partners (or, if applicable, general partners’ managing members); any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Borrower.
EXHIBIT F-1
Small Business Enterprise
EXHIBIT F-2
Construction Workforce
EXHIBIT F-3
Prevailing Wage Policy
EXHIBIT F-4
Nondiscrimination in Contracts and Benefits
EXHIBIT F-6
Minimum Compensation Policy
EXHIBIT G
Insurance Requirements

Subject to approval by the City's Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below throughout the Compliance Term of this Agreement at no expense to the OCII:

1. **Borrower, Contractors.**

   (a) to the extent Borrower or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars ($1,000,000) each accident;

   (b) commercial general liability insurance, with limits set forth below, combined single limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; broad form property damage; explosion, collapse and underground (XCU); products and completed operations, as follows:

      (i) not less than One Million Dollars ($1,000,000) combined single limit per occurrence and Two Million Dollars ($2,000,000) annual aggregate limit before the start of demolition/construction if the Site is unoccupied;

      (ii) not less than Five Million Dollars ($5,000,000) combined single limit per occurrence and Ten Million Dollars ($10,000,000) annual aggregate limit during demolition/construction and occupancy of the Site/ongoing operations of the Project;

   (c) business automobile liability insurance, with limits not less than One Million Dollars ($1,000,000) each occurrence, combined single limit for bodily injury and property damage, hired and non-owned auto coverage, as applicable;

   (d) professional liability insurance for all architects employed in connection with the Project, with limits not less than Two Million Dollars ($2,000,000) (or, in the case of any other professionals, $1,000,000) each claim and Four Million Dollars ($4,000,000) annual aggregate limit for architects and Two Million ($2,000,000) annual aggregate for any other professionals with respect to negligent acts, errors or omissions in connection with professional services to be provided in connection with the Project. Any deductible over Fifty Thousand Dollars ($50,000) each claim must be reviewed by Risk Management; and

   (e) crime policy or fidelity bond covering Borrower's officers and employees against dishonesty with respect to the Funds, in the amount of Seventy Five Thousand Dollars ($75,000) each loss, with any deductible not to exceed Five Thousand Dollars ($5,000) each loss, including the OCII as additional obligee or loss payee.
(f) Pollution Liability and/or Asbestos Pollution Liability: Pollution Liability and/or Asbestos Pollution Liability applicable to the work being performed, with a limit no less than $1,000,000 per claim or occurrence and $2,000,000 aggregate per policy period of one year, this coverage shall be endorsed to include Non-Owned Disposal Site coverage.

2. **Property Insurance.** Borrower must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

   (a) during the course of any construction, builders' risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and OCII property in the care, custody and control of Borrower or its contractor, including coverage in transit and storage off-site, with a deductible not to exceed Ten Thousand Dollars ($10,000) each loss, including OCII and all subcontractors as loss payees;

   (b) property insurance, special form coverage, excluding earthquake and flood, but including vandalism and malicious mischief, for one hundred percent (100%) of the replacement value of all furnishings, fixtures, equipment, improvements, alterations and property of every kind located on or appurtenant to the Site, including coverage for loss of rental income due to an insured peril for twelve (12) months, with a deductible not to exceed Twenty Five Thousand Dollars ($25,000) each loss, including OCII as a named insured;

   (c) boiler and machinery insurance, comprehensive form, in the amount of replacement value of all insurable objects, with any deductible not to exceed Ten Thousand Dollars ($10,000) each loss, including OCII as a named insured; and

   (d) during construction and/or rehabilitation, performance and payment bonds of contractors, each in the amount of one hundred percent (100%) of contract amounts, naming OCII and Borrower as dual obligees, or other completion security approved by OCII in its sole discretion.

3. **Commercial Space.** Borrower must require that all nonresidential tenants' liability insurance policies include Borrower and OCII as additional insureds, as their respective interests may appear. Throughout the term of any lease of Commercial Space in the Project, Borrower must require commercial tenants to maintain insurance as follows:

   (a) to the extent the tenant has "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars ($1,000,000) each accident;

   (b) commercial general liability insurance, with limits not less than One Million Dollars ($1,000,000) each occurrence, combined single limit for bodily injury and property damage, including coverage for contractual liability; personal injury; advertisers' liability; including coverage for loss of income due to an insured peril for twelve (12) months;
owners' and contractors' protective; broadform property damage; explosion, collapse and underground (XCU); products and completed operations coverage;

(c) business automobile liability insurance, with limits not less than One Million Dollars ($1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) with respect to any tenant who has (or is required by Law to have) a liquor license and who is selling or distributing alcoholic beverages and/or food products on the leased premises, to maintain liquor and/or food products liability coverage with limits not less than One Million Dollars ($1,000,000), as appropriate;

(e) special form coverage insurance, including vandalism and malicious mischief, in the amount of 100% of the full replacement cost thereof, covering all furnishings, fixtures, equipment, leasehold improvements, alterations and property of every kind of the tenant and of persons claiming through the tenant; and

(f) full coverage plate glass insurance covering any plate glass on the commercial space.

4. **General Requirements.**

(a) General and automobile liability policies of Borrower, contractors, commercial tenants and property managers must include OCII, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to OCII.

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to OCII before cancellation or intended non-renewal is effective.

(c) With respect to any property insurance, Borrower hereby waives all rights of subrogation against OCII to the extent of any loss covered by Borrower's insurance, except to the extent subrogation would affect the scope or validity of insurance.

(d) Approval of Borrower's insurance by OCII will not relieve or decrease the liability of Borrower under this Agreement.

(e) Any and all insurance policies called for herein must contain a clause providing that OCII and its officers, agents and employees will not be liable for any required premium.

(f) OCII reserves the right to require an increase in insurance coverage in the event OCII determines that conditions show cause for an increase, unless Borrower demonstrates to OCII’s satisfaction that the increased coverage is commercially unreasonable and unavailable to Borrower.
(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

(i) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than three (3) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

(j) Borrower must provide OCII with copies of insurance certificates and endorsements for each required insurance policy.
EXHIBIT H
Lobbying/Debarment Certification Form

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions.

This lobbying certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for such failure.

3. Neither the undersigned nor its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. The undersigned will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of $100,000 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities and will obtain the certification of each contractor or subcontractor whose bid is accepted that such contractor or subcontractor is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities.

____________________, a c-Corporation

BY: ________________________________

NAME: ______________________________

TITLE: ______________________________

DATE: ______________________________
EXHIBIT J
Intentionally Omitted
EXHIBIT L
INTENTIONALLY OMITTED
**EXHIBIT M**  
Schedule of Performance

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<td>Environ Review/Land-Use Entitlements</td>
<td>Complete</td>
</tr>
<tr>
<td></td>
<td>a. CEQA Environ Review Submission</td>
<td>CP-HPS2 EIR complete; separate EIS process – complete 2/13</td>
</tr>
<tr>
<td></td>
<td>b. NEPA Environ Review Submission</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. CUP/PUD/Variances Submission</td>
<td></td>
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</tr>
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<td>---</td>
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<tr>
<td>6.</td>
<td>Permits</td>
<td></td>
</tr>
<tr>
<td>a.</td>
<td>Building / Site Permit Application Submitted</td>
<td>9/30/14</td>
</tr>
<tr>
<td>b.</td>
<td>Addendum #1 Submitted (Foundation/Framing)</td>
<td>6/15/15</td>
</tr>
<tr>
<td>c.</td>
<td>Addendum #2 Submitted</td>
<td>6/30/15</td>
</tr>
<tr>
<td>7.</td>
<td>Request for Bids Issued</td>
<td>6/30/15</td>
</tr>
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<td>8.</td>
<td>Service Plan Submission</td>
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</tr>
<tr>
<td>b.</td>
<td>Interim</td>
<td>1/30/15</td>
</tr>
<tr>
<td>c.</td>
<td>Phase Update</td>
<td>6/1/2014</td>
</tr>
<tr>
<td>9.</td>
<td>Additional City Financing</td>
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</tr>
<tr>
<td>a.</td>
<td>Predevelopment Financing Application (additional)</td>
<td></td>
</tr>
<tr>
<td>b.</td>
<td>Gap Financing Application</td>
<td>1/30/15</td>
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<td>10.</td>
<td>Other Financing</td>
<td></td>
</tr>
<tr>
<td>a.</td>
<td>Construction Financing RFP</td>
<td>4/15/2014</td>
</tr>
<tr>
<td>b.</td>
<td>AHP Application</td>
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<tr>
<td>c.</td>
<td>TCAC Application</td>
<td>9% - 3/15/15, 4% - 6/15/15</td>
</tr>
<tr>
<td>11.</td>
<td>Closing</td>
<td></td>
</tr>
<tr>
<td>a.</td>
<td>Construction Closing</td>
<td>10/15/15</td>
</tr>
<tr>
<td>b.</td>
<td>Permanent Financing Closing</td>
<td>7/15/17</td>
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<tr>
<td>12.</td>
<td>Construction</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Activity Description</td>
<td>Date</td>
</tr>
<tr>
<td>---</td>
<td>---------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>a.</td>
<td>Notice to Proceed</td>
<td>10/15/15</td>
</tr>
<tr>
<td>b.</td>
<td>Temporary Certificate of Occupancy/Cert of Substantial Completion</td>
<td>2/15/17</td>
</tr>
<tr>
<td>c.</td>
<td>Final Completion</td>
<td>4/15/17</td>
</tr>
<tr>
<td>13.</td>
<td>Marketing/Rent-up</td>
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</tr>
<tr>
<td>b.</td>
<td>Commence Marketing</td>
<td>10/15/16</td>
</tr>
<tr>
<td>c.</td>
<td>95% Occupancy</td>
<td>10/15/17</td>
</tr>
<tr>
<td>14.</td>
<td>Cost Certification/8609</td>
<td>7/15/17</td>
</tr>
<tr>
<td>15.</td>
<td>Close Out SFRA Loan(s)</td>
<td>9/15/17</td>
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</tbody>
</table>
## EXHIBIT O
Developer Fee Schedule

<table>
<thead>
<tr>
<th>Project Management Disbursement Schedule (Per Phase)</th>
<th>% of Project Mgmt Fee</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>At CDLAC/TCAC application per Phase</td>
<td>15%</td>
<td>$75,000</td>
</tr>
<tr>
<td>During or at end of Predevelopment</td>
<td>35%</td>
<td>$175,000</td>
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</tbody>
</table>
EXHIBIT P
Assignment of Work Product
EXHIBIT Q
Consent to Assignment of Work Product