Memorandum of Understanding - Alice Griffith Replacement Housing Development (Surplus Cash Distributions)

This MEMORANDUM OF UNDERSTANDING-ALICE GRIFFITH REPLACEMENT HOUSING DEVELOPMENT (the "MOU"), is entered into as of October 23, 2014 by and among the Housing Authority of the City and County of San Francisco, a public body corporate and politic (the "Authority"), the City and County of San Francisco, a municipal corporation (the "City"), acting by and through the Mayor's Office of Housing and Community Development ("MOHCD"), and the 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, also known as the Office of Community Investment and Infrastructure ("OCI" or "Agency") ("OCI", and together with the Authority and MOHCD, the "Parties").

RECDIALS

A. The Authority is a public housing authority formed pursuant to California Health and Safety Code section 34200 et seq., and governed by certain regulations promulgated by the United States Department of Housing and Urban Development ("HUD"). The Authority's governing board of commissioners (the "Authority Commission") is appointed by the Mayor of the City.

B. The Authority is the owner of the two hundred fifty six (256) residential units at the Alice Griffith public housing development ("Alice Griffith"), located at 207 Cameron Way in San Francisco, California, on real property owned by the Authority more particularly described in the attached Exhibit A (the "Site").

C. The Authority desires to improve the Site and the living conditions for the residents living at the Site and the surrounding area. On February 24, 2010, HUD approved the Authority's request for a noncompetitive procurement in accordance with 24 CFR 85.36(d)(4)(i)(A) and (B), thereby allowing it to contract with Developer for the purpose of completing the demolition, disposition, and mixed-finance development of Alice Griffith.

D. CP Development Co. LP, a Delaware limited partnership (the "Master Developer") and OCI are parties to that certain Disposition and Development Agreement (Candlestick Point and Phase 2 of the Hunters Point Shipyard) dated for reference purposes as of June 3, 2010 (as amended and as may be further amended from time to time, the "Agency DDA") for the redevelopment of the Site and certain other real property adjacent to and surrounding the Site (collectively, as more particularly described in the Agency DDA, the "Agency DDA Property").

E. The Authority, the Master Developer, and McCormack Baron Salazar, Inc., a Missouri corporation ("MBS") entered into that certain Exclusive Negotiating Rights Agreement dated as of October 14, 2010, as amended (the "ENRA"), which provides, among
other things, the Master Developer and MBS with the exclusive right to negotiate with the Authority for the potential redevelopment of the Site in accordance with the requirements of the Agency DDA. The Master Developer and MBS have assigned all of their respective rights and interests under the ENRA to Double Rock Ventures, LLC, a Delaware limited liability company ("DRV").

F. The ENRA and the Agency DDA contemplate that the Master Developer, the Authority and DRV will enter into that certain Master Development Agreement (the "Master Development Agreement" or "MDA") and certain ground leases, pursuant to which the Master Developer and/or DRV will, among other matters, demolish Alice Griffith, construct on the Site certain infrastructure improvements, and in multi-phases, approximately one thousand one hundred and twenty-six (1,126) new housing units (the "Development"). The Development will include five hundred and four (504) rental units, which will include two hundred and fifty six (256) replacement public housing units (the "Alice Griffith Replacement Units") and two hundred and forty eight (248) affordable and workforce rental housing units (the "Affordable Housing Units", together with the Alice Griffith Replacement Units, the "Affordable Housing Development").

G. MBS and the Authority received a Choice Neighborhood Initiative (CNI) Grant from HUD to assist in the development of the Alice Griffith Replacement Housing Units. In addition, the Authority obtained HUD's approval for the Alice Griffith Replacement Units to part of the HUD's Rental Demonstration Assistance ("RAD") program. The Alice Griffith Replacements Units will be subject to HUD's requirements under the CNI program and the RAD program.

H. The Affordable Housing Development will be developed under the City's HOPE SF ("HOPE SF") Program, which seeks to provide financing and services to rebuild San Francisco's most distressed public housing sites, while increasing affordable housing and ownership opportunities and improving the quality of life for existing residents and the surrounding communities. The Parties have contributed and will contribute land and financing to assist in the revitalization of the Site.

I. OCII will provide a development subsidy to each phase of the Affordable Housing Development, which will be evidenced by a loan agreement (the "Loan Agreement(s)"), in the form of the Loan Agreements dated July 15, 2014 between OCII and DRV for the Alice Griffith Replacement Projects Phase 1 and Alice Griffith Replacement Projects Phase 2.

J. Prior to the conveyance or leasing of any portion of the Site, the Parties wish to enter into this MOU to set forth their agreements with regards to the proportional share of surplus cash that each Party will received in connection with the public contributions made to the Development, including the Affordable Housing Development.

K. Any undefined capitalized terms set forth herein shall have the meaning provided for such term in the MDA, Agency DDA, the Loan Agreement(s) as applicable, or the Ground Lease between the Authority and the Alice Griffith Owner.
NOW, THEREFORE, in consideration of the foregoing recitals, and for good and valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties hereby agree as follows:

1. **Site.** Prior to ground leasing of any portion of the Site, the Authority shall have an appraisal conducted on the entire Site. Such appraisal shall be based on the restricted value of the unimproved Site.

   a. **Ground Lease Rent for Long-Term Leases.** A portion of the Site will be conveyed through a series of long-term ground lease(s) for an annual rent in the amount of a one dollar ($1), plus a residual rent that will be based on ten percent (10%) of the restricted value of the Site. The residual rent will be paid to the extent of any Surplus Cash Flow, as defined in Section 2, is available in a given year, and any unpaid residual rent will not accrue.

   b. **Nominal Amount for Fee Simple Transfer Parcels.** The Authority shall convey that portion of the Site which is scheduled to ultimately be developed as market rate housing to OCII for one dollar ($1.00), subject to the condition that the ultimate conveyance of the portion of the Site to the Master Developer or its affiliate from the OCII will be subject to the terms and conditions of the Agency DDA.

2. **Determination of Surplus Cash Flow.**

   a. **In General.** The Authority, Agency and MOHCD hereby agree that Surplus Cash Flow is defined as Project Income minus Project Expenses and Project Fees for each phase.

   b. **Accounting.** Surplus Cash Flow shall be calculated by MOHCD within 120 days of the end of each fiscal year of the Affordable Housing Development following the completion of each phase, pursuant to the related Authority, Agency, and MOHCD loan and other agreements. The Parties further agree that the Surplus Cash Flow from each rental phase of the Affordable Housing Development will be distributed in a manner consistent with the following: first, to pay the tax credit investor(if applicable) the approved asset management fee; second, to pay any outstanding developer fee; third to pay any approved partnership management fee; fourth, to pay one-third (1/3) of the remaining Surplus Cash Flow to the Alice Griffith Developer as an incentive management fee in an amount not to exceed $500 per unit per year, up to a maximum of $50,000. Any remaining Surplus Cash Flow will be allocated between the California Housing and Community Development Department, if applicable, and the Parties based only on each entity's proportional share as set forth below.

   c. **Proportional Share.** The Parties agree to the following proportional share of the Surplus Cash Flow distributions for each phase of the Affordable Housing Development:

      (i) **Authority:** The lesser of (a) the annual Residual Rent, or (b) One-Third (1/3) of the Surplus Cash Flow;
(ii) **Agency/MOHCD:** Remaining Surplus Cash Flow up to a maximum of full repayment of outstanding loans for the applicable phase.

Payments to each entity shall be made from Surplus Cash Flow only pursuant to Section 2(b). The proportional share of the Surplus Cash Flow will be the sole measurement for payment to the Parties. The Parties can apply their allocation of Surplus Cash Flow in whatever manner such Party deems appropriate.

3. **Timing of Surplus Cash Flow and Distribution to the Parties.** Notwithstanding anything to the contrary contained herein, the Parties agree that Surplus Cash Flow associated with Alice Griffith Phase 1 and Alice Griffith Phase 2 or any subsequent phases prior to the completion of all affordable rental housing (including the Alice Griffith Replacement Units) phases of the Development (or the final determination pursuant to the MDA that Master Developer has failed to satisfy the requirements necessary to develop any remaining incomplete phases) shall be used to finance the construction of the affordable rental housing (including the Alice Griffith Replacement Units) for all phases of the Development and shall not be distributed to any of the Parties. Such Surplus Cash Flow will be held, administered and disbursed by MOHCD in accordance with this Section. The Agency shall loan, or otherwise provide these funds, after they are transferred from MOHCD to OCII, through a financing structure acceptable to the Parties, to DRV, or its affiliate or successor, for the development of the appropriate Development phase. MOHCD shall provide evidence of its compliance with the provision of this subsection to the other Parties in a reasonable manner.

4. **Term.** The term of this MOU shall begin on the date it is signed by all of the Parties below and shall end on the earlier of (i) the date when the Parties enter into an agreement which, by its terms, terminates this MOU or (ii) with respect to any Party, the date on which such Party delivers written notice of termination of this MOU to the other parties.

5. **Discretion of Parties.** Authority, the Agency and MOHCD, including their respective boards, commissions, departments, and officials, each shall exercise its sole discretion over all matters relating to the Development over which it has jurisdiction consistent with legal requirements, customary practices, and public health, safety, convenience and welfare, and each shall retain, at all times, its respective authority to take any action under its jurisdiction that is necessary to protect the health, safety, convenience and welfare of the public.

6. **Authority.** All matters requiring MOHCD's approval shall be approved of by the Director of MOHCD or his or her designee. All matters requiring the Authority's approval shall be approved of by the Board of Commissioners of the Authority, or if designated, by its Acting Executive Director. All matters requiring the Agency's approval shall be approved of by the Commission of the Agency, or if designated, by its Executive Director or his or her designee.

7. **Miscellaneous.**

a. This MOU may be amended or modified only by a writing signed by the Executive Director of the Authority, or his or her designee, the Director of MOHCD, or his or her designee, and the Executive Director of the Agency, or his or her designee, subject to the
Authority described in Section 6.

b. No waiver by any Party of any of the provisions of this MOU shall be effective unless in writing and signed by an authorized representative, and only to the extent expressly provided in such written waiver.

c. This MOU contains the entire understanding between the Parties as of the date of this MOU, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.

d. All transactions described herein are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and codes and applicable state and/or federal laws.

e. In the event of any inconsistency between the terms of this MOU and the terms of any other Development document (including but not limited to the MDA, the Agency DDA, or any ground lease entered into with respect to the Affordable Housing Development), the terms of this MOU shall in all instances be controlling.

8. **Recitals.** The Recitals above are expressly incorporated herein and made a part of this MOU by this reference.

9. **Counterparts.** This MOU may be executed in counterparts, each of which shall be deemed original, but all of which, together, shall constitute one instrument.
IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date first written above.

AUTHORITY:

HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic

By: ____________________________
   Barbara T. Smith
   Acting Executive Director

Date: __________________________

APPROVED AS TO FORM AND LEGALITY:

___________________________
Dianne Jackson McLean
Goldfarb & Lipman LLP
Special Counsel

MOHCD:

MAYOR’S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT

By: ____________________________
   Olson Lee, Director

Date: __________________________

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney,
as counsel to MOHCD

By: ____________________________
Name: __________________________
Title: __________________________

AGENCY:

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

Date: __________________________