Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, California 94111-4710
P: 415.262.5100 **F**: 415.262.5199

Linda C. Klein
415.262.5130
lklein@coxcastle.com

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VIA E-MAIL

Ms. Teresa L. Stricker
City Attorney
City of Richmond
450 Civic Center Plaza
Richmond, CA 94804

Mr. Christian L. Marsh
Downey Brand LLP
455 Market Street
Suite 1500
San Francisco, CA 94105

Re: Response to City's Notice Terminating Defense in *North Coast Rivers Alliance v. City of Richmon*d, Contra Costa County Super Court Case No. N20-1528

Dear Ms. Stricker and Mr. Marsh:

We were surprised to receive a letter from you stating that the City of Richmond ("City") is terminating its defense of the pending consolidated action, *North Coast Rivers Alliance v. City of Richmond*, challenging the City's decision to approve our client's proposed mixed-use development on Point Molate ("Project").

The City's termination of its defense and the Joint Defense Agreement, without first determining if such termination would be mutually agreeable with our client, Winehaven Legacy LLC ("WLL"), violates both the Development and Disposition Agreement ("DDA") and the Development Agreement ("DA"). Both the DDA and DA state that "[u]pon commencement of any such action, the City and Developer shall meet in good faith and seek to establish a mutually acceptable method of defending such action." (DDA, § 11.10; DA, § 11.15.) As required by these agreements, the City and WLL met and agreed to jointly defend the litigation and entered into a Joint Defense Agreement. The City is now taking an approach (unilaterally terminating its defense) that is not mutually acceptable to WLL, in violation of the DDA and DA.

The City cites to Section 8.4.2 of the Development Agreement ("DA") as authorizing its actions. While DA Section 8.4.2 states that the City has "sole discretion to terminate its defense at any time," that language does not appear in the DDA and conflicts with the requirement under

the DDA to establish a mutually acceptable defense strategy. Under DA Section 3.4.5, where the DA and DDA conflict, the DDA "shall control."

The City's termination of its defense also conflicts with the fundamental requirement applicable to all contracts to exercise good faith when fulfilling contractual agreements. Multiple provisions in the DDA and DA reflect this requirement, obligating the City to use good faith and cooperate with WLL. (E.g., DDA Sections 1.1, 2.3.3, 3.1, 3.2, 3.3, 4.6.2.8, 5.4.1, 5.5.2, 5.5.6, 11.22, and 11.24, and DA Sections 2.1.2, 2.4, 4.2, 6.3, 8.1, and 8.3.)

The City also has a duty not to prejudice the litigation, as indicated by the requirement in various DDA and DA provisions to cooperate with WLL on the Project. (See also Gov't Code § 66474.9(b)(2) [requiring a city to cooperate fully in the defense of a challenged subdivision map if the conditions require the subdivider indemnify the city, as the Project conditions do here].) The City's decision to withdraw from the defense could prejudice the outcome of the litigation, as the judge may infer from the City's sudden reversal that the City is convinced by petitioners that it has legally erred, rather than that the decision stems from a change in political direction. Moreover, under Government Code section 66474.9(b)(2), if the City "fails to cooperate fully in the defense, the subdivider shall not thereafter be responsible to defend, indemnify, or hold harmless the local agency." The City's termination notice means that the City is at risk of being responsible for the cost of the administrative record and other litigation expenses, including potentially petitioners' attorneys' fees.

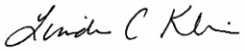
Even if the City were not to participate in the litigation, the City has a duty to continue working with WLL to process the approvals needed to undertake the Project, including "to comply with [a] court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Vested Elements, or (ii) any conflict with the Vested Elements or frustration of the intent or purpose of the Vested Elements." (DA, § 8.5.) And if the Project ultimately does not timely move forward, the City would nonetheless be obligated to sell Point Molate to Upstream and the Guidiville Rancheria of California under the federal settlement agreement. We are thus unclear on what the City hopes to gain by violating the DDA.

This letter serves as WLL's notice to the City of its breach of DDA Section 11.10 and DA Section 11.15, as required under DDA Section 10.3.2 and DA Section 7.1. We request that the City provide times at which it would be willing to meet and confer regarding this breach. We also remind the City that it must "continue to perform" its DDA and DA obligations, including "processing, issuing, and/or approving Subsequent Approvals" (DA § 2.4) and "help[ing] facilitate and cooperate . . . in seeking any Other Agency Approvals" (DA § 8.3), pending the resolution of this breach (DA § 7.7; see DDA § 10.3.2 [WLL can demand specific performance of the City's obligations under the DDA]).

WLL looks forward to meeting and conferring with the City soon to come to a mutually acceptable method of defending the lawsuit against the Project.

Sincerely,

Cox, Castle & Nicholson LLP



Linda C. Klein

cc: Andrew B. Sabey, Cox, Castle & Nicholson LLP
Daniel Engler, Cox, Castle & Nicholson LLP
Marc Magstadt, Winehaven Legacy LLP
David Soyka, Winehaven Legacy LLP

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