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May 9, 2022

VIA E-MAIL

Linda C. Klein
Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, CA 94111-4710

E-Mail: lklein@coxcastle.com

Re: Point Molate – Winehaven Closing

Dear Ms. Klein:

On Wednesday (May 3) I learned that Winehaven has proposed setting a date for closing of May 18, 2022. This is exciting news. I set an internal meeting of involved Directors and staff for the following day to learn if everything is in position to achieve this closing date and a number of issues were revealed that need to be resolved before we can close. These issues arise out of the Disposition and Development Agreement (dated September 30, 2020) and will require consultation with the City Council. Other issues are a part of the closing process, while some issues need to be on a list of follow up items after the closing. To this end, we have assembled a Summary, attached as Exhibit A, which identifies items which under the DDA will need to be addressed in order to close, and certain items that we may consider deferring to post-closing. Nothing herein is intended to modify any provision of the agreement, but to assure the parties that these issues remain important and will be addressed.

With regard to our consultation with the Council, the next Council meeting is on May 17 which is only the day before the developer's proposed closing date. If the Council raises any issues, it may take several days to weeks to address them. In that regard, I have asked Upstream/Guidiville if we may have a short extension. They have previously told me that was possible if we need it. I do not have a response yet to my specific request. In raising these issues with you now I'm hoping you can address them satisfactorily by May 17 - in fact with the agenda deadlines it would be best if any input was provided to us by the end of day Friday, May 13.

Here are issues of concern:

A. Transfer of Remediation Responsibility.

On April 20, I participated in a zoom call with a number of individuals who have been involved with the San Francisco Regional Water Quality Control Board, the Department of Navy and other entities concerning the remediation and clean-up

obligations of the Property. We discussed that with the Property Transfer, those obligations under the remediation plan (“RAP”) and other regulatory agreements, would pass to Winehaven. There was agreement that the DDA provided for this, but that there were future steps which needed to occur for transfer of obligations. Developer’s counsel, Robert Doty, by email on April 22 outlined some of these tasks. We need written assurance that as of the closing, the developer shall be the land owner and responsible party under applicable law.

B. Project Performance and Payment Security.

Section 4.6.1.12 states: “Guaranty or Initial Project Performance and Payment Security. Developer shall have delivered to the City either a Guaranty or Initial Project Performance and Payment Security for the First Site Improvement Phase.”

It is my understanding that the final plans for First Site Improvement Phase have not been finalized. Accordingly the cost for the First Phase Master Infrastructure is not definable but I understand that the estimated cost of those improvements is on the order of \$130M. Moreover, it is also not clear exactly when such improvements would be constructed. The DDA provides for the security in the form of bonds or a guarantee (Section 2.8.1.) Since the improvement plans do not have enough definition for a refined estimate of costs, nor could a bonding program be developed at this time, we think the Guaranty option provided in section 2.8 of the DDA is the route we will need to take. A form of Guaranty is provided in the DDA, and the qualifications for an “Approved Guarantor” (defined in Section 1.1 – page 2 & 3). In order for the City to have a reasonable time to evaluate the qualifications of the proposed Guarantor, please promptly provide the name of the proposed entity together with appropriate financial information which should include 3 years of audited financial statements.

As I write this letter I was advised by Mark Northcross that the proposed Guarantor is MSD Capital which is privately held. Please note that we can provide a method for their financial information to be kept confidential.

C. Financing Plan.

Section 2.5 of the DDA provides that the Developer must deliver to the City a Master Financing Plan for financing “all costs of acquisition of the Property and the construction of all of the Site Improvements, including the Offsite Improvements...”. City approval of the Final Financing Plan for the First Site Improvement Phase is a condition to closing under Section 2.5 of the DDA. As you are aware, the preliminary plan placed reliance on the formation of a Community Facilities District (“CFD”), but after months of study and discussion, and public hearings, on March 18 the City Council disapproved the use of the CFD mechanism

on the basis provided in Section 2.5.1 because it would “result in a negative fiscal impact on the City’s general fund” and other reasons; the City had the right “to reject the Proposed Master Financing Plan...in the City’s sole and absolute discretion.” After months of discussions and a public hearing on February 22, at a hearing on March 28, 2022, the City Council by Resolution disapproved utilizing the proposed CFD and the Financing Plan based thereon. You have resubmitted that same Financing Plan which utilizes the disapproved CFD. On March 24, 2022, the City’s Finance Team suggested to the Developer various other financing mechanisms which might not have an adverse impact on the general fund. On May 4, through the City’s Financial Advisor Mr. Mark Northcross, the issue was again raised that you should present an alternative Financial Plan to the City which was acceptable. We would advise you to submit a Plan which has not already been rejected and has no adverse general fund impact - and hope that you have an alternative and can submit it promptly.

D. Payment of Fees and Costs:

At the March 18 meeting outstanding fees and costs owed to the City were identified. These costs have still not been paid. The City is assembling a more current listing of outstanding costs. This will be provided to you by Friday, May 13. These will need to be paid prior to closing.

E. Remaining Closing Issues:

- i. FF&E Specifications for Fire/Police Station. This needs to be completed.
- ii. Status of Proposed Final Plans for First Site Improvement Phase.
- iii. Evidence of Availability of Funds needs to be provided.
- iv. Any matters required to be completed prior to closing and must be shifted to post-closing will need to be approved by the City and confirmed in writing.

We would be happy to discuss other items on the list and any timing issues.

Linda C. Klein
May 9, 2022
Page 4

F. Cooperation Regarding Closing Date Extension

We hope that all the items herein can be wholly addressed by March 17, but on the chance they might not be, we hope that you join with us in requesting an extension from Upstream of the May 21 closing deadline.

We look forward to hearing your response to the issues raised herein.

Very truly yours,

ALESHIRE & WYNDER, LLP



David J. Aleshire, City Attorney
City of Richmond

DJA:krb

cc: Mayor Butt and Councilmembers
Shasa Curl
Joe Leach
Lina Velasco
Mark Northcross
Anne Lanphar
Jodi Fedor

EXHIBIT A

DDA Pre-Closing, Closing and Initial Post-Closing Requirements

COMPLETED PRE-CLOSING TASKS:		
<i>DDA §</i>	<i>TASK:</i>	<i>STATUS:</i>
DDA §2.6.1	Developer Submittal of Proposed Final Plans for First Site Improvement Phase.	DEVELOPER SUBMITTED 2/20/22 - Initial comments provided, on-going discussions between parties
DDA §2.3.7	Developer to obtain Final Large Lot Map or First Phase Final Map.	CITY APPROVED 5/3/22 - City staff proceeding with execution and recordation, must be completed by Closing
DDA §2.3.8	Developer to submit Transit Plan for the Project.	DEVELOPER SUBMITTED 4/21/22 DDA does not specify approval or response time, only submittal requirement
DDA §2.9	Submittal of Preliminary Master HOA Documents.	DEVELOPER SUBMITTED 4/22/22
DDA §2.10	Submittal of Certificate of Readiness.	DEVELOPER SUBMITTED TO ESCROW 4/22/22
DDA §4.6.1.14	Submittal of Evidence of Insurance	PROVIDED: In connection with existing Permits for Security and Historic Preservation
DDA §4.4.1	Developer Delivery of Closing Documents to Escrow	DEVELOPER SUBMITTED TO ESCROW 4/22/22
DDA §4.6.1	Developer Entity Formation/Authorization Documents Submitted to City	DEVELOPER SUBMITTED 4/21/22
REMAINING PRE-CLOSING TASKS:		
<i>DDA §</i>	<i>TASK:</i>	<i>STATUS:</i>
DDA §1.1	Mutual Agreement of FF&E Specifications for Police & Fire Station.	On-going discussions between parties; if not resolved by Closing consider moving to post-closing obligation

DDA §2.5.2	Developer Submittal of Proposed Phase Financing Plan for the First Site Improvement.	DEVELOPER SUBMITTED 3/22/22 - Plan included CFD assumptions after CFD was not approved by the City so was not adequate or acceptable. Developer to re-submit reflecting alternative financing mechanisms. Approval of Financing Plan is a condition to City's obligation to Close
DDA §2.5.3	Developer Submittal of Evidence of Availability of Funds for First Site Improvement Phase.	Consistent with Approved Financing Plan; to be received and accepted as a condition to City's obligation to Close
DDA §2.2 & 2.3.2; Development Agreement, other	Developer reimbursement of all City costs incurred, including for costs intended to be covered by unreplenished Pre-development and Entitlement Fees Fund, litigation and CFD expenses	To be included on closing statement: Developer to pay all amounts outstanding through Escrow
DDA §4.4.1.1	Developer deposit of funds (including Purchase Price) required to Close to Escrow	To be submitted at least one business day prior to Closing of Escrow
DDA §4.6.2.4	Developer's Title Policy	Condition benefiting Developer
DDA §4.4.2	City Delivery of Closing Documents to Escrow, including City Grant Deed	Forms agreed
DDA §4.4.1.2 & 2.8.2	Current Architect/Engineer's Consent to Assignment of Development Documents provided by Developer to City	Developer to provide in form attached to the Assignment of Development Documents
DDA §4.10.6.1	Developer Acknowledge of Assumption of Environmental Remediation Obligations and third party documentation as needed	In progress; specifics to be confirmed and agreed
IMMEDIATE POST-CLOSING TASKS (IF NOT COMPLETED PRE-CLOSING):		
DDA §	TASK:	STATUS:
DDA §2.6.1	City Approval of Developer Submittal of Proposed Final Plans (can be conceptual plans) for First Site Improvement Phase.	Approval of Plans is not a closing condition (submittal is a closing condition benefiting City)
DDA §2.3.8	City to Provide Comments, Developer to submit revisions to Transit Plan for the Project to reflect mitigation and other requirements, final Project, etc.	Not a Closing Condition

DDA §4.6.2.7	Site Improvement Permit for First Site Improvement Phase issued or ready to be issued by City	Closing Condition benefiting Developer, can be waived/deferred to post-close
DDA §5.6.1	Initial Project Performance and Payment Security for First Site Improvement Phase (to replace Guaranty); Infrastructure Improvement Agreement	Not a Closing Condition if Guaranty is provided instead
DDA §5.5.8	Project O&M Plan submitted by Developer to City for approval	Not a Closing Condition, but a condition to issuance of permits
DDA §1.1	Submerged Lands Lease and related Easement to access pier	Not a Closing Condition; required prior to commencement of work on pier