

RESOLUTION NO. 22-19

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND,
CALIFORNIA, APPROVING THE FORM OF THE EXCLUSIVE RIGHT TO
NEGOTIATE AGREEMENT WITH WINEHAVEN LEGACY LLC AND
AUTHORIZING THE CITY MANAGER TO COMPLETE NEGOTIATIONS WITH
WINEHAVEN LEGACY LLC AND EXECUTE THE ERN FOR THE POINT MOLATE
SITE**

WHEREAS, the City Council selected JNI LLC (SunCal) through a “Request for Qualifications/Proposals” process to enter into an Exclusive Right to Negotiate (ERN) agreement for the potential redevelopment of the developable areas at Point Molate, a City-owned parcel, and identified as portions of Assessor Parcel Number 561-100-008, a copy of which is attached to the ERN; and

WHEREAS, Winehaven Legacy LLC, a wholly owned subsidiary of JNI LLC, Master Developer selected by the City Council, was created for the purpose of entering into the ERN and negotiating a disposition and development agreement (DDA) on terms acceptable to both parties; and

WHEREAS, the ERN does not constitute a final action by the City concerning the disposition, entitlement or development of the anticipated project, nor does it commit the City to take any discretionary actions to implement the anticipated project, and the provisions of the ERN constitute only an agreement to commence negotiations regarding specified terms, and thus any future discretionary decisions contemplated by the ERN will not be made unless and until the City has reviewed and considered environmental documentation prepared in compliance with CEQA for the project; and

WHEREAS, based on the foregoing this action is exempt from CEQA pursuant to Section 15061(b)(3), since it can be seen with certainty that there is no possibility that the ERN may have a significant effect on the environment.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Richmond does hereby find the above recitals are true and correct, and have served, together with the Agenda Report, as the basis for the findings and actions set forth in this Resolution.

BE IT FURTHER RESOLVED, that the City Council approves the form of the ERN and authorizes the City Manager to complete negotiations with Winehaven Legacy Point LLC and execute the ERN in the form here included as Exhibit A with Winehaven Legacy LLC for and on behalf of the City of Richmond.

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held April 23, 2019, by the following vote:

AYES: Councilmembers Bates, Johnson, Myrick, Vice Chair Choi, and Mayor Butt.
NOES: Councilmember Martinez.
ABSTENTIONS: None.
ABSENT: Councilmember Willis.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

TOM BUTT
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 22-19**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on April 23, 2019.



Pamela Christian, Clerk of the City of Richmond

EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT REGARDING POINT MOLATE MIXED-USE DEVELOPMENT

This EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT (the “Agreement”) is entered into as of May 2, 2019 by and between the CITY OF RICHMOND, a municipal corporation and charter city (the “City”), and WINEHAVEN LEGACY LLC, a Delaware limited liability company (the “Developer”), under the terms and provisions set forth below.

RECITALS

A. City is the owner of the approximately 413-acre Point Molate Site (“Site”), with approximately 142-acres being submerged in the San Francisco Bay. The Site is subject to a 2018 Judgment that stated in part that the land use entitlements must be generally consistent with the Point Molate Reuse Plan (“Reuse Plan”). The Reuse Plan designates approximately 70% of the site as open space with development to occur on the remaining 30%. The open space and developable area percentages are based on the upland 271-acre Site and are more particularly shown on the aerial map attached to and hereby made a part of this Agreement as Exhibit A (the “Property”).

B. Developer proposes to acquire the Property for the development of an environmentally suitable mixed use project (the “Mixed-Use Development”). As of the date of this Agreement Developer contemplates that the Mixed-Use Development will include (i) commercial retail space, (ii) office space, (iii) a community lawn and kayaking center and a long term plan for the pier, (iv) a shoreline park, open space areas, and trail, (v) preservation and adaptive reuse of the Winehaven Historic District including winery buildings, cottages, powerhouse and fire station, and (vi) residential space (estimated as of the date of this Agreement to be comprised of approximately 1200 residential units), which shall comply with the City’s Inclusionary Housing Ordinance (RMC Sec. 15.04.603). In addition, Developer agrees to study the market feasibility of a hotel as a component of the Mixed-Use Development and will include a potential location of such hotel on the site plan for the Mixed-Use Development.

C. On March 19, 2019, after a competitive selection process that began with the issuance of a Request for Qualifications on July 20, 2018 (the “RFQ”), and an initial Request for Proposals on October 26, 2018 (the “RFP”), Developer was selected by the City Council to enter into exclusive negotiations consistent with the terms of this Agreement regarding the terms and conditions of an agreement for the disposition and development of the Property (the “DDA”) pursuant to which Developer will purchase and develop the Property for the Mixed-Use Development.

D. Both parties acknowledge that the DDA will necessarily address all key terms relating to the transfer of the Property to Developer and Developer’s development of the Mixed-Use Development, which may or may not be set forth or referenced in this Agreement. Both parties also acknowledge that the DDA may address certain terms and conditions that are not set forth in this Agreement and that the terms and conditions of the

DDA may in certain respects be similar or dissimilar to the terms and conditions of this Agreement. In the event that any of the terms, conditions, or provisions of the DDA shall differ from, or conflict with, the terms and conditions of this Agreement, then and in any such event, the parties intend that the terms, conditions, and provisions of the DDA shall be controlling.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS OF FACT AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, the parties hereby agree as follows:

AGREEMENT

1. **Exclusive Negotiation Period.** City and Developer agree to negotiate the terms and conditions of the DDA exclusively with each other for a period of time not to exceed one hundred and eighty (180) days commencing with the date of this Agreement (the “Exclusive Period”). So long as the City and Developer are continuing to negotiate the DDA in good faith, the Developer will have two (2) options to extend the Exclusive Period for a period of thirty (30) days each; provided that the first option shall be at the Developer’s sole and absolute discretion and the second option shall be at the City Manager’s sole and absolute discretion. During the Exclusive Period, each party will cooperate and in good faith endeavor to negotiate the DDA setting forth the respective duties, obligations and rights of Developer and City. City agrees that during the Exclusive Period it will not offer, or negotiate with any other person or entity relating to the use, leasing, acquisition or development of the Property without the prior written consent of Developer. The DDA is subject to the approval of the City Council. The City Attorney’s Office will prepare the initial draft of the DDA.

During the Exclusive Period, Developer agrees to develop and prepare project applications for the Mixed-Use Development and submit applications for City Entitlements. As used in this Agreement, “City Entitlements” means all discretionary approvals made by the City necessary to entitle development and construction of the Mixed-Use Development, including zoning changes and general plan amendments, but excluding design review permits, certificates of appropriateness, ministerial permits, and approvals or permits provided by other entities.

2. **Investigation.** Developer agrees that during the first sixty (60) days of the Exclusive Period (the “Due Diligence Period”), Developer will conduct its initial due diligence review regarding the Property (the “Due Diligence Review”). The Due Diligence Review may include, but shall not be limited to, review of certain studies, tests, surveys and other environmental or land use information available regarding the Property. During the Due Diligence Period, with the City’s consent, Developer shall have the right, at Developer’s option, to conduct, at its sole cost and expense, whatever further investigations that it deems necessary regarding the Property. Developer agrees that any damage made or done as a result of any inspection upon the Property by Developer will be repaired and the Property will be returned to its pre-inspection condition inasmuch as reasonably practicable. Concurrently with the mutual execution of

this Agreement, Developer shall execute and deliver to City a right of entry and release of liability in connection therewith in the form of Exhibit B attached to and hereby made a part of this Agreement. Documents related to environmental remediation efforts under the jurisdiction of the San Francisco Bay Regional Water Quality Control Board can be accessed at: <https://geotracker.waterboards.ca.gov/>.

3. **Pre-development City Fund.** Subject to the terms and conditions of this Agreement, Developer shall deposit with City the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000) in immediately available funds (the “Pre-development City Fund”) within five (5) days after the full execution of this Agreement. The Pre-development City Fund is a significant part of the consideration for City to enter into this Agreement and may be immediately used by City to reimburse expenses incurred by it for costs related to pre-development of the Mixed-Use Development, including the preparation of this Agreement, the preparation and negotiation of the DDA and legal fees related to the entitlement of the Mixed-Use Development. If at any time prior to the execution of the DDA the amount of funds remaining in the Pre-development City Fund fall below \$100,000 (due to the City drawing such funds to reimburse costs in accordance with this Section), Developer agrees to make an additional deposit within ten (10) days of City’s request in writing for same to increase the Pre-development City Fund back up to \$200,000. The Pre-development City Fund shall be non-refundable to Developer; provided, however, that in the event that this Agreement is terminated prior to the mutual execution of the DDA, any funds remaining in the City Fund at the time of such termination shall be returned to Developer. The DDA shall provide that the Pre-development City Fund shall not be applied to the Purchase Price.

4. **Terms.** City and Developer shall in good faith endeavor to negotiate the following terms which shall be memorialized in the DDA:

a. **Purchase Price.** The purchase price shall be FORTY FIVE MILLION DOLLARS (\$45,000,000), provided that the parties agree to negotiate in good faith purchase price increases attributable to cost savings, due at the Closing Date (less the applicable DDA Deposit (defined below)).

b. **DDA Deposit.** Within five (5) days of the mutual execution of the DDA, Developer shall deposit the amount of SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00) (the “DDA Deposit”), in immediately available funds. The DDA Deposit shall be non-refundable when made, except in the event of the City’s default under the DDA or as otherwise set forth in the DDA and shall be applicable to the Purchase Price.

c. **Definitive Project Description.** The DDA shall describe the Mixed-Use Development, including density; commercial, retail, office and housing mix; affordable units; amenities; infrastructure; and preservation and adaptive reuse of historic structures.

d. **Community Benefits.** Developer shall endeavor to provide, using a commercially reasonable standard, at no cost to City: (i) working with a

qualified reuse developer approved by the City, preservation and adaptive reuse of Winehaven Historic District including winery buildings, cottages, powerhouse and fire station, (ii) waterfront promenade, (iii) improved public waterfront access with enhancement of beach park, open space, and Bay Trail connectivity, (iv) open space preservation of approximately 70%, (v) component systems for renewable energy such as solar photovoltaic, energy management systems, low water use landscaping, high efficiency low impact wastewater treatment, and dual-plumbing water system to use reclaimed water for landscape irrigation, and (vi) pedestrian and bike friendly community design, pedestrian trails, and public transportation connections.

Developer shall also comply with City Ordinances that require public art, local hire, fair chance programs, and living wage, as more fully described in Paragraph 14 and the Richmond Municipal Code. Concerning these City Ordinances-related community benefits, Developer acknowledges that City intends to create a community advisory committee (comprised of seven (7) members with the Mayor and Councilmembers each selecting one member) to advise the City Council solely on the implementation of such community benefits. Developer agrees to confer with such committee with respect to the community benefits for the Mixed-Use Development.

e. **Development of Retail and Public Space.** As of the date of this Agreement, Developer expects that the Mixed-Use Development shall include commercial/retail/office space and public space.

f. **Inclusionary Housing.** The Mixed-Used Development will be subject to City's Inclusionary Housing ordinance (RMC Sec. 15.04.603) (the "IHO"); provided, however, the DDA shall include terms requiring Developer to construct at least sixty seven (67) affordable residential units onsite. These onsite units shall be rented or sold at rates affordable to households with incomes not exceeding a to be determined percentage of Area Median Income, to be reflected in a Regulatory Agreement and Declaration of Restrictive Covenants that will be recorded against the Property. If additional units are required to meet the IHO's inclusionary requirements, the DDA may include terms that allow that the additional onsite unit count (above the sixty seven (67) required onsite) may be satisfied by Developer by paying a fee in lieu of incorporating such portion of housing onsite.

g. **As-Is, Where-Is.** The Property will be sold "As-Is Where-Is" without any representation or warranties by City of the physical or environmental condition or any other aspect of the Property or improvements thereon. Developer acknowledges that the City has licensees that use the Property and that the City stores materials on the Property, and that the City has a right to continue collecting license fees and using the Property in this manner until the Closing Date.

h. **Environmental Remediation.** City has not received a No Further Action letter from the San Francisco Bay Regional Water Quality Control Board concerning City's remediation efforts at the Site. On March 13, 2019 the City received a California Water Code Section 13267 Technical Report Requirement Order – Corrective Action, Former Point Molate Naval Fuel Depot that has been provided to Developer. Developer shall be responsible for all environmental remediation required of the Property and for the Mixed-Use Development

i. **Prevailing Wage.** Developer and any successor developers or transferees shall comply with the provisions of California Labor Code Section 1720 *et seq.* regarding the payment of prevailing wages in the development of the Mixed-Use Development. The PLA (defined below) may include terms satisfying Developer's requirement to comply with prevailing wage requirements for the Mixed-Use Development.

j. **Entitlements.** Upon timely applications by Developer, City will help facilitate and cooperate with Developer, within City's reasonable authority, in obtaining all City Entitlements in a good faith, diligent manner. Developer agrees to pay for the full cost of all Mixed-Use Development entitlements, including City Entitlements, which may include services provided by third-party consultants. In connection therewith, and upon approval of its Due Diligence Review as provided in Section 2, above, or its initial application for City Entitlements, whichever is sooner, Developer shall make an initial payment to City in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000) (the "Entitlement Fees") to pay for the cost of processing the entitlements, including environmental review following the execution of the DDA (the "Entitlement Fees Fund"). If at any time the amount of funds remaining in the Entitlement Fees Fund falls below \$50,000 (due to the City drawing such funds to reimburse costs in accordance with this Section), Developer agrees to make an additional deposit within ten (10) days of City's request in writing for same to increase the Entitlement Fees Fund back up to \$100,000. The Entitlement Fees are not intended to represent a cap on the payment of fees required by City to process City Entitlements, the costs of which shall be borne in their entirety by Developer. In the event of the termination of the DDA, any portion of the Entitlement Fees Fund not used by City shall be returned to Developer. Developer and the City each acknowledges the timeline for obtaining City Entitlements set forth in the April 12, 2018 Judgment on claims between Guidiville Rancheria of California and Upstream Point Molate LLC and City of Richmond and each is committed to meeting those timelines. Developer further agrees to use its commercially reasonable efforts to submit applications for City Entitlements no later than sixty (60) days after the mutual execution of this Agreement.

k. **Project Labor Agreement.** The DDA will contain language requiring the Developer to enter into a Project Labor Agreement ("PLA") with building trades binding on Developer and any successor developers or transferees. Such PLA shall be fully negotiated and ready for execution prior to the time the DDA is brought to the City Council for approval so that the City can assess the

need for additional or different labor, local hire and workforce training and development provisions in the DDA. The City shall be provided a list of building trade crafts to be employed on the Mixed-Use Development and for which the State of California Department of Apprenticeship Standards has approved an apprenticeship program. Developer will provide to the City written acknowledgement by Developer's lead contractor of the requirements of RMC Section 2.56.030 (d), which code section, will be reproduced in full in that written acknowledgement, and said contractor will require all sub-contractors to comply with all Richmond Business Opportunity ordinance (RMC Chapter 2.50) and Local Employment Program ordinance (RMC Chapter 2.56) requirements. The PLA will apply to both public and private improvements. Developer shall engage the City in the development of the PLA so that the City can assess the extent to which the PLA will further the City's labor, local hire and workforce training and development objectives.

l. **Long-Term Funding and Management and Operation of the Property.** The DDA will contain language that the Developer will: not use an Enhanced Infrastructure Financing District to fund infrastructure; contribute its fair share for maintenance of open space and will collaborate with the City on a mutually acceptable open space maintenance plan; form a Mello Roos Community Facilities District (the "CFD") for infrastructure financing or long term management of the Property; and acknowledges its obligation to maintain all improvements on the Property, including but not limited to roads and infrastructure, until such time that such improvements are turned over to a master association or governmental entity. City and Developer will cooperate to agree upon the financial team used in connection with obtaining CFD financing, each acting reasonably and in good faith. The City acknowledges and agrees that the CFD may be issued under a private placement with a firm specializing in tax exempt bonds.

m. **Closing Conditions.** The close of escrow on the closing date (the "Closing Date") will be contingent upon the satisfaction of certain conditions to be specified in the DDA, including but not limited to title conditions and granting of City Entitlements. The Closing Date shall be thirty (30) days after the City Entitlements are granted, and all appeal periods with respect thereto have expired without an appeal being taken, or, if an appeal is taken, the resolution of such appeal to the reasonable satisfaction of Developer.

n. **Schedule for Developer Performance.** The Schedule of Performance shall set deadlines for performance of the respective obligations of the Developer and City including, but not limited to, the submission and approval of plans, approval of title and site conditions, as will be more particularly described in the DDA.

o. **Indemnification.**

The DDA shall have a general indemnity provision substantially in the form as set forth as follows:

Without limiting and in addition to any indemnification obligations of Developer set forth elsewhere in the DDA, Developer shall indemnify, defend (with counsel reasonably acceptable to City), protect and hold harmless City and City parties, from and against any and all claims, demands, actions, causes of action, proceedings, liabilities, losses, damages, fines, penalties, liens, costs and expenses (including court costs and reasonable attorneys', experts' and consultants' fees and costs) of any nature whatsoever ("Claims") directly or indirectly arising out of or relating to Developer's ownership, occupancy, or development of the Property or construction on the Property by Developer or Developer's contractors, subcontractors, agents, employees or tenants, or Developer's obligations or performance or non-performance under the DDA, and whether such Claims arise during the term of the DDA or after the Closing under the DDA. Developer's indemnity obligations (but not the duty to defend) under this Section ____ shall not apply to the extent any Claims are finally determined to have been caused by the willful misconduct or gross negligence of City. Insurance limits shall not operate to limit Developer's indemnity obligations under this Section ____ or elsewhere in the DDA. The provisions of this Section ____ and all other indemnity obligations of Developer hereunder shall survive expiration of the Term and any termination of the DDA, and shall remain in full force and effect.

The DDA shall have a CEQA/entitlement indemnity provision substantially in the form as set forth as follows:

Developer shall indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and /or any mitigation monitoring program, or brought against the City due to acts or omissions in any way connected to the Mixed-Use Development, but excluding any approvals governed by California Government Code Section 66474.9. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorneys fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by Developer, City, and/or parties initiating or bringing such Proceeding. If Developer is required to defend the City as set forth above, the City shall retain the right to reasonably approve the counsel selected by Developer who shall defend the City.

5. **Financial Feasibility.** During the Exclusive Period, upon City request, Developer shall provide City with all of the following, in form and substance reasonably

satisfactory to City: 1) an estimate per unit per type of the cost associated with entering into a PLA and providing on-site affordable housing, accompanied by relevant documentation; 2) a proposed draft master plan, including conceptual renderings; and 3) a proposed development phasing plan.

6. **Finality of the Determination.** The parties agree to cooperate in good faith to prepare, negotiate and finalize the DDA in accordance with the terms set forth herein. The parties further agree that the DDA shall contain terms that are substantially equivalent to the terms set forth in Section 4 above. Notwithstanding anything to the contrary set forth in this Section 6, the determination by each of City and Developer as to whether to enter into the DDA shall be made in such party's sole and absolute discretion and shall be final and conclusive, without any liability therefor on the part of such party to the other party to this Agreement. In addition, Developer shall have the right to terminate this Agreement at any time on or before the last day of the Exclusive Period by giving notice thereof to City, whereupon any amounts remaining in the Pre-development City Fund shall be returned to Developer, and neither of the parties to this Agreement shall have any further rights, liabilities, or obligations to each other pursuant to this Agreement.

7. **Reports and Plans.** If, despite good faith efforts by the parties, negotiations fail to result in a signed and approved DDA within the Exclusive Period, this Agreement shall terminate. Developer agrees thereupon to promptly provide to City all findings and determinations relating to the proposed Mixed-Use Development provided to Developer by third party consultants and parties and assign (without warranty) and provide to City, all plans, studies and reports prepared for Developer in connection with this Agreement and/or the Property or the Mixed-Use Development. Nothing set forth in the preceding provisions of this paragraph shall obligate Developer to provide to City copies of any proprietary financial information or projections prepared by Developer for its internal use.

8. **Assignment.** Developer's rights and obligations under this Agreement are not assignable or transferable, in whole or in part, voluntarily or involuntarily, without the prior written consent of City in its sole and absolute discretion.

9. **Compliance with Regulations.** Developer understands, acknowledges and agrees that it must comply with requirements and provisions of the City of Richmond (including, without limitation, approvals required by City of Richmond Planning Commission, Design Review Board and other commissions/officers/agencies of the City or Richmond), as well as approvals by various state and federal regulatory agencies, and there are no assurances that any such approvals can be obtained.

10. **Disclosure of Information.** Developer understands, acknowledges and confirms that full and unconditional disclosure has been made with Developer's proposal in response to the RFQ/RFP to the City, and will continue to be made by Developer, regarding all members and officers of Developer and all other pertinent information concerning Developer.

11. **Disclosure of Financing.** Developer understands, acknowledges and agrees that disclosure will be made by Developer to City and/or City's Financial Advisor regarding methods of financing to be used in acquiring the Property and developing the Mixed-Use Development.

12. **Approvals.** Developer understands, acknowledges and agrees that if negotiations culminate in a DDA that City staff recommends to the City Council, such DDA shall become final only after and if the DDA has been considered and approved by the City Council in its sole and absolute discretion.

13. **Finder's Fees.** No finder's fee or real estate commission will be paid in connection with this proposed transaction, this Agreement or the DDA.

14. **City Ordinances.** Without limiting any other provisions of this Agreement, Developer agrees to comply with the City of Richmond Business Equal Opportunity Ordinance (RMC Chapter 2.50), the Local Employment Program (RMC Chapter 2.56), Living Wage Requirement Ordinance (RMC Chapter 2.60), the Ordinance Banning the Requirement to Provide Information of Prior Criminal Convictions on All Employment Applications (RMC Chapter 2.65), One-Percent for Public Art on Private Projects Program (RMC Chapter 12.62) and other City ordinances, regulations and programs referenced in the DDA.

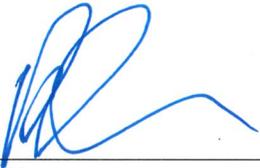
15. **Laws of the State of California.** The laws of the State of California shall govern the interpretation of this Agreement. Any litigation arising under this Agreement shall be prosecuted in the Superior Court of California, County of Contra Costa, and all parties waive their respective rights to change venue pursuant to Section 394 of the Code of Civil Procedure.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first above written.

Approved as to form:

CITY:



City Attorney

City of Richmond,
a municipal corporation and charter city

By: 

City Manager

Address for Notices:

City of Richmond
Attn: City Manager
450 Civic Center Plaza
Richmond, CA 94804

Attest:



City Clerk

DEVELOPER:

WINEHAVEN LEGACY LLC,
a Delaware limited liability company

By: 
Name: Marc L. MAGSTADT
Title: _____

Address for Notices:

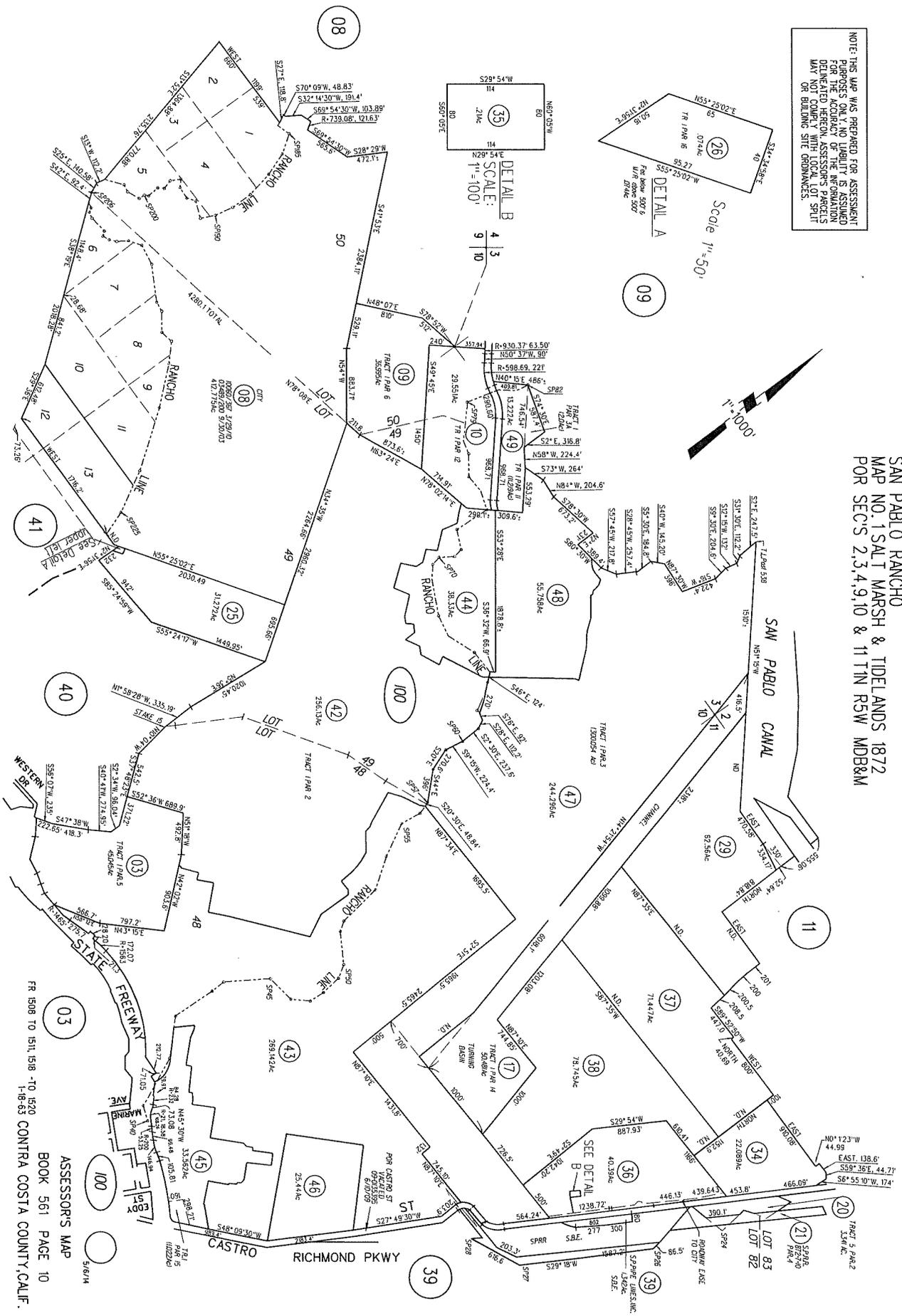
WINEHAVEN LEGACY LLC
Attn: Mr. Marc Magstadt
Mr. Nick Pappas
2392 Morse Avenue
Irvine, California 92614

EXHIBIT A
PROPERTY

EXHIBIT A

NOTE: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE INFORMATION DELINEATED HEREON. ASSESSOR'S PARCELS MAP IS FOR BUILDING SITE ORDINANCES.

SAN PABLO RANCHO
 MAP NO. 15 ALT MARSH & TIDELANDS 1872
 FOR SECS 2,3,4,9,10 & 11 T1N R5W MDB8M



ASSESSOR'S MAP
 BOOK 561 PAGE 10
 5/6/14

FR 5008 TO 1511, 1518 TO 1520
 T18S3 CONTRA COSTA COUNTY, CALIF.

EXHIBIT B
FORM OF RIGHT OF ENTRY AND
RELEASE OF LIABILITY AGREEMENT

PERMIT TO ENTER AND RELEASE OF LIABILITY AGREEMENT

THIS PERMIT TO ENTER AND RELEASE OF LIABILITY AGREEMENT (“Agreement”), dated as of May ___, 2019 (“Effective Date”), is made and entered into by and between the CITY OF RICHMOND, a municipal corporation and charter city (“City”) and WINEHAVEN LEGACY LLC, a Delaware limited liability company (“Permittee”), with reference to the following facts.

RECITALS

A. City is the owner of 413-acre Point Molate Site with approximately 142-acres being submerged in the San Francisco Bay. The site is more particularly shown on the aerial map attached to and hereby made a part of this Agreement as Exhibit A (the “Property”).

B. On April ___, 2019, City and Permittee entered into that certain Exclusive Right to Negotiate Agreement (the “ERN”) for Permittee’s acquisition of the Property for the development of the Mixed-Use Development (as that term is defined in the ERN).

C. In anticipation of Permittee’s acquisition of the Property and development of the Mixed-Use Development, and pursuant to the ERN, Permittee wishes to conduct inspections and investigations of the Property (the “Permitted Investigation”).

NOW, THEREFORE, for good and valuable consideration, City and Permittee agree as follows:

1. Recitals. The defined terms of the foregoing Recitals are a substantive part of this Agreement.

2. Provision of Permit. City hereby provides to Permittee a Permit to Enter the Property (hereinafter referred to as the “PTE”) during the Exclusive Period (as defined in the ERN) for the purpose of conducting the Permitted Investigation and other necessary activities on the Property related to the entitlement of the Property. The Permitted Investigation shall be at Permittee’s sole cost and expense and, without limitation, all tools and equipment necessary for the Permitted Investigation shall be provided by or on behalf of Permittee. Permittee shall (i) notify and procure City’s written consent to entry at least two (2) business days prior to first entering the Property or engaging in Permitted Investigation. Consent to the start of Permitted Investigation shall be conditioned on (i) Permittee’s acquiring all applicable permits required by governmental authorities; (ii) Permittee’s furnishing to City copies of such permits; and (iii) Permittee’s compliance with the conditions of all applicable laws, permits and approvals in a prompt and expeditious manner; and (iv) Permittee’s receipt of City’s approval of evidence of

insurance coverage as set forth in Section 11, below. Permittee agrees that any damage made or done as a result of the Permitted Investigation will be repaired and the Property will be returned to its pre-inspection condition inasmuch as reasonably practicable.

3. Use at Permittee's Own Risk. In entering the Property and engaging in Permitted Investigation, Permittee agrees that it will and hereby does, on its own behalf and on behalf of its contractors and subcontractors, and employees, officers, guests, volunteers and invitees, release, discharge and covenant not to sue the City, or its officials, officers, employees, volunteers and agents (collectively, the "Releasees") for any and all liability to Permittee, its contractors, subcontractors, employees, officers, guests, invitees, volunteers, assigns or their heirs and next of kin (the "Releasers"), for any loss or damage and any claim or demands therefore on account of injury or death to persons or injury or damage to property of the Releasers resulting directly or indirectly from and while Releasers are in, upon or about the Property or any facilities or equipment therein, or engaging in Permitted Investigation, unless such loss, damages, claim or demand is determined (by a court's final judgment after all appeals have been concluded or exhausted) to have been caused by the sole active negligence or willful misconduct of the Releasees. Permittee accepts the Property and any entry thereon in the Property's "AS-IS" condition as of the Effective Date of this Agreement and "WITH ALL FAULTS" AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED ON THE PART OF CITY, OR ARISING BY OPERATION OF LAW INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY.

In connection with the release set forth in this Section 3 above, Permittee, for itself and all Releasers, hereby waives the benefit of California Civil Code section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The release in this Section 3 shall survive the expiration or earlier termination of the PTE and this Agreement.

4. Mechanic's Liens. Permittee shall not permit or suffer any mechanic's or materialmen's or other liens of any kind or nature to be recorded and/or enforced against the Property, and Permittee shall indemnify and hold harmless City and the Property from and against any and all liens, claims, and expenses related to work done, labor performed, activities undertaken or materials furnished in connection with the Permittee's entry on the Property in accordance herewith.

5. Compliance with Law. Permittee shall cause all work performed and activities undertaken in connection with this Agreement to be performed and undertaken in compliance with all applicable federal, state and local laws, statutes and ordinances, and all directions, rules

and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction (collectively, the “Rules and Regulations”). Compliance under this provision includes compliance with the California Environmental Quality Act (“CEQA”) and all provisions of the Municipal Code of the City of Richmond, including Chapters 2.28, 2.39, 2.50, 2.52, 2.56, 2.60, and 2.65, if applicable, which are herein incorporated by reference. All work performed and activities undertaken shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, whether discretionary or ministerial, and Permittee shall be responsible to City for the procurement and maintenance thereof, as may be required of Permittee and all entities using the Property or engaged Permitted Investigation. Permittee shall require all contractors, subcontractors, employees, officers, guests, invitees, volunteers and assigns entering upon the Property to obey and observe all terms of the PTE and all Rules and Regulations. Permittee shall be responsible for paying for fines or charges which may be levied by any governmental bodies, agencies, authorities or courts for violations of Rules and Regulations.

6. Hazardous Materials.

(a) Solely in connection with conducting the Permitted Investigation, Permittee shall take no action, nor cause the Property to be, in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property, including, but not limited to, soil and ground water conditions. Permittee shall not use, generate, load, handle, remove, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property, contaminated water, soil, bunkers, chipped or removed paint, flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances” under any applicable federal or state laws or regulations (collectively referred to hereinafter as “Hazardous Materials”).

(b) Permittee shall immediately advise City in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Permittee or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, (“Hazardous Materials Law”); (ii) all claims made or threatened by any third party against Permittee or the Property, relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as “Hazardous Materials Claims”); and (iii) Permittee’s discovery of any occurrence or condition on any real properties adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as “border-zone property” under the provision of California Health and Safety Code, Sections 25220 *et seq.* or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) City has the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims.

(d) Notwithstanding anything to the contrary set forth elsewhere in this Agreement, Permittee shall have no liability or obligation of any kind whatsoever pursuant to this Agreement to the City or otherwise in connection with any Hazardous Materials that may exist on, under, or about the Property or any portion thereof as of or prior to the date of this Agreement, including, without limitation, for any clean-up or remediation thereof.

7. Security and Utilities. Permittee acknowledges that City does not and will not provide security services or utilities for the Property and, as part of Permitted Investigation, Permittee shall provide, at its sole cost and expense, all such services and utilities necessary or appropriate for its conduct of Permitted Investigation.

8. Indemnification. To the fullest extent allowed by law, Permittee shall defend (with counsel reasonably acceptable to City), indemnify and hold harmless, and require its contractors and subcontractors to defend, indemnify and hold harmless, City and its council members, board members, supervisors, directors, officers, employees, agents, successors and assigns (also the "Indemnified Parties"), from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees, expert fees and other defense costs, resulting from injury to or death sustained by any person (including Permittee's, contractor's or subcontractor's employees), or damage to property of any kind, or any other injury or damage whatsoever, which injury, death or damage arises directly or indirectly out of or is in any way connected with Permittee's entry on the Property, the performance by Permittee of its obligations under this Agreement or the PTE, or the Permitted Investigation, regardless of Permittee's fault or negligence, except that said indemnity shall not be applicable to injury, death or damage to property finally determined (by a court's final judgment after all appeals have been concluded or exhausted) to have been caused by the negligence or willful misconduct of any Indemnified Party, and except that said indemnity shall not apply to any condition already existing on the Property, whether patent or latent, merely discovered by Permittee, including Hazardous Materials. The indemnification obligations of Permittee and its contractors, and subcontractors shall extend to claims asserted after expiration or any earlier termination of this Agreement for whatever reason, provided that such claims arose, whether known or discovered or should have been known or discovered, during the term of this Agreement.

9. Term. The term of the PTE and this Agreement shall commence on the Effective Date and shall expire and terminate upon the first to occur of the following: (a) expiration of the Exclusive Period (as defined in the ERN), (b) termination of the ERN pursuant to its terms, or (c) the date that the DDA is fully executed; and thereupon and thereafter the PTE and this Agreement shall be null and void and of no further force or effect, except as to those provisions of this Agreement which are stated herein to expressly survive the expiration or earlier termination of this Agreement.

10. Signs. No signs or placards of an advertising or promotional nature shall be painted, inscribed or placed in or on the Property or on any building or structure located thereon without the prior written consent of the City at City's sole and absolute discretion. Permittee agrees to remove promptly and to the satisfaction of City, at the cost and expense of Permittee, upon the termination of the PTE, any and all signs and placards placed by it upon the Property pursuant to this Section.

11. Insurance. Permittee shall, at all times, maintain at its sole cost and expense the insurance coverage set forth in Exhibit B and for the benefit of City and all other additional insureds required thereunder. Permittee shall furnish City with written evidence of the required insurance coverage prior to entering the Property and engaging in Permitted Investigation. No activities permitted pursuant to the PTE shall be initiated prior to Permittee's receipt of City's approval of evidence of insurance coverage related thereto.

12. Taxes. Permittee shall pay all taxes which may be levied, imposed or assessed upon or against the Property arising out of this Agreement or the PTE, or any possessory interest right which Permittee may have in or to the Property by reason of its use or occupancy thereof. Permittee recognizes and understands that the PTE may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Permittee agrees to pay all taxes, assessments, and charges on goods, merchandise, appliances, equipment and property owned by it in or about the Property.

13. Attorney's Fees. If any legal action or proceeding arising out of or relating to this Agreement is brought by either party hereto, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorney's fees and expert fees, costs, and expenses incurred in the action or proceeding brought or defended by the prevailing party.

14. Waivers. Any waiver by City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by City to take action on any breach or default of Permittee or to pursue any remedy allowed under this Agreement or applicable law. Consent by City to any act or omission by Permittee shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for City's written consent to future waivers.

15. Default. If Permittee defaults in the performance of any of the covenants, conditions or agreements contained in this Agreement, then Permittee shall be deemed to have breached the Agreement. Upon the occurrence of such a default which is not cured within ten (10) days following written notice thereof from City, City shall have, in addition to all other remedies at law or equity, the right to terminate the PTE and to seek monetary damages and/or equitable relief.

16. Entire Agreement. This Agreement and the ERN constitute the entire agreement between City and Permittee relating to the PTE, Permitted Investigation, and release and indemnity obligations. Any other prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

17. Multiple Originals; Counterparts. This Agreement may be executed in multiple original counterparts, each of which is deemed to be an original, and all such counterparts shall constitute one and the same instrument. A facsimile or electronic signature on this Agreement shall be as valid as an ink-signed original.

18. No Property Interest; No Assignment. This Agreement and the PTE create only a temporary and revocable license and do not create any interest in the Property or any other real

property. This Agreement shall not be recorded. This Agreement is personal to Permittee and may not be voluntarily or involuntarily assigned, in whole or in part, by Permittee.

19. Third Party Beneficiaries. There are no other third party beneficiaries of this Agreement.

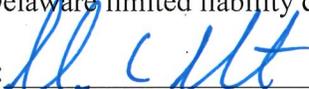
20. Amendments. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by both the City and Permittee.

[REMAINDER OF THIS PAGE IS BLANK; SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

“PERMITEE”:

WINEHAVEN LEGACY LLC,
a Delaware limited liability company

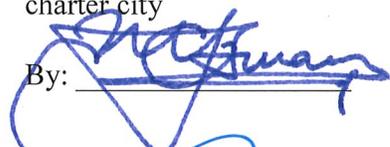
By: 
Name: Marc C. MAGSTADT
Its: _____

Address for Notices:

WINEHAVEN LEGACY LLC
Attn: Mr. Marc Magstadt
Mr. Nick Pappas
2392 Morse Avenue
Irvine, California 92614

“CITY”:

CITY OF RICHMOND, a municipal corporation and
charter city

By: 

Approved as to form:

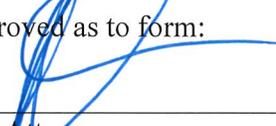

City Attorney

EXHIBIT A
PROPERTY

EXHIBIT B
INSURANCE REQUIREMENTS