

## **ATTACHMENT 27**

### **OUTLINE OF PROVISIONS OF VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT**

This Outline of Provisions of Vertical Disposition and Development Agreement ("Vertical DDA Outline") is attached to and made part of the Disposition Development Agreement (the "Agreement") for Hunters Point, Phase I. Terms not defined in this Outline have the meanings given to them in the Agreement.

It is a mutual condition precedent to the obligation of each of the Agency and Developer to close escrow for Parcel A-1 that the parties have agreed upon mutually satisfactory documents governing vertical improvements consistent with this Vertical DDA Outline. Each of the Developer and the Agency shall use commercially reasonable efforts to timely satisfy this condition. The Agency and Developer shall negotiate and mutually agree to a Vertical Disposition and Development Agreement and any agreements related thereto (the "Vertical DDA") as soon as possible after the Effective Date of the Agreement. Upon the close of escrow for any Lot conveyed to any Vertical Developer, (i) the parties shall enter into a Vertical DDA, (ii) the Agency shall execute and deliver to the appropriate parties documentation necessary to release the lien of the Agreement to the extent it encumbers such Lot, (iii) the Agreement shall be modified to exclude such Lot from its coverage, and (iv) the Agency shall release Developer from any liability under the Agreement with respect to such Lot (other than indemnity obligations relating to the period of Developer's ownership and other provisions which by their nature are intended to survive transfer of such Lot), with the intent that the Vertical DDA shall be the sole and exclusive agreement between the Agency or the Developer on one hand and the Vertical Developer on the other. The Vertical DDA shall include the relevant obligations of the Agreement to the extent they relate to the Lot in question.

The Vertical DDA shall be reasonably flexible in order to respond to the type of and timing of Vertical Improvements being constructed. However, such document shall generally include the following terms and provisions.

**1. General.** The Vertical DDA should generally serve as a model for the documents governing vertical development, with appropriate changes to reflect the nature of the improvements.

**2. Parties.** Parties to the documents will be Developer, the particular Vertical Developer and Agency.

**3. Release of Lien of Vertical DDA.** Upon the Vertical Developer's request, the Agency and Developer shall cause the lien of the Vertical DDA to be released as to a particular residential ownership unit concurrently with the first sale of that unit to an unrelated Buyer. Any indemnity obligations on the part of the Vertical Developer relating to the period of its ownership will survive expiration of the Agreement.

**4. Escrow.** The Vertical Developer shall acquire the Lot in question from Developer through an escrow established with a title company satisfactory to Developer, Vertical Developer and the Agency.

**5. Entry by Vertical Developer.** Prior to closing on the Lot in question, the Vertical Developer shall have access to the Lot for non-invasive investigation pursuant to a Permit to Enter issued by the Developer in a form attached to the Vertical DDA.

**6. Closing Conditions.** Closing conditions for Vertical Developer's obligation to close shall include Vertical Developer's compliance with all obligations of the Vertical DDA, including any preclosing requirements included in the Schedule of Performance, evidence of available financing required for the Vertical Improvements, Agency's and Developer's approval

of construction documents, the execution of construction contracts reasonably satisfactory to the Agency, the issuance of building permits (provided that if all parties agree to a fast track process, only a site permit and first addendum will be required), and Developer's delivery of required insurance certificates and bonds. Any of the foregoing conditions may be omitted from the Vertical DDA or waived upon the mutual agreement of Developer and Agency.

**7. As Is.** Developer shall sell the Lot to the Vertical Developer "as is" and Developer and Agency shall be released from any liability arising in connection with the condition of the Lot, including without limitation environmental condition. Vertical Developer shall also provide Developer and the Agency with an indemnity against Vertical Developer's violation of law or release of the hazardous substance.

**8. Schedule of Performance and Construction.** The Vertical DDA shall contain a Schedule of Performance tied to certain key events measured from production of construction documents and the close of escrow. The Vertical DDA will include a process for refining the Schedule of Performance to include times for Vertical Developer submission, and response times for the Developer's and Agency's review and for Vertical Developer's response, for (i) tentative and final subdivision maps, and a final public report from the California Department of Real Estate, for Vertical Improvements consisting of single family subdivisions or condominium units; and (ii) site permit or building permit applications, in the case of non-ownership residential and commercial, industrial and other projects. The Schedule of Performance shall address times for Vertical Developer submissions and Developer's and Agency's review and responses, for all preconstruction plan approvals and entitlements, and Vertical Developer's response thereto, and shall include time periods for obtaining financing, commencement of construction and completion of construction. The review of construction documents shall be subject to the

Design, Review and Document Approval Procedure for Vertical Improvements ("Vertical DRDAP") and the Interagency Cooperation Agreement. The outside date for completion of construction shall be measured from the date of conveyance to the Vertical Developer, and shall be agreed upon between the Agency and Developer in the Vertical DDA.

**9. Construction Obligation.** Vertical Developer shall be obligated to construct the Vertical Improvements pursuant to construction documents approved by Developer and the Agency.

**10. Mortgage Protection.** The Vertical DDA shall include customary and commercially reasonable terms for subordination of certain provisions of the Agreement, including Attachment 22 (Affordable Housing Program), and forbearance in the exercise of any remedy by Developer or the Agency pending provision to any secured lender or the Vertical Improvements of notice and the right on the part of such lender to cure Vertical Developer default and acquire Vertical Developer's interest in a lot by foreclosure or otherwise .

**11. Allocation of Affordable Housing Obligations.** The Vertical DDA shall include an allocation to each Lot of the obligations under the Affordable Housing Program included in the Agreement and based upon the designations or formula set forth in Attachment 2 and Attachment 22 to the Agreement, as modified only by the mutual agreement of Agency and Developer on or before the date of Lot transfer, and shall include provisions for "suballocation" of such obligations among multiple individual project sites within any Lot or, if such sites are not identifiable at the time of Vertical DDA, a process for such allocation to future individual project sites.

**12. Progress of Construction.** Developer and the Agency shall have access to the Lot during construction for inspection and other purposes. The Vertical Developer shall submit

written progress reports as reasonably requested by Developer or the Agency. The Vertical Developer shall have sole responsibility for obtaining all land use and construction entitlements and permits for the Vertical Improvements.

**13. Certificate of Completion.** The Vertical DDA will include procedures for the Agency [and Developer] to issue a Certificate of Completion for a particular residential condominium or single family ownership unit, as well as for the entire Vertical Improvement.

**14. Declaration of Restriction.** The Lot shall be subject to the Redevelopment Plan, the Design for Development, a particular Declaration of Restrictions and the Vertical DDA.

**15. Transfer.** Prior to issuance of a Certificate of Completion, a Vertical Developer shall not be allowed to transfer its interest in the Lot, the Vertical Improvements or the Vertical DDA, except in accordance with defined provisions. The Vertical DDA shall set forth provisions regarding participation of Agency in the Vertical Improvements Net Profits set forth in Attachment 26 to the Agreement, to the extent such provisions apply.

**16. Default And Remedies.** Among the remedies available to Developer and Agency shall be a right to recover the Lot through exercise of a right of reverter in the Vertical DDA and other legal and equitable remedies. The Vertical DDA shall give Developer a reasonable, specified time period to cure any Vertical Developer default and to exercise a right of reverter in favor of Developer to be included in the Vertical DDA, and if Developer fails to do so, then Agency may step in and cure or exercise its own right of reverter and other remedies.

**17. Open Space Master Plan.** The Vertical Developer will comply with those portions of the Open Space Master Plan, and of the funding plan for maintaining and operating the Open Space, that apply to the Lot(s) acquired by the Vertical Developer. This may require the Vertical Developer to provide funding for such purposes.

**18.** Permanent Employment. The Vertical DDA shall include permanent employment requirements similar to those set forth in Attachment 24 A, Rider 3 of the DDA titled “Permanent Work Force of the Developer and Retail Tenants”. The Vertical DDA shall also include financial incentives tied to local hiring (incentives will be tailored to fit uses covered by the specific Vertical DDA).

**19.** Attachments. The Attachments to the Agreement to be incorporated in the Vertical DDA, appropriately modified for the Vertical DDA, include Attachments 7, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 24.