

## EXHIBIT A

### DEVELOPMENT ASSISTANCE AGREEMENT

**THIS DEVELOPMENT ASSISTANCE AGREEMENT** (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_ 2022 by and between the **Town Center Development Agency**, an ORS Chapter 457 urban renewal agency (“TCDA”) and **REACH Community Development, Inc.**, an Oregon nonprofit public benefit corporation (“REACH”). TCDA and REACH may be referred to in this Agreement jointly as the “Parties” and individually as a “Party.”

#### RECITALS

- A. REACH shall form a limited partnership of which REACH, or an entity wholly controlled by REACH, is the general partner (the “Partnership”). The Partnership intends to develop property located at the intersection of SW Clinton Street and SW 69<sup>th</sup> Avenue in the Tigard Triangle area (“Property”) with an 85-unit apartment building affordable to those making 60% or below the Area Median Income (“Project”).
- B. TCDA has determined that the Project furthers many of its goals for the Tigard Triangle area because it provides affordable housing and provides a public plaza, furthering placemaking and helping to activate a priority area of the Tigard Triangle area.
- C. TCDA has identified funds it will make available to developments like the Project and REACH qualifies for the receipt of such funds.
- D. The Parties desire to enter into the Agreement for TCDA to provide development assistance to REACH for the development of the Project and, specifically, to assist REACH with the payment of the City of Tigard’s system development charges applicable to the Project.
- E. The completion of the Project according to the terms of this Agreement is a material inducement to TCDA to enter into this Agreement.

NOW, THEREFORE, in consideration of the public benefits to be created by the development of the Project and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

#### AGREEMENT

##### 1. DEFINITIONS

**Certificate of Occupancy** means the Certificate of Occupancy issued for the Project by the City of Tigard Community Development Department.

**City** means the City of Tigard, a municipal corporation of the State of Oregon.

**OHCS** means the State of Oregon acting by and through its Housing and Community Services Department.

**URA** means the Tigard Triangle Urban Renewal Area.

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### 2. REACH PROJECT DEVELOPMENT

- 2.1 Subject to events and circumstances outside of REACH's reasonable control, REACH will use commercially reasonable efforts to begin and to complete development of the no later than June 30, 2025.
- 2.2 This Agreement is not intended to be a contract providing for construction of the Project by TCDA either directly or through a contractor and REACH is not developing the Project for or on behalf of TCDA or the City. REACH is solely responsible for selecting a construction contractor for the Project. The rights and responsibilities of REACH, the general construction contractor and any subcontractors, shall be provided for in separate contracts to which TCDA is not a party.

### 3. TCDA FINANCIAL ASSISTANCE

- 3.1 TCDA shall pay to REACH up to \$1,000,000.00, to cover the actual cost of the system development charges ("SDCs") applicable to the Project. For administrative convenience, TCDA shall make the payment directly to the City. Payment will be made when the SDCs are due and payable, as provided in Tigard Municipal Code 3.24. Notwithstanding the foregoing, the payment made to the City shall be considered financial assistance to REACH for the benefit of the Project. REACH shall use such financial assistance to make a subsequent loan or capital contribution to the Partnership for the payment of the SDC fees.
- 3.2 In the event the City's SDCs applicable to the Project are less than \$1,000,000, TCDA shall pay to the City only the amount of the SDCs applicable to the Project and TCDA shall have no further financial obligations under this Agreement.
- 3.3 As a condition to payment, REACH shall provide TCDA with evidence that the apartment units in the Project will be subject to one or more regulatory agreements which will make the Project (at Certificate of Occupancy) affordable to those making 60% or below the Area Median Income, as adjusted for household size, as determined by OHCS.
- 3.4 Subject to Section 2.1 above, this Agreement expires on December 31, 2025, after which time TCDA has no financial obligation to REACH unless the Parties extend the term of this Agreement in writing.

### 4. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF REACH

To induce TCDA to enter into this Agreement, REACH represents, warrants, and covenants as follows:

- 4.1 **Existence.** REACH is a nonprofit public benefit corporation, duly organized and validly existing under the laws of the State of Oregon. REACH shall keep in force (or cause the

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Partnership to keep in force) all licenses and permits necessary to the proper conduct of its ownership and operation of the Project.

- 4.2 Compliance with Laws.** REACH will comply with, or cause the Project to comply with, all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality applicable to REACH, the Project, or the operation thereof, including (a) all applicable health and safety, environmental, and zoning laws, (b) all federal and state tax laws, and (c) all restrictions on the use, occupancy or operation of the Project.
- 4.3 Authority.** REACH has full power and authority to conduct all of the activities that are now conducted by it or proposed to be conducted by it in connection with the Project and as contemplated by this Agreement, and to execute, deliver, and perform all obligations under this Agreement; and the person executing this Agreement on behalf of REACH has the legal power, right and actual authority to bind REACH to the terms and conditions of this Agreement.
- 4.4 Title.** REACH owns and holds (or will own and hold) good and marketable fee simple title to the Property. Upon conveyance of the Property to the Partnership, REACH will cause the Partnership to hold good and marketable fee simple title to the Property.
- 4.5 Development Issues.** REACH is aware of no identifiable issue(s) that would preclude development of the Project or REACH's ability to cause the Partnership to obtain sufficient financing for the construction or permanent ownership of the Project.
- 4.6 Binding Agreement.** This Agreement and all documents required to be executed by REACH are and shall be valid, legally binding obligations of and enforceable against REACH in accordance with their terms.
- 4.7 No Conflict with Other Agreements.** Neither the execution and delivery of this Agreement and documents referred to herein, nor the incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which REACH is a party.
- 4.8 Indemnity.** REACH shall indemnify and hold TCDA, its directors, officers, employees and agents harmless from and against any and all liabilities, claims, losses, damages, or expenses (including attorney fees and title costs and expenses) which any of them may suffer or incur in connection with (a) the inaccuracy of any of the representations and warranties made herein, (b) any transaction contemplated by this, and (c) the construction or operation of the Project, except to the extent such liabilities, claims, losses, damages, or expenses arise solely from the gross negligence or willful misconduct of TCDA.

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- 4.9 Additional Acts.** From time to time, REACH will execute and deliver all such instruments, provide such additional information, and perform all such other acts as TCDA may reasonably request to carry out the transactions contemplated by this Agreement.
- 4.10 Environmental Indemnity.** REACH will hold TCDA and its directors, officers, employees, agents, successors, and assigns harmless from, will indemnify them for, and will defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the land, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the land, the preparation and implementation of any closure, remedial, or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.
- 4.10.1** For purposes of this section, “Environmental Law” means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances (as defined below), health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (42 USC §§ 9601–9675), and the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (42 USC §§ 6901–6992k).
- 4.10.2** For purposes of this section, “Hazardous Substance” includes without limitation any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local statute, ordinance, rule, regulation, or law.

## 5. EVENTS OF DEFAULT

The occurrence of any one or more of the following shall be an event of default (“Event of Default”) under this Agreement:

- 5.1 Failure to Disclose Material Facts.** REACH deliberately fails to disclose any fact material to TCDA’s provision of financial assistance, or upon discovery by TCDA of any misrepresentation by, or on behalf of, or for the benefit REACH.
- 5.2 Non-Compliance with Governmental Regulations.** REACH fails to show evidence of full or substantial compliance with any lawful, material requirement of any governmental authority having jurisdiction over the Project or the Property within thirty days after notice in writing of such requirement is given to REACH by TCDA or, if such compliance cannot be completed within such thirty (30)-day period through the exercise of reasonable diligence, the failure by REACH to commence the required compliance within such thirty (30)-day period and thereafter to continue such compliance with diligence to completion.

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- 5.3 Other Material Breach.** REACH otherwise materially breaches any term, covenant, condition, provision, representation, or warranty of under this Agreement and fails to cure such breach within thirty (30) days after notice in writing of such breach is given to REACH by TCDA or, if such breach cannot be cured within such thirty (30)-day period through the exercise of reasonable diligence, the failure by REACH to commence the required cure within such thirty (30)-day period and thereafter to continue such cure with diligence to completion.

## 6. DISPUTE RESOLUTION AND REMEDIES

If a dispute arises under this Agreement, including an Event of Default, the Party claiming the existence of a dispute or Event of Default shall provide written notification of the dispute or Event of Default to the other Party. A meeting will be held promptly between the Parties, attended by representatives of the Parties with decision making authority regarding the dispute or Event of Default to attempt in good faith to negotiate a resolution of the dispute or Event of Default. If the Parties are not successful in resolving a dispute or Event of Default within twenty-one (21) days, the Parties may pursue relief in a court of competent jurisdiction. Venue will be in the Washington County Circuit Court.

## 7. ASSIGNMENT AND TRANSFER PROVISIONS

- 7.1 Restrictions on Assignments.** Except as provided in this Section 7, REACH shall not partially or wholly transfer REACH's interest in this Agreement without the prior written approval of the TCDA, which may be withheld in TCDA's reasonable discretion.
- 7.2 Approved Transfers.** Notwithstanding Section 7.1 above, and provided that REACH provides TCDA with copies of all agreements related to the transfer, TCDA hereby consents to:
- 7.2.1** An assignment of REACH's rights under this Agreement to any entity in which REACH or an affiliate thereof owns a direct or indirect interest.
  - 7.2.2** The collateral assignment of rights under this Agreement to any mortgagee. For purposes of this Section 7.2.2, "Mortgagee" means the holder of any mortgage, deed of trust, or instrument securing debt or equity obtained to finance the construction of the Project, together with any successor or assignee of such holder. TCDA will cooperate with REACH and enter into commercially reasonable amendments to this Agreement if and as required by any lender, equity provider or financier providing equity or debt to the Project.

## 8. MISCELLANEOUS

- 8.1 Counterparts.** This Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

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- 8.2 Notice.** Any notice required or permitted under this Agreement shall be in writing and shall be deemed effective; (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for “next day” delivery, (3) two business days after having been deposited in the United States mail as certified or registered mail, or (4) when transmitted by facsimile answer back or receipt confirmed), addressed to the parties as follows:

**If to REACH:**

REACH Community Development, Inc.  
4150 S. Moody Ave.  
Portland, OR 97239  
Attn: Alma Flores

**If to TCDA:**

Town Center Development Agency of the City of Tigard  
13125 SW Hall Blvd  
Tigard, Oregon 97223

**with a copy to:**

City Attorney  
City of Tigard  
13125 SW Hall Blvd  
Tigard, Oregon 97223

- 8.3 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.
- 8.4 Governing Law.** This Agreement shall be governed by and construed under Oregon law.
- 8.5 Modification; Prior Agreements; Headings.** This Agreement may not be modified or amended except by an instrument in writing signed by the Parties. This Agreement reflects and sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter. The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.
- 8.6 Validity; Severability.** If any provision of this Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement, and the

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remainder shall be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.

- 8.7 Time of Essence.** Time is of the essence of this Agreement.
- 8.8 Waivers.** No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be of any force or effect unless in writing, shall be construed to be a continuing waiver, and shall be considered a waiver of any other rights of the Party making the waiver
- 8.9 No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties other than that of independent contracting parties.
- 8.10 Non-Waiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement, TCDA is specifically not obligating itself, the City, or any other agency with respect to any discretionary action relating to development or construction of the Project, including, but not limited to, permits or any other governmental approvals which are or may be required, except as expressly set forth herein
- 8.11 No Third-Party Beneficiary Rights.** No person other than a Party is an intended beneficiary of this Agreement, and no person other than a Party shall have any right to enforce any term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

Executed in multiple counterparts as of the day and year above written.

**TOWN CENTER DEVELOPMENT AGENCY,**  
an ORS 457 Urban Renewal Agency,

By: Steve Rymer, Executive Director of the Town Center Development Agency of the City of Tigard

Signed: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

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Shelby Rihala, City Attorney

**REACH Community Development, Inc.**

By:

Signed: \_\_\_\_\_