

DEVELOPMENT ASSISTANCE AGREEMENT

THIS DEVELOPMENT ASSISTANCE AGREEMENT ("Agreement") is made this _____ day of _____ 2022 ("Effective Date") by and between the **Town Center Development Agency**, an ORS Chapter 457 urban renewal agency ("TCDA") and **DIG Tigard QOZB, LLC**, an Oregon limited liability company ("DIG"). TCDA and DIG may be referred to in this Agreement jointly as the "Parties" and individually as a "Party."

RECITALS

- A. DIG intends to develop property located at the intersection of SW Hampton Street and SW 70th Avenue in the Tigard Triangle area ("Property") with a mixed-use building, including 55 apartments ("Project"). Two of the apartments will be income and rent restricted at 80% or below of area median income (AMI). This affordability requirement will remain in place for 10 years from certificate of occupancy.
- B. TCDA has determined that the Project furthers many of its goals for the Tigard Triangle area because it will have a strong sustainability component with "Path to Net Zero" features, provides affordable housing, and will contribute to placemaking and local identity.
- C. TCDA has identified funds it will make available to developments like the Project and DIG qualifies for the receipt of such funds.
- D. The Parties desire to enter into the Agreement for TCDA to provide development assistance to DIG for the development of the Project and, specifically, to assist DIG with the payment of the City of Tigard's ("City'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. DIG PROJECT DEVELOPMENT

- 1.1 Subject to events and circumstances outside of DIG's reasonable control, DIG will use commercially reasonable efforts to begin construction of the Project no later than June 30, 2023.
- 1.2 This Agreement is not intended to be a contract providing for construction of the Project by TCDA either directly or through a contractor and DIG is not developing the Project for or on behalf of TCDA or the City. DIG is solely responsible for selecting a construction contractor

for the Project. The rights and responsibilities of DIG, the general construction contractor and any subcontractors, shall be provided for in separate contracts to which TCDA is not a party.

2. TCDA FINANCIAL ASSISTANCE

2.1 Subject to the provisions of this Section 2, TCDA will pay to DIG \$650,000, to cover the actual cost of the system development charges (“SDCs”) applicable to the Project (“Financial Assistance”). For administrative convenience, TCDA will 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 will be considered financial assistance to DIG for the benefit of the Project.

2.2 In the event the City’s SDCs applicable to the Project are less than \$650,000, TCDA will pay to the City only the amount of the SDCs applicable to the Project and TCDA will have no further financial obligations under this Agreement.

2.3 As a condition to payment, DIG will provide TCDA with evidence of the following:

2.3.1 That at least two of the apartment units in the Project will be subject to one or more regulatory agreements restricting the units to affordable to those making 80% or below the Area Median Income, as adjusted for household size, as determined by the State of Oregon Housing and Community Services Department for a period of at least ten years from certificate of occupancy.

2.3.2 That, prior to final certificate of occupancy, either (a) Energy Trust of Oregon has issued a “final check letter,” verifying DIG’s eligibility in the Path to Net Zero program and that DIG’s energy usage intensity (“EUI”) meets Energy Trust of Oregon’s program requirements, or (b) the Project includes the following features:

- o Photovoltaic solar system on the roof;
- o Fully electrified building with no natural gas in the building;
- o Heat pump water heating systems;
- o Double paned or triple paned windows;
- o Energy recovery ventilation in apartments; and
- o EV charging systems.

In the event the Path to Net Zero program is discontinued or is made unattainable with respect to the Project in another manner outside of DIG’s control (such as by no longer offering it for multi-family properties), DIG must demonstrate to TCDA that all items under Subsection (b) have been included in the Project in order to receive the Financial Assistance. DIG’s participation in the Path to Net Zero program, or construction using the identified Project features above is material inducement for the Financial Assistance.

2.3.3 That TCDA staff have reviewed and approved DIG's 50% design plan set for the inclusion of high-quality architecture, landscaping, and pedestrian-accommodating elements discussed in the Tigard Triangle Development Assistance application review process.

- 2.4** Subject to Section 1.1 above, this Agreement expires on December 31, 2024, after which time TCDA has no financial obligation to DIG unless the Parties extend the term of this Agreement in writing. Parties agree to use commercially reasonable efforts to extend this Agreement if unforeseen conditions outside of DIG's control delay construction beyond December 31, 2024.
- 2.5** The Parties anticipate that Washington County will adopt a Commercial Property Assessed Clean Energy Program ("PACE") ordinance after the Effective Date of this Agreement. In such event, DIG anticipates utilizing PACE financing for a portion of the Project. Within 30 days after Washington County's determination of PACE eligibility for DIG, DIG will provide notice of such to the TCDA.

3. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF DIG

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

- 3.1 Existence.** DIG is a limited liability corporation, duly organized and validly existing under the laws of the State of Oregon. DIG will keep in force all licenses and permits necessary to the proper conduct of its ownership and operation of the Project.
- 3.2 Compliance with Laws.** DIG 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 DIG, 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.
- 3.3 Authority.** DIG 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 DIG has the legal power, right and actual authority to bind DIG to the terms and conditions of this Agreement.
- 3.4 Title.** DIG owns and holds good and marketable fee simple title to the Property.
- 3.5 Development Issues.** DIG is aware of no identifiable issue(s) that would preclude development of the Project or DIG's ability to obtain sufficient financing for the construction or permanent ownership of the Project.
- 3.6 Binding Agreement.** This Agreement and all documents required to be executed by DIG are and shall be valid, legally binding obligations of and enforceable against DIG in accordance with their terms.

- 3.7 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 DIG is a party.
- 3.8 Indemnity.** DIG 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.
- 3.9 Additional Acts.** From time to time, DIG 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. 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:

- 4.1 Failure to Disclose Material Facts.** DIG 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 DIG.
- 4.2 Non-Compliance with Governmental Regulations.** DIG 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 DIG by TCDA or, if such compliance cannot be completed within such thirty (30)-day period through the exercise of reasonable diligence, the failure by DIG to commence the required compliance within such thirty (30)-day period and thereafter to continue such compliance with diligence to completion.
- 4.3 Other Material Breach.** DIG 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 DIG by TCDA or, if such breach cannot be cured within such thirty (30)-day period through the exercise of reasonable diligence, the failure by DIG to commence the required cure within such thirty (30)-day period and thereafter to continue such cure with diligence to completion.

- 4.4 Failure to Pay.** TCDA fails to pay the City the SDCs as and when required by Section 2 of this Agreement.

5. 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 will 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.

6. ASSIGNMENT AND TRANSFER PROVISIONS

- 6.1 Restrictions on Assignments.** Except as provided in this Section 6, DIG may not partially or wholly transfer DIG's interest in this Agreement without the prior written approval of the TCDA, which may be withheld in TCDA's reasonable discretion.

- 6.2 Approved Transfers.** Notwithstanding Section 6.1 above, and provided that DIG provides TCDA with copies of all agreements related to the transfer, TCDA hereby consents to:

- 6.2.1** An assignment of DIG's rights under this Agreement to any entity in which DIG or an affiliate thereof owns a direct or indirect interest.
- 6.2.2** An assignment of DIG's rights under this Agreement to any person or entity upon substantial completion of Project construction, and subject to DIG's satisfaction of the conditions in Section 2.3 of this Agreement.
- 6.2.3** The collateral assignment of rights under this Agreement to any mortgagee. For purposes of this Section 6.2.2, "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 DIG 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.

7. MISCELLANEOUS

- 7.1 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 will constitute a full and original instrument, but all of which will together constitute one and the same instrument.

- 7.2 Notice.** Any notice required or permitted under this Agreement will be in writing and 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 DIG:

DIG Tigard QOZB, LLC
333 S. State St Suite V #105
Lake Oswego, OR 97034
legal@digrealestate.com

with a copy to:

Oregon Law Group
1675 SW Marlow Avenue
Suite 404
Portland, OR 97225
notices@oregonlawgroup.com

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

- 7.3 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.
- 7.4 Governing Law.** This Agreement will be governed by and construed under Oregon law.
- 7.5 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 will not limit or otherwise affect any of the terms hereof.

- 7.6 Validity; Severability.** If any provision of this Agreement is held to be invalid, such event will not affect, in any respect whatsoever, the validity of the remainder of this Agreement, and the remainder will be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.
- 7.7 Time of Essence.** Time is of the essence of this Agreement.
- 7.8 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 will be of any force or effect unless in writing, will be construed to be a continuing waiver, and will be considered a waiver of any other rights of the Party making the waiver.
- 7.9 No Partnership.** Nothing contained in this Agreement or any acts of the Parties hereby will 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.
- 7.10 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.
- 7.11 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 may have any right to enforce any term of this Agreement.

[Signature page follows]

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: _____

Shelby Rihala, City Attorney

DIG Tigard QOZB, LLC,
an Oregon limited liability company

By: DIG Tigard Partners, LLC,
an Oregon limited liability company,
Its Manager

By: _____
Name: Brenner Daniels
Title: Co-Manager