

EXHIBIT A

DEVELOPMENT ASSISTANCE AGREEMENT

THIS DEVELOPMENT ASSISTANCE AGREEMENT (“Agreement”) is made this _____ day of _____ 2023 (“Effective Date”) by and between the **Town Center Development Agency**, an ORS Chapter 457 urban renewal agency (“TCDA”) and **AVA Tigard Development, LLC**, an Oregon limited liability company (“AVA”). TCDA and AVA may be referred to in this Agreement jointly as the “Parties” and individually as a “Party.”

RECITALS

- A. AVA owns the real property located at 12533-12537 SW Main Street, Tigard, Oregon (the “Property”).
- B. AVA has requested TCDA financial assistance to complete construction of a three-story mixed-use building with 22 apartments, ground floor commercial space and a public viewing deck (the “Project”).
- C. The Parties desire to enter into the Agreement for TCDA to provide development assistance to AVA for the development of the Project.

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. AVA PROJECT

- 1.1 AVA has requested development assistance from the TCDA to help defray the costs of addressing unanticipated site conditions. Unstable fill material and large boulders were discovered during excavation of the Property. The project construction budget has contingency, but these costs were unusually large and came very early in the construction project.
- 1.2 AVA will use commercially reasonable efforts to complete construction of the Project no later than June 30, 2024.
- 1.3 This Agreement is not a contract providing for construction of the Project by TCDA either directly or through a contractor and AVA is not developing the Project for or on behalf of TCDA or the City. AVA is solely responsible for selecting a construction contractor for the Project. The rights and responsibilities of AVA, the general construction contractor and any subcontractors, will 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 award AVA \$400,000, to cover the actual cost of the system development charges (“SDCs”) applicable to the Project (“Financial Assistance”).
- 2.2 For administrative convenience, TCDA will make the Financial Assistance 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 AVA for the benefit of the Project.
- 2.3 This Agreement expires on December 31, 2024, after which time TCDA has no financial obligation to AVA unless the Parties extend the term of this Agreement in writing.

3. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF AVA

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

- 3.1 **Existence.** AVA is a limited liability corporation, duly organized and validly existing under the laws of the State of Oregon. AVA 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.** AVA 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 AVA, 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.** AVA 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 AVA has the legal power, right and actual authority to bind AVA to the terms and conditions of this Agreement.
- 3.4 **Title.** AVA owns and holds good and marketable fee simple title to the Property.
- 3.5 **Development Issues.** AVA is aware of no identifiable issue(s) that would preclude development of the Project or AVA’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 AVA are and shall be valid, legally binding obligations of and enforceable against AVA 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 AVA is a party.

3.8 Indemnity. AVA 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, AVA 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 will be an event of default (“Event of Default”) under this Agreement:

4.1 Failure to Disclose Material Facts. AVA 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 AVA.

4.2 Non-Compliance with Governmental Regulations. AVA 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 AVA by TCDA or, if such compliance cannot be completed within such thirty (30)-day period through the exercise of reasonable diligence, the failure by AVA 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. AVA 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 AVA by TCDA or, if such breach cannot be cured within such thirty (30)-day period through the exercise of reasonable diligence, the failure by AVA 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 AVA, as provided by Section 2.

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, AVA may not partially or wholly transfer AVA's interest in this Agreement without the prior written approval of the TCDA, which may be withheld in TCDA's reasonable discretion.

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 AVA:

AVA Tigard Development LLC

Address

City, State, Zip

with a copy to:

[AVA Legal Counsel]

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

AVA Tigard Development, LLC,
an Oregon limited liability company

By: AVA Tigard Development, LLC,
an Oregon limited liability company,
Its _____

By: _____

Name:

Title: