DATE: June 1, 2020

TO: Honorable Mayor and Members of the City Council and City Manager

FROM: Jim Carney, Interim Housing Administrator

SUBJECT: Consideration and Possible Adoption of a Resolution: Approving and Ratifying the Disposition, Development and Loan Agreement (DDLA) Between the City and Petaluma Ecumenical Properties (PEP) Concerning Development of the River City Senior Apartments L.P. (Project) on City-owned Property Located at 951 Petaluma Boulevard South (Property); Authorizing Amendment of Article IV of the DDLA to Provide $1.5 million in Additional City Financing for the Project; and Authorizing Assignment of PEP’s interest in the DDLA and the Property to a Successor Entity for Development of the Project; and Consideration and Possible Introduction (First Reading) of an Ordinance Approving Conveyance of the Property to PEP and/or its Successor in Accordance with the DDLA and the Requirements of Section 46 of the Petaluma Charter

RECOMMENDATIONS

It is recommended that the City Council:

1. Adopt a resolution: approving and ratifying the DDLA dated August 20, 2018 between PEP and the City concerning development of the Project) on the Property, A.P.N. 008-530-007, in Petaluma; authorizing amendment of Article IV of the DDLA to provide $1.5 million in additional financing for the Project from City Housing In-lieu funds, including financing of pre-development costs and construction costs in the form of two additional loans; authorizing the City Manager to execute on behalf of the City consent to the assignment and assumption of PEP’s interest in the DDLA and the Property to River City Senior Apartments, L.P as PEP’s successor in accordance with the terms of the DDLA; and authorizing the City Manager to execute any and all documents necessary to effect the purposes of the resolution and the DDLA, including any maintenance and other agreements and documents related to completion of the Project on the Property.

2. Introduce an Ordinance: approving conveyance of the Property to PEP and/or its successor River City Senior Apartments, L.P. for development of the Project on the Property in accordance with the terms of the DDLA and the requirements of Section 46 of the Petaluma Charter, subject to a reservation by the City of land along the eastern boundary of the Property bordering the Petaluma River to provide for public access to the Petaluma River (River Trail Property), and reservation of an easement
in the City for accessing the River Trail property across the Property conveyed to PEP.

BACKGROUND

The affordability of housing in Petaluma has long been a priority for the Petaluma City Councils. City programs have done much to provide housing for every income level, with emphasis on first-time homebuyers, very low and low and moderate-income residents, and the homeless, all when funding was more plentiful.

The City of Petaluma (“City”), through partnerships with affordable housing developers, has produced housing units throughout the City. It is through these partnerships that the City fulfills Council goals and implements the housing programs as detailed in the City’s 2015-2023 General Plan Housing Element. The housing programs not only produced affordable housing, but also focused on preserving the affordable housing that the City currently has and preventing lower-income residents from losing their housing.

In April 2017, the City issued a Request for Proposals for the development of affordable housing on the property at 951 Petaluma Boulevard South with submissions due on May 8, 2017. Three proposals were submitted, and staff reviewed all submittals. Interviews were held with all the proposers during the last week in May 2017. During the interview process it was communicated that the land would be the City’s contribution to the development of the project. The value of the City’s contribution of the land is $1,300,000 based upon an appraisal completed on June 25, 2019. Petaluma Ecumenical Properties (PEP) was selected to develop the project. The City entered into an exclusive negotiating agreement with PEP on October 17, 2017.

On August 14, 2018, the Petaluma Planning Commission adopted Resolution no. 2018-126 approving site plan and architectural review (SPAR) for the Project, consisting of the construction of 53 one-bedroom rental housing units affordable for seniors of low and very-low income levels, plus one two-bedroom on-site manager unit and ancillary community rooms, with twenty-five of the residential units identified for senior veterans. The SPAR approval included associated warrants and specified conditions of approval.

On August 20, 2018, the City entered into a Development, Disposition and Loan Agreement (DDLA) with PEP. The DDLA addresses Project financing, Project approval, and other conditions that, once satisfied, would result in transfer of most of the City-owned property at 951 Petaluma Boulevard South to PEP for construction of senior affordable housing on the site, subject to affordability and other covenants specified in the DDLA and the easement and River Access Trail access reservation described above.

On March 18, 2019, the City Council considered and approved a request from PEP to provide additional funding for the Project to close a $1,500,000 funding gap. The Council consensus at that time was to provide additional funding for the Project in the form of a combination of $900,000 of City’s HOME program funds and an additional $600,000 from other housing funds at staff discretion, with the City’s Housing In-lieu Fee fund balance to be preserved to the extent possible. However, since March 2019, PEP requested the funding be provided from the City Housing In-
lieu funds instead of the City’s HOME program funds because of the delay that would result from
the process required to access the City HOME program funds and the resulting impact on
commencement of the Project and related impacts on other Project funding.

On February 24, 2020, the City Council gave staff direction to make arrangements for the City to
contribute $1,500,000 from the City’s Housing In-lieu Fee fund, in addition to the land, to the
development of the Project. The City’s total contribution to this project totals $2,800,000.

**DISCUSSION**

**Amendment to Article IV of the Disposition, Development and Loan Agreement to Provide
City Predevelopment and Construction Financing**

The City entered into the DDLA providing for development of the Project on the Property as of
August 20, 2018. Article IV of the DDLA currently provides for City funding, in the form of seller
financing for the land acquisition cost. Accordingly, to provide the additional predevelopment and
construction financing that the City Council has directed be committed to the Project, the DDLA
must be amended to provide that the additional $1.5 million in City financing may be released for
allowable predevelopment and construction costs

**River City Senior Apartments LP as Successor to PEP**

As anticipated in the DDLA, PEP has established River City Senior Apartments, L.P. as a
successor legal entity to develop the Project on the Property. An Assignment and Assumption of
the DDLA has been prepared in accordance with the terms of the DDLA to allow PEP to legally
transfer all legal obligations regarding development of the Project and ownership of the Property
and the Project subject to conveyance from the City pursuant to the DDLA.

A controlled affiliate of PEP will serve as the developer and General Partner of the River City
Senior Apartments, L.P. that will develop and manage the Project on the Property. The Project will
provide 53 veterans and homeless seniors rental housing units and one manager’s unit. As
referenced in the DDLA, upon satisfaction of the conditions precedent set forth in the DDLA and
subject to the DDLA terms and conditions, including City approval of the Project financing plan,
the City will convey the Property to PEP and/or its successor, River City Senior Apartments LP.

**Project Development Timetable**

PEP intends to commence Project construction activity in July 2020. This timing is important
because it is a requirement of Tax Credit and tax-exempt bond financing PEP has been awarded
for the Project. Prior to commencement of Project construction, the DDLA conditions precedent
to transfer of the Property must be satisfied, chief among them being City approval of the Project
financing plan and construction plans. In addition, before Project construction can commence, the
closing on the City’s conveyance to PEP and/or its successor (with reservations) must occur, and
the City construction-related permit approvals must issue. The Council approvals sought pursuant
to this agenda item will permit the Project-related transactions to occur to keep the Project
construction timetable required by both the DDLA and the Project financing package on track.
City Council adoption of a resolution authorizing the City Manager to execute the DDLA Amendment, and Assignment and Assumption, and introduction of an ordinance approving transfer of the Property will make City In Lieu Housing funds available for current Project predevelopment costs and provide additional City gap financing for construction costs while providing for approval of transfer of the Project Property in accordance with the City Charter. The DDLA and related documents will require rents for the Project residential units to be affordable to low and very low-income senior households for a term of not less than fifty-five years. Transferring title to the property coupled with indemnity provisions contained in the DDLA will protect the City against liability during construction and ongoing management operations of the Project.

ENVIRONMENTAL REVIEW

The City has determined that the Project qualifies for an exemption from review under the California Environmental Quality Act (CEQA) pursuant to Section 15194 of the CEQA Guidelines pertaining to the affordable housing projects, as set forth in Planning Commission Resolution 2018-126 which was adopted on August 12, 2018 and approved the Project SPAR.

FINANCIAL IMPACTS

The amended DDLA and associated documents will provide, in addition to the City’s contribution of the $1.3 million stated value of the land per the site appraisal pursuant to the original DDLA, additional Project financing consisting of City In-Lieu Housing funds totaling $1,500,000. Of that amount, up to $500,000 would be made available for predevelopment expenses; the balance will provide construction financing. At the closing, the partnership will assume the obligation to repay both loans based upon residual receipts from Project cash flow. The City’s total contribution to this project totals $2,800,000.

ATTACHMENTS

1. Resolution Approving DDLA Amendment and Assignment and Assumption
   a. Amendment to DDLA
      i. Exhibit 1 - Pre-construction note
      ii. Exhibit 2 - Construction note
      iii. Exhibit 3 - First Amendment of the DDA
2. Ordinance Authorizing Conveyance of Property
RESOLUTION OF THE CITY OF PETALUMA CITY COUNCIL APPROVING AND RATIFYING THE DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT (DDLA) BETWEEN THE CITY AND PETALUMA ECUMENICAL PROPERTIES (PEP) FOR THE RIVER CITY SENIOR APARTMENTS PROJECT, A 54-UNIT LOW-INCOME RENTAL HOUSING DEVELOPMENT (PROJECT) TO BE LOCATED AT 951 PETALUMA BOULEVARD SOUTH IN PETALUMA (PROPERTY) THAT WILL PROVIDE HOUSING FOR FIFTY-THREE VETERANS AND HOMELESS SENIORS, AUTHORIZING AMENDMENT OF THE DDLA TO PROVIDE $1.5 MILLION IN CITY IN-LIEU HOUSING FEES FINANCING FOR THE PROJECT, AND AUTHORIZING ASSIGNMENT OF PEP’S INTEREST IN THE DDLA AND THE PROPERTY TO A SUCCESSOR AGENCY FOR DEVELOPMENT OF THE PROJECT EFFECTIVE UPON CLOSING FOR CONVEYANCE OF THE LAND

WHEREAS, in April of 2017, the City issued a Request for Proposals for the development of affordable housing on the City-owned property located at 951 Petaluma Boulevard South in Petaluma (Property), with submissions due on May 8, 2017; and

WHEREAS, three proposals were submitted, staff reviewed all submittals, and held interviews with the proposers during the last week in May 2017; and

WHEREAS, during the proposer interviews City staff communicated that the Property would be the City’s contribution to the development of the affordable housing project; and

WHEREAS, Petaluma Ecumenical Properties (PEP) proposed developing a project on the Property consisting of the construction of 53 one-bedroom rental housing units affordable for seniors of low and very-low income levels, plus one two-bedroom on-site manager unit and ancillary community rooms, with twenty-five of the residential units identified for senior veterans (Project), and PEP was selected to develop the Project on the Property; and

WHEREAS, the City entered into an exclusive negotiating agreement regarding development of the Project on the Property with PEP on October 17, 2017; and

WHEREAS, on August 14, 2018, the Petaluma Planning Commission adopted Resolution no. 2018-126 approving site plan and architectural review (SPAR) for the Project, including associated warrants and specified conditions of approval; and

WHEREAS, on August 20, 2018, the City entered into a Development, Disposition and Loan Agreement (DDLA) with PEP addressing Project financing, Project approval, and other conditions that, once satisfied, would result in transfer of the Property to PEP subject to certain reservations allowing for access to the River Trail, for construction of the Project on the Property, resulting in the creation of additional senior affordable housing in the City, subject to affordability and other covenants specified in the DDLA; and
WHEREAS, on March 18, 2019, the City Council considered and expressed its support in response to a request from PEP to provide additional funding for the Project to close a $1,500,000 funding gap; and

WHEREAS, in expressing support for the PEP request, the City Council directed that additional funding for the Project take the form of a combination of $906,000 of the City’s HOME program funds and an additional $600,000 from other housing funds at staff discretion, with the City’s Housing In-lieu Fee fund balance to be preserved to the extent possible; and

WHEREAS, after March of 2019, PEP requested the City gap funding be provided from City Housing In-lieu Fee funds instead of the City’s HOME program funds because of the delay that would result from the process required to access the City HOME program funds, and the resulting impact on commencement of the Project and related impacts on other Project funding; and

WHEREAS, on February 24, 2020, the City Council gave staff direction to make arrangements for the City to contribute $1,500,000 from the City’s Housing In-lieu Fee fund to the development of the Project in addition to the $1,300,000 land value, as appraised on June 25, 2019; and

WHEREAS, in addition to support PEP has requested from the City of Petaluma for the development of the Project on the Property PEP has sought and obtained other federal, state and private financing for the construction of the Project, and such funding requires that PEP complete acquisition of the Property in accordance with the DDLA, obtain all City project permits and commence Project construction by approximately July 15, 2020; and

WHEREAS, the City of Petaluma intends to support the development of the Project by transferring title of the Property to PEP and/or its successor in accordance with and subject to the terms of the DDLA; and

WHEREAS, the City Council has given direction to allocate $1,500,000 of the City’s Housing In-lieu Funds to PEP for the development of the Project on the Property; and

WHEREAS, the Project qualifies for an exemption from review under the California Environmental Quality Act (“CEQA”) pursuant to Section 15194 of the CEQA Guidelines pertaining to the affordable housing projects, as set forth in Planning Commission Resolution 2018-126 which was adopted on August 12, 2018 and approved the Project SPAR;

NOW THEREFORE, BE IT RESOLVED by the Petaluma City Council as follows:

1. The above recitals are hereby declared to be true and correct and are incorporated into this resolution as findings of the City Council.
2. The Project is exempt from CEQA review pursuant to the exemption for affordable housing projects in Section 15194 of the CEQA Guidelines as set forth in Planning Commission Resolution No. 2018-126 adopted on August 12, 2018.
3. The DDLA dated August 18, 2018 between the City and PEP concerning development of the Project on the Property is hereby approved and ratified.

4. Amendment of Article IV of the DDLA to provide an additional $1.5 million in Project financing from the City’s Housing In-Lieu funds is hereby approved, and the City Manager is hereby authorized and directed to execute on behalf of the City a DDLA Amendment substantially in the form accompanying the staff report for this item, which amendment is hereby incorporated into and made a part of this resolution.

5. The City Manager is hereby authorized and directed to execute on behalf of the City an Assignment and Assumption of PEP’s interest in the DDLA and the Property to River City Senior Apartments, L.P. as PEP’s successor in accordance with and subject to the terms of the DDLA in such form as approved by the City Manager and the City Attorney.

6. The City Manager is hereby authorized and directed to execute any and all documents necessary to affect the purposes of this resolution and the DDLA, including any maintenance and other agreements and documents related to completion of the Project on the Property.
PREDEVELOPMENT PROMISSORY NOTE

$500,000 Petaluma, California
June 1, 2020

FOR VALUE RECEIVED, Petaluma Ecumenical Properties, a California nonprofit public benefit corporation ("Borrower"), promises to pay to the City of Petaluma, a municipal corporation (the "City"), in lawful money of the United States of America: (a) the principal sum of Five Hundred Thousand Dollars ($500,000), or so much thereof as may be advanced by City pursuant to the Loan Agreement referred to below, in the manner provided below.

This Predevelopment Promissory Note (this "Note") has been executed and delivered pursuant to and in accordance with a Disposition, Development, and Loan Agreement dated as of August 20, 2018, executed by and between City and Borrower, and amended by that certain First Amendment to Disposition, Development, and Loan Agreement dated as of the date hereof (as so amended, the "Loan Agreement"), and is subject to the terms and conditions of the Loan Agreement, which is by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

This Note is secured by an assignment of agreements, reports, plans, specifications and approvals pursuant to that certain Assignment of Agreements, Plans and Specifications dated as of the date hereof and executed by Borrower in favor of City substantially in the form attached as an exhibit to the Loan Agreement (the "Assignment Agreement"). City shall be entitled to the benefits of the security provided by the Assignment Agreement and shall have the right to enforce the covenants and agreements contained in the Loan Agreement and the Assignment Agreement.

1. INTEREST RATE; PAYMENTS; MATURITY DATE.

1.1 INTEREST RATE. Interest shall accrue on the principal balance of this Note outstanding from time to time at the rate of one percent (1%) simple annual interest. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

1.2 PAYMENTS; MATURITY DATE. Payments under this Note shall be credited first to any unpaid late charges and other costs and fees then due, then to accrued interest, and then to principal. In no event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Borrower. The entire outstanding principal balance of this Note, together with interest accrued thereon and all other sums accrued hereunder shall be payable in full on the date (the "Maturity Date") which is the earlier of (i) November 1, 2020, or (ii) the Closing Date, unless Maturity Date is accelerated pursuant to the terms of this
Note. Notwithstanding the foregoing, if the obligation to repay this Note is assumed by an Approved Partnership, the outstanding principal balance of this Note and accrued interest shall be “rolled over” into, and included as part of, the principal balance of the Construction/Permanent Loan that City will provide pursuant to the Loan Agreement.

1.5 PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal.

1.6 MANNER OF PAYMENT. All payments of principal and interest on this Note shall be made to City at 11 English Street, Petaluma, CA 94952 or such other place as City shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

2. DEFAULTS AND REMEDIES.

2.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder (“Event of Default”):

(A) Borrower fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after City notifies Borrower thereof in writing.

(B) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (“Bankruptcy Law”), Borrower (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(C) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower, or substantially all of Borrower’s assets, (iii) orders the liquidation of Borrower, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within ninety (90) days after its issuance.

(D) The occurrence of a Transfer in violation of the Loan Agreement or the Regulatory Agreement.

(E) Following the Closing Date, the holder of any debt instrument secured by a mortgage or deed of trust on the Project or the Property declares a default, and such default remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.
(F) Borrower fails to maintain insurance on the Property and the Project as required pursuant to the City Documents and Borrower fails to cure such default within five (5) days.

(G) Following the Closing Date, subject to Borrower’s right to contest the following charges pursuant to the City Documents, Borrower fails to pay taxes or assessments due on the Property or the Project or fails to pay any other charge that may result in a lien on the Property or the Project, and Borrower fails to cure such default within twenty (20) days, but in all events before the imposition of any such tax or other lien.

(H) If any representation or warranty contained in any City Document, or any certificate furnished in connection therewith, or in connection with any request for disbursement of the proceeds of the Predevelopment Loan (“Loan Proceeds”) proves to have been false or misleading in any material adverse respect when made and continues to be materially adverse to the City.

(I) An Event of Default shall have been declared under the Loan Agreement or any other City Document, including without limitation, the Assignment Agreement, and remains uncured beyond the expiration of the applicable cure period.

(J) Borrower fails to use the Loan Proceeds in accordance with the Loan Agreement or fails to use the Loan Proceeds in accordance with Borrower’s request for disbursement.

2.2 REMEDIES. Upon the occurrence of an Event of Default hereunder, City may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to City under this Note and the other City Documents. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with City's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder, and all such sums shall be a part of the indebtedness secured by the Assignment Agreement, and after the Closing Date, secured by the Construction/Permanent Deed of Trust. The rights and remedies of City under this Note shall be cumulative and not alternative.

2.3 DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law (the “Default Rate”); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.
3. MISCELLANEOUS.

3.1 WAIVERS; AMENDMENTS; BORROWER’S WAIVERS. No waiver by City of any right or remedy under this Note shall be effective unless in a writing signed by City. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by City will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver that may be given by City will be applicable except in the specific instance for which it is given. No notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of City to take further action without notice or demand as provided in this Note. There shall be no amendment to or modification of this Note except by written instrument executed by Borrower and City.

To the maximum extent permitted by applicable law Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

3.2 NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 11.3 of the Loan Agreement.

3.3 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4 GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Any legal action filed in connection with this Note shall be filed in the Superior Court of Sonoma County, California, or in the Federal District Court for the Northern District of California.

3.5 BINDING ON SUCCESSORS; ASSIGNMENT. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of City and its successors and assigns. As set forth in the Loan Agreement, City has acknowledged and agreed that Borrower’s obligation to repay this Note may be assigned to an Approved Partnership approved in accordance with the Loan Agreement.

3.6 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

3.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and City under this Note is solely that of borrower and lender, and the loan evidenced by this Note will in no manner make City the partner or joint venturer of Borrower.

3.8 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.
IN WITNESS WHEREOF, Borrower has executed this Predevelopment Promissory Note as of the date first written above.

BORROWER:
Petaluma Ecumenical Properties, a California nonprofit public benefit corporation

By:______________________________

Print Name:_______________________

Title:____________________________
SECURED PROMISSORY NOTE
(Construction/Permanent Loan)

[$1,500,000]
Plus accrued interest

Petaluma, California
__________, 2020

FOR VALUE RECEIVED, River City Senior Apartments, L.P., a California limited partnership ("Borrower"), promises to pay to the City of Petaluma, a municipal corporation (the "City"), in lawful money of the United States of America: (a) the principal sum of __________ Dollars ($____________) or so much thereof as may be advanced by City pursuant to the Loan Agreement referred to below, together with interest on the outstanding principal balance in accordance with the terms and conditions described herein. Interest shall accrue on the principal balance of this Note outstanding from time to time at the rate of one percent (1%) simple annual interest. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

This Secured Promissory Note (this “Note”) has been executed and delivered pursuant to and in accordance with a Disposition, Development, and Loan Agreement (the “Loan Agreement”), dated as of August 20, 2018, executed by and between City and Petaluma Ecumenical Properties, a California nonprofit public benefit corporation (“PEP”), and amended by that certain First Amendment to Disposition, Development, and Loan Agreement dated as of June 1, 2020, as so amended, the “Loan Agreement”), and is subject to the terms and conditions of the Loan Agreement, which is by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

Pursuant to that certain Assignment and Assumption Agreement dated as of ________, 2020, executed by PEP and Borrower, and consented to by City, Borrower has assumed the rights and obligations of PEP under the Loan Agreement, including without limitation, the obligation to repay the Predevelopment Loan. The original principal amount of this Note is equal to the sum of: (a) Five Hundred Thousand Dollars ($500,000) which is equal to the outstanding principal balance of the Predevelopment Loan as of the date of this Note, (b) ________________ Dollars ($____________) which is equal to the interest accrued under the Predevelopment Note as of the date of this Note, and (c) One Million Dollars ($1,000,000) which is equal to the amount of additional funds that City will advance as the Construction/Permanent Loan.

This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“Deed of Trust”) dated as of the date hereof, executed by Borrower for the benefit of City and encumbering the property described therein. City shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, in the Deed of Trust, the Loan Agreement, and the
other City Documents, including without limitation, that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated as of the date hereof, executed by and between City and Borrower and recorded in the Official Records of Sonoma County (the “Regulatory Agreement”). The rent restrictions and other requirements set forth in the Regulatory Agreement shall remain effective for the full term of the Regulatory Agreement and shall survive the repayment of this Note.

Concurrently herewith, the City is making an additional loan to Borrower in the amount of One Million, Three Hundred Thousand Dollars ($1,300,000) (the “Seller Take-Back Loan”). The Seller Take-Back Loan will be evidenced by a Secured Promissory Note (the “Seller Take-Back Note”) and will be secured by a deed of trust (the “Seller Take-Back Deed of Trust”).

1. PAYMENTS.

1.1 PAYMENT DATES; MATURITY DATE. Annual payments on this Note shall be payable on a residual receipts basis with fifty percent (50%) of all Surplus Cash (defined below) payable to City; provided however, if other public agency lenders are entitled to receive debt service payments from Surplus Cash, then fifty percent (50%) of Surplus Cash shall be allocated among and payable to the City and such other public agency lenders in proportion to the amount of financing each agency provides for acquisition of the Property and development of the Project.

Payments shall be credited first to any unpaid late charges and other costs and fees then due, then to accrued interest, and then to principal. In no event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Borrower. The entire outstanding principal balance of this Note, together with interest accrued thereon and all other sums accrued hereunder shall be payable in full on the date (the “Maturity Date”) which is the earlier of (i) the fifty-fifth (55th) anniversary of the date upon which the City issues a final certificate of occupancy or equivalent for the Project, or (ii) the fifty-seventh (57th) anniversary of the date hereof.

1.1.1 Allocation of Payments. Notwithstanding any contrary provision hereof, in each year during the term hereof, in the aggregate, Borrower shall be obligated to pay to City fifty percent (50%) of Surplus Cash (or such lesser percentage as determined in accordance with Section 1.1 above to account for residual receipts loans provided by other public agency lenders) toward principal and interest due under (i) this Note, and (ii) the Seller Take-Back Note, it being understood that the sum of payments due in the aggregate under both of the foregoing notes for each year of the term hereof shall equal fifty percent (50%) of Surplus Cash generated by the Project in such year (or such lesser percentage as determined in accordance with Section 1.1). In each year, Borrower shall have discretion to allocate the aggregate amount payable to City towards payment of the foregoing instruments in such proportions as Borrower may elect.

1.2 ANNUAL PAYMENTS FROM SURPLUS CASH. By no later than July 1 of each year following the issuance of a final certificate of occupancy or equivalent for the Project, Borrower shall pay to City fifty percent (50%) of Surplus Cash generated by the Project during the previous calendar year to reduce the indebtedness owed under this Note (subject to adjustment pursuant to Section 1.1).
No later than April 1 of each year following the issuance of a final certificate of occupancy or equivalent for the Project, Borrower shall provide to City Borrower’s calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as City may reasonably request, including without limitation, an independent audit prepared for the Project by a certified public accountant in accordance with generally accepted accounting principles. City shall have the right to inspect and audit Borrower’s books and records concerning the calculation of Surplus Cash, and to object within sixty (60) days from receipt of Borrower’s statement. Failure to timely object shall be deemed acceptance. If City does object, City shall specify the reasons for disapproval. Borrower shall have thirty (30) days to reconcile any disapproved item. If Borrower and City cannot agree on the amount of Surplus Cash, an independent auditor mutually selected by Borrower and City shall resolve any disputed items. The cost of the auditor shall be shared equally by Borrower and City.

No later than November 1 of each year following issuance of the final certificate of occupancy or equivalent for the Project, Borrower shall provide to City a projected budget for the following calendar year which shall include an estimate of Surplus Cash. City will review the proposed budget, and City will provide Borrower with written notice of any objections that City has to the proposed budget.

1.2.1 “Surplus Cash” shall mean for each calendar year during the term hereof, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below) for the Project. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Project, less fees and closing costs reasonably incurred in connection with such refinancing, and any City-approved uses of the net cash proceeds of the refinancing.

1.2.2 “Gross Revenue” shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration actually received from the operation and leasing of the Project. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance not required to be paid to the holders of Approved Senior Loans (provided however, expenditure of such proceeds for repair or restoration of the Project shall be included within Annual Operating Expenses in the year of the expenditure); condemnation awards for a taking of part or all of the Property or the Improvements for a temporary period; and the fair market value of any goods or services provided to Borrower in consideration for the leasing or other use of any part of the Project. Gross Revenue shall include any release of funds from replacement and other reserve accounts to Borrower other than for costs associated with the Project. Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances, or interest earned on restricted reserve accounts.

1.2.3 “Annual Operating Expenses” shall mean for each calendar year during term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles:
property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Project) on loans which have been approved in writing by the City and which are secured by deeds of trust senior in priority to the Deed of Trust ("Approved Senior Loans"); property management fees and reimbursements in amounts in accordance with industry standards for similar residential projects and paid pursuant to a property management agreement approved by City; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Project; expenses for security services; advertising and marketing costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements in an amount equal to $450 per unit per year or such greater amount as reasonably required by the holder of an Approved Senior Loan or as required by a physical needs assessment prepared by a third-party selected or approved by City and prepared at Borrower’s expense; cash deposits into operating reserves in an amount reasonably approved by the City or required by the holder of an Approved Senior Loan, but only if the accumulated operating reserve does not exceed six (6) months’ projected Project operating expenses; any previously unpaid portion of the developer fee (without interest) up to the maximum permitted by TCAC and applicable public agency lenders for the Project; any required annual monitoring fees payable to the City; any required annual fees payable in connection with tax-exempt financing issued for the Project, and other ordinary and reasonable operating expenses approved by City. Commencing on the Project placed in service date, Annual Operating Expenses shall also include payment of any current partnership management fee payable to the general partner of Borrower in the maximum annual amount of Twenty-Five Thousand Dollars ($25,000), and an asset management fee payable to the investor limited partner of Borrower in the maximum annual amount of Seven Thousand Five Hundred Dollars ($7,500), each increasing annually by three percent (3%); provided that the asset management fee shall only be included in the calculation of Annual Operating Expenses during the first fifteen (15) years following the date upon which the Project is placed in service.

1.2.4 EXCLUSIONS FROM ANNUAL OPERATING EXPENSES. Annual Operating Expenses shall exclude the following: developer fees and interest on any deferred developer fees (except as permitted pursuant to Section 1.2.3); contributions to Project operating or replacement reserves (except as provided in Section 1.2.3); debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Deed of Trust; depreciation, amortization, depletion and other non-cash expenses; expenses paid for with disbursements from any reserve account; distributions to partners; any amount paid to Borrower, any general partner of Borrower, or any entity controlled by the persons or entities in control of Borrower or any general partner of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses, subject to applicable limitations set forth in Section 1.2.3 above, even if paid to Borrower, an affiliate of Borrower, or a partner of Borrower: fees paid to a property management agent, resident services agent, or social services agent; partnership management fees, asset management fees, and subject to Section 1.2.5, repayment of cash advances by Borrower or its partners to cover Project operating expense deficits or emergency cash needs of the Project. Payments to
Borrower, its partners or affiliates in excess of the limitations set forth in Section 1.2.3 shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

1.2.5 **ADJUSTMENT TO OPERATING EXPENSES.** Notwithstanding anything to the contrary set forth herein, for the purpose of calculating Surplus Cash, Annual Operating Expenses shall include: (a) the repayment of operating deficit loans provided by Borrower’s limited partner(s) provided however, interest payable on such loans may be included in Annual Operating Expenses only in an amount equivalent to the lesser of (i) interest accrued at the actual interest rate charged for the loan, or (ii) interest accrued at a rate equal to the Applicable Federal Rate, and (b) the amount of any tax credit adjustor that is required to be paid from Project cash flow.

1.3 **EXCESS PROCEEDS.** Within ten (10) business days after Borrower’s receipt of its limited partner(s)’ capital contribution following the issuance of the IRS Form 8609 for the Project, Borrower shall pay to the City as a reduction of the outstanding principal balance of this Note, a one-time payment in the amount of fifty percent (50%) of Excess Proceeds. “Excess Proceeds” shall mean the sum of all sources of financing received by Borrower for acquisition, construction and permanent financing of the Property and the Project, less the sum of actual uses as shown on the final cost certificate for the Project. Prior to calculating Excess Proceeds, the Project operating reserve shall be funded in the amount of three (3) months’ projected Project operating expenses. In the event that other public agency lenders require payment of Excess Proceeds, then Excess Proceeds shall be payable to City and such other public agencies in proportion to the amount of financing each agency provides for acquisition of the Property and development of the Project.

1.4 **DUE ON SALE.** The entire unpaid principal balance and all interest and other sums accrued hereunder shall be due and payable upon the Transfer (as defined in Section 8.1 of the Regulatory Agreement) absent City consent, of all or any part of the Project or the Property or any interest therein other than a Transfer permitted without City consent pursuant to the Regulatory Agreement or the Loan Agreement. Without limiting the generality of the foregoing, this Note shall not be assumable without City’s prior written consent, which consent may be granted or denied in City’s sole discretion.

1.5 **PREPAYMENT.** Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal. The Regulatory Agreement shall remain in full force for the entire term thereof regardless of any prepayment of this Note.

1.6 **MANNER OF PAYMENT.** All payments of principal and interest on this Note shall be made to City at 11 English Street, Petaluma, CA 94952 or such other place as City shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by City in writing.
2. DEFAULTS AND REMEDIES.

2.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("Event of Default"): 

(K) Borrower fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after City notifies Borrower thereof in writing.

(L) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), Borrower or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower, or any general partner thereof, in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(M) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower or any general partner thereof in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower, or any general partner thereof, or substantially all of such entity’s assets, (iii) orders the liquidation of Borrower or any general partner thereof, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within ninety (90) days after its issuance.

(N) The occurrence of a Transfer in violation of the Loan Agreement or the Regulatory Agreement.

(O) The holder of any debt instrument secured by a mortgage or deed of trust on the Project or the Property declares a default, and such default remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.

(P) Borrower fails to maintain insurance on the Property and the Project as required pursuant to the City Documents and Borrower fails to cure such default within five (5) days.

(Q) Subject to Borrower’s right to contest the following charges pursuant to the City Documents, if Borrower fails to pay taxes or assessments due on the Property or the Project or fails to pay any other charge that may result in a lien on the Property or the Project, and Borrower fails to cure such default within twenty (20) days, but in all events before the imposition of any such tax or other lien.

(R) If any representation or warranty contained in any City Document, or any certificate furnished in connection therewith, or in connection with any request for disbursement of the proceeds of the Loan proves to have been false or misleading in any material adverse respect when made and continues to be materially adverse to the City.
An Event of Default shall have been declared under the Loan Agreement or any other City Document, including without limitation, the Regulatory Agreement, and remains uncured beyond the expiration of the applicable cure period.

2.2 REMEDIES. Upon the occurrence of an Event of Default hereunder, City may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to City under this Note and the other City Documents, including without limitation the right to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with City's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder and all such sums shall be a part of the indebtedness secured by the Deed of Trust. The rights and remedies of City under this Note shall be cumulative and not alternative.

2.3 DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law (the “Default Rate”); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.

2.4 LIMITED PARTNERS RIGHT TO CURE. Borrower’s limited partners shall have the right to cure any default of Borrower hereunder upon the same terms and conditions afforded to Borrower. Any cure tendered by a limited partner of Borrower shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if tendered by Borrower.

3. MISCELLANEOUS.

3.1 WAIVERS; AMENDMENTS; BORROWER’S WAIVERS. No waiver by City of any right or remedy under this Note shall be effective unless in a writing signed by City. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by City will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver that may be given by City will be applicable except in the specific instance for which it is given. No notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of City to take further action without notice or demand as provided in this Note. There shall be no amendment to or modification of this Note except by written instrument executed by Borrower and City.
To the maximum extent permitted by applicable law Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

3.2 **NOTICES.** Any notice required or permitted to be given hereunder shall be given in accordance with Section 11.3 of the Loan Agreement.

3.3 **SEVERABILITY.** If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4 **GOVERNING LAW; VENUE.** This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Any legal action filed in connection with this Note shall be filed in the Superior Court of Sonoma County, California, or in the Federal District Court for the Northern District of California.

3.5 **PARTIES IN INTEREST.** This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of City and its successors and assigns.

3.6 **SECTION HEADINGS, CONSTRUCTION.** The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

3.7 **RELATIONSHIP OF THE PARTIES.** The relationship of Borrower and City under this Note is solely that of borrower and lender, and the loan evidenced by this Note and secured by the Deed of Trust will in no manner make City the partner or joint venturer of Borrower.

3.8 **TIME IS OF THE ESSENCE.** Time is of the essence with respect to every provision of this Note.

3.9 **NONRECOERCSE.** Except as expressly provided in this Section 3.9, neither Borrower nor the general or limited partners of Borrower shall have personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of City with respect to the payment of the principal of, and interest on, this Note shall be to the Project, the Property and any other collateral held by City as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall:

(A) impair the enforcement against all such security for the Loan of all the rights and remedies of the City under the Deed of Trust and any financing statements City files in connection with the Loan as each of the foregoing may be amended, modified, or restated from time to time;

(B) impair the right of City to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable City to enforce and realize upon the Deed of Trust, the interest in the Project and the Property created thereby and any other collateral given to City in connection with the indebtedness evidenced hereby and to name the Borrower as party defendant in any such action;
(C) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Loan as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto;

(D) constitute a waiver of any right which City may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to City hereunder or to require that the Project and the Property shall continue to secure all of the indebtedness owed to City hereunder in accordance with this Note and the Deed of Trust; or

(E) limit or restrict the ability of City to seek or obtain a judgment against Borrower to enforce against Borrower and its general partners to:

(1) recover under any provision of any City Document that obligates Borrower to indemnify City, or

(2) recover from Borrower and its general partners compensatory damages as well as other costs and expenses incurred by City (including without limitation reasonable attorneys’ fees and expenses) arising as a result of the occurrence of any of the following:

   (a) any fraud or intentional misrepresentation on the part of the Borrower, or its general partners, or any officer, director or authorized representative of Borrower or its general partners in connection with the request for or creation of the Loan, or in any City Document, or in connection with any request for any action or consent by City in connection with the Loan;

   (b) any failure to maintain insurance on the Property and the Project as required pursuant to the City Documents;

   (c) failure to pay taxes, assessments or other charges which may become liens on the Property or the Project (subject to the right to contest as set forth in the Loan Agreement);

   (d) the presence of Hazardous Materials on the Property or other violation of the Borrower’s obligations under Article VI of the Loan Agreement or Section 7.11 of the Deed of Trust (pertaining to environmental matters), except as limited by the provisions of such agreements;

   (e) the occurrence of any act or omission of Borrower that results in waste to or of the Project or the Property and which has a material adverse effect on the value of the Project or the Property;

   (f) the material misapplication of the Loan proceeds;

   (g) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust;
(h) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Project or the Property; and

(i) the failure of Borrower to pay all amounts payable under this Note in full if Borrower Transfers the Property in violation of the Loan Agreement or the Regulatory Agreement.

SIGNATURE ON FOLLOWING PAGE
IN WITNESS WHEREOF, Borrower has executed this Secured Promissory Note as of the date first written above.

BORROWER:

River City Senior Apartments, L.P., a California limited partnership

By: ________________________

Its:  General Partner

By: ________________________

Its: ________________________
FIRST AMENDMENT TO DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT

This First Amendment to Disposition, Development, and Loan Agreement (this “Amendment”) is entered into effective as of November ___, 2019 (“Effective Date”) by and between the City of Petaluma, a California municipal corporation and charter city (“City”) and Petaluma Ecumenical Properties, a California nonprofit public benefit corporation (“Developer”).

RECITALS

A. City and Developer entered into that certain Disposition, Development, and Loan Agreement, dated as of August 20, 2018 (the “Original DDA”). Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Original DDA. The Original DDA as amended by this Amendment is referred to herein as the “Agreement.”

B. The City has agreed to provide certain predevelopment and construction/permanent financing for the Project, and the Parties desire to enter into this Amendment in order to describe the terms and conditions applicable to such financing.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer agree as follows.

1. Predevelopment Loan. Section 4.11 is hereby added to the Original DDA to read as follows:

4.11 Predevelopment Loan. The City will provide a loan to Developer in an amount not to exceed Five Hundred Thousand Dollars ($500,000) (the “Predevelopment Loan”) to fund certain predevelopment expenses for the Project. Developer’s obligation to repay the Predevelopment Loan shall be evidenced by a Predevelopment Promissory Note (the “Predevelopment Note”) which Developer shall execute and deliver to City substantially in the form attached as Exhibit 1 to that certain First Amendment to Disposition, Development and Loan Agreement dated as of November ___, 2019 and executed by City and Developer. Upon receipt of invoices accompanied by such additional documentation as City may reasonably require, City agrees to disburse proceeds of the Predevelopment Loan for predevelopment expenses incurred for the Project in the maximum amount of the Predevelopment Loan consistent with a predevelopment budget approved by City. Prior to disbursement of Predevelopment Loan proceeds, Developer shall have obtained all applicable permits required for the work to be undertaken. If the DDA is assigned to an Approved Partnership, the obligation to repay the Predevelopment Loan may be assigned to the Approved Partnership pursuant to an assignment and assumption agreement in form approved by City, and the outstanding balance of the
Predevelopment Loan together with accrued interest will be “rolled over” to, and included in, the initial principal balance of the Construction/Permanent Loan.

2. Construction/Permanent Loan. Section 4.12 is hereby added to the Original DDA to read as follows:

4.12 Construction/Permanent Loan. The City will provide a construction/permanent loan to Developer in an amount not to exceed One Million Dollars ($1,000,000) (the “Construction/Permanent Loan”) to fund construction costs for the Project. Developer’s obligation to repay the Construction/Permanent Loan shall be evidenced by a Secured Promissory Note (the “Construction/Permanent Note”) which Developer shall execute and deliver to City at Close of Escrow substantially in the form attached as Exhibit 2 to that certain First Amendment to Disposition, Development and Loan Agreement dated as of November ___, 2019 and executed by City and Developer. Upon receipt of invoices accompanied by such additional documentation as City may reasonably require, City agrees to disburse proceeds of the Construction/Permanent Loan for construction and development expenses incurred for the Project in the maximum amount of the Construction/Permanent Loan. Developer’s obligation to repay the Construction/Permanent Loan shall be secured by a deed of trust (the “Construction/Permanent Deed of Trust”) substantially in the form attached as Exhibit D that will be executed by Developer and recorded against the Property at Close of Escrow. The Construction/Permanent Deed of Trust may be subordinated only to such liens and encumbrances consistent with the approved Financing Plan as City shall approve in writing consistent with Section 8.2. Developer shall comply with all applicable laws, rules, and regulations governing the use of funds making up the Construction/Permanent Loan.

3. City Documents. The definition of “City Documents” as set forth in Section 1.1 of the Original DDA is hereby modified to read as follows:

“City Documents” means collectively, this Agreement, the Assignment Agreement, the Seller Carryback Note, the Deed of Trust, the Regulatory Agreement, the Memorandum, the Grant Deed, the Predevelopment Note, the Construction/Permanent Note, and the Construction/Permanent Deed of Trust.

4. Conditions to Closing.

4.1 Paragraph (e) of Section 3.7 of the Original DDA is hereby modified to read as follows:

(e) Execution, Delivery and Recordation of Documents. Developer (or as Applicable, the Approved Partnership) shall have executed, acknowledged as applicable, and delivered to City this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation the Seller Carryback Note, a deed of trust substantially in the form attached hereto as Exhibit D to secure
repa

of the Seller Carryback Note (the “Deed of Trust”), an Affordable Housing
Regulatory Agreement and Declaration of Restrictive Covenants substantially in the form
attached hereto as Exhibit E (the “Regulatory Agreement”), a Memorandum of Option
and Loan Agreement substantially in the form attached hereto as Exhibit H (the
“Memorandum”), the Construction/Permanent Note, the Construction/Permanent Deed
of Trust, and a counter-signed original of the Grant Deed. Concurrently with the Close of
Escrow, the Grant Deed, the Memorandum, the Deed of Trust, the Construction/Permanent
Deed of Trust, and the Regulatory Agreement shall be recorded in the Official Records.

4.2 Paragraph (f) of Section 3.7 of the Original DDA is hereby modified to read as
follows:

(f) Lender’s Title Policy. The Title Company shall, upon payment of the
premium therefore, be ready to issue an ALTA Lender’s Policy of Title Insurance for the
benefit and protection of City (“Lender’s Title Policy”) in the amount of the Seller
Carryback Loan and the Construction/Permanent Loan, insuring that the Memorandum,
the Deed of Trust, the Construction/Permanent Deed of Trust, and the Regulatory
Agreement are recorded subject only to title exceptions and such other defects, liens,
conditions, encumbrances, restrictions, easements and exceptions as City may reasonably
approve in writing (collectively, “City’s Permitted Exceptions”) and containing such
endorsements as City may reasonably require.

5. Assignment Agreement. The first sentence of Section 4.5 of the Original DDA is
hereby modified to read as follows:

As security for repayment of the Predevelopment Loan, the Construction/Permanent Loan,
and the Seller Carryback Note, Developer shall execute an assignment agreement
substantially in the form attached hereto as Exhibit B (the “Assignment Agreement”
pursuant to which City shall be given a security interest in the plans, studies and documents
prepared for the Project, subject to the rights of senior lenders.

6. Exhibits. Exhibits 1 and 2 attached hereto are hereby incorporated into this
Amendment.

7. Original Agreement Remains Effective. All provisions of the Original DDA not
expressly modified by this Amendment shall remain unchanged and in full force and effect.

8. Further Assurances; Cooperation. The parties agree to execute such further
instruments and to take such further actions as may be necessary or desirable in order to
implement this Amendment, including without limitation the modification of City Documents to
reflect the provisions of this Amendment.

9. Counterparts. This Amendment may be executed in counterparts, each of which
shall be deemed an original and all of which taken together shall constitute one and the same
instrument.
SIGNATURES ON FOLLOWING PAGE.
IN WITNESS WHEREOF, Developer and City have executed this Amendment as of the date first written above.

DEVELOPER:

Petaluma Ecumenical Properties, a California nonprofit public benefit corporation

By:_______________________________

Print Name:________________________

Title:______________________________

CITY:

City of Petaluma, a municipal corporation and charter city

By:_______________________________

Peggy Flynn, City Manager

ATTEST:

______________________________

Claire Cooper, City Clerk

APPROVED AS TO FORM:

______________________________

Eric W. Danly, City Attorney
AN ORDINANCE OF THE CITY OF PETALUMA CITY COUNCIL APPROVING IN ACCORDANCE WITH SECTION 46 OF THE PETALUMA CHARTER CONVEYANCE OF THE PROPERTY LOCATED AT 951 PETALUMA BOULEVARD SOUTH IN PETALUMA (PROPERTY) TO PETALUMA ECUMENICAL PROPERTIES (PEP) OR ITS SUCCESSOR IN INTEREST PURSUANT TO THE DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT (DDLA) BETWEEN THE CITY AND PEP FOR DEVELOPMENT OF THE RIVER CITY SENIOR APARTMENTS PROJECT, A 54-UNIT LOW-INCOME RENTAL HOUSING DEVELOPMENT FOR VETERANS AND HOMELESS SENIORS (PROJECT) ON THE PROPERTY

WHEREAS, in April of 2017, the City issued a Request for Proposals for the development of affordable housing on the City-owned property located at 951 Petaluma Boulevard South in Petaluma (Property), with submissions due on May 8, 2017; and

WHEREAS, three proposals were submitted, staff reviewed all submittals, and held interviews with the proposers during the last week in May 2017; and

WHEREAS, during the proposer interviews City staff communicated that the Property would be the City’s contribution to the development of the affordable housing project; and

WHEREAS, Petaluma Ecumenical Properties (PEP) proposed developing a project on the Property consisting of the construction of 53 one-bedroom rental housing units affordable for seniors of low and very-low income levels, plus one two-bedroom on-site manager unit and ancillary community rooms, with twenty-five of the residential units identified for senior veterans (Project), and PEP was selected to develop the Project on the Property; and

WHEREAS, the City entered into an exclusive negotiating agreement regarding development of the Project on the Property with PEP on October 17, 2017; and

WHEREAS, on August 14, 2018, the Petaluma Planning Commission adopted Resolution no. 2018-126 approving site plan and architectural review (SPAR) for the Project, including associated warrants and specified conditions of approval; and

WHEREAS, on August 20, 2018, the City entered into a Development, Disposition and Loan Agreement (DDLA) with PEP addressing Project financing, Project approval, and other conditions that, once satisfied, would result in transfer of most of the City-owned property at 951 Petaluma Boulevard South to PEP and/or its successor for construction of the Project on the Property, resulting in the creation of additional senior affordable housing in the City, subject to affordability and other covenants specified in the DDLA; and
WHEREAS, on March 18, 2019, the City Council considered and expressed its support in response to a request from PEP to provide additional funding for the Project to close a $1,500,000 funding gap; and

WHEREAS, in expressing support for the PEP request, the City Council directed that additional funding for the Project take the form of a combination of $906,000 of the City’s HOME program funds and an additional $600,000 from other housing funds at staff discretion, with the City’s Housing In-lieu Fee fund balance to be preserved to the extent possible; and

WHEREAS, after March of 2019, PEP requested the City gap funding be provided from City Housing In-lieu Fee funds instead of the City’s HOME program funds because of the delay that would result from the process required to access the City HOME program funds, and the resulting impact on commencement of the Project and related impacts on other Project funding; and

WHEREAS, on February 24, 2020, the City Council gave staff direction to make arrangements for the City to contribute $1,500,000 from the City’s Housing In-lieu Fee fund to the development of the Project in addition to the $1,300,000 land value, as appraised on June 25, 2019; and

WHEREAS, in addition to support PEP has requested from the City of Petaluma for the development of the Project on the Property, PEP has sought and obtained other federal, state and private financing for the construction of the Project, and such funding requires that PEP complete acquisition of the Property in accordance with the DDLA, obtain all City project permits and commence Project construction by approximately July 15, 2020; and

WHEREAS, the City of Petaluma intends to support the development of the Project by transferring title of the Property to PEP or its successor in interest in accordance with and subject to the terms of the DDLA; and

WHEREAS, Section 46 of the Petaluma Charter provides that actions providing for specific improvements or appropriation or expenditure of any public money, except sums less than $3,000, for the appropriation, acquisition, sale or lease of real property, shall be taken by ordinance; and

WHEREAS, the Project qualifies for an exemption from review under the California Environmental Quality Act (CEQA) pursuant to Section 15194 of the CEQA Guidelines pertaining to the affordable housing projects, as set forth in Planning Commission Resolution 2018-126 which was adopted on August 12, 2018 and approved the Project SPAR;

NOW THEREFORE, BE IT ORDAINED by the Petaluma City Council as follows:

Section 1. Recitals made findings. The above recitals are hereby declared to be true and correct and are incorporated into this ordinance as findings of the City Council.

Section 2. CEQA Exemption. The Project is exempt from CEQA review pursuant to the exemption for affordable housing projects in Section 15194 of the CEQA Guidelines as set forth in Planning Commission Resolution No. 2018-126 adopted on August 12, 2018.
Section 3.     Conveyance of 951 Petaluma Boulevard South Approved. Transfer of the City-owned property at 951 Petaluma Boulevard South to PEP or its successor for construction of the Project on the Property, resulting in the creation of additional senior affordable housing in the City, subject to affordability and other covenants specified in the DDLA, and subject to a reservation of land on the eastern border of the Property bordering the Petaluma River to provide for public access to the Petaluma River (River Trail Property), and the reservation of an easement for the City for accessing the River Trail Property across the Property is hereby approved.

Section 4.     Severability. The City Council hereby declares that every section, paragraph, sentence, clause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

Section 5.     Effective Date. This ordinance shall be in full force and effective 30 days after its adoption and shall be published and/or posted in the manner required by the City’s charter.