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 June 1, 2020 (“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”).

RECATLALS

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 June 1, 2020, 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. **Financing**

2.1 **Seller Carryback Loan.** The first sentence of Section 4.2 is hereby amended to read as follows:

The outstanding principal balance of the Seller Carryback Note will bear simple annual interest at a rate not to exceed three percent (3%) one percent (1%).

2.2 **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 June 1, 2020, 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 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 repayment 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 therefor, 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
Exhibit 1

FORM OF PREDEVELOPMENT NOTE

(Attach form of Predevelopment Note.)
Exhibit 2

FORM OF CONSTRUCTION/PERMANENT NOTE

(Attach form of Construction/Permanent Note.)