TO: Honorable Mayor and City Council Members  
Attention: Jeremy Craig, City Manager

FROM: Emily Cantu, Housing Services Director  
(Staff Contact: Daniel Huerta, (707) 449-5664)

SUBJECT: RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VACAVILLE APPROVING A DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT BETWEEN THE CITY OF VACAVILLE AND PETALUMA ECUMENICAL PROPERTIES INC., TO TRANSFER CITY-OWNED HOUSING PROPERTY LOCATED AT 220 AEGEAN WAY (APN 0131-020-110) FOR CONSTRUCTION OF NEW AFFORDABLE SENIOR HOUSING

DISCUSSION:

In September, 2016, the City, as Housing Successor, entered into an Exclusive Negotiating Rights Agreement (ENRA) with Petaluma Ecumenical Properties Inc. (PEP Housing). PEP is a non-profit affordable housing developer established in 1978 that owns/manages 16 affordable senior properties. The purpose of the ENRA was to negotiate a Disposition, Development and Loan Agreement (DDL) for development of new affordable senior housing on a 1.82 acre Housing Successor owned property at 220 Aegean Way (See Attachment 1 – Map).

PEP Housing has undertaken due diligence efforts and has developed a plan to move toward construction of 60 new affordable senior apartments on the site and staff has completed negotiating the terms of the DDL as follows:

| Bedroom Size | 59 – one bedroom  
|  | 1 – two bedroom (Manager’s unit) |
| City Contribution | $1,320,000  
|  | 100,000  
|  | 400,000  
|  | 0%, 55 year deferred land acquisition loan  
|  | towards one-half of pre-development costs*  
|  | construction loan, 1% interest, residual receipts payments (If excess revenues exist after all regular and extraordinary expenses are paid, then a loan payment is made) |
|  | *When land use entitlements are received and property transferred to PEP, the amount will be included in the construction loan. If land use entitlements are not received the property does not transfer to PEP, the amount would be forgiven in exchange for receiving all pre-development work products (re-zoning, environmental, FEMA, topographic, etc.) |
| Affordability | 13 @ 30% of Area Median Income (AMI - $18,630 per year for family of 2)  
|  | 14 @ 50% of AMI ($31,050 per year for family of 2)  
|  | 32 @ 60% of AMI ($37,260 per year for family of 2)  
|  | 1 Manager’s unit/office and community room  
|  | 60 total units |
| Age-in-place unit features: | Gated community, computer station, indoor and outdoor exercise areas, dog run, resident garden, free wi-fi, service coordinator, community center with full kitchen, walk loop |
| Other financing ($21,000,000 total project cost): | • Federal Tax Credit Equity, Permanent Tax Exempt Bond, Deferred Developer Fee  
• Federal, State and/or Private Gap Financing such as:  
  • State Veterans Housing and Homeless Prevention Program or Affordable Housing and Sustainable Communities,  
  • Federal Section 8 Project Based Vouchers,  
  • Private Federal Home Loan Bank Affordable Housing Program. |
| Developer Obligations: | • 55 year affordability,  
• Crime-Free Housing Program participation,  
• Provision in the General Contractor Contract that every effort must be made to hire local contractors, including obtaining bids from local subcontractors. |

Based on the structure of the City’s contribution, the project would meet the prevailing wage exception in Labor Code Section 1720(c)(4) and Labor Code Section 1720(c)(6)(E). However, based on the proposed gap financing sources, payment of prevailing wages may be required.

In order for the City to enter into the DDLA and sell the property for these purposes, the following findings/determinations have been made:

- **Government Code Section 37350**: “A city may...dispose of (real property) for the common benefit.” The Council can make this finding as the property is being sold for not less than fair market value and is subject to affordability restrictions to increase the availability of affordable housing.

- The City Council’s action related to consideration of the DDLA does not require an environmental assessment decision. Per Article 3 of the DDLA, the formal project submittal is subject to the provisions of the California Environmental Quality Act (CEQA). An environmental assessment document (e.g. Mitigated Negative Declaration, Environmental Impact Report) will be prepared, reviewed and acted on by the City Council as part of the project development review process.

- **Health & Safety Code Section 33433**: The sale of the property is not less than fair market value, will provide housing for low- or moderate-income persons, and is consistent with the Redevelopment Implementation Plan.

When complete, this project will count towards the City’s Regional Housing Needs Allocation requirements and be reported to the State through the Housing Element Annual Report. Staff is recommending that the City Council approve the Disposition, Development and Loan Agreement with PEP Housing and authorize the Interim City Manager, or his designee, to make minor modifications as needed (such as to ensure gap financing requirements are met) and to execute and implement all documents necessary to complete the approved actions.

**FISCAL IMPACT:**

**No General Fund Impact.** The $100,000 pre-development loan will be a budget augmentation to the Housing Services Department budget for this fiscal year. The loan will be funded by the Low and Moderate Income Housing Asset Fund (LMIHAF) that is funded by affordable housing loan repayments and can only be used for affordable housing activities. Other LMIHAF needed for the project through this action will be included in next fiscal year’s budget.
RECOMMENDATION:

By simple motion, adopt the subject resolution.

ATTACHMENTS:

Resolution – Action Item
Attachment 1: Map
Attachment 2: Draft Disposition, Development, and Loan Agreement
RESOLUTION NO. 2017-2

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VACAVILLE APPROVING A DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT BETWEEN THE CITY OF VACAVILLE AND PETALUMA ECUMENICAL PROPERTIES, INC., TO TRANSFER CITY-OWNED HOUSING PROPERTY LOCATED AT 220 AEGEAN WAY (APN: 0131-020-110) FOR CONSTRUCTION OF NEW AFFORDABLE SENIOR HOUSING

WHEREAS, the City of Vacaville (“City”) owns 220 Aegean Way (APN 0131-020-110) in Vacaville, California, and the City acquired the property to remove blight and for the future development of land uses compatible with adjoining residential land uses; and

WHEREAS, the purpose of the transfer of the City property to Petaluma Ecumenical Properties, Inc. (“PEP Housing”) is for the development of permanently affordable housing for lower-income senior individuals and families in Vacaville; and

WHEREAS, the City would sell the parcel and will make a loan to PEP Housing, as outlined in the Disposition, Development and Loan Agreement (DDLA) to achieve the public benefits of increasing the supply of affordable housing; and

WHEREAS, in accordance with Government Code Section 37350, the proposed transfer of property is for the “common benefit” because it is transferred at a reasonable price (not less than fair market value) and is subject to affordability restrictions, which will increase the availability of affordable housing for lower income senior individuals and families within the City; and

WHEREAS, the California State Legislature enacted Assembly Bill 1X 26 to dissolve Redevelopment Agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

WHEREAS, per Section 34176(a) of California Redevelopment Law, on January 10, 2012, the City of Vacaville elected to retain the housing assets and functions previously performed by the former Redevelopment Agency in accordance with Section 34176 of the Redevelopment Law; and

WHEREAS, the City and PEP Housing will transfer the property according to the terms of a DDLA and the price is not less than fair market value as determined by an independent appraiser; and

WHEREAS, the proposed transfer of property will provide housing for low-income persons, and is consistent with the most recent Redevelopment Implementation Plan adopted pursuant to Section 33490; and

WHEREAS, the City Council approval of the DDLA does not require an environmental assessment decision. Per Article 3 of the DDLA, the formal project submittal is subject to the provisions of the California Environmental Quality Act (CEQA) and an environmental assessment document will be prepared, reviewed and acted on by the City Council as part of the project development review process.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Vacaville does hereby:

1. Approve the Disposition, Development and Loan Agreement between the City of Vacaville and Petaluma Ecumenical Properties, Inc., for the acquisition of 220 Aegean Way (APN: 0131-020-110) for the development of affordable senior housing,
2. Authorize the Interim City Manager, or his designee, to execute, implement and make minor modifications to all documents necessary to complete the approved actions, and

3. Approve a budget augmentation to the Housing Services Department budget in the amount of $100,000.

I HEREBY CERTIFY that the foregoing resolution was introduced and passed at a regular meeting of the City Council of the City of Vacaville, held on the 28th day of March, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

Michelle A. Thornbrugh, City Clerk
DRAFT

DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT

BETWEEN

THE CITY OF VACAVILLE

AND

PETALUMA ECUMENICAL PROPERTIES

(220 Aegean Way)
ARTICLE 1. DEFINITIONS AND EXHIBITS ............................................................................. 1
  Section 1.1 Definitions. ........................................................................................................ 1
  Section 1.2 Exhibits. ............................................................................................................. 7

ARTICLE 2. PREDISPOSITION REQUIREMENTS TO THE CONVEYANCE OF THE
PROPERTY ............................................................................................................................. 7
  Section 2.1 Conditions Precedent to Conveyance of Property. ...................................... 7
  Section 2.2 Application for Applicable Land Use Approvals. ......................................... 7
  Section 2.3 Construction Plans. .......................................................................................... 8
  Section 2.4 Management Agreement and Procedures. ................................................... 8
  Section 2.5 Financing Proposal and Financing Plan. ....................................................... 9
  Section 2.6 Building Permit. ............................................................................................... 9
  Section 2.7 Construction Contract. .................................................................................... 10
  Section 2.8 Construction Bonds. ...................................................................................... 10
  Section 2.9 Insurance. ....................................................................................................... 11

ARTICLE 3. DEVELOPMENT SUBJECT TO CEQA ................................................................. 11
  Section 3.1 No City Obligation; Developer at Risk. ......................................................... 11
  Section 3.2 Developer Acknowledgement regarding City Council Discretion. ................ 11
  Section 3.3 Termination following Completion of CEQA; Developer Release. ............... 12
  Section 3.4 Conflict with Other Provisions. ..................................................................... 12

ARTICLE 4. CONVEYANCE OF THE PROPERTY ................................................................ 13
  Section 4.1 Purchase and Sale. .......................................................................................... 13
  Section 4.2 Purchase Price. ............................................................................................... 13
  Section 4.3 Opening Escrow. ........................................................................................... 13
  Section 4.4 Closing Date. ................................................................................................. 13
  Section 4.5 Condition of Title. ......................................................................................... 14
  Section 4.6 Condition of Property. .................................................................................. 14
  Section 4.7 Costs of Escrow and Closing. ...................................................................... 17

ARTICLE 5. CITY LOAN PROVISIONS ................................................................................. 17
  Section 5.1 City Loan. ....................................................................................................... 17
  Section 5.2 Repayment of the Predevelopment Component and Acquisition Component. . 18
  Section 5.3 Repayment of Construction Component. ....................................................... 18
  Section 5.4 Reports and Accounting of Residual Receipts. ............................................. 20
  Section 5.5 Prepayment. ................................................................................................. 21
  Section 5.6 City Loan Disbursement. ............................................................................ 21
  Section 5.7 Development Fee. .......................................................................................... 24
  Section 5.8 Non-Recourse. .............................................................................................. 24
  Section 5.9 Subordination of City Deed of Trust. ............................................................ 25
  Section 5.10 Subordination of City Regulatory Agreement. ............................................ 26
ARTICLE 6. CONSTRUCTION OF IMPROVEMENTS ........................................................... 26
Section 6.1 Construction Pursuant to Plans ................................................................. 26
Section 6.2 Change in Construction of Improvements ................................................. 26
Section 6.3 Commencement of Construction .............................................................. 27
Section 6.4 Completion of the Improvements .............................................................. 27
Section 6.5 Equal Opportunity .................................................................................. 27
Section 6.6 Compliance with Applicable Laws ......................................................... 27
Section 6.7 Progress Report ...................................................................................... 28
Section 6.8 Construction Responsibilities ................................................................. 28
Section 6.9 Mechanics Liens, Stop Notices, and Notices of Completion ................. 29
Section 6.10 Inspections ............................................................................................ 29
Section 6.11 Information ........................................................................................... 29
Section 6.12 Records ................................................................................................. 29
Section 6.13 Financial Accounting and Post-Completion Audits ............................... 30
Section 6.14 Certificate of Completion ...................................................................... 30

ARTICLE 7. ONGOING DEVELOPER OBLIGATIONS ....................................................... 31
Section 7.1 Applicability ............................................................................................ 31
Section 7.2 Use .......................................................................................................... 31
Section 7.3 Maintenance ........................................................................................... 31
Section 7.4 Taxes and Assessments ......................................................................... 32
Section 7.5 Mandatory Language in All Subsequent Deeds, Leases and Contracts ...... 32
Section 7.6 Hazardous Materials ............................................................................. 34
Section 7.7 Management Responsibilities .................................................................. 35
Section 7.8 Management Agent .............................................................................. 36
Section 7.9 Periodic Performance Review .................................................................. 36
Section 7.10 Replacement of Management Agent .................................................... 36
Section 7.11 Approval of Management Plans and Policies ......................................... 37
Section 7.12 Insurance Requirements ...................................................................... 37
Section 7.13 Major Alterations .................................................................................. 38

ARTICLE 8. ASSIGNMENT AND TRANSFERS ................................................................ 39
Section 8.1 Definitions ............................................................................................... 39
Section 8.2 Purpose of Restrictions on Transfer ....................................................... 39
Section 8.3 Prohibited Transfers .............................................................................. 40
Section 8.4 Permitted Transfers .............................................................................. 40
Section 8.5 Other Transfers with City Consent .......................................................... 41

ARTICLE 9. DEFAULT AND REMEDIES .................................................................... 42
Section 9.1 General Applicability ............................................................................ 42
Section 9.2 No Fault of Parties .................................................................................. 42
Section 9.3 Fault of City ............................................................................................ 42
Section 9.4 Fault of Developer .................................................................................. 43
Section 9.5 Right to Cure at Developer's Expense ..................................................... 45
Section 9.6 Construction Plans .............................................................................. 45
Section 9.7 Acceleration of City Note................................................................. 45
Section 9.8 Remedies Cumulative................................................................. 45
Section 9.9 Waiver of Terms and Conditions........................................ 46

ARTICLE 10. RIGHT OF REVERTER AND OPTION TO PURCHASE .......... 46
Section 10.1 Right of Reverter................................................................. 46
Section 10.2 Option to Repurchase, Reenter and Repossess......................... 46
Section 10.3 Rights of Mortgagees............................................................... 47

ARTICLE 11. SECURITY FINANCING AND RIGHTS OF HOLDERS .......... 47
Section 11.1 No Encumbrances Except for Development Purposes........... 47
Section 11.2 Holder Not Obligated to Construct........................................ 48
Section 11.3 Notice of Default and Right to Cure...................................... 48
Section 11.4 Failure of Holder to Complete Improvements....................... 48
Section 11.5 Right of City to Cure............................................................... 48
Section 11.6 Right of City to Satisfy Other Liens........................................ 49
Section 11.7 Holder to be Notified............................................................... 49

ARTICLE 12. GENERAL PROVISIONS ........................................................... 49
Section 12.1 Notices, Demands and Communications............................... 49
Section 12.2 Non-Liability of City Officials, Employees and Agents........... 49
Section 12.3 Forced Delay............................................................................. 50
Section 12.4 Inspection of Books and Records........................................... 50
Section 12.5 Provision Not Merged with City Grant Deed........................ 50
Section 12.6 Title of Parts and Sections..................................................... 50
Section 12.7 Indemnification........................................................................ 50
Section 12.8 Applicable Law...................................................................... 51
Section 12.9 No Brokers.............................................................................. 51
Section 12.10 Severability.......................................................................... 51
Section 12.11 Legal Actions........................................................................ 51
Section 12.12 Binding Upon Successors................................................... 51
Section 12.13 Parties Not Co-Venturers.................................................... 51
Section 12.14 Time of the Essence............................................................ 52
Section 12.15 Action by the City................................................................. 52
Section 12.16 Representations and Warranties of the Developer............... 52
Section 12.17 Complete Understanding of the Parties............................... 54
Section 12.18 Operating Memoranda; Implementation Agreements.......... 54
Section 12.19 Amendments...................................................................... 54
Section 12.20 Multiple Originals; Counterparts........................................ 54

Exhibit A: Legal Description of the Property
Exhibit B: Financing Proposal
Exhibit C: Form of City Grant Deed
Exhibit D-1: Form of Predevelopment Component Note
Exhibit D-2: Form of Acquisition Component Note
Exhibit D-3: Form of Construction Component Note
Exhibit E: Form of City Deed of Trust
Exhibit F: Schedule of Performance
Exhibit G: Form of Memorandum of DDLA
Exhibit H: Scope of Development
Exhibit I: Form of City Regulatory Agreement
Exhibit J: Form of Predevelopment Component Assignment
This Disposition, Development, and Loan Agreement (the "Agreement") is entered into as of ________, 2017 (the "Effective Date"), by and between the City of Vacaville, a municipal corporation (the "City"), and Petaluma Ecumenical Properties, a California nonprofit public benefit corporation (the "Developer"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. As of the Effective Date, the City is the owner of the Property. In accordance with California Health & Safety Code Section 34172, the Former Agency was dissolved as of February 1, 2012. The City is the successor to the "housing assets" (as defined in California Health & Safety Section 34176) of the Former Agency. The City is authorized to enter into this Agreement pursuant to California Health & Safety Code Section 34176(a)(1), and the City is authorized to disburse the proceeds of the City Loan pursuant to California Health & Safety Code Section 34176(g)(1)(A).

C. The City and the Developer desire for the Developer to develop the Improvements on the Property. To effectuate this purpose, the City will convey the Property to the Developer, subject to the terms and conditions of this Agreement. In addition, the City shall provide the City Loan pursuant to the terms and conditions set forth in this Agreement.

D. The City has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement and that this Agreement is in the best interests, and will materially contribute to the improvement of the City by improving the supply of affordable housing.

E. Pursuant to Article XXXIV, Section 1, of the California Constitution, this Agreement is not subject to Article XXXIV of the California Constitution.

F. Prior to the Effective Date, the City and the Developer entered into the ENRA. In accordance with Section 1.2 of the ENRA, the ENRA is terminated as of the Effective Date.

THEREFORE, the City and the Developer agree as follows:

ARTICLE 1.
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.
(a) "Acquisition Component" means the portion of the City Loan, in the amount of One Million Three Hundred Twenty Thousand Dollars ($1,320,000), to be utilized for the acquisition of the Property. The Acquisition Component is evidenced by the Acquisition Component Note.

(b) "Acquisition Component Note" means the promissory note executed by the Developer in favor of the City in the amount of the Acquisition Component. The form of the Acquisition Component Note is attached as Exhibit D-2.

(c) "Affiliate" means an entity under the Control of the Developer.

(d) "Agreement" means this Disposition, Development, and Loan Agreement, including the attached Exhibits and all subsequent operating memoranda and amendments to this Agreement.

(e) "Applicable Land Use Approvals" means the City and other governmental permits and approvals necessary for the construction and operation of the Development, including overall design and architectural review, approval pursuant to CEQA, but excluding a building permit.

(f) "Appraisal" means that certain appraisal of the Property dated November 4, 2016, prepared by Davis & Sroaf, Real Estate Appraisers & Consultants.

(g) "CEQA" means the California Environmental Quality Act (California Public Resources Code §§ 21000 et seq.), and its implementing regulations and guidelines, as may be amended from time to time.

(h) "Certificate of Completion" means the certificate to be issued by the City upon the completion of construction of the Improvements as more particularly set forth in Section 6.14.

(i) "City" means the City of Vacaville, California.

(j) "City Affordability Notice" means the document to be recorded against the Property in accordance with California Health & Safety Code Section 33334.3(f)(3).

(k) "City Council" means the City Council of the City of Vacaville.

(l) "City Deed of Trust" means the deed of trust that will encumber the Developer's fee interest in the Property to secure repayment of the City Note, substantially in the form attached hereto as Exhibit E. The City Deed of Trust shall be executed in conjunction with the Closing.

(m) "City Documents" means, collectively, this Agreement, the City Grant Deed, the Memorandum of DDLA, the City Note, the City Deed of Trust, the City Financing Statement, the City Regulatory Agreement, the City Affordability Notice, and all other documents required to be executed by the Developer in connection with the transaction contemplated by this Agreement. "City Document" means any one of the City Documents.
(n) "City Event of Default" has the meaning set forth in Section 9.3.

(o) "City Financing Statement" means the UCC-1 Financing Statement granting the City a security interest in the personal property associated with the Improvements.

(p) "City Grant Deed" means the grant deed by which the City shall convey the Property to the Developer substantially in the form of Exhibit C.

(q) "City Loan" means the loan in the total amount of One Million Eight Hundred Twenty Thousand Dollars ($1,820,000), and is evidenced by the City Note. The City Loan consists of the Acquisition Component and the Construction Component.

(r) "City Monitoring Payment" means the payment, in the initial amount of Five Thousand Dollars ($5,000), to be paid by the Developer to the City as more particularly set forth in Section 7.2.

(s) "City Note" means, collectively, the Predevelopment Component Note (while such note is in effect), the Acquisition Component Note and the Construction Component Note.

(t) "City Regulatory Agreement" means the regulatory agreement and declaration of restrictive covenants, to be executed by the Parties, and recorded against the Property, at the Closing, substantially in the form attached hereto as Exhibit I.

(u) "Closing" means the date mutually acceptable to the Parties within thirty (30) days following the date on which all conditions precedent to conveyance set forth herein have been satisfied, but in no event later than the date set forth in the Schedule of Performance (provided that the Developer has satisfied the conditions precedent to conveyance set forth herein and that this Agreement has not been terminated in accordance with its terms), or such other date that the Parties agree upon in writing.

(v) "Code" means the Internal Revenue Code of 1986, as amended, or any successor statute.

(w) "Construction Component" means the portion of the City Loan, in the amount of Five Hundred Thousand Dollars ($500,000), inclusive of the Predevelopment Component, to be utilized for the construction of the Improvements. The Construction Component is evidenced by the Construction Component Note.

(x) "Construction Component Note" means the promissory note executed by the Developer in favor of the City in the amount of the Construction Component. The form of the Construction Component Note is attached as Exhibit D-3.

(y) "Construction Plans" means all construction documentation upon which the Developer, and the Developer's general contractor and subcontractors, shall rely on for constructing the Improvements identified in the scope of work specifications and a time schedule for construction.
(z) "Control" shall mean direct or indirect management or control of: (1) the managing member or members in the case of a limited liability company; (2) the managing general partner or general partners in the case of a partnership; and (3) a majority of the directors in the case of a corporation, as determined by the City.

(aa) "Deposit" means the deposit, in the amount of One Thousand Dollars ($1,000) paid by the Developer to the City pursuant to the ENRA.

(bb) "Developer" means Petaluma Ecumenical Properties, a California nonprofit public benefit corporation, and its permitted successors and assigns as set forth herein.

(cc) "Developer Event of Default" has the meaning set forth in Section 9.4.

(dd) "Development" means, collectively, the Property and the Improvements.

(ee) "ENRA" means that certain Exclusive Negotiating Rights Agreement dated as of September 14, 2016, by and between the City and the Developer.

(ff) "Escrow" means the escrow established with the Title Company for the purpose of conveying the Property from the City to the Developer.

(gg) "Financing Plan" means the Developer's plan for financing the acquisition of the Property and the construction of the Development, including a detailed development budget, construction and permanent financing commitment letters, and a commitment letter from the Investor, to be approved by the City pursuant to Section 2.5, and which may be revised from time to time with the approval of the City pursuant to this Agreement.

(hh) "Financing Proposal" means the Developer's initial financing proposal for financing the acquisition of the Property and the construction of the Development, in the form approved by City and attached hereto as Exhibit B.

(ii) "Former Agency" means the Redevelopment Agency of the City of Vacaville, which was dissolved pursuant to California Health & Safety Code Section 34172.

(jj) "General Partner" means any general partner of the Partnership.

(kk) "Hazardous Materials" means any substance, material, or waste which is: (1) defined as a "hazardous waste", "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant" or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) mold; (7) MTBE; or (8) determined by California, federal or local government authority to be capable of posing a risk of injury to health, safety or property. Without limiting the foregoing, Hazardous Materials means and includes any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any Hazardous Materials Laws including any federal, state or local environmental statute, regulation or ordinance presently in effect that may be promulgated in the future, as such as statutes, regulations and ordinances may be amended from time to time.
The term "Hazardous Materials" shall not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or typically used in office or residential activities; or (2) certain substances which may contain chemicals listed by the State of California pursuant to California Health & Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Improvements, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws.

(ll) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Development or any portion thereof.

(mm) "Improvements" means: (1) the sixty (60) units of affordable housing for income-eligible senior households, including one (1) manager's unit, to be constructed in accordance with this Agreement; (2) related community space to be available to, and for the benefit of, the residents of the Property; and (3) related parking and other improvements located or to be located on the Property, all as more particularly set forth in the Scope of Development attached as Exhibit H.

(nn) "Intercreditor Agreement" has the meaning given in Section 5.3(a).

(oo) "Investor" means a reputable low-income housing tax credit investor, reasonably acceptable to the City, which shall serve as a limited partner of the Partnership.

(pp) "Lenders' Share of Residual Receipts" has the meaning given in Section 5.3(a).

(qq) "Major Alterations" has the meaning set forth in Section 7.13.

(rr) "Management Agent" shall mean the professional property management company retained by the Developer, as reasonably acceptable to the City, to perform the day-to-day property management of the Development.

(ss) "Memorandum of DDLA" means the memorandum of Disposition, Development, and Loan Agreement to be recorded against the Property at the Closing. The form of the Memorandum of DDLA is attached hereto as Exhibit G.

(tt) "Official Records" means the official records of the County of Solano.

(uu) "Parties" means the City and the Developer. "Party" means either the City or the Developer.
"Partnership" means the California limited partnership to be formed by the Developer to own and operate the Development.

"Partnership Agreement" means the partnership agreement of the Partnership, as may be amended from time to time.

"Predevelopment Component" means the portion of the City Loan, in the amount of One Hundred Thousand Dollars ($100,000), to be utilized for eligible predevelopment expenses for the Project. The Predevelopment Component is evidenced by the Predevelopment Component Note.

"Predevelopment Component Assignment" means the assignment of agreements, plans and specifications, and approvals executed by the Developer in favor of the City as security for the Predevelopment Component. The form of the Predevelopment Component Assignment is attached as Exhibit J.

"Predevelopment Component Note" means the promissory note executed by the Developer in favor of the City in the amount of the Predevelopment Component. The form of the Predevelopment Component Note is attached as Exhibit D-1.

"Project" means the Development.

"Property" means the real property to be redeveloped by the Developer pursuant to this Agreement, which real property is more particularly described in Exhibit A.

"Redevelopment Plan" means the redevelopment plan affecting the Property, and other real property within such plan's project area, as set forth in the Official Records, as amended from time to time.

"Schedule of Performance" means the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve disposition of the Property to the Developer and the construction of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit F.

"Security Financing Interest" has the meaning set forth in Section 11.1.

"Supplemental Financing" means any financing received by the Developer for the Development, other than the City Loan, including but not limited to, the Tax Credit Funds.

"Tax Credit Funds" means the proceeds from the sale of limited partnership interests in the Partnership to the Investor in the anticipated amount set forth in the Financing Plan, or such other amount as may be approved by the City in an amended Financing Plan.

"Tax Credit Reservation" means a preliminary reservation of federal and/or state low income housing tax credits from TCAC.
(iii) "TCAC" means the California Tax Credit Allocation Committee.

(jjj) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall continue until earlier of: (1) the fifty-fifth (55th) anniversary of the date of issuance of the Certificate of Completion for the Development; or (2) December 31, 2072.

(kkk) "Title Company" means First American Title Company, 111 Second Street, Petaluma, California, 94952, unless modified by the Parties.

(III) "Title Report" means the preliminary title report for the Property dated as of December 28, 2016, prepared by Title Company

(mm) "Transfer" has the meaning set forth in Section 8.1.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated in the Agreement:

Exhibit A: Legal Description of the Property
Exhibit B: Financing Proposal
Exhibit C: Form of City Grant Deed
Exhibit D-1: Form of Predevelopment Component Note
Exhibit D-2: Form of Acquisition Component Note
Exhibit D-3: Form of Construction Component Note
Exhibit E: Form of City Deed of Trust
Exhibit F: Schedule of Performance
Exhibit G: Form of Memorandum of DDLA
Exhibit H: Scope of Development
Exhibit I: Form of City Regulatory Agreement
Exhibit J: Form of Predevelopment Component Assignment

ARTICLE 2.
PREDISPOSITION REQUIREMENTS TO THE CONVEYANCE OF THE PROPERTY

Section 2.1 Conditions Precedent to Conveyance of Property. The requirements set forth in this Article are conditions precedent to the City's obligations to convey the Property to the Developer. The City's obligation to convey the Property to the Developer shall be subject to the satisfaction of all such conditions precedent prior to the date or dates set forth in the Schedule of Performance, unless otherwise waived by the City. The conditions set forth in this Article 2 are solely for the benefit of the City and may only be waived by the City pursuant to Section 12.18. Satisfaction of the conditions set forth in this Section shall in no way limit the City Council's discretion set forth in Article 3.

Section 2.2 Application for Applicable Land Use Approvals. No later than the date set forth in the Schedule of Performance, the Developer shall apply to the City and any other relevant government agency for the Applicable Land Use Approvals for the Improvements. All applications shall conform with the description of the Improvements set forth in this Agreement,
unless a variation has been previously approved by the City in writing. In conjunction with any application(s) to the City for any Applicable Land Use Approvals subject to City approval, the Developer shall comply with the City's standard application process and shall pay, when due, all applicable City fees, including, but not limited to any applicable fee(s) imposed by the City in connection with review of the Development pursuant to CEQA. Thereafter, subject to the other provisions of this Agreement, the Developer shall obtain the Applicable Land Use Approvals no later than the date set forth in the Schedule of Performance. This condition precedent to the Closing shall be deemed satisfied only upon the Developer's delivery of documentation reasonably acceptable to the City, that all Applicable Land Use Approvals have been obtained and the City's approval of such documentation.

Section 2.3  Construction Plans. The Developer shall submit its Construction Plans in sufficient time to allow adequate City review of the Construction Plans, possible resubmission of the Construction Plans and final City approval of the Constructions Plans by the Closing.

The City shall approve or disapprove the Construction Plans in writing within fifteen (15) days following the City's receipt of the complete Construction Plans, which approval shall not be unreasonably denied. If the Construction Plans are disapproved by the City, the City shall deliver a written notice to the Developer setting forth, in reasonable detail, the reasons for such disapproval. The Developer shall have thirty (30) days following the receipt of such notice to submit revised Construction Plans. The provisions of this Section relating to time periods for approval, disapproval, and resubmission of new Construction Plans shall continue to apply until the final Construction Plans have been approved by the City; provided, however, that if City's reasonable approval of the final Construction Plans has not been obtained by the date set forth in the Schedule of Performance, then the City may declare a Developer Event of Default, as set forth below, and if such default is not cured by the Developer in accordance with this Agreement, then the City may terminate this Agreement pursuant to Article 9.4.

The Developer acknowledges that approval of the final Construction Plans by the City does not constitute approval by the City as required for issuance of a building permit or otherwise in connection with Applicable Land Use Approvals. The Developer further acknowledges that the City's right to review and approve the proposed construction plans, pursuant to this Agreement, are in addition to, and shall not be limited by, the City's obligation to review the Developer's proposed construction plans for consistency with applicable building code requirements. The Developer further acknowledges that the City is under no obligation to approve such proposed construction plans and shall have no obligation to approve such proposed plans in the event that the Developer fails to incorporate the City's reasonably requested changes or modifications to the proposed construction plans pursuant to this Agreement (even in the event that such requested changes or modifications exceed the minimum thresholds set forth in the applicable building code and have not been required by the City's building department, acting in its capacity as a municipal regulatory authority).

Section 2.4  Management Agreement and Procedures. The Developer is hereby approved as the initial Management Agent. No later than the date set forth in the Schedule of Performance, the Developer shall submit to the City for approval the proposed management agreement. In accordance with Article 7, the Developer shall submit and written guidelines or procedures for tenant selection, operation and management of the Development, and implementation of the income certification and reporting requirements of the City Regulatory
Agreement. In the event that the Developer desires to hire any entity other than the Developer to serve as the management agent for the Development, then the Developer shall submit the identity of such proposed management agent for the City's review and approval, as set forth in Article 7.

Section 2.5 Financing Proposal and Financing Plan. As of the Effective Date, the City has approved the preliminary Financing Proposal attached to this Agreement as Exhibit B. No later than the date set forth in the Schedule of Performance, the Developer shall submit an updated and revised Financing Proposal, including commitment letters for all Supplemental Financing and from the Investor, and setting forth the Developer's revisions to the Financing Proposal based on such commitment letters, to the City for approval. The City shall reasonably approve or disapprove the revised Financing Proposal in writing within fifteen (15) calendar days after the City's receipt. Upon City approval, the Developer's Financing Proposal shall be referred to as the "Financing Plan". If the Financing Proposal is disapproved by the City, the Developer shall have fifteen (15) calendar days from the date of the Developer's receipt of the City's notice of disapproval to submit a revised Financing Proposal. The provisions of this Section relating to time periods for approval, disapproval and resubmission of a new Financing Proposal shall continue to apply until the revised Financing Plan has been approved by the City; provided, however, that if the City's approval of the revised Financing Plan has not been obtained by the date set forth in the Schedule of Performance, then the City may declare a Developer Event of Default, as set forth below, and if such default is not cured by the Developer in accordance with this Agreement, then the City may terminate this Agreement pursuant to Section 9.4. Any approval by the City of the Financing Plan shall in no way waive the requirements of Section 5.9.

All Supplemental Financing necessary to purchase the Property and develop the Development, as approved by the City in the Financing Plan, shall be closed by the Developer prior to, or simultaneously with, the conveyance of the Property by the City to the Developer. The Developer shall also submit to the City evidence, reasonably satisfactory to the City that any conditions to the release or expenditure of the Supplemental Financing described in the approved Financing Plan as the sources of funds to pay the costs of purchasing the Property and developing the Development have been met, or will be met upon conveyance of the Property to the Developer, and that such funds will be available upon such conveyance for purchasing the Property and, subject to the Developer's satisfaction of standard disbursement preconditions required to be satisfied on a periodic basis, for constructing the Development. Submission by the Developer, and approval by the City, of such evidence of Supplemental Financing availability shall be a condition precedent to the City's obligation to convey the Property to the Developer.

Section 2.6 Building Permit. No later than the date set forth in the Schedule of Performance, the Developer shall apply for a building permit allowing for the construction of the Development in accordance with the Construction Plans. After submitting an application for a building permit, the Developer shall diligently pursue and obtain a building permit for the construction of the Development, and no later than the date set forth in the Schedule of Performance, the Developer shall deliver evidence to the City that the Developer is entitled to issuance of a building permit for the Development upon payment of applicable permit fees. Only upon delivery to the City of such evidence in a form reasonably satisfactory to the City shall the predisposition condition of this Section be deemed met. If such evidence is not delivered by the date set forth in the Schedule of Performance, then the City may declare a Developer Event of Default, as set forth below, and if such default is not cured by the Developer in accordance with
this Agreement, then the City may terminate this Agreement pursuant to Section 9.4. The City shall render all reasonable assistance (at no additional cost or expense to the City) to the Developer to obtain the building permit.

The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations for the Project, and in no way limits the discretion of the City in the permit allocation and approval process for the Project.

Section 2.7 Construction Contract. No later than the date set forth in the Schedule of Performance, the Developer shall submit to the City for its limited approval the proposed construction contract(s) for the construction of the Development to be performed by contractors retained by the Developer (collectively, the "Construction Contract"). The City's review and approval shall be limited exclusively to a determination whether: (a) the guaranteed maximum construction cost set forth in the Construction Contract is consistent with the approved Financing Plan; (b) the Construction Contract is with a licensed general contractor reasonably acceptable to the City; (c) the Construction Contract contains provisions consistent with Article 6 of this Agreement; and (d) the Construction Contract requires a retention of ten percent (10%) of costs until completion of the construction of the Development (except for specified trades previously approved by the City in writing). The City's approval of the Construction Contract shall in no way be deemed to constitute approval of or concurrence with any other term or condition of such documents, including, but not limited to, the means, methods, or techniques utilized in connection with the construction of the Development.

Upon receipt by the City of the proposed Construction Contract, the City shall promptly review and approve such documents within five (5) days if such documents satisfy the limited criteria set forth above. If the Construction Contract is not approved by the City, the City shall set forth in writing and notify the Developer of the City's reasons for withholding such approval. The Developer shall thereafter submit revised the Construction Contract for City approval, which approval shall be granted or denied in five (5) days in accordance with the criteria and procedures set forth above. Failure of the City to respond within the five (5) day period(s) set forth above shall be deemed approval by the City. The Construction Contract executed by the Developer shall be in a form approved or deemed approved by the City.

Section 2.8 Construction Bonds. No later than the date set forth in the Schedule of Performance, the Developer, or its general contractor(s) shall obtain one (1) labor and material bond and one (1) performance bond for construction of the Improvements, each in an amount equal to one hundred percent (100%) of the scheduled cost of construction. Each bond shall name the City as co-obligee and shall be issued by a reputable insurance company licensed to do business in California, and named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and for an amount which is not in excess of the acceptable amount set forth on such list for the respective surety. The form of the labor and material bond and the performance bond shall be subject to the City's prior review and written approval. Such City-approved bonds shall be delivered to the City prior to, or in conjunction with, the Closing. Notwithstanding the foregoing, the City shall consider other reasonable forms of security for the completion of the construction of the Project, from either the Developer or the Developer's general contractor, in lieu of such construction bonds described in this Section provided that: (i)
the Investor and all lenders set forth on the Financing Plan have agreed to such other security, and (ii) the City has the same enforcement rights under such security as the Investor and all lenders set forth on the Financing Plan.

Section 2.9 Insurance. The Developer shall furnish to the City evidence of the insurance coverage meeting the requirements of Section 7.12 below, no later than the date set forth in the Schedule of Performance.

ARTICLE 3.
DEVELOPMENT SUBJECT TO CEQA

Section 3.1 No City Obligation; Developer at Risk. Notwithstanding any provision of this Agreement to the contrary, as more particularly set forth in this Article, the Developer agrees and acknowledges that nothing in this Agreement, including, but not limited to the disbursement of all, or any portion of, the Predevelopment Component, shall be construed to compel the City Council to approve or make any particular findings with respect to any CEQA approval or documentation required for the Project, and that the Developer assumes all risks regarding CEQA, including, but not limited to, the risk that the Project may not be approved by the City Council, and that the City Council may impose mitigation measures on the Project.

Section 3.2 Developer Acknowledgement regarding City Council Discretion. The Developer acknowledges that the environmental review process under CEQA involves the preparation and consideration of certain information by the City Council, as well as consideration of input from third-parties; that approval or disapproval of the Project following completion of the environmental review process pursuant to CEQA is within the sole and absolute discretion of the City Council without limitation by, or consideration of, the terms of this Agreement; and that the City makes no representation regarding the ability or willingness of the City Council to approve the Project at the conclusion of the environmental review process required by CEQA, or regarding the imposition of any mitigation measures as conditions of any approval that may be imposed by the City Council. The Developer further acknowledges that the City Council retains, to maximum extent permitted under applicable law, its full discretion under CEQA and applicable planning and zoning laws to: (a) make such modifications to any entitlements, permits or approvals as may be reasonably necessary to impose reasonable measures to mitigate any significant environmental impacts of the proposed Project; (b) select other reasonable alternatives to avoid significant environmental impacts of the proposed Project; (c) balance the benefits against any significant environmental impacts of the proposed Project (if any) prior to taking final action if such significant impacts cannot otherwise be reasonably avoided; (d) determine not to proceed with the proposed Project in the event there are substantial environmental impacts that cannot be feasibly reasonably mitigated so the proposed Project can be approved without a statement of overriding considerations; or (e) take such other actions to approve or not approve the proposed Project as determined by the City Council. In addition, Developer further acknowledges that any required approvals by any other local, state or federal agency (or any other required approvals under any applicable local, state, or federal law, including, but not limited to, the National Environmental Policy Act) may require additional environmental review, and that approval by the City Council pursuant to CEQA (if any) shall not bind any other local, state or federal agency to approve the Project (or otherwise satisfy any requirements of any other applicable local, state, or federal law, including, but not limited to, the
bind any other local, state or federal agency to impose mitigation measures that are consistent with the terms of this Agreement or with the terms of any mitigation measures that may be required by the City Council pursuant to the City's environmental review in accordance with CEQA.

Section 3.3  Termination following Completion of CEQA; Developer Release. Either Party has the right to terminate this Agreement if the City Council disapproves the Project following completion of the environmental review process pursuant to CEQA. In addition, the Developer may terminate this Agreement if Developer determines that the implementation of any required environmental mitigation measures required by the City Council would cause development of the Project to become economically infeasible. To effectuate such termination of this Agreement, the terminating Party shall deliver a written notice to the other Party setting forth that this Agreement is terminated pursuant to this Section within ten (10) days following the City Council's final action under CEQA. In the event this Agreement is terminated pursuant to this Section, then the City: (a) shall have no obligation to convey the Property, or any other interest in the Property, to the Developer, or make the City Loan to the Developer; (b) shall have no further obligation or duty under this Agreement (except for any provision that expressly survives the termination of this Agreement); (c) the City shall return the Deposit to the Developer; and (d) the Predevelopment Component Note shall be terminated. In the event of such termination of this Agreement, then the Developer shall have no further duties or obligations under this Agreement (except for any provision that expressly survives the termination of this Agreement). The Developer further acknowledges that due to the termination of this Agreement as set forth above, the Developer shall have no right, pursuant to this Agreement, to acquire the Property, and, therefore, may suffer economic loss or other consequences, including, but not limited to, economic loss or other consequences due to the Developer's inability to obtain ownership of the Property, develop the Property, or to operate, or to permit the operation of, any particular form of business at the Property. The Developer, on behalf of itself and anyone claiming by, through or under the Developer specifically releases and waives any claim against the City for such loss or economic consequences in connection with the termination of this Agreement following completion of all applicable requirements of CEQA, or any other failure of any, or all, of the conditions precedent set forth above. The Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Developer's Initials: MZ

Section 3.4  Conflict with Other Provisions. In the event of any conflict between the terms of this Article, and the terms of any other provision of this Agreement, the terms of this Article shall control.
ARTICLE 4.
CONVEYANCE OF THE PROPERTY

Section 4.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, the City shall sell the Property to the Developer, and the Developer shall purchase the Property from the City. The Property shall be conveyed by the City Grant Deed, a form of which is attached as Exhibit C.

Section 4.2 Purchase Price. The purchase price for the Property shall be One Million Three Hundred Twenty Thousand Dollars ($1,320,000) (the "Purchase Price"). The Purchase Price equals the Property's fair market value as set forth in the Appraisal. The Purchase Price shall be deemed paid to the City upon the Developer's execution of the Acquisition Component Note and recordation of the City Deed of Trust against the Property.

Section 4.3 Opening Escrow. To accomplish the conveyance of the Property, the Parties shall establish an escrow with the Title Company and shall execute and deliver to the Title Company written instructions that are consistent with this Agreement.

Section 4.4 Closing Date. The Closing shall occur no later than the date set forth in the Schedule of Performance, and only in the event that all conditions precedent to conveyance set forth in Article 2 have been satisfied or waived by the City, and this Agreement has not been terminated in accordance with its terms. In addition to the conditions precedent to execution of the City Grant Deed as set forth in Article 2 (including but not limited to the closing of the financing set forth in the approved Financing Plan), and Article 3, the following conditions shall be satisfied prior to or concurrently with, and as conditions of, execution of the City Grant Deed:

(a) The Developer shall provide the City with a certified copy of an authorizing resolution, approving this Agreement and the City Documents and the conditions and covenants set forth in this Agreement and the City Documents.

(b) The Developer shall have executed and delivered to the City the City Documents, and any other documents and instruments required to be executed and delivered, all in a form and substance satisfactory to the City. In conjunction with the execution of the City Documents, the City shall mark the Predevelopment Component Note as "cancelled" and shall return such note to the Developer.

(c) The City Grant Deed, the City Deed of Trust, the City Regulatory Agreement, the City Affordability Notice, the Memorandum of DDLA, and the Intercreditor Agreement (if any) shall have been recorded against the Property as liens subject only to the exceptions authorized by the City.

(d) A title insurer reasonably acceptable to the City is unconditionally and irrevocably committed to issuing a 2006 ALTA Lender's Policy of insurance insuring the lien priority of the City Deed of Trust in the amount of the City Loan, subject only to such liens (if any) approved by the City in the Financing Plan as prior to the lien of the City Deed of Trust and such exceptions and exclusions as may be reasonably acceptable to the City and containing such endorsements as the City may reasonably require.
(e) The Developer shall have provided the City evidence that the Developer is entitled to the issuance of a building permit for the construction of the Development as set forth in Section 2.7.

(f) There shall exist no condition, event or act which would constitute a breach or default under this Agreement.

(g) The Developer shall have paid to the City, or delivered to the Title Company for disbursement to the City, the payment set forth in Section 4.7, below.

(h) All representations and warranties of the Developer contained in any part of this Agreement shall be true and correct.

In conjunction with the Closing, the City shall mark the Predevelopment Component Note as cancelled, and such note shall be returned to the Developer.

Section 4.5 Condition of Title. Upon the Closing, the Developer shall have insurable fee interest to the Property which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

(a) applicable building and zoning laws and regulations;

(b) the provisions of the Redevelopment Plan;

(c) the provisions of this Agreement (as disclosed by the Memorandum of DDLA), and the City Grant Deed;

(d) the City Regulatory Agreement, the City Deed of Trust, and the Intercreditor Agreement (if any);

(e) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Memorandum of DDLA;

(f) the liens of any loan approved by the City in the Financing Plan;

(g) conditions, covenants, restrictions or easements currently of record or as otherwise approved by the Developer in its reasonable discretion; and

(h) exceptions 1-8, inclusive, as shown in the Title Report.

Section 4.6 Condition of Property.

(a) Required Disclosure. In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), the City hereby represents and warrants that it has no knowledge, and has no reasonable cause to believe, that any release of Hazardous Materials has come to be located on or beneath the Property, except as previously disclosed by the City to the Developer.
(b) "AS IS" CONVEYANCE. THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THAT THE CITY IS CONVEYING AND THE DEVELOPER IS OBTAINING THE PROPERTY (INCLUDING ALL EXISTING IMPROVEMENTS THEREON) ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, OR ANY OF THE IMPROVEMENTS LOCATED ON THE PROPERTY; (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY; (F) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY; (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY; AND (H) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT THE DEVELOPER HAD THE OPPORTUNITY TO PERFORM OR CONDUCT TESTS AND INVESTIGATIONS OF THE PROPERTY PURSUANT TO THE ENRA, AND THAT THE DEVELOPER HAS USED, OR SHALL USE, ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A
SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(c) Survival. The terms and conditions of this Section shall expressly survive the Closing, shall not merge with the provisions of the City Grant Deed, or any other closing documents and shall be deemed to be incorporated by reference into the City Grant Deed. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. The Developer acknowledges that the Purchase Price for the Property reflects the "as is" nature of this conveyance and any faults, liabilities, defects or other adverse matters that may be associated with the Property. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understands the significance and effect thereof.

(d) Acknowledgment. The Developer acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (2) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the Purchase Price has been adjusted to reflect the same and that the City would not have agreed to convey the Property to the Developer without the disclaimers and other agreements set forth in this Section.

(e) Developer's Release of the City. The Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City, and its respective council members, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (1) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise within or about any existing improvements on the Property), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (2) any presence of Hazardous Materials; and (3) any information furnished by the Released Parties under or in connection with this Agreement.

(f) Scope of Release. The release set forth in Section 4.6(e) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts,
itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Developer's Initials: MG

Notwithstanding the foregoing, this release shall not apply to, nor shall the City be released from, the City's actual fraud or misrepresentation.

Section 4.7 Costs of Escrow and Closing. Ad valorem taxes, if any, shall be prorated as of the date of recordation of the City Grant Deed. The Developer shall pay the cost of all title insurance policies, transfer tax, Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, to close Escrow. In addition to all other costs and expenses paid by the Developer, at the Closing, the Developer shall pay the City an amount not to exceed Fifteen Thousand Dollars ($15,000), less the amount of the Deposit held by the City, to reimburse the City for certain legal fees and expenses incurred in conjunction with this Agreement.

ARTICLE 5.
CITY LOAN PROVISIONS

Section 5.1 City Loan.

(a) General Requirements. The City Loan consists of the Predevelopment Component, the Acquisition Component, and the Construction Component. The City Loan shall be governed by the terms and provisions of this Agreement, the City Note, and the City Deed of Trust.

(b) Use of the Predevelopment Component. The Predevelopment Component shall be used exclusively to fund eligible predevelopment costs and expenses for the Project as set forth below.

(c) Use of the Acquisition Component. The Acquisition Component shall be used exclusively to fund the acquisition of the Property by the Developer from the City.

(d) Use of the Construction Component. The Construction Component shall be used to pay construction costs (or, to the extent applicable, reimbursement to the Developer of predevelopment costs and expenses) as set forth on the Financing Plan.

(e) No Other Use. No other use of the City Loan is permitted.
Section 5.2 Repayment of the Predevelopment Component and Acquisition Component.

(a) Repayment of the Predevelopment Component. The Developer shall repay the Predevelopment Component to the extent required by the terms of the Predevelopment Component Note.

(b) Repayment of the Acquisition Component. The Developer shall repay the Acquisition Component pursuant to the terms of the Acquisition Component Note.

Section 5.3 Repayment of Construction Component. Annual Payments. The Parties agree and acknowledge that the Developer shall pay the City Monitoring Payment to the City from the proceeds of Gross Revenue (defined below). In addition to the Developer's payment of the City Monitoring Payment, each year the Developer shall make payments to the City of principal and interest on the Construction Component in the amount of fifty percent (50%) of Residual Receipts, defined below (the "Lenders' Share of Residual Receipts"). Such annual payments shall be due and payable in arrears no later than May 1 of each year with respect to the previous calendar year, commencing on the earlier of: (1) May 1\textsuperscript{st} of the first year after the City's issuance of a Certificate of Completion for the Improvements; or (2) May 1, 2019, (unless such date is extended in writing by the City), and shall be accompanied by the Developer's report of Residual Receipts (including an independent auditor's report as set forth in Section 5.4(a), below). The Developer shall provide the City with any documentation reasonably requested by the City to substantiate the Developer's determination of Residual Receipts. Repayments shall be credited first to interest, then to principal, due under the Construction Component Note. Interest that has accrued but for which Residual Receipts are not available in a given year shall be deferred to the following year. To the extent any loan set forth on the Financing Plan provides for repayments based on Residual Receipts (other than any loan made by a party under the Control of the Developer or the Investor), then the Lenders' Share of Residual Receipts shall be allocated, on a pro rata, basis amongst the City and such other lenders so long as such other loans remain outstanding. In conjunction with the Closing, the City may enter into an intercreditor agreement, or similar document, with other subordinate lenders to evidence such allocation of the Lenders' Share of Residual Receipts (the "Intercreditor Agreement").

(b) Special Repayments from Net Proceeds of Permanent Financing. The Net Proceeds of Permanent Financing, if any, shall be paid one hundred percent (100%) to the City (and any other lender that is a party to the Intercreditor Agreement (if any), as set forth above) as a special repayment of the Construction Component. The amount of the Net Proceeds of Permanent Financing shall be determined by the Developer and submitted to the City for approval on the date the Developer submits the final cost audit for the Development to TCAC, or at such earlier time mutually acceptable to the Parties. The amount of the Net Proceeds of Permanent Financing, if any, shall be calculated using the funding sources identified in the Financing Plan (as may be amended pursuant to this Agreement). The Developer shall also submit to the City any additional documentation sufficient to verify the amount of the Net Proceeds of Permanent Financing. The City shall approve or disapprove Developer's determination of the amount of the Net Proceeds of Permanent Financing in writing within thirty (30) days after the receipt of Developer's cost audit and supplemental documentation. Such City
approval shall not be unreasonably withheld or delayed. If the City disapproves of such
determination, then the City shall only do so for good cause, and shall provide written notice to
the Developer of such disapproval and the reasons therefor. If Developer's determination is
disapproved by the City, Developer shall re-submit documentation to the City until the City
approval is obtained. Following the determination of the Net Proceeds of Permanent Financing,
the Developer shall pay such amount within thirty (30) days following such determination.
Notwithstanding the foregoing, the Parties agree and acknowledge that no amount shall be due to
the City pursuant to this subsection in the event that Net Proceeds of Permanent Financing do not
exist (or the Parties mutually determine that the Net Proceeds of Permanent Financing will not
exist) due to construction cost overruns, payment of any deferred portion of the Developer Fee,
or other increases in costs or expenses incurred by the Developer in conjunction with the
completion of the Development. The amount of the Net Proceeds of Permanent Financing, if
any, shall constitute a prepayment of a portion of the principal amount of the Construction
Component.

(c) Payment in Full. Regardless of the availability of Residual Receipts, all
principal and interest on the City Loan shall be due upon the earliest of:

(1) a Transfer of the Development other than a Transfer permitted or
approved by the City as provided in this Agreement;

(2) the occurrence of a Developer Event of Default for which the City
exercises its right to cause the City Loan indebtedness to become immediately due and payable,
or for which the City Loan indebtedness is automatically specified to become immediately due
and payable pursuant to applicable subsections of Section 9.4 below; or

(3) the expiration of the Term.

(d) Special Definitions. The following special definitions shall apply for
purposes of this Section 5.3:

(1) "Annual Operating Expenses" with respect to a particular calendar
year shall mean the following costs reasonably and actually incurred for operation and
maintenance of the Development to the extent that they are consistent with an annual
independent audit performed by a certified public accountant, acceptable to the City, using
generally accepted accounting principles: debt service currently due on a non-optional basis
(excluding debt service due from residual receipts or surplus cash of the Development) on loans
associated with development of the Development and approved by the City in the Financing
Plan; property and other taxes and assessments imposed on the Development; premiums for
property damage and liability insurance; utility services not paid for directly by tenants,
including water, sewer, trash collection, gas, and electricity; maintenance and repair, including
but not limited to pest control, landscaping and grounds maintenance, painting and decorating,
cleaning, common systems repairs, general repairs, janitorial supplies; any annual license or
certificate of occupancy fees required for operation of the Development; general administrative
expenses including but not limited to advertising and marketing, security services and systems,
professional fees for legal, audit, accounting and tax returns; property management fees and
reimbursements including on-site manager expenses, not to exceed fees and reimbursements
which are standard in the industry and pursuant to a management contract approved by the City; service coordinator expenses; cash deposited into a reserve for capital replacements of components of the Development; the City Monitoring Payment; an annual partnership management fee, or similar fee, paid to the General Partner, or an entity Controlled by the General Partner in an amount not to exceed Fifteen Thousand Dollars ($15,000) increasing annually by three percent (3%) (provided, however, after the fifteen (15) year compliance period as described in Section 42(i)(1) of the Code, such fee shall be reduced to Seven Thousand Five Hundred Dollars ($7,500), with no annual increase, so long as the Partnership is not dissolved, and if the Partnership is dissolved, then no fee shall be due); an annual fee paid to the Investor in an amount not to exceed Five Thousand Dollars ($5,000) increasing by three percent (3%) per annum (provided, however, such fee shall only be payable during the fifteen (15) year compliance period as described in Section 42(i)(1) of the Code); payment of any previously unpaid portion of the Development Fee due (with interest at a rate not to exceed the applicable federal rate) not exceeding a cumulative amount of the Development Fee as set forth in Section 5.7; an operating reserve in such reasonable amounts as are approved by the City; extraordinary operating costs specifically approved by the City; and other ordinary and reasonable operating expenses not listed above. Annual Operating Expenses shall not include the following: depreciation, amortization, depletion or other non-cash expenses or any amount expended from a reserve account.

(2) "Gross Revenue" with respect to a particular calendar year shall mean all revenue, income, receipts, and other consideration actually received from the operation and leasing of the Development. Gross Revenue shall include, but not be limited to: all rents; fees and charges paid by tenants; 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 machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance; condemnation awards for a taking of part or all of the Development for a temporary period; and interest earned on reserve accounts. Gross Revenue shall not include tenants' security deposits, loan proceeds, or similar advances.

(3) "Net Proceeds of Permanent Financing" shall mean the portion of the approved Financing Plan funds that are not required to pay the costs of acquisition and development of the Development (including but not limited to the funding of reserves and the payment of the entire Development Fee). Net Proceeds of Permanent Financing, if any, shall be determined pursuant to the procedure set forth in Section 5.3(c).

(4) "Residual Receipts" with respect to a particular calendar year shall mean the amount by which Gross Revenue (as defined above) exceeds Annual Operating Expenses (as defined above).

Section 5.4 Reports and Accounting of Residual Receipts.

(a) Audited Financial Statement. In connection with the annual payments as set forth in Section 5.3(a), within one hundred eighty (180) days of the end of the Developer's fiscal year, the Developer shall furnish to the City an audited statement duly certified by an independent firm of certified public accountants approved by the City, setting forth in reasonable
detail the computation and amount of Residual Receipts during the preceding calendar year.

(b) **Books and Records.** The Developer shall keep and maintain on the Property, or at its principal place of business, or elsewhere with the City's written consent, full, complete and appropriate books, records and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail the Developer's calculation of Residual Receipts. Books, records and accounts relating to the Developer's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement which provide for the calculation of Residual Receipts on a cash basis. All such books, records, and accounts shall be open to and available for inspection by the City, its auditors or other City authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that the Developer may be required to furnish any governmental agency shall at all reasonable times be open for inspection by the City at the place that the books, records and accounts of the Developer are kept upon prior reasonable notice to the Developer. The Developer shall preserve records on which any statement of Residual Receipts is based for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (c) below then pending.

(c) **Audits.** The receipt by the City of any statement pursuant to subsection (a) above or any payment by the Developer or acceptance by the City of any loan repayment for any period shall not bind the City as to the correctness of such statement or such payment. Within three (3) years after the receipt of any such statement, the City or any designated agent or employee of the City, at any time, shall be entitled to audit the Residual Receipts and all books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of the Developer and other places where records are kept. Immediately after the completion of an audit, the City shall deliver a copy of the results of such audit to the Developer. If it shall be determined as a result of such audit that there has been a deficiency in a loan repayment to the City, then such deficiency shall become immediately due and payable with interest at the default rate set forth in this Agreement, determined as of and accruing from the date that said payment should have been made. In addition, if the Developer's auditor's statement for any Development fiscal year shall be found to have understated Residual Receipts by more than eight percent (8%), and the City is entitled to any additional City Loan repayment as a result of said understatement, then the Developer shall pay such amount, the interest charges referenced hereinabove, and, following the City's written request, all of the City's reasonable costs and expenses connected with any audit or review of the Developer's accounts and records.

Section 5.5 **Prepayment.** The Developer may pay the principal and any interest due on the City Loan in advance of the time for payment thereof as provided in this Agreement, without penalty; provided, however, that the Developer acknowledges that the provisions of this Agreement will be applicable to the Development for the full Term, and the provisions of the City Regulatory Agreement will be applicable to the Development for the full term of the City Regulatory Agreement, even though the Developer may have prepaid the City Loan.

Section 5.6 **City Loan Disbursement.**
(a) **Disbursement of the Predevelopment Component.** The Predevelopment Component shall be disbursed in accordance with the following provisions of this Section. The City shall not be obligated to make any disbursement of the Predevelopment Component unless the following conditions precedent are satisfied prior to the disbursement:

1. There shall exist no condition, event, or act which would constitute a breach or default under this Agreement, or any City Document or which, upon the giving of notice or the passage of time, or both would constitute such a breach or default.

2. The Developer has executed, and delivered to the City, the Predevelopment Component Assignment.

3. The Developer has furnished the City with evidence of the insurance coverage meeting the requirements of Section 7.12, below.

4. The Developer has certified in writing to the City, and the City has approved such certification and has been provided any documentation, reasonably requested by the City, supporting such certification, that the undisbursed proceeds of the Predevelopment Component, together with other funds or firm commitments for funds that the Developer has obtained in connection with the Property (if any) are not less than the amount that is necessary to pay for the predevelopment tasks and activities.

5. The City has received a written draw request from the Developer, including certification that the condition set forth in Section 5.6(a)(1) continues to be satisfied, and setting forth the proposed uses of funds consistent with this Agreement, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred.

6. Provided the conditions set forth above have been satisfied, the City shall from time to time (but not more frequently than one (1) time per month) disburse the Predevelopment Component funds to the Developer no later than fourteen (14) days following the City's receipt and approval of draw request. In the event the City disapproves of the draw request, the City shall provide a written notice to the Developer setting forth the City's reasons for such disapproval. Thereafter, upon the disbursement of the Predevelopment Component funds to the Developer, the Developer shall directly pay the vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. Upon written request from the City, the Developer shall provide the City with a copy of each check and such other documentation reasonably requested by the City to document the use of the proceeds of the Predevelopment Component. In no event shall the City disburse more than One Hundred Thousand Dollars ($100,000) pursuant to this subsection.

(b) **Disbursement of the Acquisition Component.** The Acquisition Component of the City Loan shall be disbursed in accordance with the following provisions of this Section. The Acquisition Component shall be deemed disbursed upon the execution of the Acquisition Component Note. Satisfaction by the Developer of the following requirements shall be conditions precedent to the City's obligation to disburse the City Loan:
(1) There shall exist no condition, event, or act which would constitute a breach or default under this Agreement, or any City Document or which, upon the giving of notice or the passage of time, or both would constitute such a breach or default.

(2) The Developer has satisfied all of the predisposition requirements set forth in Article 2 and has acquired the Property.

(3) The Developer has executed and delivered to the City the City Documents, and the City Deed of Trust, City Regulatory Agreement and City Affordability Notice have been recorded against the Property.

(4) The Developer has certified in writing to the City, and the City has approved such certification and has been provided any documentation, reasonably requested by the City, supporting such certification, that the undisbursed proceeds of the City Loan, together with other funds or firm commitments for funds that the Developer has obtained in connection with the Property are not less than the amount that is necessary to pay for the development tasks and activities set forth in this Agreement.

(c) Disbursement of the Construction Component. The Construction Component shall be disbursed in accordance with the following provisions of this Section. The City shall not be obligated to make any disbursement of the Construction Component unless the following conditions precedent are satisfied prior to the disbursement:

(1) There shall exist no condition, event, or act which would constitute a breach or default under this Agreement, or any City Document or which, upon the giving of notice or the passage of time, or both would constitute such a breach or default.

(2) The Developer has satisfied all of the predisposition requirements set forth in Article 2 and Article 3, and the Developer has acquired the Property in accordance with Article 4.

(3) The Developer has furnished the City with evidence of the insurance coverage meeting the requirements of Section 7.12, below.

(4) The Developer has certified in writing to the City, and the City has approved such certification and has been provided any documentation, reasonably requested by the City, supporting such certification, that the undisbursed proceeds of the City Loan, together with other funds or firm commitments for funds that the Developer has obtained in connection with the Property are not less than the amount that is necessary to pay for the development tasks and activities set forth in this Agreement.

(5) The City has received a written draw request from the Developer, including certification that the condition set forth in Section 5.6(b)(1) continues to be satisfied, and setting forth the proposed uses of funds consistent with the City approved Financing Plan, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay any contractor in connection with improvements on the Property, the written request must be accompanied by: (i)
where applicable, certification by the Developer's architect reasonably acceptable to the City that the work for which disbursement is requested has been completed (although the City reserves the right to inspect the Property and make an independent evaluation); and (ii) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the City.

(6) Provided the conditions set forth above have been satisfied, the City shall from time to time (but not more frequently than one (1) time per month) disburse the Construction Component funds to the Developer no later than fourteen (14) days following the City's receipt and approval of draw request. In the event the City disapproves of the draw request, the City shall provide a written notice to the Developer setting forth the City's reasons for such disapproval. Thereafter, upon the disbursement of the Construction Component funds to the Developer, the Developer shall directly pay the vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. Upon written request from the City, the Developer shall provide the City with a copy of each check and such other documentation reasonably requested by the City to document the use of the proceeds of the Construction Component.

(7) Nothing in this Section shall preclude the City from disbursing the Construction Component in one disbursement to the Developer (or the Title Company for disbursement to the Developer) at the Closing provided that the Developer has complied with the applicable conditions to disbursement set forth herein. In no event shall the City disburse more than Four Hundred Thousand Dollars ($400,000) pursuant to this subsection.

(d) No Funding Obligation. Notwithstanding any other provisions of this Agreement, the City shall have no further obligation to disburse any portion of the City Loan to the Developer following: (1) termination of this Agreement; or (2) notification by the City to the Developer of a Developer Event of Default and Developer's failure to cure under the terms of this Agreement.

Section 5.7 Development Fee. The amount and the terms of the City Loan have been established by taking into account the anticipated costs of development, including a maximum development fee to be paid to the Developer (or any other organization or entity, including any entity Controlled by a General Partner) for development and construction management services in an amount not exceeding One Million Four Hundred Thousand Dollars ($1,400,000), or such greater amount permitted by any funding source set forth in the Financing Plan (the "Development Fee"). The Development Fee may be reduced, or deferred, as necessary so that these funds may be utilized to pay Development cost-overruns; provided however, that the Developer shall obtain the City's prior written consent to any revision to the Financing Plan in accordance with this Agreement. Except for the Development Fee and the fees set forth in Section 5.3(d)(1), no compensation from any source shall be received by or be payable to the Developer, any entity Controlled by the Developer, any General Partner, or any other entity or organization in connection with the provision of development and construction management services for the acquisition and construction of the Improvements.

Section 5.8 Non-Recourse. Following recordation of the City Deed of Trust, and except as provided below, the Developer shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the City Loan or the performance of the covenants.
of the Developer under the City Deed of Trust. The sole recourse of the City with respect to the principal of, or interest on, the City Note and defaults by the Developer in the performance of its covenants under the City Deed of Trust shall be to the property described in the City Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall: (a) limit or impair the enforcement against all such security for the City Note of all the rights and remedies of the City there under; or (b) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the City Note as demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the City Note and the performance of the Developer's obligations under the City Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve the Developer of its waiver of City liability in Section 5.6 and the Developer's obligation to indemnify the City under this Agreement, or for: (1) fraud or willful misrepresentation; (2) the failure to pay taxes, assessments or other charges which may create liens on the Developer's interest of the Property that are payable or applicable prior to any foreclosure under the City Deed of Trust (to the full extent of such taxes, assessments or other charges); (3) the fair market value of any personal property or fixtures removed or disposed of by the Developer other than in accordance with the City Deed of Trust; and (4) the misappropriation of any proceeds under any insurance policies or awards 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 Development.

Section 5.9 Subordination of City Deed of Trust. Upon determination of the City Manager, the City Deed of Trust shall be subordinated to the Security Financing Interest securing the Developer's construction loan, and may be subordinated to other Security Financing Interests securing financing set forth in the Financing Plan, if any (in each case, a "Senior Lien"), but only on the condition that all of the following conditions are satisfied:

(a) All of the proceeds of the proposed Senior Lien, less any transaction costs, must be used to provide acquisition, construction and/or permanent financing for the Development.

(b) The Developer must demonstrate to the City's reasonable satisfaction that subordination of the City Deed of Trust is necessary to secure adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Development as required by the City Documents. To satisfy this requirement, the Developer must provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the loan is necessary to provide adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

(c) The subordination agreement(s) must be structured to minimize the risk that the City Deed of Trust would be extinguished as a result of a foreclosure by the proposed lender (each, a "Senior Lender") or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement must provide the City with adequate rights to cure any defaults by the Developer, including: (1) providing the City or its successor with copies of any notices of
(d) The subordination(s) described in this section may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the City.

(e) No subordination agreement may limit (in whole or in part) the effect of the City Deed of Trust before a foreclosure, nor require consent of the Senior Lender to the exercise of any remedies by the City under the City Documents, including, but not limited to, any right or remedy of the City to enforce the provisions of the City Regulatory Agreement.

(f) Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval by the City Council.

Section 5.10 Subordination of City Regulatory Agreement. Upon a determination by the City Council or the City Manager that the requirements of Health and Safety Code Section 33334.14 are satisfied, including the requirement that any subordination documents contain provisions that are reasonably designed to protect the City's interest in the event of default under deeds of trust to which the City is subordinating, the City shall subordinate the City Regulatory Agreement to the liens of the deeds of trust securing City-approved construction and permanent first mortgage financing for the Improvements. In no event shall the City subordinate the Memorandum of DDLA to any Security Financing Interest.

ARTICLE 6.
CONSTRUCTION OF IMPROVEMENTS

Section 6.1 Construction Pursuant to Plans. The Improvements shall be constructed substantially in accordance with the Construction Plans, unless modified by operation of Section 6.2, and the terms and conditions of the land use permits and approvals and building permits, including any variances granted. The Developer shall comply with all of the duties and obligations set forth in this Article, and the Developer's failure to comply with the duties and obligations set forth in this Article shall constitute a Developer Event of Default.

Section 6.2 Change in Construction of Improvements. If the Developer desires to make any material change in the Improvements which are not substantially consistent with the Construction Plans, the Developer shall submit the proposed change to the City for its approval. No change which is required for compliance with building codes or other government health and safety regulations shall be deemed material. If the Improvements, as modified by any such proposed change, will conform to the requirements of this Agreement, and the Construction Plans, the City shall approve the change by notifying the Developer in writing.

Unless a proposed change is rejected by the City within ten (10) days, it shall be deemed approved. If rejected within such time period, the previously approved Construction Plans shall
continue to remain in full force and effect. If the City rejects a proposed change, it shall provide the Developer with the specific reasons therefore.

The approval of changes in the Construction Plans by the City pursuant to this Section shall be in addition to any approvals required to be obtained from the City pursuant to building permit requirements. Approval of changes in the Construction Plans by the City shall not constitute approval by the City and shall in no way limit the City's discretion in approving changes to the Construction Plans.

Section 6.3 Commencement of Construction. The Developer shall commence construction of the Improvements no later than the date set forth in the Schedule of Performance.

Section 6.4 Completion of the Improvements. The Developer shall diligently prosecute to completion the construction of the Improvements no later than the date set forth in the Schedule of Performance.

Section 6.5 Equal Opportunity. During the construction of the Improvements there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the hiring, firing, promoting or demoting of any person engaged in the construction work. In connection with the construction of the Improvements, the Developer shall, and shall cause the Developer's general contractor to, use commercially reasonable, good faith efforts to retain, or otherwise utilize, the services of businesses located within the boundaries of the City of Vacaville. At a minimum, the Developer shall, or shall cause the Developer's general contractor to, notify applicable business firms located in City of Vacaville of bid opportunities for the construction of the Improvements. Documentation of such notifications shall be maintained by the Developer and available to the City as requested.

Section 6.6 Compliance with Applicable Laws.

(a) Compliance with Laws during Construction. The Developer shall cause all construction work to be performed in compliance with: (1) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter; and (2) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after the payment of all applicable fees, procurement of each permit, license, or other authorization that may be required of the Developer and all entities engaged in work on the Property.

(b) Prevailing Wages. This Agreement has been prepared with the intention that the financial assistance provided by the City under this Agreement meets the exceptions set forth in Labor Code Section 1720(c)(5)(E) to the general requirement that state prevailing wages be paid in connection with construction work that is paid for in whole or in part out of public funds; provided, however, that nothing in this Agreement constitutes a representation or warranty by any party regarding the applicability of the provisions of Labor Code Section 1720 et seq. To the extent required by applicable law, the Developer shall, and shall cause the contractor and all
subcontractors shall register with the Department of Industrial Relations (the "DIR") in accordance with Labor Code Sections 1725.5 and 1771.1, the Developer shall and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq., and the implementing regulations of the DIR, and comply with the other applicable provisions of Labor Code Sections 1720 et seq., including but not limited to the hiring of apprentices as required by Labor Code Sections 1775 et seq., and the implementing regulations of the DIR. To the extent required by any applicable law, the Developer shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and otherwise comply with the other applicable provisions of Labor Code Sections, including without limitation, 1720 et seq., 1725.5, 1771, 1771.4, 1776, 1777.5 et seq., and implementing regulations of the DIR in connection with construction of the Development or any other work undertaken or in connection with the Property. Copies of the currently applicable per diem prevailing wages are available from the DIR. During the construction of the Improvements the Developer shall or shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. The Developer shall indemnify, hold harmless and defend (with counsel reasonably selected by the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR or comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the DIR in connection with the construction of the Improvements or any other work undertaken or in connection with the Property. This indemnity obligation of the Developer shall survive the expiration or termination of this Agreement.

Section 6.7 Progress Report. The Developer will provide quarterly progress reports to the City regarding the status of the construction of the Development. The Developer shall provide the reports and information required under this Section until completion of the construction of the Improvements, as evidenced by the Certificate of Completion from the City pursuant to Section 6.14.

Section 6.8 Construction Responsibilities. As between the City and the Developer it shall be the responsibility of the Developer to coordinate and schedule the work to be performed so that commencement and completion of the construction of the Improvements will take place in accordance with this Agreement. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and the Management Agent. Any review or inspection undertaken by the City with reference to the Development, pursuant to this Agreement, is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development, or compliance with any applicable law.
Section 6.9  Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or the Improvements or a stop notice affecting the City Loan is served on the City or any other lender or other third party in connection with the Development, then the Developer shall, within thirty (30) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond from a surety, reasonably acceptable to the City, or such other evidence reasonably acceptable to the City that the lien or stop notice has been discharged acceptable to the City in sufficient form and amount, or provide the City with other assurance satisfactory to the City that the claim of lien or stop notice will be paid or discharged.

(b) If the Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section or obtain a surety bond, then in addition to any other right or remedy, the City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at the Developer's expense. Alternatively, the City may require the Developer to immediately deposit with the City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against the Developer.

(c) The Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall, limit, or prevent the assertion of claims of lien against the Property and/or Improvements. The Developer authorizes the City, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Development and Property.

Section 6.10  Inspections. The Developer shall permit and facilitate, and shall require its contractors, to permit and facilitate, observation and inspection at the Development by the City during reasonable business hours for the purposes of determining compliance with this Agreement. The Developer acknowledges that the City is under no obligation to: (a) supervise the construction, or the means, methods, or techniques utilized in connection with the construction of the Improvements; (b) inspect the Property; or (c) inform the Developer of information obtained by the City during any inspection. Any inspection by the City during the construction of the Improvements, pursuant to this Section, is entirely for determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall not rely upon the City for any supervision or inspection of the construction of the Development. The Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers. The rights granted to the City pursuant to this Section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority, including, but not limited to, any inspection rights related to the building permit for the Property.

Section 6.11  Information. The Developer shall provide any information reasonably requested by the City in connection with the Development.

Section 6.12  Records.
(a) The Developer shall maintain complete, accurate, and current records pertaining to the Development for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the City to inspect and copy records upon reasonable notice to the Developer. Such records shall include all invoices, receipts, and other documents related to expenditures from the City Loan funds. Records must be kept accurate and current.

(b) The City shall notify the Developer of any records it deems insufficient. The Developer shall have thirty (30) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then the Developer shall begin to correct the deficiency within thirty (30) days and complete the correction of the deficiency as soon as reasonably possible.

Section 6.13 Financial Accounting and Post-Completion Audits.

(a) No later than ninety (90) days following completion of construction of the Development (as evidenced by the City's issuance of the Certificate of Completion), the Developer shall provide to the City a financial accounting of all sources and uses of funds for the Development using the draw request data and other data as reasonably determined by the City. No later than one hundred fifty (150) days following completion of construction of the Development (as evidenced by the City's issuance of the Certificate of Completion), the Developer shall submit an audited financial report to the City showing the sources and uses of all funds utilized for the Development.

(b) The Developer shall make available for examination at reasonable intervals and during normal business hours to the City annually all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit City to audit, examine, and make excerpts or transcripts from such records upon reasonable prior notice to the Developer. The City, in its reasonable discretion, may make audits of any records related to the development or operation of the Development or the Developer's compliance with the City Documents. The audit rights set forth in this Section are in addition to, and shall not be limited by, the City's audit rights set forth in Section 5.4.

Until the issuance of the Certificate of Completion, the Developer shall submit any required amendments to the Financing Plan to the City for approval within fifteen (15) days of the date the Developer receives information indicating that actual costs of the Development vary or will vary from the line item costs shown on the Financing Plan. Written consent of the City shall be required to amend the Financing Plan.

Section 6.14 Certificate of Completion. Within thirty (30) days after completion of the construction of the Improvements, in accordance with those provisions of this Agreement relating solely to the obligations of the Developer to construct the Improvements (including the dates for beginning and completing construction of the Improvements), the City shall provide an instrument so certifying the completion of the construction of the Improvements (the "Certificate of Completion"). The Certificate of Completion shall be conclusive determination that the covenants in this Agreement with respect to the obligations of the Developer to construct the Improvements have been met. The issuance of the Certificate of Completion shall have no effect
on the Term of this Agreement (other than to establish the date on which the Term shall expire), and the remaining provisions of this Agreement (other than the provisions regarding the construction of the Improvements) shall remain in full force and effect throughout the Term. The certification shall be in such form as will enable such certificate to be recorded in the Official Records. These certifications and determinations shall not constitute evidence of compliance with the requirements of Section 6.6 or satisfaction of any obligation of the Developer to any holder of a Security Financing Interest, shall not be deemed a notice of completion under the California Civil Code, nor a certificate of occupancy and shall neither hinder nor convey any rights to occupy any portion of the Improvements.

ARTICLE 7.
ONGOING DEVELOPER OBLIGATIONS

Section 7.1 Applicability. The conditions and obligations set forth in this Article shall apply throughout the Term, unless a different period of applicability is specified for a particular condition or obligation. The Developer's failure to comply with the duties and obligations set forth in this Article, after the expiration of any applicable notice and cure period, shall constitute a Developer Event of Default.

Section 7.2 Use. The Developer hereby agrees that, for the entire Term, the Development will be used and continuously operated only as affordable housing in accordance with all applicable requirements of the California Community Redevelopment Law (the "Law"), including, but not limited to, the requirement that such housing be provided to households described in Section 50079.5 of the Law, at rents not exceeding the amounts set forth in Section 50053(b)(3). In the event of any conflict between the terms of this Agreement and the City Regulatory Agreement (while the City Regulatory Agreement is in effect), the Developer shall comply with the stricter requirement. In addition, the Developer shall comply with all other applicable laws, statutes, and regulations governing the Development, including, but not limited to the applicable requirements of Code Section 42, and all TCAC regulations, for such time that the Development is subject to such regulations. Commencing on the first May 1 following the recordation of the Certificate of Completion, and on each May 1 thereafter, throughout the Term, the Developer shall pay to the City the City Monitoring Payment. The City Monitoring Payment shall automatically increase at the rate equal to three percent (3%) per year; provided, however, in no event shall the annual amount of the City Monitoring Payment exceed Fifteen Thousand Dollars ($15,000). Payments required to be made by the Developer pursuant to this Section shall be in addition to the repayment of the City Loan and shall not be offset or deducted by the Developer's repayment of the City Loan. The City Monitoring Payment shall be paid by the Developer regardless of the Developer's prepayment of the City Loan, and shall continue until the expiration of the term of the Regulatory Agreement. The Developer's failure to make the City Monitoring Payment in the amount and within the timeframe set forth in this Section shall constitute a default by the Developer pursuant to Article 9.

Section 7.3 Maintenance.

(a) Improvements. The Developer hereby agrees that, prior to completion of construction of the Improvements, the portions of the Property undergoing construction shall be maintained in a neat and orderly condition to the extent practicable and in accordance with
industry health and safety standards, and that, once the Improvements are completed, the Development shall be well maintained by the Developer as to both external and internal appearance of the Improvements, the common areas, and the open spaces. The Developer shall maintain the Development in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, alleyways and landscaping, and from time to time make all necessary and proper repairs, renewals, and replacements.

(b) **Developer Failure to Maintain.** In the event that there arises at any time prior to the expiration of the Term a condition in contravention of the above maintenance standard, then the City shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of such notice to cure said condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed (and thereafter fails to pursue such cure to completion no later than sixty (60) days following the Developer's receipt of the City's initial notice), the City shall have the right to enter the Property and perform all acts necessary to cure such a condition, or to take other recourse at law or equity the City may then have and to receive from the Developer, the City's cost in taking such action. The Developer hereby irrevocably grants the City, and the City's employees and agents, a right of entry for such purpose. The Parties hereto further mutually understand and agree that the rights conferred upon the City expressly include the right to enforce or establish a lien or other encumbrance against the Property, but such lien shall be subject to previously recorded liens and encumbrances. The foregoing provisions shall be a covenant running with the Property until the expiration of the Term, enforceable by the City, its successors and assigns.

Section 7.4 **Taxes and Assessments.** The Developer shall apply for and shall thereafter use good faith efforts to obtain an exemption from local property taxes pursuant to Section 214(g) of the California Revenue and Taxation Code. The Developer shall pay all unabated real property taxes on the Development, personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property or the Developer's fee interest in the Property; provided, however, that the Developer shall have the right to contest in good faith any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge against it, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 7.5 **Mandatory Language in All Subsequent Deeds, Leases and Contracts.** All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property shall contain therein the following language:

(a) **In Deeds:**

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use,
occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."
Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

Section 7.6 Hazardous Materials.

(a) Covenants.

(1) No Hazardous Materials Activities. The Developer hereby represents and warrants to the City that, at all times from and after the Closing, the Developer shall not cause or permit the Property, or the Improvements thereon to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(2) Hazardous Materials Laws. The Developer hereby represents and warrants to the City that, at all times from and after the Closing, the Developer shall comply and cause the Property, and the Improvements thereon to comply with Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions.

(3) Notices. The Developer hereby represents and warrants to the City that, at all times from and after the Closing, the Developer shall immediately notify the City in writing of: (i) the discovery of any Hazardous Materials on or under the Property; (ii) any knowledge by the Developer that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions pending or threatened against the Developer, the Property, or the Improvements by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws (collectively "Hazardous Materials Claims"); and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property, that could cause the Property, or any part thereof to be subject to the provisions of California Health and Safety Code Sections 25220, et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Development under any Hazardous Materials Laws. The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by the Developer.

(4) Without the City's prior written consent, which shall not be unreasonably withheld, the Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Development (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(b) Developer Acknowledgement. The Developer hereby acknowledges and agrees that: (1) this Section is intended as the City's written request for information (and
Developer's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5; and (2) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(c) Indemnity. Without limiting the generality of the indemnification set forth in Section 12.7 below, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its council members, officers, and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer or any other person or entity (including, but not limited to, the Management Agent, or any of its employees or agents) to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Development on or after the date of conveyance of the Property to the Developer; (2) the presence in, on or under the Development of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Development to the extent it arises on or after the date of conveyance of the Property to the Developer; or (3) any activity carried on or undertaken on or off the Development, subsequent to the conveyance of the Property to the Developer, and whether by the Developer or any successor in title or any employees, agents, contractors or subcontractors of the Developer or any successor in title, or any third persons at any time occupying or present on the Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Development. The foregoing indemnity shall further apply to any residual contamination on or under the Development, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

(d) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under subsection (c) above, are in no way limited or otherwise affected by any information the City may have concerning the Development and/or the presence within the Development of any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations.

Section 7.7 Management Responsibilities. The Developer shall be responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs,
replacement of capital items, and security. The City shall have no direct, or indirect, responsibility over management of the Development; however, the Developer shall operate the Development in accordance with this Agreement and the City Regulatory Agreement, in a manner acceptable to the City. At all times during the Term, the Developer shall retain the Management Agent approved by the City in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required in accordance with applicable law.

Section 7.8 Management Agent. The Development shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing. As set forth in Section 2.4, the initial Management Agent is hereby approved by the City. The Developer shall submit for the City's approval the identity of any replacement management agent. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for the City to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed management agent meets the standard for a qualified management agent set forth above, the City shall approve the proposed management agent by notifying the Developer in writing. Unless the proposed management agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. If the proposed management agent is disapproved by the City for failing to meet the standard for a qualified management agent set forth above, the Developer shall submit for the City's approval a new proposed management agent within thirty (30) days following the City's disapproval. The Developer shall continue to submit proposed management agents for City approval until the City approves a proposed management agent.

Section 7.9 Periodic Performance Review. The City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by the City) review of the management practices and financial status of the Development (including, but not limited to, a review of the Management Agent's performance). The purpose of each periodic review will be to enable the City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Developer shall cooperate with the City in such reviews.

Section 7.10 Replacement of Management Agent. If, as a result of a periodic review, the City determines, in its reasonable judgment, that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement and the City Regulatory Agreement, the City shall deliver notice to Developer of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days after receipt by Developer of such written notice, City staff and the Developer shall meet in good faith to consider methods for improving the financial and operating status of the Development. If after a reasonable period as determined by the City (not to exceed sixty (60) days), the City determines that the Developer is not operating and managing the Development in accordance with the material requirements and standards of this Agreement and the City Regulatory Agreement, the City may require replacement of the Management Agent in accordance with the City Regulatory Agreement.

If, after the above procedure, the City requires in writing the replacement of the
Management Agent, Developer shall promptly dismiss the then Management Agent, and shall appoint as the replacement management agent a person or entity meeting the standards for a management agent set forth in Section 7.8 above and approved by the City pursuant to Section 7.8 above, and in accordance with the City Regulatory Agreement.

Any contract for the operation or management of the Development entered into by Developer shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a Developer Event of Default under this Agreement, and the City Regulatory Agreement.

Section 7.11 Approval of Management Plans and Policies. Prior to the initial leasing of any of the units at the Property, following the completion of the construction, and annually thereafter to the extent of any amendments thereto, the Developer shall submit its written management plan and policies with respect to the Development to the City for its review and approval (the "Management Plan"). If the Developer's proposed Management Plan sets forth the Developer's commitment and ability to operate the Development in accordance with this Agreement, the City Regulatory Agreement and applicable laws, the City shall approve the proposed Management Plan by notifying the Developer in writing. Unless the proposed Management Plan is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. If the proposed Management Plan is disapproved by the City, the Developer shall submit for the City's approval a new proposed Management Plan, which addresses the inadequacies set forth in the City's notice, within thirty (30) days following the City's disapproval. The Developer's failure to obtain the City's approval of a Management Plan shall not be withheld unreasonably, within one hundred twenty (120) days from the date of the Developer's submission of the proposed Management Plan shall constitute a Developer Event of Default under this Agreement and the City Regulatory Agreement.

Section 7.12 Insurance Requirements.

(a) Required Coverage. The Developer shall maintain and keep in force, at the Developer's sole cost and expense, the following insurance applicable to the Development:

(1) To the extent required by law, Workers' Compensation insurance, including Employer's Liability coverage, with limits not less than required by applicable law.

(2) Comprehensive or Commercial General Liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(3) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, such automobile insurance shall only be required to the extent the Developer owns automobiles.
(4) Property insurance covering the Development covering all risks of loss, including earthquake (but only if required by the Investor or by another lender) and flood, if the Property is located in a flood zone, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming the City as a Loss Payee, as its interest may appear. The amount of such insurance shall be adjusted by reappraisal of the Project by the insurer or its designee not more than once every five (5) years after the issuance of the Certificate of Completion during the Term, if requested in writing by the City.

(b) Contractor's Insurance. The Developer shall cause any general contractor or agent working on the Development under direct contract with the Developer (including, but not limited to, the Developer's architect) to maintain insurance of the types and in at least the minimum amounts described in subsections (a)(1), (a)(2), and (a)(3) above, and shall require that such insurance shall meet all of the general requirements of subsection (c) below. Subcontractors working on the Development under indirect contract with the Developer shall be required to maintain the insurance described in subsections (a)(1), (a)(2) and (a)(3) above. Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and agents pursuant to this subsection shall name as additional insured's the City, councilmembers, officers, agents, and employees.

(c) General Requirements. The required insurance shall be provided under an occurrence form, and the Developer shall maintain such coverage continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

Comprehensive General Liability, Comprehensive Automobile Liability and Property insurance policies shall be endorsed to name as additional insureds the City and its council members, officers, agents, and employees. All policies and bonds shall contain (a) the agreement of the insurer to give the City at least thirty (30) days' notice prior to cancellation (including, without limitation, for nonpayment of premium) or any material change in said policies; (b) an agreement that such policies are primary and noncontributing with any insurance that may be carried by the City; (c) a provision that no act or omission of the Developer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (d) a waiver by the insurer of all rights of subrogation against the City and its authorized parties in connection with any loss or damage thereby insured against.

(d) Certificates of Insurance. Upon the City's request at any time during the Term of this Agreement, the Developer shall provide certificates of insurance, in form and with insurers reasonable acceptable to the City, evidencing compliance with the requirements of this Section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the City as additional insured, if requested by the City.

Section 7.13 Major Alterations. Following the completion of the construction of the Development (as evidenced by the Certificate of Completion), in addition to any applicable requirements set forth in the City Deed of Trust, during the Term, the Developer shall not make any other alteration, improvement or addition to the Development having a cost greater than
Three Hundred Thousand Dollars ($300,000), or demolish any portion thereof (each referred to as "Major Alterations"), without first notifying the City of such Major Alterations. Any Major Alterations shall be made only in good and workmanlike manner using new materials of the same quality as the original improvements, and in accordance with all applicable building codes and any applicable laws. In addition, prior to commencing construction of any Major Alterations, Developer shall satisfy the requirements of Section 2.7, Section 2.8, above, and Section 7.12, above, in connection with such Major Alterations.

ARTICLE 8.
ASSIGNMENT AND TRANSFERS

Section 8.1 Definitions. As used in this Article, the term "Transfer" means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Development or any part thereof or any interest therein or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer or any contract or agreement to do any of the same; or

(c) Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer; or

The leasing of individual units in accordance with the requirements of this Agreement and the City Regulatory Agreement shall not be deemed a "Transfer" for purposes of this Article.

Section 8.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Development and its subsequent use in accordance with the terms hereof. The Developer recognizes that the qualifications and identity of the Developer are of particular concern to the City, in view of:

(a) The importance of the development of the Property to the general welfare of the community; and

(b) The land acquisition assistance and other public aids that have been made available by law and by the government for the purpose of making such development possible; and

(c) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Property and upon the continuing interest which the Developer will have in the Property to assure the quality of the use, operation and maintenance deemed critical by the City in the development of the Property; and

(d) The fact that a change in ownership or control of the owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in
a significant change in ownership or with respect to the identity of the parties in control of the Developer or the degree thereof is for practical purposes a transfer or disposition of the Property; and

\[(e)\]  The fact that the Property is not to be acquired or used for speculation, but only for development and operation by the Developer in accordance with the Agreement; and

\[(f)\]  The importance to the City and the community of the standards of use, operation, and maintenance of the Property; and

\[(g)\]  The Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 8.3 Prohibited Transfers. The limitations on Transfers set forth in this Section shall apply until expiration of the Term. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the City.

Any Transfer made in contravention of this Section shall be void and shall be deemed to be a default under this Agreement whether or not the Developer knew of or participated in such Transfer.

Section 8.4 Permitted Transfers. Notwithstanding the provisions of Section 8.3, the following Transfers shall be permitted and are hereby approved by the City.

\[(a)\]  Any Transfer creating a Security Financing Interest permitted pursuant to the approved Financing Plan;

\[(b)\]  Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest or as otherwise permitted under Article 11.

\[(c)\]  The Transfer of the rights under this Agreement by the Developer to the Partnership pursuant to an assignment and assumption agreement, prepared by the City, pursuant to which the Partnership shall expressly assume the obligations of the Developer under this Agreement, and the City Documents, and the Partnership agrees to be subject to the conditions and restrictions to which the Developer is subject arising during this Agreement and the City Documents.

\[(d)\]  The admission of the Investor as a limited partner of the Partnership for the purposes of syndicating the tax credits provided under the Tax Credit Reservation to the Investor to obtain the Tax Credit Funds. The City hereby approves the sale of limited partnership interests in the Partnership to the Investor, provided that: (1) the Partnership Agreement is first approved by the City; and (2) all documents associated with the low income housing tax credit syndication and the admission of the Investor as a limited partner of the
Partnership are submitted to the City for approval prior to execution, which approval shall not be unreasonably withheld.

(e) Following the expiration of the fifteen (15) year compliance period as described in Section 42(i)(1) of the Code, any Transfer to an entity Controlled by the General Partner or the Developer, provided that: (1) the Developer has submitted such entity's organizational documents to the City and the City has determined that such entity is Controlled by the General Partner or the Developer; and (2) upon such Transfer, the transferee, by an instrument in writing prepared by the City and in form recordable in the Official Records, shall expressly assume the obligations of the Developer under this Agreement and the City Documents (including, but not limited to the repayment obligations of the City Note) and agrees to be subject to the conditions and restrictions to which the Developer (or the Partnership) is subject arising during this Agreement and the City Documents.

(f) Future transfers of the limited partner interest of the Investor provided that: (1) such transfers do not affect the timing and amount of the limited partner capital contributions provided for in and subject to the terms of the Partnership Agreement approved by the City; and (2) in subsequent transfers, an entity Controlled by the Investor retains a membership interest or general partner interest and serves as a managing member or managing general partner of the successor limited partner.

(g) In the event the Developer (or its Affiliate) is removed as the managing general partner by the Investor for cause following default under the Partnership Agreement, the City hereby approves the transfer of the managing general partner interest to a nonprofit corporation that is exempt from federal income taxation pursuant to Section 501(c)(3) of the Code, or a limited liability company, whose sole member is a nonprofit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Code, selected by the Investor and approved by the City in writing, which approval shall not be withheld unreasonably.

Section 8.5 Other Transfers with City Consent. The City may, in its sole discretion, approve in writing other Transfers as requested by the Developer. In connection with such request, there shall be submitted to the City for review all instruments and other legal documents proposed to affect any such Transfer. If a requested Transfer is approved by the City such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied by the City within thirty (30) days after receipt by the City of Developer's request for approval of a Transfer. Upon such approval, if granted, the transferee, by an instrument in writing prepared by the City and in form recordable among the Official Records, shall expressly assume the obligations of the Developer under this Agreement, and the City Documents, and agree to be subject to the conditions and restrictions to which the Developer is subject arising during this Agreement and the City Documents, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Development conveyed in such Transfer. In the absence of specific written agreement by the City, no such Transfer, assignment or approval by the City shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.
ARTICLE 9.
DEFAULT AND REMEDIES

Section 9.1 General Applicability. The provisions of this Article shall govern the Parties' remedies for breach or failure of this Agreement.

Section 9.2 No Fault of Parties. The following events constitute a basis for a Party to terminate this Agreement without the fault of the other:

(a) The Agreement is terminated in accordance with Article 3;

(b) The Developer, despite good faith and diligent efforts (as reasonably determined by the City), is unable to satisfy all of the conditions precedent to the City's obligation to execute the City Grant Deed set forth in Article 4 by no later than the dates set forth in the Schedule of Performance; or

(c) The City, despite good faith and diligent efforts, is unable to execute the City Grant Deed and convey the Property to the Developer and the Developer is otherwise entitled to the conveyance of the Property.

Upon the happening of any of the above-described events, and at the election of either Party, this Agreement may be terminated by written notice to the other Party. In conjunction with such termination, the following shall occur: (i) the Predevelopment Component Note shall be terminated, (ii) the Predevelopment Component shall be forgiven, in accordance with the Predevelopment Component Note, and (iii) the Developer shall, or shall cause, the delivery to the City of all work product subject to the Predevelopment Component Assignment. Thereafter, neither Party shall have any rights against, or liability to, the other under this Agreement, except that the waiver and indemnification provisions set forth herein shall survive such termination and remain in full force and effect.

Section 9.3 Fault of City. Except as to events constituting a basis for termination under Section 9.2, the following events each constitute a City Event of Default and a basis for the Developer to take action against the City:

(a) The City, without good cause, fails to convey the Property to the Developer within the time and in the manner set forth in Article 3 and the Developer is otherwise entitled by this Agreement to such conveyance; or

(b) The City breaches any other material provision of this Agreement.

Upon the happening of any of the above-described events, the Developer shall first notify the City in writing of its purported breach or failure, giving the City forty-five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty-five (45) days, to commence to cure such breach, failure, or act. In the event the City does not then so cure within said forty-five (45) days, or if the breach or failure is of such a nature that it cannot be cured within forty-five (45) days, the City fails to commence to cure within such forty-five (45) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the Developer shall be afforded all of its rights at
law or in equity, by taking all or any of the following remedies: (1) terminating in writing this Agreement (provided, however, that the waiver and indemnification provisions set forth herein shall survive such termination); and (2) prosecuting an action for specific performance.

Section 9.4 Fault of Developer. Except as to events constituting a basis for termination under Section 9.2, the following events each constitute a Developer Event of Default and a basis for the City to take action against the Developer:

(a) The Developer fails to exercise good faith and diligent efforts to satisfy, within the time set forth in the Schedule of Performance, one or more of the conditions precedent to the City’s obligation to convey the Property to the Developer; or

(b) The Developer refuses to execute the City Grant Deed within the time set forth in the Schedule of Performance and under the terms set forth in Article 4; or

(c) The Developer fails to comply with any obligation or requirement set forth in Article 5 (including, but not limited to the Developer’s failure to repay the City Loan);

(d) The Developer constructs or attempts to construct the Development or otherwise redevelop the Property in violation of Article 6; or

(e) The Developer has not satisfied all preconditions set forth in this Agreement to commencement of construction of the Improvements by the date set forth in the Schedule of Performance, or fails to commence or complete the construction of the Improvements within the times set forth in the Schedule of Performance, or abandons or suspends construction of the Improvements prior to completion of all construction for a period of thirty (30) days after written notice by the City of such abandonment or suspension;

(f) The Developer fails to comply with, or fails to cause the Management Agent to comply with, any obligations or requirement set forth in Article 7; or

(g) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 8;

(h) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made.

(i) A Developer Event of Default or an event of default occurs under any of the City Documents.

(j) A court having jurisdiction shall have made or entered any decree or order: (1) adjudging the Developer (or any General Partner) to be bankrupt or insolvent; (2) approving as properly filed a petition seeking reorganization of the Developer (or any General Partner) or seeking any arrangement for the Developer (or any General Partner) under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (3) appointing a receiver, trustee, liquidator, or assignee of the
Developer (or any General Partner) in bankruptcy or insolvency or for any of their properties; or (4) directing the winding up or liquidation of the Developer (or any General Partner), if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection (j) as well; or the Developer (or any General Partner) shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (1) to (4), inclusive; or

(k) The Developer (or any General Partner) shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection (k) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. In the event that the Developer is diligently working to obtain a return or release of the property, as determined in the City's reasonable business judgment, and the City's interests under the Agreement are not immediately threatened, in the City's reasonable business judgment, the City shall not declare a default under this subsection; or

(l) The Developer (or any General Partner) shall have voluntarily suspended its business or, if the Partnership shall have been dissolved or terminated; or

(m) The Developer breaches any other material provision of this Agreement.

Upon the happening of any of the above-described events, the City shall first notify the Developer in writing of its purported breach, failure or act described, giving the Developer in writing forty-five (45) days from receipt of such notice to cure, or, if cure cannot be accomplished within said forty-five (45) days, to commence to cure such breach, failure, or act. In the event the Developer fails to cure within said forty-five (45) days, or if such breach is of a nature that it cannot be cured within forty-five (45) days, Developer fails to commence to cure, and diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies:

(1) Termination of this Agreement by written notice to the Developer; provided, however, that the City's remedies pursuant to this Article or any other City Document and the waiver and indemnification provisions of this Agreement shall survive such termination;

(2) Any of the remedies specified in Article 10; and/or

(3) Acceleration of the City Loan.

Provided that the Investor has delivered to the City the Investor's address, the City shall deliver a copy of any notice of default, or similar notice, to the Investor. The City shall accept a cure made by the Investor, or any General Partner of the Partnership, of a Developer Event of
Default under any of the City Documents in accordance with such document(s) as if such cure was made directly by the Developer. If a cure by the Investor requires the removal of the General Partner, then the City shall not exercise its rights set forth above during such time as the Investor is proceeding diligently, and in good faith (as reasonably determined by the City) to cause the removal and replacement of the General Partner, so long as all Security Financing Interest holders have also agreed to such forbearance.

Section 9.5 Right to Cure at Developer's Expense. The City shall have the right to cure any monetary default by the Developer under a loan in connection with the Development. The Developer agrees to reimburse the City for any funds advanced by the City to cure a monetary default by the Developer upon demand therefor, together with interest thereon at the lesser of the rate of ten percent (10%) per annum or the maximum rate permitted by law from the date of expenditure until the date of reimbursement.

Section 9.6 Construction Plans. If this Agreement is terminated pursuant to Section 9.4, then the Developer shall promptly deliver to the City, within ten (10) days of such termination, copies of all plans and specifications for the Development, all permits and approvals obtained in connection with the Development, and all applications for permits and approvals not yet obtained but needed in connection with the Development (collectively, the "Assigned Development Documents"). The delivery of the Assigned Development Documents shall be accompanied by an assignment, in form reasonably satisfactory to the City, of the Developer's right, title and interest in the Assigned Development Documents; provided however, that any use of the Assigned Development Documents by the City or any other person shall be without liability of any kind to the Developer and without any representation or warranty of the Developer or its employees, as to the quality, validity, or usability of the Assigned Development Documents.

Section 9.7 Acceleration of City Note. Following an uncured Developer Event of Default, the City shall have the right to cause all indebtedness of the Developer to the City under this Agreement, and the City Note together with any accrued interest thereon, to become immediately due and payable. The Developer waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under the law, including the Uniform Commercial Code, including foreclosure under the City Deed of Trust. The Developer shall be liable to pay the City on demand all expenses, costs and fees (including, without limitation, reasonable attorneys' fees and expenses and other professional service fees and expenses) paid or incurred by the City in connection with the collection of the City Loan and the amounts due under the City Note, and the preservation, maintenance, protection, sale, or other disposition of the security given for the City Loan and the amounts due under the City Note.

Section 9.8 Remedies Cumulative. No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.
Section 9.9  **Waiver of Terms and Conditions.**  No waiver of any default or breach by the Developer hereunder shall be implied from any omission by the City to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the City to or of any act by the Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or the other City Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the City in the exercise of any right, power, or remedy hereunder or under this Agreement, unless in the exercise of any such right, power, or remedy all obligations of the Developer to the City are paid and discharged in full.

**ARTICLE 10.**

**RIGHT OF REVERTER AND OPTION TO PURCHASE**

Section 10.1  **Right of Reverter.**  If there is an uncured Developer Event of Default or this Agreement is terminated pursuant to Section 9.4, and such default and/or termination occurs after the Closing, but prior to issuance of the Certificate of Completion pursuant to Section 6.14, then the City shall have the right to reenter and take possession of the Property and all improvements thereon, and to revest in the City the estate of Developer in the Property. The Developer hereby agrees to execute such documents as reasonably necessary to cause the Developer's interest in the Property to revert and revest in the City.

Upon revesting in the City of title to the Property, or any portion thereof, the City shall promptly use its best efforts to resell the revested portion of the Property consistent with its obligations under state law and the Redevelopment Plan. The City may also determine, in its sole discretion, to complete the construction of all or any of the Improvements, prior to the sale of the Property. Upon sale, the proceeds shall be applied as follows:

(a)  First, to reimburse the City, for any reasonable costs it incurs in managing or selling the Property, or in connection with the completion of the construction of the Improvements, including but not limited to amounts to discharge, or to prevent liens or encumbrances arising from any acts or omissions of Developer;

(b) Second, to the Developer in the amount of the reasonable costs expended by Developer in undertaking the construction of the Improvements on the Property;

(c) Any balance to be retained by the City.

The right of reverter contained in this Section shall be set forth in the City Grant Deed.

Section 10.2  **Option to Repurchase, Reenter and Repossess.**
(a) The City shall have the additional right at its option to repurchase, reenter and take possession of the Property, or any portion thereof owned by the Developer for which a Certificate of Completion has not been issued, with all improvements thereon, if after conveyance of title to the Property, and prior to the issuance of the Certificate of Completion for the Improvements, there is a Developer Event of Default pursuant to Section 9.4 with respect to the construction of the Improvements or portion thereof.

(b) To exercise its right to repurchase, reenter and take possession, the City shall pay to the Developer in cash an amount equal to the amount of the Construction Component repaid under the Construction Component Note (if any, and if no repayment has been made, then the City shall pay the amount of One Dollar ($1.00)). Upon vesting in the City of title to all or a portion of the Property, the City shall promptly use its best efforts to resell it, subject to a requirement that the Property be developed in accordance with this Agreement. Upon any resale of the Property or portion thereof by the City, the City shall apply such sale proceeds as follows:

1. To the Developer, the fair market value of any improvements existing on the applicable portion of the Property at the time of the repurchase, reentry and repossession; less
   (A) Any gains or income withdrawn or made by the Developer from the applicable portion of the Property or the improvements thereon; less
   (B) The value of any unpaid liens or encumbrances on the applicable portion of the Property which the City assumes or takes subject to said encumbrances.

2. The remaining sale proceeds, if any, shall be retained by the City.

Section 10.3 Rights of Mortgagees. Any rights of the City under this Article, shall not defeat, limit or render invalid any lease, mortgage, deed of trust or any other security interest permitted by this Agreement or otherwise consented to by the City in writing or any rights provided for in this Agreement for the protection of holder of security interests in the Property. The City acknowledges that, upon obtaining ownership of the Property pursuant to the this Article, the City shall be subject to all applicable obligations of any Security Financing Interest, defined below, arising on, or after, the date the City re-acquires the Property (other than any obligation personal to the Developer, including, but not limited to any guaranty or indemnification obligation).

ARTICLE 11.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 11.1 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security, regulatory agreements and other use restrictions are permitted to be placed upon the Developer's fee interest in the Property but only for the purpose of securing loans approved by the City pursuant to the approved Financing Plan. Mortgages, deeds of trust, or
other reasonable security instruments securing loans approved by the City pursuant to the approved Financing Plan, and regulatory agreements and other use restrictions are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development.

Section 11.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses of improvements provided for or authorized by this Agreement.

Section 11.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 9 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the City shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Developer's fee interest in the Property or any portion thereof a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to such Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates. Any such holder properly completing such Improvements pursuant to this paragraph shall assume all rights and obligations of Developer under this Agreement and shall be entitled, upon completion and written request made to the City, to a Certificate of Completion from the City, in a form acceptable by the City.

Section 11.4 Failure of Holder to Complete Improvements. In any case where six (6) months after default by the Developer in completion of construction of the Improvements under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct (pursuant to the assignment and assumption agreement more particularly described in Section 11.3), has not proceeded diligently with construction of the Improvements, the City shall be afforded those rights against such holder it would otherwise have against Developer under this Agreement, including, but not limited to declaring a default in accordance with Article 9.

Section 11.5 Right of City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of development, and the holder has not exercised its option to complete the construction of the Development, the City may cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to
reimbursement from the Developer of all costs and expenses incurred by the City in curing the
default. The City shall also be entitled to a lien upon the Developer's fee interest in the Property
or any portion thereof to the extent of such costs and disbursements. The City agrees that such
lien shall be subordinate to any Security Financing Interest, and the City shall execute from time
to time any and all documentation reasonably requested by Developer to effect such
subordination.

Section 11.6 Right of City to Satisfy Other Liens. Following the Closing, and after the
Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on
the fee interest in the Property or any portion thereof (including, but not limited to, any breach or
default under a Security Financing Interest) the City shall have the right to satisfy any such lien
or encumbrances; provided, however, that nothing in this Agreement shall require the Developer
to pay or make provision for the payment of any tax, assessment, lien or charge so long as the
Developer in good faith shall contest the validity or amount therein and so long as such delay in
payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 11.7 Holder to be Notified. The provisions of this Article shall be incorporated
into the relevant deed of trust or mortgage evidencing each Security Financing Interest to the
extent deemed necessary by, and in form and substance reasonably satisfactorily to the City, or
shall be acknowledged by the holder of a Security Financing Interest prior to its coming into any
security right or interest in the Property.

ARTICLE 12.
GENERAL PROVISIONS

Section 12.1 Notices, Demands and Communications. Formal notices, demands, and
communications between the City and the Developer shall be sufficiently given if, and shall not
be deemed given unless, dispatched by registered or certified mail, postage prepaid, return
receipt requested, by reputable overnight delivery service, or delivered personally, to the
principal office of the City and the Developer as follows:

City: City of Vacaville
650 Merchant Street
Vacaville, CA 95688
Attn: City Manager

Developer: Petaluma Ecumenical Properties
951 Petaluma Boulevard South
Petaluma, CA 94952
Attn: Executive Director

Such written notices, demands and communications may be sent in the same manner to such
other addresses as the affected Party may from time to time designate by mail as provided in this
Section.

Section 12.2 Non-Liability of City Officials, Employees and Agents. No member,
official, employee or agent of the City shall be personally liable to the Developer, or any
successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 12.3 Forced Delay. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather (provided that such claim is documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had a material adverse impact on the Party's ability to satisfy its obligation hereunder); inability to secure necessary labor, materials or tools; acts of the other Party; acts or failure to act of any public or governmental agency or entity (other than the acts or failure to act of the City); or any other causes (other than Developer's inability to obtain financing for the Development) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the date the Party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other Party within ten (10) days after receipt of the notice. Times of performance under this Agreement may also be extended in writing by the City and the Developer. In no event shall the cumulative delays exceed one hundred eighty (180) days, unless otherwise agree to by the Parties in writing.

Section 12.4 Inspection of Books and Records. Upon request, the Developer shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of the Developer necessary to determine Developer's compliance with the terms of this Agreement.

Section 12.5 Provision Not Merged with City Grant Deed. None of the provisions of this Agreement are intended to or shall be merged by the City Grant Deed transferring title to any real property which is the subject of this Agreement from City to Developer or any successor in interest, and any such grant deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 12.6 Title of Parts and Sections. Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 12.7 Indemnification. The Developer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its council members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of: (a) the Developer's performance or non-performance under this Agreement, or any City Document, including, but not limited to the failure, or alleged failure to comply with any applicable prevailing wage requirements, except as directly caused by the City's willful misconduct or gross negligence; (b) acts or omissions of Developer or any of Developer's contractors, subcontractors, or persons claiming under any of the aforesaid; (c) the Developer's ownership, construction, use and operation of the Development
(including, but not limited to, any claims related to fair housing laws or accessibility laws); (d) the City's granting of any Applicable Land Use Approvals, or the City's approval of this Agreement, except as directly caused by the City's willful misconduct or gross negligence; or (e) the Developer's breach of this Agreement. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 12.8 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 12.9 No Brokers. Each Party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the Party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified Party's choice, and hold the indemnified Party harmless from all expense, loss, damage and claims, including the indemnified Party's attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 12.10 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 12.11 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of the County of Solano.

Section 12.12 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no Transfer of any interest by any of the Parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. However, on the termination of this Agreement, such covenants and restrictions shall expire. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the City expressly releases the Property from the requirements of this Agreement.

Section 12.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.
Section 12.14 **Time of the Essence.** In all matters under this Agreement, the Parties agree that time is of the essence.

Section 12.15 **Action by the City.** Except as may be otherwise specifically provided in this Agreement or another City Document, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under this Agreement or another City Document, including, but not limited to, any request by the Developer to extend a date set forth in the Schedule of Performance, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing to the Developer by the City, without further approval by the City Council. Any such action shall be in writing. The Developer acknowledges that nothing in this Agreement (including any approval by the City Manager in accordance with this Agreement) shall limit, waive, or otherwise impair the authority and discretion of: (a) the City Council's discretion in connection with CEQA (as more particularly set forth in Article 3, above); (b) the City's Planning Department, in connection with the review and approval of the proposed construction plans for the Development (or any change to such plans), or any use, or proposed use, of the Property; (c) the City's issuance of a building permit; or (d) any other office or department of the City acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Development.

Section 12.16 **Representations and Warranties of the Developer.** The Developer hereby represents and warrants to the City as follows:

(a) **Organization.** The Developer is a validly existing California nonprofit public benefit corporation, and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) **Authority of Developer.** The Developer has full power and authority to execute and deliver this Agreement, and the other City Documents to be executed and delivered pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) **Authority of Persons Executing Documents.** This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Developer, and all actions required under the Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) **Valid Binding Agreements.** This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer enforceable against it in accordance with their respective terms.
(e) **No Breach of Law or Agreement.** Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.

(f) **Compliance with Laws; Consents and Approvals.** The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) **Pending Proceedings.** The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to construct the Development.

(h) **Title to Property.** Upon the recordation of the City Grant Deed, the Developer will have good and marketable title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the City, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the City or approved in writing by the City.

(i) **Financial Statements.** The financial statements of the Developer and other financial data and information furnished by the Developer to the City fairly present the information contained therein. As of the Effective Date, there has not been any adverse, material change in the financial condition of the Developer from that shown by such financial statements and other data and information.

(j) **Sufficient Funds.** Upon the Developer's acquisition of the Property, the Developer holds sufficient funds or binding commitments for sufficient funds to purchase the Property, and complete the construction of the Development in accordance with this Agreement.
Section 12.17 Complete Understanding of the Parties. This Agreement and the attached exhibits (and, to the extent applicable, the City Documents) constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party (including but not limited to Civil Code Section 1654 as may be amended from time to time) shall not apply to the interpretation of this Agreement.

Section 12.18 Operating Memoranda; Implementation Agreements. The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time, the Parties find that refinements or adjustments are desirable, such refinements or adjustments shall be accomplished through operating memoranda or implementation agreements approved by the Parties which, after execution shall be attached to this Agreement as addenda and become a part hereof.

Operating memoranda or implementation agreements may be executed on the City's behalf by the City Manager, or his or her designee. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Any significant modification to the terms of performance under this Agreement, including but not limited to amendments or modifications to the City Loan, shall be processed as an amendment of this Agreement in accordance with Section 12.19 and must be approved by the City Council in accordance with applicable law.

Section 12.19 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties, following approval by the City Council, in accordance with applicable law.

Section 12.20 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Remainder of Page Left Intentionally Blank
IN WITNESS WHEREOF, the City and the Developer have executed this Agreement on or as of the Effective Date.

DEVELOPER:

PETALUMA ECUMENICAL PROPERTIES, a California nonprofit public benefit corporation

By: ________________________________
Name: Mary Rompe
Its: Executive Director

NOTE: Developer must initial Section 3.3 and Section 4.6

Signatures continue on following page
CITY:

CITY OF VACAVILLE, a municipal corporation

By: ____________________________________________
    Jeremy Craig
    City Manager

APPROVED AS TO FORM:

GOLDFARB & LIPMAN LLP

By: ________________________________
    Special Counsel to the
    City of Vacaville
EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Vacaville, County of Solano, State of California, described as follows:
EXCEPTING THEREFROM A PORTION OF LAND CONVEYED TO CITY OF VACAVILLE, A MUNICIPAL CORPORATION FOR RIGHT OF WAY AS DESCRIBED IN GRANT DEED RECORDED ON JULY 26, 2006 AS INSTRUMENT NO. 2006-93990 OF OFFICIAL RECORDS.
APN: 0131-020-110
# SOURCES OF FUNDS

## SOURCES OF FUNDS - PERMANENT

<table>
<thead>
<tr>
<th>AMOUNT</th>
<th>TOTAL</th>
<th>OID or AFR</th>
<th>INTEREST COST</th>
<th>INTEREST RATE</th>
<th>TERM (Yr)</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank Permanent Loan</td>
<td>991,000</td>
<td>6.284%</td>
<td>15</td>
<td>15 Yr Fixed; 15 Yr Amort.</td>
<td>Cushion: 2.000%</td>
<td></td>
</tr>
<tr>
<td>City of Vacaville</td>
<td>500,000</td>
<td>1.000%</td>
<td>55</td>
<td>Per Unit: 8,333</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal Home Loan Bank - AHP</td>
<td>885,000</td>
<td>0.000%</td>
<td>55</td>
<td>Per Unit: 14,750</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HCD - VHHP</td>
<td>10,000,000</td>
<td>1.788%</td>
<td>55</td>
<td>Per Unit: 166,667 ※Mandatory annual interest: 0.42%※</td>
<td></td>
<td></td>
</tr>
<tr>
<td>City Acquisition Loan</td>
<td>1,320,000</td>
<td>0.000%</td>
<td>55</td>
<td>※Percent of Unadjusted Eligible Basis: 0.00%※</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deferred Developer Fee</td>
<td>0</td>
<td>0.000%</td>
<td>55</td>
<td>※Dev Fee net of defer/GP Cap/Dev Cor: 2,139,481※</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Partner</td>
<td>301,170</td>
<td>0.000%</td>
<td>55</td>
<td>※% ownership: Net Equity Pricing: 0.92 ※</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limited Partners</td>
<td>7,464,923</td>
<td>0.000%</td>
<td>55</td>
<td>※Net Equity Pricing: 0.92 ※</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL SOURCES</strong></td>
<td><strong>21,466,760</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Surplus/(Shortfall)**: 0

**Net TDC**: 21,359,760

**Net LP Equity**: 7,357,923

## SOURCES OF FUNDS - CONSTRUCTION

<table>
<thead>
<tr>
<th>AMOUNT</th>
<th>INT RATE</th>
<th>TERM (Mo.)</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank Construction Loan</td>
<td>14,883,000</td>
<td>4.523% 22</td>
<td>50% Test: 74.46% ※See page 4-A※</td>
</tr>
<tr>
<td>City of Vacaville</td>
<td>500,000</td>
<td>1.000% 22</td>
<td>See page 1-A - right column</td>
</tr>
<tr>
<td>Federal Home Loan Bank - AHP</td>
<td>885,000</td>
<td>0.000% 22</td>
<td>See page 1-A - right column</td>
</tr>
<tr>
<td>City Acquisition Loan</td>
<td>1,320,000</td>
<td>0.000% 22</td>
<td>See page 1-A - right column</td>
</tr>
<tr>
<td>Deferred Developer Fee</td>
<td>0</td>
<td>0.000%</td>
<td>※% of total pay-in: 15.00%※</td>
</tr>
<tr>
<td>General Partner</td>
<td>301,170</td>
<td>0.000%</td>
<td>※Devel/Construction: 2,453,257※</td>
</tr>
<tr>
<td>Limited Partners</td>
<td>7,464,923</td>
<td>0.000%</td>
<td>※Devel/Construction: 2,453,257※</td>
</tr>
<tr>
<td><strong>TOTAL SOURCES</strong></td>
<td><strong>21,466,935</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Surplus/(Shortfall)**: 175

**Net TDC**: 21,359,935

**Net LP Equity**: 1,012,841

## DEVELOPMENT SCHEDULE

<table>
<thead>
<tr>
<th>Stage</th>
<th>Start Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Begin Construction</td>
<td>9/1/17</td>
</tr>
<tr>
<td>Const. Complete</td>
<td>11/1/17</td>
</tr>
<tr>
<td>Begin Lease Up</td>
<td>11/1/18</td>
</tr>
<tr>
<td>100% Occupancy</td>
<td>3/1/19</td>
</tr>
<tr>
<td>Perm Conversion</td>
<td>7/1/19</td>
</tr>
</tbody>
</table>
EXHIBIT C
FORM OF CITY GRANT DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Vacaville
650 Merchant Street
Vacaville, CA 95688
Attention: City Manager

No fee for recording pursuant to
Government Code Section 27383

GRANT DEED
(220 Aegean Way)

For valuable consideration, the receipt of which is hereby acknowledged, the City of Vacaville, a municipal corporation (the "Grantor"), hereby grants to ___________________, L.P., a limited partnership (the "Grantee"), the real property (the "Property") described in Exhibit A attached hereto and incorporated in this grant deed (this "Grant Deed") by this reference.

1. The Property is conveyed subject to the Disposition, Development, and Loan Agreement dated as of ______________, 2017, by and between the Grantor and Petaluma Ecumenical Properties, a California nonprofit public benefit corporation ("PEP"), as assigned by PEP to the Grantee pursuant to that certain Assignment and Assumption Agreement dated on, or about, the date of this Grant Deed (as amended, or implemented, from time to time, the "Agreement" or the "DDL A"). Capitalized terms used, but not defined, in this Grant Deed shall have the meaning set forth in the DDLA.

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that the Grantee and such successors and assigns shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the improvements required pursuant to the DDLA (the "Improvements"), and that such construction shall be commenced and completed within the times provided in the DDLA.

Promptly after completion of the Improvements on the Property in accordance with the provisions of the DDLA, the Grantor will furnish the Grantee with an appropriate instrument so certifying (a "Certificate of Completion"). Such Certificate of Completion by the Grantor shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the DDLA and in this Grant Deed with respect to the obligations of the Grantee and its successors and assigns to construct the Improvements and the dates for the beginning and completion of such construction.
3. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall devote the Property only to the uses specified in the DDLA.

4. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall operate and maintain the Property and Improvements thereon in compliance with all requirements for operation and maintenance set forth in the DDLA.

5. The Grantee covenants and agrees, for itself and its successors and assigns that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sexual orientation, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property and the Improvements thereon.

All deeds, leases or contracts made relative to the Property, Improvements thereon or any part thereof, shall contain or be subject to substantially the following non-discrimination clauses:

a. In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

b. In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns,
and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

c. In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

6. The Grantee represents and agrees that the Property will be used for the purposes of timely redevelopment as set forth in the DDLA and not for speculation in landholding. The Grantee further recognizes that in view of the following factors, the qualifications of the Grantee are of particular concern to the community and the Grantor:

a. The importance of the redevelopment of the Property to the general welfare of the community; and
b. The fact that a change in ownership or control of the owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Grantee or the degree thereof is for practical purposes a transfer or disposition of the Property.

The Grantee further recognizes that it is because of such qualifications and identity that the Grantor has entered into the DDLA and has conveyed the Property to the Grantee.

For the reasons stated above, the Grantee covenants, for itself and its successors and assigns, that there shall be no sale, transfer, assignment, conveyance, lease, pledge or encumbrance of the DDLA, or the Property and the Improvements thereon or any part thereof, or of other ownership interest in the Grantee, in violation of the DDLA.

No voluntary or involuntary successor in interest of the Grantee shall acquire any rights or powers under this Grant Deed or the DDLA except as expressly set forth in this Grant Deed or the DDLA.

7. The covenants contained in this Grant Deed shall remain in effect for the period set forth in the DDLA.

8. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust, or other financing or security instrument permitted by the DDLA. However, any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale, or otherwise.

9. The covenants contained in this Grant Deed shall be, without regard to technical classification or designation, legal or otherwise specifically provided in this Grant Deed, to the fullest extent permitted by law and equity, binding for the benefit and in favor of and enforceable by the Grantor, its successor and assigns, and any successor in interest to the Property or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and such aforementioned parties shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other property proceedings to enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors, and such aforementioned parties.

10. The Grantor shall have the right, at its option, to reenter and take possession of the Property, or any portion thereof, with all Improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, if the DDLA is terminated pursuant to Section 9.4 of the DDLA prior to recordation of a Certificate of Completion. Upon revesting in the Grantor of title to the
Property, the Grantor shall promptly use its best efforts to resell the Property consistent with its obligations under state law. Upon sale the proceeds shall be applied as follows:

(a) First, to reimburse the Grantor, for any reasonable costs it incurs in managing or selling the Property, or in connection with the completion of the construction of the Improvements, including but not limited to amounts to discharge, or to prevent liens or encumbrances arising from any acts or omissions of Grantee;

(b) Second, to the Grantee in the amount of the reasonable costs expended by Grantee in undertaking the construction of the Improvements on the Property; and

(c) Any balance to be retained by the Grantor.

Such right to reenter, repossess and revest shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(a) Any mortgage, deed of trust or other Security Financing Interest permitted by the DDLA; and

(b) Any rights or interest provided in the DDLA for the protection of the holder of such mortgages, deeds of trust or other Security Financing Interests.

The Grantor shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Section, including also the right to execute and record or file with the Recorder of the County of Solano a written declaration of the termination of all rights and title of the Grantee, and its successors in interest and assigns, in the Property, and the revesting of title thereto in the Grantor. Any delay by the Grantor in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 10 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that Grantor should not be constrained so as to avoid the risk of being deprived of or limited to the exercise of the remedy provided in this Section because of concepts of waiver, laches, or others), nor shall any waiver in fact made by the Grantor with respect to any specific default by the Grantee, its successors and assigns, be considered or treated as a waiver of the rights of the Grantor with respect to any other defaults by the Grantee, its successors and assigns, or with respect to the particular default except to the extent specifically waived. The Grantor's interest in the Property, as set forth in this Section, shall be a "power of termination" as defined in California Civil Code Section 885.010.

11. In addition, as set forth in Section 10.2 of the DDLA, the Grantor shall have the additional right at its option to repurchase, reenter and take possession of the Property, or any portion thereof owned by the Grantee for which a Certificate of Completion has not been issued, with all improvements thereon, if after conveyance of title to the Property, and prior to the issuance of the Certificate of Completion for the Improvements, there is a Developer Event of Default pursuant to Section 9.4 of the DDLA with respect to the construction of the Improvements or portion thereof.
12. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Property shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Grant Deed or to subject the Property to additional covenants, easements, or other restrictions. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and not to include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property.

13. As more particularly set forth in the DDLA, the Grantee agrees to use the Property for the specific purpose of developing and operating the Improvements as set forth in the DDLA and the Applicable Land Use Approvals.

In accordance with Section 7.3 of the DDLA, in the event that there arises at any time prior to the expiration of the Term a condition in contravention of these maintenance and use standards, then the Grantor shall give written notice to the Grantee of the deficiency. If the Grantee (or its limited partners) fails to cure the deficiency within the time period set forth in Section 7.3 of the DDLA, then the Grantor shall have the irrevocable right to enter the Property and perform all acts necessary to cure the deficiency or to take other recourse at law or in equity the Grantor may then have and to receive from Grantee the Grantor's cost in taking such action. The Parties further mutually agree that the rights conferred upon the Grantor expressly include the right to enforce or establish a lien or other such encumbrance against the Property.

14. In the event there is a conflict between the provisions of this Grant Deed and the DDLA, it is the intent of the parties hereto and their successors in interest that the DDLA shall control.

15. This Grant Deed may be executed and recorded in two or more counterparts, each of which shall be considered for all purposes a fully binding agreement between the parties.

Remainder of Page Left Intentionally Blank
IN WITNESS WHEREOF, the parties hereto have executed this Grant Deed on __________________, 20__. 

GRANTOR:

CITY OF VACAVILLE, a municipal corporation

By: ____________________________________________
    Emily Cantu
    Director of Housing Services

APPROVED AS TO FORM:

GOLDFARB & LIPMAN LLP

By: ____________________________________________
    Special Counsel to the City

*Signatures continue on the following page*
GRANTEE:

_________________________________________, L.P.,
a California limited partnership

By: ______________________________________

Name: ____________________________________

Its: ______________________________________

ALL SIGNATURES MUST BE NOTARIZED
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  )
 )
COUNTY OF __________________ )

On ____________________, before me, ___________________________, Notary Public, personally appeared ______________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: ____________________________________

Notary Public
STATE OF CALIFORNIA )
) )
COUNTY OF __________________ )

On ____________________, before me, __________________________, Notary Public,
personally appeared ______________________________________, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____________________________________
Name: __________________________________________________________________
Notary Public
EXHIBIT A
(Property Description)

The land referred to herein is situated in the State of California, County of Solano, City of Vacaville, and is described as follows:


APN: 0131-020-110
EXHIBIT D-1

FORM OF PREDEVELOPMENT COMPONENT NOTE

PROMISSORY NOTE
(Predevelopment Component)

$100,000.00  Vacaville, California
________________________, 2017

FOR VALUE RECEIVED, Petaluma Ecumenical Properties, a California nonprofit public benefit corporation ("Borrower" or the "Developer"), promises to pay to the City of Vacaville, a municipal corporation (the "City"), or order, the principal sum of One Hundred Thousand Dollars ($100,000) (the "Loan" or the "City Loan"), disbursed by the City to pursuant to that certain Disposition, Development and Loan Agreement dated as of ______________, 2017, by and between the City and the Developer (the "DDLA"), plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note (the "Note") evidences the Borrower's obligation to pay the City the principal amount of One Hundred Thousand Dollars ($100,000), for the funds loaned to the Borrower by City to finance the predevelopment of the Property pursuant to the DDLA. This Note is referred to as the "Predevelopment Component Note" in the DDLA, and the City Loan evidenced by this Note is referred to as the "Predevelopment Component" in the DDLA. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA.

2. Interest. The outstanding principal balance of this Note shall bear interest at the rate of three percent (3%) per annum; provided, however, if a Developer Event of Default occurs, interest on the principal balance shall begin to accrue, as of the date of the Developer Event of Default (following expiration of applicable notice and cure periods), and continuing until such time as the Loan funds are repaid in full or the Developer Event of Default is cured, at the default rate of ten percent (10%) compounded annually, or the highest rate permitted by law (whichever is lower).

3. Term and Repayment Requirements.

(a) The term of this Note (the "Term") shall commence on the date set forth above and shall expire on the earliest of: (i) the date of a Developer Event of Default, or (ii) the expiration or termination of the DDLA.

(b) Subject to the provisions of subsection (e) below, all principal and interest, if any, on the Loan shall, at the option of the City, be due and payable upon the earliest of: (i) a Transfer other than a Transfer permitted or approved by the City as provided in the DDLA; (ii) the occurrence of a Developer Event of Default for which the City exercises its right to cause the
City Loan indebtedness to become immediately due and payable; or (iii) the expiration of the Term specified in subsection (a) above.

(c) Notwithstanding any provision of this Note to the contrary, in the event the Borrower acquires the Property, in accordance with the DDLA, then this Note shall be marked as "cancelled" by the City and returned to the Borrower and the Loan evidenced by this Note shall thereafter be evidenced by the Construction Component Note.

(d) Notwithstanding any provision of this Note to the contrary, the City Loan shall be forgiven in the event the DDLA is terminated in accordance with Section 9.2 of the DDLA.

(e) The Borrower shall have the right to prepay the City Loan at any time without penalty or additional charge.

4. **No Assumption.** This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the City, or as set forth in the DDLA.

5. **Security.** This Note is secured by the Predevelopment Component Assignment.

6. **Terms of Payment.**

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to the City at the following address: City of Vacaville, 650 Merchant Street, Vacaville, CA 95688, Attention: Director of Housing, or to such other place as the City may from time to time designate in writing.

(c) All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees of the City, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the City may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

7. **Default.**
(a) Any of the following shall constitute an "Event of Default" or "Developer Event of Default" under this Note:

   (i) Any failure to pay, in full, any payment required under this Note when due following written notice by the City of such failure and ten (10) days opportunity to cure;

   (ii) Any failure in the performance by the Borrower of any other term, condition, provision or covenant set forth in the City Documents subject to the applicable notice and cure period set forth therein; and

(b) Upon the occurrence of such an Event of Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the DDLA shall at the option of the City become immediately due and payable upon written notice by the City to the Borrower without further demand.

(c) The failure to exercise the remedy set forth in subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the City hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the City, except as and to the extent otherwise provided by law.

8. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the City may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the City with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.
9. **Miscellaneous Provisions**.

(a) All notices to the City or the Borrower shall be given in the manner and at the addresses set forth in Section 12.1 of the DDLA, or to such addresses as the City and the Borrower may hereinafter designate.

(b) This Note may not be changed orally, but only by an agreement in writing signed by the Party against whom enforcement of any waiver, change, modification or discharge is sought.

(c) This Note shall be governed by and construed in accordance with the laws of the State of California.

(d) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(e) This Note, together with the DDLA, the Predevelopment Component Assignment, and any other applicable City Document, contain the entire agreement between the Parties as to the Loan.

*Signatures on Following Page*
BORROWER:

PETALUMA ECUMENICAL PROPERTIES, a California nonprofit public benefit corporation

By: _________________________________

Name: _________________________________

Its: _________________________________
EXHIBIT D-2
FORM OF ACQUISITION COMPONENT NOTE

PROMISSORY NOTE
(Acquisition Component)

$1,320,000.00
Vacaville, California
_________________, 201_

FOR VALUE RECEIVED, _________________________, a California limited partnership ("Borrower" or the "Developer"), promises to pay to the City of Vacaville, a municipal corporation (the "City"), or order, the principal sum of One Million Three Hundred Twenty Thousand Dollars ($1,320,000) (the "Loan" or the "City Loan"), disbursed by the City to pursuant to that certain Disposition, Development and Loan Agreement dated as of __________, 2017, by and between the City and Petaluma Ecumenical Properties, a California nonprofit public benefit corporation, as assigned to the Developer, as may be amended from time to time (collectively, the "DDLA"), plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note (the "Note") evidences the Borrower's obligation to pay the City the principal amount of One Million Three Hundred Twenty Thousand Dollars ($1,320,000), for the funds loaned to the Borrower by City to finance the acquisition of the Property pursuant to the DDLA. This Note is referred to in the DDLA as the "Acquisition Component Note", and the City Loan evidenced by this Note is referred to as the "Acquisition Component" in the DDLA. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA.

2. Interest. The outstanding principal balance of this Note shall not bear interest; provided, however, if a Developer Event of Default occurs, interest on the principal balance shall begin to accrue, as of the date of the Developer Event of Default (following expiration of applicable notice and cure periods), and continuing until such time as the Loan funds are repaid in full or the Developer Event of Default is cured, at the default rate of ten percent (10%) compounded annually, or the highest rate permitted by law (whichever is lower).

3. Term and Repayment Requirements.

(a) The term of this Note (the "Term") shall commence on the date set forth above and shall expire on the earliest of: (i) December 31, 2074, (ii) the date of a Developer Event of Default, or (iii) the expiration or termination of the DDLA.

(b) Subject to the provisions of subsection (d) below, all principal and interest, if any, on the Loan shall, at the option of the City, be due and payable upon the earliest of: (i) a Transfer other than a Transfer permitted or approved by the City as provided in the DDLA; (ii) the occurrence of a Developer Event of Default for which the City exercises its right to cause the City Loan indebtedness to become immediately due and payable; or (iii) the expiration of the Term specified in subsection (a) above.
(c) Except as otherwise set forth in this Note, no payments are due under this Note during the Term.

(d) The Borrower shall have the right to prepay the City Loan at any time without penalty or additional charge.

4. No Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the City, or as set forth in the DDLA.

5. Security. This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing (collectively, the "Deed of Trust") of even date herewith, wherein the Borrower is Trustor and the City is the Beneficiary, recorded against the Property.

6. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to the City at the following address: City of Vacaville, 650 Merchant Street, Vacaville, CA 95688, Attention: Director of Housing, or to such other place as the City may from time to time designate in writing.

(c) All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees of the City, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the City may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

7. Default.

(a) Any of the following shall constitute an "Event of Default" or "Developer Event of Default" under this Note:

(i) Any failure to pay, in full, any payment required under this Note when due following written notice by the City of such failure and ten (10) days opportunity to cure;
(ii) Any failure in the performance by the Borrower of any other term, condition, provision or covenant set forth in the City Documents subject to the applicable notice and cure period set forth therein; and

(b) Upon the occurrence of such an Event of Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of the City become immediately due and payable upon written notice by the City to the Borrower without further demand.

(c) The failure to exercise the remedy set forth in subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the City hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the City, except as and to the extent otherwise provided by law.

8. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the City may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the City with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.


(a) All notices to the City or the Borrower shall be given in the manner and at the addresses set forth in Section 12.1 of the DDLA, or to such addresses as the City and the Borrower may hereinafter designate.

(b) This Note may not be changed orally, but only by an agreement in writing signed by the Party against whom enforcement of any waiver, change, modification or discharge is sought.
(c) This Note shall be governed by and construed in accordance with the laws of the State of California.

(d) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(e) This Note, together with the DDLA, the Deed of Trust, and any other applicable City Document, contain the entire agreement between the Parties as to the Loan.

(f) This Note is subject to the non-recourse provision, and the limitations thereto, as set forth in Section 5.8 of the DDLA.

Signatures on Following Page
BORROWER:
_______________________, L.P., a California limited partnership

By: ____________________________

Name: ____________________________

Its: ____________________________
EXHIBIT D-3
FORM OF CONSTRUCTION COMPONENT NOTE

PROMISSORY NOTE (Construction Component)

$500,000.00

Vacaville, California

FOR VALUE RECEIVED, _________________________, a California limited partnership ("Borrower" or the "Developer"), promises to pay to the City of Vacaville, a municipal corporation (the "City"), or order, the principal sum of Five Hundred Thousand Dollars ($500,000) (the "Loan" or the "City Loan"), disbursed by the City to pursuant to that certain Disposition, Development and Loan Agreement dated as of ______________, 2017, by and between the City and Petaluma Ecumenical Properties, a California nonprofit public benefit corporation, as assigned to the Developer, as may be amended from time to time (collectively, the "DDL A"), plus interest thereon pursuant to Section 2 below.

1. **Borrower's Obligation.** This promissory note (the "Note") evidences the Borrower's obligation to pay the City the principal amount of Five Hundred Thousand Dollars ($500,000), for the funds loaned to the Borrower by City to finance the construction of the Property pursuant to the DDLA. This Note is referred to in the DDLA as the Construction Component Note, and the City Loan evidenced by this Note is referred to as the "Construction Component" in the DDLA. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA.

2. **Interest.** The outstanding principal balance of this Note shall bear interest at the rate of three percent (3%) per annum; provided, however, if a Developer Event of Default occurs, interest on the principal balance shall begin to accrue, as of the date of the Developer Event of Default (following expiration of applicable notice and cure periods), and continuing until such time as the Loan funds are repaid in full or the Developer Event of Default is cured, at the default rate of ten percent (10%) compounded annually, or the highest rate permitted by law (whichever is lower).

3. **Term and Repayment Requirements.**

   (a) The term of this Note (the "Term") shall commence on the date set forth above and shall expire on the earliest of: (i) December 31, 2074, (ii) the date of a Developer Event of Default, or (iii) the expiration or termination of the DDLA.

   (b) Subject to the provisions of subsection (d) below, all principal and interest, if any, on the Loan shall, at the option of the City, be due and payable upon the earliest of: (i) a Transfer other than a Transfer permitted or approved by the City as provided in the DDLA; (ii) the occurrence of a Developer Event of Default for which the City exercises its right
to cause the City Loan indebtedness to become immediately due and payable; or (iii) the expiration of the Term specified in subsection (a) above.

(c) The Borrower shall make annual repayments of the City Loan in an amount equal to one hundred percent (100%) of Residual Receipts, in accordance with Article 5 of the DDLA.

(d) The Borrower shall have the right to prepay the City Loan at any time without penalty or additional charge.

4. No Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the City, or as set forth in the DDLA.

5. Security. This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing (collectively, the "Deed of Trust") of even date herewith, wherein the Borrower is Trustor and the City is the Beneficiary, recorded against the Property.

6. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to the City at the following address: City of Vacaville, 650 Merchant Street, Vacaville, CA 95688, Attention: Director of Housing, or to such other place as the City may from time to time designate in writing.

(c) All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney’s fees of the City, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the City may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

7. Default.

(a) Any of the following shall constitute an "Event of Default" or "Developer Event of Default" under this Note:
(i) Any failure to pay, in full, any payment required under this Note when due following written notice by the City of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by the Borrower of any other term, condition, provision or covenant set forth in the City Documents subject to the applicable notice and cure period set forth therein; and

(b) Upon the occurrence of such an Event of Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of the City become immediately due and payable upon written notice by the City to the Borrower without further demand.

(c) The failure to exercise the remedy set forth in subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the City hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the City, except as and to the extent otherwise provided by law.

8. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the City may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the City with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.


(a) All notices to the City or the Borrower shall be given in the manner and at the addresses set forth in Section 12.1 of the DDLA, or to such addresses as the City and the Borrower may hereinafter designate.
(b) This Note may not be changed orally, but only by an agreement in writing signed by the Party against whom enforcement of any waiver, change, modification or discharge is sought.

(c) This Note shall be governed by and construed in accordance with the laws of the State of California.

(d) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(e) This Note, together with the DDLA, the Deed of Trust, and any other applicable City Document, contain the entire agreement between the Parties as to the Loan.

(f) This Note is subject to the non-recourse provision, and the limitations thereto, as set forth in Section 5.8 of the DDLA.

Signatures on Following Page
BORROWER:
_______________________, L.P., a California
limited partnership

By: ____________________________
Name: ____________________________
Its: ____________________________
EXHIBIT E

FORM OF CITY DEED OF TRUST

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Vacaville
Department of Housing Services
40 Eldridge Avenue, Suite 2
Vacaville, CA 95688
Attn: Director of Housing Services

No fee for recording pursuant to Government Code Section 27383

CONSTRUCTION DEED OF TRUST WITH ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT
(220 Aegean Way)

THIS CONSTRUCTION DEED OF TRUST WITH ASSIGNMENT OF RENTS AND SECURITY AGREEMENT ("Deed of Trust") is made as of _____________, 20__, by and among ____________________, a California limited partnership ("Trustor"), ____________________, Title Company, a California corporation ("Trustee"), and the City of Vacaville, a municipal corporation ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in the City of Vacaville, County of Solano, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property;
TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Paragraph 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the "Security." To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING:
(a) Payment of just indebtedness of Trustor to Beneficiary as set forth in the Note (defined in Article 1 below) until paid or cancelled. Said principal and other payments shall be due and payable as provided in the Note. Said Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced; and

(b) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

(c) Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents (defined in Section 1.1 below).

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

ARTICLE 1
DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

Section 1.1 The term "Loan Documents" means this Deed of Trust, the Loan Agreement, the Note, the Regulatory Agreement, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

Section 1.2 The term "DDL A" or "Loan Agreement" means that certain Disposition, Development, and Loan Agreement entered into as of _______________, 2017, by and between the Trustor and Petaluma Ecumenical Properties, a California nonprofit public benefit corporation ("PEP"), as assigned by PEP to the Trustor pursuant to that certain Assignment and Assumption Agreement dated on, or about, the date of this Deed of Trust.

Section 1.3 The term "Note" means, collectively, (i) the promissory note in the principal amount of One Million Three Hundred Twenty Thousand Dollars ($1,320,000), which is referred to as the "Acquisition Component Note" in the DDL A, and (ii) the promissory note in the amount of Five Hundred Thousand Dollars ($500,000), which is referred to as the "Construction Component Note" in the DDL A, each dated of even date herewith executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Deed of Trust. (A copy of the Note is on file with the Beneficiary and terms and provisions of the Note are incorporated herein by reference.)

Section 1.4 The term "Principal" means the amount required to be paid under the Note.
Section 1.5 The term "Regulatory Agreement" means, collectively, any regulatory agreement or declaration of restrictive covenant, or similar use restriction, by and between the Beneficiary and the Trustor affecting, or otherwise encumbering, some, or all, of the Property.

ARTICLE 2
MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

The Trustor agrees that at all times prior to full payment of the sum owed under the Note, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition (reasonable wear and tear excepted). The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor, upon written request of the Beneficiary, shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of Solano County, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

Section 2.2 Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law and as approved, in writing, by Beneficiary.
Section 2.3 Assignment of Rents.

As part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the sums secured by this Deed of Trust with the balance, so long as no such breach has occurred, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 2.3 as the same becomes due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 2.3, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenant that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

Upon Trustor's breach of any covenant or agreement of Trustor in the Loan Documents, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on
such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this Deed of Trust. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section 2.3.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become indebtedness of Trustor to Beneficiary secured by this Deed of Trust pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in Section 3.3.

Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Deed of Trust ceases to secure indebtedness held by Beneficiary.

ARTICLE 3
TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in
installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, shall become an additional obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all other obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to the Beneficiary's receipt of the entire Principal and all amounts secured by this Deed of Trust. Trustee is aware that California Civil Code Section 2955.5(a) provides as follows: No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

Section 3.3 Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Beneficiary, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of eight percent (8%) per annum or the maximum rate permitted by law.
ARTICLE 4
DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages.

All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or in any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property ("Funds") are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such reasonable conditions as the Beneficiary may impose for its disposition, and Beneficiary agrees to release Funds to Trustor to be used for the restoration of the Project so long as Beneficiary is reasonably satisfied that the proceeds of insurance, together with any additional proceeds made available by Trustor, are sufficient to restore the Project. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust.

ARTICLE 5
AGreements Affecting the Property; Further Assurances; Payment of Principal and Interest

Section 5.1 Other Agreements Affecting Property.

The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.
Section 5.3 Payment of the Principal.

The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code.

Section 5.5 Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with their terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security.

The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

Section 5.7 Inspection of the Security.

At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security. Such rights are in addition to any similar rights of the Beneficiary under the DDLA.

Section 5.8 Nondiscrimination.

The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that:

1. There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference
to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

ARTICLE 6
HAZARDOUS WASTE

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any applicable federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, or hazardous wastes, including without limitation, any substances defined as or included in the definition of "hazardous substances," hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily kept and used in and about multifamily residential property.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above hereinafter referred to a "Hazardous Materials Claims"); and (iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to the provisions of California Health and Safety Code Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor. Trustor shall indemnify and hold harmless Beneficiary and its boardmembers, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about
the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees.

Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgement, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Trustor knew or should have known of
the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the rate specified in the Note until paid, shall be added to the indebtedness secured by this Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

ARTICLE 7
EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default.

The following shall constitute an event of default (an "Event of Default" or a "Default") following the expiration of any applicable notice and cure periods: (1) failure to make any payment to be paid by Trustor under the Loan Documents; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination; or (3) failure to make any payment or perform any of Trustor's other covenants, agreements, or obligations under any other debt instruments or Regulatory Agreement secured by the Property, which default shall not be cured within the times and in the manner provided therein.

Section 7.2 Acceleration of Maturity.

If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and the unpaid Principal of the Note shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 7.3 The Beneficiary's Right to Enter and Take Possession.

If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or notice of default provided in accordance with applicable law (a "Notice of Default") hereunder or invalidate any act done in response to such Default or pursuant to such Notice of Default and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to
exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold in accordance with applicable law (the "Notice of Sale"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Solano County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

Section 7.4 Foreclosure By Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall the deliver the Notice of Sale to Trustee, and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the unpaid principal amount of the Note is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of such notice from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Sale and after applicable notice having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other amounts owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without
further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 7.5 Receiver.

If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 7.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. Beneficiary's expressed or implied consent to a breach by Trustor, or a waiver of any obligation of Trustor hereunder shall not be deemed or construed to be a consent to any subsequent breach, or further waiver, of such obligation or of any other obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (iv) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted
or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security.

The Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 7.9 Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Trustee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

Section 7.10 Waiver.

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, notice of interest on interest and late charges, and diligence in taking any action to collect any sums owing under the Note or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 8
MISCELLANEOUS

Section 8.1 Amendments.

This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven, that all obligations to be performed by the Trustee under the Loan Documents (including, but not limited to, the operation of the Property in accordance with, and for the entire term of, the Regulatory Agreement), and upon surrender of this Deed of Trust to Trustee for
cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3 Notices.

If at any time after the execution of this Deed of Trust it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally, by reputable overnight delivery service, or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and (1) if intended for Beneficiary shall be addressed to:

    City of Vacaville
    Department of Housing Services
    40 Eldridge Avenue, Suite 2
    Vacaville, CA  95688
    Attn: Director of Housing Services

and (2) if intended for Trustor shall be addressed to:

    ________________ , L.P.
    c/o Petaluma Ecumenical Properties
    951 Petaluma Boulevard South
    Petaluma, CA 94952
    Attn: Executive Director

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

Section 8.4 Successors and Joint Trustors.

Where an obligation is created herein binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor shall be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

Section 8.5 Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.
Section 8.6 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 8.7 Governing Law.

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 8.8 Gender and Number.

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 8.9 Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

Section 8.10 Actions.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 8.11 Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 8.12 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.
Section 8.13  Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

Section 8.14  Compliance with Internal Revenue Code Section 42.

Beneficiary acknowledges that Trustor intends to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the "Code"). As of the date hereof, Code Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Code Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or by instrument in lieu of foreclosure. In the event the extended use agreement is recorded against the Property, the Beneficiary agrees to comply with the provisions set forth in Code Section 42(h)(6)(E)(ii).

Remainder of Page Left Intentionally Blank
IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

_______________________, L.P.,
a California limited partnership

By: ____________________________

Name: ____________________________

Its: ____________________________
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )
COUNTY OF _________________ )

On ________________, before me, ___________________________, Notary Public, personally appeared ______________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: __________________________
Notary Public
EXHIBIT A
(Legal Description)

The land is situated in the City of Vacaville, County of Solano, State of California, and is described as follows:

Real property in the City of Vacaville, County of Solano, State of California, described as follows:


EXCEPTING THEREFROM A PORTION OF LAND CONVEYED TO CITY OF VACAVILLE, A MUNICIPAL CORPORATION FOR RIGHT OF WAY AS DESCRIBED IN GRANT DEED RECORDED ON JULY 26, 2006 AS INSTRUMENT NO. 2006-93990 OF OFFICIAL RECORDS.

APN: 0131-020-110
EXHIBIT F

SCHEDULE OF PERFORMANCE

This Schedule of Performance summarizes the schedule for various activities under the Disposition, Development, and Loan Agreement (the "Agreement" or the "DDA") to which this exhibit is attached. Times for performance set forth in this Schedule of Performance are subject to Section 12.3 of the DDA, and may be amended or otherwise revised in accordance with Section 12.18 and Section 12.19 of the DDA. The description of items in this Schedule of Performance is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the DDA to which such items relate. Section references herein to the DDA are intended merely as an aid in relating this Schedule of Performance to other provisions of the DDA and shall not be deemed to have any substantive effect.

Whenever this Schedule of Performance requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the City, within the time set forth herein. Prior to the time set forth for each particular submission, the Developer shall consult with City staff, informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

<table>
<thead>
<tr>
<th>Action</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Effective Date. The DDA is executed by the Parties.</td>
<td>March 29, 2017 (the &quot;Effective Date&quot;).</td>
</tr>
<tr>
<td>5. City Approval of the Construction Plans. The City shall either approve or disapprove of the Construction Plans. [DDA § 2.3]</td>
<td>No later than 30 days after the Developer submits construction plans (October 1, 2018).</td>
</tr>
<tr>
<td>Action</td>
<td>Date</td>
</tr>
<tr>
<td>---------------------------------------------------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>7. Management Agreement. The Developer shall submit the proposed management agreement and related property management documentation. [DDA § 2.4]</td>
<td>No later than September 30, 2019.</td>
</tr>
<tr>
<td>10. Construction Contract. The Developer shall submit the proposed construction contract to the City. [DDA § 2.7]</td>
<td>No later than March 1, 2019.</td>
</tr>
<tr>
<td>11. Construction Bonds. The Developer shall deliver the construction bonds, or other security. [DDA § 2.8]</td>
<td>No later than March 1, 2019.</td>
</tr>
<tr>
<td>12. Building Permit. The Developer shall obtain a building permit for the construction of the Development. [DDA § 2.7]</td>
<td>No later than the Closing.</td>
</tr>
<tr>
<td>13. Closing of all Supplemental Financing. The Developer shall close on all Supplemental Financing as set forth in the Financing Plan. [DDA § 2.5]</td>
<td>No later than the Closing.</td>
</tr>
<tr>
<td>14. Developer Insurance. The Developer shall provide the City all applicable insurance policies required by DDA. [DDA § 2.9]</td>
<td>No later than the Closing.</td>
</tr>
<tr>
<td>15. Closing. The closing for the purchase and sale of the City Parcel shall occur shall occur upon the satisfaction of the predisposition requirements in accordance with the DDA. [DDA § 4.4]</td>
<td>No later than April 30, 2020.</td>
</tr>
<tr>
<td>16. Commencement of Construction. The Developer shall commence the construction of the Improvements. [DDA § 6.3]</td>
<td>No later than thirty (30) days following the Closing, or May 31, 2020, whichever is earlier.</td>
</tr>
<tr>
<td>Action</td>
<td>Date</td>
</tr>
<tr>
<td>---------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>17. Completion of Construction. The Developer shall complete the construction of the Improvements. [DDA § 6.4]</td>
<td>No later than 16 months after the commencement of construction, or December 31, 2021, whichever is earlier.</td>
</tr>
</tbody>
</table>
EXHIBIT G

FORM OF MEMORANDUM OF DDLA

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Vacaville
650 Merchant Street
Vacaville, CA  95688
Attention: City Manager

No fee for recording pursuant
To Government Code Section 27383

MEMORANDUM OF
DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT
(220 Aegean Way)

THIS MEMORANDUM OF DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT (the "Memorandum of DDLA") is made as of ______________, 20___, by and between the City of Vacaville, a municipal corporation (the "City"), and __________________, L.P., a California limited partnership (the "Developer"), to confirm that the City and the Developer are parties to that certain Disposition, Development and Loan Agreement dated as of ______________, 2017, by and between the City and Petaluma Ecumenical Properties, a California nonprofit public benefit corporation ("PEP"), as assigned by PEP to the Developer pursuant to that certain Assignment and Assumption Agreement dated on, or about, the date of this Memorandum of DDLA, as amended, or implemented from time to time (collectively, the "DDLA"). The DDLA imposes certain conditions (including but not limited to, construction requirements, operating covenants, and transfer restrictions) on the real property described in Exhibit A attached hereto and incorporated herein. The DDLA is a public document and may be reviewed at the principal office of the City.

Remainder of Page Left Intentionally Blank
IN WITNESS WHEREOF, the parties have caused this Memorandum of DDLA to be duly executed as of the date first above written.

CITY:

CITY OF VACAVILLE, a municipal corporation

By: ___________________________________
    Emily Cantu, Director of Housing Services

APPROVED AS TO FORM:

GOLDFARB & LIPMAN LLP

By: ______________________
    Special Counsel to the City

Signatures continue of the following page
DEVELOPER:

_________________________, L.P., a California limited partnership

By: ____________________________

Name: ____________________________

Its: ____________________________

Signatures Must Be Notarized
EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Vacaville, County of Solano, State of California, described as follows:


EXCEPTING THEREFROM A PORTION OF LAND CONVEYED TO CITY OF VACAVILLE, A MUNICIPAL CORPORATION FOR RIGHT OF WAY AS DESCRIBED IN GRANT DEED RECORDED ON JULY 26, 2006 AS INSTRUMENT NO. 2006-93990 OF OFFICIAL RECORDS.

APN: 0131-020-110
EXHIBIT H

SCOPE OF DEVELOPMENT

Petaluma Ecumenical Properties (aka PEP Housing)-Exhibit H Project Summary
Petaluma Ecumenical Properties is proposing a 60-unit apartment complex affordable to the low and very low-income seniors in Vacaville. The 1.82 City owned vacant parcel will be acquired and developed into 59 one bedroom units and a two bedroom unit designated for the onsite property manager. The proposed development will also include common areas essential for our residents to gracefully age in place, such as a community room with full kitchen, computer stations, raised garden beds, a dog run, and Wellness Center. The Wellness Center will be designated for outside health services and activities for the residents. All common areas will be designed to be accessible by individuals with physical disabilities as well as all the units being ADA adaptable to meet the changing needs of the senior community. Green and sustainable material will be incorporated in the site design and building orientation. As a sponsor and developer, PEP Housing will conduct all predevelopment activities, construction management, and, once built, will also serve as the property management company, overseeing the day-to-day management, and the service coordination for the property
EXHIBIT I
FORM OF CITY REGULATORY AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Vacaville
650 Merchant Street
Vacaville, CA  95688
Attn:  City Manager

No fee document pursuant to
Government Code Section 27383

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(220 Aegean Way)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of ________________, 2017 (the "Effective Date"), by and between the City of Vacaville, a municipal corporation (the "City"), and ________________, L.P., a California limited partnership (the "Developer").

RECITALS

1. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

2. The City and the Developer have entered into the DDLA, pursuant to which the City has conveyed certain real property to the Developer, and provided the City Loan to the Developer. The Property owned by the Developer and subject to this Agreement is more particularly described in Exhibit A.

3. In accordance with the DDLA, the Developer shall use the proceeds of the City Loan, and other financing obtained by the Developer, for the development of Property.

4. The City has agreed to provide the City Loan to Developer on the condition that the Development be maintained and operated in accordance with California Health and Safety Sections 33334.2 et seq., and in accordance with additional restrictions concerning affordability, operation, and maintenance of the Improvements, as specified in this Agreement.
5. As a condition to the conveyance of the Property pursuant to the DDLA, and in consideration of receipt of the City Loan and repayment terms substantially below market rate loans, the Developer has further agreed to observe all the terms and conditions set forth below.

6. In order to ensure that the Property will be used and operated in accordance with these conditions and restrictions, the City and Developer desire to enter into this Agreement.

7. Pursuant to Article XXXIV, Section 1, of the California Constitution, this Agreement is not subject to Article XXXIV of the California Constitution.

THEREFORE, the City and Developer (each a "Party", and, collectively, the "Parties") hereby agree as follows.

ARTICLE 1.
DEFINITIONS

1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Actual Household Size" shall mean the actual number of persons in the applicable household.

(b) "Adjusted Income" shall mean the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, the City shall provide the Developer with a reasonably similar method of calculation of adjusted income as provided in said Section 6914.

(c) "Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

(d) "Annual Monitoring Payment" means the payment in the amount of Five Thousand Dollars ($5,000), as increased in accordance with Section 3.6.

(e) "Assumed Household Size" shall have the meaning set forth in Section 2.2.

(f) "City" shall mean the City of Vacaville, a municipal corporation.

(g) "City Loan" shall mean all funds loaned to Developer pursuant to the DDLA.

(h) "City Note" shall mean the promissory notes from the Developer to the City evidencing all or any part of the City Loan.

(i) "Code" shall mean the Internal Revenue Code of 1986, as amended, or any successor statute.
(j) "DDLA" shall mean that certain Disposition, Development, and Loan Agreement, dated as of ______________, 2017, by and between the City and PEP, as assigned to the Developer, and as may be amended or implemented from time to time.

(k) "Deed of Trust" shall mean the deed of trust in favor of the City recorded against the Property which secures repayment of the City Loan and performance of this Agreement.

(l) "Developer" shall mean ________________, L.P., a California limited partnership, and its successors and assigns as permitted by this Agreement.

(m) "Development" shall mean the Property and the Improvements.

(n) "Extremely Low Income Household" shall mean a household with an Adjusted Income which does not exceed the qualifying limits for extremely low income families as established and amended from time to time by HUD and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations, as published by HCD.

(o) "Extremely Low Income Rent" shall mean the maximum allowable rent for an Extremely Low Income Unit pursuant to Section 2.1 below.

(p) "Extremely Low Income Unit" shall mean any one of the Units which, pursuant to Section 2.1 below, are required to be occupied by Extremely Low Income Households.

(q) "HCD" shall mean the State of California Department of Housing and Community Development.

(r) "HUD" shall mean the U.S. Department of Housing and Urban Development.

(s) "Improvements" shall mean the improvements to be developed by the Developer on the Property, including the Units, and appurtenant landscaping and improvements.

(t) "Low Income Household" shall mean a household with an Adjusted Income that does not exceed the qualifying limits for lower income households, adjusted for Actual Household Size, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by the State of California Department of Housing and Community Development.

(u) "Low Income Rent" shall mean the maximum allowable rent for a Low Income Unit pursuant to Section 2.2 below.

(v) "Low Income Unit" shall mean any one of the Units which, pursuant to Section 2.1 below, are required to be occupied by Low Income Households.

(w) "Management Agent" shall mean the professional property management company retained by the Developer, in accordance with this Agreement and the DDLA, for the
day-to-day operation of the Development. PEP is hereby approved as the initial Management Agent.

(x) "Median Income" shall mean the median gross yearly income adjusted for Actual Household Size or Assumed Household Size, as specified herein, in the County of Solano, California, as published from time to time by HUD and HCD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the City shall provide the Developer with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD and HCD.

(y) "Official Records" means the official records of the County.

(z) "PEP" means Petaluma Ecumenical Properties, a California nonprofit public benefit corporation.

(aa) "Property" shall mean the real property described in Exhibit A attached hereto and incorporated herein.

(bb) "Rent" shall mean the total of monthly payments by the tenants of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Developer which are required of all tenants, other than security deposits; the cost of an adequate level of service for utilities paid by the Tenant (as established by the Housing Authority of the City of Vacaville), including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Developer, and paid by the Tenant.

(cc) "TCAC" means the California Tax Credit Allocation Committee, or any successor agency or department.

(dd) "TCAC Regulatory Agreement" shall mean the regulatory agreement to be entered into by and between the Developer and TCAC restricting the use and occupancy of the Development.

(ee) "Tenant" shall mean a household occupying a Unit.

(ff) "Term" shall mean the term of this Agreement which shall commence on the Effective Date, and shall continue until the later of: (i) the fifty-seventh (57th) anniversary of the Effective Date, or (ii) the full repayment of all amounts owed under the City Note.

(gg) "Units" shall mean the sixty (60) rental units, including one (1) manager's units, to be developed by the Developer on the Property.

(hh) "Very Low Income Household" shall mean a household with an Adjusted Income that does not exceed the qualifying limits for very low income households, adjusted for Actual Household Size, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by HCD.
(ii) "Very Low Income Rent" shall mean the maximum allowable rent for a Very Low Income Unit pursuant to Section 2.2 below.

(jj) "Very Low Units" shall mean any one of the Units which, pursuant to Section 2.1 below, are required to be occupied by Very Low Income Households.

ARTICLE 2.
AFFORDABILITY COVENANTS

2.1 Occupancy Requirements.

(a) Income Restrictions. The Units, other than the one (1) manager's unit, shall be rented to and occupied by or, if vacant, available for occupancy by households as follows:

<table>
<thead>
<tr>
<th></th>
<th>Extremely Low</th>
<th>Very Low Income</th>
<th>Low-Income</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>One Bedroom Unit</td>
<td>13</td>
<td>14</td>
<td>32</td>
<td>59 (Plus 1 managers' unit)</td>
</tr>
<tr>
<td>Total</td>
<td>13</td>
<td>14</td>
<td>32</td>
<td>59</td>
</tr>
</tbody>
</table>

(b) Senior Occupancy. Developer shall operate the Development as a senior housing development and shall require all Units in the Development, except for the manager's unit, to be occupied or held available for occupancy by households containing "elderly" or "senior citizen" residents. Developer shall operate the Development at all times in compliance with the provisions of: (i) the Unruh Act, as amended (ii) the United States Fair Housing Act, as amended, and (iii) the California Fair Employment and Housing Act, as amended, which relate to lawful senior housing. Developer shall develop and implement appropriate age verification procedures to ensure compliance with the requirements of this Section. Developer shall provide the City with a copy of its written verification procedures. Developer shall indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, and its council members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Developer's failure to comply with applicable legal requirements related to housing for seniors. The provisions of this subsection will survive expiration of the Term or other termination of this Agreement, and remain in full force and effect.

2.2 Allowable Rent.

(a) Extremely Low Income Rent. Subject to Section 2.3 below, the Rent charged to Tenants of the Extremely Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of thirty percent (30%) of Median Income, adjusted for Assumed Household Size.
(b) **Very Low Income Rent.** Subject to 2.3 below, the Rent charged to Tenants of the Very Low Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Median Income, adjusted for Assumed Household Size.

(c) **Low Income Rent.** Subject to 2.3 below, the Rent charged to Tenants of the Very Low Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of sixty percent (60%) of Median Income, adjusted for Assumed Household Size.

(d) **Assumed Household Size.** In calculating the allowable Rent for the Units, the following Assumed Household Sizes shall be utilized:

<table>
<thead>
<tr>
<th>Number of Bedrooms</th>
<th>Assumed Household Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>One</td>
<td>2</td>
</tr>
</tbody>
</table>

Provided, however, during any period in which the TCAC Regulatory Agreement encumbers the Property the Developer may utilize the assumed household size determined by, or utilized by, TCAC.

(e) **City Approval of Rents.** Initial rents for all Units shall be approved by the City prior to occupancy. The Developer shall provide the City an annual written report setting forth the proposed annual rent increase, if any, for the subsequent year on such date mutually acceptable to the Parties. The City shall have fifteen (15) days following the receipt of such report to either approve or disapprove of such rent increase. The City shall approve such rent increase if such increase complies with the requirements of this Agreement. The City's failure to either approve or disapprove of such proposed rent increase within such fifteen (15) days shall be deemed approval.

2.3 **Increased Income of Tenants.**

(a) **Extremely Low Income Household to Very Low Income Household.** In the event, upon recertification of a Tenant's household's income, the Developer discovers that an Extremely Low Income Household no longer qualifies as an Extremely Low Income Household (but does qualify as a Very Low Income Household), such household's Unit shall continue to be considered an Extremely Low Income Household, and, upon expiration of the Tenant's lease, the Rent may be increased to one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Median Income upon sixty (60) days written notice to the Tenant (and, at such time, such household shall then be considered a Very Low Income Household), and the Developer shall rent the next available Unit to an Extremely Low Income Household to comply with the requirements of Section 2.1 above.

(b) **Very Low Income Household to Low Income Household.** In the event, upon recertification of a Tenant's household's income, the Developer discovers that a Very Low Income Household (or any other lower income household) no longer qualifies as a Very Low Income Household (but does qualify as a Low Income Household), such household's Unit shall continue to be considered a Very Low Income Household, and, upon expiration of the Tenant's lease, the Rent may be increased to one-twelfth (1/12th) of thirty percent (30%) of sixty percent (60%) of Median Income upon sixty (60) days written notice to the Tenant (and, at such time,
such household shall then be considered a Low Income Household), and the Developer shall rent the next available Unit to a Very Low Income Household to comply with the requirements of Section 2.1 above.

(c) **Above Low Income Household.** If, upon recertification of a Tenant's income, the Developer determines that a former Extremely Low Income Household, a Very Low Income Household, or a Low Income Household's Adjusted Income has increased and exceeds the qualifying income for a Low Income Household set forth in above, then, upon expiration of the Tenant's lease:

1. Such Tenant's Unit shall continue to be considered a Unit occupied by an Extremely Low Income Household, a Very Low Income Household, or a Low Income Household (as applicable);  
2. Such Tenant's Rent may be increased, upon sixty (60) days written notice to the Tenant, to a Rent equal to, the lesser of: (i) the market rate rent for a similar unit of comparable quality to the Unit, or (ii) one-twelfth (1/12th) of thirty percent (30%) of one hundred ten percent (110%) of Median Income; provided, however, the Developer shall remain obligated to comply with other limitation on Rent imposed by any other third-party, including, but not limited to, TCAC; and  
3. The Developer shall rent the next available Unit to an Extremely Low Income Household, a Very Low Income Household, or a Low Income Household (as applicable), at Rent not exceeding the maximum Rent specified in Section 2.2, as applicable, to comply with the requirements of Section 2.1 and Section 2.2 above.

(d) **Termination of Occupancy.** Upon termination of occupancy of a Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level (e.g. an Extremely Low Income Household, a Very Low Income Household, or a Low Income Household) as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of the Unit (e.g. an Extremely Low Income Household, a Very Low Income Household, or a Low Income Household) shall be redetermined.

2.4 **Tenant Selection.**

(a) **Marketing Plan.** Before leasing any vacant Units in the Development, the Developer must provide the City for its review and approval the Developer's written marketing and Tenant selection plan consistent with the occupancy restrictions set forth in this Agreement.

(b) **Nondiscrimination.**

1. **Source of Income.** The Developer shall not discriminate on the basis of source of income or rent payment (for example, TANF or SSI) or poor credit history if a prospective Tenant's previous rent history of at least one (1) year provides evidence of Tenant's ability to pay the applicable Rent (ability to pay shall be demonstrated if the prospective Tenant can show that the Tenant has paid the same percentage or more of the Tenant's income for Rent as the Tenant would be required to pay for the Rent applicable to the Unit to be occupied).

783:34/2038875.4
(2) **Section 8 Certificate Holders.** The Developer will accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Developer shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective tenants, nor shall the Developer apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of Units by such prospective Tenants.

(3) **General Public.** All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible and otherwise meet the requirements of this Agreement. The Developer shall not give preference to any particular class or group of persons in renting the Units, except to the extent that the Units are required to be leased to an Extremely Low Income Household, a Very Low Income Household, or a Low Income Household. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income, disability, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Developer or any person claiming under or through the Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of the Development. All deeds, leases or contracts made or entered into by Developer as to the Units or the Development or portion thereof, shall contain covenants concerning discrimination as prescribed by the DDLA.

2.5 **Lease Provisions.** Developer shall include in leases for all Units provisions which authorize Developer to immediately terminate the tenancy of any household one or more of whose members misrepresented any fact material to the household's qualification as an Extremely Low Income Household, a Very Low Income Household, or a Low Income Household. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 3.1 below, and that, if the household's income increases above the applicable limits such household's Rent may be subject to increase.

2.6 **Condominium Conversion.** The Developer shall not convert the Development's Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the Term of this Agreement.

2.7 **Waiting List.** The Developer shall maintain a separate waiting list of potential applicants for each income category and shall update the waiting list at least once per year.

ARTICLE 3.
INCOME CERTIFICATION AND REPORTING

3.1 **Income Certification.** The Developer will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income and household size certifications from each Tenant renting any of the Units. The Developer shall make a good faith
effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain three (3) pay stubs for the most recent pay periods; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit agency or similar search; (4) obtain an income verification form from the applicant's current employer; (5) obtain three (3) most recent bank statements for all savings and checking accounts; (6) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (7) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be available to the City upon request. Compliance by the Developer with the income certification requirements of the TCAC Regulatory Agreement, or any other lender's requirements, shall be deemed to be compliance with the requirements of this Section 3.1, and in the event of any conflicts between this Agreement and the TCAC Regulatory Agreement regarding income certification requirements, the terms of the TCAC Regulatory Agreement shall control.

3.2 Semi-Annual Reports to City. The Developer shall submit to the City (a) not later than June 30th of each calendar year, and not later than December 31st of each calendar year, or such other dates as may be requested by the City, a statistical report, including income and rent data for all Units, and vacancy history, setting forth the information called for therein, and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the City.

3.3 Additional Information. Developer shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of Developer which pertain to any Unit.

3.4 Records. Developer shall maintain complete, accurate and current records pertaining to the Development, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Tenants during normal business hours upon no less than seventy-two (72) hours prior notice. All Tenant lists, applications and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of the Developer and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City upon no less than seventy-two (72) hours' notice prior notice. The Developer shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

3.5 On-site Inspection. The City shall have the right to perform an on-site inspection of the Development at least one time per year. The Developer agrees to cooperate in such inspection.

3.6 Annual Monitoring Payment. In consideration for the City providing the City Loan to the Developer, no later than May 1 of each year during the Term of this Agreement, the Developer shall pay to the City the Annual Monitoring Payment in the amount of Five Thousand Dollars ($5,000) to reimburse the City for costs incurred by the City in connection with the monitoring of the Developer's operation of the Development in accordance with this Agreement. The Annual Monitoring Payment shall automatically increase, on an annual basis, at the rate of
three percent (3%) per year; provided, however, in no event shall the annual amount of the Annual Monitoring Payment exceed Fifteen Thousand Dollars ($15,000). Payments made by the Developer pursuant to this Section shall be made in addition to the repayment of the City Loan and shall not be offset or deducted by the Developer's repayment of the City Loan. Such Annual Monitoring Payments shall be made by the Developer regardless of the Developer's prepayment of the City Loan, or the availability of any "Residual Receipts" (as defined in the DDLA). The obligation to pay the Annual Monitoring Payment shall continue until the expiration of the Term. In the event the Developer transfers the Property, the obligation to pay the Annual Monitoring Payment runs with the land to the benefit of the City, and shall be an obligation of Developer's successors and/or assigns. The Developer's failure to make the Annual Monitoring Payment in the amount and within the timeframe set forth in this Section shall constitute a default by the Developer pursuant to Section 6.4.

ARTICLE 4.
OPERATION OF THE DEVELOPMENT

4.1 Residential Use. The Development shall be used only for rental residential use. No part of the Development shall be used for transient housing.

4.2 Taxes and Assessments. Developer shall pay all real and personal property taxes, assessments, if any, and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

ARTICLE 5.
PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities. The Developer shall be responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no direct, or indirect, responsibility over management of the Development; however, the Developer shall operate the Development in accordance with this Agreement, and the DDLA in a manner acceptable to the City. At all times during the Term, the Developer shall retain the Management Agent approved by the City in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required in accordance with applicable law.

The Development shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing. The
Developer shall submit for the City's approval the identity of any replacement management agent. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for the City to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed management agent meets the standard for a qualified management agent set forth above, the City shall approve the proposed management agent by notifying the Developer in writing. Unless the proposed management agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. If the proposed management agent is disapproved by the City for failing to meet the standard for a qualified management agent set forth above, the Developer shall submit for the City's approval a new proposed management agent within thirty (30) days following the City's disapproval. The Developer shall continue to submit proposed management agents for City approval until the City approves a proposed management agent.

5.2 Periodic Performance Review. The City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by the City) review of the management practices and financial status of the Development (including, but not limited to, a review of the Management Agent's performance). The purpose of each periodic review will be to enable the City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Developer shall cooperate with the City in such reviews.

5.3 Replacement of Management Agent. If, as a result of a periodic review, the City determines, in its reasonable judgment, that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement and the DDLA, the City shall deliver notice to Developer of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days after receipt by Developer of such written notice, City staff and the Developer shall meet in good faith to consider methods for improving the financial and operating status of the Development. If after a reasonable period as determined by the City (not to exceed sixty (60) days), the City determines that the Developer is not operating and managing the Development in accordance with the material requirements and standards of this Agreement and the DDLA, the City may require replacement of the Management Agent in accordance with the DDLA and this Agreement.

If, after the above procedure, the City requires in writing the replacement of the Management Agent, Developer shall promptly dismiss the existing Management Agent provided that the City and any other lender or limited partner of the Owner have mutually agreed upon a replacement management agent, and shall appoint such replacement management agent as the management agent for the Development.

Any contract for the operation or management of the Development entered into by Developer shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute a Developer Event of Default under this Agreement, and the DDLA.

5.4 Approval of Management Plans and Policies. Prior to the initial leasing of any of the Units at the Property, and annually thereafter to the extent of any amendments thereto, the
Developer shall submit its written management plan and policies with respect to the Development to the City for its review and approval (the "Management Plan"). Among other things, the proposed Management Plan shall set forth the social services to be provided to the Tenants either by the Developer, the property manager, or a third-party, consistent with the plan for such services approved by the City pursuant to the DDLA. If the Developer's proposed Management Plan sets forth the Developer's commitment and ability to operate the Development in accordance with this Agreement, the DDLA and applicable laws, the City shall approve the proposed Management Plan by notifying the Developer in writing. Unless the proposed Management Plan is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. If the proposed Management Plan is disapproved by the City, the Developer shall submit for the City's approval a new proposed Management Plan, which addresses the inadequacies set forth in the City's notice, within thirty (30) days following the City's disapproval. The Developer's failure to obtain the City's approval of a Management Plan which approval shall not be withheld unreasonably, within one hundred twenty (120) days from the date of the Developer's submission of the proposed Management Plan shall constitute a Developer Event of Default under this Agreement and the DDLA. Any review or approval by the City of the Management Plan is entirely for determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the Developer's compliance with applicable law or any other reason.

5.5 Property Maintenance. The Developer agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

(a) Landscaping. The Developer agrees to have landscape maintenance performed every other week (or more frequently if necessary), including replacement of dead or diseased plants with comparable plants. The Developer agrees to adequately water the landscaping on the Property to the extent permitted by applicable laws and regulations. No improperly maintained landscaping on the Property shall be visible from public streets and/or rights of way.

(b) Yard Area. No yard areas on the Property shall be left unmaintained, including, but not limited to:

(1) broken or discarded furniture, appliances and other, household equipment stored in yard areas for a period exceeding one (1) week;

(2) packing boxes, lumber trash, dirt and other debris in areas visible from public property or neighboring properties; and

(3) vehicles parked or stored in other than approved parking areas.
(c) **Building.** No buildings located on the Property may be left in an unmaintained condition so that any of the following exist:

1. violations of state law, uniform codes, or City ordinances;
2. conditions that constitute an unsightly appearance that detracts from the aesthetics or value of the Property or constitutes a private or public nuisance;
3. broken windows;
4. graffiti (must be removed within 72 hours); and
5. conditions constituting hazards and/or inviting trespassers, or malicious mischief.

The City places prime importance on quality maintenance to protect its investment and to ensure that all City-assisted affordable housing projects within the City are not allowed to deteriorate due to below-average maintenance or are not allowed to endanger the health and safety of the Tenants or the surrounding community. Normal wear and tear of the Development will be acceptable to the City assuming the Developer agrees to provide all necessary improvements to assure the Development is maintained in good condition. The Developer shall promptly make all repairs and replacements necessary to keep the Improvements in good condition and repair.

In the event that the Developer breaches any of the covenants contained in this section and such default continues for a period of ten (10) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance, or the Developer fails to commence to cure any breach within thirty (30) days after written notice from the City (and thereafter fails to diligently pursue such cure to completion), with respect to landscaping and building improvements (or to preserve the health and safety of the Tenants and/or surrounding community), then the City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. The Developer hereby irrevocably grants the City, and the City's employees and agents, a right of entry for such purpose. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, including a ten percent (10%) administrative charge, which amount shall be promptly paid by the Developer to the City upon demand. In addition, the Developer's failure to comply with this Section shall constitute a default pursuant to Section 6.4 of this Agreement.

5.6 **Safety Conditions.** The Developer agrees to implement and maintain throughout the Term the following security measures in the Development:

(a) maintain lighting in parking areas;
(b) work with the City's Police Department to implement and operate an effective neighborhood watch program;

(c) provide added security including dead-bolt locks for every entry door, and where entry doors are damaged, replace them with solid-core doors; and

(d) such other commercially reasonable efforts to maintain the Development as a crime-free and drug-free living environment (including, but not limited to prohibiting loitering at or within any portion of the Development).

ARTICLE 6.
MISCELLANEOUS

6.1 **Term.** The provisions of this Agreement shall apply to the Property for the entire Term even if the entire City Loan is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City. The City conveyed the Property and made the City Loan on the condition, and in consideration of, this provision and would not do so otherwise.

6.2 **Compliance with the DDLA.** The Developer's actions with respect to the Property shall at all times be in full conformity with: (i) all requirements of the DDLA; and (ii) all applicable requirements imposed on projects pursuant to California Health and Safety Code Section 33334.2 et seq (but only during such time as such laws remain in effect).

6.3 **Covenants to Run With the Land.** The City and Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement (including, but not limited to, the payments to be made to the City as set forth in Section 3.6) shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.4 **Developer Default; Enforcement by the City.** If Developer fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the City has notified the Developer in writing of the default or, if the default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure (in no event to exceed ninety (90) days from the date of the City's initial notice), the City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) **Calling the City Loan.** The City may declare a default under the Note, accelerate the indebtedness evidenced by the City Note, and proceed with foreclosure under the Deed of Trust.
(b) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel Developer's performance of its obligations under this Agreement, and/or for damages.

(c) Remedies Provided Under the DDLA. The City may exercise any other remedy provided under the DDLA.

(d) City Sublease of Units. If and to the extent necessary to correct any Developer default regarding the leasing of Units to income-eligible Tenants, the Developer hereby grants to the City the option to lease, from time to time, vacant Units in the Development for a rental of One Dollar ($1.00) per Unit per year for the purpose of subleasing such Units to comply with Article 2 of this Agreement and hereby agrees to execute such agreements or further documentation and to take such further action reasonably requested by the City to provide the City the ability to sublease the Units following such uncured default. Any rents received by the City under any such sublease shall be paid to the Developer after the City has been reimbursed for any expenses incurred in connection with such sublease.

The City agrees that any cure of a default by the limited partner(s) of the Developer, shall be deemed to be a cure by the Developer, and shall be accepted or rejected on the same basis as if made or tendered by the Developer.

6.5 Recording and Filing. The City and Developer shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records.

6.6 Governing Law. This Agreement shall be governed by the laws of the State of California.

6.7 Amendments. This Agreement may be amended only by a written instrument executed by the Parties hereto or their successors in title, and duly recorded in the Official Records.

6.8 Notice. All notices given or certificates delivered under this Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service which furnishes signed receipts of delivery or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as set forth below:

City: City of Vacaville
650 Merchant Street
Vacaville, CA 95688
Attention: City Manager

Developer: ____________________, L. P.
c/o Petaluma Ecumenical Properties
951 Petaluma Boulevard South
Petaluma, CA 94952
Attn: Executive Director
Either of the Parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

6.9 **Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.10 **Provision Not Merged with City Grant Deed.** None of the provisions of this Agreement are intended to or shall be merged by the grant deed transferring title to any real property from City to Developer or any successor in interest, and any such grant deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

6.11 **Time of the Essence.** In all matters under this Agreement, the Parties agree that time is of the essence. References in this Agreement to days shall be to calendar days. If the last day of any period to give or reply to a notice, meet a deadline or undertake any other action occurs on a day that is not a day of the week on which the City of Vacaville is open to the public for carrying on substantially all business functions (a "Business Day"), then the last day for giving or replying to such notice, meeting such deadline or undertaking any such other action shall be the next succeeding Business Day. In no event shall a Saturday or Sunday be considered a Business Day.

6.12 **Legal Actions.** In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of the County of Solano.

6.13 **Indemnification.** The Developer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its council members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of: (a) the Developer's performance or non-performance under this Agreement, or any other agreement executed pursuant to the DDLA; (b) acts or omissions of Developer or any of Developer's contractors, subcontractors, or persons claiming under any of the aforesaid; (c) the Developer's ownership, construction, use and operation of the Development (including, but not limited to, any claim made against the City in connection with the approval of this Agreement, the use or operation of the Improvements, any claims related to fair housing laws or accessibility laws, or any other claim made by a Tenant, or a former or prospective Tenant) except as directly caused by the City's willful misconduct or gross negligence; or (d) the Developer's breach of this Agreement. The provisions of this Section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

6.14 **Complete Understanding of the Parties.** This Agreement constitutes the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party (including but not limited to
Civil Code Section 1654 as may be amended from time to time) shall not apply to the interpretation of this Agreement.

6.15 City Approval.

(a) Approval by City Manager. Whenever this Agreement calls for City approval, consent, or waiver, the written approval, consent, or waiver of the City Manager, or his or her designee as designated in writing, shall constitute the approval, consent, or waiver of the City, without further authorization required from the City Council. The City hereby authorizes the City Manager, or his or her designee as designated in writing, to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the City. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The City Manager, or his or her designee as designated in writing, is also hereby authorized to approve, on behalf of the City, requests by the Developer for reasonable extensions of time deadlines set forth in this Agreement; provided, however, the City is under no obligation (express or implied) to grant any request for an extension of time. The City shall not unreasonably delay in reviewing and approving or disapproving any proposal by the Developer made in connection with this Agreement.

(b) City Discretion. The Developer acknowledges that nothing in this Agreement (including any approval by the City Manager, or his or her designee, in accordance with this Agreement) shall limit, waive, or otherwise impair the authority and discretion of: (a) the City's Community Development Department, in connection with the review and approval of the proposed construction plans for the Development (or any change to such plans), or any use, or proposed use, of the Property; (b) any other office or department of the City acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Development.

6.16 State Law Requirements.

(a) Enforcements by Certain Third Parties. Pursuant to Health and Safety Code Section 33334.3(f)(7) a default under this Agreement, including the rental of a Unit by the Developer to a household not eligible under this Agreement, may be enforceable by the City, a residents' association, a resident of another affordable unit, a former resident of a Unit, a person on an affordable housing waiting list, and others who are listed in any applicable state law. The Parties agree and acknowledge that such rights shall only exist during such time that the Property is subject to the requirements of Health and Safety Code Section 33334.3(f)(7), or any successor statute.

(b) Developer Obligations Prior to Expiration of Term. At least six (6) months prior to the expiration of the Term, Developer shall provide by first-class mail, postage prepaid, a notice to all Tenants in the Units containing: (1) the anticipated date of the expiration of the Term, (2) any anticipated Rent increase upon the expiration of the Term, (3) a statement that a copy of such notice will be sent to the City, and (4) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Developer shall also file a copy of the above-described notice with the City Manager. In addition, Developer shall comply with the
requirements set forth in California Government Code Sections 65863.10 and 65863.11, to the extent applicable.

6.17 **Multiple Originals; Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

*Remainder of Page Left Intentionally Blank*
IN WITNESS WHEREOF, the City and Developer have executed this Agreement by duly authorized representatives as of the Effective Date.

DEVELOPER:

____________________, L.P., a California limited partnership

By: ______________________________

Name: ______________________________

Its: ______________________________

Signatures Continue on Following Page
CITY:
CITY OF VACAVILLE, a municipal corporation

By: ____________________________________
Emily Cantu, Director of Housing Services

APPROVED AS TO FORM:
GOLDFARB & LIPMAN LLP

By: _______________________
Special Counsel to the City
EXHIBIT A

PROPERTY DESCRIPTION

Real property in the City of Vacaville, County of Solano, State of California, described as follows:
EXCEPTING THEREFROM A PORTION OF LAND CONVEYED TO CITY OF VACAVILLE, A MUNICIPAL CORPORATION FOR RIGHT OF WAY AS DESCRIBED IN GRANT DEED RECORDED ON JULY 26, 2006 AS INSTRUMENT NO. 2006-93990 OF OFFICIAL RECORDS.
APN: 0131-020-110
ASSIGNMENT OF AGREEMENTS, PLANS AND SPECIFICATIONS, AND APPROVALS
(220 Aegean Way- Predevelopment Component)

FOR VALUE RECEIVED, the undersigned, Petaluma Ecumenical Properties, a California nonprofit public benefit corporation (the "Developer"), hereby assigns and transfers to the City of Vacaville, a municipal corporation (the "City"), all of its right, title and interest in and to:

1. All consulting, architectural, design, engineering, and construction contracts and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively "Agreements"), heretofore or hereafter entered into by any Contractor (as defined below);

2. All studies and analyses, surveys, plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively "Studies, Plans and Specifications") heretofore or hereafter prepared by any Contractor (as defined below); and

3. All land use approvals, building permits, and other governmental approvals of any nature obtained for the Development (collectively, the "Land Use Approvals").

This Assignment is made pursuant to the terms of that certain Disposition, Development, and Loan Agreement, dated as of ______________, 2017, entered into between the Developer and the City (the "DDL A"). Capitalized terms used but not defined in this Assignment shall have the meanings set forth in the DDLA. This Assignment is referred to as the "Predevelopment Component Assignment" in the DDLA.

For purposes of this Assignment, the term "Contractor" means any consultant, architect, construction contractor, engineer or other person or entity entering into Agreements with the Developer and/or preparing Studies, Plans and Specifications for the Developer with respect to the Development.

The Developer hereby irrevocably appoints the City as its attorney-in-fact (which agency is coupled with an interest) to, upon the occurrence of a Developer Event of Default (after notice and opportunity to cure) or an event which, with notice or the passage of time or both would constitute a Developer Event of Default (after notice and opportunity to cure), demand, receive, and enforce any and all of the Developer's rights with respect to the Studies, Plans and Specifications, Agreements and Land Use Approvals, and perform any and all acts in the name of the Developer or in the name of the City with the same force and effect as if performed by the Developer in the absence of this Assignment.

The Developer represents and warrants to the City that no previous assignment(s) of its rights or interest in or to the Studies, Plans and Specifications, Agreements, and/or Land Use Approvals, has or have been made, and the Developer agrees not to assign, sell, pledge, transfer, mortgage, or hypothecate its rights or interest therein (without prior written approval of the City) so long as the City holds the Predevelopment Component Note.
This Assignment is made to secure: (1) payment to the City of all sums now or hereafter owing under the Predevelopment Component Note, and any and all additional advances, modifications, extensions, renewals and amendments thereof; and (2) payment and performance by the Developer of all its obligations under the DDLA.

This Assignment shall be governed by the laws of the State of California, except to the extent that Federal laws preempt the laws of the State of California, and the Developer consents to the jurisdiction of any Federal or State Court within the County of Solano having proper venue for the filing and maintenance of any action arising hereunder.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of the Developer and the City; provided, however, this shall not be construed and is not intended to waive the restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation or encumbrance by the Developer contained in the DDLA. This Assignment shall terminate upon the execution of the Construction Component Note in accordance with the DDLA.

Executed by the Developer as of _______________, 2017.

DEVELOPER:

PETALUMA ECUMENICAL PROPERTIES, a California nonprofit public benefit corporation

By: _________________________________

Name: _________________________________

Its: _________________________________
ARCHITECT'S/ENGINEER'S CONSENT

The undersigned architect and/or engineer (collectively referred to as "Architect") hereby consents to the foregoing Assignment of Agreements, Plans and Specifications, and Approvals ("Assignment"), of which this Architect's/Engineer's Consent ("Consent") is a part, and acknowledges that there presently exists no unpaid claims presently due to the Architect except as disclosed to the City arising out of the preparation and delivery of the Plans and Specification to the Developer and/or the performance of the Architect's obligations under the Agreements, as the term "Agreements" is defined in the Assignment.

Architect agrees that if, at any time, the City shall become the owner of said Property, or, pursuant to its rights under the DDLA, elects to undertake or cause the completion of construction of the Development on any of the Property, in accordance with the Plans and Specifications, and gives Architect written notice of such election; then so long as the Architect has received, receives or continues to receive the compensations called for under the Agreements, the City may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Agreements for the benefit and account of the City in the same manner as if performed for the benefit or account of the Developer in the absence of this Assignment.

Architect further agrees that, in the event of a breach by the Developer of the Agreements, or any agreement entered into with Architect in connection with the Plans and Specifications, so long as the Developer's interest in the Agreements and Plans and Specifications is assigned to the City, Architect will give written notice to the City at the address shown below of such breach. The City shall have thirty (30) days from the receipt of such written notice of Default to remedy or cure said Default; provided, however, nothing herein shall require the City to cure said Default or to undertake completion of construction of the Improvements.

Architect warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment or the DDLA, as applicable.

Executed by the Architect on ____________, 20__.  

Architect:  

By: _________________________  

Its: _________________________  

Address of City:  

City of Vacaville  
650 Merchant Street  
Vacaville, CA 95688  
Attn: City Manager  

Address of Architect:  

_________________________  

_________________________