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**RESOLUTION #2012-45**  
**RESOLUTION OF THE CITY OF ALBANY CITY COUNCIL**  
**APPROVING**  
**DENSITY BONUS LAW DEVELOPMENT STANDARD REDUCTION FOR**  
**PARCEL B OF THE**  
**UNIVERSITY VILLAGE MIXED USE DEVELOPMENT**

**WHEREAS**, Planning and Zoning Code Section 20.40.040 provide Density Bonus incentives and development standard waivers and/or reductions for the production of housing units for eligible households (including senior housing) in accordance with California Government Code Sections 65915 through 65918.

**WHEREAS**, the senior citizen housing development proposed for Parcel B of the University Village at San Pablo Avenue Mixed Use Development project (the “project”) qualifies for Density Bonus because it is designated as a senior citizen housing development containing a minimum of 175 independent and assisted living residential units and includes a separate and secured Alzheimer’s Care area.

**WHEREAS**, the Density Bonus development standard reduction/waiver process, set out in Government Code Section 65915(e)(1) allows an applicant to submit to the City a proposal for waiver or reduction of any development standard, and states that in no case may a city apply any development standard that will have the effect of physically precluding the construction of a housing development project that qualifies for a density bonus.

**WHEREAS**, Government Code Section 65915(o)(1) defines “development standard” to include, among other things, a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

1           **WHEREAS**, Government Code Section 65915(e)(1) does not explicitly  
2 require that a senior citizen housing development project include affordable housing  
3 in order for a waiver or reduction to be granted.  
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5           **WHEREAS**, Planning and Zoning Code Section 20.40.040(H)(3) requires  
6 that applications for a density bonus shall include, in summary, the following items:  
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- 8           a.       The desired density increase;
- 9           b.       Incentives or concessions requested;
- 10          c.       Waivers or reductions in development standards that are  
11 requested;
- 12          d.       The number, type, location, size and construction scheduling of  
13 all units;
- 14          e.       A project financial report to allow the City to evaluate the  
15 financial need for the incentives, concessions, waivers or reductions of zoning of City  
16 standards is necessary to make the project economically feasible.
- 17          f.       Any other relevant information that the Community  
18 Development Director may determine to be necessary in the evaluation of the  
19 proposal.  
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21           **WHEREAS**, on April 16, 2012, the applicant submitted an application, and  
22 provided evidence, including relevant financial data and construction information, to  
23 demonstrate that the waiver or reduction is necessary to make the development of  
24 senior housing units economically feasible and to not physically preclude the  
25 construction of the development.  
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27           **WHEREAS**, on April 20, 2012, the Community Development Department  
28 determined that the application for a Density Bonus was complete.  
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30           **WHEREAS**, The Planning and Zoning Commission held a public hearing on  
31 the application for a Density Bonus on June 27, 2012.

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**WHEREAS** , Notice of the public hearing was provided on April 13, 2012 according to Planning and Zoning Code subsection 20.100.010.E.

**WHEREAS**, the Planning and Zoning Commission considered all written testimony and public comments and approved a motion recommending to the City Council approval of the density bonus.

**WHEREAS**, Government Code Section 65915 and Planning and Zoning Code Section 20.40.040(H)(4) provides that following the rendering of a recommendation by the Planning and Zoning Commission, the City Council shall be the decision-making body on all applications involving a density bonus.

**WHEREAS**, The City Council held a public hearing on the application for a Density Bonus on July 9, 2012.

**WHEREAS** , Notice of the public hearing was provided on June 29, 2012 according to Planning and Zoning Code subsection 20.100.010.E.

**WHEREAS**, on \_\_\_\_\_, the City Council approved a resolution certifying the Final Environmental Impact Report pursuant to the requirements of the California Environmental Quality Act.

**WHEREAS**, the City Council considered all written testimony and public comments;

**NOW THEREFORE, BE IT RESOLVED**, that the City Council makes all of the following Findings for approval of a Density Bonus:

- a. The proposed development standard waiver/reduction is consistent with the criteria identified in Government Code Section 65915(b)(1),

1 65915(e)(1) and 65915(o)(1) allowing for a waiver or reduction of the  
2 development standard for a senior housing development that qualifies for a  
3 density bonus.

4 b. without waiver or reduction of parking ratio standards, the City's  
5 development standards will have the effect of physically precluding the  
6 construction of the senior residential housing units that qualify the  
7 development project for a density bonus and would make it economically  
8 infeasible.

9 c. The proposed waiver/reduction is not materially detrimental to the public  
10 health, safety, and welfare, nor injurious to property and/or improvements  
11 in the vicinity of the development.

12 d. the waiver or reduction of development standards will not have a specific,  
13 adverse impact upon the health, safety or the physical environment, and  
14 for which there is no feasible method to satisfactorily mitigate or avoid the  
15 specific adverse impact.

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17 **NOW THEREFORE, BE IT FURTHER RESOLVED**, that the City  
18 Council approves a modification to the requirements of Planning and Zoning Code  
19 Section 20.28.030 (Parking Space Requirements) Table 4 are modified for Parcel B of  
20 the project to allow 0.6 parking spaces per senior residential housing unit.

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22 **NOW THEREFORE, BE IT FURTHER RESOLVED**, that the City  
23 Council approves the following **CONDITIONS OF APPROVAL** associated with the  
24 Density Bonus development standard waiver/reduction approval:

25  
26 1. Project Approval: except as may be modified by conditions herein, this  
27 Density Bonus approval is for the Parcels shown and described on sheet A0.4 of plans  
28 prepared by Peter Waller (Pyatok Architects), date received April 4, 2011, as  
29 presented to the Planning and Zoning Commission on May 24, 2011, as may be  
30 modified or supplemented by presentations to the Planning and Zoning Commission

1 on September 14, 2011, September 27, 2011, June 27, 2012 and to the City Council  
2 on October 17, 2011, January 17, 2012, and July 9, 2012.

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4 2. This Density Bonus waiver/reduction is granted for Parcel B of the project  
5 described in the Environmental Impact Report certified by the City Council on \_\_\_\_  
6 and including a senior citizen housing development containing a minimum of 175  
7 independent and assisted living residential units and includes a separate and secured  
8 Alzheimer's Care area. Subsequent approvals relying on this Density Bonus shall be  
9 in substantial compliance with the project described in this Environmental Impact  
10 Report.

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12 3. This Density Bonus is granted for the reduction to standards of development  
13 specifically described in these findings and conditions of approval. Approval of the  
14 Density Bonus does not constitute an express or implied approval of other required  
15 actions, including but not limited to design review, conditional use permit, variances,  
16 subdivision, encroachment permits, stormwater management permits, grading  
17 permits, or building permits. The size and location of buildings and other on-site and  
18 off-site improvements may be required to be modified to comply with regulatory  
19 requirements that are part of subsequent applications.

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21 4. The approval of this Density Bonus does not constitute a development  
22 agreement as authorized by Government Code 65864 and does not represent a grant  
23 of a vested right to develop the proposed project. The City retains its authority to  
24 adopt policies rules, regulations, standards, and conditions of approval that may affect  
25 the proposed project until such time that the project approvals are vested by issuance  
26 and substantial reliance on a building permit.

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28 5. Project Approval Expiration: This Density Bonus approval shall expire five  
29 years from the date on which this approval becomes effective unless a design review  
30 application has been submitted and diligently pursued.

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1 6. Hold Harmless Agreement. Pursuant to Government Code Section  
2 66474.9(b) and Albany Municipal Code section 20.100.010(e), but subject to the  
3 terms of this Section 6, the applicant (including any agent thereof) shall defend,  
4 indemnify, and hold harmless, the City of Albany and its agents, officers and  
5 employees, from any claim, action or proceeding against the City or its agents,  
6 officers or employees to attack, set aside, void or annul the City's approval  
7 concerning this application, which action is brought within the time period provided  
8 for in Section 66499.37. The City will obtain the applicant's approval before filing  
9 the CEQA notice of determination. The City will promptly notify the applicant of  
10 any such claim, action or proceeding and cooperate fully in the defense in good faith  
11 consultation with the applicant. This indemnification shall include, but not be limited  
12 to, damages, fees and/or costs awarded against the City, if any, and cost of suit,  
13 attorneys' fees, and other costs liabilities and expenses incurred in connection with  
14 such proceeding whether incurred by the applicant, the City and/or the parties  
15 initiating or bringing such proceeding. The applicant shall also defend, indemnify  
16 and hold harmless the City, its agents, officers, employees and attorneys for all costs  
17 incurred in additional investigation and/or study of, or for supplementing, preparing,  
18 redrafting, revising, or amending any document (such as an EIR), if made necessary  
19 by said proceeding and if the applicant desires to pursue securing such approvals,  
20 after initiation of such proceeding, which are conditioned on the approval of such  
21 documents. The applicant shall also indemnify the City for all the City's costs, fees,  
22 and damages which the City incurs in enforcing the indemnification. The applicant  
23 may propose counsel of its choice to represent jointly the applicant and the City;  
24 provided, however, the City shall have right to retain separate counsel if the City  
25 reasonably determines, after consultation with the applicant, that such separate  
26 counsel is necessary in order effectively represent the interests of the City. The City  
27 shall retain the right to approve all significant decisions concerning the City's defense  
28 of the matter and any and all settlements, which approval shall not be unreasonably  
29 withheld. In addition, the applicant shall have the right to withdraw the project  
30 application in order to remove the cause for any claim, action or proceeding in  
31 accordance with the provisions of this Section 6, in which case the City may elect to

1 render rescind any approvals granted pursuant to this Resolution, as well as any  
2 approvals related to the project associated with this Resolution, making such  
3 approvals null and void.

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