ORDINANCE #2012-04

AN ORDINANCE OF THE CITY OF ALBANY CITY COUNCIL APPROVING UNIVERSITY VILLAGE MIXED USE PROJECT DEVELOPMENT AGREEMENT

WHEREAS, the Legislature of the State of California adopted Section 65864 et seq. of the Government Code ("Development Agreement Statute") which authorizes a city to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

WHEREAS, Owner is the owner of approximately 6.3 acres of real property within University Village located at 1030-1130 San Pablo Avenue (portion of APN 066-2692-002-06) on two separate blocks (Blocks A and B) to the northwest and southwest of the Monroe Street/San Pablo Avenue intersection within the University Village development and includes the area generally bounded by San Pablo Avenue, Codornices Creek, 10th Street and Village Creek, which is generally depicted on Exhibit A attached (the "Property").

WHEREAS, the Property is currently located in the City and is undeveloped.

WHEREAS, the City's General Plan ("General Plan") designates the Property as Residential/Commercial (RC) and Creek Conservation Zone. The Property is currently zoned San Pablo Commercial (SPC) for the first 100 feet along the eastern side of San Pablo Avenue and Medium Density Residential (R-2) for the rest of the Property west towards University Village.

WHEREAS, Owner has applied to rezone the entire Property to San Pablo Commercial from its current mix of SPC and R-2 (Application No. 07-100) and for a planned unit development in order to develop up to approximately 57,000 square feet retail space, including a grocery store with beer, wine and distilled spirits comprising

no more than 20% of the grocery store sales floor and other commercial uses permitted in SPC zoning district on the north side of Monroe and a mixed-use development at the south end of the lot, which includes up to approximately 28,000 square feet of commercial space and approximately 175 independent/assisted living rental senior housing units of no more than four stories and other on and off-site amenities and improvements.

WHEREAS, City has also proposed to adopt an ordinance to approve the University Village Mixed Use Overlay District on the Property to require mixed-use development on the Property specifically requiring residential development, including residential care uses, consistent with the Realistic Unit Capacity of the San Pablo Commercial Zone as defined by the City's Housing Element.

WHEREAS, On _____, the City Council approved the Owner's development applications to rezone the Property, a Planned Unit Development, a Density Bonus development standard parking ratio reduction, and the University Mixed Use Overlay District, attached as Exhibit C (the "Project Approvals"). Collectively, the development of the Property, subject to the Project Approvals, is commonly referred to as the "University Village at San Pablo Avenue Project" (or the "Project").

WHEREAS, City has determined that this Agreement is appropriate for the Property and, therefore, desires to enter into this Agreement. This Agreement establishes planning principles, standards, and procedures to eliminate uncertainty in planning and guide the orderly development of the Property consistent with the General Plan. Furthermore, development of the Property pursuant to the Agreement would ensure the desirable redevelopment of an underused segment of San Pablo Avenue, the installation of certain necessary public improvements and result in increased revenues resulting in fiscal benefits to the City and an improved opportunity for jobs and housing within the City. In exchange for the benefits to City, together with the public benefits that will result from the development of the Project pursuant to this Agreement, Owner will receive the assurance that it may

proceed with the project identified in the University Village at San Pablo Avenue Project and in accordance with Applicable Law, and therefore desires to enter into this Agreement.

WHEREAS, the Albany Planning and Zoning Commission, on June 27, 2012, after due public notice, held a public hearing on the proposed Development Agreement, and

WHEREAS, a public hearing on the proposed project and Report to the City Council was held on July 9, 2012 pursuant to California Government Code Section 65090 and 65091.

WHEREAS, on _____, the City Council approved resolution #2011-51 certifying the Final Environmental Impact Report pursuant to the requirements of the California Environmental Quality Act.

NOW THEREFORE, the Albany City Council does ordain and makes all of the findings for approval required for and incorporated in the Development Agreement attached hereto as Exhibit 1, based on substantial evidence contained in the administrative record:

SECTION 1. The Development Agreement attached hereto as Exhibit 1 and incorporated herein by reference between the City of Albany, a municipal corporation, and the University of California is hereby approved.

SECTION 2. The City Manager is authorized to execute the Agreement on behalf of the City of Albany.

SECTION 3. The City Manager is authorized and directed to perform all acts required for administration of the Development Agreement pursuant to the terms of the Development Agreement.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

This ordinance shall take effect 30 days after the date of its adoption, and prior to the expiration of 7 days from the passage thereof shall be published at least once in the West County Times, a newspaper of general circulation, published and circulated in the Counties of Contra Costa and Alameda and thenceforth and thereafter the same shall be in full force and effect.

PASSED, APPROVED and ADOPTED this ____ day of ____, 2011.

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Mayor

ATTEST:

_____
City Clerk

# # #

Exhibit 1

RECORDING REQUESTED BY, **AND WHEN RECORDED RETURN TO:** **CITY CLERK** **CITY OF ALBANY** **1000 SAN PABLO AVENUE** **ALBANY, CA 94706**	RECORDED AT O'CLOCK ALAMEDA COUNTY RECORDS COUNTY RECORDER **FEE:**

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF ALBANY AND THE UNIVERSITY OF CALIFORNIA
RELATING TO THE PROJECT KNOWN AS
"UNIVERSITY VILLAGE AT SAN PABLO AVENUE"

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF ALBANY AND THE UNIVERSITY OF CALIFORNIA
RELATING TO THE PROJECT KNOWN AS
"UNIVERSITY VILLAGE AT SAN PABLO AVENUE"

This Development Agreement ("Agreement") is entered into as of the __ day of _____, 2012, by and between the City of Albany, a charter city ("City"), and the Regents of the University of California, a California corporation ("Owner"), pursuant to the authority of Section 65864 et seq. of the Government Code of the State of California.

RECITALS

A. The Legislature of the State of California adopted Section 65864 et seq. of the Government Code ("Development Agreement Statute") which authorizes a city to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

B. Owner is the owner of approximately 6.3 acres of real property within University Village located at 1030-1130 San Pablo Avenue (portion of APN 066-2692-002-06) on two separate blocks (Blocks A and B) to the northwest and southwest of the Monroe Street/San Pablo Avenue intersection within the University Village development and includes the area generally bounded by San Pablo Avenue, Codornices Creek, 10th Street and Village Creek, which is generally depicted on **Exhibit A** attached (the "Property").

C. The Property is currently located in the City and is undeveloped.

D. The City's General Plan ("General Plan") designates the Property as Residential/Commercial (RC) and Creek Conservation Zone. The Property is currently zoned San Pablo Commercial (SPC) for the first 100 feet along the eastern side of San Pablo Avenue and Medium Density Residential (R-2) for the rest of the Property west towards University Village.

E. Owner has applied to rezone the entire Property to San Pablo Commercial from its current mix of SPC and R-2 (Application No. 07-100) and for a planned unit development in order to develop up to approximately 57,000 square feet retail space, including a grocery store with beer, wine and distilled spirits comprising no more than 20% of the grocery store sales floor and other commercial uses permitted in SPC zoning district on the north side of Monroe and a mixed-use development at the south end of the lot, which includes up to approximately 28,000 square feet of commercial space and approximately 175 independent/assisted living rental senior housing units of no more than four stories (Application No. _____), and other on and off-site amenities and improvements as more fully set forth in plans attached as **Exhibit B** (the "**Project Plans**").

F. City has also proposed to adopt an ordinance to approve the University Village Mixed Use Overlay District on the Property to require mixed-use development on the Property specifically requiring residential development, including residential care uses, consistent with the

Realistic Unit Capacity of the San Pablo Commercial Zone as defined by the City's Housing Element.

G. On _____, 2012, the City Council approved the Owner's development applications to rezone the Property, a Planned Unit Development, a Density Bonus development standard parking ratio reduction, and the University Mixed Use Overlay District, attached as **Exhibit C** (the "**Project Approvals**"). Collectively, the development of the Property, subject to the Project Approvals, is commonly referred to as the "University Village at San Pablo Avenue Project" (or the "**Project**").

H. City has determined that this Agreement is appropriate for the Property and, therefore, desires to enter into this Agreement. This Agreement establishes planning principles, standards, and procedures to eliminate uncertainty in planning and guide the orderly development of the Property consistent with the General Plan. Furthermore, development of the Property pursuant to the Agreement would ensure the desirable redevelopment of an underused segment of San Pablo Avenue, the installation of certain necessary public improvements and result in increased revenues resulting in fiscal benefits to the City and an improved opportunity for jobs and housing within the City. In exchange for the benefits to City, together with the public benefits that will result from the development of the Project pursuant to this Agreement, Owner will receive the assurance that it may proceed with the project identified in the University Village at San Pablo Avenue Project and in accordance with Applicable Law, and therefore desires to enter into this Agreement.

I. On _____, 2012, Owner made a written commitment to the Albany Little League ("ALL") to allow ALL to continue to use the existing fields at University Village adjacent to the Property, and has committed to ALL to pay for the relocation of said fields in the event Owner causes the existing fields to be developed in the future, attached as **Exhibit E**, (the "**Albany Little League Commitment**")

J. Owner has agreed to require the Project developers and their contractors and subcontractors for the Project to comply with the University's general conditions pertaining to prevailing wages, payroll records and apprentices, as well as certain prequalification and binding arbitration requirements, as set forth in the University Village Senior Living and Marketplace Project Prevailing Wage and Apprenticeship Commitment, attached as **Exhibit F** (the "**Prevailing Wage and Apprenticeship Commitment**").

K. This Agreement and the Project referenced in this Agreement are consistent with the project described and analyzed in the University Village at San Pablo Avenue Project Environmental Impact Report ("University Village EIR") and has been properly reviewed and assessed by City pursuant to the California Environmental Quality Act ("CEQA"). On _____, 2012 the City Council certified the University Village EIR and adopted a mitigation monitoring and reporting program as well as a statement of overriding considerations.

L. This Agreement is consistent with the General Plan. Development of the Property in accordance with this Agreement will provide for orderly growth consistent with the goals, policies, and other provisions of the General Plan.

M. On _____, the City Planning and Zoning Commission, following a duly noticed and conducted public hearing, recommended that the City Council approve this Agreement. On _____, 2012, the City Council, following a duly noticed and conducted public hearing, approved this Agreement as consistent with the General Plan, and adopted Ordinance No. _____ approving this Agreement.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth in this Agreement, the Parties agree as follows:

AGREEMENT

1. Effective Date and Term.

1.1 Effective Date. This Agreement shall become effective upon the thirtieth (30th) day following adoption by the City Council of Ordinance No. _____ approving this Agreement ("Effective Date").

1.2 Term. The term of this Agreement (the "Term") shall extend five (5) years from the Effective Date, unless the Term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by the mutual consent of the Parties, provided that the Term shall be automatically extended during the pendency of any legal challenge to this Agreement or the Project Approvals and for any period of time during which Project implementation is delayed by the failure of any governmental agency, including the California Department of Transportation, to timely process and consider Subsequent Approvals. Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, such termination shall not affect any rights or duties arising from entitlements on the Property which were approved prior to, concurrently with or subsequent to the approval of this Agreement. The term of any other permit approved as a Subsequent Project Approval shall automatically be extended for the term of this Agreement as provided under the appropriate provisions of Government Code section 66452.6(a) or Government Code section 65863.9, unless a longer term would result under otherwise applicable state law or, in the absence of such state law, the term given such approval under local law.

2. Development of Property.

2.1 Vested Right To Develop. Owner shall have the vested right to develop the Project consistent with the Project Approvals pursuant to the terms of this Agreement and Applicable Law. The rules, regulations, official policies, standards and specifications applicable to the Property (the "Applicable Law") shall be those set forth in this Agreement, and those rules, regulations, official policies, standards and specifications, including City ordinances and resolutions, in force and effect on the Effective Date, that are applicable to the Property and govern the permitted uses, density, design, improvements, development procedures, the rate and phasing of development, including without limitation any exactions, impact fees or other requirements applicable to the Property as of the Effective Date. To the extent Applicable Law is in conflict with Owner's vested rights secured by this Agreement, the vested rights secured by this Agreement shall prevail.

2.2 No Conflicting Enactments. Notwithstanding any other provision of this Agreement, this Agreement precludes City (including the voters in the City), by subsequent action, from enacting or imposing any new city law ("New City Law") that conflicts with Applicable Law. Without limitation of the foregoing, any New City Law, whether by specific reference to the development of the Property or as part of a general enactment that directly or indirectly applies to

the development of the Property, shall be considered to conflict with this Agreement and Applicable Law if it has any one or more of the following effects:

(a) Limits or reduces the uses, square footage or FAR, height, site coverage, or density requirements which may be developed on the Property as set forth in the Project Plans.

(b) Limits utilities, services or related facilities or any privileges or rights to such utilities, services and facility for the Property.

(c) Limits or controls in any manner the growth or other rate, timing, subdivision, phasing, or sequencing of the approval or development of the Property, whether by moratorium, growth restriction, a mechanism by which development is tied to the availability of public services and/or facilities (for example, the presence of a specified traffic level or service or water or sewer availability) or otherwise.

(d) Applies to the Property any New City Law otherwise allowed by this Agreement that is not uniformly applied on a City-wide or an area-wide basis to all substantially similar developments and properties.

(e) Changes any land use designation vested by this Agreement on the Property without the consent of Owner.

(f) Requires the issuance of additional permits or approvals by City other than those required by Applicable Law.

(g) Establish, enacts, or increases in any manner applicable to the Property, whether directly by the City Council or by City-called or other City election, or imposes against the Property, any fees, taxes (including, without limitation, general, special and excise taxes except as specified in subjection (j)), exactions, assessments, liens or other financial obligations other than (i) those specifically permitted by this Agreement or Applicable Law or (ii) any City-wide taxes, assessments or bond issuance.

(h) The above list of actions is not intended to be comprehensive, but is illustrative of the types of actions that would conflict with this Agreement. All City actions applying any New City Law to the development of the Property must be consistent with this Agreement.

(i) The project shall comply with the City's Green Building Ordinance.

(j) The project will be subject to any future ad valorum, parcel, and/or sales tax measures passed in the City of Albany.

2.3 State and Federal Law. As provided in Government Code Section 65869.5, this Agreement shall not preclude the application to the Property of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law"). Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Owner any fee specifically

mandated and required by state or federal laws or regulations. In the event the Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with the Changes in the Law, and Parties shall take such action as may be required pursuant to this Agreement, including, without limitation, **Section 3** (Cooperation/Implementation).

2.4 Exactions and Processing Fees. City may charge Owner only those community facilities fees, development fees, impact fees, capacity and connection charges, commercial linkage fees, and other similar fees, exactions or charges for permits and entitlements which are in force and effect on the Effective Date and the amount of such fees and/or monetary exactions shall be at the rate in force and effect on the Effective Date. Except as provided in this Agreement, City may not impose any further or additional fees, taxes, charges, exactions or assessments on the Property, whether through the exercise of the police power, the taxing power or otherwise other than those set forth in Applicable Law. Owner shall be subject to any future Federal, State or Regional Agency fees or charges that the City is compelled by law or order to adopt and enforce. City may charge Owner the application processing fees that are in force and effect on a City-wide basis at the time such services are rendered. Owner shall be subject to any future City-wide ad valorum, parcel, and/or slaes tax or other revenue increases that the voters, City Council or the school board adopt.

2.5 Affordable Housing Requirement. City has determined that the Project's rental senior housing component and rental residential care component are not subject to the provisions of Albany Municipal Code section 20.40.030 (Inclusionary Housing) regarding development of new dwelling units, and City shall not impose an inclusionary housing in-lieu fee on the Project so long as the residential units in the Project remain all-rental.

2.6 Compliance with Project Conditions of Approval and Mitigation Measures. Owner shall comply with all conditions of approval set forth in the Project Approvals as well as all mitigation measures as required by the mitigation monitoring and reporting program set out in the certified University Village EIR.

3. Cooperation/Implementation.

(a) Covenant of Good Faith and Fair Dealing. Each Party shall take and employ all necessary actions to ensure that the rights secured by the other Party through this Agreement can be enjoyed, and neither Party shall take any action that will deprive the other Party of the enjoyment of the rights secured through this Agreement.

(b) New Law. The Parties recognize that City presently is required by law to defend the validity of any voter-approved City initiative or referendum. The undertaking and provision of any such defense by City shall not be construed in any manner as a violation or default of this Agreement.

(c) Timing of Construction and Completion. The Parties acknowledge that it is not now possible to predict when, or the rate at which, or the order in which, the Property or any portion of the Property will be developed. Such decisions depend upon

numerous factors not within the control of Owner, including market orientation and demand, interest rates, general economic conditions, competition, employment rates and other similar factors. Owner may develop or not develop the Property in accordance with the Project Plans in such order, at such rate and at such times, as Owner deems appropriate within the exercise of its subjective and independent discretion, and Owner shall determine the part of the Property to develop first. Owner shall not be required to initiate, pursue or complete development of the Property or any portion of the Property within the Term or any other specific period of time. However, the foregoing does not exempt Owner from completing work required by a road improvement agreement, subdivision agreement or similar agreement in accordance with such agreement's terms. The parties intend by this provision to make inapplicable to this Agreement the *Pardee Construction Co. v. City of Camarillo*, 37 Cal. 3d 465 (1984) decision.

4. City Obligations

4.1 Obligations of City. Approval and execution of this Agreement by Owner are in consideration, among other things, of City's acceptance of and agreement to comply with this Agreement.

4.2 Processing of Subsequent Approvals.

(a) Anticipated Future Approvals. In order to implement and construct development consistent with the Project Plans, it is anticipated that the following land use entitlements and/or permits will be sought: parcel and/or subdivision maps, building permits, certificates of occupancy and such other permits as may be necessary for the development of the Property in accordance with the Project Plans ("**Subsequent Project Approvals**").

(b) Upon submission by Owner of all appropriate Applications for any Subsequent Project Approval, City shall commence and complete (and shall use its best efforts to promptly and diligently commence and complete) all steps necessary to act on the Subsequent Project Approval Application including, without limitation, (i) the notice and holding of all required public hearings, and (ii) the decision on the Subsequent Approval Application.

(c) City may deny Subsequent Project Approval Application by or requested by Owner only if such Application does not comply with the Applicable Law or this Agreement, provided, however, that the inconsistency with the General Plan shall not constitute grounds for denial of an Application that is an amendment to the General Plan.

(d) Owner shall, in a timely manner, provide City with all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder and cause Owner's planners, engineers, and all other consultants to submit, in a timely manner, all required materials and documents therefor. It is the express intent of the Parties to cooperate and diligently work to process all Subsequent Project Approvals.

(e) In order to assist City in the review and processing of Subsequent Project Approvals, Owner may elect to pay City to contract with consultants for additional staffing. City and Owners shall cooperate in selecting the firm or persons to provide additional staffing to City. Any funds advanced by the Owner shall be a credit against the City's standard fees for the services performed.

4.3 Parking Requirements for Senior Housing Component. City shall allow the parking ratio for the senior housing component of the Project to be 0.6 spaces per senior independent and assisted living unit based on the City Council's determination that, pursuant to evidence supplied by Owner, that such a reduction is allowable under the State Density Bonus Law (Government Code § 65915 et seq.).

4.4 Parkland Dedication Requirements for Senior Housing Component. City shall allow the parkland dedication requirement for the senior housing component of the Project to be fulfilled by the dedication to City of a combination of access easements for the publicly accessible pedestrian path along Village Creek between San Pablo Avenue and 10th Street, the publicly accessible pedestrian/bicycle path along Codornices Creek between San Pablo Avenue and 10th Street, and public open space easements for the portions of Village Creek and Codornices Creek located within the Property (collectively, the "**Creek Easements**") as described in the Project Approvals, in lieu of the ratio of parkland dedication set forth in Section 22-8.4 of the Municipal Code based on the City Council's determination that such dedication bears a reasonable relationship to the use of park and recreational facilities by the future inhabitants of the senior housing development and pursuant to City council amendments to Section 22-8.4 of the Municipal Code.

4.5 Other Governmental Permits. Owner shall apply in a timely manner for Subsequent Project Approvals required by other agencies having jurisdiction over, or providing services or facilities to, the Property. City shall not be required by this Agreement to join or become a party in any manner to litigation or any administrative proceeding involving such agencies.

5. Owner Obligations

5.1 Obligations of Owner. Approval and execution of this Agreement by City are in consideration, among other things, of Owner's acceptance of and agreement to comply with this Agreement.

5.2 Dedication of Property.

(a) Owner hereby agrees to offer to dedicate to City the Creek Easements as set forth in **Exhibit D** ("**Parkland Dedication Property")** to the City or to any governmental agency designated by City in full satisfaction of the requirements contained in Albany Municipal Code Section 22-8.4 (Parkland Dedication). The offer of dedication will occur on the later of (i) thirty (30) days following the expiration of the statute of limitations for initiation of any administrative appeal, judicial challenge or filing of an application for a referendum of this Agreement or the expiration of any other applicable statute of limitations for challenging this Agreement under CEQA or any other land use law (a "Challenge")

without the commencement of a Challenge or (ii) if a Challenge is commenced, the thirty (30) days after the Challenge is finally resolved in favor of upholding the approval of this Agreement without the imposition of any new material modification to the terms of this Agreement which materially or adversely affect the development of the Property as contemplated by this Agreement. The Creek Easements shall be recorded prior to issuance of the first building or grading permit for any senior housing units in the Project, except that the public access easement for Codornices Creek shall be recorded prior to issuance of an building or grading permit for the creek restoration work.

5.3 Public Art. In compliance with Albany Municipal Code Section 20-58 relating to art in public places, Owner shall satisfy the requirements of that section by providing the required amount of art on the Property in areas accessible to the general public and will not be required to pay any fees to the City's Art in Public Places Fund.

5.4 Albany Resident Preference Priority. Owner shall require the operator of the senior housing component of the Project to develop a marketing and outreach program that complies with Federal Fair Housing requirements in order to provide Albany residents move-in priority over other applicants on at least 10% of the senior housing units.

6. Amendment.

6.1 Amendment of Agreement. This Agreement may be amended from time to time in whole or in part by mutual written consent of the Parties or their successors in interest, and subject to the provisions of Government Code Section 65868. All amendments to this Agreement, other than an insubstantial amendment as set forth in Section 6.2, require the approval of the City Council following a noticed public hearing.

6.2 Insubstantial Amendment Exemption. An insubstantial amendment to this Agreement is one that does not relate to the Term; change in permitted uses; density or intensity of use; height or size of proposed buildings; provisions for reservation and dedication of land; conditions, restrictions, and requirements relating to subsequent discretionary actions by City; or monetary contributions by Owner or any other conditions or covenants relating to the use of the Property. An insubstantial amendment shall not require notice of public hearing before the Parties may execute an amendment to this Agreement. The Director of Community Development shall determine whether the insubstantial amendment exemption applies. Notice of an Insubstantial Amendment shall be provided by the Director to the City Council in the form of a communication to be placed on the agenda of the next regularly scheduled City Council meeting. The Decision of the Director may be appealed pursued to procedures established in Planning and Zoning Code Section 20.100.080. Any such appeal shall toll all applicable time periods until such time as the appeal is concluded. The Chancellor of the University of California, Berkeley, or designee, shall be authorized to execute an Insubstantial Amendment on behalf of the Owner.

7. Default; Annual Review; Delay; Legal Challenge.

7.1 Default.

(a) Notice and Cure. The terms, provisions and conditions of this Article 5 (Default; Annual Review; Delay; Legal Challenge) shall apply to any default by either Party. A "Default" is a failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a "Cure Period" of sixty (60) days following written notice of such failure from the other Party or for such longer period as may be provided by mutual consent. Any notice given pursuant to the preceding sentence ("Default Notice") shall specify the nature of the alleged failure to perform and, where appropriate, the manner in which such failure may be cured. If the nature of the alleged failure to perform is such that it cannot reasonably be cured within a 60-day period, then the commencement of the cure within the 60-day period following the Default Notice, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within the Cure Period.

(b) Cure Period. During any Cure Period, the Party alleged to have failed to perform shall not be in default of this Agreement for the purposes of termination, other remedies or institution of an administrative proceeding or litigation. If the alleged failure is cured, then no default by the Party shall have taken place or existed and the Party giving the Default Notice shall take no further action.

(c) Remedies.

i. Subject to the foregoing provisions of this Section 7.1 (Default), after a Default (i.e., after Default Notice and expiration of the Cure Period without cure), the Party giving the Default Notice may institute a legal proceeding to enforce the terms of this Agreement, and/or terminate this Agreement pursuant to Government Code Section 65868.

ii. If City elects to consider terminating this Agreement due to a Default of Owner, then City shall give Owner twenty (20) days written notice of intent to terminate this Agreement, and the matter shall be scheduled for consideration and review by the City Council within sixty (60) days. Owner shall have the right to offer written and oral evidence prior to and at such public hearing. If the City Council determines that a Default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Owner by certified mail and this Agreement shall thereby be terminated effective the date of the City Council's decision.

(d) Relation to Annual Review. Evidence of an alleged default by Owner may also arise in the course of the regularly scheduled Annual Review of this Agreement, as further described in Section 7.2 (Annual Review) of this Agreement.

7.2 Annual Review.

(a) On or before April 1, 2013, and on or before April 1 on each successive year during the Term thereafter, City shall conduct an Annual Review. This Annual Review shall be conducted by the Director of Community Development and presented to the City Council, and shall be limited in scope to compliance with the terms of this Agreement.

(b) During the Annual Review, Owner may be required to demonstrate good faith compliance with the terms of this Agreement pursuant to Government Code

Section 65865.1, and supply information to the Director of Community Development as reasonably requested in connection therewith. Based on a staff report prepared by the Director of Community Development, the City Council shall, at a public hearing, make written findings and determinations, on the basis of substantial evidence, whether or not Owner has complied in good faith with the terms and conditions of this Agreement. If City finds and determines that Owner has not complied with such terms and conditions, the City Council may terminate or modify this Agreement in the manner set forth in Section 7.1 and by giving notice of its intention to do so in the manner set forth in Government Code Section 65867.

(c) City shall deposit in the mail to Owner a copy of all final public staff reports and to the extent practicable, related exhibits concerning Owner's performance hereunder at least ten (10) days prior to such periodic review. Owner shall be permitted an opportunity to respond to City's evaluation of their performance, orally at public hearing, or in a written statement, or both, at Owner's election.

(d) Failure by the City to conduct an Annual Review or notify Owner in writing (following the time during which the review is to be conducted) of City's determination as to compliance or noncompliance with the terms of this Agreement shall not be deemed to be a determination by City of Owner's compliance with the terms of this Agreement for that Annual Review period, nor shall it act as a waiver by the City of any default on the part of the Owner.

(e) With respect to any year for which an Annual Review is conducted and compliance is determined, City, upon request of Owner, shall provide Owner with a written "Notice of Compliance," within five (5) business days following Owner's request therefor.

7.3 Enforced Delay; Extension of Time of Performance. In addition to any specific provision of this Agreement which may excuse performance, performance by Owner of its obligations hereunder may be excused during any period of delay caused by war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by governmental entities other than City (including new or supplemental environmental regulations), enactment of conflicting state or federal laws or regulations, judicial decisions, or other circumstances outside the reasonable control of Owner if agreed to by the City Council in its sole and absolute discretion. A Challenge shall be deemed to create an excusable delay. Upon the request of either Party to this Agreement, an extension of time for such cause (including a corresponding extension of the Term) shall be granted in writing by the other Party for the period of the enforced delay or such longer period relating to the delay as may be mutually agreed upon. Such an extension of time, having been granted pursuant to this Agreement, shall not be an amendment of it.

7.4 Legal Action.

(a) Legal Remedies. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Either Party may, in addition to any other rights or remedies, institute an action to cure, correct or remedy any default, enforce any covenant or agreement in this Agreement, enjoin or restrain any threatened or attempted

violation of this Agreement or enforce by specific performance the obligations and rights of the parties to this Agreement, or to obtain any other remedy. The Parties acknowledge that neither the City nor Owner would have entered into this Agreement had they been exposed to damage claims from the other party for any breach thereof. As such, the parties agree that in no event shall either party be entitled to monetary damages for breach of contract by the other party to this Agreement.

(b) Cooperation in the Event of Challenge. In the event of any legal or equitable act, action or other proceeding instituted by a Third Party, other governmental entities or officials challenging the validity of the provision of this agreement, the Parties hereby agree to cooperate in defending said action or proceeding.

7.5 Defense and Indemnity.

(a) Owner's Actions. Owner shall defend, hold harmless, and indemnify City and its elected and appointed officers, agents, employees, and representatives from claims, costs, and liabilities for any personal injury, death or property damage, which may arise, directly or indirectly, from operations performed under this Agreement, by Owner or by Owner's contractors, subcontractors, agents or employees, whether such operations were performed by Owner or any of Owner's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Owner or any of Owner's contractors or subcontractors except for those suits claims or actions arising from the active negligence or willful misconduct of the City or its elected or appointed officers, representatives, agents or employees. Owner further agrees to and shall save and hold City harmless for any and all claims, costs and liability arising as a result of a successful legal action against City which challenges the validity of this Agreement, or the Project, or any of the terms and conditions herein excepting however any suits, claims, or actions brought by Owner for defaults or breach of this Agreement.

8. Covenants and Transfers.

8.1 Covenants. The provisions of this Agreement shall constitute covenants or servitudes that shall run with the land comprising the Property, and the burdens and benefits of such provisions shall bind and inure to the benefit of all successors in interest and shall be assignable thereto.

8.2 Transfers and Assignments.

(a) Right to Assign. Owner contemplates ground leasing, selling, transferring or assigning all or portions of its Property to other persons or entities (each such other person or entity is referred to as a “Transferee”) prior to development of the Project. In connection with any such sale, transfer or assignment to a Transferee, Owner may ground lease, sell, transfer or assign to such Transferee any or all rights, interests and obligations of Owner arising hereunder and that pertain to the portion of the Property being sold or transferred, to such Transferee. Owner shall notify City of any such ground lease, sale, transfer or assignment and the identity of the Transferee.

(b) Effect of Sale, Transfer or Assignment. Owner shall be released from any obligations hereunder ground leased, sold, transferred or assigned to a Transferee pursuant to subparagraph 8.2(a) of this Agreement, provided Owner has provided to City a written assignment and assumption agreement in which the Transferee expressly assumes the obligations of Owner being assigned to Transferee.

9. Miscellaneous Provisions.

9.1 Generally. Any notice required under this Agreement between City or Owner must be in writing, and may be given either personally or by regular and registered or certified mail, return receipt requested. If given by registered or certified mail, such notice shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed.

9.2 Addresses for Notice. Notices shall be given to the Parties at their addresses set forth below:

If to City, to:

City Manager
City of Albany
1000 San Pablo Avenue
Albany, CA 94706
Telephone: (510) 528-5710
Facsimile: (510) _____

With a copy to:
Director of Community Development
City of Albany
1000 San Pablo Avenue
Albany, CA 94706
Telephone: (510) 528-5760
Facsimile: (510) _____

If to Owner, to:

Kevin Hufferd, Property Development Director
University of California, Berkeley
200 A&E Building
Berkeley, CA 94720-1382
Telephone: (510) 643-5314
Facsimile: (510) 643-9266

With a copy to:

James Agate, Senior Counsel
Office of the General Counsel of The Regents
1111 Franklin Street
Oakland, CA 94607
Telephone: (510) 987-9719
Facsimile: (510) 987-9757

Any Party to this Agreement may at any time, by giving notice to the other Party pursuant to Section 9.1 (Generally) of this Agreement, designate any other address in substitution of the above address. Thereafter, all notices relating to this Agreement shall be addressed and transmitted to such new address.

9.3 No Agency, Joint Venture or Partnership. City and Owner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herein shall be construed as making the City and Owner joint ventures or partners.

9.4 Severability. If any portion, part, article, section, subsection, subdivision, sentence, phrase, word, term, provision, covenant, or condition of this Agreement (each a "Portion") or the application of any Portion of this Agreement to a particular situation is held by a court or other authority of competent jurisdiction to be invalid, void or unenforceable, such Portion shall be considered severed from this Agreement and the remainder of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if the Portion or its application held to be invalid, void or unenforceable is material to Owner, Owner may (in Owner's sole and absolute discretion) terminate this Agreement by providing written notice of such termination to City.

9.5 Other Necessary Acts. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement.

9.6 Construction. This Agreement has been reviewed and revised by legal counsel for both City and Owner, and no presumption or rule that ambiguities be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

9.7 Other Miscellaneous Terms. The singular includes the plural; the masculine gender includes the neuter and feminine; "shall" is mandatory; "may" is permissive.

9.8 Section, Etc., References. A reference to an Article, Section, or Recital is a reference to the corresponding Article, Section, or Recital of this Agreement.

9.9 Counterparts. This Agreement may be executed in two duplicate counterparts, each of which shall be deemed to be an original.

9.10 Entire Agreement. This Agreement shall constitute the entire Agreement of the Parties. This Agreement supersedes all negotiations and previous agreements between the Parties with respect to all or any part of the subject matter of this Agreement. Any waiver of any provision of this Agreement shall be in writing and signed by the appropriate authorities of City and Owner.

9.11 Recordation. Within thirty (30) days after the execution hereof, this Agreement (or suitable memorandum thereof) shall be recorded by the City Clerk at Owner's expense in the official Records of the County of Alameda.

9.12 Incorporation. The Preamble, the Recitals and the Exhibits, including without limitation all defined terms, are hereby incorporated into this Agreement as if set forth in this Agreement in full.

10. Mortgage Protection; Certain Rights of Cure.

10.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

10.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 10.1 (Mortgage Protection) above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that except to the extent any covenant to be performed by Owner is a condition to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance. In the event a Mortgagee elects to develop the Project Site or applicable portion thereof in accordance with this Agreement and the Project Approvals, the Mortgagee shall be required to assume and perform the obligations of Owner under this Agreement.

10.3 Notice of Default to Mortgagee and Extension of Right to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner hereunder and specifying the address for service thereof, City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice given to Owner with respect to any claim by City that Owner has committed an event of default. Each Mortgagee shall have the right during the same period available to Owner to cure or remedy, or to commence to cure or remedy, the event of default claimed set forth in City's notice. City, through its City Manager, may extend the thirty-day cure period provided in Section 5.1 (Default) for not more than an additional sixty (60) days upon request of Owner or a Mortgagee.

11. Definitions.

Unless the context requires a different meaning, any term or phrase used in this Agreement which has its first letter capitalized shall have the meaning given to it in this Section. A definition applies to both the singular and plural forms of the term, so long as the first letter is capitalized. A definition applies throughout this Agreement, regardless of whether the definition is given with the first use of the defined term, thereafter or in this Section 11.

"Agreement" means this Development Agreement, including all of its Exhibits, as this Agreement may be amended.

"Annual Review" means the annual review that the City shall make regarding the good-faith compliance by Owner with the terms of this Agreement (Section 7.2).

"Applicable Law" means (i) this Agreement, (ii) the General Plan, (iii) and any and all other rules, regulations and official policies relating to the Property in effect on the Effective Date.

"Application" means an application filed at the request of Owner for a Subsequent Approval.

"CEQA" means the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.), the CEQA Guidelines, and City's local guidelines promulgated thereunder (collectively "CEQA").

"Challenge" means any administrative, legal or equitable action or other proceeding instituted by a Third Party challenging the validity of any provision of this Agreement or any other aspect of the Property.

"Changes in the Law" means any New City Law that is specifically mandated and required by changes in state or federal laws or regulations.

"City" means the City of Albany, including its City Council, Planning and Zoning CommissionPlanning and Zoning Commission, agencies, departments, employees and authorized agents, consultants and volunteers.

"City Council" means the City Council of the City of Albany.

"City Laws" means all City rules, regulations and official policies, including without limitation all City laws, ordinances, codes, rules, regulations, general, specific and other plans, policies, resolutions, orders, directives, mitigation measures, other measures, conditions, standards, specifications, dedications, fees, taxes, assessments, liens, other exactions, other impositions and any other action, whether enacted or adopted: by the City Council, Planning and Zoning Commission, other board, commission or similar body of City; the City electorate through the initiative or referendum process or other means; by any district or other entity under the direction or control of the City Council or City; by the electorate of such district or other entity; or through exercise of County's police or other power, right or interest. "City Law" means any one of them.

"Cure Period" has the meaning given in Section 7.1.

"Default" has the meaning given in Section 7.1.

"Default Notice" has the meaning given in Section 7.1.

"Department" means the Community Development Department of City or any successor department of City.

"Director" means the Director of the Department or his or her designee.

"Effective Date" is the date on which this Agreement becomes effective, as provided in Section 1.1.

"**Exactions**" means and refers to all exactions, fees, in lieu payments or other monetary payments, requirements for dedications, acquisitions, reservation or maintenance of land, obligations to construct on or off-site improvements that benefit the Project.

"General Plan" means the entire City of Albany General Plan adopted December 7, 1992.

"Mortgage" has the meaning set forth in Section 10.1.

"Mortgagee" has the meaning set forth in Section 10.1.

"New City Law" means any City Law that becomes operative or effective after the Effective Date.

"Owner" is the Regents of the University of California. "Owner" shall also apply to subsequent Transferee(s) and/or successors in interest to this Agreement.

"Parties" refers to Owner and City, and a **"Party"** is either one of them.

"Planning and Zoning Commission" means the Planning and Zoning Commission of the City of Albany.

"Preamble" means the first paragraph of this Agreement, which immediately precedes the recitals.

"Project" or **"University Village at San Pablo Avenue Project"** means the development approved in the Planned Unit Development approval including up to approximately 57,000 square feet of retail space, including a grocery store with beer, wine and distilled spirits comprising no more than 20% of the grocery store sales floor, and other commercial uses permitted in SPC zoning district on the north side of Monroe and a mixed-use development at the south end of the lot, which includes up to 28,000 square feet of retail space for retail uses permitted in the SPC zoning district and approximately 175 independent/assisted living rental senior housing units and other on and off-site amenities and improvements as more fully set forth in plans attached as Exhibit B and in the Project Approvals. The height of the

senior housing unit portion of the Project will be no more than 52 feet from finished floor to top of the structure. The General Exceptions, Mechanical Appurtenances, and General Exemptions portions of Section 20.24.080 shall apply.

"Project Plans" means the plans for the University Village at San Pablo Avenue Project as set forth in Exhibit B.

"Property" has the meaning given in Recital B and set out in Exhibits A and B.

"Subsequent Approvals" means the land use approvals, actions, agreements, permits or entitlements necessary or desirable to the development of the Property, including (without limitation) use permits, or amendments thereto, subdivision or parcel maps, and building permits required by Owner.

"Term" has the meaning given in Section 1.2.

"Third Party" means a person other than the Parties, the owners, or their successors in interest, including another governmental entity or official.

IN WITNESS WHEREOF, this Agreement has been approved by City and has taken effect as of the Effective Date and has been executed by the Parties to this Agreement as of the day and year shown on the notarial acknowledgments to this Agreement.

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

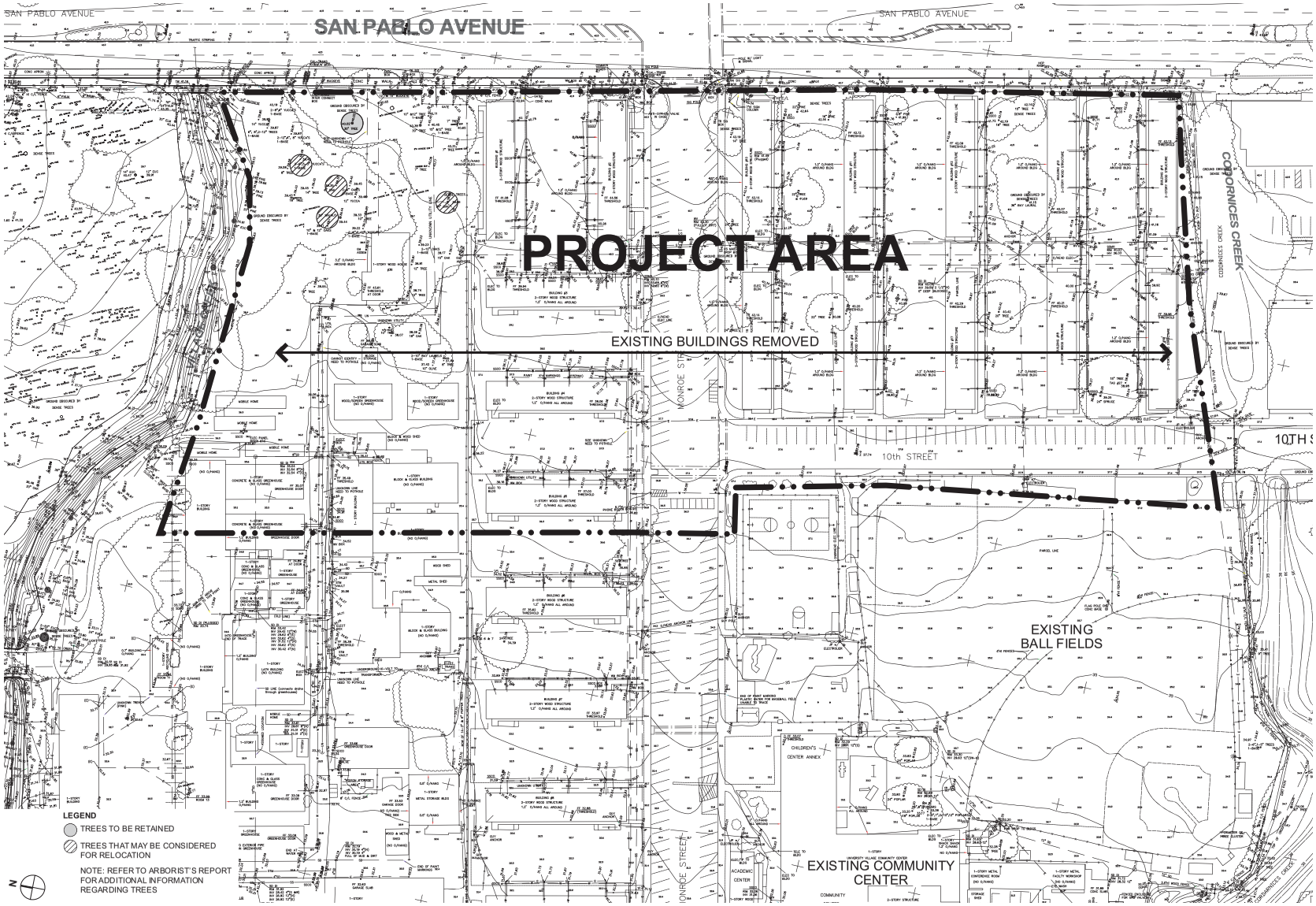
CITY OF ALBANY, a public body corporate and politic

By: _____

UNIVERSITY OF CALIFORNIA

By: _____

EXHIBIT A
Map of Property



SITE SURVEY 1

SCALE: 30' 60' 120'

Pyatok Architects, Inc.
architecture planning research
1611 Telegraph Avenue, Suite 200
Oakland, California 94612
510.465.7010 p | 510.465.8575 f
www.pyatok.com

Consultants:

PGA DESIGN
444 17th Street,
Oakland, CA 94612

BKF ENGINEERS
4670 Willow Road, Suite 250,
Pleasanton, CA 94588

BICYCLE SOLUTIONS
338 S. Fremont St. #112,
San Mateo, CA 94401-3374

UNIVERSITY VILLAGE
SENIOR HOUSING & MARKETPLACE
1030 - 1130 SAN PABLO AVENUE,
ALBANY, CA 94706

Client:
University of California, Berkeley
Real Estate Services
200 A&E Building
Berkeley, CA 94720-1382

Revision Schedule

Rev. No.	Issue	Date
	REVISED PUD & RE-ZONING SUBMITTAL	3/30/11

Stamp:

PETER WALLER
C-23551
LICENSE EXP. 12-31-2012
STATE OF CALIFORNIA

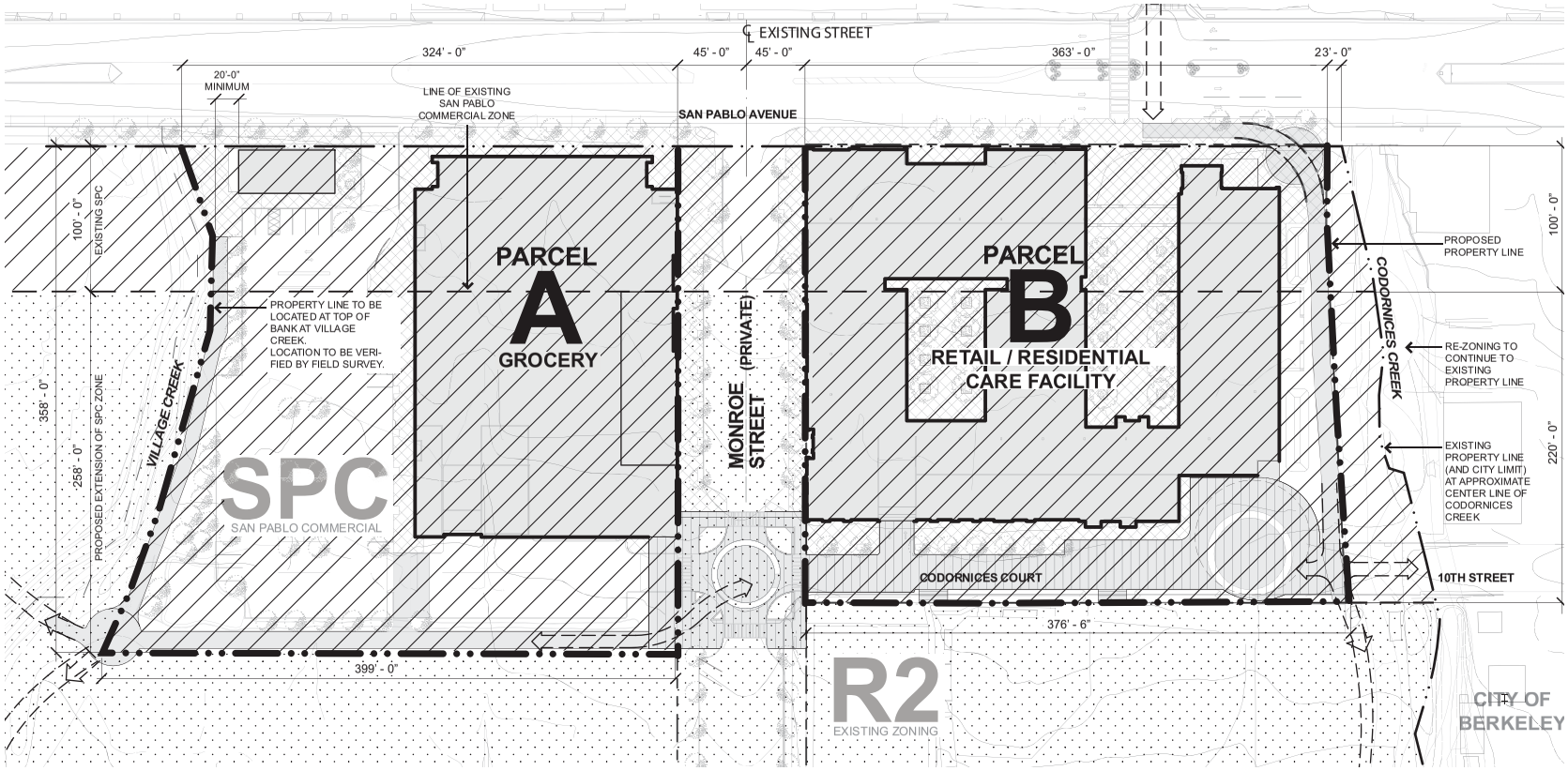
Job Number:	0507
Drawn by:	BPH
Checked by:	PW
Date:	01/11/2011
Scale:	1" = 30'-0"

Title
SITE SURVEY

Sheet
A0.3

Not-For-Construction

EXHIBIT B
Project Plans for University Village at San Pablo Avenue Project



LEGEND

- PROPOSED STRUCTURES
- EXG PROPERTY LINE
- PROPOSED PROPERTY LINE
- SAN PABLO COMMERCIAL ZONE
- RESIDENTIAL-2 ZONE

NOTE

LOCATION OF PROPOSED PROPERTY LINES IS APPROXIMATE. FINAL LOCATION TO BE DETERMINED THROUGH SUBDIVISION APPROVAL PROCESS.

Development Summary

		Parcel A	Parcel B	Monroe Street From San Pablo to westerly line of Parcel A	Total Development
Total Lot area		125,000 SF **2.87 acres**	118,000 SF **2.71 acres**	31,300 **0.72 acres**	274,300 **6.3 acres**
Grocery	Single tenant space with dedicated parking and loading zones	45,000 SF 40,000 footprint with 5,000 SF mezzanine	-	-	45,000
Community Serving Retail	Multiple Tenants with shared parking. Loading from street	7,000 SF	19,200	-	26,200
Total Retail		52,000	19,200	-	**71,200**
RCFE Residential Care Facility for the Elderly	Assisted living Senior Care Facility with meal program and on-site services	-	175 units/suites 220,000 SF	-	175 220,000 SF
Total Development Area	Not including underground garages	52,000	239,200	-	**291,200 SF**
Underground Parking garages		45,000	65,000	-	110,000 SF
Private street	Serves new development and the existing residents at University Village	-	-	31,300	

Zoning Summary

Land use Standards Table 20.24.020, and as noted		Proposed Development		
		Parcel A	Parcel B	Combined, including Monroe St.
Density (1)	63 DUA maximum	-	64.6 (1)	27.8 DUA
Total FAR (Floor Area Ratio)	2.25	0.42	2.03	1.06
Commercial FAR	0.95 max.	0.42	0.16	0.26
Minimum Lot Area per Dwelling Unit (1)	690 sq. ft./unit Based on R-3	-	674 SF (1)	-
Lot Coverage	100%	40%	52%	43%
Building Height	38' maximum	30' max	54' Measured from sidewalk at San Pablo Avenue to top of roof	-
Set backs				
Front setback	0' minimum 4' maximum	8'-6" at Grocery	3' minimum at Community Retail -additional setbacks as indicated	
Side setback	5' minimum Required adjacent to R district 20.24.070.A	20' minimum at Retail adjacent to Village Creek	25' minimum 30' average	
Rear setback	10' plus daylight plane	80' minimum	60' minimum	
Open Space at Residential Uses				
Useable Open Space for residential units (1)	200 SF common space x 175 units = 35,000 SF Private open space counts at 2:1 ratio 20.24.90 (4)	Common open space at grade: 15,800 Roof & porches 6,500 Total Common Open Space 22,300 Private useable Open Space 1,500 SF (x 2) 3,000 Total Open Space provided 25,300		
Required Landscaping at Surface Parking Areas (exceeding 50 cars)				
Trees	One tree for every 8 stalls	Minimum of 13 trees provided for 97 stalls, Meets standard		
Landscaped area	10% of the total.	Additional landscaped areas provided at perimeter equal to 10% of surface parking. Limited landscape area within parking area due to conflict with shopping carts.		

Parking Summary

Use	Area	Zoning Standard	Total required	Total Provided	Surplus (Deficit)
Retail/Commercial					
Grocery	45,000	One space per 400 SF	112	210 97 surface 113 garage	80
Community Retail Parcel A	7,000	One space per 400 SF	18	Included above	
Community Retail Parcel B	19,200	One space per 400 SF	48	27 (On Monroe.)	(21)
Total Retail	71,200		**178**	**237**	**59**
Residential Care Facility (RCF)					
RCFE Residential Care Facility for the Elderly	175 units/suites	1.5 space per unit, based on reduction for adequate on-street parking	263	180	(83)
Total Parcel A & B			**441** required	**417** provided	**(24)** deficit

1. Note that the residential standards for Density, Minimum Lot Area and Open Space are not directly applicable to the proposed Residential Care Facility. These standards and calculations for proposed density and open space are provided for reference only.

PROPOSED RE-ZONING (1)

SCALE: 30' 60' 120'

Pyatok Architects, Inc.
architecture planning research
1611 Telegraph Avenue, Suite 200
Oakland, California 94612
510.465.7010 p | 510.465.8575 f
www.pyatok.com

Consultants:

PGA DESIGN
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BKF ENGINEERS
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UNIVERSITY VILLAGE
SENIOR HOUSING & MARKETPLACE
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Client:
University of California, Berkeley
Real Estate Services
200 A&E Building
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Revision Schedule

Rev. No.	Issue	Date
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Stamp:

PETER WALLER C-23551 LICENSED ARCHITECT

Job Number:	0507
Drawn by:	BPH
Checked by:	PW
Date:	01/11/2011
Scale:	1" = 30'-0"

Title
PROPOSED RE-ZONING

Sheet
A0.4

Not-For-Construction

EXHIBIT C
Approved Development Applications for University Village at San Pablo Avenue Project

EXHIBIT D
Property to be Dedicated by Owner in Satisfaction of Parkland Dedication Requirement

EXHIBIT E

Albany Little League Commitment

UNIVERSITY OF CALIFORNIA, BERKELEY

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO SANTA BARBARA • SANTA CRUZ

REAL ESTATE SERVICES BERKELEY, CALIFORNIA 94720-1382

April 16, 2012

Jack Miller
President, Albany Little League
Via e-mail: J_Miller@lbl.gov

Dear Jack,

As you know, the University of California, Berkeley is proud of our long, collaborative relationship with the Albany Little League. As we have discussed, the implementation of our University Village Senior Living and Marketplace project provides the University with greater certainty and resources to help support our long range goals for the University Village. With this in mind and in the spirit of our long relationship, we are pleased to be able to provide our commitment to you that the existing little league fields at the Village can remain in place for at least 10 years if the University Village Senior Living and Marketplace project goes forward.

We would like to further reinforce the University's binding commitment to the Albany Little League. With the Little League's support, if the University and the City satisfactorily conclude our current discussions with respect to a development agreement and our University Village Senior Living and Marketplace project is developed, the University will fund the relocation of the existing little league fields to equivalent facilities if the University subsequently causes the fields to be displaced.

As we have also discussed, we welcome the opportunity to set up a Fields Management Working Group consisting of Little League and UC representatives (from both the Village administration and our Government and Community Relations office) so that site management/maintenance issues can continue to be worked out in a collaborative manner. Assistant Vice Chancellor Chris Treadway, with the campus Government and Community Relations office will spearhead the formation of this working group.

We look forward to continuing our partnership with the League.

Sincerely,

R. Hatheway

Robert Hatheway
Assistant Vice Chancellor, Real Estate

EXHIBIT F
Prevailing Wage and Apprenticeship Commitment

April 23, 2012 (amended 6/13/2012)

University Village Senior Living and Marketplace Project
Prevailing Wage and Apprenticeship Commitment
Key Terms

Prevailing wages and apprentices:

Subsequent to the City of Albany's approval of the University Village Senior Living and Marketplace Project, the University would require the future developer(s) have its general contractor agree to comply with the University's general conditions pertaining to prevailing wages, payroll records and apprentices (see Sections 14.3, 14.4, 14.5 attached).

The General Contractor shall:

- Require the Subcontractors to sign a letter of commitment, provided by the General Contractor, stating the Subcontractors will comply with the provisions of this Amendment.
- Agree that if anything in Amendment is inconsistent with the University's general conditions the agreement language will control and be enforced.
- The $50 a day penalty fee for violating contractors will be paid by the contractor to an account to be established to benefit the Friends of Albany Seniors.
- Allow authorized representatives of the Union access to the Project, provided that such representatives fully comply with customary visitor, security and safety rules and the environmental compliance requirements of the Project that are posted. Each Contractor recognizes the right of access set forth in this Section and such access will not be unreasonably withheld from an authorized representative of the Union.
- Shall insure apprentices will be utilized on the project from each craft at the ratios required as stipulated in the University's attached general conditions. These apprentices shall be enrolled in a State of California approved apprenticeship program with a proven record of graduating participants.

Pre-qualification of contractors:

As part of the City of Albany's approval of the University Village Senior Living and Marketplace Project, the University would require the future developer(s) to prequalify its contractors and exclude any which have been required to pay either back wages or penalties for failure to comply with the State's prevailing wage laws on three or more occasions within the last three years.

Binding Arbitration:

The University would have the developer of the project require its contractor to agree to a binding arbitration process to resolve disputes that arise over compliance with the provisions described above.

Complaint and Arbitration Procedure

Section 1. All disputes concerning violations of the prevailing wage requirements agreed to by the City and the University will be resolved though the following complaint and arbitration procedures.

Section 2. A complaint shall be considered null and void if not brought to the attention of the Contractor(s) within ten 10) working days after the complaint is alleged to have occurred or within ten (10) working days after the Union's first knowledge of the complaint.

Section 3. Complaints shall be settled according to the following Steps:

Step 1: The steward or business representative and the complainant shall attempt to resolve the complaint with the craft supervisor.

Step 2: In the event the matter remains unresolved in Step 1 above, within ten (10) working days, the complaint shall be reduced to writing and may then be referred by the Union or complainant to the Contractor(s) for discussion and resolution.

Step 3: In the event the matter remains unresolved in Step 2 above, either Party may request, within ten (10) working days, the complaint will be submitted to arbitration. The time limits set out in this procedure may, upon mutual agreement, be extended. Any request for arbitration, request for extension of time limits, and agreement to extend such time limits shall be in writing.

Step 4: The parties agree that an arbitrator shall be selected by the alternate striking method from a list of arbitrators obtained from the American Arbitration Association, or any alternate method of selection mutually agreeable to the parties. The selection of the party who shall strike the first name shall be by the toss of a coin.

The arbitration procedure contained herein, once invoked, shall be mandatory. Should a Party to the procedure fail or refuse to participate in the hearing, if the Arbitrator determines that the proper notice of the hearing has been given, said hearing shall proceed to a default award. The Arbitrator's award shall be final and binding on all Parties to the arbitration. The costs of the arbitration, including the arbitrator's fee and expenses, shall be borne by the losing Party. The Arbitrator's decision shall be confined to the question(s) posed by the complaint and the Arbitrator shall not have authority to modify, amend, alter, add to, or subtract from, any provisions of this Agreement.

Scope of the Agreement:

These labor provisions would apply to all construction work associated with the proposed project including the tenant improvements, except: (a) the work of non-manual employees, (b) work after the issuance of a Certificate of Occupancy for core construction and one year after the C of O for tenant improvement work (c) work by state, county, city or other governmental bodies, (d) non-construction support services, (e) tenant improvement work for any restaurant or retail space that is less than $100,000.

14.3 PREVAILING WAGE RATES

14.3.1 For purposes of this Article 14.3, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

14.3.2 Contractor shall comply and shall ensure that all Subcontractors comply with Sections 1770, 1771, 1772, 1773, 1774, and 1775 of the State of California Labor Code. Compliance with these sections is required by this Contract.

14.3.3 The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the Work is to be performed for each craft, classification, or type of worker required to perform the Work. A copy of the general prevailing per diem wage rates will be on file at University's principal facility office and will be made available to any interested party upon request.

Contractor shall post a copy of the general prevailing per diem wage rates at the job site. By this reference, such schedule is made part of the Contract Documents. Contractor shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Contractor in the execution of the Work. Contractor shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the prevailing rates to all workers employed by such Subcontractors in the execution of the Work. Contractor shall forfeit to University, as a penalty, not more than $50 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Work done by Contractor or any Subcontractor. The amount of this penalty shall be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the Contract Sum or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the Contract Sum. Contractor shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Work, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment shall be made pursuant to section 17420 of the California Labor Code.

14.4 PAYROLL RECORDS

14.4.1 For purposes of this Article 14.4, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

14.4.2 Contractor and all Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyworker, apprentice, worker, or other employee employed in connection with the Work. All payroll records shall be certified as being true and correct by Contractor or Subcontractors keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.

.2 A certified copy of all payroll records shall be made available for inspection upon request to University, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.

.3 A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either University, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Contractor or Subcontractors. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by University shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.

14.4.3 Contractor shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. Contractor shall inform University of the location of such payroll records for the Project, including the street address, city, and county; and Contractor shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Article 14.4 or with the State of California Labor Code Section 1776, Contractor shall have 10 days in which to comply following receipt of notice specifying in what respects Contractor must comply. Should noncompliance still be evident after the 10 day period, Contractor shall forfeit to University, as a penalty, $25 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Contract Sum.

14.5 APPRENTICES

14.5.1 For purposes of this Article 14.5, the term Subcontractor shall not include suppliers, manufacturers, and distributors.

14.5.2 Only apprentices, as defined in the State of California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by Contractor and Subcontractors as apprentices. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training.

14.5.3 Every apprentice shall be paid the standard wage to apprentices, under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the Work in the craft or trade to which the apprentice is indentured.

14.5.4 When Contractor or Subcontractors employ workers in any apprenticeship craft or trade on the Work, Contractor or Subcontractors shall
1) send contract award information to the applicable joint apprenticeship committee that can supply apprentices to the site of the public work and

2) apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the area of the Project site, for a certificate approving Contractor or Subcontractors under the apprenticeship standards for the employment and training of apprentices in the area of the Project site. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journeypersons who shall be employed in the craft or trade on the Work. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than 1 hour of apprentice work for every 5 hours of journeyperson work, except as permitted by law.
Contractor or Subcontractors shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices or the ratio of apprentices to journeypersons fixed in the certificate issued by the joint apprenticeship committee or present an exemption certificate issued by the Division of Apprenticeship Standards.

14.5.5 “Apprenticeship craft or trade,” as used in this Article 14.5, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

14.5.6 If Contractor or Subcontractors employ journeyworkers or apprentices in any apprenticeship craft or trade in the area of the Project site, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other contractors in the area of the Project site are contributing, Contractor and Subcontractors shall contribute to the fund or funds in each craft or trade in which they employ journeyworkers or apprentices on the Work in the same amount or upon the same basis and in the same manner done by the other contractors. Contractor may include the amount of such contributions in computing its bid for the Contract; but if Contractor fails to do so, it shall not be entitled to any additional compensation therefor from University.

14.5.7 In the event Contractor willfully fails to comply with this Article 14.5, it will be considered in violation of the requirements of the Contract.

14.5.8 Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Contractor or Subcontractors of journeyworker trainees who may receive on-the-job training to enable them to achieve journeyworker status in any craft or trade under standards other than those set forth for apprentices.