

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”**

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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 and for a Planned Unit Development, 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.

H. 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**")

I. 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.

J. 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.

K. On _____, 2012, the City Planning and Zoning Commission 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), 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 parcel 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.

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.

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 pursuant 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 Commission, Planning 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 OF ALBANY, a public
body corporate and politic

City Clerk

By: _____

APPROVED AS TO FORM:

City Attorney

UNIVERSITY OF CALIFORNIA

By: _____

EXHIBIT A
Map of Property

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

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



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,

A handwritten signature in cursive script that reads "R. Hatheway".

Robert Hatheway
Assistant Vice Chancellor, Real Estate