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RESOLUTION # _____
RESOLUTION OF THE CITY OF ALBANY CITY COUNCIL
APPROVING
DENSITY BONUS LAW INCENTIVE AND CONCESSION FOR PARCEL B
OF THE
UNIVERSITY VILLAGE MIXED USE DEVELOPMENT

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

WHEREAS, the project qualifies for Density Bonus because it is designated as a senior citizen housing development containing a minimum of 175 independent and assisted living residential units and includes a separate and secured Alzheimer’s Care area.

WHEREAS, the Density Bonus incentive process allows an applicant to submit to the City a proposal for waiver or reduction of any development standard that will have the effect of precluding the construction of a housing development project that qualifies for a density bonus and concessions(s) or incentives(s).

WHEREAS, Government Code Section 65915(e)(1) does not explicitly require that a senior citizen housing development project include affordable housing in order for a waiver to be granted.

WHEREAS, Planning and Zoning Code Section 20.40.040(H)(3) requires that applications for a density bonus shall include, in summary, the following items:

- a. The desired density increase;
- b. Incentives or concessions requested;

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- c. Waivers or reductions in development standards that are requested;
- d. The number, type, location, size and construction scheduling of all units;
- e. A project financial report to allow the City to evaluate the financial need for the incentives, concessions, waivers or reductions of zoning of City standards is necessary to make the project economically feasible.
- f. Any other relevant information that the Community Development Director may determine to be necessary in the evaluation of the proposal.

WHEREAS, on April 16, 2012, the applicant submitted an application containing evidence, including relevant financial data, to demonstrate that the waiver or reduction is necessary to make the development of senior housing units economically feasible.

WHEREAS, on April 20, 2012, the Community Development Department determined that the application for a Density Bonus was complete.

WHEREAS, The Planning and Zoning Commission held a public hearing on the application for a Density Bonus on June 26, 2012.

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

WHEREAS, the Planning and Zoning Commission considered all written testimony and public comments and approved a motion recommending to the City Council _____.

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

5
6 **WHEREAS**, The City Council held a public hearing on the application for a
7 Density Bonus on _____.

8
9 **WHEREAS** , Notice of the public hearing was provided on _____ according to
10 Planning and Zoning Code subsection 20.100.010.E.

11
12 **WHEREAS**, on _____, the City Council approved a resolution certifying the
13 Final Environmental Impact Report pursuant to the requirements of the California
14 Environmental Quality Act.

15
16 **WHEREAS**, the City Council considered all written testimony and public
17 comments;

18
19 **NOW THEREFORE, BE IT RESOLVED**, that the City Council makes all
20 of the following Findings for approval of a Density Bonus:

- 21
- 22 a. The proposed density bonus concession or incentive is consistent with the
23 criteria identified in Government Code Section 65915(b)(1) allowing a
24 density bonus concession or incentive for a senior housing development.
 - 25 b. without waiver or reduction of parking standards, the City’s development
26 standards will have the effect of precluding the construction of the senior
27 residential housing units that would qualify the development project for a
28 density bonus concession or incentive.
 - 29 c. The proposed concession or incentive is not materially detrimental to the
30 public health, safety, and welfare, nor injurious to property and/or
31 improvements in the vicinity of the development.

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

5
6 **NOW THEREFORE, BE IT FURTHER RESOLVED**, that the City
7 Council approves a modification to the requirements of Planning and Zoning Code
8 Section 20.28.030 (Parking Space Requirements) Table 4 are modified for Parcel B to
9 allow 0.6 parking spaces per senior residential housing unit.

10
11 **NOW THEREFORE, BE IT FURTHER RESOLVED**, that the City
12 Council approves the following **CONDITIONS OF APPROVAL** associated with the
13 Density Bonus concessions and incentives approval:

14
15 1. Project Approval: except as may be modified by conditions herein, this
16 Density Bonus approval is for the Parcels shown and described on sheet A0.4 of plans
17 prepared by Peter Waller (Pyatok Architects), date received April 4, 2011, as
18 presented to the Planning and Zoning Commission on May 24, 2011, as may be
19 modified or supplemented by presentations to the Planning and Zoning Commission
20 on September 14, 2011, September 27, 2011, June 26, 2012 and to the City Council
21 on October 17, 2011, January 17, 2012, and _____.

22
23 2. This Density Bonus concessions and incentives are granted for the project
24 described in the Environmental Impact Report certified by the City Council on _____.
25 Subsequent approvals relying on this Density Bonus shall be in substantial
26 compliance with the project described in this Environmental Impact Report.

27
28 3. This Density Bonus is granted for the exceptions to standards of development
29 specifically described in these findings and conditions of approval. Approval of the
30 Density Bonus does not constitute an express or implied approval of other required
31 actions, including but not limited to design review, conditional use permit, variances,

1 subdivision, encroachment permits, stormwater management permits, grading
2 permits, or building permits. The size and location of buildings and other on-site and
3 off-site improvements may be required to be modified to comply with regulatory
4 requirements that are part of subsequent applications.

5
6 4. The approval of this Density Bonus does not constitute a development
7 agreement as authorized by Government Code 65864 and does not represent a grant
8 of a vested right to develop the proposed project. The City retains its authority to
9 adopt policies rules, regulations, standards, and conditions of approval that may affect
10 the proposed project until such time that the project approvals are vested by issuance
11 and substantial reliance on a building permit.

12
13 5. Project Approval Expiration: This Density Bonus approval shall expire five
14 years from the date on which this approval becomes effective unless a design review
15 application has been submitted and diligently pursued.

16
17 6. Hold Harmless Agreement. Pursuant to Government Code Section
18 66474.9(b) and Albany Municipal Code section 20.100.010(e), but subject to the
19 terms of this Section 6, the applicant (including any agent thereof) shall defend,
20 indemnify, and hold harmless, the City of Albany and its agents, officers and
21 employees, from any claim, action or proceeding against the City or its agents,
22 officers or employees to attack, set aside, void or annul the City's approval
23 concerning this application, which action is brought within the time period provided
24 for in Section 66499.37. The City will obtain the applicant's approval before filing
25 the CEQA notice of determination. The City will promptly notify the applicant of
26 any such claim, action or proceeding and cooperate fully in the defense in good faith
27 consultation with the applicant. This indemnification shall include, but not be limited
28 to, damages, fees and/or costs awarded against the City, if any, and cost of suit,
29 attorneys' fees, and other costs liabilities and expenses incurred in connection with
30 such proceeding whether incurred by the applicant, the City and/or the parties
31 initiating or bringing such proceeding. The applicant shall also defend, indemnify

1 and hold harmless the City, its agents, officers, employees and attorneys for all costs
2 incurred in additional investigation and/or study of, or for supplementing, preparing,
3 redrafting, revising, or amending any document (such as an EIR), if made necessary
4 by said proceeding and if the applicant desires to pursue securing such approvals,
5 after initiation of such proceeding, which are conditioned on the approval of such
6 documents. The applicant shall also indemnify the City for all the City's costs, fees,
7 and damages which the City incurs in enforcing the indemnification. The applicant
8 may propose counsel of its choice to represent jointly the applicant and the City;
9 provided, however, the City shall have right to retain separate counsel if the City
10 reasonably determines, after consultation with the applicant, that such separate
11 counsel is necessary in order effectively represent the interests of the City. The City
12 shall retain the right to approve all significant decisions concerning the City's defense
13 of the matter and any and all settlements, which approval shall not be unreasonably
14 withheld. In addition, the applicant shall have the right to withdraw the project
15 application in order to remove the cause for any claim, action or proceeding in
16 accordance with the provisions of this Section 6, in which case the City may elect to
17 render rescind any approvals granted pursuant to this Resolution, as well as any
18 approvals related to the project associated with this Resolution, making such
19 approvals null and void.

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