

AGREEMENT REGARDING FUNDING FOR ACQUISITION AND IMPROVEMENT OF
OFF-SITE PROPERTY AND DEDICATION OF ON-SITE PUBLIC PARKLAND FOR
THE TOWN & COUNTRY SAN JOSE DEVELOPMENT

This Agreement is made and entered into this 29th day of February, 2000, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California, hereinafter called "City" and FRIT SAN JOSE TOWN AND COUNTRY VILLAGE, LLC, a California limited liability company, developer of Town & Country San Jose, hereinafter called "Developer."

WITNESSETH:

WHEREAS, Developer is engaged in redeveloping that property known as Town & Country San Jose, situate in the City of San Jose, County of Santa Clara, State of California; and

WHEREAS, the General Development Plan Exhibit C (Land Use Plan Sheet D, paragraph 12 Open Space Requirements, subparagraphs II and III, and at Sheet 7A of 7 of Conceptual Park Plans) of the Planned Development Zoning approved by City on June 30, 1998, by Ordinance No. 25627 (the "PD Zoning"), requires Developer to acquire certain real property (the "Off-site Parkland") located adjacent to Town & Country San Jose, and dedicate that property as required to be improved pursuant to the PD Zoning to City (such improvements being the "Off-site Improvements"), or provide sufficient funds for the costs of acquisition and improvement of the Off-site Parkland, to the satisfaction of the Director of Public Works, as set forth in Exhibits A and B attached hereto and incorporated by reference; and

WHEREAS, Developer has attempted but been unable to acquire the Off-site Parkland; and

WHEREAS, Developer desires to affirm its obligation to provide on-site public park land (the "On-site Parkland") to the satisfaction of the Director of Public Works as set forth in Exhibits A and B attached hereto and incorporated herein by reference; and

WHEREAS, application PDSH 98-11-074 for a Planned Development Permit ("PD Permit") has been filed by Developer with the City Planning Department, and Developer has requested approval of said PD Permit prior to the acquisition of the Off-site Parkland and dedication of the On-site Parkland; and

WHEREAS, this Agreement is executed by Developer in order to permit City to proceed with consideration of said PD Permit, prior to the acquisition of the Off-site Parkland and dedication of the On-site Parkland.

NOW, THEREFORE, the parties hereto do hereby agree as follows:

1. Purpose. The purpose of this Agreement is to provide for payment by the Developer of the costs of acquiring and improving the Off-site Parkland and to provide for future dedication of the On-site Parkland, to the satisfaction of the Director of Public Works, as required by the PD Zoning.

2. Acquisition and Improvement of Off-site Parkland

(a) Developer agrees to pay all costs and expenses of acquisition of the Off-site Parkland, including, but not limited to, the fair market value of the Off-site Parkland as reasonably determined by the City through appraisals or by a court of competent jurisdiction, reasonable costs and expenses of appraisers, attorneys and other experts deemed necessary by City for the acquisition of the Off-site Parkland, all court costs, relocation, if appropriate, and all other reasonably related costs of acquisition (hereinafter collectively referred to as "Acquisition Costs"). Acquisition Costs shall also include any court costs, expert fees and/or attorney's fees awarded by the court in the event that condemnation proceedings are commenced and thereafter abandoned by City. Developer understands and agrees that it may be necessary to acquire certain remainder, adjacent or replacement property for reasons of severance or otherwise as reasonably required in conjunction with the acquisition of the Off-site Parkland, and that the costs of acquisition of such remainder, adjacent or replacement property, including reasonable costs and expenses of appraisers, attorneys and other experts deemed necessary by City for the acquisition of such property, all court costs, relocation, if appropriate, and all other reasonably related costs of acquisition of such remainder, adjacent or replacement property, shall be considered "Acquisition Costs" as defined herein.

(b) Upon request of City or Developer, City staff and Developer's representatives shall meet and confer with respect to the status of negotiations for acquisition of the Off-site Parkland. City shall also confer with Developer prior to making any offer for acquisition of the Off-site Parkland in excess of fifteen percent (15%) above the City's approved appraisal. City may initiate an eminent domain action at any time it deems appropriate. City will confer with Developer regarding the need to commence and the timing of initiation of an action in eminent domain.

(c) Developer agrees to pay all costs and expenses of improvement of the Off-site Parkland, including, but not limited to, design, engineering, construction and construction management costs (hereinafter collectively referred to as "Improvement Costs"). City's Public Works Department ("Department") will establish a billing account ("Account") to which Improvement Costs shall be charged. City's work will be billed against the Account at hourly rates based on the City's direct and indirect costs, including, but not limited to salaries, benefits, overhead and other administrative expenses. Fees and other costs of any consultants hired by the City in connection with

construction of the Off-site Parkland Improvements shall be billed at the rate actually incurred by the City.

(d) Promptly upon execution of this Agreement by City, Developer shall provide City with an initial deposit in the amount Twenty-Five Thousand Dollars (\$25,000.00). The initial deposit shall be used by City for obtaining an appraisal of the Off-site Parkland, and associated pre-acquisition costs. Developer shall, within thirty (30) days of receipt of written notice from the Director of Public Works of the City's need to commit funds in excess of the initial deposit for the acquisition of the Off-site Parkland, deposit with City such additional sums as are requested by the Director of Public Works to proceed with the acquisition (collectively "the Acquisition Deposit"). Developer shall also provide City with an additional deposit in the amount One Hundred Twenty-Five Thousand Dollars (\$125,000.00) within thirty (30) days of receipt of written notice from the Director of Public Works of the City's readiness to proceed with design and engineering of park improvements to the Off-site Parkland ("Off-site Parkland Improvements"). The additional deposit shall be used by City for design, engineering, cost estimating, inspection and construction management services associated with construction of the Off-site Parkland Improvements. Developer shall provide City with a further deposit for Off-site Parkland Improvements Costs in the amount of the engineers' estimate of the cost of construction, as determined by the Director of Public Works, within thirty (30) days of receipt of written notice from the Director of Public Works of the City's readiness to proceed with advertising the construction of the Off-site Parkland Improvements for bid; and with further deposit(s) for Improvement Costs, in such amount(s) as may be deemed necessary by City's Director of Public Works to complete the Off-site Parkland Improvements, within seven (7) days of written notice from the Director of Public Works. The first day of receipt of such notices shall be deemed to be the day after the day on which City deposits said notice in United States mail, postage prepaid, return receipt requested, addressed to Developer at this address:

Federal Realty Investment Trust
1626 East Jefferson Street
Rockville, MD 20852-4041
Attn: John Hannigan

With a copy to the Legal Department, at the same address.

And, a copy to:

Andrew L. Faber, Esq.
Berliner Cohen
Ten Almaden Blvd., 11th Floor
San Jose, CA 95113-2233

(e) City will provide quarterly reports to Developer reporting interest accrued to any unspent portion of all Deposits made by Developer with City pursuant to this Agreement. Interest shall be accrued to Developer's credit, at the City's rate of return on investments net of investment costs.

(f) Developer hereby waives the time limit for acquisition set forth in Government Code §66462.5 if, in the sole discretion of City, additional time is necessary in order to bring an action under Title 7 of Part 3 of the Code of Civil Procedure.

(g) Developer shall pay City for attorney fees at an hourly rate charged by City based on City's direct and indirect costs including, but not limited to salaries, benefits, and overhead. Engineering fees, appraiser fees and all other services provided by non-attorney employees of City shall be paid for by Developer based on City's direct and indirect costs including, but not limited to salaries, benefits, and overhead. City may, at its option, contract with other parties to provide any services necessary to acquire the off-site property, in which case Developer shall pay all such costs (including reasonable legal fees of outside counsel) incurred by City.

(h) In no event shall the sum of the Acquisition Costs and Off-site Parkland Improvement Costs to be paid by Developer exceed the cost which Developer would be required to incur under the City's Parkland Dedication Ordinance and/or Park Impact Ordinance (collectively, "PDOs"), and Developer shall be given credit for costs paid pursuant to this Agreement against the costs to be incurred under the PDOs. Any portion of the Deposit(s), including interest, held by City after acquisition and construction of the Off-site Parkland has been completed, which exceed the cost which Developer would be required to incur under the City's PDOs, shall be returned to Developer within fifteen (15) days after final accounting of all costs has been made, but in no event later than ninety (90) days after Notice of Completion of Construction of the Off-site Parkland Improvements has been filed by City.

3. Dedication and Improvement of the On-site Parkland. Developer confirms its obligation to dedicate and improve a minimum of twenty thousand (20,000) square feet of On-site Parkland to be located at the southeast corner of the Town & Country San Jose development site to provide a connection to Santana Park and the new Off-site Property as set forth in Exhibit B attached hereto, or to provide and improve On-site Parkland in another location mutually agreed upon by City and Developer. Prior to issuance of any Planned Development Permit that would permit construction to commence in the portion of the site designated as the On-site Parkland, the final location of the On-site Parkland shall be determined and Developer shall execute an agreement with City, providing for the dedication and improvement of the On-site Parkland to meet the City's Turnkey Park Standards for Park Design and Construction ("Parkland Turnkey Agreement"). Developer shall be given credit for dedication and improvement of the On-site Parkland, as specified in the Parkland Turnkey Agreement in accordance with the PDOs.

4. Right to Cure. If Developer defaults in the performance of its obligations hereunder, Developer shall have the right to cure such default within fifteen (15) days after receipt of written notice of said default, the time of the receipt to be calculated pursuant to Section 2(d) above. In the event Developer fails to cure the specified breach within fifteen (15) days or such other time, City may terminate this Agreement and the rights and responsibilities of the parties shall be restored to the status quo preceding this Agreement, except that City shall be entitled to retain all funds previously deposited hereunder and encumbered or appropriated by City.

5. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

6. Termination. Developer's obligations under this Agreement shall terminate upon (i) full payment by developer of all Acquisition and Off-site Parkland Improvement Costs and dedication and improvement of the On-site Parkland in accordance with the Parkland Turnkey Agreement, or (ii) Developer determines to abandon the Development Project approved by PD Zoning. In the event of abandonment of the Project by Developer, City shall be entitled to retain all funds previously deposited hereunder which City has encumbered, appropriated or otherwise become obligated to pay or incur, and to the extent said funds are not sufficient to cover costs incurred by City, Developer shall reimburse City for costs properly incurred to the date upon which written notice from Developer is received by City, said notice delivered and deemed received in the manner and the time set forth in Section 1(d) above. Said notice shall be addressed to City as follows:

City of San Jose
City Hall
801 North First Street
San Jose, CA 95110
Attn: James Derryberry

With a copy to Office of the City Attorney, as follows:

City of San Jose
Office of the City Attorney
151 W. Mission Street
San Jose, CA 95110
Attn: Mollie J. Dent

7. No Limitation on City's Exercise of Discretion. This Agreement shall not be interpreted as requiring City to adopt resolutions of necessity regarding condemnation of the Off-site Parkland. The City retains all discretion provided by law to determine whether or not such resolutions should be adopted based upon the evidence before it at the time such resolutions are considered.

8. Waiver. Developer agrees that waiver by City of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

9. Prior Agreements and Amendments. This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment duly executed by the parties to this Agreement.

10. Continued Effect of Other Terms and Conditions of PD Zoning. Except as expressly stated herein, all terms and conditions of PD zoning for this Project shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF, the day and year first hereinabove written.

"CITY"

APPROVED AS TO FORM

Mollie Dant
City Attorney

CITY OF SAN JOSE, a municipal corporation

By Patricia L. O'Hearn
Name: Patricia L. O'Hearn
Its: City Clerk

"DEVELOPER"

FRIT SAN JOSE TOWN AND COUNTRY VILLAGE, LLC

By: Federal Realty Investment Trust
By: Howard S. Biel
Name: Howard S. Biel
Its: Sr VP & Chief Development Officer

EXHIBIT A

PARKLAND ACQUISITION AND DEDICATION CONDITIONS (PDCSH#97-06-026)

12. Open Space Requirements

- II. Prior to the issuance of any Planned Development Permit, the Developer shall secure a minimum of 30,000 square feet of Off-site Public Parkland located adjacent to the project site and Santana Park to the satisfaction of the Director of Public Works. Should the Developer be unable to secure the property, the Developer shall provide sufficient funds to fully reimburse the City of San Jose for the cost of acquisition and improvements, including any costs associated with condemnation proceedings to the satisfaction of the Director of Public Works. Credit toward the Developer's PDO obligation for meeting this condition shall be consistent with the PDO.
- III. Prior to the issuance of any Planned Development Permit, the Developer shall provide a minimum of 20,000 square feet of On-site Public Parkland located at the southeast corner of the site to provide an unobstructed connection to Santana Park and the new Off-site Parkland, referenced above, to the satisfaction of the Director of Public Works.

STATE OF MARYLAND

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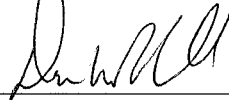
SS

COUNTY OF MONTGOMERY

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I, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that Howard S. Biel, who is personally well known to me as, or satisfactorily proven to be, the person named as Senior Vice President and Chief Development Officer of Federal Realty Investment Trust, the managing member of FRIT San Jose Town and Country Village, L.L.C. in the foregoing document, personally appeared before me in the said jurisdiction and acknowledged the same to be the act and deed of Federal Realty Investment Trust, as the managing member of FRIT San Jose Town and Country Village, L.L.C., and delivered the same as such.

GIVEN under my hand and official seal this 28th day of February, 2000.



Notary Public

My Commission Expires: _____

11/1/03

Memorandum



TO: HONORABLE MAYOR & CITY COUNCIL **FROM:** Mark Linder

SUBJECT: APPROVAL OF PARKLAND
AGREEMENT

DATE: February 22, 2000

Approved

Date

February 23, 2000

Council District: 6

RECOMMENDATION

Approve an agreement with Federal Realty Investment Trust (FRIT) San Jose Town and Country Village, LLC, regarding Funding for Acquisition and Improvement of Off-Site Property and Dedication of On-Site Property for Park Purposes for pending PD Permit No. PDSH98-11-074. CEQA: Resolution No. 68210.

BACKGROUND

FRIT San Jose Town and Country Village, LLC ("developer"), received zoning approval (PDCSH97-06-036, Ordinance No. 25627) on June 30, 1998 to allow a phased mixed-use development of up to 1,200 residential units, retail uses and two hotel uses on approximately 36 acres near the corner of Winchester Boulevard and Stevens Creek Boulevard. Conditions in the PD Zoning require the developer to acquire parkland off-site and dedicate land for public open space on the development site in partial fulfillment of their Parkland Dedication/Park Impact Ordinance (PDO/PIO) obligations.

ANALYSIS

Under the conditions of the PD zoning for this project development, the developer is required to provide parkland/open space on the project site (20,000 square feet) and off-site (approximately 30,000 square feet) at an adjacent location to be determined. The developer has applied for a PD Permit (PDSH98-11-074) that will allow site development activities, but not actual building construction to commence on the site, and is anticipating PD Permit approval by the City before off-site parkland can be acquired. This Parkland Agreement sets forth the terms by which the developer will provide funding for the City to acquire and improve the off-site parkland and reaffirms

developer's obligation to provide on-site public parkland to the satisfaction of the Director of Public Works. Acquisition and improvement costs incurred by the City to provide an off-site park site will be credited toward their PDO/PIO obligations. Any eligible private recreation amenities provided in the project will also be credited toward the developer's PDO/PIO requirement.

PUBLIC OUTREACH

The City and the developer conducted numerous public meetings during the zoning approval process associated with the project.

COORDINATION


Preparation of the Parkland Agreement has been coordinated with the City Attorney's Office, and the Public Works and Planning, Building and Code Enforcement Departments.

FISCAL IMPLICATIONS

City will be responsible for ongoing maintenance of both public park areas at an estimated annual cost of \$10,000.

CEQA

Environmental Impact Report, Resolution No. 68210; June 16, 1998.


Mark Linder, Director
Department of Parks, Recreation and
Neighborhood Services

DJM:BB



CITY CLERK

CITY OF SAN JOSÉ, CALIFORNIA


Office of the City Clerk
801 North First Street, Room 116
San José, California 95110
Telephone (408) 277-4424
FAX (408) 277-3285

March 01, 2000

**John Hannigan
Federal Realty Investment Trust
Frit San Jose Town and County Village LLC
1626 East Jefferson Street
Rockville, MC 20852-4041**

**Re: Funding for Acquisition and Improvements of Off-Site Property
and Dedication of On-Site Public Parkland for the Town and Country
San Jose Development**

Enclosed is the executory copy of the above-referenced agreement which
was approved by San Jose City Council on February 29, 2000.


Cynthia Jaszka
Office Specialist II
Contract Administration

Enclosure



CITY CLERK

CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
801 North First Street, Room 116
San José, California 95110
Telephone (408) 277-4424
FAX (408) 277-3285

March 01, 2000

Andrew L. Faber, Attorney at Law
Ten Almaden Boulevard
Eleventh Floor
San Jose, CA 95113-2233

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Cynthia Jaszka

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