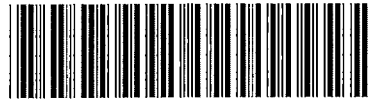


City of San Jose
Office of the City Clerk
200 East Santa Clara Street Wing
San Jose, CA 95113

ORIGINAL

DOCUMENT: 19329927



Pages: 19

Fees.... * No Fees
Taxes...
Copies...
AMT PAID

This document is for the benefit of the City of San Jose. Request for recordation without fee is made in accordance with Section 6103 of the Government Code of the State of California.

ATTEST: Lee Price, City Clerk

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
City

RDE # 010
3/07/2007
8:46 AM

By Colyn Joseph, Deputy

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

DOCUMENT TITLE:

**SETTLEMENT AND PARKLAND AGREEMENT
BETWEEN
CITY OF SAN JOSE
AND
FRIT SAN JOSE TOWN AND COUNTRY VILLAGE LLC**

SEPARATE PAGE, PURSUANT TO GOVT. CODE 27361.6

ORIGINAL

12/5/06
5.2

RECORDING REQUESTED
BY CITY OF SAN JOSE:

When Recorded, Return To:
City of San José
200 East Santa Clara Street
San José, CA 95113
Attn: City Clerk, 2nd Floor West Wing

**SETTLEMENT AND PARKLAND AGREEMENT
BETWEEN
CITY OF SAN JOSE
AND
FRIT SAN JOSE TOWN AND COUNTRY VILLAGE, LLC**

This Settlement and Parkland Agreement ("Agreement") is made and entered into as of this 5th day of December, 2006 (the "Effective Date"), by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("City") and FRIT SAN JOSE TOWN AND COUNTRY VILLAGE, LLC ("Developer"), a California Limited Liability Company (collectively the "Parties").

RECITALS

- A. Developer is engaged in redeveloping the real property currently known as Santana Row ("Property") located on the former Town and Country Center site located generally at the southeasterly corner of Stevens Creek and Winchester Boulevards in the City of San Jose, County of Santa Clara, State of California.
- B. On June 30, 1998, the San José City Council adopted Ordinance No. 25627 for the planned development rezoning for the Property from commercial to planned development to allow the development of commercial/retail space,

1200 residential units, and two hotels ("Original PD Zoning"). The development of the commercial/retail space, 1200 residential units and two hotels are referred to hereinafter as the "Development".

- C. Under the provisions of Chapter 19.38 of the San José Municipal Code ("Parkland Dedication Ordinance"), developers of residential subdivisions are required to dedicate property for neighborhood and community parks, construct park improvements and/or pay in-lieu fees ("Parkland Dedication Obligation").
- D. The Original PD Zoning contains conditions in the General Development Plan, Exhibit C, Section 12, entitled "Open Space Requirements" that impose certain requirements upon the Developer with respect to satisfying its Parkland Dedication Obligation and complying with the Parkland Dedication Ordinance. The Open Space Requirements as stated in the Original PD Zoning are restated herein as follows:
 - I. The developer is required to meet the requirements of the City's Parkland Dedication Ordinance (PDO) in effect at the time of the issuance of a Tentative Map to the satisfaction of the Director of Public Works. Credit for private recreation areas shall be in accordance with the PDO and does not require that these areas be at grade.
 - 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 in 12.III above to the satisfaction of the Director of Public Works.
- IV. In addition to the parkland identified in items 12.II and 12.III above, the developer shall provide a minimum of 50,000 gross square feet of improved on-site recreational space. Open space located between commercial uses and/or along primary commercial streets shall be in addition to this 50,000 square foot requirement. Improvements shall be the same or higher quality than that shown on the "Conceptual Park plans" (Sheets 7A and 7B of the approved zoning for PDCSH97-06-036) to the satisfaction of the Director of Planning. These improved recreation areas shall be retained in private ownership and the property owner shall assume the responsibility for funding the long-term maintenance and capital costs associated with the improvements. Credit toward the developers' PDO obligation for meeting this condition shall be consistent with the PDO.
- V. Prior to the issuance of any Tentative Map, the developer shall submit plans acceptable to the Director of Public Works for all improvements

on lands to be dedicated to the City of San Jose. These improvements will be subject to a turnkey agreement between the developer and the City.

The "Conceptual Park Plans" 7A and 7B of 7, dated June 4, 1998, prepared by the developer is hereby incorporated into the General Development Plan. The developer shall receive full acre for acre credit for private recreation open space against any applicable city requirement for dedication of land for park purposes. Furthermore, the developer shall receive dollar for dollar credit for the costs of improvement of those same sites against any city requirement for payment of fees for park purposes.

The construction of Rosewalk Gardens is subject to acquisition of adequate fee or easement interest in the land from PAC Bell, by the City of San Jose using the developer's fees paid to the city concerning park purpose requirements.

- E. In order for Developer to satisfy Section II. and Section III. of the Open Space Requirements, City and Developer entered into an agreement entitled "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" ("Acquisition Agreement") on February 29, 2000. Developer provided the City with an initial deposit in the amount of twenty-five thousand dollars (\$25,000) to be used by the City to obtain an appraisal of the Off-Site Parkland and associated pre-acquisition costs as required by Section 2.(d). of the Acquisition Agreement ("Appraisal Costs").

- F. On March 29, 2000, the City approved and issued Tentative Map PTSH 99-11-127 for the Development ("Tentative Map"). The Tentative Map provided among other things, that the Development conform to the Acquisition Agreement to the satisfaction of the City Attorney, and Directors of Planning, Public Works, and Recreation, Parks and Community Services.
- G. On June 26, 2001, the San José City Council adopted Ordinance No. 26427 amending the Original PD Zoning to, among other things, add another residential unit to the Development, for a total of 1201 residential units ("Original 1201 Units"). The terms "Original PD Zoning" and "Development" shall include the additional residential unit added by Ordinance No. 26427.
- H. On or about April 4, 2005, Developer filed a planned development rezoning application PDSCH 05-030 for a rezoning (the "Proposed Rezoning") that would allow an increase in the number of approved residential units in the Development by an additional Four Hundred (400) (the "Additional Residential Units").
- I. A number of disputes have arisen between the Parties as to the effect and Developer's obligations arising out of: a) Ordinance No. 25627 that was adopted on June 30, 1998 in that some of the provisions of Ordinance No. 25627 as ultimately adopted on June 30, 1998, differed substantively in several respects from the ordinance that was passed for publication on June 16, 1998 and, b) the City Council's adoption of several rezoning ordinances for the Property since the adoption of Ordinance No. 25627 which retained the same language relating to Developer's Parkland Dedication Obligation for the Property as ultimately set forth in Ordinance No. 25627. These disputes include without limitation: 1) the interpretation and application of the apparently

inconsistent Open Space Requirements stated in the Original PD Zoning; and
2) the manner and amount of private recreation credit the Developer is entitled
to under the Parkland Dedication Ordinance and Original PD Zoning,
specifically, whether Developer is entitled to dollar for dollar and acre for acre
credit for certain private recreation improvements under Section 12 as
described in Recital D herein above (the "Disputes").

The Parties now desire to enter into this Agreement to clarify and resolve these
Disputes forever in their entirety.

NOW, THEREFORE, the Parties hereby agree as follows:

SECTION 1. DEVELOPER'S PARKLAND DEDICATION OBLIGATION.

- A. The Parties hereto hereby agree and acknowledge that Developer's total
Parkland Dedication Obligation for the 1201 units under the Original PD
Zoning is 8.25 acres ("Total Parkland Obligation"). This amount is calculated
based on the number of units approved by the Original PD Zoning (1201),
multiplied by the number of persons per dwelling type according to the 1990
Federal Census (2.29), multiplied by the minimum acreage dedication
requirement set forth in the Parkland Dedication Ordinance (.003) [(1201
units x 2.29 persons per unit x .003 = 8.25 acres)].
- B. The Parties further agree and acknowledge that if the Developer's Total
Parkland Obligation were converted to an in lieu fee, required payment of the
Developer's total parkland fees in lieu of the land dedication referenced in
Paragraph 1.A. would equal \$7,506,250 ("Parkland Fees"). This amount was
calculated based on the number of units approved in the Original PD Zoning
(1201), multiplied by the fee per unit set forth in City Council Resolution No.
68207, as amended by City Council Resolution No. 68643 (the "1998 Fee

Resolution”), which amount equals \$6,250 [(1201 units x \$6,250 = \$7,506,250)].

SECTION 2. CREDITS.

A. General.

1. Section 19.38.400 of the Parkland Dedication Ordinance allows developers of residential subdivisions to receive credits against their Parkland Dedication Obligation when the developer agrees to construct certain eligible improvements and has entered into a parkland agreement which requires the construction of improvements within a specified period.
2. Under the Parkland Dedication Ordinance, the amount of credit and the improvements eligible for credit shall be determined pursuant to the schedule of credits adopted by the City Council. The total credit shall not exceed fifty (50%) of the dedication requirement (“Private Recreation Credit”).

B. Credits.

1. Developer shall receive credit against its Total Parkland Obligation for constructed private recreation improvements, private recreation improvements to be constructed in the future, constructed Market Square Improvements, and Appraisal Costs as set forth in Attachment A.
2. Developer shall install the future private recreation improvements referenced in Attachment A in conjunction with the construction of the associated residential units, in accordance with the Schedule set forth in Attachment B. The future private recreation improvements described

in Attachment B shall be completed on each parcel on or before the date the Certificate of Occupancy is issued for the last building to be constructed on the the parcel that includes the planned private recreational improvements described in Attachment B.

3. With respect to any credited improvements which relate to the Original 1201 Units and which have not been completed in accordance with the Schedule set forth in Attachment B, the credits for the incomplete improvements shall be disallowed and Developer shall be required to pay Parkland Fees calculated using the methodology set forth in Attachment A.

SECTION 3. TOTAL PARKLAND FEES DUE.

The total amount of Parkland Fees due to the City are as follows:

- A. The total amount of Private Recreation Credit Developer shall receive for private recreation improvements and costs of constructed improvements for the Original 1201 Units subject to the Original PD Zoning is \$2,924,240.
- B. The total amount of credit Developer shall receive for the Appraisal Costs it paid to the City pursuant to the terms of the Acquisition Agreement is \$25,000.
- C. Developer shall pay the City \$4,557,010 in Parkland Fees in full satisfaction of its remaining Parkland Dedication Obligation for the Original 1201 Units. This amount is calculated based on the total amount of Parkland Fees due the City (\$7,506,250), less the total Private Recreation Credit (\$2,924,240), less the Appraisal Costs (\$25,000).

- D. Developer understands and agrees that as a condition for receiving any Private Recreation Credits under this Agreement, Developer is obligated to record a covenant as described in Chapter 19.38.

SECTION 4. TIME OF PAYMENT.

The Parkland Fees in the amount of \$4,557,010 shall be paid by Developer to City within ten (10) days of the execution of this Agreement by both Parties. In addition to any other remedies provided by law and/or this Agreement, the late payment of fees shall result in the imposition of additional charges upon Developer as provided in Chapter 19.38.

SECTION 5. TRANSFER OF PROPERTY.

Developer's transfer of any property described in the Tentative Map(s) shall not release Developer of its obligations hereunder, and no building permit for the Remaining Units shall be issued with respect to any unit prior to payment of the Parkland Fees. Upon any transfer, Developer shall give a copy of this Agreement to the transferee. Developer and its successors, assigns and transferees shall be jointly and severally liable to City for payment of the Parkland Fees under this Agreement.

SECTION 6. SATISFACTION OF PARKLAND DEDICATION OBLIGATION.

The payments by Developer and the performance of its obligations as outlined herein shall satisfy and supersede Developer's Parkland Dedication Obligation pertaining to all on- and off-site obligations of Developer regarding public and private parks, recreation, and open space, including without limitation those obligations under the Original PD Zoning, the Parkland Dedication Ordinance or any successor ordinances or regulations, and the Acquisition Agreement, for the Original 1201 Units only. Upon the making of the payments described in Section 4 of this Agreement, the Acquisition Agreement shall become null and void and of no further effect.

SECTION 7. **PROPOSED REZONING AND ANY FUTURE REZONINGS.**

With respect to any matters not directly and expressly covered herein, Developer shall be subject to any parkland requirements contained in then applicable ordinances and associated fees and credits resolution as specified in such ordinances and fees and credits resolution.

SECTION 8. **AMENDMENT.**

This Agreement may be modified only by a written amendment executed by the Parties.

SECTION 9. **NOTICES.**

Any communication or notice which either party is required to send to the other or which either party desires to send to the other, shall be in writing and shall be either personally delivered or mailed in the United States mail, postage prepaid, to the City and to Developer as set forth below their respective signature blocks.

SECTION 10. **MISCELLANEOUS.**

- A. The headings of the sections and subsections of this Agreement are inserted for convenience only. They do not constitute a part of this Agreement and shall not be used in its construction.

- B. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

- C. Any and all attachments which are referred to in this Agreement are incorporated herein by reference and are deemed a part of this Agreement.

- D. Where this Agreement refers to City and no officer or the City is named, City's Manager shall have the authority to act on City's behalf.
- E. In the event that suit shall be brought by either party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.
- F. This Agreement represents the entire understanding of the Parties only as to those matters expressly contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

SECTION 11. RELEASES.

- A. Except as provided otherwise herein, and subject to Developer's fulfillment of its obligations contained herein, the City, on behalf of itself, its past, present, and future employees, partners, agents, predecessors, successors, consultants, contractors, attorneys, and assigns, hereby releases and forever discharges Developer, its past, present, and future affiliates, parents, subsidiaries, members, officers, directors, shareholders, employees, partners, agents, attorneys, consultants, contractors, predecessors, successors, assigns, heirs, executors, and administrators, all of whom expressly deny any liability, from any and all claims, demands, damages, liabilities, actions, or suits, known and unknown, relating to, arising out of, Developer's Parkland Obligation for the Original 1201 Units which has accrued or arisen before the date of full execution of this Agreement.

B. Developer, on behalf of itself, its past, present and future affiliates, parents, subsidiaries, members, officers, directors, shareholders, employees, partners, agents, attorneys, consultants, contractors, predecessors, successors, assigns, heirs, executors, and administrators, hereby releases and forever discharges the City, its past, present and future employees, partners, agents, predecessors, successors, consultants, contractors, attorneys, and assigns, all of whom expressly deny any liability, from any and all claims, demands, damages, liabilities, actions, or suits, known and unknown, relating to, arising out of, Developer's Parkland Obligation for the Original 1201 Units, which has accrued or arisen prior to the date of full execution of this Agreement.

C. Section 1542 of the Civil Code of the State of California provides as follows:

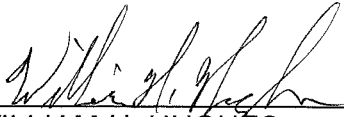
"A General Release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the Release, which if known by him must have materially affected his settlement with the debtor."

Each of the Parties hereby represents that Civil Code Section 1542 has been read and reviewed with counsel and understood, and that each of the Parties hereby waives any and all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, Developer's

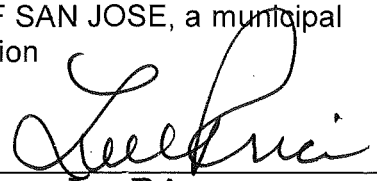
Parkland Obligation for the Original 1201 Units, based on facts found to be different from the facts believed to be true at the time this Agreement was executed.

WITNESS THE EXECUTION HEREOF the day and year hereinafter written.

APPROVED AS TO FORM:


WILLIAM H. HUGHES
Assistant City Attorney

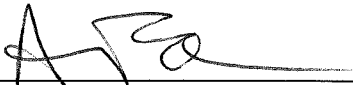
CITY OF SAN JOSE, a municipal corporation

By: 
Name: Lee Price
Title: City Clerk

Address:
200 East Santa Clara Street, 17th Fl.
San José, CA 95113-1905

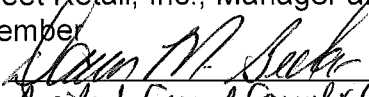
Notices should also be sent to:
City of San José
Department of Parks, Recreation and
Neighborhood Services
200 East Santa Clara Street, 9th Fl.
San José, CA 95113-1905

APPROVED AS TO FORM:


ANDREW L. FABER
Attorney for FRIT San Jose Town and
Country Village, LLC

"DEVELOPER"

FRIT SAN JOSE TOWN AND
COUNTRY VILLAGE, LLC

By: Street Retail, Inc., Manager and
Sole Member
Name: 
Its: Vice President - General Counsel & Secretary

Address:
1626 East Jefferson Steet,
Rockville, MD 20852
Attn: Legal Department

STATE OF CALIFORNIA

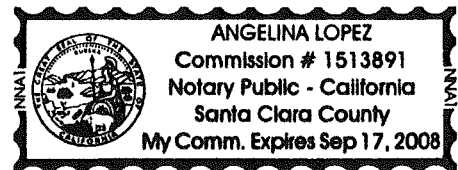
COUNTY OF SANTA CLARA

} ss.

On JANUARY 11, 2007, before me, Angelina Lopez, Notary Public, personally appeared Dawn M. Becker personally known to me (or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she they executed the same in his her their authorized capacity(ies), and that by his her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Angelina Lopez



Print Name of Notary: Angelina Lopez
My commission expires: Sept. 17, 2008
Commission No.: 1513891
Business Telephone No.: (408) 551-4609

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Santa Clara

} ss.

On 1/28/2007

Date

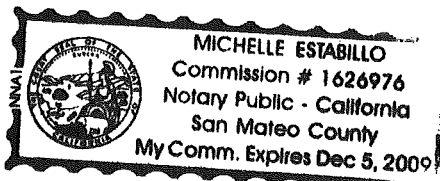
, before me, Michelle Estabillo, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Lee Price

Name(s) of Signer(s)

- ☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

SETTLEMENT AND PARKLAND AGREEMENT

ATTACHMENT A

Total Parkland Obligation			
# of Units	Total Parkland	Fee/Unit	Total Amount
1201	8.25 acres	\$6,250	\$7,506,250

Parkland Obligation Calculated as follows:

1201 Units x 2.29 Persons/ Unit x 3 acres/1000 Population = 8.25 acres of Park Obligation

1201 Units x \$6,250/Unit = \$7,506,250 Total In-Lieu Fee Obligation

Constructed Private Recreational Improvements	Active Elements		Match Area
	Sq. Ft.	Area Use	Sq. Ft.
Market Square Chess & Deck	5,500	Chess Area	5,500
Valencia Plaza	2,356	Play Area – Badminton	2,356
7B Building	18,400	Picnic + 1/3 Pool	11,296
Sub Totals – Built	26,256		19,152
Adjustments	0	7B Building Match	7,104
Total sq. ft.	26,256	0	26,256
A	B	C	D
B + D / 298.3 = 176.0	Units		
52,512/298.3 = 176.0	Units	Total In Lieu Fees for 176.0 Units x \$6,250/Unit = \$1,100,000	
Private Recreational Improvements to be Constructed in the Future			
Parcel 2	1,000	Future picnic area = 1/3 of pool deck	1,000
Parcel 6B	1,650	Future picnic area = 1/3 of pool deck	1,650
Parcel 8B	5,000	Future picnic area = 1/3 of pool deck	5,000
Parcel 9 & 10	3,000	Future picnic area = 1/3 of pool deck	3,000
Parcel 11	3,000	Future picnic area = 1/3 of pool deck	3,000
Parcel 12	1,330	Future picnic area = 1/3 of pool deck	1,330
Parcel 12 – Park Area	4,750	Community park site	0

Parcel 12 – Garden Plots Area	0	Garden Plots Area	4,750
Total sq. ft.	19,730		19,730
A	B	C	D
B + D / 298.3 = 132.3	Units		
39,460/298.3 = 132.3	Units	Total In Lieu Fees for 132.3 Units x \$6,250/Unit = \$826,875	

Constructed Market Square Improvements				
Actual Cost of Chess Board	\$372,354			
Actual Cost of Deck Area surrounding Chess Area including associated tables, chairs and decking	\$625,011			
Total Credit for Market Square Improvements	\$997,365			

Credit for Appraisal Costs under the Acquisition Agreement

Developer shall receive \$25,000 in credit against its total Parkland Dedication Obligation for the \$25,000 it paid to the City pursuant to the Acquisition Agreement for purposes of obtaining an appraisal of the Off-Site Parkland and for pre-acquisition costs.

Total Private Recreation Credit for Constructed and Future Private Recreation Improvements =

\$1,926,875 (1,100,000 + \$826,875)

Total Credit for Market Square Improvements =

\$997,365

Total Credit under the Acquisition Agreement =

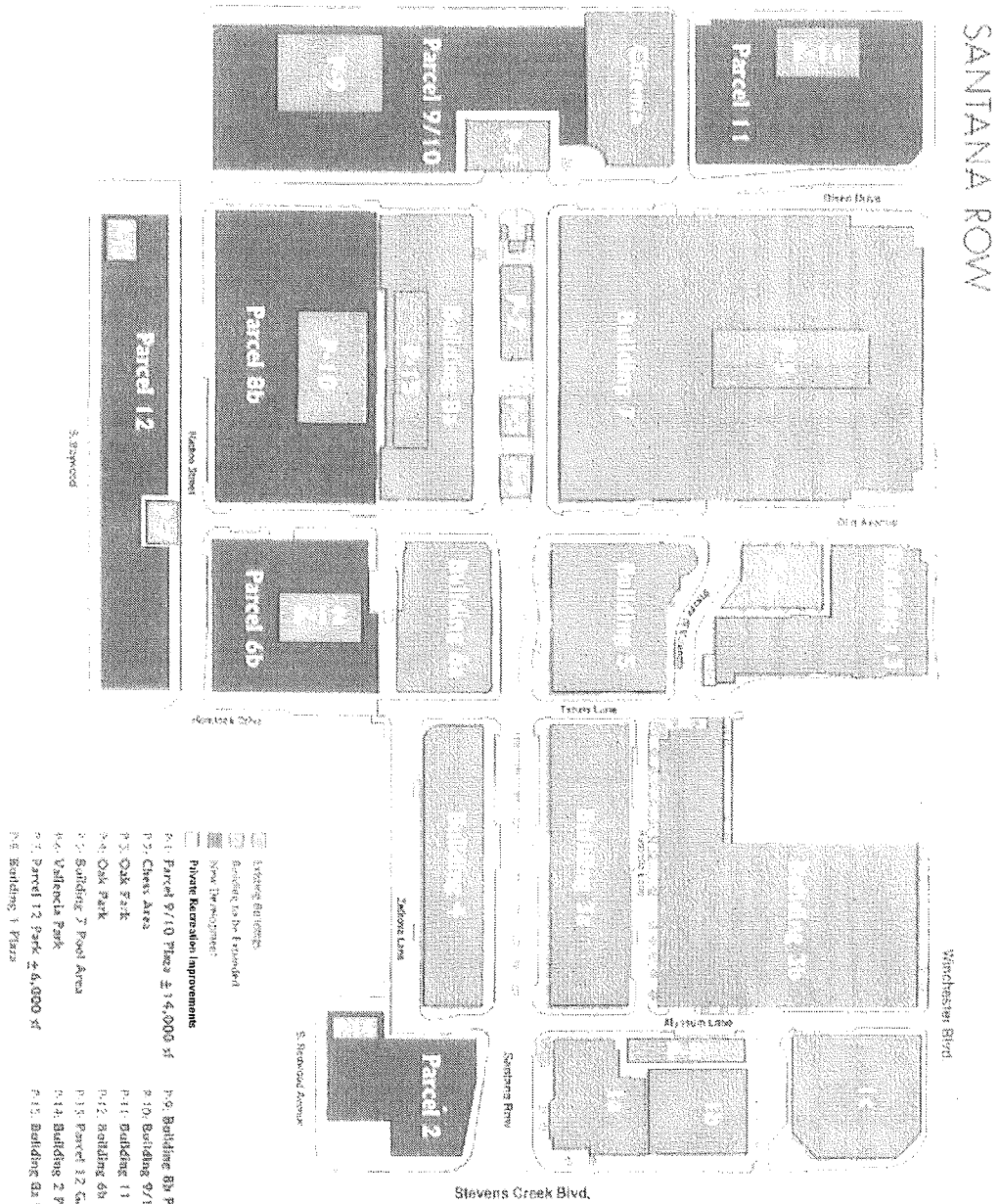
\$25,000

Total In Lieu Fee Obligation Due for the 1201 Original Units =

\$4,557,010 (\$7,506,250 - \$2,924,240 - \$25,000)

SETTLEMENT AND PARKLAND AGREEMENT

ATTACHMENT B





Memorandum

TO: Robyn Joseph
Analyst II

FROM: Cecilia Banaszak
Legal Admin. Assistant

SUBJECT: Santana Row Agreement

DATE: January 24, 2007

Hi Robyn,

Attached is the Settlement and Parkland Agreement between the City of San Jose and FRIT San Jose Town and Country Village, LLC to be signed and recorded by your office. You had advised us that we needed to get the Developer's notarized signature on this agreement in order for it to be recorded. We resent the signature page and received the Developer's notarized signature. This agreement was on the 12/5/06 Council agenda, item 5.2. Please let me know if there is any other information you need.

Also, if you could send me a copy of the agreement after it has been signed by your office, I would appreciate it.

Thank you,
Cecilia Banaszak
x51938

RECEIVED
San Jose City Clerk
2007 JAN 24 P 4:26