

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: Fwd: Copy of Settlement Agreement
Date: Tuesday, February 16, 2021 3:53:36 PM
Attachments: [Santana West Settlement Agmt 1483609.pdf](#)

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Begin forwarded message:

From: "Phan, Johnny" <Johnny.Phan@sanjoseca.gov>
Date: February 16, 2021 at 3:52:41 PM PST
To: Miles Imwalle <mimwalle@coblenzlaw.com>
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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and among the City of Santa Clara ("Petitioner"), Federal Realty Investment Trust ("Real Party in Interest"), and the City of San José and City Council of the City of San Jose (collectively "Respondent"), collectively referred to as the "Parties."

WHEREAS, Petitioner filed an action against Respondent on or about November 3, 2016, in the Superior Court of California, County of Santa Clara, case number 16CV302300, entitled City of Santa Clara v. City of San Jose, et al. ("Action"), alleging that Respondent violated the California Environmental Quality Act (CEQA) in approving a project at the Santana West site (the "Santana West Project");

WHEREAS, on or about February 2, 2017, the Action was transferred to San Mateo County Superior Court, case number 17-CIV-00547 ("Action");

WHEREAS, Respondent denies it has violated CEQA and contends that it complied with CEQA;

WHEREAS, the Parties now undertake to settle this Action in its entirety; AND

WHEREAS, each party expressly releases the other party from all claims, known or unknown, that have arisen or may arise from the Santana West Project;

NOW THEREFORE, the Parties agree as follows:

1. The City of San Jose agrees that before the issuance of a certificate of occupancy for the first 300,000 rentable square feet at the Santana West Project site the City of San Jose will implement the following transportation improvements, the estimated costs of which total approximately Two Million Five Hundred Thousand Dollars (\$2,500,000):

(a) Increase left-turn storage capacity and re-stripe the roadway on Stevens Creek Boulevard between Santana Row and Baywood Avenue to improve traffic flow. The median islands on Stevens Creek Boulevard between Winchester Boulevard and Monroe Street will be reconstructed.

(b) Widen the pedestrian crosswalks at the intersection of Stevens Creek Boulevard and Santana Row.

(c) Widen the sidewalks along the north side of Stevens Creek Boulevard between Santana Row and Monroe Street.

(d) Align the entrances to Westfield Shopping Center and Baywood Avenue, with a traffic signal at this intersection.

(e) Install a new traffic signal and crosswalk across Stevens Creek Boulevard at Henry Avenue.

2. The City of San Jose agrees to add Class II and/or Class III bicycle boulevard treatments, where feasible, along Cypress Avenue from Stevens Creek Boulevard to Williams Road. The City of San Jose will determine, in its sole discretion, where bicycle boulevard treatments are physically and safely feasible, and where appropriate, shall implement said bicycle improvement work no later than thirty-six (36) months of the Effective Date of this Settlement Agreement.

3. Within fifteen business days of the issuance of a grading permit for the first 300,000 rentable square feet for the Santana West Project site, the City of San Jose will provide to the City of Santa Clara the total amount of One Million Two Hundred Thousand Dollars (\$1,200,000) to be used exclusively for the following traffic improvements:

(a) Implement traffic calming in the South of Forest neighborhood to discourage cut through traffic pursuant to a traffic calming policy approved by the City of Santa Clara in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000);

(b) Fund the procurement of software licenses to implement adaptive signal control at existing traffic signals along Stevens Creek Boulevard from I-880 to Saratoga Avenue, and the equipment required to add traffic surveillance camera and Bluetooth/Wi-Fi travel time monitoring capability where appropriate;

(c) Fund the procurement of software licenses to implement adaptive signal control at existing traffic signals along Saratoga Avenue from Stevens Creek Boulevard to Pruneridge Avenue, and the equipment required to add traffic surveillance cameras and Bluetooth/Wi-Fi travel time monitoring capability where appropriate.

(d) Fund the procurement of software licenses to implement adaptive signal control at Cypress Avenue and Pruneridge Avenue traffic

signal, and the equipment required to add traffic surveillance cameras and Bluetooth/Wi-Fi travel time monitoring capability where appropriate;

It is estimated that the projects set forth in sections (b) through (d) above will be completed within three years of the grading permit issuance.

4. The City of San Jose will use fees from the Santana West Project site, received as the development proceeds, to fund an additional One Million Two Hundred Thousand Dollars (\$1,200,000) in traffic improvements as follows:

(a) Study possible grade separation for pedestrian and bicycle crossings at Stevens Creek/Santana Row and Stevens Creek/Winchester intersections, with Phase One of the study being completed within 18 months of the issuance of the grading permit for the first 300,000 rentable square feet of the Santana West Project site at an estimated Phase 1 cost of no more than \$150,000. Phase 2 of the study, if needed as determined jointly by the City Managers of Santa Clara and San Jose, will commence upon issuance of the grading permit for the second 300,000 rentable square feet of the Santana West Project site, for an estimated cost of not to exceed \$250,000;

(b) Install transit signal priority friendly adaptive signal control systems, to include traffic monitoring cameras and Bluetooth/Wi-Fi travel time monitoring systems where appropriate, (i) on Stevens Creek Boulevard between Interstate 880 and Winchester Boulevard; (ii) on Winchester Boulevard between Pruneridge Avenue and Moorpark

Avenue, both of which are to begin when a grading permit for the second 300,000 rentable square feet of the Santana West Project site is issued; and (iii) at Moorpark Avenue and Interstate 280, when a grading permit for the third 300,000 rentable square feet of the Santana West Project site is issued. It is estimated that these projects will be completed within three years of each applicable grading permit issuance.

If the projects described in Paragraphs 3 and 4 herein, are completed for a sum less than the total of Two Million Four Hundred Thousand Dollars (\$2,400,000), the City of Santa Clara and the City of San Jose shall develop an alternative expenditure plan for traffic improvements to be approved by both the City Manager of Santa Clara and the City Manager of San Jose using the remaining sum of money. Staff of the City of Santa Clara and City of San Jose will meet no less often than a semi-annual basis to review the project costs and expenditures.

5. The City of San Jose shall pay to the City of Santa Clara Five Million Dollars (\$5,000,000) within ten (10) calendar days of the City of San Jose issuing a grading permit or building permit for development on the Santana West Project site, or on July 1, 2022, whichever occurs first, to be used solely for affordable housing and transportation improvements in the City of Santa Clara (Affordable Housing and Transportation Payment).

6. The City of San Jose agrees to collect transportation impact funds pursuant to all applicable programs for development in the Stevens Creek Corridor, including the Santana West Project. To the extent the City of San Jose does issue a fee waiver, and that fee waiver would affect traffic in the City of Santa Clara, San Jose shall designate an alternative source of funds in the same amount and at the time such waived fees would have been due.

7. The City of San Jose shall meet and confer with the City of Santa Clara on

no less often than a semi-annual basis over the next five years regarding traffic impact funds that have been collected pursuant to the City of San Jose's Protected Intersection Policy for intersections that will also impact traffic in the City of Santa Clara, to ensure that such fees will be directed toward transportation improvements that will be located in the vicinity of where such traffic impacts will occur and will alleviate increased traffic congestion in the City of Santa Clara that results from development in the City of San Jose to the mutual satisfaction of the City of San Jose and the City of Santa Clara. The City of San Jose agrees to collect fees pursuant to its Protected Intersection Policy for intersections that will also impact traffic in the City of Santa Clara. To the extent the City of San Jose does issue a fee waiver, and that fee waiver would affect traffic in the City of Santa Clara, San Jose shall designate an alternative source of funds in the same amount and at the time such waived fees would have been due.

8. The Parties understand, and agree, that Real Party in Interest has no obligations under Paragraphs 1-7 of this Agreement, nor shall it have any obligation to Santa Clara to pay the fees and costs provided for in Paragraph 14.

9. The City of Santa Clara agrees to dismiss the Action with prejudice immediately after this Settlement Agreement is executed.

10. The Parties shall cooperate in executing all documents necessary to effectuate this Settlement Agreement and to effectuate the dismissal with prejudice of the Action.

11. Except for the rights and obligations created or reserved by this Agreement, the Parties hereby release, acquit, and discharge each other and each other's current and former and future governing officials, owners, officers, officials, members, assignees, affiliated entities, employees, agents, directors, attorneys, and authorized volunteers from any and all known and unknown claims, demands,

damages, sums of money, costs, expenses, actions, rights, causes of action, appeals, agreements, promises, obligations, liabilities, and all other liability arising under the California Environmental Quality Act process, as it concerns the project approvals for the Santana West Project (the "Released Claims").

The Parties hereby represent and warrant that in executing this Agreement, they do so with the full knowledge of any and all rights which they may have with respect to all Parties released hereby. Except as expressly set forth in this Agreement, the Parties hereto acknowledge that they have not relied upon any representations or statements made by any Party hereto, or their respective agents, or any other representative, with regard to any of the facts involved in the matters referred to in this Agreement. The Parties acknowledge that they are executing this Agreement after independent investigation and consultation with their respective legal counsel, and without fraud, duress, or undue influence.

12. 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 or her favor at the time of executing the Release, which if known by him or her must have materially affected his or her settlement with the debtor."

The Parties represent that Civil Code Section 1542 has been read and reviewed with counsel and understood, and that they hereby waive any and all present and future rights and benefits under Section 1542 to the extent it would permit claims based on facts relating to the Released Claims found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

13. The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims relating to, arising out of or any way connected with the Action. No act taken by the Parties, either previously or in connection with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims heretofore made or an acknowledgment or admission by any party of any fault or liability whatsoever to the other party. Each party acknowledges that each other Party expressly denies that it is any way liable or obligated to any other Party in connection with the Project or this Action.

14. With the exception of the payment set forth in the following sentence of this Paragraph 14, the Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with this Settlement Agreement and the events underlying this Settlement Agreement. However, the City of San Jose shall reimburse the City of Santa Clara for its reasonable fees and costs of legal services rendered by the City of Santa Clara's outside counsel relating to the Action and this Settlement Agreement from October 31, 2017, through the effective date of this Settlement Agreement.

15. The Parties represent that they have had the opportunity to consult with legal counsel and have carefully read and understand the terms of this Settlement Agreement. The terms of this Settlement Agreement are voluntarily accepted for the express purpose of making a full and final compromise and settlement of the Action.

16. Except for the separate Contribution Agreement, by and between Real Party in Interest and Respondent, relating to the settlement of the Action this Settlement Agreement represents the entire agreement and understanding between the Parties regarding settlement of the Action and supersedes any and all prior and

contemporaneous agreements, representations, and negotiations. This Settlement Agreement may be modified or amended only by a written instrument signed by all Parties hereto.

17. Each person executing this Settlement Agreement on behalf of any other person or persons hereby warrants that they have full authority to do so.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date all Parties have signed.


Dated: 11/12/18

CITY OF SANTA CLARA

By: 
TINA THOMAS
Thomas Law Group


Dated: 1/12/18

CITY OF SANTA CLARA

By: 
BRIAN DOYLE
City Attorney
City of Santa Clara
Attorney for Petitioner City of
Santa Clara

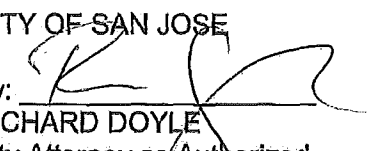
Dated: 1/11/2018

FEDERAL REALTY
INVESTMENT TRUST

By: 
JEFFREY S. BERNES
Executive Vice President,
President-West Coast

Dated: 1/12/2018

CITY OF SAN JOSE

By: 
RICHARD DOYLE
City Attorney as Authorized
Agent for the CITY OF SAN
JOSE and SAN JOSE CITY
COUNCIL