Meeting Date: 4-9-13 **AGENDA REPORT** **Agenda Item #** 7.C

City of Santa Clara, California

Date: April 9, 2013

To: City Manager for Council Action

From: Richard E. Nosky, Jr., City Attorney

Subject: Adoption of Ordinance No. 1903, approving an Amendment to the Development Agreement between the City of Santa Clara and PR II Kiely Boulevard LLC for the Property Located at 900 Kiely Boulevard, Santa Clara

EXECUTIVE SUMMARY:

Ordinance No. 1903, approving an amendment to the Development Agreement between the City of Santa Clara and PR II Kiely Boulevard LLC for the property located at 900 Kiely Boulevard, Santa Clara, was passed to print on March 26, 2013. Pursuant to City Charter Sections 808 and 812, proposed Ordinance No. 1903, was published on April 3, 2013, and copies were posted in at least three public places.

In 2009, the City of Santa Clara entered into a Development Agreement with PR II Kiely Boulevard LLC, a Delaware limited liability company ("Developer"), regarding a proposed 26-acre residential development on the property commonly referred to as 900 Kiely Boulevard. The Development Agreement required the Developer to make 10% of the units in the development affordable to very low, low, and moderate income households. The proposed ordinance would amend the Development Agreement to allow the Developer to instead satisfy its affordable housing obligation through payment of an in-lieu fee prior to issuance of certificates of occupancy. The City would use the fee for the production and rehabilitation of affordable housing. The amount of the fee is estimated to be Five Million Six Hundred Fifty Nine Thousand Five Hundred Sixty dollars ($5,659,560). This amount will be adjusted as necessary to track changes in the consumer price index and would be adjusted proportionately in the event the Developer modifies the number of dwelling units to be built at the complex.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of the amendment will satisfy the project's affordable housing requirements for the apartment unit portion of the project. The other development area plans (No. 2-4) will provide affordable housing units within each of the respective development areas in accordance with the City's for sale below market rate housing program. The payment of an in-lieu fee for affordable rental units can be used by the city in a manner of its choosing for the production, acquisition, financing or rehabilitation of affordable housing.

ECONOMIC/FISCAL IMPACT:

With respect to the project's apartment rental units, the developer may elect to fully satisfy its affordable housing obligation through payment of an in-lieu fee. The fees collected would assist the city in the production, acquisition, financing or rehabilitation of affordable housing. There is no cost to the city other than administrative staff time and expense.

RECOMMENDATION:

That the Council adopt Ordinance No. 1903, approving an amendment to the Development Agreement between the City of Santa Clara and PR II Kiely Boulevard LLC for the property located at 900 Kiely Boulevard, Santa Clara.

Richard E. Nosky, Jr.
City Attorney

APPROVED:

for Julio J. Fuentes
City Manager

Documents Related to this Report:
1) Ordinance No. 1903
I:\AGENDA\AGENDA REPORTS\Ordinance Adoption 1903 - 900 Kiely Blvd. 04-09-13.doc

ORDINANCE NO. 1903

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND PR II KIELY BOULEVARD LLC FOR THE PROPERTY LOCATED AT 900 KIELY BOULEVARD, SANTA CLARA

[Original Ordinance No. 1845 Adopted September 15, 2009]

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, California Government Code sections 65864 through 65869.51 (collectively, the "Development Agreement Act") authorize cities to enter into binding development agreements with owners of real property and these agreements govern the development of the property;

WHEREAS, in 2009, the City of Santa Clara ("City") entered into such an agreement (the "2009 Development Agreement") with PR II Kiely Boulevard LLC, a Delaware limited liability company ("Developer") regarding a proposed 26-acre residential development ("Project") on the property commonly referred to as 900 Kiely Boulevard, as more fully described in Exhibit A ("Legal Property Description") to the 2009 Development Agreement ("Property");

WHEREAS, City staff and Developer have recently negotiated proposed Amendment No. 1 to the Development Agreement, attached hereto and incorporated herein by this reference ("Amendment No. 1");

WHEREAS, on June 16, 2009, the City Council certified an Environmental Impact Report ("EIR") for the Project;

WHEREAS, City staff has determined that the changes contemplated in the proposed Amendment No. 1 are included within the scope of the previously certified EIR, in that all of the potential environmental impacts of the project as revised are addressed in such EIR, and therefore no further environmental review or documentation is required; and,

WHEREAS, on March 26, 2013, the City Council conducted a public hearing, at which time the Council received and considered all verbal and written testimony and evidence submitted.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: The City Council hereby finds that all of the foregoing recitals are true and correct.

SECTION 2: Pursuant to Government Code section 65867.5, the City Council hereby finds that the provisions of the Development Agreement, as amended by Amendment No. 1, are consistent with the General Plan, in that it supports urban design objectives by promoting the mixed residential uses and densities as required in the Planned Development – Master Community designation and the economic development objectives of increased residential uses within the City.

SECTION 3: The City Council has reviewed Amendment No. 1, and based on its review finds that the 2009 Development Agreement, as amended by Amendment No. 1, complies with all requirements of Government Code section 65865.2 [entitled "Contents" (of a Development Agreement)].

SECTION 4: The City Council hereby approves Amendment No. 1, substantially in the form attached hereto.

SECTION 5: The City Manager is hereby authorized to execute Amendment No. 1 on behalf of the City upon adoption of this Ordinance, together with such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof. The City Manger and/or his designee is also authorized and directed to take any action and execute any documents or agreements necessary to implement the Development Agreement as amended, including but not limited to conducting annual review of compliance as specified therein.

SECTION 6: Except as specifically set forth herein, this ordinance suspends and supersedes all conflicting resolutions, ordinances, plans, codes, laws and regulations.

SECTION 7: Within ten (10) days after the City Manager executes Amendment No. 1, the City Clerk shall cause Amendment No. 1 to be recorded with the Santa Clara County recorder.

SECTION 8: Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 9: This Ordinance shall not be codified in the Santa Clara City Code.

SECTION 10: Effective Date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 26th day of March 2013, by the following vote:

AYES:	COUNCILORS:	Davis, Mahan, Marsalli and O'Neill and Mayor Matthews
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	Gillmor and Kolstad
ABSTAINED:	COUNCILORS:	None

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. Amendment No. 1 to Development Agreement with PRII Kiely Boulevard LLC

AMENDMENT NO. 1
TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND PR II KIELY BOULEVARD LLC

PREAMBLE

This agreement ("Amendment No. 1") is made and entered into on this _____ day of March, 2013, ("Effective Date") by and between PR II Kiely Boulevard LLC, a Delaware limited liability company, with its principal place of business located at c/o PREI, Attn: PRISA II Asset Manager, 4 Embarcadero Center, Suite 2700, San Francisco, California 94111 ("Developer"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Amendment No. 1."

RECITALS

A. The Parties previously entered into an agreement entitled "Development Agreement," recorded October 22, 2009 as Document #20477059 in the official records of the Office of Santa Clara County Clerk-Recorder (the "Original Agreement");

B. Developer entered into the Original Agreement to obtain certain assurances from the City regarding the development of two parcels of land, and the City entered into the Original Agreement for the purpose of having Developer comply with certain conditions of project approval for residential development;

C. The Parties now wish to amend the Original Agreement to allow payment of an in-lieu fee for compliance with the affordable housing requirement for the Project's apartment rental units; and,

D. The provisions of the Original Agreement with respect to the Project's for sale units shall remain unchanged by this Amendment No.1.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. That section 4.4 of the Original Agreement, entitled "Affordable Housing," is hereby amended to read as follows:

   4.4. Affordable Housing. The parties acknowledge that the Project's affordable housing requirements, as reflected in the AHA Terms - revised August 18, 2009 and July 13, 2012, require that a portion of the units in the Project be affordable to very low, low, and moderate income households, as more particularly provided in **Exhibit F** to the Original Agreement, pursuant to Program 16 in the Housing element of the General Plan as implemented by (i) the "City of Santa Clara

Below-Market Price Purchase Program Policies and Procedures approved on January 9, 2007" as to for-sale units and (ii) the "City's Inclusionary Housing Policy, Below-Market Rate Rental" as to rental units. With respect to the Project's apartment rental units, Developer may elect to fully satisfy its affordable housing obligation through payment of an in-lieu fee. The in-lieu fee for the apartment rental units shall be determined in consideration of: a) the City's current Regional Housing Needs Assessment as a percentage of very low- and low-income units; b) unit size distinguished by the number of bedrooms; c) fair market rent levels as a comparison to affordable rent levels; and d) duration of the affordability restriction (collectively "**Affordable Housing Regulations**"). No failure of any Development Area of the Project to meet any affordability requirements shall result in imposition of additional or more stringent affordability requirements on any other Development Area within the Project.

2. That a new section 4.4.1, and new subsections 4.4.1.1 through 4.4.1.6, are hereby added to the Original Agreement to read as follows:

4.4.1. Affordable Housing Rental In-lieu Fee. As of the Effective Date, the parties agree that Developer may pay an in-lieu fee of Five Million Six Hundred Fifty Nine Thousand Five Hundred Sixty dollars ($5,659,560) (hereafter "**Rental In-Lieu Fee**") in full and complete satisfaction of the Project's affordable housing obligations for the currently contemplated five hundred and fifty two (552) apartment rental units in two apartment structures, as provided in more detail below.

4.4.1.1. Payment in Installments. Developer has the option of paying the Rental In-Lieu Fee in either one lump-sum payment or in two installments, with such installment payment based upon the pro rata unit count for each respective apartment building (the "Installment Payments").

4.4.1.2. Time of Payment. Developer has the right to pay the Rental In-Lieu Fee or either Installment Payment at any time prior to the issuance of the certificate of occupancy for the respective apartment building, to fully satisfy its affordable housing obligations for the rental units. The City will not issue a certificate of occupancy prior to receipt of the respective Installment Payment for each apartment building.

4.4.1.3. Pro-Rata Modification. To the extent the overall apartment unit count increases or decreases, the Rental In-Lieu Fee shall be increased or decreased by a pro-rata rate (the "Pro-Rata Modification"). The amount of the Pro-Rata Modification shall be Ten Thousand Two Hundred and Fifty Three dollars ($10,253) per rental unit, unless adjusted pursuant to Section 4.4.1.5, below.

4.4.1.4. Vesting of Rental In-Lieu Fee. Subject to the Pro-Rata Modification, each Installment Payment shall not be subject to any further adjustment ("Fully Vested") upon (1) the City's issuance of a building permit for the respective apartment structure, or (2) by payment of the Installment Payment (or full Rental

In-Lieu Fee), whichever occurs first. Until one of those two events occurs, each Installment Payment shall be subject to adjustment as described below.

4.4.1.5. Adjustment Schedule. The Rental In-Lieu Fee (or, if one Installment Payment is already Fully Vested, the remaining Installment Payment) and the Pro-Rata Modification shall be subject to adjustment according to the following schedule:

- From the Effective Date until the one-year anniversary of the Effective Date: no change.

- From the one-year anniversary of the Effective Date until the third anniversary of the Effective Date: the Rental In-Lieu Fee (or unvested Installment Payment) and the Pro-Rata Modification shall be adjusted to reflect any increase in the CPI during any such 12-month period. "CPI" shall mean the Revised Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, for San Francisco-Oakland-San Jose, California – All Urban Consumers.

- From the third anniversary of the Effective Date on: City may recalculate the Rental In-Lieu Fee (or unvested Installment Payment) and the Pro-Rata Modification in accordance with the Affordable Housing Regulations using the then-current fair market rent determinations that have been published by HUD at the time of building permit issuance for the respective apartment structure.

4.4.1.6. Subsequent Use of Fees. The payment of an in-lieu fee for affordable rental units shall not constrain the ability of the City to use those fees in any manner for the provision, production, acquisition, financing, rehabilitation, or administration of affordable housing.

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3. All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control. Specifically, it is the parties' intent that this Amendment No. 1 shall modify only the requirements applicable to the project's rental unit affordable housing obligations, and that the Project's affordable housing obligations governing the for sale units shall not be changed or modified by this Amendment No.1.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment No. 1 shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

PR II KIELY BOULEVARD LLC
a Delaware limited liability company

By: _____
(Signature of Person executing the Agreement on behalf of Contractor)

Name: _____

Title: _____

Local Address: 4 Embarcadero Center
Suite 2700
San Francisco, CA 94111

Telephone (415) 398-7310

Fax: (415) 398-1025

"CONTRACTOR"

I:\PLANNING - BLDG. INSPECTION\900 Kiely - Gallery at Central Park\Amd No. 1 to Dev Agmt Kaiser Site 900 Kiely 03-04-13.doc

PROOF OF PUBLICATION

Santa Clara Weekly

P.O. Box 580, Santa Clara, California 95052

IN THE
City of Santa Clara,
State of California,
County of Santa Clara

CITY OF SANTA CLARA

NOTICE OF PROPOSED ORDINANCE

ORDINANCE NO. 1903

State of California,
County of Santa Clara } SS.

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to nor interested in the above entitled proceeding; and was at and during all said times and still is publisher of the Santa Clara Weekly, a newspaper of general circulation printed and published weekly in the County of Santa Clara, State of California, and said Santa Clara Weekly is and was at all times hereinmentioned a newspaper of general circulation as that term is defined by sections 6000 and following, of the government code of the State of California, and, as provided by said sections, is published for the dissemination of local or telegraphic news and intelligence of a general character, having a bonafide subscription list of paying subscribers, and is not devoted to the interest or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professions, trades, callings, races or denominations; that at all times said newspaper has been established, printed and published in the said County of Santa Clara and State of California at regular intervals for more than one year proceeding the first publication of the notice herein mentioned; that said notice was set in type not smaller than non-parell, describing and expessing in general terms the purport and character of the notice intended to be given; that the clipping of which the annexed is a true printed copy, was published and printed in said newspaper on the following dates to wit:

Pub: 4/3/2013

Dated at Santa Clara, California

This 4TH day of APRIL, 2013

I declared under penalty of perjury that the foregoing is true and correct.

Signed: _____
(Assoc.) Publisher of the Santa Clara Weekly

The Santa Clara Weekly was adjudicated a newspaper of general circulation in and for the County of Santa Clara on September 3, 1974 (Case No. 314617). The Santa Clara Weekly was adjudicated a newspaper of general circulation within the City of Santa Clara on April 2, 1976 (Case No. 347776).

CITY OF SANTA CLARA
NOTICE OF PROPOSED
ORDINANCE NO. 1903

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND PR II KIELY BOULEVARD LLC FOR THE PROPERTY LOCATED AT 900 KIELY BOULEVARD, SANTA CLARA
[Original Ordinance No. 1845 Adopted September 15, 2009]

DATE OF ORDINANCE INTRODUCTION: Tuesday, March 26, 2013

PUBLIC HEARING ON ADOPTION OF PROPOSED ORDINANCE: Tuesday, April 9, 2013, at 7:00 p.m., or as soon thereafter as the matter may be heard

LOCATION OF PUBLIC HEARING CONCERNING THE ADOPTION OF THE PROPOSED ORDINANCE: City Council Chambers, 1500 Warburton Avenue, Santa Clara, CA 95050. Written material on the subject of the ordinance may be submitted to the City Clerk's Office, 1500 Warburton Avenue, Santa Clara, CA 95050, no later than Thursday, April 4, 2013. Interested parties are invited to attend the public meeting to address the City Council on the matter on Tuesday, April 9, 2013.

TITLE AND SUMMARY OF ORDINANCE:

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND PR II KIELY BOULEVARD LLC FOR THE PROPERTY LOCATED AT 900 KIELY BOULEVARD, SANTA CLARA
[Original Ordinance No. 1845 Adopted September 15, 2009]

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POSTING LOCATIONS:
City of Santa Clara locations where the full text of the proposed ordinance is available for review:
1. City Clerk's Office, City Hall East Wing, 1500 Warburton Avenue, Santa Clara, CA
2. Central Park Library, Central Park Library 2635 Homestead Road Santa Clara, CA
3. Mission Branch Library, 1098 Lexington Street, Santa Clara, CA
Pub.: 4/3/2013