

**UNANIMOUS APPROVAL
of Annexation to a Community Facilities District
and Related Matters**

**CITY OF SANTA CLARA
Community Facilities District No. 2010-1**

June 26, 2019

To the Honorable City Council,
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Members of the City Council:

This constitutes the Unanimous Approval (the "Unanimous Approval") of the record owner(s) (the "Property Owner") of the fee title to the real property identified below (the "Property") contemplated by Section 53339.3 et seq. of the Mello-Roos Community Facilities Act of 1982, as amended (the "Act") to annexation of the Property to the "City of Santa Clara Community Facilities District No. 2010-1" (the "CFD"), and it states as follows:

1. Property Owner. This Unanimous Approval is submitted by the Property Owner as a record owner of fee title to the Property. The Property Owner has supplied to the City current evidence of its ownership of fee title to the Property.

2. Approval of Annexation. This Unanimous Approval constitutes the unanimous approval and unanimous vote by the Property Owner in favor of the annexation of the Property to the CFD. The CFD was formed to finance the public facilities (the "Facilities") and municipal services (the "Services") described in Exhibit A hereto and made a part hereof.

3. Approval of Special Tax, the Facilities and the Services. This Unanimous Approval constitutes the unanimous approval and unanimous vote by the Property Owner in favor of the levy of special taxes (the "Special Taxes") on the Property to finance the Facilities and the Services. The Special Taxes will be levied according to the "Rate and Method of Apportionment of Special Tax" attached hereto as Exhibit B and made a part hereof (the "Rate and Method").

4. Waivers and Vote. The Property Owner hereby confirms that this Unanimous Approval constitutes its approval and unanimous vote as described herein and as contemplated by Section 53339.3 et seq. of the Act and Article XIII A of the California Constitution. The Property Owner hereby waives all other rights with respect to the annexation of the Property, the levy of the Special Taxes on the Property and the other matters covered in this Unanimous Approval.

5. Recordation of Amendment to Notice of Special Tax Lien. The Notice of Special Tax Lien for the CFD was recorded in the Office of the County Recorder of the County of Santa Clara, State of California on May 14, 2010, as Document No. 20712468. The Property Owner hereby authorizes and directs the City Clerk to execute and cause to be recorded in the office of the County Recorder of the County of Contra Costa an amendment to the Notice of Special Tax Lien for the CFD as required by Section 3117.5 of the California Streets and Highways Code. The amendment to the Notice of Special Tax Lien shall include the Rate and Method as an exhibit thereto.

6. Authority Warranted. The Property Owner warrants to the City that the presentation of this Unanimous Approval, any votes, consents or waivers contained herein, and other actions mandated by the City for the annexation of the Property to the CFD shall not constitute or be construed as events of default or delinquencies under any existing or proposed financing documents entered into or to be entered into by the Property Owner for the Property, including any "due-on-encumbrance" clauses under any existing security instruments secured by the Property.

7. Due Diligence and Disclosures. The Property Owner agrees to cooperate at no additional material cost to Property Owner with the City and its attorneys and consultants and to provide all information and disclosures reasonably required by the City about the Special Taxes to purchasers of the Property or any part of it.

8. Agreements. The Property Owner further agrees to execute such additional or supplemental agreements as may be reasonably required by the City to provide for any of the actions and conditions described in this Unanimous Approval, including any cash deposit required to pay for the City's costs in annexing the Property to the CFD.

9. The Property. The Property is identified as follows:

Address:

2950 Lakeside Drive
Santa Clara, CA 95054

Santa Clara County Assessor Parcel Numbers:

216-30-047-00

1.70 acres

By executing this Unanimous Approval, the Property Owner agrees to all of the above.

Property Owner

M9 Dev, LLC,
a California limited liability company

By: T2 Management, LLC,
a California limited liability company
Its Manager

By: MKP One, LLC,
a California limited liability company,
Its Manager

By: 
Mayur Patel, Member

Notice Address:

Nilesh Madhav
VP of Administration
T2 Management, LLC
620 Newport Center Drive, Sixteenth
Floor
Newport Beach, CA 92660

EXHIBIT A

CITY OF SANTA CLARA Community Facilities District No. 2010-1

AUTHORIZED FACILITIES AND SERVICES

DESCRIPTION OF AUTHORIZED FACILITIES TO BE FINANCED BY THE CFD

The Facilities shown below are proposed to be financed or funded in whole or in part by the CFD. The Facilities shall be owned and operated by the City or by another public agency, and shall be constructed, whether or not acquired in their completed states, pursuant to the plans and specifications approved by the City and its officials, including the City Engineer.

- (a) utility improvements
- (b) streets, parking lots and paving
- (c) sidewalks, pedestrian pathways and pedestrian bridges
- (d) fencing
- (e) landscaping and lighting
- (f) storm drain and flood protection facilities

The Facilities to be financed or funded shall include, without limitation, the following costs: earthwork related to the Facilities; appurtenances to and improvements related to the Facilities; related landscaping and irrigation; acquiring rights-of-way (including any right-of-way intended to be dedicated by the recording of a final map); design, architecture, engineering and planning; any environmental review or environmental studies, traffic studies, surveys, geotechnical studies, soils testing, or other studies related to the Facilities; permits, plan check and inspection fees; insurance, legal and related overhead costs; project management, coordination and supervision; and any other costs or appurtenances related to any of the foregoing.

The CFD may also finance or fund, and the special taxes may also be used, for any of the following purposes:

1. To pay for the purchase, construction, expansion, improvement or rehabilitation of any of the Facilities, and to reimburse the City or any third parties for advances made to purchase, construct, expand, improve or rehabilitate any of the Facilities.

2. To pay principal of, interest on, and any premium due with respect to, any bonds or other indebtedness issued or entered into by the City with respect to the CFD, and to pay lease payments or installment sale payments with respect to any of the Facilities.

3. To pay all expenses related to the issuance of bonds or other indebtedness by the City with respect to the CFD, including without limitation: underwriters discount; reserve fund; capitalized interest; fees, expenses and premium associated with any letter of credit or other credit enhancement; fees and expenses of bond counsel, disclosure counsel and issuer's counsel; fees

and expenses of the City's financial advisors and special tax consultants, and other City consultants; and all other incidental expenses.

4. To pay annual or periodic administrative fees of the City and the bond trustee or fiscal agent related to the CFD and the bonds, and to reimburse the City for its costs and expenses related to the administration of the CFD and the bonds.

5. To reimburse the City or any third parties for actual costs advanced that are related to the formation of the CFD.

DESCRIPTION OF AUTHORIZED SERVICES TO BE FINANCED BY THE CFD

The Services shown below and authorized to be funded by the CFD and paid by the special taxes shall incorporate and have the meaning given to the term "services" in the Mello-Roos Community Facilities Act of 1982. The cost of the Services include all related administrative costs and expenses, and related reserves for replacement of vehicles, equipment and facilities.

- (a) Police protection services.
- (b) Fire protection and suppression services, and ambulance and paramedic services.

EXHIBIT B

**CITY OF SANTA CLARA
Community Facilities District No. 2010-1**

**RATE AND METHOD OF
APPORTIONMENT OF SPECIAL TAX**

attached

EXHIBIT B

CITY OF SANTA CLARA COMMUNITY FACILITIES DISTRICT No. 2010-1

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Assessor's Parcel in the City of Santa Clara Community Facilities District No. 2010-1 shall be levied and collected according to the tax liability determined by the Administrator through the application of the appropriate amount or rate for Hotel Property, as described below. All of the property in CFD No. 2010-1, unless exempted by law or by the provisions of Section D below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2010-1, unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

"Administrative Expenses" means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City carrying out its duties with respect to CFD No. 2010-1 and the Bonds, including, but not limited to, levying and collecting the Special Tax, the fees and expenses of legal counsel, charges levied by the County in connection with the levy and collection of Special Taxes, costs related to property owner inquiries regarding the Special Tax, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Tax, and all other costs and expenses of the City in any way related to the establishment or administration of CFD No. 2010-1 or administration of the Bonds.

"Administrator" means the Director of Finance for the City, or such other person or entity designated by the Director of Finance of the City to administer the Special Tax according to this RMA.

"Assessor's Parcel" or "Parcel" means a lot or parcel shown on an official map of the County Assessor designating parcels by Assessor's Parcel numbers.

“Authorized Facilities” means those public facilities authorized to be funded by CFD No. 2010-1 as set forth in the CFD formation documents.

“Authorized Services” means those public services authorized to be funded by CFD No. 2010-1 as set forth in the formation documents.

“Base Special Tax” means the Special Tax levied pursuant to this RMA, which equals two percent (2%) of the Rent that is used in the calculation of the Transient Occupancy Tax for Hotel Property.

“Bonds” means bonds or other debt (as defined in the Act), whether in one or more series, issued or assumed by CFD No. 2010-1 to pay for Authorized Facilities.

“CFD No. 2010-1” or **“CFD”** means the City of Santa Clara Community Facilities District No. 2010-1.

“City” means the City of Santa Clara and/or any joint powers agency that becomes the governing authority for issues related to the new professional National Football League Stadium in the City of Santa Clara.

“City Code” means the Santa Clara City Code.

“City Council” means the City Council of the City of Santa Clara, acting as the legislative body of CFD No. 2010-1.

“County” means the County of Santa Clara.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Future Annexation Areas” means the areas designated for potential future annexation to CFD No. 2010-1 as shown in the CFD No. 2010-1 boundary map that was recorded in the County Recorder’s Office.

“Hotel” or **“Hotel Property”** means any structure, or any portion of any structure within the CFD, that is occupied or intended or designed for occupancy by Transients for dwelling, lodging, or sleeping purposes, including but not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home, or house trailer at a fixed location, or other similar structure or portion thereof. This definition incorporates by reference and shall be deemed to be amended to incorporate any changes made from time to time to Section 3.25.020(b) of the TOT Chapter.

“Indenture” means the bond indenture, fiscal agent agreement, trust agreement, resolution, or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

“Maximum Special Tax” means the greatest amount of Special Tax that can be collected in accordance with Section B below.

“Operator” means the person or entity who is proprietor of any Hotel Property, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, or licensee, or in any other capacity. Where this person performs his/her functions through a managing agent of any type or character other than as an employee of an operator, the managing agent shall also be deemed an Operator for the purposes of this RMA and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this RMA by either the principal or the managing agent shall, however, be considered to be compliance by both. This definition incorporates by reference and shall be deemed to be amended to incorporate any changes made from time to time to Section 3.25.020(d) of the TOT Chapter.

“Rent” means the consideration charged, whether or not actually received by Operator, for the occupancy of space in a Hotel valued in money, whether said Rent is received in money, goods, labor, or otherwise, including all receipts, cash, credits, and property and services of any kind or nature, without any deduction therefrom whatsoever. This definition incorporates by reference and shall be deemed to be amended to incorporate any changes made from time to time to Section 3.25.020(f) the TOT Chapter.

“RMA” means this Rate and Method of Apportionment of Special Tax.

“Special Tax” means a special tax collected pursuant to this RMA.

“Stadium Opening Date” means the date of the first pre-season, regular season, or post-season game, whichever comes first, held at the new professional National Football League Stadium located in the City.

“TOT Chapter” means the Transient Occupancy Tax chapter, being Chapter 3.25 (commencing with Section 3.25.010) of the City Code, as it may be amended from time to time.

“Transient” means any person who exercises occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive days or less, counting portions of days as full days. Any such person exercising occupancy in a Hotel shall be deemed to be a Transient until the period of thirty (30) consecutive days has expired. If such person enters into a written agreement with a Hotel pursuant to Section 3.25.020(g) of the TOT Chapter, and such agreement requirements are satisfied, such person shall not be considered a Transient and will not be subject to the Special Tax. This definition incorporates by reference and shall be deemed to be amended to incorporate any changes made from time to time to Section 3.25.020(g) of the TOT Chapter.

“Transient Occupancy Tax” means a tax imposed for the privilege of occupancy in Hotel Property, which each Transient is subject to and is required to pay in accordance with the TOT Chapter.

B. MAXIMUM SPECIAL TAX

In any Special Tax reporting period, the Maximum Special Tax for each Operator shall be equal to the sum of (i) the then-current Base Special Tax, (ii) any Base Special Taxes from prior reporting periods that have not yet been paid, and (iii) penalties and interest that have accrued on the delinquent Special Taxes.

C. COLLECTION OF THE SPECIAL TAXES

Starting in the calendar quarter after the Stadium Opening Date, Special Taxes shall be levied on and collected from each Hotel Property pursuant to this RMA. Each Operator of Hotel Property shall report and remit the Special Taxes in the same manner as outlined in Section 3.25.090 of the TOT Chapter. Specifically, the Operators' duties shall include the following:

- (i) Each Operator shall, on or before the last day of the month following the close of each calendar quarter (or at the close of any shorter reporting period, which may be established by the Administrator), file a Special Tax return with the Administrator, on forms and pursuant to guidelines provided by the Administrator, of the total Rents charged and received and the amount of Special Tax collected for transient occupancies. The Special Tax collected shall be the Maximum Special Tax, unless the Administrator determines a lesser amount shall be collected pursuant to the Indenture or pursuant to any provisions in a term sheet, disposition and development agreement, or other such agreement between the City and the Operators that provide for a reduction of, or credit against, Special Taxes.
- (ii) At the time the return is filed, the full amount of the Special Tax collected shall be remitted to the Administrator.
- (iii) The Administrator may establish shorter reporting periods for any Operator if the Administrator deems it necessary in order to ensure timely collection of the Special Tax, and the Administrator may require further information in the Special Tax return. Special Tax returns and payments of all Special Taxes are due immediately upon cessation of business for any reason.
- (iv) All Special Taxes collected by Operators shall be held by the Operators in trust for the account of the CFD until payment thereof is made to the Administrator.

Special Taxes for CFD No. 2010-1 shall be collected in the same manner and at the same time as Transient Occupancy Taxes, provided, however, that the City may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods as set forth in the Indenture. Special Taxes levied pursuant to this RMA shall be subject to the same penalties and interest applied to delinquent Transient Occupancy Taxes pursuant to Sections 3.25.100 and 3.25.110 of the TOT Chapter. Additionally, Special Taxes will be

subject to the same audit, appeal, and refund procedures as set forth in Sections 3.25.120, 3.25.130, and 3.25.150 of the TOT Chapter.

The Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, the City's costs of constructing or acquiring Authorized Facilities from Special Tax proceeds have been paid, and all Administrative Expenses and Authorized Services have been paid and/or reimbursed. However, in no event shall a Special Tax be levied for more than 40 years beginning with the first calendar quarter after the Stadium Opening Date.

D. EXEMPTIONS

Notwithstanding any other provision of this RMA, no Special Tax shall be collected from (i) any Parcel that is not Hotel Property, and (ii) any person who is exempt from the Transient Occupancy Tax pursuant to Section 3.25.040 of the TOT Chapter.

E. INTERPRETATION OF SPECIAL TAX FORMULA

The City may amend or supplement this RMA, including without limitation changes to mechanisms for collecting the Special Taxes, to clarify or make this RMA consistent with the TOT Chapter. No such amendment, supplement, or change shall increase the Maximum Special Tax that can be collected.