

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING ANNEXATION OF TERRITORY TO CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1 AND LEVYING A SPECIAL TAX IN SUCH TERRITORY (ANNEXATION NO. 1)**

**WHEREAS**, the City of San José (the “City”) is a municipal corporation and charter city duly organized and existing under a charter pursuant to which the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and the Charter of the City; and

**WHEREAS**, Chapter 14.32 (the “Chapter”) of the San José Municipal Code provides that the City is authorized to form a convention center facilities district to finance the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center under the provisions of the Mello-Roos Community Facilities Act of 1982 (Sections 53311 and following of the California Government Code) as they existed at the time of the adoption of the Chapter (the “Act”) and as modified by the Chapter; and

**WHEREAS**, the City Council has duly adopted its Resolution No. 74783 (the “Resolution of Intention”) on February 3, 2009, wherein the Council declared its intention to and proposed to establish a convention center facilities district under and pursuant to the terms and provisions of the Act as modified by the Chapter, to be known and designated as “Convention Center Facilities District No. 2008-1 (the “Convention Center Facilities District”), to finance the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center of the public facilities shown on Exhibit A attached hereto (the “Facilities”). All of

the Facilities have an estimated useful life of five years or longer. They are public facilities that the City is authorized by law to construct, own, or operate, or to which it may contribute revenue; and

**WHEREAS**, the cost of financing the Facilities includes incidental expenses for the Facilities comprising the costs of planning and designing the Facilities, together with the costs of environmental evaluations thereof, and all costs associated with the creation of the Convention Center Facilities District, the issuance of bonds, the determination of the amount of any special taxes, or the collection or payment of any special taxes and costs otherwise incurred to carry out the authorized purposes of the Convention Center Facilities District, together with any other expenses incidental to the acquisition and construction of the Facilities. A representative list of incidental expenses proposed to be incurred is set forth on Exhibit B attached hereto, which by this reference is incorporated herein and made a part of this Resolution; and

**WHEREAS**, the Boundary Map for the Convention Center Facilities District was filed for record in the office of the County Recorder of Santa Clara County on November 4, 2008, in Book 44 of Maps of Assessment and Community Facilities Districts at pages 32-46; and

**WHEREAS**, pursuant to the Resolution of Intention, a public hearing was held by the City Council on Tuesday, February 3, 2009 at 1:30 p.m. to consider the establishment of the Convention Center Facilities District, the future annexation of territory, the proposed rate and method of apportionment of such special tax, and all other matters set forth in the Resolution of Intention, and at such public hearing all persons interested, including all taxpayers, property owners and registered voters within the Convention Center Facilities District, were given an opportunity to appear and be heard, and the testimony of all interested persons and all taxpayers, property owners and registered voters for or against the establishment of the Convention Center Facilities

District and the levy of such special tax, or the extent of the Convention Center Facilities District, or any of the Facilities proposed therefor, or on any other matters set forth in the Resolution of Intention, was heard and considered, and such special tax as described in the Rate and Method of Apportionment of the Special Tax (the "RMA") attached thereto and hereto as Exhibit C was not precluded by a majority protest pursuant to Section 53324 of the Government Code of the State of California, and the City Council at the conclusion of said hearing was fully advised in the premises, and was authorized to proceed as thereafter provided; and

**WHEREAS**, subsequent to the City Council's adoption of the Resolution of Intention, the City Council conducted proceedings in accordance with Act as modified by the Chapter to authorize a special tax and to authorize the issuance of debt to finance the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center, and to establish the appropriations limit for the Convention Center Facilities District, all as set forth in the City Council's Resolution No. 74826 ("Resolution of Formation") and Resolution No. 74827 ("Resolution Deeming it Necessary to Incur Bonded Indebtedness"), both adopted on March 10, 2009 (collectively, the "Formation Resolutions"); and

**WHEREAS**, the City Council conducted the election in the Convention Center Facilities District to authorize the levy of a special tax therein to pay for the proposed Facilities to be provided in and for the Convention Center Facilities District and to establish an appropriations limit for the Convention Center Facilities District, and adopted its Resolution No. 75000 determining the election results on June 16, 2009; and

**WHEREAS**, pursuant to Section 53339.3 of the Act, the City Council has identified in the Resolution of Formation that may be developed for hotel purposes (as defined in the City's Municipal Code) anywhere within the City –, or within the City's sphere of

influence, as determined by the Local Agency Formation Commission (“LAFCO”) of the County of Santa Clara, and which becomes annexed to the City – as “territory proposed for annexation in the future” as that phrase is used in Section 53339.3(b) of the Act not already included within the boundaries of the Convention Center Facilities District, as territory proposed for annexation in the future into the Convention Center Facilities District, provided, prior to the annexation of any portion of such territory under the authority of Section 53339.3 of the Act, unanimous written approval of the owner or owners of each parcel or parcels to be annexed is delivered to the City Clerk; and

**WHEREAS**, certain property owners within the corporate limits of the City have unanimously approved to annex their property (the “Annexed Territory”) into the Convention Center Facilities District and have filed with the City Clerk their written approvals as required by Section 53339.3 of the Act in the form attached hereto as Exhibit D; and

**WHEREAS**, a list of the assessor's parcels to be annexed to the Convention Center Facilities District is shown on Exhibit E attached hereto;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

Section 1. The above recitals are true and correct, and the City Council so finds and determines. The exhibits attached to this Resolution are made a part hereof.

Section 2. The Resolution of Intention and the Resolutions of Formation (including the Exhibits attached thereto) are incorporated herein by reference and made a part hereof.

Section 3. Pursuant to Section 53339.3(b), the City Council hereby accepts and approves the written approvals as submitted by the property owners of the Annexed

Territory and hereby finds and determines that such written approvals represent the unanimous approvals of all of the property owners of the Annexed Territory.

Section 4. The Council hereby approves the annexation of the Annexed Territory to the Community Facilities District. A special tax is hereby levied annually on the Annexed Territory under the RMA attached to the Resolution of Intention, and a copy of the RMA is attached hereto as Exhibit C. The authorized Facilities shall be as described in the Resolution of Formation and also set forth in the attached Exhibit A.

Section 5. The special tax will be secured by the recordation of a continuing lien against all non-exempt real property within the Annexed Territory. The City Clerk is hereby directed to record a Notice of Special Tax Lien (Annexation) in the Office of the County Recorder of the County of Santa Clara no later than fifteen (15) days after the adoption of this Resolution.

Section 6. This Resolution shall take effect immediately after its passage.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

## EXHIBIT A

### CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1, CITY OF SAN JOSE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

#### AUTHORIZED CONVENTION CENTER FACILITIES

The Convention Center Facilities District special tax may finance any acquisition, construction, reconstruction, replacement, rehabilitation or upgrade, with an expected useful life of 5 years or longer, of any Convention Center Facility as defined in Section 14.32.220 of the Chapter. Pursuant to Section 14.32.300 of the Chapter, the Convention Center Facilities District special tax may be spent on the following: debt service; lease payments; costs of issuance of securities issued for the purpose of financing or refinancing Convention Center Facilities; administrative costs of the District; prepayment of such securities; direct costs of acquisition, design and construction of Convention Center Facilities; and ongoing capital repair and capital replacement of Convention Center Facilities.

Whether any such facility will be financed is within the sole discretion of the City Council. It is the intention of the City Council to develop the Phase I Project outlined below. However, project components may be delayed if the capital markets limit the ability to issue bonds, the Redevelopment Agency's ability to partially fund the project changes, or other *force majeure* circumstances beyond the control of the City occur, including: acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster); terrorist activities; labor disputes, strikes and lockouts; shortage of supplies, equipment, or materials; or any other reason where failure to perform is beyond the reasonable control of the City and the City has exercised all reasonable efforts to avoid or remedy such *force majeure*. If the Phase I Project cannot be completed in its entirety, the City will seek a recommendation from an advisory committee to the City Manager (the "Capital Facilities Advisory Committee") to assist in redefining the Phase I Project within the limits of Section 14.32.220 of the Chapter. The Capital Facilities Advisory Committee, established under the Agreement for the Management of the San José Convention Center and Cultural Facilities between the City of San José and Team San José, Inc., shall consist of four members from the hotel industry to be selected by Team San José, Inc., a California nonprofit mutual benefit corporation (the "Operator"), and four members from the City or Redevelopment Agency selected by City.

Ongoing capital repair and capital replacements shall be funded from special tax collections in excess of administrative fees, debt service or lease payments, and related financing costs (e.g. reimbursement payments to the City or the Redevelopment Agency). A long-range capital replacement plan shall be prepared and updated by the convention center Operator annually.

The Convention Center Facilities District special tax in excess of the capital repair and replacement expenditures needed for the San José Convention Center to achieve a quality level consistent with its competitors may finance future acquisition, construction, reconstruction, replacement, rehabilitation or upgrade, with an expected useful life of 5 years or longer, of any Convention Center Facility as defined in Section 14.32.220 of the Chapter.

Whether any additional Convention Center Facilities will be financed is within the sole discretion of the City Council. However, the City Council will, before ordering the financing of any additional Convention Center Facilities, consult with the Capital Facilities Advisory Committee to consider its views on whether any of the Convention Center Facilities should be financed.

### **Phase I Project**

The Phase I Project will include the following components:

1. Existing Convention Center Renovation
  - a. Fire Alarm and Protection – Replace the fire alarm and protection system consistent with current codes.
  - b. Central Plant – Replace the heating, ventilation, and air conditioning system including related pumps, chillers, exhaust fans, boilers, heat exchangers, cooling towers, and related electrical systems.
  - c. Building Management System – Replace the building management system with a direct digital control system that controls building systems.
  - d. Roof and Terraces – Replace flat roofs with single-ply overlay at build-up roofing, gutter system at aluminum barrel roof; and IPB glass block grid system. Waterproof terraces.
  - e. Exhibit Halls – Replace ACT ceiling panels and paint grid; replace/refurbish operable walls and tracks; reconfigure and replace acoustic wall panels; install new way finding; paint walls; reconfigure and replace lights; drop existing pick points below the ceiling; add additional pick points; repair and paint restrooms; replace and/or repair doors and door hardware.



- f Ballroom – Replace carpet tiles; repair and paint metal ceiling; replace operable walls and tracks; install new way finding; reconfigure and replace acoustic wall panels; paint walls; replace down lights; repair and paint restrooms; replace and/or repair doors and door hardware.
- g Exhibit Level Concourse – Replace carpet tiles; paint walls; install wall graphics; installing new way finding; refurbish metal slat ceiling; repair and paint metal ceiling; replace ACT ceiling panels and paint grid; reconfigure lighting; repair and paint restrooms; replace and/or repair doors and door hardware.
- h Meeting Rooms and Corridors – Replace carpet tiles; replace ACT ceiling panels and paint grid; replace/refurbish operable walls and tracks; install new way finding; reconfigure and replace acoustic wall panels; paint walls; repair and paint restrooms; replace and/or repair doors and door hardware.
- i Arcade – Paint walls; install wall graphics; install new way finding; refurbish metal slat ceiling; replace ACT ceiling panels and paint grid; reconfigure lighting; repair, and paint restrooms; replace and/or repair doors and door hardware.
- j Elevators and Escalators – Refurbish elevator cabs on public elevators, refurbish controllers, power units, fixtures, and selectors; and refurbish escalator rollers, steps, comb-plate, and handrails.
- k Surveillance System – Replace existing cameras, door monitoring, front-end equipment, control panels and recording systems.
- l Kitchen – Renovate the existing kitchen to accommodate the needs of the existing and expanded convention center including reconfiguration of kitchen area and replacement of equipment. Kitchen may be an additive alternate in the Phase 1 project.

## 2. Convention Center Expansion

The convention center expansion will be developed to current, competitive, “Class A” standards and include all the function and support spaces required for effective operations. Key components of the expansion will include:

- a Exterior Facade – The exterior of the building will consist of a glass curtain wall and metal panel system. A 3,300 ± square foot

programmable LED media messaging display wall may be included as an additive alternate in the Phase 1 project.

- b Lobby – A new lobby will be constructed that connects the existing convention center to the expanded facility.
- c Ballroom – A 35,000 square foot, column-free ballroom with 30-foot clear ceilings, and operable wall divisibility. In addition, the ballroom will be expandable to 43,000 square feet.
- d Junior Ballroom – A 20,000 square foot, column-free junior ballroom with 25-foot clear ceilings, and operable wall divisibility. In addition, the junior ballroom will have operable walls enabling expansion to 37,000 square feet.
- e Service – A plating kitchen, pre-function and back of house areas and systems to service the expansion space.
- f Wayfinding and Signage – A new wayfinding system will work throughout the renovated and expanded facility.
- g The expansion will be a LEED-Silver rated building in accordance with City policy.
- h Furniture, Fixtures and Equipment (F.F.&E.) – The F.F.&E. to operate the convention center with an expected useful life of 5 years or longer. Some F.F.&E. may be additive alternates in the Phase 1 project.

## EXHIBIT B

### CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1 CITY OF SAN JOSE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

#### REPRESENTATIVE LISTING OF INCIDENTAL EXPENSES AND BOND ISSUANCE COSTS

It is anticipated that the following incidental expenses may be incurred in the proposed legal proceedings for formation of the Convention Center Facilities District, acquisition, expansion, construction, reconstruction, rehabilitation, replacement or upgrade, of the Facilities and related bond financing and will be payable or reimbursed from proceeds of the Bonds or directly from the proceeds of the Special Tax:

- Special tax consultant services
- City, Participating District staff review, oversight and administrative services
- Bond Counsel and Disclosure Counsel services
- Financial advisor services
- Special tax administrator services
- Appraiser/Market absorption consultant services
- Initial bond transfer agent, fiscal agent, registrar and paying agent services, and rebate calculation service set up charge
- Bond printing and Preliminary Official Statement and Official Statement printing and mailing
- Publishing, mailing and posting of notices
- Recording fees
- Underwriter's discount
- Bond reserve fund
- Capitalized interest
- Governmental notification and filing fees
- Credit enhancement costs
- Rating agency fees
- Continuing disclosure services

The expenses of certain recurring services pertaining to the Convention Center Facilities District may be included in the special tax levy. The foregoing enumeration shall not be regarded as exclusive and shall be deemed to include any other incidental expenses of a like nature which may be incurred from time to time with respect to the Convention Center Facilities District.

## EXHIBIT C

### CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1 CITY OF SAN JOSE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

#### RATE AND METHOD OF APPORTIONMENT OF THE SPECIAL TAX

The Special Tax authorized by Convention Center Facilities District No. 2008-1 ("CCFD No. 2008-1") of the City of San José (the "City") shall be levied on all Assessor's Parcels within CCFD No. 2008-1 and collected as provided herein commencing in Fiscal Year 2009-2010 in an amount determined by the City Council through the application of the rate and method of apportionment of the Special Tax set forth below. All of the real property within CCFD No. 2008-1, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

#### **A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**"Additional Special Tax"** means the Special Tax determined in accordance with Section D herein, which may be levied by the City Council in any Fiscal Year on an Assessor's Parcel of Taxable Property to satisfy the Revenue Stabilization Reserve Requirement, provided that there are Bonds outstanding.

**"Assessor's Parcel"** means a lot or parcel shown in an Assessor's Parcel Map with an assigned assessor's parcel number.

**"Assessor's Parcel Map"** means an official map of the Assessor of the County designating parcels by assessor's parcel number.

**"Base Special Tax"** means the Special Tax determined in accordance with Section C herein, which may be levied by the City Council in any Fiscal Year on an Assessor's Parcel of Taxable Property.

**"Bond Documents"** means any bond indenture, trust agreement or similar document setting forth the terms of any Bonds.

**"Bonds"** means any binding obligation to pay or repay a sum of money, including obligations in the form of bonds, notes, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions,

private businesses, or individuals, or long-term contracts, or any refunding thereof, to which the Special Tax has been pledged.

**“CCFD Administrator”** means an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes for CCFD No. 2008-1.

**“Chapter”** means Chapter 14.32 of the San José Municipal Code, as amended.

**“City”** means the City of San José.

**“City Council”** means the City Council of the City.

**“County”** means the County of Santa Clara.

**“Director of Finance”** means the finance director of the City.

**“Exempt Property”** means all Assessor’s Parcels within CCFD No. 2008-1 which are exempt from the Special Taxes pursuant to Section F herein.

**“Facilities”** has the meaning given to that term in the resolution of which this Rate and Method of Apportionment of Special Tax is a part.

**“Fiscal Year”** means the period commencing on July 1 of any year and ending the following June 30.

**“Hotel Property”** means an Assessor’s Parcel of Taxable Property which consists of one or more buildings or structures situated in the City that has, on file with the Director of Finance, a transient occupancy registration certificate, including, but not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, guesthouse, bed and breakfast inn, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof situated in the city, which is occupied or intended or designed for Occupancy by Transients for dwelling, lodging or sleeping purposes.

**“Hotel Transient Unit”** means a room within Hotel Property as to which the Special Tax may be levied in that it is used for Transient Occupancy.

**“Occupancy”** means the use or possession, or right to the use or possession of any Hotel Transient Unit, or portion thereof.

**“Operator”** means the person who is proprietor of the Hotel Property, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any

other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator, and shall have the same duties and liabilities as his principal.

**“Owner”** means the landowner, owner of land, or property owner of Hotel Property, except that if the fee owner of the Hotel Property is a government entity, ‘Owner’ means the lessee of the government entity.

**“Rent”** means the consideration charged for the Occupancy of Hotel Transient Units valued in money, whether to be received in money, goods, property, labor, service, or otherwise. For purposes of this definition, Rent charged to: 1) a federal or state employee when on official business, or 2) any officer or employee of a foreign government, who is exempt by reason of express provision of federal law or international treaty, shall be excluded from the Base Special Tax and Additional Special Tax calculations defined in Section C and D herein, respectively.

**“Revenue Stabilization Reserve”** means a fund to be established and held by the City. Prior to the issuance of Bonds, all Special Tax revenues will, as collected and received by the City, be deposited in the Revenue Stabilization Reserve. Prior to the first issuance of Bonds, the City may pay its authorized expenses incurred in connection with the Convention Center Facilities District from the Revenue Stabilization Reserve, and thereafter as may be specified in the Bond Documents. Funds in the Revenue Stabilization Reserve shall be available for transfer to the appropriate redemption funds or accounts, established by the Bond Documents for the payment of debt service on Bonds, in the event that Special Tax collections, at any time, are not sufficient to make scheduled payments of principal or interest on the Bonds.

Subject to any limitations that may be imposed by the Bond Documents, the City may, at any time, transfer amounts in the Revenue Stabilization Reserve in excess of the Revenue Stabilization Reserve Requirement to the project fund for the Facilities or provide for changes, including a reduction, of the Revenue Stabilization Reserve.

The Bond Documents may establish terms and conditions under which the Revenue Stabilization Reserve may be closed and the Special Tax revenues therein, and any investment earnings thereon, applied to other authorized purposes of CCFD No. 2008-1. In the absence of provisions in the Bond Documents, once all Bonds have been retired, or provision has been made for their retirement or early redemption (which provision may include the application of moneys in the Revenue Stabilization Reserve), the Revenue Stabilization Reserve will be closed and all remaining funds in the Revenue Stabilization Reserve transferred to the project fund for the Facilities.

**“Revenue Stabilization Reserve Requirement”** means the minimum balance required in the Revenue Stabilization Reserve, as specified in the Bond Documents.

**“Special Tax”** means the special tax authorized by CCFD No. 2008-1 to be levied by the City Council pursuant to the Chapter to fund the Facilities.

**“Taxable Property”** means all Assessor’s Parcels that are not exempt from the Special Tax pursuant to law or the Rate and Method of Apportionment of Special Tax.

**“Transient”** means a person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days.

**“Zone”** means one of the two mutually exclusive geographic areas defined below.

- **“Zone 1”** means all territory in the City located within a two and one quarter (2 ¼) mile radius of the San José Convention Center located at 408 Almaden Blvd. San José CA. 95110.
- **“Zone 2”** means all territory within the City of San José that is not within Zone 1.

## **B. CLASSIFICATIONS OF ASSESSOR’S PARCELS**

Each Fiscal Year using the definitions above, all Assessor’s Parcels within CCFD No. 2008-1 shall be classified as either Hotel Property or Exempt Property and all Hotel Property shall be classified as within either Zone 1 or Zone 2. Commencing with Fiscal Year 2009-2010 and for each subsequent Fiscal Year, all Hotel Property shall be subject to Special Taxes pursuant to Sections C, D and E below.

## **C. BASE SPECIAL TAX RATE**

### **Zone 1**

Commencing in Fiscal Year 2009-2010, each Assessor’s Parcel classified as Hotel Property within Zone 1 of CCFD No. 2008-1 shall be subject to a Base Special Tax. The Base Special Tax for each Assessor’s Parcel classified as Hotel Property within Zone 1 shall equal four percent (4%) of all Rent charged.

## **Zone 2**

Commencing in Fiscal Year 2009-2010, each Assessor's Parcel classified as Hotel Property within Zone 2 of CCFD No. 2008-1 shall be subject to a Base Special Tax. The Base Special Tax for each Assessor's Parcel classified as Hotel Property within Zone 2 shall equal the percentage of all Rent charged as identified in Table 1 below.

**TABLE 1  
ZONE 2 BASE SPECIAL TAX RATES**

<b>Term</b>	<b>Base Special Tax</b>
July 1, 2009 – December 31, 2009	1%
January 1, 2010 – June 30, 2010	2%
Fiscal Year 2010-2011	3%
Fiscal Year 2011-2012 and thereafter	4%

### ***D. ADDITIONAL SPECIAL TAX RATE***

Commencing in Fiscal Year 2009-2010, each Assessor's Parcel classified as Hotel Property in CCFD No. 2008-1 shall be subject to an Additional Special Tax. The Additional Special Tax for each Assessor's Parcel classified as Hotel Property within either Zone shall equal one percent (**1%**) of all Rent charged.

If Bonds are outstanding, and the City Council determines, by no later than June 1 of any calendar year (or such other date as specified in the Bond Documents), that the amount in the Revenue Stabilization Reserve is less than the Revenue Stabilization Reserve Requirement, then the City Council may levy and collect the Additional Special Tax in the following Fiscal Year. The City must mail written notice of the imposition of the Additional Special Tax to all Owners, or Operators on behalf of Owners, at least 30 days before the imposition of the Additional Special Tax may commence. If the Additional Special Tax will not be imposed in any year immediately following a year in which it was imposed, then the City must mail written notice by June 1 to all Owners or Operators on behalf of Owners that levy of the Additional Special Tax will cease as of the following July 1 for the Fiscal Year beginning on that day.

### ***E. METHOD OF APPORTIONMENT OF THE SPECIAL TAX***

Commencing with Fiscal Year 2009-2010, and for each subsequent Fiscal Year, the City Council shall levy Special Taxes as described below:



Step One: The Base Special Tax shall be levied on each Assessor's Parcel classified as Hotel Property up to the rates specified in Section C.

Step Two: The Additional Special Tax shall also be levied on each Assessor's Parcel classified as Hotel Property if authorized, and as provided in, Section D.

Special Taxes associated with Rent that is charged for Transient Occupancy shall be considered levied and due in the calendar month the Transient ceases Occupancy of the Hotel Transient Unit(s), except that Special Taxes associated with Rent that is paid by credit card shall be deemed levied and collected on the date that the credit card is presented for payment to the Operator. The Special Taxes are payable as described in Section G below.

#### ***F. EXEMPTIONS***

No Special Tax shall be levied on any Assessor's Parcel not classified as Hotel Property.

#### ***G. MANNER OF COLLECTION***

The Special Tax shall be collected monthly by the City. Each Operator on behalf of the Owner shall, on or before the last day of each calendar month, submit the Special Taxes levied against their Hotel Property to the Director of Finance of the City and shall include a special tax obligation form provided by the City.

#### ***H. FAILURE TO SUBMIT SPECIAL TAX***

If any Owner, or Operator on behalf of Owner, fails or refuses to pay the Special Tax levied, the Director of Finance shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the Special Tax. As soon as the Director of Finance shall procure such facts and information as he is able to obtain upon which to base the Special Tax for such Assessor's Parcel classified as Hotel Property, the Director of Finance shall proceed to determine the amount of such Special Tax due plus any penalties and interest, as described below. In case such determination is made, the Director of Finance shall give a Determination of Special Tax Due by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Owner or Operator on behalf of the Owner at its last known place of address. Such Owner, or Operator on behalf of the Owner, may file an appeal as prescribed in Section J herein.

Any Operator who fails to remit the Special Tax levied within the time required shall be subject to a penalty of ten percent (10%) of the amount delinquent in addition to the delinquent Special Tax. Delinquent Special Taxes will incur an additional 1½% penalty

(applied to the amount originally levied without compounding) on the first day of each month which is more than six months after the date when the delinquent Special Tax was levied.

### ***I. SPECIAL TAX AUDIT***

It shall be the duty of the Owner, or Operator on behalf of the Owner, for each Assessor's Parcel classified as Hotel Property that is subject to the Special Tax to keep and preserve, for a period of three years, all records as may be deemed necessary by the City (and that will, at a minimum, include a record of all Rents collected) to determine the Special Taxes levied upon such Hotel Property by the City Council. The City shall have the right to inspect such records at all reasonable times.

### ***J. APPEALS***

Any Owner or Operator on behalf of the Owner, claiming that the amount or application of the Special Tax is not correct, may appeal to the City Council by filing a notice of appeal with the City Clerk within fifteen calendar days of the serving or mailing of the Determination of Special Tax Due. The City Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such Owner and Operator at their last known place of address. The findings of the City Council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any Special Tax found to be due shall be immediately due and payable upon the service of the City Council findings. If the City Council decision requires that the Special Tax for an Assessor's Parcel be modified or changed in favor of the Owner, or Operator on behalf of Owner, a cash refund shall not be made, but a credit shall be given against future Special Taxes on that Assessor's Parcel.

### ***K. TERM OF SPECIAL TAX***

The authority of the City Council to levy the Base Special Tax on all Assessor's Parcels classified as Hotel Property within CCFD No. 2008-1 in accordance with Section E is perpetual. The Additional Special Tax may only be levied during a period when Bonds are outstanding in accordance with Section E herein.

**EXHIBIT D**

**APPROVAL OF LANDOWNER  
TO ANNEX PROPERTY TO  
CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1**

**CITY OF SAN JOSE, SANTA CLARA COUNTY, CALIFORNIA**

**(ANNEXATION NO. \_\_\_\_)**

The undersigned is the authorized representative of \_\_\_\_\_ (the "Landowner"), owner of Assessor's Parcel No. \_\_\_\_\_ (the "Property") which is located in the territory proposed to be annexed to Convention Center Facilities District No. 2008-1, City of San José, Santa Clara County, California (the "Convention Center Facilities District"), that was formed pursuant to the requirements of Chapter 14.32 of the San José Municipal Code (the "Chapter") and, as provided therein, under the provisions of the Mello-Ross Community Facilities Act of 1982 (Sections 53311 and following of the California Government Code) as they existed at the time of the adoption of the Chapter (the "Act"), and as modified by the Chapter. In such capacity the undersigned hereby approves, on behalf of the Landowner, the annexation of the Property to the Convention Center Facilities District. Pursuant to Section 53339.3(b) of the Act, and hereby requests the City Council of the City of San Jose to proceed with the annexation proceedings at its meeting on DATE, or at any later date as determined by the City Council of the City of San José.

The Landowner understands that, pursuant to Section 53339.3(b) of the Act, the City Council of the City of San Jose shall approve the annexation of the Property to the Convention Center Facilities District upon receipt of this Approval of Landowner to Annex Property to Convention Center Facilities District No. 2008-1 Form.

The undersigned hereby declares that the Landowner has full knowledge of the facilities to be provided as described in the attached Attachment A and incorporated herein, and of the rate and method of apportionment of the special tax as set forth in the attached Attachment B and incorporated herein, and the Landowner has consented to the levy of the special tax by the City of San José on the Property located within the territory proposed to be annexed to the Convention Center Facilities District.

Dated: \_\_\_\_\_, 20\_\_

[NAME OF LANDOWNER]

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name of authorized representative)

**EXHIBIT E**

**PROPERTY OWNER AND ASSESSOR'S PARCEL  
TO BE ANNEXED TO CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1  
ANNEXATION NO.1**

<u>Assessor's Parcel No.</u>	<u>Name of Landowner</u>	<u>Mailing Address</u>
015-45-048	CalTex Hospitality Holdings LLC DBA Aloft Santa Clara	340 Scenic Ave Piedmont CA 94611
230-29-109	San Jose HHG Hotel Development, LP DBA Residence Inn/Springhill Suites San José Airport	105 Decker Ct Ste 500 Irving TX 75062
259-39-111	RB-TPG San Jose, LLC	c/o Steven D Caudill 4100 Regent St Suite G Columbus OH 43219
497-22-043	Panchal Natwarlal M and Panchal Gita N DBA White House Inn	115 Arroyo del Rancho Los Gatos CA 95032