

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ANNEXING CERTAIN REAL PROPERTY COMMONLY KNOWN AS CERANO APARTMENTS AND MURPHY RANCH TOWNHOMES (APN NO. 086-01-041 & 086-01-042) INTO CITY OF MILPITAS COMMUNITY FACILITIES DISTRICT NO. 2005-1 ANNEXATION NO. 9**

**WHEREAS**, Fairfield Murphy Road, LLC, and Fairview Murphy Road, LLC, are the owners of certain real property commonly known as the Cerano Apartments and Murphy Ranch Townhomes (APN No. 086-01-041 and 086-01-042, respectively), more specifically described in the annexation map attached as Exhibit A to the Consent and Election To Annex Real Property to an Existing Community Facilities District City of Milpitas Community Facilities District 2005-1, attached hereto as Exhibit 1; and

**WHEREAS**, on May 17, 2005 the City Council created by resolution the City of Milpitas Community Facilities District No. 2005-1 (“CFD 2005-1”) pursuant to the Mello-Roos Community Facilities Act of 1982, California Government Code Section 53311 *et seq.* Each fiscal year, a special tax is levied on all assessor’s parcels of residential property in CFD 2005-1 in an amount determined by the Council, as described in Exhibit B to the Consent and Election To Annex Real Property to an Existing Community Facilities District City of Milpitas Community Facilities District 2005-1, attached hereto as Exhibit 1; and

**WHEREAS**, pursuant to the Mello-Roos Community Facilities Act, the City Council also established a procedure to allow and provide for the annexation of parcels within the boundaries of CFD 2005-1 in the future without additional hearings, upon the unanimous approval of the owner or owners of each parcel or parcels at the time that the parcel or parcels are annexed, pursuant to Government Code Section 53339.7; and

**WHEREAS**, Fairfield Murphy Road, LLC and Fairview Murphy Road, LLC, now voluntarily seek to annex their properties to CFD 2005-1 and to be subject to the levy of a special tax there under.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Legally valid and unanimous consent to the annexation of real property identified as Assessor’s Parcel No. 086-01-041 and 086-01-042 into CFD 2005-1 has been given, as set forth in the Consent and Election to Annex Real Property To An Existing Community Facilities District, attached as Exhibit 1 to this Resolution. All prior proceedings and actions taken by the City Council pursuant to the Mello-Roos Community Facilities Act and this Resolution were and are valid and in conformity with state and local law.
3. The City Council hereby declares and determines that the territory comprising Annexation No. 9, as described in Exhibit A, is now added to and becomes a part of CFD 2005-1. City staff is hereby directed to include the property in the annual assessment. In no event shall the annual per-lot assessment exceed the maximum amount authorized by the engineer’s report for the CFD 2005-1 in any given fiscal year. Exhibit 2 attached hereto is provided to show all parcels that have been annexed to the CFD 2005-1.
4. The City Clerk is hereby directed to record an amendment to the Notice of Special Tax Lien within fifteen (15) days of the adoption of this Resolution with the Office of the County Recorder. The City Clerk is further directed to file a certified copy of the maps, attached as

Exhibit A to Exhibit 1 hereto, and as Exhibit 2 hereto, within fifteen (15) days of the adoption of this Resolution with the Office of the County Recorder.

5. The City Clerk shall certify the adoption of this Resolution.
6. This Resolution shall take effect immediately upon adoption.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Robert Livengood, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**CONSENT AND ELECTION TO ANNEX REAL PROPERTY TO AN EXISTING  
COMMUNITY FACILITIES DISTRICT  
CITY OF MILPITAS COMMUNITY FACILITIES DISTRICT NO. 2005-1  
(PUBLIC SERVICES)**

TO: CITY COUNCIL OF THE CITY OF MILPITAS IN ITS CAPACITY AS THE LEGISLATIVE  
BODY OF THE ABOVE ENTITLED COMMUNITY FACILITIES DISTRICT:

1. The undersigned is the owner (the "Owner"), or the duly authorized representative of the Owner, of the real property as described in **Exhibit A** attached hereto and incorporated herein by reference (the "Property"); and in such capacity, possesses all legal authority necessary to execute this Consent and Election as and on behalf of the Owner in connection with the annexation of the Property to the District (as defined below).

The Owner is:           **FAIRFIELD MURPHY ROAD LLC,  
A DELAWARE LIMITED LIABILITY COMPANY**

**FAIRVIEW MURPHY ROAD LLC,  
A DELAWARE LIMITED LIABILITY COMPANY**

2. The Owner is aware of and understands the following:
  - A. The City of Milpitas has conducted proceedings pursuant to the "Mello-Roos Community Facilities Act of 1982", (Government Code Section 53311 and following) (the "Act") to form a community facilities district known and designated as COMMUNITY FACILITIES DISTRICT NO. 2005-1 (PUBLIC SERVICES) (the "District") to finance the increased demand for public services (the "Services") resulting from new development within the District. The services to be financed by the CFD comprise services ("Services") authorized to be financed pursuant to Section 53313 and 53313.5 of the Government Code. CFD 2005-01 shall finance Services only to the extent they are in addition to those provided in the territory of CFD 2005-1 before the CFD was created and such Services may not supplant services already available within CFD 2005-1 when the CFD was created.  
For a full and complete description of the public services, reference is made to the final CFD Report, a copy of which is on file in the Office of the City Clerk. For all particulars, reference is made to said CFD Report.
  - B. The City has also undertaken proceedings pursuant to Article 3.5 of the Act to provide for the future annexation of certain territory, including the Property, to the District. On May 17, 2005, the City held a public hearing as required by the Act, to consider the future annexation of such territory, including the Property, to the District. Notice of such hearing was given in the form and manner as required by law. A protest to such future annexation was not received from 50% or more of the registered voters, or six registered voters, whichever is more, residing in the territory proposed to be annexed in the future or the owners of one-half or more of the area of land in the territory proposed to be

annexed in the future. At the conclusion of such public hearing, the legislative body of the City did approve and provide for the annexation in the future upon the unanimous approval of the owner or owners of each parcel or parcels at the time that such parcel or parcels are annexed, without additional hearings.

**THE UNDERSIGNED DOES HEREBY CERTIFY UNDER PENALTY OF PERJURY AS FOLLOWS:**

3. The Owner consents and elects to and expressly approves annexation of the Property to the District and the authorization for the levy of the Special Tax within the Property without further public hearing and without an election conducted pursuant to the provisions of Government Code Section 53339.7 and Article 2 of the Act and the Elections Code of the State of California. Owner agrees and intends that such consent and approval constitutes Owner's election to annex the Property to the District and to approve the authorization for the levy of the Special Tax within the Property.
4. The Owner waives any right, which the Owner may have to make any protest or complaint or undertake any legal action challenging the validity of the proceedings of the City or the District to authorize the future annexation of the Property to the District or the authorization for the levy of the Special Tax within the Property, any necessity, requirement, right or entitlement for further public hearing or election pertaining to the annexation of the Property to the District and the levy of the Special Tax within the Property.
5. The Owner specifically authorizes the levy of the Special Tax on the Property pursuant to the rate and method of apportionment set forth in **Exhibit B** to pay for the authorized Public Services.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2009, in \_\_\_\_\_, California.

**FAIRFIELD MURPHY ROAD LLC,  
A DELAWARE LIMITED LIABILITY COMPANY**

By: FF California Housing Fund LLC, A Delaware Limited Liability Company, its Manager

By: FF Properties, Inc., A Delaware Corporation, its Manager

By: \_\_\_\_\_

Name: ED McLay

Title: Vice President

Signature: 

**FAIRVIEW MURPHY ROAD LLC,  
A DELAWARE LIMITED LIABILITY COMPANY**

By: FF California Housing Fund LLC, A Delaware Limited Liability Company, its Manager

By: FF Properties, Inc., A Delaware Corporation, its Manager

By: \_\_\_\_\_

Name: ED McCay

Title: VICE PRESIDENT

Signature: 

Note:

1. Signatures of property owner(s) or representatives must be notarized.
2. Proof of Authorization to sign is required for Corporations, Partnerships, Limited Liability Companies, Trusts, etc.

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

\_\_\_\_\_  
(Type or Print name of signor)

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

\_\_\_\_\_  
(Type or Print name of signor)

**ATTACH NOTARY ACKNOWLEDGMENT**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

On August 6, 2009 before me Shannyn Daye Henkel, Notary Public  
Name and Title of the Officer, e.g. "JANE DOE, NOTARY PUBLIC"

personally appeared Ed McCoy  
Name(s) of Signer(s)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

  
SIGNATURE OF NOTARY



**-OPTIONAL SECTION-  
CAPACITY CLAIMED BY  
SIGNER**

Though statute does not require the Notary to fill in the date below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S)

\_\_\_\_\_  
TITLE(S)

- PARTNERS(S)       LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER:

**SIGNER IS  
REPRESENTING**  
NAME OF PERSON(S) OR ENTITY(IES)  
\_\_\_\_\_  
\_\_\_\_\_

**OPTIONAL SECTION**

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

Title or Type of Document: \_\_\_\_\_

Number of Pages: \_\_\_ Date of Document: \_\_\_\_\_

Signer(s) Other Than Named Above:

**EXHIBIT A**

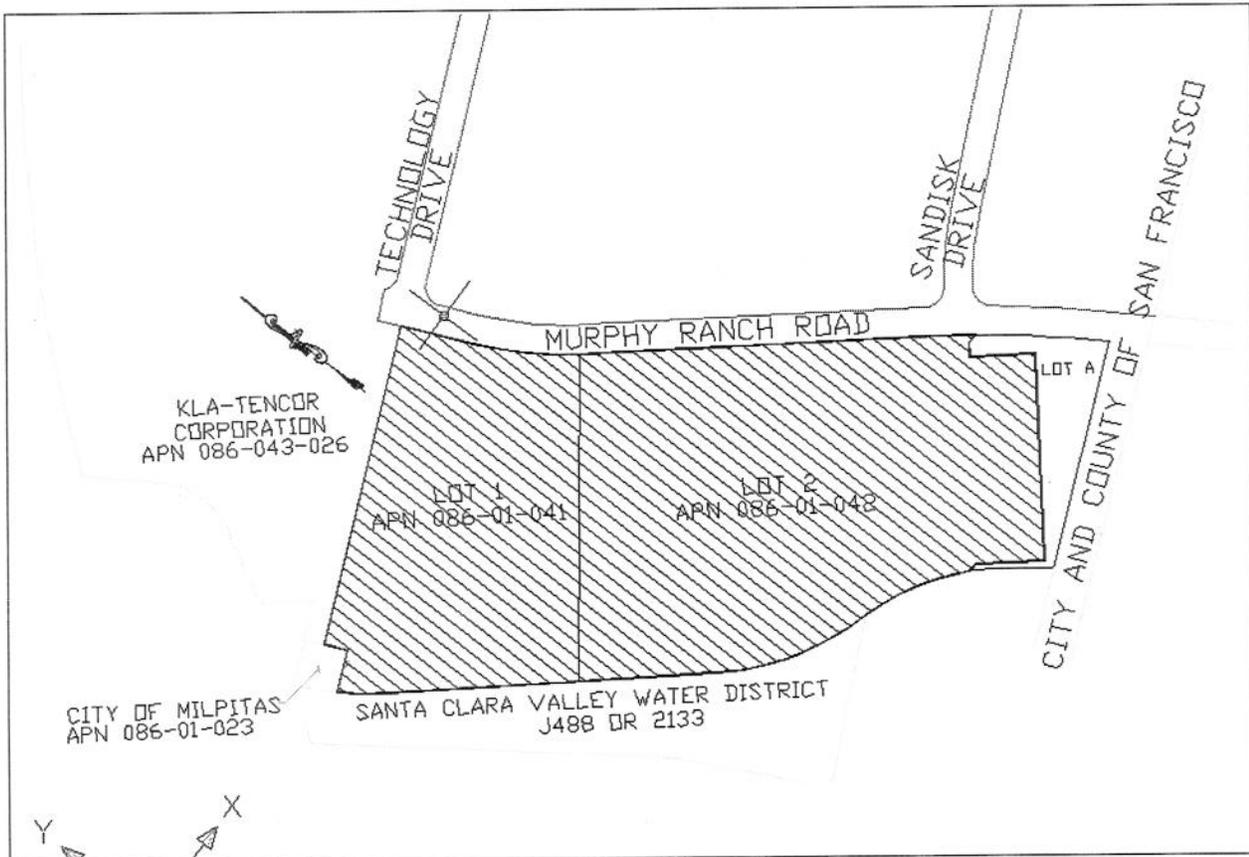
**CONSENT AND ELECTION TO ANNEX REAL PROPERTY TO AN EXISTING  
COMMUNITY FACILITIES DISTRICT**

**CITY OF MILPITAS**

**COMMUNITY FACILITIES DISTRICT NO. 2005-1  
(PUBLIC SERVICES)**

**ANNEXATION NO. 9**

<u>Assessor's Parcel No.</u>	<u>Name of the Owner</u>
<b>86-01-041</b>	<b>FAIRFIELD MURPHY ROAD LLC, A DELAWARE LIMITED LIABILITY COMPANY</b>
<b>86-01-042</b>	<b>FAIRVIEW MURPHY ROAD LLC, A DELAWARE LIMITED LIABILITY COMPANY</b>



**CERTIFICATION OF ADEQUACY OF CONSENT AND ELECTION TO ANNEX  
REAL PROPERTY TO AN EXISTING COMMUNITY FACILITIES DISTRICT**

**CITY OF MILPITAS**

**COMMUNITY FACILITIES DISTRICT NO. 2005-1  
(PUBLIC SERVICES)**

**ANNEXATION NO. 9**

The undersigned is the duly appointed CITY CLERK for the proceedings relating to the annexation of property to the District.

On the \_\_\_\_\_ day of \_\_\_\_\_, 2009, at MILPITAS, California.

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CITY CLERK  
CITY OF MILPITAS  
STATE OF CALIFORNIA

**City of Milpitas CFD 2005-1 Special Tax Rates  
FY 2008/09**

<b>Applied Special Tax Rates:</b>				
<b>Land Use Code</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>
	CPI	2.90%	3.20%	2.80%
1	\$ 310.61	\$ 319.62	\$ 329.85	\$ 339.0811
2	\$ 248.48	\$ 255.69	\$ 263.87	\$ 271.2562
3	\$ 155.30	\$ 159.80	\$ 164.92	\$ 169.5351
4	\$ -	\$ -	\$ -	\$ -

<b>Max Tax Rates</b>	
<b>Land Use</b>	<b>Max Tax 2008/09</b>
1	\$339.08
2	\$271.26
3	\$169.54
4	\$0.00

The Greater of 2% or CPI San Francisco Region Feb. to Feb.

<b>FY</b>	<b>CPI</b>
2006/07	2.90%
2007/08	3.20%
2008/09	2.80%

**B. ASSIGNMENT TO LAND USE CATEGORIES**

Each Fiscal Year, all Assessor's Parcels, as applicable within CFD No. 2005-1, shall be classified as Residential Property, Non-Residential Property, Undeveloped Property, Public Property, or Property Owner Association Property. However, only Residential Property shall be subject to annual Special Taxes in accordance with the rate and method of apportionment determined pursuant to Sections C and D below. Residential Property shall be assigned to Land Use Classes 1-4, as listed in Table 1, below.

**C. MAXIMUM SPECIAL TAX RATE**

**1. Developed Property**

a. Maximum Special Tax

The Maximum Special Taxes for Fiscal Year 2005-06 for Residential Property are shown below in Table 1, based on the Land Use Class in which such Residential Property has been assigned. Under no circumstances shall a Special Tax be levied on Non-Residential Property, or for renovations to an existing Dwelling Unit located on Residential Property.

**TABLE 1**

**Maximum Special Taxes for Developed Property  
For Fiscal Year 2005-06  
Community Facilities District No. 2005-1**

<b>Land Use Class</b>	<b>Land Use Type</b>	<b>Maximum Special Tax Per Dwelling Unit</b>
1	Market-Priced Residential Property	\$310.61 per Dwelling Unit
2	Low- Income Affordable Housing	\$248.48 per Dwelling Unit
3	Very Low-Income Affordable Housing	\$155.30 per Dwelling Unit
4	Extremely Low-Income Affordable Housing	\$0.00 per Dwelling Unit

b. Increase in the Maximum Special Tax

On each July 1, commencing on July 1, 2006, the Maximum Special Taxes set forth above shall be increased annually by the greater of the change in the San Francisco-Oakland-San Jose Area Urban Consumer Price Index during the twelve months prior to February of the previous Fiscal Year, or two percent (2%).

