

**DAVIS JOINT UNIFIED SCHOOL DISTRICT
AGREEMENT, PETITION AND WAIVER
(Annexation of Property to Community Facilities District No. 2)**

This Agreement, Petition and Waiver ("Agreement") is made and entered into this ___ day of ____ 2016, by and between the Davis Joint Unified School District, a political subdivision of the state of California (the "District") and Nishi Gateway LLC, a California limited liability company (the "Landowner").

RECITALS

A. On March 15, 1990 the District passed and adopted its Resolution No. 24-90, entitled, "A Resolution of Intention to Establish a Community Facilities District and to Levy a Special Tax to Pay for Certain Public Facilities" ("Resolution of Intention"), instituting proceedings under the Mello-Roos Community Facilities Act of 1982, as amended (Government Code sections 53311 et seq.) (the "Act") to establish and form the Davis Joint Unified School District Community Facilities District No. 2 ("CFD No. 2") for the purpose of providing financing for the acquisition and construction of public school facilities, as more particularly described in the Resolution of Intention. Such proceedings under the Act included the holding of required hearings, the adoption of all resolutions, the holding of an election to authorize the levy of a special tax (the "Special Tax") on the real property located within the boundaries of CFD No. 2, and all other actions necessary to establish CFD No. 2 and levy the Special Tax on such property.

B. Landowner's property, consisting of one parcel located southeast of the Union Pacific Railroad and University of California Davis campus, southwest of Putah Creek, and north/northwest of Interstate 80, totaling approximately 46.9± acres, generally described and referred to as APN 036-170-018, which is described and shown in Exhibit A attached hereto and incorporated herein by this reference ("Landowner's Property"), is subject to proceedings of the City of Davis ("City") whereby the City would amend the General Plan, and take other certain zoning actions ("General Plan Amendment").

C. The General Plan Amendment is subject to a special election ("Special Election") by the City's voters on June 7, 2016, and certain other entitlements thereafter.

D. Landowner seeks to develop Landowner's Property for purposes of research and development, surface parking, open space/parks, multi-family for-sale residences, and multi-family rental residences.

E. Only the 210 multi-family for sale residences will be annexed into CFD No. 2 (the "For-Sale Residences"). These specific parcels constituting the For-Sale Residences to be annexed into CFD No. 2 will be identified at a later date and will be subject to the annexation proceedings. The remaining parcels, including but not limited to multi-family rental residences, will be subject to the District's developer fees, pursuant to Education Code section 17620 and Government Code section 65995.

F. Landowner now desires to initiate proceedings by the District to annex the For-Sale Residences into CFD No. 2.

G. The District's Board of Education ("Board") will not proceed with such annexation proceedings for the For-Sale Residences until after the Special Election is approved by the voters, resulting in amendment of the General Plan for Landowner's Property, and upon annexation of Landowner's Property to the City of Davis, and receipt by Landowner of entitlements to build the project.

H. Landowner's Property is currently subject to the District's CFD No. 1, in accordance with Government Code section 53311 et seq.

I. Landowner's Property is also currently subject to the District's developer fee program pursuant to Government Code section 65995 et seq. ("Developer Fee"), which requires Landowner to pay a fee prior to issuance by the City of Davis ("City") of a building permit for each residential or commercial unit to be built.

J. As an alternative to collection of a developer fee pursuant to Government Code section 65995 ("Level I Developer Fee"), the District has determined that it is in its best interest to pursue annexation of the For-Sale Residences into CFD No. 2, as described above. Portions of Landowner's Property that are not annexed to CFD No. 2 will remain subject to the mitigation programs as identified in Recital paragraphs H and I above.

K. In the event that annexation is successful, the District will refund any Developer Fee paid by Landowner in exchange for Landowner voluntarily subjecting the For-Sale Residences to the Special Tax. Such Special Tax shall be made binding on Landowner's assignees and successors in interest irrespective of whether additional territory is annexed to CFD No. 2.

L. The Special Tax will be levied in CFD No. 2 in accordance with the special tax formula set forth in Exhibit B attached hereto and made a part hereof. As detailed in Exhibit B, the Special Tax shall be levied against all residential properties in CFD No. 2. The Special Tax shall be in addition to any other general or special tax levied upon the For-Sale Residences.

M. The Board may authorize the issuance of bonds issued under the Act and secured by the Special Tax (the "Bonds") to be repaid from the annual levy and collection of the Special Tax. The proceeds of the Special Tax and Bonds will be used to finance the purchase, construction, expansion, rehabilitation, improvement, and acquisition of the types of public school facilities described in Exhibit C attached hereto and incorporated herein by this reference to serve properties within the boundaries of CFD No. 2.

N. In order to implement the annexation to CFD No. 2 described herein, the Landowner is requested to execute a petition for annexation and waiver of the election timetable as set forth below in connection with such annexation.

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NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated into this Agreement by this reference.

2. Petition of Landowner to be Annexed into CFD No. 2. Landowner hereby proposes that the For-Sale Residences be annexed into the boundaries of a community facilities district formed by the District. The Landowner, being the owner of not less than ten percent (10%) of the For-Sale Residences, hereby requests that the Board institute proceedings to annex the For-Sale Residences into the CFD No. 2 and petitions that all of the For-Sale Residences be included therein and be subject to Special Tax. The Landowner hereby agrees to support the annexation for CFD No. 2.

2.1 The For-Sale Residences are to be included within CFD No. 2 when the Board takes all steps necessary to complete the annexation of the For-Sale Residences into CFD No. 2 and to levy the Special Tax therein to provide a voluntary method to finance a portion of the public school facilities made necessary by the development of the For-Sale Residences, all as specified in the proceedings for the creation of CFD No. 2 and the levy of the Special Tax.

3. Annexation Proceedings. Upon execution by the District's Associate Superintendent, Business Services and ratification by the Board of this Agreement, District staff shall seek approval from the Board to institute proceedings to annex For-Sale Residences to CFD No. 2, which includes an election for annexation. This Agreement is in no way a guarantee that For-Sale Residences will be successfully annexed to CFD No. 2.

4. Waiver of All Applicable Timelines. Landowner hereby consents to the acceleration of the election timetable and waiving all other procedural requirements in connection with the annexation proceedings and the election for annexation of For-Sale Residences to CFD No. 2.

4.1 It is the Landowner's desire that the annexation into CFD No. 2 and the levy of said Special Tax proceed as quickly as possible and the Landowner unanimously waives all applicable timelines for the annexation proceedings conducted by the Board and the election to annex the For-Sale Residences, to order the levy of the Special Tax, and to establish an appropriations limit for CFD No. 2. The Landowner further waives any and all requirements relating to the publication and giving of any form of notice for annexation proceedings, including an election for annexation, and the preparation of analysis and arguments in any ballot materials or otherwise.

5. Consolidation of Election. In furtherance of the waivers described above, the Landowner agrees that the election may be consolidated as to all issues and be conducted by mailed ballots to be returned (including by electronic means), not later than a date specified by the Board, to the Secretary of the Board, and that the results of said election be canvassed and reported to the Board at that same or subsequent meeting.

6. Acknowledgment of Special Tax. The Landowner acknowledges that the Special Tax will be levied against the For-Sale Residences (in accordance with the formula as set forth at Exhibit B attached hereto) and consistent with the funding needs of the District, created by the impact of development, for the purpose of the construction and acquisition of public school facilities and, if applicable, paying debt service on bonds issued for such purposes, all as specified in the proceedings for the creation of CFD No. 2, and hereby consents to application of the Special Tax formula to the For-Sale Residences.

7. Special Tax Rates. The rates at which the Special Tax is collected from properties within CFD No. 2, including the annexed property, exclusive of any other general or special taxes, shall be in accordance with the rates as set forth in Exhibit B subject to amendment or modification of Exhibit B in the future as authorized by law.

8. Developer Fees. If Landowner determines to commence construction on the For-Sale Residences prior to successful annexation to CFD No.2, Landowner shall be required to pay the Developer Fee to the City in order to obtain a building permit for each unit. Following a successful annexation, Landowner may request reimbursement from the District of the Developer Fee previously paid. In exchange for such reimbursement, Landowner hereby agrees to voluntarily subject For-Sale Residences to levy of the Special Tax. Such Special Tax shall be binding on Landowner's assignees and successors in interest irrespective of whether additional territory is annexed to CFD No. 2.

8.1 Following successful annexation, during the period of time the Special Tax is levied on the For-Sale Residences, Landowner shall be exempt only from those Level I Developer Fees as established by the District pursuant to Government Code section 65995, which otherwise would be levied for the purpose of funding the District's school facilities.

9. Bonds. The Board may authorize the issuance of Bonds under the Act to be repaid from the annual levy and collection of the Special Tax. The proceeds of the Bonds may be used to finance the school facilities described in Exhibit C. Such facilities may serve, in whole or in part, the dwelling units within the boundaries of CFD No. 2 and may be located anywhere within the jurisdiction of the District.

10. Successors Bound; Covenants Run with the Land. All of the covenants, stipulations and agreements contained in this Agreement made by or on behalf of, or for the benefit or burden of, the parties hereto shall be binding upon and shall inure to the benefit or burden of the assigns, successors in interest, and successors in title of the respective parties. Further, the provisions and terms of this Agreement shall be a covenant that applies to and runs with the land within the meaning of Civil Code section 1468. This Agreement is recited to be of benefit to the land in that, upon its execution, the District will certify compliance with any school facilities mitigation condition imposed by the City of Davis, thereby allowing Landowner to record a final subdivision map. Further, this Agreement creates an equitable servitude that will bind all successors and assigns of the parties hereto under principles of equity. Landowner shall give notice of this Agreement in all deeds, leases, contracts of sale, or other instruments conveying any interest in the For-Sale Residences.

11. Amendment. This Agreement shall be amended only by a written instrument executed on behalf of the District and the Landowner. Nothing in this Agreement shall be interpreted as limiting the authority of the Board to make changes, annex territory to CFD No. 2, or establish other community facilities districts as authorized by the Act.

12. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby, except where enforcement is inconsistent with the parties' intent.

13. Entire Agreement. This Agreement, including Exhibits A, B, and C, constitutes the final, complete, and exclusive statement of the terms and conditions of the parties pertaining to the authorized public facilities to be financed by CFD No. 2 and supersedes all prior and contemporaneous understandings or agreements, either oral or written, between the parties. Notwithstanding the preceding sentence, all provisions of the Resolution of Intention and all other documentation governing CFD No. 2, except as modified by this Agreement, shall remain in full force and effect, and are reaffirmed. In the event of any conflict, inconsistency or incongruity between any provision of this Agreement and any provision of the Resolution of Intention or other documentation governing CFD No. 2, the provisions of this Agreement shall govern and control.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

15. Execution in Counterparts. This Agreement may be executed in several counterparts each of which shall be an original and all of which shall constitute but one and the same agreement.

16. Recording of Memorandum. The Landowner agrees to execute, simultaneously with the execution of this Agreement, a Memorandum of Agreement, to be recorded in the real property records of the county by the District. The Memorandum of Agreement shall give notice that the For-Sale Residences are subject to this Agreement.

16.1 Not Applicable to Home Buyer. This Agreement shall not apply to any agreement between a Landowner and a member of the home-buying public pursuant to which such home buyer has agreed to purchase a single lot upon completion of construction of a dwelling unit on such lot, or any subsequent sale of such lot after such home buyer acquires the completed home. This Agreement shall automatically terminate on a lot-by-lot basis upon the conveyance of that lot to a member of the home-buying public following completion of construction of a dwelling unit on such lot.

16.2 Cancellation of Agreement. Upon the recordation of a grant deed which is executed and acknowledged by Landowner and which conveys a lot with a completed dwelling to an unrelated member of the home-buying public, with the exception of the special tax applicable to such property, this Agreement shall no longer serve any purpose as to such portion of the For-Sale Residences, and it will no longer be necessary for third parties to have notice of the existence of the Agreement as to the portion of the property

described in said deed. Upon such recordation, this Agreement shall be nullified and of no further force or effect and this Agreement shall not be a matter of record with respect to the portion of the property described in said deed. The Landowner and the District hereby authorize and direct any and all issuers of title insurance with respect to the property not to indicate the Agreement in matters affecting the condition of title to the property, or applicable portion(s) thereof, following the recordation of the grant deed(s) described above.

17. Authority. As of the date set forth below, the undersigned, hereby represents that it owns the Landowner's Property described in Exhibit A. Each of the parties hereto represents to the other that (a) it has the requisite power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it have been duly authorized by all necessary actions, (c) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms, and (d) the representatives of the District and Landowner executing this Agreement are fully authorized to execute the same.

NOW, THEREFORE, the parties hereto have executed this Agreement on the date first written above.

DAVIS JOINT UNIFIED SCHOOL DISTRICT

By: _____
Bruce Colby,
Associate Superintendent, Business Services

NISHI GATEWAY LLC
a California limited liability company

By:  _____
Timothy Ruff
Managing Partner

EXHIBIT A

LANDOWNER'S PROPERTY

APN 036-170-18

[Map/legal description to come]

EXHIBIT B

DAVIS JOINT UNIFIED SCHOOL DISTRICT COMMUNITY FACILITIES DISTRICT NO. 2

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax, determined as shown below, shall be levied each Fiscal Year by the Governing Board of the Education of the Davis Joint Unified School District (the "District") within the boundaries of Community Facilities District No. 2 ("CFD No. 2"):

- I. **Definitions.** The following definitions shall apply:
- A. "Assessor's Parcel" means a parcel of land designated on a map of the Yolo County Assessor and assigned a discrete identifying number.
 - B. "Board" means the District's Board of Education.
 - C. "Commercial Property or Use" means an Assessor's Parcel within CFD No. 2 for which the building permit has been issued for a commercial improvement or use, or where there is a use for a commercial purpose that does not require a building permit, by June 1 of the previous Fiscal Year.
 - D. "Escalation Rate" means a rate of not more than 4.63% to be annually determined by the Board at the time taxes are levied.
 - E. "Fiscal Year" means the period starting on July 1 and ending on the following June 30.
 - F. "Assessable Space" means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure or similar area. This figure shall be determined by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structure perimeters.
 - G. "Chargeable Covered and Enclosed Space" means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the development, garage, parking structure, unenclosed walkway or utility or disposal area. This figure shall be determined by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.
 - H. "Industrial Property or Use" means an Assessor's Parcel within CFD No. 2 for which a building permit has been issued for an industrial improvement or use, or

where there is a use for an industrial purpose that does not require a building permit, by June 1 of the previous Fiscal Year.

- I. "Residential Property" means an Assessor's Parcel within CFD No. 2 for which a building permit for a residential improvement or use has been issued by June 1 of the previous Fiscal Year.
- J. "Special Tax – Commercial or Industrial" means for each Commercial or Industrial Property or Use the sum of \$0.03 per square foot of Chargeable Covered and Enclosed Space, increased by an amount that reflects the Escalation Rate compounded from Fiscal Year 1990-91 to the Fiscal Year in which the Property is first subject to the tax. For those parcels where no building permit is required, the parcel shall be taxed on the basis of building area equivalent to 30% of the area of the entire parcel in square feet. The Special Tax may not be imposed on the reconstruction of any structure damaged or destroyed as a result of a disaster (fire, earthquake, landslide, mudslide, flood, tidal wave or other unforeseen event that produces material damage or loss) except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure damaged or destroyed.
- K. "Special Tax – Residential" means for each Residential Property the sum of \$0.20 per square foot of Assessable Space increased by an amount that reflects the Escalation Rate compounded from Fiscal Year 1990-91 to the Fiscal Year in which the Property is first subject to the tax. The Special Tax shall not be levied upon Residential Property for increases in assessable space, for existing structures, of less than 500 square feet.
- L. "Superintendent" means the District's Superintendent.
- M. "Tax-Exempt Property means any property within CFD No. 2 that is classified as Tax-Exempt Property pursuant to Section III below.
- N. "Territory to be Annexed" means any territory that is within (or as a result of a District boundary change, is included within) District boundaries but not included within the boundaries of CFD No. 2 upon formation.
- O. "Undeveloped Property" means all real property in CFD No. 2 for which no residential, commercial or industrial improvements or use exist and no building permit has been issued as of June 1 of the Fiscal Year preceding the Fiscal Year for which the tax is being levied.

II. Classification of Property and Assignment of Tax.

- A. At the beginning of each Fiscal Year, beginning in 1990-91, the District shall cause each Assessor's Parcel in CFD No. 2 to be classified as Residential Property, Commercial Property or Use, Industrial Property or Use, or Tax-Exempt Property.

- B. At the time taxes are levied each Fiscal Year, the Board shall determine the Escalation Rate that will be applied to the prior Fiscal Year's Special Tax Rate. The resultant compounded rate will be applied to properties first becoming subject to the Special Tax during the current Fiscal Year.
- C. At the beginning of each Fiscal Year, beginning in 1990-91, the District shall cause the Special Tax to be apportioned and levied in CFD No. 2 as follows:
 - (1) For Tax-Exempt Property no Special Tax shall be apportioned or levied.
 - (2) All other parcels will be assigned the Special Tax as compounded by the Escalation Rate, in effect for the Fiscal Year following the Fiscal Year in which a building permit has been issued for the parcel or, in the event no building permit is required, is otherwise approved for a use subject to the Special Tax. A parcel receiving a building permit, or approved for a use not required, is otherwise approved for a use subject to the Special Tax. A parcel receiving a building permit, or approved for a use not requiring a building permit, after June 1 shall be treated as if the permit or use were not received or approved until July 1. The tax rate shall then remain constant and not escalate further for those parcels. Parcels first becoming subject to tax in subsequent Fiscal Years will then be taxed at a rate higher than similarly classified parcels first taxed in previous Fiscal Years.
 - (a) For each Residential Property, the Special Tax shall be the Special Tax-Residential in effect the Fiscal Year the Special Tax is first apportioned and levied on that property.
 - (b) For each Commercial Property or Use, or Industrial Property or Use, the Special Tax shall be the Special Tax-Commercial or Industrial in effect the Fiscal Year the Special Tax is first apportioned and levied on that property.
 - (3) Parcels changing classification after assignment of the Special Tax, shall pay the highest potential Special Tax.

III. Tax-Exempt Property

- A. Governmental property owned by the state, federal or other local governments will not be taxed except:
 - (1) If a public agency owning property, including property held in trust for any beneficiary, that is exempt from a special tax pursuant to Section 53340 grants a leasehold after January 1, 1988, or other possessory interest in the property to a nonexempt person or entity, the special tax shall, notwithstanding Section 53340, be levied on the leasehold or possessory interest and shall be payable by the owner of the leasehold or possessory interest.

- (2) If property not otherwise exempt from a special tax levied to this chapter is acquired by a public entity other than the District through a negotiated transaction, or by gift or devise, the special tax shall, notwithstanding Section 53340, continue to be levied on the property acquired and shall be enforceable against the public entity that acquired the property.
- (3) If the property subject to a special tax is acquired by a public entity through eminent domain proceedings, the obligations to pay the special tax shall be treated as if it were a special annual assessment. For this purpose, the present value of the obligation to pay a special tax to pay the principal and interest on any indebtedness incurred by the district prior to the date of apportionment determined pursuant to Section 5082 of the Revenue and Taxation Code shall be treated the same as a fixed lien special assessment.

B. Undeveloped Property: Undeveloped property will not be taxed.

C. Low Income Housing: A property owner has the option of applying for a low income housing tax exemption from the special tax if all of the following conditions exist.

- (1) The property owner provides evidence that the dwelling unit(s) constitute(s) low income housing under either of the following categories.
 - (a) A low-rent housing project within the meaning of Section 214 (g) of the California Revenue and Taxation Code that is owned by (i) a non-profit tax exempt corporation that qualified under Section 501 (c) (3) or 501 (c) (4), of the Internal Revenue Code of 1986, as amended or (ii) a non-profit mutual benefit corporation organized under Section 7110 of California Corporations Code, or (iii) a limited partnership with a non-profit general partner, or
 - (b) A limited equity housing cooperative defined by California Health & Safety Code Section 33007.5 or California Business and Professions Code Section 11003.4.
- (2) The property owner provides evidence of ownership of the property.
- (3) The application is filed and qualifies annually. Filing of the application shall be made between May 15 and June 15 annually.

IV. Appeals and Interpretation Procedures. Any taxpayer claiming that the amount or application of the Special Tax is in error may file a notice with the District appealing the levy of the Special Tax. The Superintendent or designee shall review the appeal promptly and, if necessary, meet with the applicant and decide the appeal. If the findings of the Superintendent or designee verify that the tax should be modified or changed, the special tax levy shall be corrected and, if appropriate, a refund shall be granted. Any

dispute over the decision of the Superintendent or designee shall be referred to the Board and the decision of the Board shall be final.

Interpretation may be made by Resolution of the Board for purposes of clarifying any vagueness or uncertainty as it relates to the application of the special tax rate, or application of the method of apportionment, or the classification of properties or any definition applicable to CFD No. 2.

- V. Claims for Refund. All claims for refund of Special Taxes collected on behalf of CFD No. 2 shall be filed with the Superintendent of the District no later than one year after the date the Special Tax has been paid to the county. The claimant shall file the claim within this time period and the claim shall be finally acted upon by the Board as a prerequisite to the claiming bringing suit thereon. Pursuant to Government Code Section 935(b) the claim shall be subject to the provisions of Government Code Sections 945.6 and 946.

The Board acting on its own behalf and on behalf of CFD No. 2 shall act on a timely claim within the time period required by Government Code Section 912.4.

The procedure described in this tax formula shall be the exclusive claims procedure for claims seeking a refund of Special Taxes. The decision of the Board in response to the claim for refund of taxes shall be final.

- VI. Collection of Special Tax. The Special Tax shall be collected each year upon the applicable Assessor's Parcels in CFD No. 2 in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and lien priorities in the case of delinquency as is provided for ad valorem taxes. The District shall cause the actions required above to be done for each Fiscal Year in a timely manner to assure that the schedule of the Special Taxes to be collected are received by the Auditor of Yolo County for inclusion with billings for such ad valorem taxes for the applicable Fiscal Year.
- VII. Annexation of Territory. Any territory to be annexed to CFD No. 2 shall, in addition to payment of taxes at the rate set forth above, be subject to payment of any costs incurred by the District in conducting the annexation process.
- VIII. Term. The Special Tax shall be levied on each property for a maximum of 30 years from the Fiscal Year in which the parcel is first taxed.

EXHIBIT C

DESCRIPTION OF PUBLIC SCHOOL FACILITIES

The facilities to be financed by CFD No. 2 shall be as follows to the extent that financing is available:

1. The repair, rehabilitation, modification and expansion of existing elementary and secondary school facilities;
2. The acquisition of sites and the construction of elementary and secondary school facilities with related appurtenances and support structures;
3. The acquisition of sites and the construction of non-school facilities to support District operations; and
4. The acquisition of related equipment and furnishings; all necessary to meet student population demands.