

**FIRST AMENDED  
RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX  
COMMUNITY FACILITIES DISTRICT NO. 16  
SWEETWATER UNION HIGH SCHOOL DISTRICT**

This First Amended Rate and Method of Apportionment of Special Tax sets forth the Special Tax applicable to each Assessor's Parcel within Community Facilities District No. 16 (the "CFD") of the Sweetwater Union High School District ("School District") to be apportioned, levied and collected according to the Special Tax liability determined by the Board of Trustees of the School District, acting as the Legislative Body of the CFD. The applicable Annual Maximum Special Tax shall be determined pursuant to the application of the appropriate amount or rate for Developed Property and Undeveloped Property, as described below. All Developed Property and Undeveloped Property within the CFD, unless exempted by law or the provisions of Section VI below, shall be subject to the applicable Annual Maximum Special Tax levied and collected to the extent and in the manner hereinafter provided in each Fiscal Year. The Special Taxes of this CFD shall not be levied until a Notice of Cancellation of Special Tax Lien of the the special taxes of Community Facilities District No. 11 of the School District is recorded with respect to all property within the CFD.

**I. DEFINITIONS:**

"Acre(s)" applies only to Undeveloped Property and means the acreage of an Assessor's Parcel as set forth on the latest San Diego County assessor's map if such acreage is shown thereon. If such acreage is not shown on such map, the acreage shall be the acreage information shown upon any recorded subdivision map, parcel map, record of survey, or other recorded document describing the property. If none of the above information is available, the determination of the acreage shall be made by the School District.

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

"Administrative Expense" means any cost incurred by the School District on behalf of the CFD related to the determination of the amount of the annual levy of the Special Tax, the collection of the Special Tax, the administration of the Bonds of the CFD, and the other costs incurred in order to carry out the authorized purposes of the CFD.

"Age-Restricted Unit" means a residential dwelling unit restricted for the use consistent with the provisions of Section 65995.1 of the Government Code or subsequent successor statutory provisions.

"Annual Maximum Special Tax" means the maximum Special Tax that may be levied in each Fiscal Year pursuant to Sections III. and IV. on each Assessor's Parcel classified

as Developed Property for a period not to exceed 30 years from the beginning of the Initial Fiscal Year, and on each Assessor's Parcel classified as Undeveloped Property for a period not to exceed the term of any Bonds which may be secured by such Undeveloped Property.

"Annual Special Tax Requirement" means the amount required in any Fiscal Year to pay for: i) the debt service on all outstanding Bonds, ii) a sinking fund for the acquisition, construction, equipment and finance costs of future Facilities, iii) Administrative Expense, iv) any amount required to establish or replenish any reserve funds established in connection with the Bonds, and v) any other payments permitted by law.

"Assessor's Parcel" means a parcel of land as designated on a map of the San Diego County Assessor and which has been assigned a discrete identifying parcel number.

"Board" means the Board of Trustees of the Sweetwater Union High School District.

"Bonds" means the bonds or other debt obligations (as defined in Section 53317(d) of the Act), including, but not limited to certificates of participation or leases, of the CFD issued and sold to finance the Facilities.

"CFD" means Community Facilities District No. 16 of the School District.

"Commercial/Industrial/Other Property" means property zoned for commercial/ industrial use or any other uses, other than uses associated with a Residential Dwelling Unit or an Age-Restricted Unit.

"Cost Index" means the applicable building cost index for the City of Los Angeles as set forth in the Engineering News Record, McGraw-Hill Construction Weekly, or if not available, the School District shall determine a suitable replacement.

"Developed Property" means all Assessor's Parcels of Taxable Property for which a building permit was issued to permit the construction of a Residential Dwelling Unit or Age-Restricted Unit on or before June 30 of the preceding Fiscal Year.

"Facilities" means the school facilities designated in the CFD Special Tax Report approved by the Board.

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

"House Square Footage" means the livable area of improvement exclusive of garage area or carport area of a Residential Dwelling Unit or Age Restricted Unit as shown on the most recent building permit issued for such dwelling unit.

"Initial Fiscal Year" applies only to Developed Property and means the first Fiscal Year in which the Annual Maximum Special Tax will be apportioned and levied on an Assessor's Parcel of Developed Property.

“Land Use Category” means the classification of a Residential Dwelling Unit or Age-Restricted Unit based on the applicable definitions in Section I.

“Owner” means McMillin Otay Ranch LLC, or its designee.

“Residential Dwelling Unit” means any residential dwelling unit, except for an Age-Restricted Unit, constructed or to be constructed for habitable living purposes.

“Special Tax” means the amount of special taxes to be levied on Developed Property and Undeveloped Property in any Fiscal Year, as determined pursuant to Section IV. below.

“Taxable Property” means all Assessor’s Parcels within the CFD which are not exempt from the levy of Special Tax pursuant to Section VI below.

“Undeveloped Property” means all Taxable Property that is not classified as Developed Property.

“Undeveloped Property Shortfall Tax per Acre” means a Special Tax that may be levied on Undeveloped Property pursuant to Section IV herein.

**II. ASSIGNMENT TO LAND USE CATEGORIES:**

On July 1 of each Fiscal Year, beginning on July 1, 2006, each Assessor’s Parcel shall be categorized as Developed Property or Undeveloped Property. Developed Property shall be assigned to a Land Use Category as provided for in Table 1 below.

**III. ANNUAL MAXIMUM SPECIAL TAX:**

**A. Developed Property**

The Annual Maximum Special Tax for any Assessor’s Parcel classified as Developed Property shall be determined by reference to Table 1 for the 2004/05 Fiscal Year, and the paragraphs that follow Table 1.

**Table 1  
Annual Maximum Special Tax  
For Fiscal Year 2004/05**

<u>Land Use Category</u>	<u>Land Use Designation</u>	<u>Annual Maximum Special Tax (2004/05)</u>
1	Residential Dwelling Unit	\$0.5768 multiplied by House Square Footage
2	Age-Restricted Unit	\$0.0961 multiplied by House Square Footage

In determining the Annual Maximum Special Tax applicable to an Assessor’s Parcel of Developed Property in its Initial Fiscal Year, the Annual Maximum

Special Tax for each Land Use Category in Table 1 shall be increased in the 2005/06 Fiscal Year, and each Fiscal Year thereafter, by the greater of: i) the annual percentage change in the Cost Index determined every May 31 for the prior twelve (12) month period, commencing on May 31, 2005, or ii) two (2) percent per Fiscal Year.

In each Fiscal Year following the Initial Fiscal Year for an Assessor's Parcel of Developed Property, the Annual Maximum Special Tax applicable to that parcel shall be determined by increasing the prior year Annual Maximum Special Tax by two (2) percent per Fiscal Year.

#### **B. Undeveloped Property**

The School District may levy a Special Tax on Undeveloped Property based on the criteria described in Sections IV. and V. The Annual Maximum Special Tax for an Assessor's Parcel classified as Undeveloped Property for the Fiscal Year 2004/05 shall be \$7,110.00 per Acre. In determining the Annual Maximum Special Tax per Acre for an Assessor's Parcel classified as Undeveloped Property for the 2005/06 Fiscal Year, and each Fiscal Year thereafter, the Annual Maximum Special Tax per Acre shall be increased by the greater of: i) the annual percentage change in the Cost Index determined every May 31 for the prior twelve (12) month period, commencing on May 31, 2005, or ii) two (2) percent.

#### **IV. METHOD OF APPORTIONMENT OF THE SPECIAL TAX:**

Commencing in Fiscal Year 2006/07, and each Fiscal Year thereafter, the Board shall levy the Special Tax in the following order of priority:

On each Assessor's Parcel of Developed Property, up to the Annual Maximum Special Tax applicable to Developed Property, to fund the Annual Special Tax Requirement.

Second, on each Assessor's Parcel of Undeveloped Property in an amount equal to the lesser of the: i) the Annual Maximum Special Tax per Acre applicable to Undeveloped Property pursuant to Section III, or ii) the Undeveloped Property Shortfall Tax per Acre calculated pursuant to Section V.

#### **V. CALCULATION OF THE UNDEVELOPED PROPERTY SHORTFALL TAX PER ACRE:**

The School District plans to issue Bonds in series or increments over time. Commencing in Fiscal Year 2006/07, and each Fiscal Year thereafter, the School District shall calculate the Undeveloped Property Shortfall Tax per Acre, if any, based on the following steps:

*Step 1:* Within 90 days prior to each Bond issue date, the Owner shall provide the School District a reasonable projection of the estimated number of building permits, the related House Square Footage, and Land Use Category anticipated to be obtained in the current Fiscal Year and over the next two (2) Fiscal Years immediately following the Fiscal Year in which Bonds are issued.

*Step 2:* The School District shall assign each estimated building permit, related House Square Footage, as provided in Step 1, to the applicable Land Use Category in Table 1 to determine total estimated Special Tax revenues anticipated to be produced in the Initial Fiscal Year and each Fiscal Year thereafter.

Example:

Assuming the School District issues Bonds on March 1, 2006, the Owner reasonably estimates obtaining building permits for Residential Dwelling Units that all have a House Square Footage of 1,725 square feet, and an estimated Annual Maximum Special Tax of \$994.98 per unit (i.e., \$0.5768 x 1,725 square feet) increased at 2% per year commencing in Fiscal Year 2006/07 and each Fiscal Year thereafter, the following would apply:

Initial Fiscal Year:	<u>2006/07</u>	<u>2007/08</u>
Estimated Building Permits from Step 1:		
7/1/06 to 6/30/07	100	0
7/1/07 to 6/30/08	0	300
Cumulative Building Permits	<u>100</u>	<u>400</u>
Estimated Annual Maximum Special Tax per Residential Dwelling Unit	<u>\$1,035.18</u>	<u>\$1,055.88</u>
Total Estimated Special Tax Revenues From Step 2	<u>\$103,518</u>	<u>\$422,352</u>

*Step 3:* Commencing on July 10 after the end of the first Fiscal Year in Step 1, and on each July 10 thereafter, the District shall determine: (i) the actual number of new building permits that were prepaid in full or part as provided for in Section VII., and (ii) the actual number of new building permits that were obtained since the beginning of the first Fiscal Year in Step 1. The School District shall assign each actual building permit, and the actual House Square Footage to the applicable Land Use Category in Table 1 to determine total actual Special Tax revenues to be entered on the tax roll as Developed Property in the Initial Fiscal Year and each Fiscal Year thereafter.

Example:

Assuming the same assumptions in Step 2 above, except the actual number of building permits are different than the estimated building permits and 25 of the 400 building permits were prepaid in full on November 1, 2006, as follows:

Initial Fiscal Year:	<u>2006/07</u>	<u>2007/08</u>
Actual Building Permits from Step 3:		
7/1/06 to 6/30/07	125	0
7/1/07 to 6/30/08	<u>0</u>	<u>250</u>
Cumulative Building Permits	<u>125</u>	<u>375</u>
Less: Cumulative Building Permits Prepaid in Full	<u>0</u>	<u>(25)</u>
Cumulative Building Permits Subject to the Annual Maximum Special Tax	<u>125</u>	<u>350</u>
Annual Maximum Special Tax per Residential Dwelling Unit	<u>\$1,035.18</u>	<u>\$1,055.88</u>
Total Actual Special Tax Revenues from Step 3	<u>\$129,397</u>	<u>\$369,558</u>

*Step 4:* The District shall compare the total estimated Special Tax revenues in Step 2 to the total actual Special Tax revenues in Step 3. Prior to performing this comparison, the School District shall determine if any building permits were prepaid in full or part as provided for in Section VII. and, if so, shall provide a credit against the total estimated Special Tax revenues in Step 2 in an amount equal to the actual number of building permits that were prepaid multiplied by their applicable Annual Maximum Special Tax.

If the amount in Step 3 is equal to or greater than the amount in Step 2, the CFD shall have no authority to levy the Undeveloped Property Shortfall Tax per Acre. If the amount in Step 3 is less than the amount in Step 2, the School District shall compute the difference, and Step 5 would apply.

Example:

Initial Fiscal Year:	<u>2006/07</u>	<u>2007/08</u>
Total Estimated Special Tax Revenues (Step 2)	\$103,518	\$422,352
Less: Prepayments (25 units x \$1,055.88/unit increasing at 2% per year)	<u>0</u>	<u>(26,397)</u>
Total Estimated Special Tax Revenues (Adjusted)	<u>\$103,518</u>	<u>\$395,955</u>
Total Actual Special Tax Revenues (Step 3)	<u>129,397</u>	<u>369,558</u>
Total Undeveloped Property Shortfall Tax	<u>\$0</u>	<u>\$26,397</u>

*Step 5:* The District shall levy the Undeveloped Property Shortfall Tax per Acre on all Undeveloped Property in the CFD by dividing the amount determined in Step 4 by the total Acres of Taxable Property in the CFD.

**VI. EXEMPTIONS:**

The Board shall not levy a Special Tax on: i) Assessor's Parcels of property existing at the time of the establishment of the CFD which will be conveyed, dedicated, or irrevocably offered for dedication to a public agency, including property owned by a

public agency which is in public use; property which is utilized for public utility purposes and not occupied on a regular basis by employees of the utility; property irrevocably dedicated to a public agency for public use; property owned by a church and utilized for church purposes; property owned by a homeowner's association; property which is zoned for open space; property used as a golf course other than clubhouse facilities; and property which has no intrinsic value upon foreclosure, such as sliver parcels at entries and perimeter landscape parcels, ii) Assessor's Parcels of Commercial/Industrial/Other Property, although subject to applicable statutory fees, and iii) Assessor's Parcels for which the Annual Maximum Special Tax has been fully discharged, as determined pursuant to Section VII.

Tax exempt status will be irrevocably assigned in the chronological order in which property becomes Public Property, Church Property, HOA Property, OS Property, Golf Property, Landscape Property and Commercial Property provided however, that no such classification shall reduce the sum of all Taxable Property to less than 55 Acres. Property that is not exempt from Special Taxes under this section shall be required to prepay the Special Tax in full at the then applicable rate per acre for Undeveloped Property pursuant to Section VII. In the event the prepayment is not made pursuant to the preceding sentence, the Assessor parcels will be subject to taxation as Undeveloped Property.

## **VII. PREPAYMENT OF THE ANNUAL MAXIMUM SPECIAL TAX:**

Any owner of property or land within the CFD No. 16 may fully discharge the Annual Maximum Special Tax obligation applicable to such property or land in full or in part as provided for in Section A below, or in part as provided for in Section B below, by making cash payment as follows:

### **A. Calculation of Full Prepayment**

At the time of or subsequent to the time of issuance of a building permit for a Residential Dwelling Unit or Age-Restricted Unit, the owner may discharge the Annual Maximum Special Tax in full by making a cash payment to the CFD No. 16. The Maximum Annual Special Tax for Developed Property in its Initial Fiscal Year is set forth in Section III. The prepayment formula is defined as follows:

$$\text{Prepayment Formula: } P = PVT + F + RP$$

The variables are described as: P - the prepayment amount, PVT - the present value of taxes, F - prepayment fees, and RP - redemption premium on the bonds if applicable.

The PVT or present value of taxes means the present value of the Maximum Annual Special Tax - Developed Property applicable to the subject parcel in each remaining Fiscal Year subsequent to the Fiscal Year in which the

calculation is made. The present value of the Annual Special Tax - Developed Property is calculated by taking the present value of the Maximum Annual Special Tax – Developed Property escalating by two percent (2%), using a discount rate equal to 6.5% prior to the issuance of Bonds or the weighted average interest rate on the outstanding Bonds and the remaining term for which the Special Tax may be levied. The remaining Fiscal Years are calculated by subtracting the number of years, including the present Fiscal Year, that the parcel has been subject to the Maximum Annual Special Tax - Developed Property from thirty (30).

Prepayment fees or F means the fees of the School District, the fiscal agent and any consultants retained by the School District in connection with the prepayment calculations and redemption of the Bonds.

Redemption premium on the Bonds or RP means a prepayment premium as set forth in the Bond indenture for a mandatory redemption of the Bonds as of the prepayment date and includes, if applicable, the amount needed to pay interest on the Redemption Amount until the earliest available redemption date.

Bonds shall be redeemed in a manner such that the yield on the Bonds outstanding after the prepayment is as close as possible to the original yield on all of the Bonds.

In addition, any property owner prepaying his or her Annual Special Tax - Developed Property must also pay the present Fiscal Year levy and all delinquent special taxes, interest and penalties owing on the parcel on which prepayment is being made, if any.

## **B. Calculation of the Partial Prepayment**

At the time of, or subsequent to, the issuance of a building permit, the owner may alternatively discharge the Annual Maximum Special Tax Developed Property in part by making a partial cash payment to the CFD No. 16 which shall be determined by multiplying the result of Section IV (A) above by the owner's desired prepayment percentage. The Annual Maximum Special Tax applicable to an Assessor's Parcel utilizing a prepayment percentage less than 100% shall be reduced in the Fiscal Year following the date of prepayment, and for each Fiscal Year thereafter, by multiplying the Assessor's Parcel's Annual Maximum Special Tax by the prepayment percentage actually used or applied. The Assessor's Parcel's revised Annual Maximum Special Tax described in this paragraph shall be used in calculations related to Section III.



**VIII. MANNER OF COLLECTION:**

The Special Taxes shall be collected in the same manner and at the same time as ordinary ad valorem property taxes; provided, however, the Board may provide for other means of collecting the Special Taxes including direct billing. The Special Tax shall be subject to the same penalties and same procedure, sale and lien priority in case of delinquency as is provided for with ad valorem taxes.

**IX. TERMINATION OF SPECIAL TAX LEVY:**

Provided that Special Taxes previously levied on an Assessor's Parcel are not delinquent, the lien of Special Taxes of the CFD shall terminate as to such Assessor's Parcel as follows: i) the close of the 30th Fiscal Year following the beginning of the Initial Fiscal Year for such Assessor's Parcel, or ii) the Special Tax obligation has been fully and completely discharged pursuant to Section VII. The Board shall cause to be recorded in the official records of San Diego County a Notice of Cessation of Special Tax for each Assessor's Parcel upon termination of the lien on such Assessor's Parcel.

**X. APPEALS AND INTERPRETATION PROCEDURE**

Any property owner or resident who feels that the amount or formula of the Special Tax is in error may file a notice with the Agency appealing the levy of the Special Tax. An appeal panel of 3 members, as appointed by the School District, will communicate the findings of the Appeals Panel. If the findings of the Appeals Panel verify that the Special Tax should be modified or changed, a recommendation at that time will be made to the Board and, as appropriate, the Special Tax levy shall be corrected, and if applicable in any case, a refund shall be granted. The time period used for calculating a refund will be limited to three years preceding the appeal.

Interpretations may be made the School District by resolution for purposes of clarifying any vagueness or ambiguity as it relates to any category, rate or definition applicable to these proceedings so long as such interpretations are consistent with that certain Agreement between the School District and the Owner.