

RECORDING REQUESTED BY:

WHEN RECORDED, MAIL TO:

Foley & Lardner LLP  
402 West Broadway, Suite 2100  
San Diego, CA 92101  
Attn: Richard L. Moskitis, Esq.

(SPACE ABOVE FOR RECORDER'S USE)

APNs: 086-32-033 through -040

**AMENDMENT TO COST SHARING AND REIMBURSEMENT AGREEMENT**

**(Milpitas Transit Area Specific Plan –  
Piper/Montague Subdistrict – Milpitas, California)**

## AMENDMENT TO COST SHARING AND REIMBURSEMENT AGREEMENT

### (Milpitas Transit Area Specific Plan – Piper/Montague Subdistrict – Milpitas, California)

THIS AMENDMENT TO COST SHARING AND REIMBURSEMENT AGREEMENT (“Amendment”), dated for reference purposes as of March 2, 2010, is made by and between the CITY OF MILPITAS, a California municipal corporation (“City”), MILPITAS STATION (SAN JOSE) VENTURE, L.L.L.P., a Delaware limited liability limited partnership (“MSSJV”) as successor to MILPITAS STATION, LLC, a California limited liability company (“MS”), SOUTHSIDE INDUSTRIAL PARK, a California general partnership (“SI”) and SCS DEVELOPMENT CO., a California corporation, dba Citation Homes Central (“Citation”) (MSSJV, SI and Citation are sometimes collectively referred to herein as the “Owners,” and singularly as an “Owner”) (the Owners and the City are each individually referred to herein as a “Party” and collectively referred to herein as the “Parties”), with reference to the following:

#### RECITALS

A. The Owners own various parcels of improved and unimproved land located in the Piper/Montague Subdistrict (the “Subdistrict”) of the Milpitas Transit Area Plan, Santa Clara County, State of California.

B. Previously, MS, SI, Citation and the City executed that certain Cost Sharing and Reimbursement Agreement (“Agreement”), dated August 18, 2009, recorded September 10, 2009 in the Official Records of Santa Clara County, California as Instrument No. 20427520. Under Section 3.2.7 of the Agreement, the Owners agreed *inter alia* to request permission from the City to form a community facilities district (“CFD”) under the Mello-Roos Community Facilities Act of 1982 in order to provide a security for the payment of each Owner’s applicable shared infrastructure payment and the payment of assessments and special taxes, as provided by the Agreement.

C. The Owners have now duly requested permission from City staff to form such a CFD under the Agreement. Under the Agreement and City Council approved policies for the formation of community facilities districts, amended and restated most recently on October 21, 2008, costs for the establishment and evaluation of a CFD must be borne or paid for by the proponents of the CFD in advance.

D. Accordingly, the Owners now wish to acknowledge in this Amendment the obligation that, having made the request to form a CFD pursuant to Section 3.2.7 of the Agreement, the Owners must now bear the costs of and project manage the delivery of initial draft legal documents and other materials and to take other steps necessary for the City to form a CFD in the Subdistrict, as mandated by the Agreement, within the timeline set forth in this Amendment.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## AGREEMENT

1. Acknowledged Owner Obligations. The Owners acknowledge that the costs for and the general project management of the creation of initial draft of reports, legal services, resolutions of formation, rate and method of apportionment, and other documents necessary for the creation of a community facilities district under the Agreement shall be borne by and performed by the Owners in accordance with Article 5 of the Agreement, and shall be allocated among the parties comprising the Owners in accordance with the percentages set forth in Section 3.2.2.1 of the Agreement.

2. Acknowledged City Obligations. Upon receiving initial draft documents and other materials necessary for the creation of a CFD in the Subdistrict, as set forth in the Agreement, from the Owners, the City shall work in good faith to evaluate, review, finalize and take such official steps necessary under the law to form such a CFD. All City costs must be reimbursed by the Owners

3. Timeline for Formation of CFD. The Owners shall ensure that the City has sufficient time to review, evaluate and take such actions as are necessary to create the CFD prior to the issuance of any City credit(s) under the Agreement to any Owner or thirty-six (36) months from the effective date of this Amendment, whichever is sooner. Failure to provide to the City the necessary drafts of formation documents, reports and other materials required by law within this time period shall constitute a breach of the Agreement.

4. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one agreement after each of the Owners has executed such a counterpart.

5. Waiver. No waiver by one Party of a breach of any of the terms, covenants or conditions of this Amendment by another Party shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No waiver of any default by one Party hereunder shall be implied from any omission by another Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect a default other than as specified in such waiver. The consent or approval by one Party to or of any act by another Party requiring the consent or approval of the first Party shall not be deemed to waive or render unnecessary such Party's consent or approval to or of any subsequent similar acts by the other Party.

6. Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Amendment shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Amendment shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law and to the extent that the purposes of this Amendment can still be met.

7. Effective Date. This Amendment shall be effective upon execution of this Amendment by the Parties.

8. Recitals. The Recitals set forth above are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth above.

MSSJV:

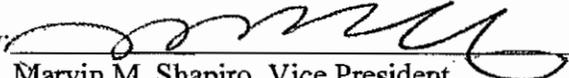
MILPITAS STATION (SAN JOSE) VENTURE, L.L.L.P., a Delaware limited liability limited partnership

By: Milpitas Station (San Jose) ASLI VI, L.L.L.P., a Delaware limited liability limited partnership, its general partner

By: Milpitas Station (San Jose) GP, L.L.C., a Delaware limited liability company, its general partner

By: Avanti Properties Group II, J.V., a Florida joint venture, its manager

By: Avanti Development Corporation II, a Florida corporation, its general partner

By:   
Marvin M. Shapiro, Vice President

SI:

SOUTHSIDE INDUSTRIAL PARK, a California general partnership

By: Green Valley Corporation, a California corporation, General Partner

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

CITATION:

SCS DEVELOPMENT CO., a California corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY:

CITY OF MILPITAS

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Signature Page to Amendment to Cost Sharing and Reimbursement Agreement*

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MSSJV:

MILPITAS STATION (SAN JOSE) VENTURE, L.L.L.P., a Delaware limited liability limited partnership

By: Milpitas Station (San Jose) ASLI VI, L.L.L.P., a Delaware limited liability limited partnership, its general partner

By: Milpitas Station (San Jose) GP, L.L.C., a Delaware limited liability company, its general partner

By: Avanti Properties Group II, J.V., a Florida joint venture, its manager

By: Avanti Development Corporation II, a Florida corporation, its general partner

By: \_\_\_\_\_  
Marvin M. Shapiro, Vice President

SI:

SOUTHSIDE INDUSTRIAL PARK, a California general partnership

By: Green Valley Corporation, a California corporation, General Partner

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

CITATION:

SCS DEVELOPMENT CO., a California corporation

By: Stephen E. Schott  
Print Name: Stephen E. Schott  
Title: Vice President

CITY:

CITY OF MILPITAS

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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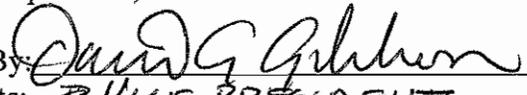
By: Avanti Development Corporation II, a Florida corporation, its general partner

By: \_\_\_\_\_  
Marvin M. Shapiro, Vice President

SI:

SOUTHSIDE INDUSTRIAL PARK, a California general partnership

By: Green Valley Corporation, a California corporation, General Partner

By:   
Its: VICE PRESIDENT

CITATION:

SCS DEVELOPMENT CO., a California corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY:

CITY OF MILPITAS

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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