CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

01/03/2012
Agenda Item No. 7

ATTACHMENTS AND/OR ADDITIONAL MATERIALS RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION

City Clerk's Office
DEC 27 2011
RECEIVED

City Clerk
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035
(408)586-3030 fax

December 27, 2011

Dear Clerk,

Please accept/file my answers to Supplemental Questionaire for my application for the Planning Commission. The filed application dated 9/7/2011 does not have the answers to the supplemental questions attached.

My application is due for deliberations on the next City Council Agenda on January 3, 2011.

Thank you for your assistance.

Sincerely,

Garry D. Barbadillo

[redacted]

PLANNING COMMISSION
Supplemental Questionnaire

1. ***Why are you interested in serving on the Planning Commission?*** As a resident of Milpitas, I felt obligated to take part on its path to further development. I live here and my children go to the public school system of Milpitas. Serving in the Planning Commission will be a personal agenda, as I would like to realize that Milpitas will be an ideal place for my family to live and raise my children; as well as fulfilling my dedication to share what I have, both experience and education, to the residents of Milpitas.

2. ***Describe your understanding of how the City's General Plan, Zoning Ordinance, and Planning Procedures affect the Development of the Community?*** The City's General Plan is a response to the City needs and state law, it describes the city's ideas for its future and ways in which it intends to transform these ideas into reality. The Zoning Ordinance and Planning establishes various districts, including all the territory within the boundaries of the city, within various of which it will be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades and occupations, etc. The blue print to success and development well defined and in place for Milpitas. The people through the Commissions and City council expresses their democratic participation in the process, and if given a chance to serve in the Planning Commission, reassured I will make sure that their voices are heard in the Council.

3. ***In what way will your personal or work experience contribute to your role as Planning Commissioner?*** I am widely exposed to the diversity in Milpitas (and the Santa Clara County). As an immigrant, I catered different jobs ranging from retail sales associate, food waiter, assisted living worker, volunteer and an attorney. My personal experience in dealing with diverse culture will help me understand how individual Milpitas residents feel and react on various issues and be able to relate with their concerns, which in turn, as a Planning Commissioner, I will make sure that their concerns will be heard. I am an attorney by profession and deal with grassroots clients from all walks of life. Everyday I mingle with them, talk to them and as much as possible personalize my service. The level of professionalism in my practice is always predicated on public service. This work ethic will be an advantage if I am given a chance to serve in the Commission.

4. ***What do you feel are the most pressing planning problems or issues in Milpitas? How do you think they should be resolved?*** I think the problem in Milpitas is housing/ rezoning of districts. With the present economic depression affecting residents' earning capacities, it would be worthwhile to revisit, ordinances or Plan provisions to cater with these downturns for the long term. Helping small entrepreneurs and building or rephrasing affordable housing will help lessen the impact, or may even eliminate the hurdle of a basic necessity, of "roof over the head" (Shelter).

5. ***Do you have a long term vision of how you think the City should develop?*** I believe that whoever is in the City Council or City officials are doing their duty to realize development. We do not have to reinvent the wheel of progress but I am an advocate of change, which is "change" that would willingly adapt to the present situation of the City, and addressed the residents' welfare.

6. ***A major planning problem facing the entire Bay Area is the shortage of affordable housing. Do you have any thoughts on how the city should address this issue?*** I am aware of several Zonings in Milpitas that is catering for more affordable housing. But in addition, I would suggest that small entrepreneurs be given considerations for their business to take off. It is a fact that unemployment is high and the alternative is self income. Addressing this collateral issue of income will take a good position in the housing issues.

7. ***What do you see as different roles of City Staff, the Planning Commission and the City Council?*** One of my work ethic is to be a team player. As I said, across political boundaries, I believe that everybody in the Milpitas government has one common aim, which is seeing Milpitas thrive to development and progress. Even if the City staffs, the Planning Commission and the City Council have different roles, they should work as a team player, for the whole team to be successful.

8. ***What do you believe should be the focus of the Milpitas redevelopment Agency and Program?*** Despite the States position to Redevelopment Agencies, the Milpitas Redevelopment Agency (MRA) should continue its vision. Since budget is the major constraint, the MRA should focus on mainly on economic growth and public school funding. Economic growth because it is vital to the City's machinery and Public school system because this is an avenue for social reform where children of Milpitas, who will be the future leaders and citizens.

Garry D. Barbadillo
Applicant for the Planning Commission

CITY OF MILPITAS

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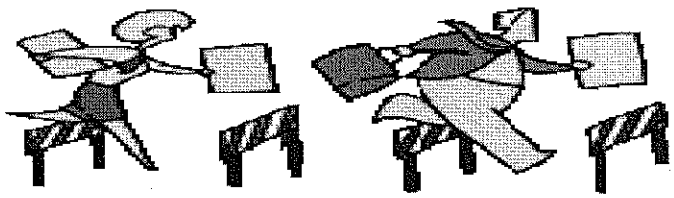
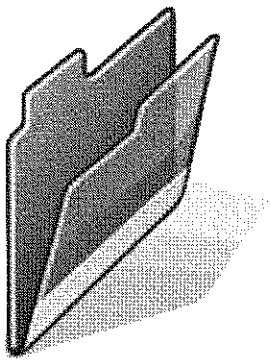
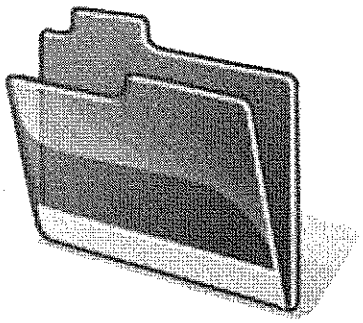
01/03/2012
Agenda Item No. 12



ATTACHMENTS AND/OR ADDITIONAL MATERIALS RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION





Mary Lavelle

From: Ed Riffle [ed.riffle@comcast.net]
Sent: Saturday, December 31, 2011 9:32 AM
To: Jose Esteves; Pete McHugh; Armando Gomez; Althea Polanski; Debbie Giordano
Cc: Mike Ogaz; Mary Lavelle
Subject: Milpitas Ordinance Evaluation
Attachments: Dr John Eastman Bio.docx; ATT00001..htm; MilpitasAnalysis copy.pdf; ATT00002..htm

Dear Mayor Esteves and Members of the Milpitas City Council:

Attached please find a biography of Dr. John Eastman and a copy of his professional evaluation of Milpitas Ordinance Number 243.4.

It is my sincere hope that, after reading Dr. Eastman's evaluation and considering all of your options, that you will rescind the ordinance.

While it may seem that the other alternatives are to use the election process at a cost of approximately $425,000, $100,000 or $20,000 depending on whether the vote takes place in April, June or November, I can assure you that the cost will be significantly more. The constitutional issues raised by Dr. Eastman would likely be challenged in court in the unlikely event that the referendum should lose at the ballot box. The city would likely lose in court since the 9th District Court of Appeals has already weighed in on some of the constitutional issues in question.

The residents of Milpitas have already been hard hit by the ongoing economic difficulties. The city government is already having to make difficult decisions to keep within the constraints of a tightening budget. To purposefully embark on a losing legal battle using taxpayer money makes no sense, especially since the citizens of Milpitas have already in large numbers signed the referendum.

In light of all of this, I urge you to rescind the ordinance on Tuesday night.

The Claremont Institute

Center for Constitutional Jurisprudence

December 30, 2011

Re: Milpitas Proposed Campaign Finance Ordinance

To Whom It May Concern:

I am a constitutional law professor and former Dean at the Chapman University School of Law in southern California. I am also the founding director of the Center for Constitutional Jurisprudence, a public interest law whose mission is to enforce, through strategic litigation, the principles of our constitutional system of government. In that latter capacity, I have successfully litigated a number of constitutional challenges to campaign finance restriction ordinances that were quite similar to the one that has been proposed by the City of Milpitas. That the First Amendment of the U.S. Constitution protects the ability of citizens to participate fully in the political process by making expenditures in support of their preferred candidates or causes, is a proposition too well established to be disputed. And yet, the Milpitas proposal seeks to undermine those First Amendment rights.

Most egregiously, Subsection 3 of Section 2 of the original proposal sought to restrict contributions to independent expenditure committees in a way that clearly violated the constitution. Ever since the U.S. Supreme Court's landmark decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), reasonable restrictions on contributions *to candidates* have been upheld because of the legitimate governmental concern about quid pro quo corruption, but restrictions on expenditures have uniformly been held to be unconstitutional. This is particularly true with respect to limitations on expenditures by independent expenditure committees, which by definition do not coordinate with candidates, alleviating any concern with quid pro quo corruption. *Fed. Election Comm'n v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985). Prior efforts by cities across California to limit such expenditures by limiting contributions to independent expenditure committees, using language virtually identical to that proposed by Milpitas, have uniformly failed. In *Lincoln Club of Orange County v. City of Irvine*, 292 F.3d 934 (2001), for example, the Ninth Circuit held that such ordinances are strict scrutiny, and on remand to the district court, the City entered into a stipulated judgment that its ordinance was unconstitutional under that standard. Similarly, the City of Long Beach just recently had its ordinance invalidated by the Ninth Circuit as an unconstitutional infringement of First Amendment freedoms. *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684 (9th Cir. 2010). I know, because I have litigated those cases through my Center for Constitutional Jurisprudence. We have successfully challenged nearly identical ordinances in

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several other cities as well, and will continue to do so, given the central importance of First Amendment protections to the political process.

Although the revised version of the proposal expressly excludes independent expenditure committees from its restrictions, the proposal still prohibits any "person" from making "any contribution in support of or in opposition to a candidate for elective office" in aggregate excess of $500. "Contribution" is defined in Section 82015 of the California Government Code to include a "payment" for any communication that expressly advocates for the election or defeat of a candidate or that merely contains references to a candidate. The current proposal thus unconstitutionally restricts independent expenditures by individuals.

The provision suffers from unconstitutional vagueness problems as well. Subsection 3 of Section 2 prevents any "person" from making a contribution (defined to include payments for communicates that merely reference a candidate) in support of any candidate. But Subsection 2 of Section 2 provides that the campaign contribution limit "applies to all candidates, whether formerly declared or not." Everyone in the City is potentially a candidate, so a payment for a communication that references any such individual (a newsletter touting the Girl or Boy Scout leader of the year, for example) would apparently run afoul of the proposed ordinance once the payments exceed the $500 threshold. The ordinance makes no effort to provide a narrowing definition of "undeclared candidate" that might save it from being unconstitutionally vague, and provides no notice to the unwary of what would trigger that classification. The Supreme Court's void-for-vagueness doctrine requires that a statute define the prohibited conduct with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). The vague definition of "candidate" contained in this proposed ordinance suffers from that fatal flaw.

The "Voluntary Campaign Expenditure Limits" contained in Subsection 6 of Section 2 of the proposal are also constitutionally suspect. The Supreme Court has repeatedly held that restrictions on expenditures are unconstitutional, most recently in *Citizens United v. Federal Election Com'n.*, 130 S.Ct. 876 (2010). Here, the City has not restricted expenditures directly, but only purports to do so by encouraging candidates to voluntarily accept such restrictions. The issue, then, is whether the mechanism that the City of Milpitas has proposed to encourage such "voluntary" expenditure limitations is constitutional. Existing case law strongly suggests that it is not, for at least two reasons.

First, Subsection 1 expressly describes that the purpose of the expenditure limit is "to create an even playing field." That is an illegitimate purpose. The Supreme Court has repeatedly rejected the claim that the government has a legitimate interest in leveling the playing field in political campaigns, finding that "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." *Buckley v. Valeo*, 424 U.S. at 48-49.

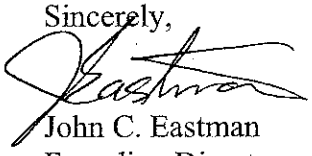
Second, the sanction that the City seeks to impose on candidates who do not "voluntarily" accept expenditure limitations closely resembles "scarlet letter"-type of political regulations that have previously been found to be unconstitutional. Proposed Section I-2.10-6.20 provides that "the City Clerk shall provide notification to the voters on the City website that the candidate has accepted or rejected the voluntary expenditure ceiling established herein." In *Cook v. Gralike*,

531 U.S. 510 (2001), the Supreme Court held unconstitutional a provision of the Missouri Constitution which required that elected officials and candidates who did not support term limits be so identified on the ballot with the phrases, "Disregarded Voters' Instructions on Term Limits," or "Declined to Pledge to Support Term Limits." Because the City's proposed provision is quite clearly designed to induce candidates indirectly to accept limits on their campaign expenditures that the City could not constitutionally require directly, it is susceptible to constitutional challenge under *Gralike*.

The proposals targeting campaign consultants for special regulation are also constitutionally problematic. Stunningly overbroad, Subsection 2 of Section 3 of the proposal defines "campaign consultant" to include anyone (family members and friends included!) who devotes 10 hours or more to a campaign, even as a volunteer, developing or contributing to a campaign strategy. It then imposes on these "consultants" registration and client disclosure requirements that it does not apply to anyone else. As the Supreme Court has repeatedly held, "the First Amendment protects political association as well as political expression." *Buckley v. Valeo*, 424 U.S. at 14. The proposed act intrudes on that constitutionally protected freedom in two ways. First, it imposes a burden on consultants' freedom of association with candidates that it does not impose on anyone else. Second, it requires consultants to disclose their clients—"candidates for elected public office in Milpitas or who have an economic interest in projects approved . . . within the past two calendar years or for which an application has been filed and approval is pending"—beyond what is warranted by existing conflict of interest rules. Moreover, the statute does not apply to those involved in other occupations who would appear to have nearly identical interests in the City—lawyers and accountants advising clients with recent projects before the City, for example. Because the freedom of association is a constitutionally-protected fundamental right, that disparate treatment would subject the ordinance to strict scrutiny under the federal Constitution's Equal Protection clause, rendering the ordinance unconstitutional unless the City could demonstrate that it was narrowly tailored to further a compelling governmental interest. Even assuming that the mere recitation of an integrity-protecting purpose in the ordinance's preamble qualifies as a compelling interest, a dubious proposition, the proposed ordinance is clearly not narrowly tailored to further it. It is both over- and under-inclusive. It reaches consultants whose services to clients have done nothing to undermine the integrity and public faith in Milpitas' local elections, and it does not apply to others who have.

In sum, Milpitas would be opening itself to several strong constitutional challenges were it to proceed with the adoption of this ordinance . Those challenges will most likely be brought under Section 1983 of Title 42 of the United States Code, for deprivation of constitutionally-protected rights. Prevailing plaintiffs in Section 1983 litigation are typically entitled to attorneys fees in addition to any damages they have suffered as the result of the deprivation of their constitutional rights. It is never appropriate for elected officials to take actions that they know will infringe on the constitutionally-protected rights of their citizens, but in this time of budget austerity, it would seem particularly irresponsible to take actions that are so very likely to result in a large financial judgment against the City.

Sincerely,



John C. Eastman
Founding Director

c/o Chapman University School of Law * One University Drive * Orange, California 92866 * (714) 628-2500

Bio of Dr. John Eastman

Dr. John C. Eastman is the Henry Salvatori Professor of Law & Community Service at Chapman University School of Law, and also served as the School's Dean from June 2007 to January 2010, when he stepped down to pursue a bid for California Attorney General. He is the Founding Director of the Center for Constitutional Jurisprudence, a public interest law firm affiliated with the Claremont Institute, and the current Chairman of the Constitutional Jurisprudence Clinic. Prior to joining the Chapman Law faculty in August 1999, he served as a law clerk with Justice Clarence Thomas at the Supreme Court of the United States and with Judge J. Michael Luttig at the United States Court of Appeals for the Fourth Circuit. After his clerkships, Dr. Eastman practiced with the national law firm of Kirkland & Ellis, specializing in major civil and constitutional litigation at both the trial and appellate levels. He earned his J.D. from the University of Chicago Law School, where he graduated with high honors in 1995. He was selected for membership in the Order of the Coif and was a member of the *Law Review*, a Bradley Fellow for Research in Constitutional History and an Olin Fellow in Law & Economics. Dr. Eastman also has a Ph.D. and M.A. in Government from the Claremont Graduate School, with fields of concentration in Political Philosophy, American Government, Constitutional Law, and International Relations. He has a B.A. in Politics and Economics from the University of Dallas. Prior to law school, he served as the Director of Congressional & Public Affairs at the United States Commission on Civil Rights during the Reagan administration and was the 1990 Republican Nominee for Congress in California's 34th District.
Courses Taught: Constitutional Law, Property, Legal History, First Amendment, Constitutional Jurisprudence Clinic.

CITY OF MILPITAS

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01/03/2012
Agenda Item No. 19

ATTACHMENTS AND/OR ADDITIONAL MATERIALS RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION

SheppardMullin

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David P. Lanferman
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December 29, 2011

Mr. Michael J. Ogaz
City Attorney
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035-5411

Mr. David R. Sylva
General Counsel
SCS Development Company,
a California Corporation dba
Citation Homes Central
Citation Homes, Inc.
404 Saratoga Ave., Suite 100
Santa Clara, CA 95050

Mr. Michael Sullivan
c/o SCS Development Company
404 Saratoga Ave.
Santa Clara, CA 95050

Re: Engagement of Sheppard, Mullin, Richter & Hampton LLP

May et al v. City of Milpitas, Citation Homes, et al.
Santa Clara County Superior Court, Case No. 111 CV 214518

Agreement for Joint Representation

Dear Mr. Ogaz, Mr. Sylva, and Mr. Sullivan:

The purpose of this letter is to confirm our engagement to represent the City of Milpitas and the City Council of the City of Milpitas (collectively, "the City"), the SCS Development Company ("SCS"), a California corporation dba Citation Homes Central, Citation Homes, Inc. (collectively, "the Developers"), and Michael Sullivan, an employee of SCS in connection with the Litigation (as defined below). The City, the Developers and Michael Sullivan are referred to herein each as a "Client" and, collectively, as "the Clients." We appreciate your confidence and thank you for selecting us as counsel.

1. Scope of Representation. We have been engaged to represent the Clients in connection with the lawsuit filed by Michael May and Carpenters Local Union No. 405 (the "petitioners") entitled "*Michael May and Carpenters Local Union No. 405, petitioners v. City of Milpitas, City Council of the City of Milpitas, respondents, and SCS Development Co., Michael Sullivan, Citation Homes Inc, Citation Homes Central, and Roes I- X, inclusive*" (Santa Clara County Superior Court, Case No. 111 CV 214518) (such lawsuit, together with any related claims and proceedings, is referred to hereinafter collectively as the "Litigation"). The Litigation involves challenges to the City's approval of certain

land use and development entitlements, and certification of environmental review under CEQA, for the Developers' proposed residential development project in Milpitas. We will coordinate our defense on behalf of the Clients and the City's approvals with the City Attorney to the fullest extent feasible, and will provide support for the City Attorney's office in preparing the record and responding to petitioners, as requested by the Clients.

The Developers have agreed to defend the City and the City's approvals for the Developers' residential project as challenged by the above-captioned civil action.

The legal fees and costs contemplated by this engagement are to be solely the responsibility of the Developers, as further described below.

Except as we may agree otherwise in writing, we will be representing only the named Clients and will not be representing any parent, subsidiary or other affiliated entity nor any individual Council member, City staff member, shareholder, partner, member, director, officer, employee (other than Mr. Michael Sullivan), agent or insurer of the Clients. Except as we may otherwise agree, the terms of this letter apply to other engagements for the Clients that we may undertake.

2. Waiver of Conflicts of Interest. Our joint representation of the Clients in the Litigation is undertaken on the understanding that none of the Clients now perceives any actual conflict of interest in such joint representation. However, since you may not always perceive matters in the same way and because your interests do or may vary, it is possible that a conflict of interest now exists or may arise. Examples of such potential conflicts of interest include, but are not limited to, the following:

   (a) One or more of the Clients may differ on litigation strategy or the issue of whether to settle the Litigation on certain terms.

   (b) One or more of the Clients could, at some point, seek contribution or indemnity from one of the other Clients for any claims arising out of the Litigation. We will not advise or represent any of the Clients in connection with any claim for contribution or indemnity that it may have against any of the other Clients.

   (c) One or more of the Clients could be the subject of claims, or may wish to assert claims, arising out of its relationship or dealings with a plaintiff which might be adverse to the interests of the other Clients.

The law is complex, especially as applied to actual facts and circumstances, and the factual circumstances also may be complicated. Therefore as a practical matter it is not possible to anticipate and describe, or to advise each of you about, all potential conflicts of interest between or among you, about the pros and cons of any particular item from the point of view of each of you, or of the adverse effects of those conflicts upon our representation of any one or more of you.

Although joint representation may result in tactical advantage, convenience, efficiency or reduced legal expense, joint representation also has the following disadvantages that you must acknowledge and accept as a condition to our engagement:

(a) Joint representation may result in less aggressive assertion or protection of one Client's individual or separate interests than if we were to represent only that Client; we will provide a united defense and not necessarily make every argument that we would make if we represented only one Client.

(b) Joint representation has the further disadvantage that no attorney-client privilege would apply to communications between or among the Clients or with us in any dispute between or among the Clients or by any of the Clients with us. In other words, we cannot keep confidential from one of the Clients any communication with another one of the Clients in the course of the joint representation, and we could be compelled to testify concerning any such communication. The Clients should also know that communications which occur during the course of the joint representation will lose their privileged character if they should be offered in a future civil proceeding between one Client and another.

(c) When we communicate with the Clients, whether in the course of the Litigation in order to obtain instruction, to report or otherwise, or for the purpose of discussing the pros and cons of any particular item or issue, we shall be entitled to rely on communication with fewer than all of the Clients. For this reason and possibly others, joint representation may have the disadvantage of communication that is less complete or effective than if we represented only one Client.

(d) The Clients should not assume that we will advise each Client of the substance of every communication received by us from any one of the Clients.

Upon your confirmation of this engagement and signature of this letter, you waive the potential conflict of interest arising from such joint representation and acknowledge that, if any actual dispute arises between or among the Clients concerning the subject of the joint representation, absent further consent from each of the Clients, we may be required to withdraw as counsel to one or more or all of the Clients. If we withdraw, a Client who then is required to or does engage independent counsel may incur legal costs (e.g., for new counsel to become familiar with the matter) that would be avoided by separate representation throughout the matter. We will notify you in such an event that we intend either to withdraw completely from the representation of any Client in the Litigation or continue as counsel for one or more of the Clients. At present, we would seek to continue to represent one or more of the Clients to the extent we determine that we could appropriately do so, notwithstanding any adversity between their interests and the interests of the Clients. Accordingly, your signature below constitutes your consent to our present and continued future representation of the Clients, and each Client agrees not to assert any conflict of interest or seek to disqualify us from representing one or more of the Clients now or in the future, despite any adversity between the interests of

the Clients that may arise. Nonetheless, notwithstanding your consent hereto, depending on the circumstances at the time, we may be required to withdraw or we may be disqualified from representing any of the Clients in the event of a dispute between or among the Clients.

In the event that either or any Client may subsequently perceive a material conflict of interest requiring withdrawal from this joint representation agreement, such withdrawal would be without prejudice to the rights of the Clients under their pre-existing agreements relating to defense of the City's approvals for the Developers' project, and without prejudice to the Firm's continued representation of the non-withdrawing Clients, except as otherwise described above.

Each of you should feel free to consult independent counsel at any time concerning matters which are the subject of the joint representation, including whether or not to sign this engagement letter by which you will be providing this waiver and consent.

3. Fees and Charges. We propose that our fees for this matter will be based on a "blended rate" and on the hours charged at that blended rate. The "blended rate" to be charged for the services to be provided in this engagement is $475.00 per hour, for the services of any of the Firm's attorneys working on this matter, without regard to the prevailing individual hourly rate for such attorneys. We propose that the primary attorneys working on this matter include Arthur Friedman and myself, as well as other land use litigation attorneys and paralegal staff from time to time depending on the particular needs of the case and the Clients. We reserve the right to adjust our hourly rate periodically, no sooner than January 1, 2013, but such adjustment may not exceed 10% in any 12-month period, without the separate written approval of the Clients.

In addition to fees, our statements include our actual costs (except as set forth in Attachment A) for fees of governmental agencies and disbursements and/or charges for third parties, the current schedule for which is set forth on Attachment A and which also is adjusted from time to time (collectively "Charges"). Our standard practice is to have certain charges for outside retained services such as process service, court and deposition reporting and transcription services, expert witnesses, and investigation services invoiced to you directly. This letter constitutes your agreement to pay all such invoices prior to delinquency and to hold us harmless from your failure to do so. Of course, to the extent such third party charges are paid directly by us they will be included in our statements. Statements are submitted monthly and are due and payable upon receipt. You agree to notify us promptly in writing if you dispute any entry for legal services or charges on any statement. In the absence of any written objection thereto within thirty (30) days of your receipt of an invoice, the Clients will be deemed to have accepted and acknowledged the invoice as correct through the period covered by the invoice. Please understand that it is our policy to stop work on all matters we are handling for a client if any amount invoiced to such client is sixty (60) days or more past due. Also, interest is charged at 10% per annum from date of statement for amounts outstanding more than sixty (60) days.

Unless we otherwise expressly agree in writing, any estimates of costs or fees that we may provide from time to time and any Fee Deposits or advances against costs we may require are not a limitation on our fees and other charges. In addition, if as a result of our engagement we are required to produce documents or appear as witnesses in connection with any governmental or regulatory examination, audit, investigation or other proceeding or any litigation, arbitration, mediation or dispute involving the Clients or related persons, the Clients are responsible for costs and expenses reasonably incurred by us (including professional and staff time at then scheduled hourly rates and reasonable attorneys' fees and costs incurred that we may incur). Similarly in the event that the Clients should request that they be given their files or that they be transferred to some other firm, the Clients agree that we may retain a copy of those files and Clients agree to pay for the costs of such copying. These provisions shall survive any termination of our representation of the Clients.

We have agreed to undertake this engagement on the condition that the Developers shall each be jointly and severally obligated to pay all amounts due in accordance with the provisions of this letter. As to Michael Sullivan and the City, payment of fees by one other than the client may afford an economic benefit, but it also may have disadvantages. For example, although attorneys are bound not to permit any interference with independence of the attorney's professional judgment or with the attorney-client relationship as a result of payment of the client's fees by another, the person who pays the client's fees may have desires or demands that could influence the client in making choices among alternative courses of action or that may inhibit the client in asserting rights or resisting obligations. Also, if the Developers cease to pay our fees and other charges, we will have the right to withdraw from representing Michael Sullivan and the City. The withdrawal could result in Mr. Sullivan and the City incurring additional costs to engage and bring new counsel "up to speed" and could also result in delay or other prejudice. By signing this letter where indicated below, Mr. Sullivan and the City acknowledge these disclosures and consent to the payment by the Developers of the legal fees and other charges incurred on their behalf. They also agree that we may withdraw if the Developers fail to pay their legal fees and other charges, unless they pay them in a timely fashion, including any Fee Deposits or deposits for Charges that may be required.

Fee Deposits. We have agreed to undertake this engagement without requiring an advance deposit (a "Fee Deposit") for legal fees and/or Charges. However, as this matter involves contested litigation, we reserve the right in the future (i) to require that a Fee Deposit in such amount as we shall then request and (ii) from time to time thereafter to require that the amount of the Fee Deposit be increased. We may make such a request as the monthly activity in the matter increases, as it approaches trial or for any other reason that we deem appropriate to protect our firm. You hereby grant us a security interest in any and all Fee Deposits made pursuant to this engagement letter to secure payment to us of any future Fees and Charges. Should we request the same, the initial Fee Deposit and any increase in the Fee Deposit must be paid within fifteen (15) days of our written request. The amounts we may request be deposited as a

Fee Deposit will not represent our estimate of the total fees and Charges to be incurred in the course of this engagement or for any time period of our engagement. The Fee Deposit will be applied to our final invoice, or at our option, if you are delinquent in the payment of any invoice, we may apply some or all of the Fee Deposit to the payment of such invoice. In such event, you agree that, within ten (10) days of our notice to you, you will deposit with us the amount so applied in order to restore the Fee Deposit to its amount prior to such application.

4. Conflicts with Other Clients. Sheppard, Mullin, Richter & Hampton LLP has many attorneys and multiple offices. We may currently or in the future represent one or more other clients (including current, former, and future clients) in matters involving the Clients. We undertake this engagement on the condition that we may represent another client in a matter in which we do not represent the Clients, even if the interests of the other client are adverse to the Clients (including appearance on behalf of another client adverse to the Clients in litigation or arbitration) and can also, if necessary, examine or cross-examine Clients personnel on behalf of that other client in such proceedings or in other proceedings to which the Clients are not a party *provided* the other matter is not substantially related to our representation of the Clients and in the course of representing the Clients we have not obtained confidential information of the Clients material to representation of the other client. By consenting to this arrangement, the Clients are waiving our obligation of loyalty to them so long as we maintain confidentiality and adhere to the foregoing limitations. We seek this consent to allow our Firm to meet the needs of existing and future clients, to remain available to those other clients and to render legal services with vigor and competence. Also, if an attorney does not continue an engagement or must withdraw therefrom, the clients may incur delay, prejudice or additional cost such as acquainting new counsel with the matter. Finally, we may have occasion to seek legal advice about our own rights and responsibilities regarding our engagement by the Clients. We may seek such advice from attorneys in our internal Office of the General Counsel who do not do work for the Clients or from outside attorneys at our own expense. You agree that any such communications and advice are protected by our own attorney-client privilege and neither the fact of any communication nor their substance is subject to disclosure to you. To the extent that we are addressing our own rights and responsibilities, a conflict of interest might be deemed to exist between us and the Clients, particularly if a dispute should arise between us. The Clients hereby consent to such consultation occurring and waives any claim of conflict of interest based on such consultation or resulting communications that would otherwise disqualify us from continuing to represent the Clients or from acting in our own behalf, even if doing so might be deemed adverse to the interests of the Clients.

5. Consent to Representation of Parties Adverse to the City. We may be asked to also represent the City in the future in other engagements. Any past, present, and future engagement of us by the City is referred to in this letter individually and collectively as the "City Engagement." As required by California law and Rules of Professional Conduct governing attorneys (the "Ethical Rules"), with this letter we make disclosures and the City consents to us acting both as counsel for the City and also acting as

counsel for any persons other than the City (individually and collectively, "Private Parties"), now or in the future, in matters not substantially related to any City Engagement ("Unrelated Matters").

We have many attorneys and multiple offices. Consequently, we currently represent and in the future may represent numerous Private Parties who may have dealings with the City. Our ability to maintain and sustain our relationships with Private Parties who are clients is critical to us. Therefore, the execution and delivery of this consent and waiver by the City is an essential condition to our acceptance of the City Engagement.

Unrelated Matters in which we represent Private Parties (but not the City) may involve seeking discretionary or ministerial approvals by the City or affiliated agencies or authorities relating to land use, building, construction or other matters; appearances before the City Council, the City Attorney, or regulatory or administrative agencies regarding political, legislative, administrative, enforcement and tax matters; representation of plaintiffs or defendants in civil actions; representation of defendants in civil or criminal enforcement actions; tax matters; and transactions between Private Parties and the City such as preparing and negotiating agreements, licenses, leases or other documents. We may also represent Private Parties in litigation, arbitration, audits, examinations, inquiries, administrative appeals, and other adversarial proceedings in which the interests of the Private Parties are adverse to the interests of the City.

6. Termination of Representation. You have the right to terminate our representation of you at any time. Subject to our ethical obligation to give you reasonable notice to arrange for alternate representation, we may terminate our representation of you at any time. Upon termination of our representation, you agree to promptly sign substitutions of counsel authorizing our withdrawal as your counsel of record in any proceeding. Unless we agree to render other legal services to the Clients, our representation will terminate upon completion of the Litigation. That will be the case whether or not, as is not uncommon, we are designated to receive copies or courtesy copies of notices under one or more documents related to the Litigation.

7. Clients' Document Retention Responsibilities. The Clients agrees that they will be responsible for providing us with all records pertinent to this matter, including information stored electronically such as e-mails and other computerized records. If the Clients have in effect document retention policies that could result in the destruction, deletion or alteration of information that could potentially be discoverable in this matter, it is very important that the Clients institute steps to stop all such destruction, deletion or alteration and to preserve all such information in the form that it now exists. In particular, you should notify your officers and employees that may have potentially discoverable emails or other paper or electronic files not to delete or destroy them, but to allow the Client to preserve these records. Please remember that information that may be potentially discoverable includes not only information that is relevant to the underlying dispute but also information that could lead to the discovery of relevant information. You should err on the side of caution, and make sure that potentially discoverable information is no

longer subject to destruction under your standard document retention policies until you speak with us further on this important subject.

8. Our Document Retention. It is our policy and practice to destroy our files ten (10) years after the file is first closed unless the client requests a shorter or longer retention period in writing. Files are generally closed at the conclusion of a lawsuit or completion of a transaction.

9. No Warranties. As you know, litigation is by its nature unpredictable. It is not possible to warrant a successful result or represent that a particular result can be obtained within a given time framework. We appreciate your awareness of and patience with the pitfalls of litigation. You acknowledge that we have not made any representations, promises, warranties or guarantees to you, express or implied, regarding the outcome of your matter.

10. Arbitration. Any dispute between us concerning our fees or charges shall, if you so elect, be submitted to arbitration under rules of the California State Bar, and shall be binding if (i) each of us so agrees after any such dispute arises, or (ii) such arbitration becomes binding under such rules. Any dispute between us concerning our fees or charges not so submitted to binding arbitration under the rules of the California State Bar, or that remains unresolved after non-binding arbitration under such rules, and any other dispute between or among you and us or any of our attorneys and agents, including but not limited to claims of malpractice, errors or omissions, or any other claim of any kind regardless of the facts or the legal theories, shall be finally settled by mandatory binding arbitration in San Francisco, California, conducted in accordance with California Code of Civil Procedure §§ 1282 *et seq.*, including, but not limited to, section 1283.05, with each party to bear its own costs and attorneys' fees and disbursements. Such arbitration shall be conducted before a single arbitrator, except in matters involving a dispute greater than five hundred thousand dollars, which shall be conducted before a three arbitrator panel with each side selecting one arbitrator and the two arbitrators selected by the parties choosing the third arbitrator. Judgment on a binding arbitration award may be entered in any court of competent jurisdiction. Arbitration has the potential to provide a more timely, more economic and more confidential resolution of any dispute between us. There will likely be less discovery and a determination by an agreed upon arbitrator or arbitrators rather than a judge or jury. *We mutually acknowledge that, by this agreement to arbitrate, each of us irrevocably waives our rights to court or jury trial. You have the right to consult separate legal counsel at any time as to any matter, including whether to enter into this engagement letter and consent to the foregoing agreement to arbitrate.* The Clients agree that this agreement will be governed by the laws of California without regard to its conflict rules. Subject in all cases to the arbitration provisions herein provided, the Clients agree that with regard to the courts exclusive jurisdiction and exclusive venue for any dispute between us shall lie solely with the California Superior Court for the county in which our office identified on our letterhead above is located and the corresponding federal court.

Subject to the arbitration provisions, the Clients consent to service of process pursuant to the applicable California state statutes and federal rules.

If the foregoing is an acceptable basis for our engagement as counsel, I would appreciate it if you would print out and sign a copy of this letter, return the copy to me by e-mail, and mail an originally signed copy to us. You have the right to seek the advice of an independent counsel of your choice before signing this letter and to be given a reasonable opportunity to seek that advice.

If you have any questions or concerns, please call.

Once again, thank you for selecting us to represent you in this matter.

Sincerely,

DAVID P. LANFERMAN
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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The undersigned have read and understood this engagement letter and agree that it correctly sets forth the terms upon which Sheppard, Mullin, Richter & Hampton LLP has been engaged by the undersigned in connection with the representation described herein and have waived any conflict of interest on the part of this Firm arising out of the representation described above.

Michael J. Ogaz
City Attorney
CITY OF MILPITAS

By: _____

Title: _____

Date: _____

Citation Homes, Inc., a California Corporation

By: _____

Title: _____

Date: _____

SCS Development Company, a California Corporation, dba Citation Homes Central

By: _____

Title: _____

Date: _____

_____
Michael Sullivan

Date: _____

SheppardMullin

ATTACHMENT A

ADMINISTRATIVE CHARGE TABLE

(As of January 1, 2011)

For your information, the following is a current list of the various costs that are charged to clients.

Category	Charge
Delivery (DHL, Federal Express, Airborne, messenger etc.)	Invoiced cost; not reduced by any volume discounts.
Document imaging (Scanning, OCR, Coding)	Invoiced cost.
Duplicating	$0.25 per page; color copies $0.75.
Lexis/ Westlaw Legal research	Ten Percent (10%) off of Vendor Standard Rates.
Postage	Actual cost of mailings over $5.00 per day.
Telephone	
Local calls	No charge
Long distance calls within U.S. and Canada	$0.10 to $0.15 per minute
Other international calls	Firm's estimated cost
Travel	Actual Cost.