**Case No. S212800**

# In the Supreme Court

OF THE

# State of California

ORANGE CITIZENS FOR PARKS AND RECREATION; AND ORANGE PARKS ASSOCIATION,
*Plaintiffs and Appellants,*

vs.

MILAN REI IV, LLC; MARY E. MURPHY; CITY CLERK OF THE CITY OF ORANGE; CITY OF ORANGE; CITY COUNCIL OF THE CITY OF ORANGE; NEAL KELLEY, REGISTRAR OF VOTERS FOR THE COUNTY,
*Defendants and Respondents.*

## ANSWER OF DEFENDANT AND RESPONDENT MILAN REI IV, LLC TO PETITION FOR REVIEW

After Decision by the Court of Appeal, Fourth Appellate District, Division Three
Case No. G047219 (consolidated with G047013)

From Judgment of the County of Orange, Honorable Robert J. Moss
(Superior Court Case No. 30-2011-00494437)

Colin L. Pearce (SBN 137252)
Duane Morris LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
Telephone: 415 957 3000
Facsimile: 415 957 3001
E-mail: clpearce@duanemorris.com

David E. Watson (SBN 138753)
Heather U. Guerena (SBN 238122)
Duane Morris LLP
750 B Street, Suite 2900
San Diego, CA 92101-4681
Telephone: 619 744 2200
Facsimile: 619 744 2201
E-mail:dewatson@duanemorris.com
huguerena@duanemorris.com

*Attorneys for Defendant and Respondent*
MILAN REI IV, LLC

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Telephone: 415 957 3000
Facsimile: 415 957 3001
E-mail: clpearce@duanemorris.com

David E. Watson (SBN 138753)
Heather U. Guerena (SBN 238122)
Duane Morris LLP
750 B Street, Suite 2900
San Diego, CA 92101-4681
Telephone: 619 744 2200
Facsimile: 619 744 2201
E-mail:dewatson@duanemorris.com
huguerena@duanemorris.com

*Attorneys for Defendant and Respondent*
MILAN REI IV, LLC

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Defendant and Respondent Milan REI IV, LLC (hereinafter "Milan") submits this Answer to the Petition for Review ("Petition") filed by Plaintiffs and Appellants Orange Citizens for Parks and Recreation and Orange Parks Association (collectively herein "Appellants").

## I. INTRODUCTION

This action involves a routine, ordinary dispute over a city's interpretation of its own general plan. In the underlying proceeding, the Trial Court and the Court of Appeal reviewed the question of whether a residential development project ("Project") proposed by Milan on 51.5 acres of land ("Property") located within the "Orange Park Acres" area of the City of Orange ("City") is consistent with the City's "pre-General Plan Amendment general plan."

In the underlying Opinion (*Orange Citizens for Parks and Recreation v. Superior Court* (2013) 217 Cal.App.4th 1005), the Fourth District Court of Appeal did not resolve any disputed areas of law and did not base its decision on any new, unique or emerging legal principles. The Court of Appeal instead simply determined that the City did not abuse its discretion in finding that the Project was consistent with the City's General Plan.

The Petition does not present any unique, distinct or unusual issues, or any issue that requires Supreme Court review. Cities are often called on to interpret and apply their own general plans, and to determine if proposed developments are consistent with the city's general plan. In the present

case, the City made a consistency determination regarding the Project by reviewing and resolving an apparent ambiguity in the wording within the General Plan with regard to the authorized use of the Property. Appellants' disagreement with the City's resolution of this issue does not justify further review by this Court.

This Court should also summarily dismiss the Petition because it is based on and filled with errors, omissions, and blatantly false and misleading statements. Appellants ignore the undisputed facts and evidence in the Administrative Record for this action, and the actual language of the Opinion. Appellants are apparently trying to manufacture grounds for review where none exist by misstating the facts and the content of the Opinion, and by ignoring the actual documents in the Administrative Record.

The amicus letters submitted in support of the Petition are filled with the same errors, omission and misconceptions in the Petition. None of the letters accurately recite the underlying facts or the issues decided by the Court of Appeal. The letters are therefore not relevant or applicable to this proceeding, and do not add anything to the review of these issues.

The factual scenario presented by this case, involving the interpretation of the City's General Plan, is "a local legislative matter and not of statewide concern." (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 774, quoting *Duran v. Cassidy* (1972) 28 Cal.App.3d 574, 583.) This

case further does not raise or implicate any significant environmental issues. The Project instead proposes 39 one-acre estates, with riding trails and a ride-in arena, within a previously developed portion of the City. There was no challenge to the Final Environmental Impact Report ("FEIR") for the Project, which found that the Project had no significant environmental impacts.

Appellants have failed to establish or demonstrate that the Court of Appeal erred in any way by upholding the City's discretionary interpretation and application of its own General Plan. The Court of Appeal had jurisdiction over this matter, and review is not needed to secure uniformity of decision or settle important questions of law. (Cal. Rule of Court 8.500(b).)

There is therefore absolutely no reason for Supreme Court review of this matter, and this Court should deny the Petition.

## II. THE ISSUES PRESENTED FOR REVIEW DO NOT ESTABLISH ANY BASIS OR NEED FOR SUPREME COURT REVIEW

The Opinion is supported by, and consistent with, established authority. There is no split of authority or lack of uniformity of decision on the issues addressed by the Court of Appeal.

Although Appellants argue that certain cases cited by the Court of Appeal are not applicable or distinguishable, these arguments do not establish that the Opinion creates a split of authority. Such arguments only

establish that Appellants do not agree with the Opinion, and the underlying discretionary findings of the City.

The Court of Appeal found that the City did not abuse its discretion in considering the facts and information presented to it, and in thereafter interpreting and applying its own General Plan. This action raises factual issues, not new or disputed legal issues.

The primary issue presented on appeal was the City's determination that the Project was consistent with the City's General Plan, prior to and independent of a later General Plan Amendment. In connection with that review, the Court explained:

> We review decisions regarding consistency with a general plan under the arbitrary and capricious standard. These are quasi-legislative acts reviewed by ordinary mandamus, and the inquiry is whether the decision is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. [Citations.] Under this standard, we defer to an agency's factual finding of consistency unless no reasonable person could have reached the same conclusion on the evidence before it." (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.) "'It is, emphatically, *not* the role of the courts to micromanage these development decisions.'" [Citation.] Thus, as long as the City reasonably could have made a determination of consistency, the City's decision must be upheld, regardless of whether *we* would have made that determination in the first instance." (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 638.)

(Opinion p. 29, emphasis in original, footnote omitted.) The Court of Appeal applied this standard and found that the City did not abuse its discretion in interpreting its own General Plan.

Appellants ignore the actual findings of the City, and the specific determinations and holdings in the Opinion. Instead, they present three unnecessary and irrelevant issues for review in the Petition. None of the issues provide a basis for review of the Opinion by the Supreme Court. On their face, the issues do not raise unresolved, unique or significant issues of law. The issues instead demonstrate that Supreme Court review is unnecessary and unwarranted.

The first two issues only establish that Appellants disagree with the City's interpretation of its own General Plan, and related findings by the City, in connection with the City's approval of the Project. At most, the issues indicate that Appellants challenge the Court of Appeal's application of established land use and planning law to a unique factual dispute regarding the contents of the City's General Plan.

The third issue presented for review is premised entirely on false contentions regarding an amendment to the City's General Plan. The City clearly stated that its approval of the Project was not dependent on the amendment to the General Plan. (*See* Opinion pp. 4, 21-22,31, 43; AR4:01455-1458, AR4:01713-1716; AR4:01894-1965; AR9:03975-3979.) Appellants' contentions regarding a referendum on the General Plan Amendment, and the alleged "will of the voters," are therefore erroneous and misleading. The amendment discussed by Appellants is not relevant to

the City's approval of the Project, or the issues considered by the Court of Appeal.

### A. The First Two Issues Do Not Justify Supreme Court Review.

The first two issues presented for review by Appellants are virtually identical, and state the same question, with slight variation. Through the first and second issues, Appellants contend that this case involves a conflict between the City's 1973 designation of the Property as authorized for open space and residential development, and a map attached to the amended, updated General Plan of the City, which only reflected the open space designation.

Appellants indicate, in both the first and second issues, that the Property was subject to "conflicting designations" in the City's General Plan. Appellants contend that there was a conflict between the land use designation for the Property adopted by the City in 1973 by way of resolution, and an alleged conflicting "unambiguous land use designation" in the City's "subsequently adopted general plans," meaning the map attached to the General Plan.

The 1973 land use designation, however, does not directly conflict with the map attached to the most recent version of the General Plan. Rather, the map is only incomplete because it only reflects the open space designation, and not the dual authorization for open space *and* residential

development for the Property. At most, the incomplete map creates some ambiguity in the General Plan in connection with the Property.

### 1. The City's resolution of the apparent conflict in the General Plan was supported by substantial evidence.

It is difficult to understand how the City's reasoned, logical interpretation of its own General Plan and resolution of the factual dispute over the contents of its General Plan warrants judicial review, let alone Supreme Court review. The Court of Appeal found that the City's interpretation of its General Plan was supported by substantial evidence, and was consistent with established authority regarding land use, and general plans in particular. The Petition does not raise any valid or proper challenge to the Opinion in this regard, or to the City's interpretation of its General Plan, and accordingly does not present any justification for Supreme Court review.

In considering Milan's proposed development, the City was called on to resolve the ambiguity in the land use designation for the Property in the General Plan. The City reviewed and considered a substantial amount of evidence and testimony to resolve the ambiguity in the General Plan and to determine whether the Project was consistent with the actual, valid land use designation for the Property. The City also considered the reasoned and well supported opinion of its City Attorney, and thereafter exercised its discretion to make various findings and conclusions in connection with the

interpretation of the General Plan and its approval of the Project. (Opinion p. 39.)

The City carefully reviewed and considered its prior resolutions and actions (included in the Administrative Record) and found that in 1973 the City had, through a binding, valid resolution, authorized residential development on the Property by designating the Property as "Other Open Space and Low Density (1 Acre)" within the City's General Plan. (AR9:03683-3689; APP3:705-707.) The City further determined that there was no evidence that the City took any subsequent action to change, amend, or repeal the General Plan's land use designation for the Property, or to invalidate the residential development authorization. (APP706-707.)

Instead of directly addressing the findings and conclusions of the City, Appellants attempt to convince this Court to accept review of this matter by inserting a blatantly false and deceptive claim into the first two issues. In the first two issues, and throughout their Petition, Appellants claim that the Ridgeline Property has been designated "Open Space" in the City's General Plan "for decades." (Petition, p. 2.) That statement is inaccurate, and ignores the City's actual findings and conclusions in interpreting its General Plan. Appellants' contentions also ignore and contradict the contents of the Administrative Record considered by the City, the Trial Court and Court of Appeal.

The Court of Appeal easily rejected Appellants' claim that the Property had been solely designated as open space "for decades." Instead, the Court recognized that the City authorized residential development on the Property, by properly and validly designating the Property as "Other Open Space and Low Density (1 Acre)," as part of the City's General Plan. As the City determined, the fact that only the open space designation was carried over onto a map attached to the current General Plan did not invalidate the prior residential development authorization. (*See generally,* Opinion p. 39 ["Nonetheless, *Las Virgenes* demonstrates that the Policy Map is not the end of the analysis."].)

Appellants cannot point to a single resolution, determination, or formal, binding legislative act on the part of the City that designated the Property solely as open space, within the OPA Plan or otherwise, or to specifically change, rescind or remove the residential development authorization from the Property. Instead, the only time the City formally and specifically took action with regard to the authorized use of the Property was in 1973, when the City authorized residential development on the Property. (Opinion p. 39.)

Appellants still fail to point to any evidence in the Record, or otherwise, that indicates or even suggests that the reference in the General Plan map to only one of the authorized uses of the Property, instead of both authorized uses, was intended to invalidate or repeal the second authorized

designation for residential development. Specifically, there is no evidence or legal authority to support Appellants' apparent contention that the reference to "Open Space" was intended to change, and did validly and properly change, the "Other Open Space and Low Density (1 Acre)" land use designation for the Property. The Court of Appeal specifically held that it was "unwilling to conclude that the City Council acted unreasonably by finding the 1989 and/or 2010 general plan were not intended to supersede the Orange Park Acres plan, and that the low density residential designation therefore survived the adoption of the 1989 and 2010 general plans." (Id.)

Contrary to the contentions in the Petition and Amicus letters, it is Appellants, and not Milan or the City, who actually urge this Court to overlook and ignore established land use law regarding general plans, by ignoring the actual contents of the General Plan, as adopted by the City in 1973, and finding that a general plan can be amended in secret, without notice and without any formal legislative action on the part of the City.

Contrary to Appellants' contentions, *Harroman Co. v. Town of Tiburon* (1991) 235 Cal.App.3d 388, does not hold that adoption of an amended general plan automatically invalidates and repeals every provision and land use policy set forth in a prior general plan, nor does an amendment to a general plan automatically "abate" or "suspend" every prior land use policy or designation. As the Court of Appeal noted, *Harroman* generally holds that "a revised general plan takes precedence over an older general

plan." (Opinion, p. 38.) The Court of Appeal explained, however, that there was still no evidence in the record that the 1989 and 2010 amendments to the General Plan were intended to change the land use designation of the Property. (Id.) Instead, there was considerable evidence that the residential land use designation continued to remain in effect, through the Orange Park Acres plan, following the amendments to the General Plan.

The Court of Appeal accordingly found that all of the findings and conclusions of the City were supported by substantial evidence, and affirmed the findings of the City.

Given the extensive and detailed procedural and notice requirements for an amendment to a general plan, the Court correctly found that the 1973 land use designation for the Property was not automatically, by implication or "de facto" repealed or amended through later versions of the General Plan. (See *Lesher Communications Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 541-542, holding that a general plan cannot be amended "by implication" and without following the procedural requirements for amendment.)

Appellants cannot challenge such findings through the Petition, and accordingly cannot establish any basis for Supreme Court review.

### 2. The City's resolution of the apparent conflict in the General Plan was supported by and consistent with established authority.

This action does not involve any unique or unusual events, actions or circumstances. Cities are routinely and often asked to interpret their own general plans or to resolve differences of opinion over the interpretation of their resolutions, ordinances and land use policies. Cities have considerable discretion to resolve disputes involving the interpretation of their general plans, and courts may not interfere with such discretion absent an obvious abuse of discretion. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.)

In the Petition, Appellants fail to demonstrate or establish that the Trial Court, Court of Appeal or this Court should intervene in and invalidate the City's well-reasoned and thorough review of its General Plan. Instead, "[a] city's findings that the project is consistent with its general plan can be reversed only if it is based on evidence from which no reasonable person could have reached the same conclusion. [Citation.]" (*A Local & Regional Monitor v. City of Los Angeles* (1993) 16 Cal.App.4th 630, 648.) Thus, the party challenging a city's determination of general plan consistency has the burden to show why, based on all of the evidence in the record, the determination was unreasonable. (*California Native Plant Society v. City of Rancho Cordova, supra*, 172 Cal.App.4th at p. 639.)

In reviewing an order granting an administrative petition for writ of mandate to the superior court, this Court "seek[s] to determine if the decision of the Respondent Court was supported by the evidence and was a proper exercise of discretion." (*City of Poway v. City of San Diego* (1991) 229 Cal.App.3d 847, 858-859, citing *Centinela Valley Secondary Teachers Assn. v. Centinela Valley Union High Sch. Dist.* (1974) 37 Cal.App.3d 35, 38.) The evidence is viewed "in the light most favorable to the respondent, with all intendments and reasonable inferences made to sustain the findings and the judgment." (*Poway*, supra, 229 Cal.App.3d at 859, citing *Lompoc Federation of Teachers v. Lompoc Unified Sch. Dist.* (1976) 58 Cal.App.3d 701, 710.)

The opinions and determinations of the City with regard to its own General Plan are subject to considerable deference. Because the adoption or amendment of a general plan is a legislative act, "the wisdom of the plan is within the legislative and not the judicial sphere." (*Dale v. City of Mountain View* (1976) 55 Cal.App.3d 101, 108, quoting *Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 118.) Planning law "leaves wide discretion to a local government ... to determine the contents of its land use plans ...." (*Yost v. Thomas* (1984) 36 Cal.3d 561, 573.) Courts have recognized that "[g]eneral plans or policy statements are often semantical exercises which require considerable interpretation on the part

of persons charged with implementing them." (*Bownds v. City of Glendale* (1980) 113 Cal.App.3d 875, 883.)

Although Appellants do not agree with the City's interpretation of its General Plan, such disagreement does not justify or require Supreme Court review. The Court of Appeal, as well as the Trial Court, instead agreed that substantial evidence supported the City's determination that the original 1973 authorization of residential development on the Property was still valid and binding, notwithstanding the incomplete designation of the Property in the map attached to the General Plan.

The actions and findings of the City, and the judicial decisions and findings upholding such actions, do not, as Appellants argue, "undercut" established California zoning and planning laws, or the authority establishing the primacy of a City's General Plan. The City instead followed accepted, binding authority regarding general plans and properly found that the City's 1973 authorization of residential development on the Property remained part of the City's General Plan, notwithstanding the incomplete designation of the Property in a map attached to the 2010 update to the General Plan.

As the Court of Appeal explained "It is not as if the City Council invented an alternate general plan out of whole cloth. There is no evidence of bad faith. Instead, the most reasonable inference from the record is that a seemingly insignificant (at the time) error of omission by City planning

employees in the early 1970's reared its ugly head 30 years later." (Opinion p. 39.)

The Court of Appeal recognized that "reasonable persons can disagree as to the actual composition of the City's general plan and its consistency with the Project." (Opinion p. 32.) The Court still found that "[t]here is substantial evidentiary support for the City Council's finding that the City's general plan allowed low density residential development at the Property by way of the Orange Park Acres plan. And it logically follows that it was reasonable for the City Council to conclude the Project is consistent with the City's general plan as interpreted by the City Council." (Id.)

An incomplete land use designation on a map attached to a general plan is not dispositive, and does not act to amend a general plan, as Appellants have contended throughout this action. There is no authority that establishes the City abused its discretion by finding the original authorization for residential development was still in effect and binding because it had not been repealed.

The findings and conclusions of the City, and the Trial Court and Court of Appeal, with regard to the impact of the map attached to the General Plan were also consistent with and supported by established authority regarding general plans, and planning and zoning laws and policies. The Court of Appeal recognized that *Las Virgenes Homeowners*

*Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, stands for the proposition that a land use policy map that is inconsistent with the actual contents of a city's general plan does not control development or amend or supersede the actual general plan. In the Opinion, the Court explained: "*Las Virgenes* demonstrates that the Policy Map is not the end of the analysis." (Opinion p. 39.)

Contrary to Appellants' contentions, the Opinion, and the underlying actions of the City in connection with the Project, would not turn "California planning law upside down." (Petition, p. 1.) Instead, Appellants' contentions, if accepted by this Court, would "undercut" and ignore "the most basic tenets of modern planning law." (Petition, p. 3.) Appellants contend that a validly adopted and approved land use designation within a city's general plan can be repealed or removed from the general plan without notice, hearing or formal action on the part of the City. That contention is completely contrary to the authority cited by Appellants in their brief. In *DeVita v. County of Napa, supra,* for example, this Court explained that a general plan may only be amended by a legislative body "after undergoing a series of procedural steps." (9 Cal.4th at 773.)

Appellants' attempted reliance on *Sierra Club v. Kern County* (1981) 126 Cal.App.3d 698 and *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90 is also misguided. Those

cases do not stand for the proposition, as Appellants argue, that conflicting designations in a general plan can only be resolved by "referendum." As the Court of Appeal recognized, cities retain jurisdiction and authority to interpret and apply their own general plans, and such interpretation can only be set aside by a court if "a reasonable person could not have reached the same conclusion." (Opinion p. 30, quoting *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223.)

Here, the City resolved an apparent ambiguity in the General Plan involving the map with the incomplete land use designation. Appellants challenged the City's resolution of that issue, but throughout this action have failed to demonstrate that the City's findings and decision on that issue were not supported by substantial evidence, or constituted an abuse of discretion. It was still the City, and not the court, or the referendum, which resolved this issue.

There is no need or compelling reason for the Supreme Court to further review the City's discretionary interpretation of its General Plan, or the Trial Court's and Court of Appeal's decision not to disturb or interfere with such exercise of discretion. Appellants have presented no factual or legal justification or support for review.

### B. The Third Issue is Not Accurately Stated or Relevant to this Action.

The third issue presented for review refers to a general plan amendment which was "defeated by referendum." Through the third issue, Appellants argue that the Court of Appeal, based on the defeat of the General Plan Amendment, "invalidated portions" of the General Plan "in a manner contrary to the will of the voters."

The third issue is not relevant to this action, and is not an accurate or complete statement. Appellants' contentions regarding the referendum on the City's General Plan Amendment are blatantly false. Contrary to Appellants' contentions, the General Plan Amendment, and consequently the referendum on the General Plan Amendment, did not change the land use designation of the Property or otherwise impact the City's approval of the project or the issues considered by the Trial Court and the Court of Appeal.

It is undisputed that a general plan amendment was not necessary for the development of the Property. The City instead made it very clear, on numerous occasions, that its approval of the Ridgeline Project was not dependent on the General Plan Amendment.

Contrary to Appellants' contentions, Milan and the City did not change their positions and argue that the General Plan Amendment was not necessary for approval of the Ridgeline Project only after the amendment

was challenged by referendum. The City Attorney instead advised the City on a number of occasions, as evidenced by his December 22, 2009, letter and May 10, 2011, memo, that approval of the Project was based on the original land use designation for the Property. The City thereafter made "Findings of Fact and Statements of Overriding Consideration," in support of the FEIR which confirmed the Project was authorized by and consistent with the original land use designation for the Property. The relevant City approvals and planning documents did not indicate that an amendment to the General Plan was necessary for the Project to proceed.

The City's approval of the Project in 2011 therefore reflected and was based on the original 1973 designation of the Property, not the General Plan Amendment. The City's approval of the Project occurred well before the referendum on the General Plan Amendment, and the City therefore did not thwart the "will of the voters," as Appellants contend. The referendum on the General Plan Amendment had no bearing on the validity of the City's approval of the Project, the judicial review of the City's action, or this Court's consideration of the Petition.

The Court of Appeal recognized that Appellants' challenge to the actions and findings of the City was based on false and invalid conclusions. All of Appellants' arguments and conclusions regarding the referendum on the City's General Plan Amendment are erroneous or irrelevant. As the Court of Appeal found:

> But Orange Citizens ignores the City Council's repeated findings in multiple resolutions and the challenged ordinances that the Orange Park Acres Plan was part of the City's general plan and that the General Plan Amendment did not amend the land use designation of the Property, which remained low density residential (1 acre). Orange Citizens do not identify any of the other features of the General Plan Amendment as necessary for the Project to be found consistent with the general plan. Taken at face value, the City *did not amend* the land use designation of the Property by means of the General Plan Amendment. Thus, reference to the amended general plan does not negate any deference owed to the City Council's approval of the zone change and development agreement.

(Opinion p. 31, emphasis in original.)

Appellants' arguments regarding the General Plan Amendment are not relevant to this action, and not properly presented to this Court. The underlying trial occurred prior to the referendum on the General Plan Amendment. Appellants improperly raise matters outside the Administrative Record in presenting arguments regarding the referendum and the alleged "will of the voters." Appellants' third issue therefore presents no legal, practical or factual basis for Supreme Court review of the Opinion.

## III. CONCLUSION

The Petition does not present any compelling grounds or justification for Supreme Court review. Specifically, review is not appropriate or necessary to "secure uniformity of decision or to settle an important question of law." (California Rule of Court 8.500(b)(1).) Appellants have further not established or even asserted that there were any jurisdictional

deficiencies or lack of concurrence of sufficient qualified justices in connection with the decision. (California Rule of Court 8.500(b)(2) and (3).)

There is no need or basis for this Court to grant the Petition and accept review of this case. This Court should instead summarily dismiss the Petition without further proceedings.

Dated: September 9, 2013

**DUANE MORRIS LLP**

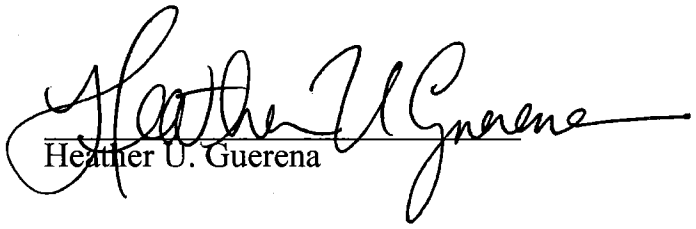
By: _____

Colin L. Pearce
David E. Watson
Heather U. Guerena
Attorneys for Defendants and Respondents
MILAN REI IV, LLC

**CERTIFICATE OF WORD COUNT**

Pursuant to California Rules of Court, Rule 8.204(c)(1), I certify that this Answer to Petition for Review contains 4,700 words, not including the Tables of Contents and Authorities, the caption page, signature blocks, attachments or this certification page.

Dated: September 9, 2013



Heather U. Guerena

**DECLARATION OF SERVICE**

I declare that I am, and was at the time of service hereinafter mentioned, at least 18 years of age and not a party to the above-entitled action. My business address is 750 B Street, Suite 2900, San Diego, CA 92101-4681. I am a citizen of the United States and am employed in the City and County of San Diego. On September 9, 2013, I caused to be served the following document(s):

**MILAN REI IV, LLC'S ANSWER TO PETITION FOR REVIEW**

Upon the parties in this action by placing true and correct copies thereof in a sealed envelopes as follows:

**FOR OVERNIGHT DELIVERY VIA FEDERAL EXPRESS:**

Clerk of the Court
California Supreme Court
350 McAllister Street, Room 1295
San Francisco, CA 94102

Original + 13 Copies

**FOR COLLECTION VIA U.S. MAIL:**

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California Court of Appeal
Fourth Appellate District
Division Three
601 W. Santa Ana Blvd.
Santa Ana, California 92701

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Clerk of the Court
Orange County Superior Court
Central Justice Center
700 Civic Center Drive West
Santa Ana, CA 92701

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| | |
|---|---|
| Steven Baric<br>Baric& Tran<br>2603 Main Street, Suite 1050<br>Irvine, CA 92614<br>Telephone: 949-468-1047<br>Facsimile: 800-455-8217<br>Email: sbaric@barictran.com<br>sbaric@bamlawyers.com | Attorneys for Defendant and Respondent<br>*Milan REI IV, LLC*<br><br>1 Copy |
| David A. DeBerry<br>Woodruff, Spradlin& Smart, APC<br>555 Anton Boulevard, Suite 1200<br>Costa Mesa, CA 92626-7670<br>Telephone: 714-558-7000<br>Facsimile: 714-835-7787<br>Email: ddeberry@wss-law.com | Attorneys for Defendant and Respondent<br>*Mary E. Murphy, City Clerk Of The City Of Orange, City Of Orange, and City Council Of The City Of Orange*<br><br>1 Copy |
| Wayne W. Winthers<br>City of Orange<br>300 East Chapman Ave.<br>Orange, CA 92886<br>Telephone: (714) 744-5580<br>Facsimile: (714) 538-7157<br>Email: wwinthers@cityoforange.org | Attorneys for Defendant and Respondent<br>*Mary E. Murphy, City Clerk Of The City of Orange, City of Orange, and City Council of The City of Orange*<br><br>1 Copy |
| Leon J. Page<br>Deputy County Counsel<br>Office of Orange County Counsel<br>333 W. Santa Ana Blvd., Suite 407<br>Santa Ana, CA 92702<br>Telephone: 714-834-6238<br>Facsimile: 714-796-8469<br>Email: leon.page@coco.ocgov.com | Attorneys for Defendant and Respondent<br>*Neal Kelley, Registrar of Voters for the County of Orange*<br><br>1 Copy |

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| Rachel B. Hooper<br>Robert S. Perlmutter<br>Heather M. Minner<br>Susannah R. French<br>Shute, Mihaly& Weinberger LLP<br>396 Hayes Street<br>San Francisco, CA 94102<br>Telephone: (415) 552-7272<br>Facsimile: (415) 552-5816<br>Email: perlmutter@smwlaw.com<br>hooper@smwlaw.com<br>minner@smwlaw.com<br>french@smwlaw.com | Attorneys for Plaintiffs and Appellants<br>*Orange Citizens for Parks and Recreation; Orange Park Association*<br><br>1 Copy |
| Daniel P. Selmi<br>919 Albany Street<br>Los Angeles, CA 90015<br>Telephone: (213) 736-1098<br>Facsimile: (949) 675-9861<br>Email: dselmi@aol.com | Attorneys for Plaintiffs and Appellants<br>*Orange Citizens for Parks and Recreation; Orange Park Association*<br><br>1 Copy |
| The Honorable Robert J. Moss<br>Department C-23<br>Orange County Superior Court<br>Central Justice Center<br>700 Civic Center Drive West<br>Santa Ana, CA 92701 | 1 Courtesy Copy |

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 9, 2013, at San Diego, California.

Carlos Armijo

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