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CITY OF TEMPLE CITY and CITY OF ROSEMEAD

FILING FEE EXEMPT PURSUANT TO GOVERNMENT CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

CITY OF TEMPLE CITY and CITY OF ROSEMEAD

Petitioners/Plaintiffs

v.

CITY OF EL MONTE, CITY COUNCIL OF THE CITY OF EL MONTE, and DOES 1-20

Respondents/Defendants

GSC HOLDING GROUP, LLC, OAKS BY THE LAKE, LLC, and DOES 21-40

Real Parties in Interest

Case No.

PETITION FOR WRIT OF MANDATE

(Code Civ. Proc. §§ 1085, 1094.5; Public Resources Code §§ 21000 et seq. ("CEQA"))

Petitioners City of Temple City and City of Rosemead (collectively, "Petitioners") allege through this Petition for Writ of Mandate ("Petition")[1] as follows:

INTRODUCTION

1. This Petition challenges the December 18, 2018 and January 8, 2019 decisions of Respondent City Council of the City of El Monte to approve Development Agreement No. 02-18, Medicinal Cannabis Conditional Use Permit No. 07-18, Medicinal Cannabis Conditional Use Permit No. 08-18, and Medicinal Cannabis Conditional Use Permit No. 09-18 (collectively, the "Entitlements"), which would allow medicinal cannabis cultivation, manufacturing, and distribution activities on a 4.4 acre site in the City of El Monte ("Project"). Specifically, this Petition challenges Respondent City of El Monte's and Respondent City Council of the City of El Monte's (collectively, "Respondents") reliance on the Initial Study/Mitigated Negative Declaration ("MND") prepared/approved for the Project. Respondents committed a number of errors and thus failed to ensure that the MND disclosed, analyzed, and mitigated the Project's many foreseeable public health and environmental impacts as required by the California Environmental Quality Act ("CEQA"), Public Resources Code Sections 21000 *et seq.*, and the CEQA Guidelines, Title 14, California Code of Regulations Sections 15000 *et seq.*

2. For all these reasons, and as set forth in detail in this Petition, Respondents failed to proceed in the manner required by law and committed a prejudicial abuse of discretion in relying on/adopting the MND and approving the Project and its Entitlements based thereon. Petitioners accordingly seek a peremptory writ of mandate under Code of Civil Procedure section 1085 and/or section 1094.5 and Public Resources Code section 21168 and/or section 21168.5 commanding Respondents to vacate and set aside the Entitlements and the MND and refrain from taking any action in furtherance of the Project until Respondents demonstrate and this court determines that Respondents fully complied with CEQA. Petitioners further seek a stay of the effect of the Entitlements and a temporary restraining

[1] Pursuant to Code of Civil Procedure § 446, this Petition need not be verified.

order and a preliminary injunction against any/all Project activities during the pendency of these proceedings. Finally, Petitioners seek an award of costs and attorneys' fees under Code of Civil Procedure section 1021.5, together with any other relief the Court deems just and proper.

PARTIES

3. Petitioner City of Temple City is a charter city in the State of California located immediately north of Respondent City of El Monte. The City of Temple City is dedicated to preventing environmental degradation, and to improving the quality of life within the City of Temple City and the region, and ensuring that residents of the City of Temple City enjoy a good quality of life. The City of Temple City participated in the administrative process leading up to the City of El Monte's approval of the Entitlements, and lodged objections to the Project and the MND prior to Respondents' final approval thereof. The maintenance and prosecution of this action will confer a substantial benefit on the public by protecting the public from the environmental and other harms alleged herein and by ensuring that Respondents abide by the procedures required under law in approving development projects like the one at issue here. The City of Temple City is beneficially interested in this matter because it has a direct interest in ensuring that Respondents fulfill their duty to comply with CEQA and the City of El Monte municipal code and ordinances. Given its close proximity to the City of El Monte, Petitioner City of Temple City has an interest in preserving and protecting the environment for the general public and its own residents. Indeed, although the land on which the Project will be located lies within the City of El Monte, all roadway access to/from the Project site is within the jurisdiction of the City of Temple City.

4. Petitioner City of Rosemead is a general law city in the State of California located immediately west of Respondent City of El Monte. The City of Rosemead is dedicated to preventing environmental degradation, and to improving the quality of life within the City of Rosemead, and the region, and ensuring that residents of the City of Rosemead enjoy a good quality of life. The City of Rosemead participated in the administrative process leading up to the City of El Monte's approval of the Entitlements, and lodged objections to the Project and the

MND prior to Respondents' final approval thereof. The maintenance and prosecution of this action will confer a substantial benefit on the public by protecting the public from the environmental and other harms alleged herein and by ensuring that the City of El Monte abides by the procedures required under law in approving development projects like the one at issue here. The City of Rosemead is beneficially interested in this matter because it has a direct interest in ensuring that Respondents fulfill their duty to comply with CEQA and the City of El Monte municipal code and ordinances. Given its close proximity to the City of El Monte, Petitioner City of Rosemead has an interest in preserving and protecting the environment for the general public and its own residents.

5. Respondent City of El Monte is a general law city in the State of California responsible for administering and carrying out its laws and applicable state laws. The City of El Monte is the "lead agency" for the purposes of Public Resources Code Section 21067, with principal responsibility for conducting environmental review of the proposed Project. The City of El Monte has a duty to comply with CEQA, state law, and its own ordinances.

6. Respondent City Council of the City of El Monte is, and at all times herein mentioned was, the duly elected decision making body of Respondent City of El Monte. As the decision making body, the City Council was charged with responsibilities under CEQA for conducting a proper review of the proposed Project's environmental impacts and granting the Entitlements necessary for the Project.

7. Petitioners are unaware of the true names and capacities of respondents fictitiously named Does 1 through 20 and sue such respondents by fictitious names. Petitioners are informed and believed, and on that basis allege, that the fictitiously named respondents are also responsible for the actions described in this Petition. When the true identities and capacities of these respondents have been determined, Petitioners will amend this Petition, with leave of the court if necessary, to insert such identities and capacities.

8. Petitioners are informed and believe, and thereon allege, that Real Party in Interest GSC Holding Group, LLC ("GSC") is, and at all times herein mentioned was, the sole applicant for the Entitlements granted by Respondents for the Project.

9. Petitioners are informed and believe, and thereon allege, that Real Party in Interest Oaks by the Lake, LLC is, and at all times herein mentioned was, the owner of the property known as Assessor Parcel Number 8577-001-043 and/or 4400 Temple City Boulevard, El Monte, CA where the Project is to be located. While Respondents' Notice of Intent to Adopt the MND identified the "property owner" as "Oaks by the Lakes, LLC," the California Secretary of State's business search website/database has no records for any such LLC but does have records showing "Oaks by the Lake, LLC" is a registered/active LLC in California, and the Los Angeles County Assessor confirmed that "Oaks by the Lake, LLC" is the owner of the Project site.

10. Petitioners are unaware of the true names and capacities of Real Parties in Interest Does 21 through 40 and sue such real parties in interest by fictitious names. Petitioners are informed and believe, and on that basis allege, that the fictitiously named real parties in interest are directly and materially affected by the actions described in this Petition. When the true identities and capacities of these real parties in interest have been determined, Petitioners will amend this Petition, with leave of the court if necessary, to insert such identities and capacities.

JURISDICTION AND VENUE

11. This Court has jurisdiction of the matters alleged herein pursuant to Code of Civil Procedure sections 526, 527, 1085, 1087, and 1094.5, and Public Resources Code sections 21168 and 21168.5.

12. Venue for this action properly lies in the Superior Court for the State of California in and for the County of Los Angeles pursuant to Code of Civil Procedure section 394 as Respondents are located in and the activities authorized by the approved Entitlements will occur in the City of El Monte, which is located in Los Angeles County. Consistent with Local Rule 3.232, this Petition will be filed in LA County Superior Court's Central District.

13. Respondents have taken final agency actions with respect to adopting/approving the MND, the Project and its Entitlements. Respondents have a duty to comply with applicable state laws, including but not limited to CEQA, prior to undertaking the discretionary approvals at issue in this lawsuit. Respondents failed to comply with that duty and Petitioners possess no effective remedy to challenge the approvals at issue in this action other than by means of this

lawsuit.

14. On January 17, 2019, Petitioners complied with Public Resources Code section 21167.5 by mailing to Respondents a letter stating that Petitioners planned to file a Petition for Writ of Mandate challenging the adequacy of the MND approved by Respondents and seeking to invalidate the Project approvals/Entitlements. Attached hereto as Exhibit A is a true and correct copy of and proof of service for this "Notice of Commencement" letter.

15. On January 18, 2019, Petitioners complied with Public Resources Code Section 21167.7 and Code of Civil Procedure section 388 by furnishing the Attorney General of the State of California with a copy of the Petition. Attached hereto as Exhibit B is a true and correct copy of and proof of service for the letter transmitting the Petition to the Attorney General.

16. Pursuant to Public Resources Code section 21167.6(a), Petitioners request that Respondents prepare the record of proceedings in this action pursuant to the record content requirements of section 21167.6(e) and Local Rule 3.232. Concurrently with this Petition, Petitioners are filing a Request to Prepare the Record of Proceedings and will serve that Request on Respondents together with a copy of this Petition.

17. Petitioners have no plain, speedy, or adequate remedy in the course of ordinary law unless this Court grants the requested writ of mandate and issues a peremptory writ requiring Respondents to set aside their adoption of the MND and approvals for the Project. In the absence of such remedies, Respondents' approvals will remain in effect in violation of state law, and the environment, Petitioners, and residents and property owners of the City of El Monte, City of Rosemead, City of Temple City, and nearby communities will be irreparably harmed. No money damages or legal remedy could adequately compensate Petitioners or the general public (on whose behalf this action is brought) for that harm.

18. Petitioners are entitled to recover attorneys' fees under Code of Civil Procedure section 1021.5 if they prevail in this action and the Court finds that a significant benefit has been conferred on the general public or a large class of persons, and that the necessity and burden of private enforcement is such as to make an award of fees appropriate.

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EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. This Petition is brought consistent with the requirements of Public Resources Code section 21177 and Code of Civil Procedure section 1094.5. Petitioners objected to Respondents' approval of the MND and the Project orally or in writing during the public comment period provided by CEQA and/or prior to the close of the public hearings on the Project before the issuance of the Notice of Determination. Indeed, Petitioners submitted comment letters to Respondents on or about November 21, 2018, November 26, 2018, December 6, 2018, and December 12, 2018 detailing numerous inadequacies of the MND and objecting to the Project's approval. Petitioners and/or other members of the public raised each of the legal deficiencies asserted in this Petition orally or in writing during the public comment period provided by CEQA, or prior to the close of the public hearings on the Project before the issuance of the Notice of Determination.

20. Petitioners have performed any and all conditions precedent to filing the instant action and have exhausted any and all available administrative remedies to the extent possible and required by law.

FACUAL ALLEGATIONS

Description of the Project Area and Project

21. The Project will be located within an existing 71,658 square foot industrial building on a 4.4 acre site located at 4400 Temple City Boulevard, El Monte, California 91731 (APN 8577-002-054) ("Subject Property"). The Subject Property is located in the M-2 General Manufacturing zone, and has frontage along the east side of Ellis Lane/Temple City Boulevard. Access to the Subject Property is provided via two existing driveways located on the east side of Ellis Lane/Temple City Boulevard. The Subject Property is surrounded on three sides by land uses currently devoted to Regional Commercial and Industrial/Business Park. However, residential development occupies the frontage along the west side of Ellis Lane, opposite the Subject Property, and residents of Respondent City of Temple City, including families with small children, live, work, shop, and attend school in the neighborhood and immediate vicinity of the Subject Property.

22. Petitioners are informed and believe that the Project site is contaminated and undergoing active remediation. In addition to being in the vicinity of extensive groundwater contamination associated with the City of El Monte's San Gabriel Groundwater Basin Superfund site that is subject to ongoing, long term remediation under the U.S. Environmental Protection Agency's jurisdiction, the Subject Property itself and/or its groundwater was also contaminated by volatile organic compounds by a prior business (Miller Dial Corporation) that was required to install vapor extraction/remediation wells which remain and operate on the Project site under the State of California's Department of Toxic Substances Control's continuing jurisdiction.

23. On September 25, 2018, Real Party in Interest GSC filed an application for Development Agreement No. 02-18 and Medicinal Cannabis Conditional Use Permit Nos. 07-18, 08-18, and 09-19, consisting of: (1) a Conditional Use Permit to allow medicinal cannabis cultivation; (2) a Conditional Use Permit for medicinal cannabis manufacturing, and (3) a Conditional Use Permit for medicinal cannabis distribution; and (4) adoption of a MND and Mitigation Monitoring and Reporting Program to conduct commercial medicinal cannabis activities on the Subject Property.

24. Real Party in Interest GSC proposes to establish medicinal cannabis cultivation, manufacturing, and distribution operations on the Subject Property. To establish such operations, GSC proposes to remodel the existing 71,658 square foot building, and to upgrade the utilities to accommodate the proposed use.

Respondents' Review and Approval of the Project

25. On or about November 8, 2018, Respondents released a Notice of Intent to Adopt the MND as well as the Initial Study and Mitigated Negative Declaration for the Project for public review and comment. The MND asserted that despite the Project's significant size and industrial scope – which includes a 43,882 square foot cultivation area capable of producing 8,850 marijuana plants per harvest cycle for five (5) harvest cycles per year for a total of 44,250 plants per year, a 8,674 square foot manufacturing/extraction area, and a 8,338 square foot distribution area – located directly across the street from a residential area, the Project will have no significant, unmitigated environmental impacts.

26. The MND was made available for public comment from November 8, 2018 through November 27, 2018. Various persons and entities – including Petitioners and residents of El Monte, Rosemead, and Temple City – submitted written comments on and objections to the MND and the Project prior to the close of the public comment period. Those comments stated and demonstrated, *inter alia*, that the MND had failed to accurately/completely describe the Project and adequately identify, evaluate, and mitigate all of the Project's potentially significant environmental impacts.

27. Uncertain about the number of active Commercial Medicinal Cannabis Business applications pending before Respondents, Petitioner City of Temple City's Planning Manager submitted a Public Records Request via e-mail on November 16, 2018 for a list of all such applications and the status of each in the application process. Respondent City's Director of Community and Economic Development sent a reply email containing an attachment listing a total of eleven (11) active applications, six (6) of which, including the Project at issue here, were identified as being in the final "Entitlements" phase.

28. On November 27, 2018, the City of El Monte Planning Commission considered the Project and the MND. Members of the public attended the meeting to express their concern over Respondents' inadequate review process and the Project's foreseeable and unmitigated significant adverse environmental impacts. Petitioners submitted comment letters pointing out various deficiencies in the MND and objecting to the Project. Despite these comments, the Planning Commission voted (3-1, 1 absent) to recommend that the City Council approve Development Agreement No. 02-18, approve Medicinal Cannabis Conditional Use Permit Nos. 07-18, 08-18, and 09-19 subject to conditions; and adopt and Initial Study/MND and Mitigation Monitoring and Reporting Program.

29. On December 18, 2018, Respondent City Council considered the Planning Commission's recommendation that the Project be approved. Prior to the hearing, Petitioners once again submitted comments regarding the inadequacy of the MND and in opposition to the Project. Those comments pointed out numerous deficiencies in the MND, including its failure to adequately describe the Project and analyze and fully mitigate the Project's: (1) impacts on

public services including police and fire; (2) impacts on transportation and traffic; (3) waste impacts; (4) generation, use, handling, and disposal of hazardous materials; (5) water usage; and (6) cumulative impacts with approximately eight other similar pending projects in the immediate vicinity. Despite the written and oral comments, Respondent City Council voted (4-1) to adopt the MND prepared for the Project, to issue Conditional Use Permit Nos. 07-18, 08-18, and 09-18, and to introduce an ordinance approving Development Agreement No. 02-18 for a first reading.

30. El Monte Ordinance 2924 and El Monte Municipal Code Section 5.18.070(A) require discretionary Conditional Use Permit(s) *and* a Development Agreement for commercial medicinal cannabis projects like the Project proposed by Real Party in interest GSC here. Development Agreement No. 02-18, like all development agreements, is a legislative act that must be enacted by ordinance and that is not final until after a first and second reading. City staff reports agreed and expressly noted that the Conditional Use Permits were not valid until the Development Agreement was finally approved. Even so, on December 20, 2018, Respondents filed a Notice of Determination with the County Clerk for Los Angeles County. That Notice of Determination was premature because it was filed/posted before Respondents had finally adopted an ordinance approving Development Agreement No. 02-18. Accordingly, the December 20, 2018 Notice of Determination did not start the applicable CEQA statute of limitations period.

31. On January 8, 2019, Respondent City Council held a second hearing/reading to adopt an ordinance approving Development Agreement No. 02-18. Accordingly, approval of the Development Agreement was complete/final on January 8, 2019, and, absent a successful referendum, becomes effective 30 days thereafter.

32. By letter dated January 9, 2019, Petitioners' counsel informed counsel for Respondents and representatives of Real Parties in Interest that the Notice of Determination Respondents filed on December 20, 2018 was premature because the Development Agreement had not yet had a second reading and been adopted. Petitioners requested that Respondents withdraw the December 20, 2018 Notice of Determination and refile a new/valid Notice of Determination after the Project's CUPs and Development Agreement approvals were final.

33. On January 10, 2019, Respondents filed a second Notice of Determination for the

Project with the County Clerk for Los Angeles County.

34. By email dated January 14, 2019, Respondents represented that the January 10, 2019 Notice of Determination would govern the 30-day statute of limitations period under CEQA. However, Respondents refused to rescind the premature December 20, 2018 Notice of Determination or request that the Los Angeles County Clerk remove it from its CEQA Notice posting/website. Even if the December 20, 2018 Notice of Determination was not premature and complied with CEQA's content and filing/posting requirements so as to effectively commence the 30-day limitations period under CEQA (Petitioners contend it did not), this lawsuit is timely.

FIRST CAUSE OF ACTION

Violation of CEQA

35. Petitioners re-allege and incorporate by reference the preceding paragraphs in their entirety.

36. At all times relevant to this action Respondent City of El Monte was the "Lead Agency" responsible for the review and approval of the Project under Public Resources Code section 21067.

37. CEQA is designed to ensure that government agencies incorporate the goal of long-term protection of the environment into decisions that may affect the environment, consistent with the provision of a decent home and suitable living environment for every Californian. CEQA applies to any discretionary action taken by an agency that may cause a direct or reasonably foreseeable indirect physical change in the environment.

38. In furtherance of its goal of environmental protection, CEQA requires that an agency prepare an EIR for a project whenever substantial evidence in the record supports a fair argument that the project may have a significant impact on the environment. The EIR is the cornerstone of the CEQA process and discloses a project's potential adverse environmental and human impacts. The EIR also informs decision makers, responsible agencies, and the public of all feasible mitigation measures and project alternatives that would lessen or avoid the project's adverse environmental impacts.

39. CEQA also mandates that the lead agency adopt feasible and enforceable

mitigation measures to avoid or at a minimum reduce all of a project's significant environmental impacts to insignificant levels. If substantial evidence in the record supports a fair argument that any of the project's significant environmental impacts cannot be mitigated to a less than significant level, an agency may not rely on a Mitigated Negative Declaration and must instead prepare an EIR.

40. Respondents' approval of Conditional Use Permit Nos. 07-18, 08-18, and 19-19, and Development Agreement No. 02-18 are discretionary acts that trigger their obligation to comply with CEQA.

41. Respondents violated CEQA when they approved the Project by failing to adequately describe the Project, identify the existing/baseline conditions and/or evaluate and mitigate all Project impacts to levels of insignificance for the following non-exclusive list of reasons:

a. The MND fails to completely and adequately describe the Project and its effects, including, but not limited to: Project-specific information on the use of hazardous substances in commercial medicinal cannabis cultivation and manufacturing; information concerning the amount of waste (organic and non-organic) generated by cultivation; how cannabis byproducts will be disposed of and in what quantities; the types of pesticides, herbicides, or hazardous substances that will be used (and their proper handling and disposal); the use and risks of mishandling solvents and the potential impacts of such mishandling; the types, times and numbers of anticipated deliveries to/from the Subject Property and the traffic impacts of those deliveries; and Project site-specific information regarding the type, location and extent of existing soil and groundwater contamination and related remediation efforts.

b. The MND violates CEQA because it categorically fails to analyze whether the Project's impacts will be cumulatively considerable. The MND's cumulative impact analysis is literally relegated to a single, conclusory and

unsupported sentence on page 101 of the MND and is limited to air eminssions. CEQA provides that "a project may have a significant effect on the environment if the project's possible effects . . . are individually limited but cumulatively considerable." (Pub. Res. Code § 21083.) "'Cumulatively considerable' means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (14 CCR § 15065(a)(3).) Although Respondents were fully aware of at least ten (1) other medical-marijuana related project applications in the immediate vicinity of the Project and were in fact simultaneously conducting wholly separate environmental review under CEQA for at least two such related projects at the same time Respondents were considering the Project, the MND failed to acknowledge any other foreseeable/related projects or undertake any cumulative impacts analysis whatsoever. This type of piecemeal impact analysis violates CEQA. Indeed, earlier in the day on January 8, 2019, before Respondents finally approved the Project at the City Council's meeting later that same evening, Respondents filed and provided public notice of its completion of and intent to adopt a separate MND for another massive 132,908 square foot medicinal cannabis facility proposed by El Monte Green Group, LLC and Green Mountain Alliance, LLC located literally a stone's throw away from the Project site on nearby Gidley Street.

c. The MND fails to adequately identify the existing baseline conditions and analyze and mitigate the Project's impacts on traffic, transportation, circulation and safety. These include increased traffic from Project employees and from Project trucks, vans and other vehicles associated with the proposed operation of a major distribution center on residential streets and within a residential community. Indeed, rather than using

traffic observations and counts to identify and quantify the actual existing vehicle trips and roadway/intersection level of service conditions associated with the Project site's existing furniture outlet store and telecommunications business tenants as required by CEQA, Respondents impermissibly used assumed/hypothetical traffic baseline information that resulted in skewed impact analyses and unsupported impact significance determinations. Given that access to the Project site comes only through the City of Temple City, the MND's failure to so much as document the actual existing traffic conditions and study the Project's potential impacts directly affects the residents of that community.

d. The MND fails to adequately identify the existing baseline conditions and analyze and mitigate the Project's impact on the demand for police services. For example, despite acknowledging that its threshold of significance uses police service ratios and response times to assess the significance of impacts, the MND fails to provide any data on existing service calls/ratios and response times or analysis of how the Project (or existing projects of similar size and operational characteristics) might affect those standards. Accordingly, there is no factual basis for Respondents' conclusion that the Project's impact on police services will be insignificant. Moreover, Respondents' statement that the Police Department will "continue to review" the operational plans impermissibly defers mitigation by failing to provide the public the opportunity to review and analyze the public safety impacts of the Project.

e. The MND fails to adequately identify the existing baseline conditions and analyze and mitigate the Project's impact on fire services. For example, the MND admits that there will be an "increase in the demand for . . . fire service calls" but concludes without explanation or analysis of existing and/or existing plus project fire service ratios and response times that the

increase will be "less than significant" because Real Parties will pay for fire response costs. However, this conclusory statement fails to meaningfully review the Project's fire services impacts, ignores data indicating that the Project will result in an increased demand for fire services, and does not explain how such impacts to the demand for fire services can be mitigated below the level of significance by Real Parties' payment of fire response costs. Indeed, Respondents failed to demonstrate that it has the kind of dedicated fund and related mitigation program required under CEQA to ensure such in lieu fee payments will produce effective and enforceable mitigation of fire service impacts. Moreover, Respondents' statement that the Fire Department will "continue to review" the operational plans impermissibly defers mitigation by failing to provide the public the opportunity to review and analyze the public safety impacts of the Project and the adequacy of any mitigation measures before the project is approved.

f. The MND fails to adequately analyze and mitigate the Project's potential impact on public services because – notwithstanding the Project's location on the border of the City of Temple City and near Rosemead – the MND fails to consider the Project's foreseeable impact on the Los Angeles County Sherriff's Department as the City of Temple City's and City of Rosemead's contract law enforcement provider.

g. The MND fails to adequately identify the existing baseline conditions and analyze and mitigate impacts from the Project's acknowledged use, disposition, and handling of hazardous materials. The MND fails to identify, let alone discuss or analyze, the potential environmental and health impacts of hazardous materials (e.g., herbicides, pesticides, solvents) to be used in connection with the cultivation, manufacturing, and distribution of cannabis products under the Project, and compounds this

critical error by illegally deferring the actual identification of the hazardous materials to be used and the mitigation to be employed to ensure their safe handling and prompt accident response. Nor does the MND address the risk of leakage or spraying of hazardous materials during transport to or from the Project Site or whether/how the Project might exacerbate existing contamination at/near the site or inhibit existing and/or planned remediation of that contamination.

h. The MND fails to adequately identify the existing baseline conditions and analyze and mitigate the Project's impact on water supplies. The Project is expected to have an average water consumption of 2,543 gallons per day, which equals approximately 928,195 gallons per year. While the MND states that the City is anticipated to have a surplus of available water by the year 2035, it also plainly admits that the "City would not have enough supplies to meet projected demand during a single dry-year or multiple dry-year scenario." This violates CEQA, especially considering Respondents employed (but failed to apply/follow) a water supply threshold of significance that expressly acknowledges that a project would result in a significant adverse utility impact if there were "insufficient water supplies to serve the project and the reasonably foreseeable future development during normal, dry, and multiple dry years."

i. The MND fails to analyze and mitigate the Project's potential odor impacts. By requiring the installation of ventilation and filtration systems that prevent odors from exiting the structure "to the greatest extent feasible" only, Respondents have eliminated any guarantee that the Project will not create offensive odors that would adversely impact the environment. This violates CEQA's requirement that mitigation measures be proven to be effective and enforceable. Indeed, under the proposed mitigation measure Real Parties could emit such noxious odors if excessive

equipment costs led them to deem effective odor control infeasible.

j. The MND and the Mitigation Monitoring and Reporting Program impermissibly and illegally defer the development of key mitigation measures, including for the Project's potentially significant air quality/odor and hazardous materials impacts, until after Project approval without providing critically important and legally required performance standards to ensure the effectiveness and enforceability of any such mitigation measures or plans to be developed after-the-fact.

42. Respondents lack substantial evidence to support their conclusion that identified mitigation measures will actually mitigate the Project's significant impacts.

43. Respondents violated CEQA by failing to prepare an EIR for the Project when the record demonstrates that the Project may cause the potentially significant environmental impacts described above, among others, which have not been adequately disclosed, analyzed, or mitigated to a less than significant level.

44. For all of the above reasons, Respondents prejudicially abused their discretion and failed to comply with the law.

PRAYER FOR RELIEF

WHEREFORE, Petitioners prays for judgment as follows:

1. For alternative and peremptory writs of mandate directing Respondents to vacate and set aside all Project approvals/Entitlements, including Development Agreement No. 02-18, Conditional Use Permit Nos. 07-18, 08-18, and 09-18;

2. For alternative and peremptory writs of mandate directing Respondents to vacate and set aside the MND for the Project;

3. For alternative and peremptory writs of mandate directing the Respondents to comply with the requirements of CEQA and take any other action required by Public Resources Code Section 21168.9;

4. For a temporary stay, temporary restraining order, and preliminary and

permanent injunctions prohibiting Respondents and Real Parties in Interest and their representative agents, servants, and employees, and all others acting in concert with Respondents or Real Parties in Interest on their behalf, from taking any action to implement the Project pending full compliance with the requirements of CEQA;

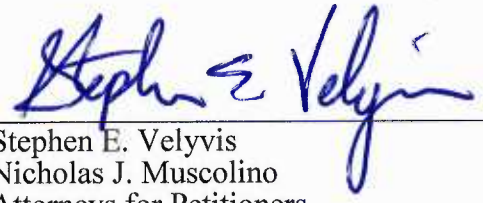
5. For costs of the suit;

6. For Petitioner's attorneys' fees under Code of Civil Procedure Section 1021.5 and other applicable authority; and

7. For such other and further relief as the Court deems just and proper.

Dated: January 18, 2019

BURKE, WILLIAMS & SORENSEN, LLP

By: 

Stephen E. Velyvis
Nicholas J. Muscolino
Attorneys for Petitioners
City of Temple City and City of Rosemead

EXHIBIT A

BURKE, WILLIAMS & SORENSEN, LLP

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January 17, 2019

VIA US MAIL

Jonathan Hawes, City Clerk
City Hall East
11333 Valley Boulevard
El Monte, CA 91731
E-mail: cityclerk@elmonteca.gov

Re: Notice of Commencement of CEQA Litigation Challenging Approval of Development Agreement No. 02-18 and Medicinal Cannabis Conditional Use Permit Nos. 07-18, 08-18, and 09-19.

Dear Mr. Hawes:

The undersigned represents the City of Temple City and the City of Rosemead. This letter is to notify you that the City of Temple City and the City of Rosemead will file suit against the City of El Monte and its City Council for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., the CEQA Guidelines, California Code of Regulations sections 15000 et seq., and state law when it approved Development Agreement No. 02-18 and Medicinal Cannabis Conditional Use Permit Nos. 07-18, 08-18, and 09-19 and adopted a Mitigated Negative Declaration. This notice is given pursuant to Public Resources Code section 21167.5.

Please note that, pursuant to Public Resources Code section 21167.6, the record of proceedings for the City of El Monte's actions includes, among other things, all "internal agency communications, including staff notes and memoranda related to the project or to compliance with [CEQA]." Because all emails and other internal communications related to the project are part of the administrative record for the lawsuit to be filed by the City of Temple City and the City of Rosemead, the City of El Monte may not destroy or delete such documents.

Sincerely,

Nicholas J. Muscolino

NJM

CC: Stephen Velyvis

OAK #4819-0093-8373 v1

PROOF OF SERVICE

I, Celestine Seals, declare:

I am a citizen of the United States and employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1901 Harrison Street, Suite 900, Oakland, California 94612-3501. On January 17, 2019, I served a copy of the within document(s):

PRC 21167.5 Notice

☒ by mail on the following party(ies) in said action, in accordance with Code of Civil Procedure § 1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Burke, Williams & Sorensen, LLP, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Oakland, California.

☐ by e-mail or electronic transmission on the following party(ies) whose email address(es) is listed below, in accordance with Code of Civil Procedure § 1010.6, and based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Jonathan Hawes, City Clerk
City Hall East
11333 Valley Boulevard
El Monte, CA 91731

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 17, 2019, at Oakland, California.

Celestine Seals

EXHIBIT B

BURKE, WILLIAMS & SORENSEN, LLP

1901 Harrison Street - Suite 900
Oakland, California 94612-3501
voice 510.273.8780 - fax 510.839.9104
www.bwslaw.com

Direct No.: 510.903.8818
nmuscolino@bwslaw.com

January 18, 2019

VIA US MAIL

Attorney General Xavier Becerra
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Re: Notice of Filing CEQA Litigation: *City of Temple City et al. v. City of El Monte*

Dear Attorney General Becerra:

Enclosed please find a copy of the Petition for Writ of Mandate ("Petition") in the above captioned case. The undersigned represents the City of Temple City and the City of Rosemead. The Petition is being provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt in the enclosed prepaid, self-addressed envelope.

Sincerely,

Nicholas J. Muscolino

I confirm receipt in the Attorney General's office of the aforementioned Petition

_____

NJM
Enclosure
cc: Stephen Velyvis

OAK #4825-9090-1381 v1

PROOF OF SERVICE

I, Celestine Seals, declare:

I am a citizen of the United States and employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1901 Harrison Street, Suite 900, Oakland, California 94612-3501. On January 18, 2019, I served a copy of the within document(s):

Notice to Attorney General

☒ by mail on the following party(ies) in said action, in accordance with Code of Civil Procedure § 1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Burke, Williams & Sorensen, LLP, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Oakland, California.

☐ by e-mail or electronic transmission on the following party(ies) whose email address(es) is listed below, in accordance with Code of Civil Procedure § 1010.6, and based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Attorney General Xavier Becerra
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 18, 2019, at Oakland, California.

Celestine Seals