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CITY OF DIAMOND BAR  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SACRAMENTO

12 CITY OF DIAMOND BAR, a municipal  
13 corporation

14 Petitioner,

15 v.

16 OVERSIGHT BOARD OF THE SUCCESSOR  
17 AGENCY TO THE INDUSTRY URBAN-  
18 DEVELOPMENT AGENCY; SUCCESSOR  
19 AGENCY TO THE INDUSTRY URBAN-  
20 DEVELOPMENT AGENCY; BOARD OF  
21 DIRECTORS OF THE SUCCESSOR  
22 AGENCY TO THE INDUSTRY URBAN-  
DEVELOPMENT AGENCY; CALIFORNIA  
DEPARTMENT OF FINANCE, a department  
of the State of California; MICHAEL COHEN,  
an individual in his official capacity as Director  
of the California Department of Finance; and  
DOES 1 through 50, inclusive,

23 Respondents,

24 CITY OF INDUSTRY, a municipal corporation,  
acting by and through its city council,  
25 commissions, committees, staff, agencies,  
26 departments and officials; CITY OF  
INDUSTRY CITY COUNCIL; and DOES 51  
through 100, inclusive,

27 Real Parties in Interest.  
28

**FILED/ENDORSED**

JAN - 2 2018

By: M. Rubalcaba  
Deputy Clerk

*Exempt from fees pursuant to  
Government Code § 6103*

Case No.: 34-2017-80002718-CU-WM-  
GDS

Related Case No.: 34-2017-80002719-CU-  
WM-GDS (Chino Hills  
v. Oversight Board)

Assigned to the Honorable Michael P.  
Kenny (Department 31)

**FIRST AMENDED VERIFIED  
PETITION FOR PEREMPTORY  
WRIT OF MANDATE**

(Cal. Civ. Proc. Code §§ 1094.5 and 1085)

[Petition filed on October 20, 2017]

**COPY**

1 In support of its First Amended Verified Petition for Peremptory Writ of Mandate  
2 (the "Petition"), petitioner City of Diamond Bar ("Diamond Bar") alleges as follows:

3  
4 **INTRODUCTION**

5  
6 1. This action concerns the "Tres Hermanos" property, which includes  
7 approximately 2,445 acres of largely undeveloped land that has historically been used for  
8 ranching, farming and cattle grazing. The Industry Urban-Development Agency (the "Industry  
9 Redevelopment Agency"), which was a redevelopment agency established in the City of Industry  
10 ("Industry"), acquired Tres Hermanos in 1978, but the property was transferred in 2012 to the  
11 Successor Agency to the Industry Urban-Development Agency (the "Successor Agency") after the  
12 Industry Redevelopment Agency, and all other redevelopment agencies in California, were  
13 dissolved in 2011.

14  
15 2. Approximately 695 acres of Tres Hermanos are located within the  
16 boundaries of Diamond Bar and the County of Los Angeles ("LA County"), while the other  
17 approximately 1,750 acres are located within the boundaries of the City of Chino Hills ("Chino  
18 Hills") and the County of San Bernardino ("SB County"). Therefore, Diamond Bar and Chino  
19 Hills are among the "taxing entities" that are entitled to receive portions the real property taxes  
20 assessed for Tres Hermanos, as well as portions of the proceeds from the sale of Tres Hermanos  
21 by the Successor Agency.

22  
23 3. In 2014, the California Department of Finance ("DOF") approved a Long-  
24 Range Property Management Plan (the "LRPMP") prepared by the Successor Agency that governs  
25 the Successor Agency's disposal of the real property previously owned by the Industry  
26 Redevelopment Agency. The LRPMP states that the "current estimated value" of Tres Hermanos  
27 was approximately **\$85-122 million** as of April 2013.



1 Successor Agency Board approved a revised purchase agreement for the sale of Tres Hermanos  
2 with a purchase price of \$100 million.

3  
4 8. The Successor Agency Board's approval of the \$100 million purchase  
5 agreement was scheduled for review and approval by the Oversight Board at its August 24, 2017  
6 meeting. However, the Oversight Board never took action on that agreement. Instead,  
7 Mr. Philips, who is also a member of the Oversight Board, made a motion, following public  
8 testimony, to approve a purchase and sale agreement with a **\$41.65 million** purchase price, subject  
9 to the Oversight Board's imposition of a restrictive covenant that limited the use of Tres Hermanos  
10 to "open space, **public use** or preservation." The Oversight Board narrowly approved the motion  
11 by a 4-3 vote. The Oversight Board did not provide any opportunity to the public to comment on  
12 this sudden turn of events.

13  
14 9. This was little more than a shell game by Industry, the Successor Agency  
15 and the Oversight Board. The \$41.65 million appraisal assumed that Tres Hermanos would  
16 remain **open space** in perpetuity. The restrictive covenant, however, also allows "**public uses**."  
17 Therefore, the \$41.65 million appraisal does not support a sale that allows public uses. The  
18 restrictive covenant is also illusory because, under current State law, a city can only acquire real  
19 property outside its boundaries for public use, and Industry had offered \$100 million fully  
20 cognizant of that limitation.

21  
22 10. What is really going on here? The answer is that, for about two years,  
23 Industry has covertly been working with a developer and large teams of consultants and lawyers to  
24 develop a major solar facility on Tres Hermanos and, potentially, on adjacent tracts of land that it  
25 owns. In May 2016, it purported to approve a master ground lease with San Gabriel Valley Water  
26 and Power, LLC ("San Gabriel WP") for the development of a **photovoltaic solar project with an**  
27 **aggregate of 450 megawatts of rated annual output** on Tres Hermanos and adjacent land

1 parcels, from which Industry would receive significant financial benefit. Diamond Bar is  
2 informed and believes, and thereon alleges, that neither the master ground lease nor any of the four  
3 lease amendments thereto (collectively, the "Master Lease") were approved by the City Council in  
4 open session at a public meeting. The Master Lease requires Industry to reimburse San Gabriel  
5 WP for up to \$20 million in expenses relating to the development of the solar project.

6  
7 11. Around the time the original master ground lease was executed, San Gabriel  
8 WP and Industry put their consultant/legal teams to work to develop the solar project. Diamond  
9 Bar is informed and believes, and thereon alleges, that based on documents Diamond Bar and  
10 Chino Hills received in response to Public Records Act requests, (a) Industry has received  
11 invoices from San Gabriel WP that, at a minimum, total almost **\$9 million** for work performed by  
12 its consultant/legal team from April 2016-April 2017 with respect to the solar project, and that  
13 those aggregate reimbursable expenses have increased considerably since April 2017, and (b)  
14 Industry has paid its own consultant/legal team a minimum of almost **\$4 million**. Very recently,  
15 at a City Council meeting, Newell Ruggles, one of the Industry Councilmembers, stated in  
16 frustration that Industry's total expenditures were **\$20 million** and that the City Council was  
17 "being kept in the dark by city staff" and "hadn't seen anything" relating to the solar project.

18  
19 12. Industry and the Successor Agency representatives have done all they  
20 possibly can to conceal the existence of the solar project and all documentation relating to it. To  
21 date, notwithstanding repeated Public Records Act requests for all documents relating to the solar  
22 project, neither Diamond Bar nor Chino Hills has received any of the plans, studies or  
23 environmental documents for which Industry has already paid millions of dollars. Industry  
24 representatives, in particular Mr. Philips and Mr. Casso, have repeatedly and disingenuously stated  
25 at public meetings that, despite the execution of the Master Lease and the enormous expenditures  
26 over an extended period (which they almost never publicly acknowledge), Industry still has no

1 development plan or documentation whatsoever that it can share with the public, or apparently  
2 with some members of its own City Council, regarding the planned solar project.

3  
4 13. Against this covert background, Mr. Philips proposed the \$41.65 million  
5 purchase price, subject to the illusory "public use" restriction, so that Industry could attempt to  
6 characterize the planned solar project as a public use and reap significantly greater profit. The  
7 restrictive covenant would allow Industry to artificially and significantly reduce the purchase price  
8 by almost \$60 million, based on a "hypothetical" **open space** use, even as it moves aggressively  
9 forward with the development of the major solar facility on Tres Hermanos that might well justify  
10 a purchase price in excess of \$100 million. This scheme would effectively transfer approximately  
11 \$60 million from Diamond Bar, Chino Hills and the other taxing entities, which are entitled to  
12 share the proceeds from the sale, to Industry (which is not a taxing entity because Tres Hermanos  
13 is located outside of Industry's boundaries). It would also significantly reduce the real property  
14 taxes that would otherwise be assessed for Tres Hermanos following the sale, to the further  
15 detriment of the taxing entities. Nonetheless, four members of the Oversight Board went along  
16 with it, and in so doing the Oversight Board breached its statutory fiduciary responsibility to  
17 Diamond Bar and the other taxing entities.

18  
19 14. And what does Industry intend to do with its \$60 million windfall? On this  
20 subject, Mr. Philips was quite candid at the Oversight Board meeting on August 24: "Frankly,  
21 there's more cash to put into the [solar] project." He then characterized this as a primary  
22 "justification" for the \$41.65 million purchase price.

23  
24 15. That is not a lawful justification, and the Oversight Board's approval of the  
25 \$41.65 million purchase agreement and restrictive covenant violated numerous provisions of the  
26 Redevelopment Dissolution Act (Sections 34179-34191.6 of the California Health & Safety Code  
27 (the "HSC")). Those violations, as more particularly pled below, include the following:

1 a. The approval violated the terms of the LRPMP because (i) the  
2 \$41.65 million purchase price is an unreasonable price that does not maximize value, (ii) Industry  
3 failed to comply with other "basic criteria" in the LRPMP, including the submission of a  
4 development plan, development schedule, anticipated job creation or any other information  
5 regarding Industry's intended use of Tres Hermanos, and (iii) the Successor Agency did not market  
6 the property and select a buyer in accordance with the LRPMP's requirements.

7  
8 b. The Oversight Board had no legal authority to propose and approve  
9 a purchase agreement that was not proposed by the Successor Agency.

10  
11 c. The Oversight Board failed to provide adequate notice regarding its  
12 consideration of either the \$100 million purchase agreement proposed by the Successor Agency or  
13 the \$41.6 million purchase agreement and restrictive covenant proposed and approved by the  
14 Oversight Board.

15  
16 d. The Oversight Board's approval breached its fiduciary duty to  
17 Diamond Bar, Chino Hills and the other taxing entities.

18  
19 e. The Oversight Board's approval of the restrictive covenant  
20 constituted the unlawful creation of a new enforceable obligation.

21  
22 f. The Oversight Board unlawfully transferred to Industry  
23 \$58.35 million of revenue that the Successor Agency should have derived from the sale for the  
24 benefit of Diamond Bar, Chino Hills and the other taxing entities.

25  
26 16. On September 28, 2017, the Successor Agency Board (as well as the City  
27 Council) purported to "ratify" the Oversight Board's actions at the August 24 Meeting. Therefore,

1 the Successor Agency Board's approval is legally defective for all of the reasons set forth in the  
2 preceding paragraph.

3  
4 **GENERAL ALLEGATIONS**  
5

6 17. Diamond Bar is, and at all relevant times herein was, a general law city duly  
7 incorporated under the laws of the State of California. Diamond Bar lies within LA County,  
8 exercising its authority through its City Council, commissions, committees, staff, agencies,  
9 departments and officials.

10  
11 18. Diamond Bar is informed and believes, and thereon alleges, that respondent  
12 Successor Agency is, and at all times relevant herein was, a public body established pursuant to  
13 HSC Section 34179 to administer the dissolution and winding down of the former Industry  
14 Redevelopment Agency, including the disposal of its assets and properties.

15  
16 19. Diamond Bar is informed and believes, and thereon alleges, that respondent  
17 Successor Agency Board is, and at all times relevant herein was, acting as the governing board for  
18 the Successor Agency to govern its affairs. The Industry City Council designated itself to act as  
19 the Successor Agency Board.

20  
21 20. Diamond Bar is informed and believes, and thereon alleges, that respondent  
22 Oversight Board is, and at all times relevant herein was, a public body established pursuant to  
23 HSC Section 34173 to oversee the Successor Agency's dissolution and winding down of the  
24 former Industry Redevelopment Agency, including the oversight and approval of Successor  
25 Agency's disposal of the assets and properties of the former Industry Redevelopment Agency.

1                   21.     Diamond Bar is informed and believes, and thereon alleges, that respondent  
2 California Department of Finance (previously defined as "DOF") is, and at all times relevant  
3 herein was, a department of the State of California responsible for implementation of the  
4 Redevelopment Dissolution Act and overseeing the winding down of the successor agencies,  
5 including (a) the approval of long-range property management plans and (b) determining whether  
6 to review certain actions taken by oversight boards. Diamond Bar is further informed and  
7 believes, and thereon alleges, that respondent Michael Cohen ("Cohen") is, and at all times  
8 relevant herein was, the Director of DOF. Cohen is named in his official capacity.

9  
10                   22.     Diamond Bar is informed and believes, and thereon alleges, that real party  
11 in interest City of Industry (previously defined as "Industry") is, and at all times relevant herein  
12 was, a municipal corporation duly chartered under the California Constitution and the laws of the  
13 State of California. Industry lies within LA County and exercises its authority by and through its  
14 City Council, commissions, committees, staff, agencies, departments and officials. Diamond Bar  
15 is informed and believes, and thereon alleges, that Industry is an anomaly among California cities.  
16 According to Industry's website, it has a population of 219 people and 67,000 jobs, and a general  
17 fund balance of approximately \$646 million. By comparison, Diamond Bar, which is considered  
18 to have a healthy general fund balance for a city of its size, has a population of approximately  
19 57,000 and a general fund balance of approximately \$26 million.

20  
21                   23.     Diamond Bar is informed and believes, and thereon alleges, that real party  
22 in interest Industry City Council is, and at all times relevant herein was, the elected governing  
23 body of Industry.

24  
25                   24.     Diamond Bar is ignorant of the true names and capacities, whether  
26 individual, corporate, associate or otherwise, of respondent Does 1 through 50, inclusive, and real  
27 party in interest Does 51 through 100, inclusive. Such fictitious respondents and real parties in  
28

1 interest are sued pursuant to the provisions of California Code of Civil Procedure Section 474.  
2 Diamond Bar is informed and believes, and thereon alleges, that each fictitious respondent and  
3 real party in interest was in some way responsible for or participated in or contributed to the  
4 matters and things of which Diamond Bar complains herein, and in some fashion is legally  
5 responsible therefor. When the exact nature and identification of such fictitious respondents and  
6 real parties in interests' responsibility for, participation in and contribution to the matters herein  
7 alleged is ascertained by Diamond Bar, it will seek to amend this Petition and all proceedings  
8 herein to set forth the same.

9  
10 **TRES HERMANOS**  
11

12 25. On February 3, 1978, Industry acquired Tres Hermanos for \$12.1 million.  
13 The property consists of approximately 2,445 acres of largely undeveloped land. In November  
14 1978, Industry transferred ownership of Tres Hermanos to the Industry Redevelopment Agency.  
15

16 26. Approximately 695 acres of Tres Hermanos are located within the  
17 boundaries of Diamond Bar and, therefore, within the boundaries of LA County, and include  
18 Assessor Parcel Nos. 8701-021-271, 8701-022-270 and 8701-022-273. The other approximately  
19 1,750 acres are located within the boundaries of Chino Hills and, therefore, within the boundaries  
20 of SB County, and include Assessor Parcel Nos. 1000-011-019, 1000-011-020, 1000-011-021,  
21 1000-11-022, 1000-021-013, 1000-021-014, 1000-031-014 and 1000-031-15. The current general  
22 plan land use and zoning designations established for Tres Hermanos by Diamond Bar and Chino  
23 Hills allow limited residential development and open space uses.

24  
25 27. For almost 40 years, Tres Hermanos has remained primarily open space and  
26 the Industry Redevelopment Agency and its successor in interest, the Successor Agency, have  
27 leased Tres Hermanos to tenants for cattle grazing, one of its historic uses.

1           28.     In the 1970s and 1980s, Industry and the Industry Redevelopment Agency  
2 caused the preparation of a variety of preliminary studies for the development of a modest  
3 reservoir/dam or a residential community on Tres Hermanos. Later, in July 2000, they began to  
4 explore a potential large-scale reservoir/dam on a larger parcel of land that included Tres  
5 Hermanos and approximately 2,400 acres of the adjacent Firestone Scout Reservation (the "2,400-  
6 Acre Firestone Property") that the City subsequently acquired from the Boy Scouts of America,  
7 Los Angeles Area Council (the "Boy Scouts"), in June 2001 and still owns.

8  
9     **THE SUCCESSOR AGENCY, THE LONG-RANGE PROPERTY MANAGEMENT PLAN**  
10                                   **AND THE OVERSIGHT BOARD**

11  
12           29.     Pursuant to Assembly Bill X1 26 (as amended, the "Redevelopment  
13 Dissolution Act"), which became effective in June 2011, the Industry Redevelopment Agency and  
14 all other redevelopment agencies in California were dissolved. The Redevelopment Dissolution  
15 Act added HSC Sections 34179-34191.6, which, among other things, (a) provide for the creation  
16 of successor agencies to succeed to the authority, rights, powers, duties and obligation of the  
17 former redevelopment agencies, and set forth procedures, requirements and standards regarding  
18 the governance of successor agencies, and (b) require the establishment of an oversight board with  
19 respect to each successor agency to oversee the activities of the successor agency, and set forth  
20 procedures, requirements and standards for the governance of oversight boards.

21  
22           30.     In September 2011, the Successor Agency was established as the successor  
23 agency to the Industry Redevelopment Agency. In February 2012, the Industry City Council,  
24 acting as the governing board for the Successor Agency, established rules and regulations for the  
25 governance and operation of the Successor Agency and, pursuant to that resolution, provided that  
26 the Successor Agency would be governed by a Board of Directors consisting of the members of  
27 the City Council (previously defined as the "Successor Agency Board").



1                   b.       Tres Hermanos is one of the "properties to be marketed through  
2 direct contact with interested parties and through the use of brokers. Proposals would be evaluated  
3 based upon acceptable development plans."

4  
5                   c.       As one of the properties made available for sale, Tres Hermanos  
6 would have to meet **the basic criteria of agreement to pay a**  
7 **reasonable price based on a current appraisal and submission of a**  
8 **Development Plan and Schedule acceptable to the City.** The  
9 properties would be distributed to brokers and interested parties.  
10 Competing proposals would be evaluated based upon the following  
11 criteria to determine which prospective buyer to work with on  
12 finalizing a project to forward to the Successor Agency and Oversight  
13 Board for approval.

- 14                   – Agreement to pay a reasonable price based upon a current appraisal
- 15                   – A development Plan and schedule through construction acceptable to  
16                   the City
- 17                   – An estimate of the assessed value of the project
- 18                   – Identification of the end user, the job creation and if the user is a local  
19                   company
- 20                   – Identification of the type of intended tenants if the project is  
21                   speculative. (Emphasis added.)

22                   d.       Successor Agency "staff recommends the property be offered for  
23 sale to the City and if the City has no interest in acquiring the property would be made generally  
24 available for sale."

25                   36.       The Successor Agency submitted that LRPMP to DOF for approval.  
26 However, DOF required revisions to the LRPMP. On February 6, 2014, the Oversight Board  
27 approved a revised version of the LRPMP prepared by the Successor Agency. However, none of  
28 those revisions related to Tres Hermanos.

                  37.       In a February 21, 2014 letter (the "2/21/14 DOF Approval Letter") from  
Justyn Howard of DOF to Kevin Radecki, then the Industry City Manager, DOF approved the  
revised LRPMP. The letter stated that the LRPMP governs the disposition of all real property

1 assets of the Industry Redevelopment Agency. It further stated that "[a]ny subsequent [Oversight  
2 Board] actions addressing the Agency's implementation of the approved LRPMP should be  
3 submitted to [DOF] for approval."  
4

5 38. On August 27, 2014, the Oversight Board approved a further revised  
6 version of the LRPMP prepared by the Successor Agency, but none of the revisions related to Tres  
7 Hermanos.  
8

9 39. In a November 12, 2014 letter from Mr. Howard of DOF to Kevin Radecki,  
10 DOF approved the further revised LRPMP.  
11

#### 12 **THE POTENTIAL RESIDENTIAL DEVELOPMENT OF TRES HERMANOS**

13

14 40. In late 2014, the Successor Agency began to receive expressions of interest  
15 and offers to purchase Tres Hermanos for residential development. In February 2015, Successor  
16 Agency staff recommended that the Successor Agency retain a broker to assist in the sale of Tres  
17 Hermanos. In a May 5, 2015 memorandum from Kevin Radecki, who also then served as the  
18 Executive Director of the Successor Agency, to the Oversight Board, he recommended that the  
19 Oversight Board approve The Hoffman Company ("Hoffman") as the Successor Agency's broker.  
20 This recommendation followed Hoffman's submittal of a proposal letter, dated April 6, 2015, in  
21 which it stated that the "as-is" sale of Tres Hermanos would be in the \$100 million plus range,  
22 while the sales price if the property was entitled for residential development would be in the \$250  
23 to \$400 million range "or more depending on site constraints . . . ." On June 2, 2015, the  
24 Oversight Board approved the retention of Hoffman as the Successor Agency's exclusive broker  
25 for the sale of Tres Hermanos. Notwithstanding this Oversight Board approval and the Successor  
26 Agency's delivery of the brokerage agreement to DOF, the Successor Agency never executed it  
27 and, at least until June 7, 2016, did not explain to the Oversight Board why it failed to do so.  
28



1 counsel for the Successor Agency (and also the Industry City Attorney), indicated that he and Mr.  
2 Philips (who was by then both Industry City Manager and a member of the Oversight Board) had  
3 been directed by the City Council to "look at different options with regard to Tres Hermanos," and  
4 that they hoped to reach a conclusion within 45-60 days. Santos Kreimann, the Chairman of the  
5 Oversight Board, requested that the City and the Successor Agency at least acknowledge receipt of  
6 GH America's offer, which Mr. Casso said they would do. However, in a subsequent October 22,  
7 2015 email, Mr. Gordon advised Ms. Schlichting that GH America had still not received any such  
8 acknowledgment. GH did not receive that acknowledgment until January 14, 2016.

9  
10 **INDUSTRY DECIDES IT WANTS TO PURCHASE TRES HERMANOS**

11  
12 45. Meanwhile, as Mr. Casso stated on October 1, 2015, the Successor Agency  
13 and Industry were indeed discussing their options regarding the sale of Tres Hermanos, but they  
14 were doing so behind closed doors. Item 11.1 on the Agenda for the September 24, 2015 Industry  
15 City Council meeting was a "closed session" discussion, titled "Conference with real estate  
16 negotiators pursuant to Government Code Section 54956.8," ostensibly regarding the sale of Tres  
17 Hermanos. The Agenda Item only referenced the Assessor Parcel Numbers for the property, with  
18 no reference to "Tres Hermanos," and therefore effectively concealed from the public that the  
19 acquisition of Tres Hermanos was the subject of the private discussion. The meeting minutes for  
20 the September 24 meeting did not include any discussion of Agenda Item 11.1. A few days prior  
21 to that meeting, on September 21, Oversight Board Chairman Kreimann emailed Ms. Schlichting  
22 regarding his understanding that Item 11.1 related to Tres Hermanos and requested notification of  
23 any action items reported out of the closed session discussion.

24  
25 46. A few days after that City Council meeting, on September 30,  
26 Ms. Schlichting emailed John Laurain to "let me know the timing and cost to prepare an appraisal  
27 for" Tres Hermanos. She also wanted to know the status of an appraisal that Mr. Laurain was  
28

1 already preparing for Industry with respect to the approximate 800 acres of the adjacent Firestone  
2 Scout Reservation (the "800-Acre Firestone Property") that was then still owned by the Boy  
3 Scouts. On October 5, Mr. Laurain submitted a written proposal to the Successor Agency to  
4 prepare an appraisal for Tres Hermanos. The proposal states in part that "we will need to review  
5 any available studies pertaining to the subject site, in order to determine if the highest and best use  
6 of the site is as existing open space, and/or if there are any other viable private uses of the subject  
7 property . . . ." On October 22, 2015, Mr. Philips authorized the preparation of the appraisal.  
8

9           47. Diamond Bar is informed and believes, and thereon alleges, that on October  
10 8, 2015, the Industry City Council approved a contract with Cordoba Corporation to provide  
11 unspecified real estate advisory services relating in part to the development of Tres Hermanos.  
12

13           48. Finally, at the Oversight Board meeting on January 27, 2016, Mr. Casso,  
14 the Industry City Attorney and the Successor Agency's counsel, publicly disclosed to the  
15 Oversight Board that the Industry City Council had directed him and Mr. Philips to begin the  
16 process for Industry to acquire Tres Hermanos and other Successor Agency properties that were  
17 not currently in escrow or for which no agreement had been entered into with a developer.  
18 Chairman Kreimann "asked that Jim Rabe of Keyser Marston continue to be used as a third-party  
19 financial advisor to confirm that all transactions are at fair market value."  
20

21           49. A few days later, on February 2, 2016, Mr. Laurain delivered to Mr. Casso  
22 an Appraisal Report for Tres Hermanos (the "Laurain Appraisal"). Contrary to appraisal practice,  
23 the Laurain Appraisal did not determine the fair market value of the property based on its highest  
24 and best use. Instead, the appraisal was based on a "hypothetical condition" that the appraisal  
25 acknowledged was "contrary to known fact." The hypothetical condition stated in the Laurain  
26 Appraisal was as follows:

27                   While the subject parcels are zoned for agricultural use or low  
28                   density single-family residential use, per the City of industry, it is

1 understood that the subject property will be encumbered with the  
2 covenant that will restrict the use of the subject land as **open space,**  
3 **public use or preservation use.** Said covenant will "run with the  
4 land," thereby making the subject property an effective open space  
5 land parcel. The subject property, therefore, has been appraised as  
6 open space land (emphasis added).

7 50. Based on this hypothetical condition, the Laurain Appraisal determined that  
8 the value of Tres Hermanos as open space was \$41.65 million. The appraisal did not determine  
9 the value of the property based on any other "public use," notwithstanding that the hypothetical  
10 condition would allow other public uses.

11 51. On February 23, 2016, shortly after the Successor Agency received the  
12 Laurain Appraisal, the Successor Agency Board met in closed session to discuss Tres Hermanos  
13 pursuant to Agenda Item 6.5, which stated "Conference with real property negotiators pursuant to  
14 Government Code Section 54956.8." The minutes for this meeting state that, with respect to  
15 Item 6.5, "the Board took no reportable action."

16 52. At the March 11, 2016 Oversight Board meeting, Mr. Gordon, the attorney  
17 for GH America, again spoke during the public comment period regarding his client's offer to  
18 purchase Tres Hermanos for \$101 million. He was asked to provide documentation to the  
19 Oversight Board relating to that offer.

20  
21 **THE MASTER LEASE AND INDUSTRY'S COVERT PLAN TO DEVELOP**  
22 **A MAJOR SOLAR PROJECT ON TRES HERMANOS**  
23

24 53. Diamond Bar is informed and believes, and thereon alleges, that prior to  
25 May 17, 2016, Industry was negotiating the terms of a master ground lease (the "Original Master  
26 Lease") with San Gabriel Valley Water and Power, LLC (previously defined as "San Gabriel  
27

1 WP"), but that neither the existence nor substance of those negotiations was disclosed to the public  
2 at any meeting of the Industry City Council or in any agenda or minutes for any such meeting.

3  
4 54. On May 9, 2016, San Gabriel WP executed the Original Master Lease, as  
5 tenant, and on May 17, 2016, Industry executed the Original Master Lease, as landlord. Diamond  
6 Bar is informed and believes, and thereon alleges, that (a) Industry did not provide any public  
7 notice of the City Council's intention to approve the Original Master Lease, (b) the public had no  
8 opportunity to address the City Council prior to its approval of the Original Master Lease, (c) the  
9 City Council did not approve the Original Master Lease in open session at a public meeting and  
10 (d) Industry did not publicly disclose the existence of the Original Master Lease for approximately  
11 one year after it was approved, and then only in response to Diamond Bar's Brown Act demand  
12 letter and Chino Hills' Public Records Act requests.

13  
14 55. Pursuant to the Original Master Lease, Industry purported to lease three  
15 parcels of land with an aggregate size of approximately 5,500 acres, including (a) the 2,400-Acre  
16 Firestone Property, which it already owned, (b) Tres Hermanos, which it did not own and includes  
17 approximately 2,445 acres of land, and (c) the 800-Acre Firestone Property, which it did not own  
18 at time (the "Total Site"). Recital A states that the legal description of the Total Site is attached as  
19 Exhibit "A", but Diamond Bar is informed and believes, and thereon alleges, that the legal  
20 description was omitted from the executed Original Master Lease.

21  
22 56. The Original Master Lease includes the following provisions:

23  
24 a. Sections 2.1 and 2.2 provide that the term is 25 years and San  
25 Gabriel WP has the right to sublease portions of the Total Site to subtenants for terms of up to 65  
26 years. Section 3.1 provides that the annual rent is \$1.00.



1 Industry's right to terminate the Master Lease expires upon completion of **one or more**  
2 **photovoltaic projects that produce an aggregate of at least 50 megawatts per year.**

3  
4 c. Article XXI provides that the parties agree to execute a  
5 memorandum of the Original Master Lease that would be recorded against the Total Site at San  
6 Gabriel WP's election. Diamond Bar is informed and believes, and thereon, alleges, that the  
7 memorandum was never recorded.

8  
9 d. Section 24.2 provides that, with respect to all **photovoltaic solar**  
10 **projects** proposed for a portion of the Total Site, San Gabriel WP will submit a "request for  
11 Industry to participate therein and contribute financially thereto" and describes the materials and  
12 information that must be submitted to Industry for its review.

13  
14 e. Section 24.3 provides that Industry may approve or disapprove any  
15 such request in its sole discretion. If Industry approves a request, it must (i) contribute 50% of the  
16 required capital expenditures (net of indebtedness), (ii) construct and pay for required  
17 infrastructure and (iii) pay for 50% of any construction overruns (the "Industry Contribution"). In  
18 return, Industry will receive the greater of (iv) the fair market rental value of the applicable portion  
19 of the Total Site plus 12% of the net operating income for the project, (v) 6% annual return on the  
20 Industry Contribution and (vi) 50% of (A) the net operating income for the project plus (B) any  
21 net extraordinary gains from the sale or refinancing of the solar project.

22  
23 f. Section 25.1 provides that Industry will reimburse San Gabriel WP  
24 for its **pre-development costs for solar projects** in the maximum aggregate amount of  
25 \$5 million.

26  
27  
28





1 Hills in response to Public Records Act requests and (e) Industry did not publicly disclose copies  
2 of any of the Master Lease Amendments until on or about October 10, 2017.

3  
4 63. Shortly after the execution of the Original Master Lease, Mr. Gordon spoke  
5 during the public comment period at the June 7, 2016 Oversight Board meeting. He reiterated  
6 GH America's offer to purchase Tres Hermanos. Mr. Little of South Coast Communities then  
7 discussed the benefits of the contemplated residential development. Mr. Gordon requested that the  
8 Oversight Board adopt a resolution to enter into a purchase and sale agreement with GH America  
9 on the terms proposed by GH America. Chairman Kreimann responded that the Oversight Board  
10 could not do that because no such agreement had been negotiated with the Successor Agency.  
11 Sean Varner, the Oversight Board's counsel, concurred. A discussion then ensued regarding the  
12 City's interest in acquiring Tres Hermanos. Mr. Casso, the Industry City Attorney and Successor  
13 Agency counsel, responded that he would advise the Industry City Council of the Oversight  
14 Board's desire to know whether Industry wanted to purchase Tres Hermanos and would report  
15 back on August 31. Mr. Philips, Industry's City Manager and one of the Oversight Board  
16 members, stated he would go back to the City Council and Successor Agency for direction, but  
17 claimed that Industry had the right to purchase Tres Hermanos over any other bid, apparently  
18 regardless of the purchase price offered by Industry. Diamond Bar is informed and believes, and  
19 thereon alleges that, despite the fact the Original Master Lease had been executed just three weeks  
20 earlier, neither Mr. Casso nor Mr. Philips disclosed (a) the existence of the Original Master Lease  
21 to the Oversight Board or (b) that Industry had already committed to allow the development of  
22 solar projects on Tres Hermanos after it acquired the property.

23  
24 64. About a month later, the Industry City Council again met in closed session  
25 at its August 11, 2016 meeting to discuss Tres Hermanos pursuant to Agenda Item 10.2, which  
26 was titled "Conference with real property negotiators pursuant to Government Code Section  
27 54956.8." It stated that the "City Negotiators" were Mr. Philips, the City Manager, and Mr. Casso,

1 the City Attorney, and that the "Negotiating Parties" for the seller were Mr. Philips, the Executive  
2 Director of the Successor Agency, and Mr. Casso, the Successor Agency's counsel. In other  
3 words, Mr. Philips and Mr. Casso represented both the buyer and the seller.

4  
5 **INDUSTRY'S FIRST ATTEMPT TO PURCHASE TRES HERMANOS**  
6 **AT AN EXTREMELY LOW PRICE AND WITHOUT CEQA REVIEW**  
7

8 65. At its September 8, 2016 meeting, the Industry City Council, under  
9 Agenda Item 7.2, considered the approval of a purchase and sale agreement (the "Tres Hermanos  
10 PSA"), pursuant to which Industry would purchase Tres Hermanos from the Successor Agency for  
11 an unspecified purpose. The stated purchase price was \$41.65 million, consistent with the Laurain  
12 Appraisal and its hypothetical limitation to open space use. However, the required form of grant  
13 deed attached as Exhibit C to the Tres Hermanos PSA did not include any restriction regarding the  
14 permitted uses on the property.

15  
16 66. Attached to the Agenda was a September 1, 2016 memorandum from Mr.  
17 Casso, as City Attorney, in which he stated that (a) the Redevelopment Dissolution Act required  
18 the Successor Agency to dispose of its property "in a manner that maximizes value," (b) "[t]he  
19 City will purchase the Property from the Agency for the appraised value as open space of  
20 \$41.650,000" and (c) Industry "proposes to use the Property for open space, public facility use or  
21 preservation use . . . ." Mr. Casso did not disclose the existence of the Original Master Lease,  
22 which had been executed more than three months earlier.



1 would not "maximize" the value of Tres Hermanos, which the LRPMP states had a fair market  
2 value of approximately \$85-122 million in April 2103 and for which GH America repeatedly and  
3 credibly offered the sum of \$101 million, (c) the 9/8/16 City Council PSA Resolution relied on the  
4 open space assumption in the Laurain Appraisal, which was false because Industry had already  
5 committed to allow the development of solar facilities on Tres Hermanos under the Original  
6 Master Lease for its financial benefit, and (d) the resolution did not disclose that Industry had  
7 committed to lease Tres Hermanos for the development of a major solar facility.

8  
9           69. Diamond Bar is informed and believes, and thereon alleges, that the City  
10 Council unanimously adopted the 9/8/16 City Council PSA Resolution.

11  
12           70. At its September 8, 2016 meeting, which immediately preceded the City  
13 Council meeting, the Successor Agency Board (the members of which are the Industry City  
14 Councilmembers), under Agenda Item 5.3, considered the approval of the Tres Hermanos PSA.

15  
16           71. Included in the Agenda package was a September 8, 2016 memorandum  
17 from Mr. Casso, as Successor Agency counsel, in which he stated that (a) the Redevelopment  
18 Dissolution Act required the Successor Agency to dispose of its property "in a manner that  
19 maximizes value," (b) "[t]he City will purchase the Property from the Agency for the appraised  
20 value as open space of \$41,650,000," (c) Industry "proposes to use the Property for open space,  
21 public facility use or preservation use" and (d) the "proposed purchase/sale . . . awaits Oversight  
22 Board and Department of Finance approval, in compliance with California law."

23  
24           72. Also attached to the Agenda was proposed Resolution No. SA 2016-15 (the  
25 "9/8/16 Successor Agency PSA Resolution") to approve the sale of Tres Hermanos and make the  
26 requisite CEQA findings. That resolution includes all of the statements described in paragraph 67,

1 above, which statements were inaccurate and extremely misleading for the reasons set forth in  
2 paragraph 68, above.

3  
4 73. Diamond Bar is informed and believes, and thereon alleges, that the  
5 Successor Agency Board unanimously adopted the 9/8/16 Successor Agency PSA Resolution.

6  
7 74. Shortly after the Industry City Council and Successor Agency Board took  
8 these actions, LA County objected to the proposed sale on multiple grounds. In a September 29,  
9 2016 letter from David Howard, Assistant Chief Executive Officer for LA County, to the  
10 Oversight Board, he requested that the Oversight Board reject the Successor Agency's approval of  
11 the sale, and undertake an independent appraisal of Tres Hermanos, for the following reasons:

12  
13 a. The LRPMP lists the current value of the property at \$85-122  
14 million and GH America offered \$101 million for the property, an offer that apparently was never  
15 forwarded to the Oversight Board. Therefore, the proposed \$41.65 million purchase price would  
16 not maximize the value of the property, which the Successor Agency holds in trust on behalf of all  
17 of the taxing entities.

18  
19 b. The City's bid of \$41.65 million was based on the Laurain  
20 Appraisal, which was flawed because it was based on a hypothetical assumption that Tres  
21 Hermanos was encumbered with a covenant that restricts its use to open space, when in reality no  
22 such covenant existed.

23  
24 **THE OVERSIGHT BOARD REJECTS THE \$41.65 MILLION SALE**

25  
26 75. Diamond Bar is informed and believes, and thereon alleges, that, at its  
27 meeting on September 29, 2016, the Oversight Board, by a 5-2 vote, rejected the \$41.65 million

1 purchase price and requested that the Successor Agency obtain a new appraisal for Tres Hermanos  
2 that did not include a hypothetical restriction on the use of the land and instead was based on the  
3 current land use and zoning designations for the property in the Diamond Bar and Chino Hills  
4 general plans and zoning ordinances.

5  
6 76. Thereafter, the Successor Agency retained Larry Heglar to prepare a second  
7 appraisal for Tres Hermanos (the "Heglar Appraisal"), which he delivered to Mr. Casso on  
8 December 7, 2016. Unlike the Laurain Appraisal, the Heglar Appraisal did not include any  
9 hypothetical conditions and determined that the fair market value of the property in its "as-is"  
10 condition was \$100 million as of November 7, 2016, based on its highest and best use of limited  
11 residential development. This amount roughly matched GH America's \$101 million offer and  
12 matched Hoffman's as-is estimated value of at least \$100 million.

13  
14 77. On December 22, 2016, the Successor Agency Board again met in closed  
15 session to discuss Tres Hermanos pursuant to Agenda Item 11.1, which is titled "Conference with  
16 real property negotiators pursuant to Government Code Section 54956.8." It stated that the "City  
17 Negotiators" were Mr. Philips, City Manager, and Mr. Casso, City Attorney, and that the  
18 "Negotiating Parties" for the seller were Mr. Philips, Executive Director of the Successor Agency,  
19 and Mr. Casso, Successor Agency Legal Counsel.

20  
21 78. On or about January 6, 2017, Terracon Consultants, Inc. submitted a  
22 proposal to Blue Oak Energy to provide geotechnical services "for the **proposed solar farm**  
23 **known as the Tres Hermanos Solar Project**" (emphasis added). It set forth specific project  
24 details, stating that (a) the proposed solar array fields would occupy an area of approximately 900  
25 acres." (b) the project includes two substations that would be connected by transmission lines  
26 approximately 2.5 miles in length, (c) the project includes multiple basins along the base of the  
27 canyon (south of Grand Avenue) to retain stormwater runoff, (d) portions of the project site

1 (primarily between the valleys) would be located in liquefaction hazard potential zones, and (e)  
2 multiple slopes within the project site are mapped for earthquake-induced landslide hazards.  
3 Terracon's proposed compensation was \$99,000.  
4

5 79. On January 12, 2017, the Industry City Council again met in closed session  
6 to discuss Tres Hermanos pursuant to Agenda Item 11.4, which is titled "Conference with real  
7 property negotiators pursuant to Government Code Section 54956.8." It stated that the "City  
8 Negotiators" were Mr. Philips, City Manager, and Mr. Casso, City Attorney, and that the  
9 "Negotiating Parties" for the seller were Mr. Philips, Executive Director of the Successor Agency,  
10 and Mr. Casso, Successor Agency Legal Counsel.  
11

12 **THE INDUSTRY CITY COUNCIL AND SUCCESSOR AGENCY BOARD**

13 **APPROVE A \$100 MILLION SALE**

14  
15 80. As Industry's predevelopment work continued with respect to the proposed  
16 solar development, Industry and the Successor Agency decided to modify and re-approve the Tres  
17 Hermanos PSA. At a joint special meeting on January 13, 2017, under Agenda Item 5.1, the  
18 Industry City Council and the Successor Agency Board considered the approval of a revised Tres  
19 Hermanos PSA (the "\$100 Million Tres Hermanos PSA"). The principal revision was to increase  
20 the purchase price from \$41.65 million to \$100 million, based on the Heglar Appraisal.  
21

22 81. Attached to the Agenda were two memoranda dated January 13, 2017  
23 from Mr. Casso to the City Council and Successor Agency, respectively, in which he stated that  
24 (a) the Dissolution Act required the Successor Agency to dispose of its property "in a manner that  
25 maximizes value," (b) "[t]he City will purchase the Property from the Agency for the appraised  
26 value as open space of \$100,000,000," (c) Industry "proposes to use the Property for open space,  
27  
28

1 public facility use or preservation use" and (d) the "proposed purchase/sale . . . awaits Oversight  
2 Board and Department of Finance approval, in compliance with California law."

3  
4 82. Also attached to the Agenda was proposed Resolution No. CC 2017-01 (the  
5 "1/13/17 City Council PSA Resolution") regarding the acquisition of Tres Hermanos and the  
6 requisite CEQA findings. That resolution stated:

7  
8 a. Pursuant to the LRPMP, the Successor Agency "desires to sell the  
9 Property at its highest and best use, maximizing its value . . . ."

10  
11 b. "The purchase price is \$100,000,000, which represents an amount  
12 equal to or greater than the current fair market value of the Property, as determined by" the Heglar  
13 Appraisal.

14  
15 c. Industry's purchase of Tres Hermanos was exempt from  
16 environmental review under CEQA pursuant to the "common sense" exemption in Section  
17 15061(b)(3) of the State CEQA Guidelines. The primary reasons were still that "[t]he sale of the  
18 property does not involve any land use entitlements that will allow for development on the  
19 property" and "[a]ny future development at the property will be subject to additional  
20 environmental review and independent analysis as required by CEQA."

21  
22 83. The 1/13/17 City Council PSA Resolution did not include any operative  
23 statement that the City Council approved the \$100 Million Tres Hermanos PSA or disclose that  
24 Industry had committed to lease Tres Hermanos to San Gabriel WP for the development of a  
25 major solar facility.

1           84.     Diamond Bar is informed and believes, and thereon alleges, that the City  
2 Council unanimously adopted the 1/13/17 City Council PSA Resolution.

3  
4           85.     Also attached to the Agenda was proposed Resolution No. SA 2017-02  
5 (the "1/13/17 Successor Agency PSA Resolution") regarding the sale of Tres Hermanos and  
6 CEQA findings. That resolution states:

7  
8                   a.     Pursuant to the LRPMP, the Successor Agency "desires to sell the  
9 Property at its highest and best use, maximizing its value . . . ."

10  
11                   b.     "The purchase price is \$100,000,000, which represents an amount  
12 equal to or greater than the current fair market value of the Property, as determined by" the Heglar  
13 Appraisal.

14  
15                   c.     Industry's purchase of Tres Hermanos was exempt from  
16 environmental review under CEQA pursuant to the "common sense" exemption in Section  
17 15061(b)(3) of the State CEQA Guidelines.

18  
19           86.     The 1/13/17 Successor Agency PSA Resolution did not include any  
20 operative statement that the Successor Agency Board approved the \$100 Million Tres Hermanos  
21 PSA or disclose that Industry had committed to lease Tres Hermanos to San Gabriel WP for the  
22 development of a major solar facility, which the Successor Agency Board obviously knew.

23  
24           87.     Diamond Bar is informed and believes, and thereon alleges, that the  
25 Successor Agency Board unanimously adopted the 1/13/17 Successor Agency PSA Resolution.

26  
27  
28

1                   **ALL THE WHILE WORK ON THE SOLAR PROJECT CONTINUES IN EARNEST**

2  
3                   88.       Diamond Bar is informed and believes, and thereon alleges, that as of  
4 April 21, 2017, San Gabriel WP had assembled an extensive team of consultants and attorneys to  
5 develop solar projects on Tres Hermanos (the "San Gabriel Consultants") The "entitlement  
6 consultants" on the team at that point included:

- 7                   • Ambient Communities/Sustainable Water and Power (total environmental  
8 process, including negotiating subcontractor agreements, managing hiring of  
9 vendors, managing biological and construction scheduling and costs, and EIR  
10 completion)  
11                  • DAMG Advisors (project and budget financing, contract negotiation)  
12                  • JGM Design, Inc. (environmental surveying, civil engineering, planning  
13 services, construction management)  
14                  • ZGlobal Power Engineering (pre-application to SCE, preparation of  
15 interconnection requests to the CAISO and SCE)  
16                  • Blue Oak Energy (geotechnical engineering and exploration services, soil  
17 borings, field electrical resistivity, percolation testing, evaluation and suitability  
18 for slope stability, thermal resistivity testing, corrosion laboratory testing, pile  
19 installation, pile testing, pile extraction)  
20                  • Kimley Horn & Associates (base map preparation, preliminary civil  
21 engineering, conceptual site plan, preliminary energy modeling, surveying  
22 services, environmental and biological services, geotechnical analysis,  
23 entitlement and permitting coordination (including CEQA and FEMA), final  
24 engineering design, conduit design and layout, utility coordination  
25                  • Terracon Consultants, Inc. (geology, boring and soil analysis)  
26                  • Solar Engineering Consultants (specialize in solar energy and storage projects  
27 and technologies)  
28                  • Helix (preparation of draft EIR, coordination of biology studies to engineering  
layouts, study of visual impact and neighbors)  
                  • Kitchell (construction advisor)  
                  • Arcadis (technical, environmental, engineering and business advisory support  
services, including business case development, development management,  
delivery structure advice, operation and maintenance advice, statutory  
compliance advice and technical and environmental due diligence)  
                  • Randall MacDougall (direct and assess entity assets, oversee project finance  
and architecture modeling, analysis of potential investment opportunities).  
                  • Brooks Kincaid (modeling project finances and architecture, coordinating with  
Ambient Communities and other consultants, researching component  
technologies)  
                  • Sonia Walcott (organizational filing, office bookkeeping, permit tracking)  
                  • Dennis & Dennis LP (accounting)  
                  • Forward Realty/Michael Christopher (consulting).

26 The legal team included:

- 27                   • Downey Brand (land use and EIR)  
28                   • Dechert LLP (corporate and tax advice, financial structure)  
                  • Day, Carter & Murphy (interconnection regulatory issues)

- Orrick, Herrington & Sutcliffe (bond counsel)
- Dongell Lawrence Finney (governmental relations with regard to CAISO and California Public Utilities Commission).

89. Diamond Bar is informed and believes, and thereon alleges, for the period commencing on or about April 1, 2016 and ending on or about April 2017, the San Gabriel Consultants billed San Gabriel WP a minimum of approximately **\$8,803,123** for their collective services, as shown on the following table:

Consultant/Law Firm	Aggregate Fees
Ambient Communities/ Sustainable Water and Power	\$1,065,000
DAMG Advisors	645,000
JGM Design, Inc.	2,501,360
ZGlobal Power Engineering	1,075,150
Blue Oak Energy	341,686
Kimley Horn & Associates	28,585
Solar Engineering Consultants	1,718
Helix	1,222,643
Arcadis	115,000
Randall MacDougall/Silverado Company	112,000
Brooks Kincaid	118,990
Sonia Walcott	66,000
Dennis & Dennis LP	27,500
Forward Realty/Michael Christopher	30,000
Downey Brand	80,707
Dechert LLP	813,440
Day, Carter & Murphy	50,245
Orrick, Herrington & Sutcliffe	138,099
Dongell Lawrence Finney LLP	\$370,000
<b>TOTAL</b>	<b>\$8,803,123</b>

90. Diamond Bar is informed and believes, and thereon alleges, that Industry assembled its own consultant/legal team with respect to the development of solar projects on Tres Hermanos (the "Industry Consultants"), which includes the following individuals and entities:

- Cordoba Engineering (real estate advisory services, energy consultants)
- CNC Engineering (engineering services)
- DAMG Advisors (project and budget financing, contract negotiation)
- Lang, Hansen, O'Malley (lobbyist)
- Dolphin Communications (public relations)
- Bouza Law Firm (energy legal services).

1            91.     Diamond Bar is informed and believes, and thereon alleges, that for the  
2 period commencing on or about January 2016 and ending on or about September 2017, the  
3 Industry Consultants billed Industry a minimum of approximately **\$3,848,516** for their collective  
4 services, as shown on the following table:

Consultant/Law Firm	Aggregate Fees
Cordoba Engineering	\$900,000
CNC Engineering	99,046
DAMG Advisors	1,826,681
Lang, Hansen, O'Malley	475,000
Dolphin Communications	264,021
Bouza Law Firm	283,768
<b>TOTAL</b>	<b>\$3,848,516</b>

5  
6  
7  
8  
9  
10            92.     The dollar amounts set forth in paragraphs 89 and 91, above, are based on  
11 invoices and other documents obtained by Chino Hills and Diamond Bar in response to multiple  
12 Public Records Act requests and on websites. Chino Hills and Diamond Bar have submitted  
13 further Public Records Act requests for invoices and other documents relating to the work  
14 performed and amounts billed by the consultant/legal teams for Industry and San Gabriel WP.  
15 Diamond Bar, however, is informed and believes, and thereon alleges, that, at a minimum, the San  
16 Gabriel Consultants have performed additional and significant work with respect to the proposed  
17 Tres Hermanos solar project since April 2017, and billed significant additional amounts to San  
18 Gabriel WP for that work, for which Industry has reimbursed or will reimburse San Gabriel WP.

19  
20            93.     At its meetings, the Industry City Council normally approves a "register of  
21 demands," which approval authorizes City officials to pay Industry's bills for a specified period.  
22 A copy of the register is attached to the meeting agenda and includes a description and the amount  
23 of each invoice to be paid. Diamond Bar is informed and believes, and thereon alleges, that none  
24 of the registers provided to the City Council since April 2016 has included any invoices from any  
25 of the San Gabriel Consultants.





1 determined by" the Heglar Appraisal, (b) the sale "must be completed . . . in a manner aimed at  
2 maximizing value" and (c) the Oversight Board "hereby approves the sale and disposition of the  
3 Property in accordance with the terms of the approved LRPMP and the Purchase Agreement."  
4

5           100. On August 24, 2017, prior to the August 24 Meeting, David DeBerry, the  
6 Diamond Bar City Attorney, submitted a letter to the Oversight Board in opposition to the sale.  
7 That letter documented that the approval of the \$100 Million Tres Hermanos PSA would be  
8 unlawful, in part because (a) the LRPMP does not require the Successor Agency to sell the  
9 property to Industry for \$8 million less than the \$108 million offered by GH America and (b) the  
10 approval of the sale would place Industry's interests ahead of the taxing entities, in violation of the  
11 Oversight Board's fiduciary duties.  
12

13           101. Konradt Bartlam, the Chino Hills City Manager, also submitted a letter to  
14 the Oversight Board prior to the August 24 Meeting in opposition to the sale. In that letter, he  
15 stated in part that Industry had deceived the public for years regarding its plans for Tres Hermanos  
16 and concealed its plan to develop significant solar facilities on Tres Hermanos, and that it was  
17 inconceivable that Industry would pay \$100 million for the property to preserve it as open space.  
18 He submitted with the letter a CD with numerous documents obtained from Industry in response to  
19 Public Records Act request that reflected the existence and significant work that had already  
20 occurred with respect to the proposed solar project.  
21

22           102. During the August 24 public hearing, and prior to public comment, the  
23 following comments were made:  
24

25           a. Mr. Casso spoke at length in support of the \$100 million purchase  
26 price approved by the Successor Agency. He stated that Mr. Rabe of Keyser Marston had opined  
27 that the \$100 million Heglar Appraisal had been "done correctly and was compliant with the  
28





1           106. After further discussion, Mr. Philips' motion was narrowly approved by a  
2 4-3 vote, with Mr. Philips voting in favor.

3  
4           107. The next day, in an August 25, 2017 letter from Mark Hensley, the Chino  
5 Hills City Attorney, to Chikako Takagi-Galamba, a DOF Manager, Mr. Hensley requested that  
6 DOF exercise its authority to review the Oversight Board's action pursuant to HSC Section  
7 34179(h). He stated that (a) Mr. Philips rationale for discounting the purchase price by more than  
8 \$58 million was to provide more money for Industry to spend on the project, when neither he nor  
9 anyone else involved with the project had explained what the project was, (b) the Oversight Board  
10 had no legal authority to reduce the purchase price and its action constituted a gift of public funds  
11 and failed to maximize the value of the property, (c) the resuscitated restrictive covenant was  
12 illusory since Government Code Section 37351 already prohibits a city from acquiring real  
13 property outside its boundaries for any purpose other than "municipal purposes," and therefore  
14 there was no consideration for the huge price reduction, contrary to the Oversight Board's  
15 fiduciary duty to maximize the value of the property, (d) the sale was inconsistent with the  
16 LRPMP, which valued Tres Hermanos at approximately \$85-122 million, (e) Industry had  
17 deceived the Oversight Board and the public by constantly making false statements that the  
18 property would be used for open space and recreational purposes, while it was spending millions  
19 of dollars to cause the development of a major solar facility, and (f) as a result of this deception,  
20 the affected taxing agencies have been harmed.

21  
22           108. On August 28, 2017, Mr. DeBerry wrote to Ms. Takagi-Galamba and  
23 voiced Diamond Bar's own strong objections to the Oversight Board's action and also requested  
24 that DOF exercise its authority to review it. He stated that (a) the \$41.6 million purchase price  
25 failed to maximize the value of Tres Hermanos, (b) the severely discounted purchase price was  
26 inconsistent with the \$85-122 million value set forth in the LRPMP and failed to the comply with  
27 the "basic criteria" for a proposed purchase agreement, including the requirement that the property  
28

1 be sold at a "reasonable price," (c) the Laurain Appraisal was based on the assumption that the  
2 property would only be used as open space, but the restrictive covenant would allow any public  
3 use, so that the Laurain Appraisal provided no basis for the \$41.6 million purchase price, (d) the  
4 Oversight Board had no authority to approve a \$41.6 million sale because the Successor Agency  
5 Board had not approved a sale for \$41.6 million and (e) the public notice for the Oversight Board  
6 meeting was deficient.

7  
8 109. In an August 31, 2017 letter from Dena Smith, the Interim Chief Executive  
9 Officer of SB County, to Ms. Takagi-Galamba and Mr. Howard of DOF, SB County also  
10 requested that DOF exercise its right to review the Oversight Board's approval of the sale. The  
11 letter emphasized that (a) Tres Hermanos had been appraised at a value of \$100 million and  
12 Industry had offered to purchase it for that amount and, therefore, the Oversight Board's approval  
13 of the sale for \$41.65 million "based on a specious offer by the City of Industry to restrict the use  
14 of the property in a manner already imposed by Government Code Section 37351, violated the  
15 Oversight Board's obligation to expeditiously sell the property while maximizing its value"  
16 (emphasis in original), and (b) the \$41.65 million purchase price was in clear conflict with the  
17 LRPMP, which valued Tres Hermanos at between \$85-122 million.

18  
19 110. DOF also received an August 31, 2017 letter from Jeff Ballinger, whose  
20 firm serves as General Counsel to the Chino Valley Fire District, one of the taxing entities with  
21 respect to Tres Hermanos. He set forth the Fire District's vigorous opposition to the Oversight  
22 Board's approval of the \$41.65 million purchase price. He noted that (a) the purchase price was  
23 based on the Laurain Appraisal, which the Oversight Board had previously rejected because it  
24 assumed open space use, (b) the purchase price was approximately \$58.4 million less than the  
25 \$100 million purchase price that Industry had already agreed to pay, (c) the vaguely worded deed  
26 restriction approved by the Oversight Board would allow Industry to proceed with its proposed  
27 solar project, so Tres Hermanos' value was substantially greater than a property restricted simply  
28

1 for open space uses, and (d) as a result, the \$41.6 million purchase price was not representative of  
2 the property's value and did not maximize value, and the Oversight Board had therefore abrogated  
3 its fiduciary duty to the taxing entities under HSC Section 34179.

4  
5 **DOF INITIALLY ELECTS TO REVIEW THE FINAL TRES HERMANOS PSA**

6  
7 111. Following the Oversight Board's approval of the \$41.65 million sale, the  
8 8/24/17 OB PSA Resolution was amended to reduce the stated purchase price to \$41.65 million,  
9 and a recital was revised to state that this reduced purchase price

10 represents an amount less than current value of the Property due to the  
11 Property being subject to a restrictive covenant that specifically limits  
12 the use of the Property to open space, public use, or preservation. The  
reduced purchase price is equal to value determined by" the [Laurain  
Appraisal].

13  
14 112. Attached to the revised 8/24/17 OB PSA Resolution was a further revised  
15 Tres Hermanos PSA (the "Final Tres Hermanos PSA"), in which the purchase price was reduced  
16 to \$41.65 million. In addition, a new provision was added in Section 8 of the Final Tres  
17 Hermanos PSA and the required grant deed attached as Exhibit C thereto, stating that "[p]ursuant  
18 to Health and Safety Code Sections 34181(a) and 34193.3, Buyer's [Grantee's] use of the Site and  
19 any future use of the Site shall be used for open space, public use, or preservation use only." Both  
20 provisions further states that the restrictive covenant "will remain in effect in perpetuity" and the  
21 grant deed states that it "runs with the land."

22  
23 113. Diamond Bar is informed and believes, and thereon alleges, that on  
24 September 21, 2017, Ms. Schlichting, as Industry's Chief Deputy City Clerk, emailed to  
25 Mr. Howard of DOF a copy of the complete, revised 8/24/17 OB PSA Resolution and the Final  
26 Tres Hermanos PSA.



1 City Council decided to "ratify" the Final Tres Hermanos PSA approved by the Oversight Board.  
2 At back-to-back meetings on September 28, 2017, the City Council (under its Agenda Item 6.1)  
3 and the Successor Agency Board (under its Agenda Item 5.1) considered such "ratification."

4  
5 117. Attached to each Agenda was a September 28, 2017 Memorandum from  
6 Mr. Casso to both the City Council and Successor Agency Board. He stated that "[g]iven the  
7 overwhelming concern about the preservation of Tres Hermanos, the OB considered a motion  
8 imposing a deed restriction on the property as to its use by any future owner, including the City of  
9 Industry, at a price of \$41,650,000 that reflected the use restriction." Mr. Casso made this  
10 statement despite having previously advised the Oversight Board that the restrictive covenant  
11 served no purpose. Contrary to this new position, however, the \$41.65 million purchase price  
12 obviously did not reflect the development of a public use on the property or the development of  
13 the major solar facility planned by Industry and San Gabriel WP..

14  
15 118. No resolution to approve the proposed "ratification" was attached to either  
16 of the Agendas.

17  
18 119. On September 27, 2017, prior to the "ratification" hearings, Mr. DeBerry,  
19 the Diamond Bar City Attorney, submitted a letter to the Industry City Council and Successor  
20 Agency Board in opposition. In that letter, he stated that Diamond Bar's objections to the  
21 proposed approvals included the following: (a) the City Council could not take action prior to the  
22 completion of general plan conformity review by the Diamond Bar Planning Commission  
23 pursuant to Government Code Section 65402(b); (b) neither body should take any action until  
24 DOF had completed its review of the Oversight Board's action and determined whether to  
25 disapprove it; (c) the purchase and sale violated the LRPMP; and (d) the sale of Tres Hermanos  
26 for \$41.65 million constituted an unconstitutional gift of public funds because (i) the fair market  
27

1 value of the property was at least \$100,000,000 and (ii) there was no appraisal that supported the  
2 "low ball" selling price.

3  
4 120. Also on September 28, 2017, prior to the "ratification" hearings, Mr.  
5 Hensley, the Chino Hills City Attorney, submitted a letter to the City Council and Successor  
6 Agency Board in opposition.

7  
8 121. Nonetheless, at their September 28 meetings, the City Council and  
9 Successor Agency Board, with virtually no discussion, each unanimously approved the Oversight  
10 Board's action on August 24 Meeting.

11  
12 **THE INDUSTRY CITY COUNCIL "RATIFIES" THE MASTER LEASE**

13  
14 122. On May 8, 2017, Chino Hills received from Ms. Schlichting, as Industry  
15 Chief Deputy Clerk, what Ms. Schlichting stated was an "executed copy of the [Original Master  
16 Lease]," in response to multiple Public Records Act requests. However, the copy provided  
17 omitted Exhibit "A" to the document, which was the legal description of the property leased to San  
18 Gabriel WP, without which it could not be determined whether the leased property included Tres  
19 Hermanos. In a subsequent May 18, 2017 email from Ms. Schlichting to Elizabeth Calciano, an  
20 Assistant City Attorney for Chino Hills, Ms. Schlichting stated that the legal description had been  
21 "inadvertently omitted" and that a copy was being sent to her by email. Diamond Bar  
22 subsequently received copies of these documents for the first time.

23  
24 123. In a September 21, 2017 letter from Mr. DeBerry, the Diamond Bar City  
25 Attorney, to the Industry City Council, he submitted a demand that the City Council correct  
26 violations of the Brown Act relating to its approval of the Master Lease. He stated that (a) the  
27 City Council had unlawfully approved the Original Master Lease and one or more amendments

1 thereto in closed session under the description of threatened litigation, (b) Diamond Bar had never  
2 received copies of any of the amendments, (c) the Master Lease had to be approved in open  
3 session, (d) if the City Council did in fact approve the Original Master Lease and any amendments  
4 in open session, to provide evidence of the same, and (e) the City Council had 30 days to cure the  
5 violations pursuant to Government Code Section 54960.1 or face legal action.

6  
7 124. In response to Mr. DeBerry's demand letter, the Industry City Council  
8 attempted to cure the multiple Brown Act violations by "ratifying" the unspecified prior actions it  
9 took regarding the Original Master Lease and all of the Master Lease Amendments within the 30-  
10 day cure period. At its October 12, 2017 meeting, the City Council considered "Ratification of  
11 Master Ground Lease with San Gabriel Valley Water and Power and Amendment Nos. 1-4." The  
12 lone Councilmember who spoke was Councilmember Newell Ruggles, whose frustration boiled  
13 over because he knew as little about Industry's plans for Tres Hermanos as the general public, and  
14 the following dialogue occurred that involved Mr. Philips, the City Manager:

15 Councilmember Ruggles: This lease – we've been working with San  
16 Gabriel Valley Water and Power for over a year now? I have not . . .  
17 received any updates of the scope of the project. I haven't seen any  
18 plans, I haven't seen rendering, layouts, cost analysis, nothing on  
19 paper.

20 Just every time you talk to us, you say, oh, we need more money, we  
21 need more money. Now we're at \$20 million, taxpayer dollars. I  
22 haven't seen anything. Why should we continue on with this  
23 project? And we're being kept in the dark by city staff.

24 Philips: . . . we don't have any preliminary data . . .

25 Councilmember Ruggles: I've learned more about this project in  
26 newspapers than I've learned at Council meetings.

27 Philips: That's true, but they're crafting it in a different way and in a  
28 different light. . .

Councilmember Ruggles: So you think it's fiduciary to keep  
amending, \$20 million, and not telling anything about the project?

Philips: . . . as long as the billings are justified and go through the  
Council . . . .

1 Councilmember Ruggles: So I have to make a records request to get  
2 that information?

3 125. The City Council then voted 4-0 to approve the Master Lease, with  
4 Councilmember Ruggles abstaining.

5  
6 **DOF RECONSIDERS AND DECIDES NOT TO REVIEW**

7 **THE FINAL TRES HERMANOS PSA**

8  
9 126. In a November 2, 2017 letter, Mr. Howard of DOF advised Mr. Philips that  
10 DOF would take no action with respect to the revised 8/24/17 OB PSA Resolution and, therefore,  
11 the Final Tres Hermanos PSA:

12 [HSC] section 34191.5 (f) states actions to implement the disposition of  
13 property pursuant to an approved Long-Range Property Management  
14 Plan (LRPMP) shall not require review by Finance. As such, Finance  
15 is taking no action on this OB Resolution. It should be noted that  
16 pursuant to HSC section 341901.3, an approved LRPMP shall govern  
17 the disposition of property so any oversight board action taken related  
18 to an approved LRPMP should be consistent therewith.

19 127. Diamond Bar is informed and believes, and thereon alleges, that Mr. Casso  
20 publicly stated on or about November 4, 2017 that DOF's decision not to object to the revised  
21 8/24/17 OB PSA Resolution and the Final Tres Hermanos PSA was "tantamount to an approval."

22 128. It is apparent that DOF took no action with respect to the revised 8/24/17  
23 OB PSA Resolution and the Final Tres Hermanos PSA, and therefore did not approve it.  
24 However, in light of Mr. Casso's comment and in an abundance of caution, Diamond Bar has  
25 added DOF as a respondent in this First Amended Petition.



1           134. The approval of the Final Tres Hermanos PSA by the Oversight Board and  
2 its subsequent approval by the Successor Agency Board violated the LRPMP in multiple respects,  
3 as follows:

4  
5           a. HSC Sections 34177(e) and 34181(e) provide that the disposal of all  
6 assets of the former redevelopment agency must be transferred "in a manner aimed at maximizing  
7 value." Consistent with that requirement, the LRPMP requires, as one of its "basic criteria," that  
8 the buyer of a real property asset must agree "to pay a reasonable price based on a current  
9 appraisal." The Final Tres Hermanos PSA violated those requirements, as follows:

10  
11           i. The LRPMP states that the "current estimated value" of Tres  
12 Hermanos in April 2013 was approximately \$85-122 million, as determined by Keyser Marston,  
13 an economic consulting firm. Diamond Bar is informed and believes, and thereon alleges, that the  
14 fair market value of Tres Hermanos has substantially increased since April 2013. The Heglar  
15 Appraisal determined that, as of November 7, 2016, the fair market value of Tres Hermanos was  
16 \$100 million, which is consistent with the value range in the LRPMP. GH America offered \$101  
17 million, then \$108 million, to purchase Tres Hermanos, which is also consistent with value range  
18 in the LRPMP. The Industry City Council and the Successor Agency Board themselves approved  
19 a \$100 million purchase price in January 2013.

20  
21           ii. The purchase price in the Final Tres Hermanos PSA is  
22 \$41.65 million, which is \$43.35 million lower than the floor of the value range in the LRPMP  
23 (\$85 million), \$58.35 million lower than the fair market value stated in the Heglar Appraisal (\$100  
24 million) and Industry's previously approved purchase price, and \$66.35 million lower than the  
25 GH America's most recent offer.

26  
27  
28





1 proposals." The Oversight Board's approval of the Final Tres Hermanos PSA and the subsequent  
2 approval by the Successor Agency Board violated these requirements because (i) the Successor  
3 Agency never engaged Hoffman or any other real estate broker to find potential buyers for Tres  
4 Hermanos, (ii) as discussed in the preceding paragraph, the Successor Agency never obtained,  
5 reviewed or approved a development plan regarding Industry's intended use of the property, and  
6 (iii) Diamond Bar is informed and believes, and thereon alleges, that Keyser Marston did not  
7 participate in the selection of appraisers or the review and selection of proposals" with regard to  
8 the sale of Tres Hermanos.

9  
10 135. The Oversight Board's approval of the Final Tres Hermanos PSA and its  
11 subsequent approval by the Successor Agency Board constituted prejudicial abuses of discretion  
12 because the Final Tres Hermanos PSA and the process to approve it violated the terms of the  
13 LRPMP, and the Oversight Board and the Successor Agency thereby failed to proceed in the  
14 manner required by law.

15  
16 136. WHEREFORE, Diamond Bar prays for relief as set forth below.

17  
18 **SECOND CAUSE OF ACTION**

19 **(Writ of Mandate – Violation of Redevelopment Dissolution Act Relating to Oversight Board**  
20 **Approval of Agreement Not Previously Approved By Successor Agency)**

21  
22 137. Diamond Bar repeats and realleges paragraphs 1 through 130, above, and  
23 incorporates them herein by this reference as though set forth in full.

24  
25 138. A successor agency's proposed transfer of any asset or property of a former  
26 redevelopment agency "shall be approved by the oversight board at a public meeting . . . ." Cal.  
27 Health & Safety Code § 34181(f). The 2/14/14 DOF Approval Letter, pursuant to which DOF

1 approved the LRPMP, confirms that "[a]gency actions taken pursuant to a [DOF] approved  
2 LRPMP are subject to oversight board (OB) approval per HSC section 34181(f)." The purpose of  
3 an oversight board, as the name reflects, is to provide oversight regarding actions taken by the  
4 successor agency.

5  
6 139. The Oversight Board's approval of the Final Tres Hermanos PSA exceeded  
7 the scope of its legal authority under Section 34181(f) and the 2/21/14 DOF Approval Letter, as  
8 follows:

9  
10 a. The Successor Agency Board did not approve the \$100 Million Tres  
11 Hermanos PSA in its 1/13/17 Successor Agency PSA Resolution, so that the Oversight Board had  
12 no authority to approval any sale of Tres Hermanos.

13  
14 b. The Oversight Board had no authority to approve a sale that was not  
15 first proposed and approved by the Successor Agency.

16  
17 c. The Successor Agency Board did not approve the Final Tres  
18 Hermanos PSA before it was proposed and approved by the Oversight Board on August 24, 2017.  
19 The action of the Successor Agency that the Oversight Board was required to consider and take  
20 action on was the Successor Agency's alleged approval of the \$100 Million Tres Hermanos PSA.  
21 The Oversight Board had no authority to formulate its own purchase price and impose a restrictive  
22 covenant in an attempt to justify it.

23  
24 d. The Successor Agency Board approval of the Final Tres Hermanos  
25 PSA on September 28, 2017 did not and could not cure the Oversight Board's original approval  
26 because the Successor Agency was required to consider and approve the Final Tres Hermanos  
27 PSA before the Oversight Board considered it.

28

1 e. For these reasons, the Oversight Board's approval of the Final Tres  
2 Hermanos PSA and its subsequent approval by the Successor Agency Board were *ultra vires* and  
3 had no legal force or effect.

4  
5 140. The Oversight Board's approval of the Final Tres Hermanos PSA and its  
6 subsequent approval by the Successor Agency Board constituted prejudicial abuses of discretion  
7 because the Oversight Board had no legal authority to approve the Final Tres Hermanos PSA and  
8 the Successor Agency Board had no legal authority to subsequently approve it, and the Oversight  
9 Board and the Successor Agency thereby failed to proceed in the manner required by law.

10  
11 WHEREFORE, Diamond Bar prays for relief as set forth below.

12  
13 **THIRD CAUSE OF ACTION**  
14 **(Writ of Mandate – Violation of Redevelopment Dissolution Act Relating to**  
15 **Failure to Provide Required Notice of Oversight Board Approval)**

16  
17 141. Diamond Bar repeats and realleges paragraphs 1 through 130, above, and  
18 incorporates them herein by this reference as though set forth in full.

19  
20 142. An oversight board's approval of a successor agency's proposed transfer of  
21 any asset or property of a former redevelopment agency shall occur at a public meeting after at  
22 least 10 days' notice to the public of the **specific proposed actions.**" Cal. Health & Safety  
23 Code § 34181(f) (emphasis added).









1           157. The Oversight Board's approval of the Final Tres Hermanos PSA and its  
2 subsequent approval by the Successor Agency Board violated HSC Section 34177.3(a), as  
3 follows:

4  
5           a. The prohibition on the creation of new enforceable obligations in  
6 Section 34177.3(a) also applies to oversight boards, which cannot circumvent and violate  
7 limitations placed on successor agencies.

8  
9           c. Section 8 of the Final Tres Hermanos PSA and the grant deed  
10 attached as Exhibit C thereto provide that (i) "[p]ursuant to Health and Safety Code Sections  
11 34181(a) and 34193.3, Buyer's [Grantee's] use of the Site and any future use of the Site shall be  
12 used for open space, public use, or preservation use only" and (ii) the restrictive covenant "will  
13 remain in effect in perpetuity" and "run with the land." The restrictive covenant is a legally  
14 binding and enforceable contractual provision that would have to be enforced in perpetuity by the  
15 Successor Agency following the transfer of Tres Hermanos to Industry.

16  
17           158. The Oversight Board's approval of the Final Tres Hermanos PSA, including  
18 the restrictive covenant, and its subsequent approval by the Successor Agency Board, constituted  
19 prejudicial abuses of discretion because the Oversight Board unlawfully created a new enforceable  
20 obligation in violation of HSC Section 34177.3(a), and the Oversight Board and the Successor  
21 Agency thereby failed to proceed in the manner required by law.

22  
23           WHEREFORE, Diamond Bar prays for relief as set forth below.

1 **SIXTH CAUSE OF ACTION**

2 **(Writ of Mandate – Violation of Redevelopment Dissolution Act Relating to**  
3 **Unlawful Transfer of Successor Agency Revenues)**

4  
5 159. Diamond Bar repeats and realleges paragraphs 1 through 130, above, and  
6 incorporates them herein by this reference as though set forth in full.

7  
8 160. Successor agencies shall lack the authority to, and shall not, transfer any  
9 powers or revenues of the successor agency to any other party, public or private, except pursuant to  
10 an enforceable obligation on a recognized obligation payment schedule approved by DOF. Any  
11 such transfers of authority or revenues are void, and the successor agency shall take action to  
12 reverse any of those transfers. Cal. Health & Safety Code § 34177.3(c).

13  
14 161. The Oversight Board's approval of the Final Tres Hermanos PSA and its  
15 subsequent approval by the Successor Agency Board violated HSC Section 34177.3(c), as follows:

16  
17 a. The fair market value of Tres Hermanos is at least \$100 million, as  
18 established by (i) the LRPMP, which states that the estimated value of the property as of April  
19 2013 was approximately \$85-122 million, (ii) the Heglar Appraisal, which estimated that the fair  
20 market of the property was \$100 million in November 2016, (iii) GH America's most recent offer  
21 to purchase Tres Hermanos for \$108 million and (iv) Industry's offer, and the Successor Agency's  
22 approval, of a \$100 million purchase price.

23  
24 b. The Oversight Board approved a purchase price of \$41.65 million  
25 and the Successor Agency Board subsequently approved it.

1 c. As a result, the Oversight Board and the Successor Agency  
2 effectively transferred to Industry **\$58.35 million** (\$100 million - \$41.65 million) of the revenue  
3 that the Successor Agency should have derived from the sale for the benefit of the Diamond Bar,  
4 Chino Hills and the other taxing entities. As Mr. Philips admitted at the August 24, 2017 meeting  
5 of the Oversight Board, his justification for proposing the \$41.65 million purchase price was to  
6 use the resulting windfall to help Industry pay for the Tres Hermanos solar project.

7

8 162. The Oversight Board's approval of the Final Tres Hermanos PSA and its  
9 subsequent approval by the Successor Agency Board constituted prejudicial abuses of discretion  
10 because the Oversight Board unlawfully transferred revenues of the Successor Agency to Industry  
11 in violation of HSC Section 34177.3(c), to the detriment of Diamond Bar, Chino Hills and the  
12 other taxing entities, and the Oversight Board and the Successor Agency thereby failed to proceed  
13 in the manner required by law.

14

15 WHEREFORE, Diamond Bar prays for relief as set forth below.

16

17 **ON ALL CAUSES OF ACTION**

18

19 1. Issue a peremptory writ of mandate:

20

21 a. ordering that (i) the Oversight Board and the Successor Agency  
22 Board set aside their approvals of the Final Tres Hermanos PSA, (ii) DOF set aside its approval, if  
23 any, of the Final Tres Hermanos PSA and (iii) the Successor Agency, the Successor Board, the  
24 Oversight Board, DOF and Cohen (collectively, "Respondents") set aside all other permits,  
25 approvals, contracts, resolutions, letters, ordinances, certifications and other documents and  
26 actions approved, issued, granted, adopted, certified, executed or taken by Respondents with  
27 respect to the purchase and sale of Tres Hermanos; and

28

1                   b.       enjoining Respondents from approving, issuing, granting, adopting,  
2 executing or taking any further permits, approvals, contracts, resolutions, letters, ordinances,  
3 certifications or other documents or actions relating to the sale of any portion of Tres Hermanos  
4 until they have taken such actions as may be necessary to comply fully with the requirements of  
5 the Redevelopment Dissolution Act.

6  
7                   2.       Issue an order immediately enjoining (a) the effectiveness of any and all  
8 permits, approvals, contracts, resolutions, letters, ordinances, certifications and other documents  
9 and actions approved, issued, granted, adopted, certified, executed or taken by Respondents  
10 relating to the sale of Tres Hermanos, including without limitation (i) the approvals of the Final  
11 Tres Hermanos PSA by the Oversight Board and the Successor Agency Board and (ii) any  
12 approval of the Final Tres Hermanos PSA by DOF, and (b) Respondents from approving, issuing,  
13 granting, adopting, certifying, executing or taking any further permits, approvals, contracts,  
14 resolutions, letters, ordinances, certifications or other documents or actions relating to the sale of  
15 Tres Hermanos, all pending a final adjudication of this Petition.

16  
17                   3.       Enter an order awarding Diamond Bar its reasonable attorneys' fees, interest  
18 and costs incurred in this action pursuant to Section 1021.5 of the California Code of Civil  
19 Procedure and all other applicable laws.

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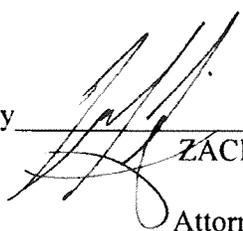
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4. For such other and further relief as the Court deems just and proper.

Dated: December 29, 2017

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
JACK H. RUBENS  
ZACHARY NORRIS  
LAUREN K. CHANG

By



ZACHARY NORRIS

Attorneys for Petitioner

**VERIFICATION**

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1. I, Dan Fox, declare as follows:

2. I am the City Manager of City of Diamond Bar, the petitioner in this action. I have read the foregoing First Amended Verified Petition for Peremptory Writ of Mandate and know its contents. The facts alleged in the First Amended Verified Petition for Peremptory Writ of Mandate are true of my own knowledge and belief, except as to those matters alleged on information and belief, and as to those matters I believe them to be true.

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4. Executed this 29th day of December, 2017, at Diamond Bar, California.

  
\_\_\_\_\_  
DAN FOX

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 333 South Hope Street, 43rd Floor, Los Angeles, CA 90071-1422.

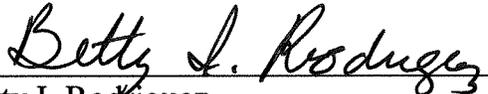
On January 4, 2018, I served true copies of the following document(s) described as: **FIRST AMENDED VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE**, on the interested parties in this action as follows:

**Department of Finance**  
Kari Krogseng, Chief Counsel  
915 L Street, 10th Floor  
Sacramento, CA 95814

**BY MESSENGER SERVICE:** I served the documents by e-mailing them to a professional messenger service for service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 4, 2018, at Los Angeles, California

  
\_\_\_\_\_  
Betty I. Rodriguez