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Superior Court of California
County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CITIZENS FOR ENFORCEMENT OF PARKLAND COVENANTS and JOHN A. HARBISON Plaintiffs, vs. CITY OF PALOS VERDES ESTATES, a municipal corporation, PALOS VERDES HOMES ASSOCIATION, a California corporation; ROBERT LUGLIANI and DORIS LUGLIANI, as co-trustees of THE LUGLIANI TRUST; THOMAS J. LIEB, TRUSTEE, THE VIA PANORAMA TRUST U/DO MAY 2, 2012 and DOES 1through 20 Defendants	CASE NO. BS 142768 **SUMMARY JUDGMENT RULING ON CROSS MOTIONS FOR SUMMARY JUDGEMENT/ADJUDICATION**

The Plaintiff and the City of Palos Verdes Estates (hereinafter the "City") have filed cross-motions for summary judgment. By this ruling, the court grants the motion of plaintiff, John A. Harbison (hereinafter "plaintiff") for summary judgement as against all defendants and denies City's cross-motion.

The court is also granting the summary judgment motion in favor of the Citizens for Enforcement of Parkland Covenants (hereinafter "Citzens" or plaintiff) even though it is not pled in the Second Amended Complaint that this "association" is made up of property owners in the City because the evidence submitted in connection with the Motion indicates that approximately 10 of the members of Citizens are in fact property owners in the City. The court recognizes that it may be that

the gap between pleading and fact cannot be overlooked in this manner, but "it only takes one." Although only plaintiff Harbison has been identified in the amended Complaint as a property owner, that is enough for "standing" and for him to proceed and to recover on his Complaint.[1]

The Verified Second Amended Complaint (the Complaint) in this action states three causes of action for declaratory relief, waste of public funds and nuisance. The declaratory relief sought in the prayer of the Complaint is to have the various title conveyances discussed below vacated, for a declaration that the City and Association have the duty to enforce land use restrictions and to remove "illegal improvements" from Area A, and for an order enjoining the City from enacting a "special open space, privately owned zoning district for the sole benefit of Area A recipients" or "enacting other legislative solution authorizing the erection and maintenance of improvements on Area A." As to the second cause of action, the prayer essentially seeks an order enjoining the City from taking any other action for the benefit of Area A recipients; and the third, for nuisance, asks for a permanent injunction enjoining Area A recipients from "using Area A for private purposes and compelling the Area A recipients to restore the parkland." The Complaint also seeks a ruling that this litigation has vindicated an important public right (which this court finds that it has), for attorney fees and costs and "for such other and further relief as the Court may deem proper and just."

The nature of the judgment that the court is prepared to render is generally to provide declaratory relief to the effect that the City and the Palos Verdes Homes Association, Inc. (hereinafter "the Association) both engaged in *ultra vires* acts, with the City "aiding and abetting" and acting in an arrangement and effort to see Area A, the land in issue in this case, transferred to a private party in violation of the deed restrictions on that parcel and the duty owed to all other landowners in the City, and with the Association ultimately making the actual impermissible transfer to a private party, Thomas J. Lieb, as trustee of the Via Panorama Trust U/DO May 2, 2012, Together with Trusts for

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[1]As the court has previously noted in hearings on various issues, the documents establishing the land grant which formed the foundation for the creation of Palos Verdes Estates include at some points references to the fact that "residents" as well as property owners will also have the right to enforce the parkland deed restrictions, however, since there is not consistency in the documents and continuity in this regard, the court is not inclined to attempt to enforce these provisions, particularly in the absence of discussion by the parties.

the Benefit of Related Parties (hereinafter defendant Lieb).[2] Further, the City cannot issue "permits" as called for in Article V A of the Memorandum of Understanding (the "MOU"), entered into between the City, School District and private parties as is more fully discussed below, and is enjoined from doing so since the deed restrictions on and as to Area A prohibits any such walls from being constructed on the property in issue. No legal authority has been cited to the court which would establish any right in the City to take any such action.

The current "owner" (holder of title) to Area A, apparently Mr. Lieb as trustee,[3] will be ordered to transfer title back to the Association because the court is going to vacate the deed provided to him by the Association, and, should he fail to do so, the Clerk of the Court will be ordered to execute a deed in his stead. The Association will, in turn, be enjoined from re-transferring the land again to any private party and ordered to hereinafter enforce all deed restrictions in the manner called for in the "establishment documents" *infra.;* it will also be required to remove all of the illegal constructions on the property put there by the Lugliani defendants and/or their predecessors in interest; and the Lugliani defendants will be enjoined from any future actions in violation of the deed restrictions on Area A in conjunction with a declaratory ruling as to the impropriety of the actions they have taken thereon.[4]

In addition, this court is prepared, pursuant to the prayer for such additional relief as the court deems proper and just, to include in its declaratory relief ruling an injunction prohibiting the City and the Association from entering into any future contracts and from taking any other actions in the future to eliminate the deed restrictions as to all properties governed by the "establishment documents" described below, other than as those documents provide for specific votes to be taken among property

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[2]The court has never seen a trust designated in this manner. It is unclear to the court whether Mr. Lieb purported to take title to Area A as the trustee of one trust, the Via Panorama trust or some other additional trust or trusts. The parties will be asked to clarify this issue because the court has not been provided with the trust instrument or instruments in issue.

[4]The MOU and the evidentiary filings made in this case are unclear as to whether or not the retaining wall in issue is actually on Area A or some other parcel which is contiguous to property owned by defendants Lieb and/or Lugliani. Further documents will be requested in this regard if not all violations of the restrictions are precisely on Area A.

owners in the development. The court is inclined to include this relief because this is now the second lawsuit involving exactly the same issues where exactly the same pronouncements and rulings as to the inviolability of the deed restrictions in issue have had to be made, at great cost to the courts and property owners and others giving rise to a situation where the need for such litigation ought to be or must be brought to an end. No one should again have to litigate to establish the binding and signifigant nature of the deed restrictions in the Palos Verdes development.

As an aside, after preparing this entire document, the court took a look at the statement of decision that Judge Fruinn wrote in case number BC431020 and was astonished, to put it mildly, that he had addressed the same equitable servitude and condition subsequent law as this court has found, *infra*, controls, and even ruled on the merger and many of the other arguments made herein, but in that case with the Association advocating the positions of its opponents in that case and in apparent complete opposition to those it has now espoused here. The doctrine of judicial admissions also known as "judicial estoppel," in this court's view, prohibits such reverse and inconsistent contentions. Having ultimately discovered that Statement of Decision, the reasoning and authorities cited and utilized by Judge Fruinn being identical and in some areas supplemental to what this court has determined and discussed are incorporated by reference as exhibit B hereto along with the judgment in that matter.

The court's general reasons for its decision are stated in the attached Discussion and Rationale.

Dated: June 26, 2015

Hon. Barbara A. Meiers

Judge of the Superior Court

DISCUSSION AND RATIONALE

Preface:

Before getting into the merits of any of the pending motions, the court believes it appropriate to address any lingering "law of the case" issues. This action "began" as a Petition for a Writ of Mandate which was subsumed in the plaintiffs' Complaint (as opposed to being filed as a separate Petition) as the plaintiffs "Third Cause of Action." The subject of that proceeding as now was a dispute over the right and power to make various dispositions of land in Palos Verdes ("Area A") where deed restrictions on that Area create limitations on the land's use to being used as parkland along with various other related deed restrictions, including but not limited to that it cannot be transferred, generally speaking, to any private party along with building restrictions, etc.

Issues relating to the viability of such restrictions as to two similar parcels, parcels C and D-- similar to the Area A parcel in that they had essentially the same deed restrictions-- had already been addressed in a prior action between the Palos Verdes Peninsula Unified School District ("the District") (Plaintiff) and the Association (Defendant) in which the District sought to have these deed restrictions found to be no longer applicable leaving the District free to apply the land to other uses, etc. That action was brought in another department of this Superior Court in case number BC 431020. The court there ended up holding that all the deed restrictions remained in full force and effect and continued as restrictions on the land's use with broad reasoning which can only serve to support the conclusion that any and all such restrictions were and would be valid as to all Palos Verdes properties bearing such restrictions.

When an appeal was filed from the judgment in that case, all parties to that action agreed, while the appeal was pending, to enter into a settlement agreement (the Memorandum of Understanding, hereinafter the "MOU") which they did, and which also included the private parties as well as the City defendant involved in this case. That contract provided for the District to convey parcels C and D to the City and for the City to transfer Area A, the parcel in issue in this case, to the Palos Verdes Homes Association (hereinafter "the Association") and for the Association to then transfer it to a private landowner, Mr. Lieb as trustee for the Via Panorama Trust U/DO May 2, 2012 as that trust's own private property (not restricted parkland), in return for other consideration

including but not limited to the payment of a substantial sum of money ($2,000,000 from the private landlowners, Mr. Lieb and the Luglianis.

These private parties, at least defendant Lieb, by means of this "settlement agreement transaction" received title to the land in issue, and the Luglianis participated in the MOU apparently because Area A is contiguous to their own private parcels and because they had already placed structures on it before obtaining any title which actions violated the building and parkland restrictions on the land and which structures included a retaining wall, a gazebo, a sports court or area, etc. utilized by the Luglianis. This "settlement" transfer to the private parties was obviously, on its face, a violation of the restrictions upon the parcels in question ever being transferred to private parties (the prohibition does not use the term "private parties" but that is clearly within its meaning since it restricts transfers of the park land parcels essentially only to municipalities or others capable of handling and managing park land are permissible transferees).

The mandate "petition" (as part of the Complaint in this action) by the named plaintiff in this case followed. However, it was very unclear as to the relief sought, how the relief was to be provided etc. As a result, the ruling on the mandate petition was also unclear.

However, what is clear from the ruling of the writs and receivers judge, Judge O'Brian, who handled the writ aspects of this case (see, attached Exhibit A) is that; 1) he made a ruling on the mandate third cause of action as with regard to the plaintiffs' requested relief as against the City only and never ruled one way or another on the writ issues as to the Association, and, 2) he struck plaintiff Harbison as a plaintiff in the action, and, therefore, made no ruling at all and could make no ruling on Mr. Harbison's writ efforts or any other aspect of Mr. Harbison's claims for relief on the mandamus issue and elsewhere in the action since Mr. Harbison was essentially dismissed as a plaintiff. [5]

In this January 6, 2014 ruling, the court did not explain why it believed that no evidence could be produced to establish that the City's conduct in issue was "ministerial" and not "discretionary" or

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[5]As Exhibit A reflects, even though the "Writs and Receivers" court dismissed Mr. Harbison, it did so without prejudice to him being able to return later as a plaintiff in the case with regard to the rest of the Complaint–which he did.

for his dismissing Mr. Harbison's claims, but this is not entirely surprising in light of the lack of clarity of the pleadings before the court.

This lack of clarity, in this court's view, resulted in large part from the ever increasing lawyers' practice of not filing Petitions for Mandate separate and apart from any civil Complaint. As a result, the arguments being made for civil relief, such as declaring actions to be void for various reasons, become, and in this case became, mixed in with what was being sought as mandamus relief. For example, plaintiffs relied on Code of Civil Procedure (hereinafter "CCP") section 1085 as being the statutory basis for their mandate petition as against the Association. However, that statute provides in pertinent part as follows:

> "(A) A writ of mandate may be issued by any court to any inferior tribunal, corporation, board or person, **to compel the performance of a duty resulting from an office,** etc." [Emphasis added]

Yet, plaintiffs stated at the very outset of their complaint that the purpose of their Complaint was to have the court invalidate only certain portions of a "private agreement" (referring to the settlement agreement). Plaintiffs went on to contend at page 16 of their First Amended Complaint (FAC) that the transfer of the property in issue was "void" and that, therefore, the City was the owner of the properties in issue and that, as such, the court through mandamus could make an order compelling the performance of the duty as owner to remove encroachments.

The problem with this is that it put the cart before the horse. A mandamus court does not generally pass on the validity of already performed contracts--it cannot. What plaintiffs needed was to first obtain a ruling, perhaps through declaratory relief which is entitled to a trial setting preference, that the settlement contract was void in whole or in part, and to then pursue a remedy, if title was thereby placed back in the City's hands, of seeking to have the City compelled to enforce the deed restrictions on its land. In short, in this court's view, plaintiffs' mandamus action in this case was premature and confused because it was mixed in with civil claims to have the validity of the settlement contract adjudicated, which really needed to be decided first, before any mandamus effort on the theories that plaintiffs was advancing, could be pursued. Once a court decided whether the City was the landowner, the court could have entertained the issue of what actions the City as property owner was then to take with regard to implementing the deed restrictions attached to the land. But,

absent first obtaining a ruling that this settlement contract was void, the City could not be directed to take any "ministerial action" based on its ownership of restricted land with regard to enforcing any deed restrictions on land it no longer owned.

The same problem existed with regard to the plaintiffs mandamus action against the Association except that the Association's duties were not limited to those it would have as the holder of title to the property--which, as was the case with the City's situation, it no longer held as of the date of the filing of the Complaint. It additionally had a reversionary right to receive title back were property restrictions abused as well as a duty to enforce the deed restrictions in issue even when land was not still held by it which the City did not have. The plaintiffs wanted the mandamus court to order the Association to enforce the restrictions and/or to exercise its reconveyance rights and reclaim title. However, since the writs and receivers court never ruled on the plaintiffs claims for mandamus relief as to the Association (see, Exhibit A), it obviously never passed on these issues. This court, is, accordingly, not bound by any other court's decision in this regard with respect to the law which it may and must apply to this case as to the Association. As to the City, if this court finds that because performance under the agreement was *ultra vires*, against public policy or otherwise void, given the continuing dispute that the City's conduct reflects as to what can and cannot be done in light of the restrictive deed provisions on property it owns, with virtually identical restrictions as exist as to Area A, the court can issue declaratory and injunctive and other relief as may be called for as against the City as well as all other defendants in a manner that will hopefully eliminate any future disputes on these and similar issues.

I. THE FACTS

A. The "Establsihment Documents"

The property in issue, what has been referred to and designated as "Area A," is governed by a long string of recorded documents ranging in date from 1923 to 2012. Within these documents are contained all of the governing provisions which control in this case. They are generally contained, except where otherwise noted, attached to the Sidney Croft Declaration as Exhibits A through F.

1. The Declaration No. 23 of Establishment of Local Protective Conditions, etc. Dated 1923 but apparently executed in 1925 (Exhibit A)

In this document, page 8, it recites that "the power to interpret and enforce certain of the conditions, restrictions and charges set forth in this declaration is to reside in Palos Verdes Homes Association, a non-profit, cooperative association and in Palos Verdes Art Jury...." But, it goes on to state therein that the Bank of America thereby established a local plan and

> "fixed local protective restrictions, conditions, covenants, reservations, liens and charges upon and subject to which all lots parcels and portions of said tract shall be held, leased or sold and/or conveyed by it as such owner, each and all of which is and are for the benefit of all of said tract and of each owner of land therein and shall inure to and pass with said tract and each and every parcel of land therein and shall apply to and bind the respective successors in interest of the present owners thereof, and are and each thereof is imposed upon said realty as a servitude in favor of said property and each and every parcel of land therein as the dominant tenement as follows:"

The document then goes on to state the various restrictions for use of land in the grant (which was given by a private donor in or about 1923 and put in the hands of Bank of America to run and develop and manage as trustee and title recipient to act on behalf of the grantor in the form of a trust--see, Exhibit A "Protective Restrictions" from Bank of America, Trustee) as does the summary of Protective Restrictions, undated, also in the Exhibit).

At page 11 of Declaration 23, the document further states:

> "Section 18. Right to Enforce: The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by Bank of America, Palos Verdes Homes Association, the owner or owners of any property in the tract their and each of their legal representatives, heirs, successors and assigns and any failure by Bank of America, Palos Verdes Homes Association or of any property owner...to enforce any of such restrictions, conditions, covenants, reservations, liens or charges shall in no event be deemed a waiver of the right to do so thereafter."

Section 12 of that same document further states with regard to reversions that should title "revert" to Bank of America (i.e., end up back in its hands due to violations of restrictions or other reasons):

> "Each and all of said restrictions, conditions, covenants reservations, liens and charges is and are for the benefit of each owner of land (or any interest therein) in said property and they and each thereof shall inure to and pass with each and every parcel of said property, shall apply to

> and bind the respective successors in interest of Bank of America. Each grantee of Bank of America of any part or portion of the said property by acceptance of a deed incorporating the substance of this Declaration either by setting it forth or by reference therein, accepts the same subject to all of such restrictions, conditions covenants, reservations of liens...A breach of any of the restrictions...shall cause the real property upon which such breach occurs to revert to Bank of America or its successor in interest ... as owners of the reversionary rights herein provided for; and the owner of such reversionary rights shall have the right of immediate re-entry upon such property in the event of any such breach; and as to each lot owner in the said property, the said restrictions, conditions, and covenants shall be covenants running with the land, and the continuance of any such breach may be enjoined, abated or remedied by appropriate proceedings by the owner of the reversionary rights or by such owner of other lots or parcels in said property ...."

The document on page 13 goes on to state that the Association can enter and abate without being guilty of trespass and in Section 14, page 13 that every violation of a restriction "in whole or in part" is a nuisance which can be abated by the Association "and/or any lot owner subject to the jurisdiction of the...Association, and such remedy shall be deemed cumulative and not exclusive." This right to enter and abate by all homeowners is repeated at page 11, Section 18, along with the additional statement that the provisions of the Declaration not only inure to **but bind** all of the homeowners, the Association, Bank of America, etc.

2. Untitled Docment re Tract 8652--page 15a

This appears to be an amendment to some earlier document or documents which states that it is being executed in contemplation of the Bank transferring several parcels of land and states that "in addition to and supplemental to the Basic Plan set forth in Declaration No. 1, it is now establishing a local plan for Tract 8652 as to which it is imposing various conditions and restrictions, but with the important part of this document for our purposes being the reiteration in it that all of the restrictions, etc. imposed on all of the lots:

> "...shall be held for...and each and all of which is and are for the benefit of all of the tract and of each owner of land theein and shall inure to and pass with said tract and each and every parcel of land therein and shall apply to and bind the successors in interest of the present owners thereof and are and each are imposed upon said realty as a servitude in favor of said property, and each and every parcel of land therein as the dominant tenement or tenements as follows...."

3. Declaration No. 1 (1923, recorded 1925) Declaration of Establishment of

Basic Protective Restrictions...Affecting Real Property to be known as ...Parcels A and B

Exhibit A, at page 17, sets forth that the Association is a non-profit corporation, and goes on to discuss its purpose and the conduct of its affairs. It provides at Section 5, p. 22 for the homeowners to remove the Board of Directors if it fails to act, and establishes various areas of use including area F, restricted to public and semi public use. Article VI of the document is important because it provides at Article VI, Section 1, p.38 that:

> "All of the restrictions, etc., shall continue and remain in full force and effect at all times against said property and the owners thereof subject to the right of change or modification provided for in Sections 2 and 3 of Article VI hereof..."

And goes on to state that this term would continue automatically, first until 1960 and thereafter would be automatically renewed for 20- year terms unless extinguished (which has not happened to date).

Article VI, sections 2 and 3 then go on to provide that "amendments, changes, modification or termination of any of the conditions, restrictions, etc...may be made by Commonweath Trust or its successors in interest" (it was the predecessor to Bank of America as trustee, which was in turn the predecessor in interest to the Association as holder of land and of the reversionary interest) **"by mutual agreement with the then owners of record...of not less than ninety (90) percent in area of said property and with not less than eighty (80) per cent of all of the then owners of record title of said property ...."** [Emphasis added], which statement referred to all of the deed restrictions we are dealing with in this case, including that the properties in issue could not be used for anything other than parkland, etc., and could not be transferred to any private party! Or if governed by the next paragraph, p 38, Section 3, any deed restriction set forth in a deed could be changed if then owned by the Association only by the vote of "the owners of not less than two thirds in area of all lands held in private ownership within 300 feet in any direction of the property conceerning which a change or modification is sought to be made, any **approval by the Association of any such action is not valid unless there is first a public hearing thereon. Accordingly, a vote in writing and a public hearing would be necessary even if the Association held title if it wanted to change any deed restriction in any way**--as it purported to do in this case without observation of this limitation.

4. Exhibit B--The1933 Grant Deed from Bank of America to the Association

This document grants title to the Association, it appears, as to all tracts and parcels which the Bank previously held but subject to every provision, restriction, etc. originally established by the Declaration of Establishment of Basic Protective Restrictions from 1923 and all of the amendments thereafter, stating at part 3. that "the said realty is to be used and administered forever for park/and/or recreational purposes ...for "persons residing and living within...property commonly known and referrred to as Palos Verdes Estates for the purpose of "safeguarding said realty...from damage or deterioration, and for protecting the residents of said Palos Verdes Estates from any uses of or conditions in or upon the said realty which are, or may be, deterimental to the amenities of the neighborhood.... In 4, it further provides that the Association could not convey property except under the terms thereof other than to a park commission or body constituted by law to take and maintain public parks, etc. with the exception, under 4(d) that it could "permit the owner of a lot abutting on such [park] realty to construct and/or maintain paths steps and/or other landscaping improvements, as a means of egress from and ingress to said lot or for the improvement of views therefrom...in a manner ...as will not...impair or interfere with the use and maintainence of said realty for park and/or recreation purposes."

This document also preserved a reversionary right in the Bank as well as a right to re-enter.

It also reiterates that the servitudes were and are for the benefit of all landowner and that the servitude and restrictions imposed on properties were to bind all landowners as well as the Bank's successor in interest with every parcel owner an owner of a dominant tenant with respect to every restriction placed on every property in Palos Verdes Estates!

In a later document in Exhibit C, dated 1940, the Bank quitclaimed its rights to the Association including its reversionary rights. The Association then transferred to the City, again in 1940, with the City bound by all of the above, but prior thereto, in 1938, the Association transferred a portion of its property to the Palos Verdes School District, including various portions of various tracts, including parcels C and D, which is the deed which started the parties on the road to where they find themselves now

6. The Grant Deed to the Palos Verdes School District of 1938

This deed clearly stated as follows:

"...SUBJECT TO conditions, restrictions and reservations

> of record; and to the express condition that the said realty shall not be used for any other purpose than for the establishment and maintenance of public schools, parks, play grounds and/or recreation areas and shall not be sold or conveyed except subject to conditions, restricitons and reservations of record and except to a park commission or other body suitable constituted by law to take, hold, maintain and regulat public parks and/or playgrounds; provided that easements may be granted over portions of said realty to the public for parkway or other street purposes."

The land subject to these incorporated- by- reference conditions and reservations of record as well as the deed's express conditions and limitations that it could only be used for certain specific purposes and that it could not be conveyed to others than park management bodies is the very land which the District later purported to transfer (deed over) to the City in a deal for Area A which bore these same restrictions, so that Area A could be indirectly transferred through the City to the Association and from there to defendant Lieb without adherence to the conditions and restrictions or the responsibilities of holders of park land property to all of the other property owners in the Palos Verdes development.

The court finds that there is no material issue of fact presented by competent evidence which would preclude the grant of a judgment to the plaintiff Harbison, et. al. as a matter of law.

B. Other Facts: The court will not go into a lengthy review of more detailed facts here because the most important pertinent facts are all set forth in the series of documents noted above (as well as others repeating the same language of limitation and rights created in individual landowners and at times to "residents") which dated from the 1920s to the "settlement agreement" referred also referred to as the MOU which was executed in 2012, and the Lieb deed in 2012. It is the content of all of these documents on their face, already known by all and admitted in evidence on the cross-motions, which, *inter alia*, are of import in the making of this ruling.

The court will not attempt to further address each of these documents. However, aside from what has already been noted above, they generally reflect that a very wealthy individual in the 1920s bought up the land which is now basically "Palos Verdes." He thereafter essentially designed a community, complete with ample parklands to complete his view of an "ideal habitat." To insure that his plans were carried out, he, as grantor, transferred the lands ultimately to a bank, 1st

Commonweath and then Bank of America, as trustee to act in his stead to carry out and implement the plan by, among other things, enforcing the deed restrictions which were placed on some parcels, requiring that those parcels be used for nothing but parkland or similar public usages (such as the School District deed noted above) and further providing, to insure that their parkland usages would be preserved, that they would not be and could not be transferred to anyone other than a public entity or similar body that had the capacity to keep and maintain them as parkland for the benefit of the entire community. Were these restrictions not observed, the "grantor"and later trustee had a right to a reconveyance back to the grantor/trustee of any and all of the non-conforming parcels in addition to re-entry rights to remove violations.

Ultimately, Bank of America, acting as the trustee, provided a "grant deed" to the Association, but it contained reversion rights still vested in Bank of America. Accordingly, later, as to these reversion rights, rather than a grant deed, the Bank issued a quitclaim deed by which it "quitclaimed" all of its rights as the "grantor" (the term used in the original and follow up documents to refer to the original owner and then the trustee in his stead which created and governed the property interests in question) to the Palos Verdes Homes Association, including those rights to carry out a reversion of violating properties. Pursuant to this quitclaim, all have regarded the Association, standing in the shoes of the grantor as its successor in interest, as having the above-noted reversionary right and obligation, originally held and retained by the grantor, to recapture title to any property where the deed restrictions noted above have not been observed so that the Association could cure the defalcations–that is until the Association conveyed all of its rights and title to the lands in issue to the City.

All of the documents before the court which govern the creation and continuation of this land grant further reflect that it was not only the "grantor" and then later the Association that had the ability to insure that the parkland lots would be protected. These documents additionally provided over and over, as noted above, **that any property owner within the land grant area (and at times additionally any "resident," a broader concept) could act to eliminate any wrongful use as a "nuisance" and to otherwise act to enforce the restrictions and conditions of all deed.**

All of the documents additionally reflect a clear strong policy and intent that these parkland restrictions were created and were to be enforced so as to benefit the community as a whole and each

and every one of the other property owners--a policy so strong that it even embraces that entries to remove violations of restrictions cannot and will not be deemed trespasses and that any such violation is per se a "nuisance." These positions are also reiterated in the documents creating and governing the actions of the Association.

These documents also reflect that there were (and are) provisions for the Association (now also in the grantor's shoes) to make modifications to the deed restrictions, but those provisions, as set forth above and elsewhere, **call for votes to be taken and approval obtained by other landowners, with the number and identity dependent in part on the change sought.** However, the Association did not follow any of the "legal procedures" called for in these documents to effectuate any alteration in the nature or required implementation of the deed restrictions when it granted the land in issue to defendant Lieb. These "establishment documents also provide that any act taken by the Association in this regard without first following these procedures is **void,** meaning void *ab initio.*

Mr. Harbison has attested, and it is not disputed, that he is such a property owner. Accordingly, under these various provisions he has the standing to sue and a clear cause of action as do other property owning members of Citizens.

As noted infra, after a series of transfers of parkland- designated parcels by various parties in the course of a settlement of a lawsuit, the Association created a deed by which it purported to transfer parkland- designated property which bore the restrictions set forth above to a private party, the Lieb defendant, in violation of the restrictions and conditions of the deed and also further acted, ultra vires, without following the procedures requiring votes of property owners in order to lawfully act, by additionally inserting into the September 2012 deed from the Association to the Lieb defendant, words stating, that although area A is to remain open space "it is the intent of the parties...that (recipients of the deed) may construct any of the following, a gazebo, sports court, retaining wall, landscaping, barbeque, and /or any other uninhabitable 'accessory structure.

The Association had no ability to act in this manner for even though it gave lip service to the existing restrictions by saying that the existence of the protective restrictive covenants was still acknowledged, this "added on" language as to what the new owners could do regardless of the restrictions on the face of the deed was a blatant attempt to retroactively approve constructions these

private parties had long since stuck on the parcel, the retaining wall, woods, sports area, gazebo, etc. (and which they had been repeatedly been asked to remove by the City, supported by the Association, as being in violation of the restrictions). By these means, the Association attempted to eliminate the parkland restrictions and give leave to the holders of its deed to do various prohibited acts.

This, as is more fully discussed below, it cannot do.

II. THE COURT NEED NOT FIND THE SETTLEMENT AGREEMENT TO BE VOID

There is a great deal of case law dealing with the fact that municipalities , and in fact all forms of government entities, wear two hats. On one hand they may be viewed as exercising sovereign powers, such as promulgating legislation, and on the other they may act in the same capacity as any individual, which is the role they play when they enter into contracts, even though the power to contract is a general power vested in the municipality. See, Los Angeles Unified School District v. Great American Insurance Company (2010) 49 Cal.4th 739,748; Wunderlich v. State (1967) 65 Cal.2d 777, 782; Souza & McCue (1962) 57 Cal.2d 508. Accordingly, once they enter into a contract, they are responsible and to be held liable on the same terms as any other private party.

In this case, the City entered into a contract with other parties, just as it might when contracting to buy widgets for a construction job or to lease office space. There is, therefore, in this court's view, no question or issue as to whether or not the City and the Association and the District and the LL defendants had the right or power to enter into a contract. But, the fact that they "could" contract, and even if the City had the blessing of the City Council or other governing party in deciding or acting to do so, it does not alter the fact that these parties could not do what the contract called for them to do.

What the City and Association offered by way of performance under that contract was not lawful--to wit, the transfer of property (Area A) from the City to the Association and from them to defendant Lieb, a private party, much less their agreeing and purporting to change or "modify" the deed restrictions with which these parcels had been burdened for over 50 years. These acts could not be lawfully done because such promised acts, if carried out, was and would have been ultra vires

acts, barred by the deed restrictions burdening the land which they intended to convey, in violation of the public trust and the trust terms which led to the creation of all of the parkland restricted parcels in Palos Verdes, as well as the City's obligations which it accepted when it purchased the land from the Association. Such performance/acts by these parties is also barred by considerations of public policy.

Deeds are also deemed to be contracts of a sort, and by their actions, the City and Association were acting to breach their contractual obligations as title owners under these deeds not only to the party from whom the deed was obtained and from whom the deed was accepted along with an acceptance of all of its conditions and restrictions, but also to all of the other property owners in the Palos Verdes development as, if you will, third party beneficiaries and indirect parties to these "deed contracts." See discussion, infra.

The court does not need to void the contract or, in this court's view, any part of it in order to enjoin or otherwise address as law and equity may dictate the conduct of the parties proposed in their agreement (MOU) and/or as then subsequently carried out because of their private contract among themselves.

By rough analogy, if neighbor 1 entered into a contract with a contractor corporation to do a whole series of remodeling tasks on his or her property and included an agreement that the contractor would also tear down the fence of neighbor 2, nothing would impair the ability of neighbor 2 to come into court against the contractor to show that the fence was well within his or her property line and to enjoin it from tearing down the fence and/or even from requiring it to rebuild that portion which it had already destroyed. There would be no need for neighbor 2 to join neighbor 1 or to seek to invalidate its contract with the contractor. The contractor and neighbor 1 could be left to work out between themselves what they want to do in light of a court's intervention and prevention of performance by the contractor creating an impossibility of performance on the contractor's part.

Accordingly, although the District could properly and lawfully transfer title to land from itself to the City (because the deed restriction does and did allow transfers to government entities and/ or those otherwise equipped to maintain and "run" private parks), the City could not act in concert with the Association or anyone else to eliminate deed restrictions on any deed it conveyed to the Association just as the Association could not eliminate or change the restrictions by "fiat" as it has

attempted to do by means of its deed to defendant Lieb.

Plaintiff argues that the transfer to the Association from the City was itself "ultra vires," etc. and should be reversed, saying that the Association is not now equipped to manage parkland and that, this being the case, it is an unacceptable transferee under the language of the restrictions, but the court has no evidence of that fact other than plaintiff's arguments. To the contrary, all of the documents before the court, including the Association's "charter" and by- laws reflect that the Association has the power to levy assessments from homeowners within the Associations purview in order to do all that it is charged with doing with regard to all of the properties governed by the Association and/or held by it. The actions that this court will now be requiring of it are clearly acts within its purview to perform, indeed, based on all of the documents before the court, it has an affirmative duty to perform them and cannot do otherwise. This in the court's view would make acts to restore the parkland in accordance with the restrictions a proper subject of an assessment of some sort.

The question then is whether this court should first order that the deed or deeds to the defendant Lieb is null and void and order the deed documents canceled and vacated (or order in conjunction therewith that the Lieb defendant execute a deed back to the Association, having the clerk of the court do so if they will not in order to keep the chain of title cleaner) and then find that the deed from the City to the Association is null and void (i.e, reversing the City's improper act in performance of its contract) and put title back in the City or simply carry out the disenfranchising process by causing title to now go back only as far as the Association. The court has opted for the latter course,

It is said to be a "maxim of jurisprudence" that the law will never require a "useless act." In this case, the City received a deed to Area A many many years ago. During that time, it issued orders to the Lugliani parties and/or their predecessors to remove the items they had constructed on the City land (i.e., this land restricted to parkland), but then never followed through or acted beyond sending out the notices to perform and of the City's order to the Luglianis to remove the edifices, sport court, etc. When there was no compliance with these notices, the City did nothing.

In addition, the Association never stepped in to take the matter out of the City's hands by exercising its "reversionary" rights (duty) so nothing happened over a period of many many years to

protect this land as parkland subject to all of the restrictions of use that apply thereto. The court has, therefore, concluded that to pass title back to the City under these circumstances would be just such a "useless act," not to mention that trying to enforce any judgment in this regard (i.e., to make the City act to remove the improper constructions and trees) would be equally problematic--possibly leading to more mandamus petitions, etc., which even then might not be effective since a Writs and Receivers court might conclude that how a City is to comply with such an order, involving issues such as how many trees are to be removed and in what manner, etc., involves too many "discretionary decisions" to be the subject of a writ, leaving the plaintiff to potentially have to sue all over again to get compliance with the judgment.

The court is, therefore, ordering instead that the Association shall receive back title and a deed from defendant Lieb, and that the title ultimately vested in the Association will be to the land with all of the restrictions restated on the deed as they originally appeared going back to when the Association first had title to Area A even before its transfer to the City with absolutely no modifications or diminutions of those restrictions as were set forth on the deed or deeds ultimately furnished by the Association to the defendant Lieb. This will probably require an additional quitclaim deed as well. The order will further provide that the Association is to within 90 days, take down each of the not permitted structures and obstructions in issue, to wit, the trees and retaining wall, gazebo, sports, court, etc.

However, the court notes that there is an exception for private property owners to do some limited construction on the types of restricted parkland as are in issue, as is set forth more fully above in the quotes from the pertinent "establishment" documents where such actions would serve the public good, for example, to put in a road to increase access, etc. This court is, therefore, inviting the parties to consider and address the question of whether or not, even though not specified in the paragraph or paragraphs allowing for such exceptions, the retaining wall, much like an access road, would increase the benefit to the public with regard to this "soon to be again" parkland, such that the court should not require its elimination and should treat it as being within the purview of this/these "exception" paragraphs.

As to whether or not the Association can assess and/or levy the Luglioni defendants for the costs of this removal or can obtain the money to take the actions required from all property owners

in the development, this court expresses no opinion at this time because no cross-action was filed against them for contribution or indemnity, etc. However, it seems that the Association, at the least, might well have an action for indemnity against the Luglianis once the money in issue has had to be spent. But whatever may ultimately be the case, funding, is not right now to be an obstacle to the court's order to the Association which will be to forthwith eliminate the offending structures and restore the land as it was before any of the impermissible violations of the deed restrictions.

The actions all of the Association and City in carrying out the transferring of title to the properties in issue to defendant Lieb in performance of a contract were "*ultra vires*" and must be reversed; even if these parties had the "power" to make an agreement, they lack the right or power to have engaged in the acts of performance they agreed upon.

The contract itself, accordingly, having been made, still exists. If the Lugliani and Lieb parties choose to sue on it (perhaps because they are out $2,000,000 unless the City and other recipients return the money), to obtain damages for the breach by the City and Association and possibly others (which promises to perform the City and Association will have breached as a result of this ruling), the City and Association might or might not have a defense based upon "impossibility" due to this order, or, perhaps a court might find that if these private parties were in *pari delicto*, they would not be entitled to relief. However, this court need not be concerned with any such possible aftermath or with what might take place between all parties to that contract once the actions taken by the City and Association are reversed.

III. THE DEFENSES TO THE MOTION AND THE ARGUMENTS OF THE CROSS-MOTION

A. The City Opposition and Cross-Motion

The City's Opposition and its Cross-Motion essentially consist of the argument that since the City no longer owns the land, no judgment or order would be properly directed at it, and a judgment should be rendered in its favor. As noted above, this court does not agree. Moreover, should the court be in error in letting the title pass now back into the Association and in being able to require it to enforce the deed restrictions as opposed to the City, then as a part of the Declaratory Relief action,

with a finding having been made of an *ultra vires* transfer by the City, it might well then be that the appellate court would choose to return title to the City. The City should not be out of this case. There are also remaining issues between the property owners and the City with regard to restricted properties which need to be definitively resolved now before further litigation ensues.

B. The Association, Lugliani and Lieb Opposition Filed 5/15/15

The Association and LL defendants oppose plaintiff's motion on many grounds making the following arguments:

1. As a member of the Association plaintiff is bound by its settlement agreement (the MOU): The court rejects this argument. As is more fully set forth below, the various documents creating and governing the Palos Verdes creation and the property restrictions as a part of the plan, set forth an independent separate right of action in every single homeowner (and at times stated so broadly as to include "residents" as well) to pursue by means of a nuisance action and in other modes any violation of the parkland restrictions in the deeds. The court has already quoted language from various recorded documents which relate to the land in issue to this effect, *supra*.

Since these documents all also provide for a separate and distinct right of the Association to act to eliminate violations, even utilizing means such as the ability to regain title to the misused land which individual property owners or residents cannot use, this court is of the view that the only reasonable interpretation of these documents is that they were intended to and went out of the way to provide for the separate and independent rights of property owners and residents to proceed on their own as a back-up just in case the Association did not act or would not act to protect their and the community's interests. Were this not the case, there would be no reason to include these independent rights of action in each and every landowner and even residents (who are not members of any Association). The above-noted documents even refer to these property owner rights as being cumulative with regard to the Association's right to act.

Plaintiff property owner (and to the extent allowed actionable rights in some

documents, residents) are also third party beneficiaries in every land transaction with regard to land which is and was a part of the original grant whenever title exchanges, including but not limited to sales, of restricted properties are involved, given that on the face of the deeds and in all of the recorded documents relating to all properties in the grant with restrictions, any and all who acquire property within the project are on notice that all other owners (and residents) are to be benefitted by the restrictions on property use set forth in the various deeds which are being transacted and will have a right to enforce them. Deeds are treated like contracts under the law, and, accordingly, third parties may have enforceable rights arising out of them.

2. Plaintiffs who have no property ownership have no standing. The evidence before the coury shows that all but about 10 members of the CITZENS FOR THE ENFORCEMENT OF PARKLAND COVENANTS are in fact either property owners or residents. This being the case, the court is of the view that no law has been produced that indicates that in order to be a proper "group" plaintiff, every member of the group has to be individually qualified to act. For example, the ACLU might bring suit even though many of its members are not up to date in their dues, or the Association here can act, even though some of its "members" are no longer qualified. In short, so long as some of the members of this group are qualified to act, which does not seem to be contradicted by opposing evidence, the CITIZENS can proceed. But, be that as it may, of course, there is no question but that plaintiff Harbison is a property owner within the development and as such entitled to proceed.

3. Pursuant to the Doctrine of Merger as set forth in Civil Code (CC) sections 803 and 811, once the property was deeded by the City to the Association, the merger of title in the holder of both the dominent and servient tenement holders extinguishes the "easement.[6]

[6]This position taken, in this court's view, totally inconsistent with the Association's position in the School District versus Association case is barred by principles of judicial

The defendants seem to assume that because there are restrictions and conditions that limit the use of the land in issue that what we are dealing with is easements, and that these "easements" are governed by sections 801 through 811 of the Civil Code. However, that is not the case. Before discussing what they are, the parties should note that even within the above-noted "establishment documents", a clear distinction is drawn between "easements" which those documents refer to as allowances for the construction and continued existance of such structures as power poles and lines, roadways, etc. and the type of dominant estate it refers to in connection with the restrictive conditions placed on deeds, etc. which it vests in all property owners with a right to enforce those restrictions.

If we just look to the term "easements," as that term is used in the CC we can see that just as comports with general experience, an easement creates a limited right to the use or enjoyment of another's land--not a general restriction on its use. In fact, CC section 801 sets forth a list of those "rights to use," and nowhere is there a restrictive covenant which limits the uses to which land can be put of the nature involved in this case for they generally involve some sort of physical right of access or use with regard to the land of another. Defendants have not cited any authority for the application of section 811 to our situation. And, there is no provision in the law of easements for the loss of title to the servient parcel if an easement right is violated.

This is because what we are dealing with reflects a different aspect of general real property law which includes the doctrines of covenants, conditions and equitable servitudes. In this regard, this court has always found a very old series of volumes from California Jurisprudence, Second Edition, Bankroft Whitney Company, San Francisco, 1960 to be very helpful when addressing real property issues anchored in old common law or early real property law cases.

Volume 14 of the series addressing Covenants, Conditions and Restrictions,

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estoppel.

pages1-152, is particularly helpful in this area. A limitation or restriction running with the land of the type in issue does just that. Once imposed, it continues and applies to the grantor, its successors in interest and to grantees and their successors in interest. Covenants can also run with the land, but one of the essential distinctions between a covenant running with the land and a condition, as here, which is technically and most often a condition subsequent running with the land, is that the latter carries with it a reversionary right to the grantor (or its successors) to enable it to enforce the prohibition or at the least to take title back from the grantee or its successors in interest if post- imposition of the restriction or condition the restriction is violated. A covenant does not carry such a reversionary right. Such conditions in deeds are for the benefit of an entire development and every owner therein, such that they can also be regarded as "equitable servitudes," as to which this author states at 116:

> "In view of the technical objections to an action at law brought by one not a party to the original agreement, the equity courts have developed the rule that uniform restrictions imposed for the benefit of all lots in a building tract are mutually equitable servitudes and are enforceable in the proper case by each owner in the tract. The reasoning behind this principle is that, at the time of the first conveyance, a mutual equitable servitude springs into existence as between the first lot conveyed and the balance of the lots in the remainder of the tract. As each conveyance follows, the burden and the benefit imposed by preceding conveyances pass as incidents of ownership. A similar servitude is created by the conveyance of each successive lot, as to those lots retained by the grantor."

Of course, in our case, there is no need for equity to step in since every buyer of property in the tracts with which we are concerned agrees in advance and essentially contracts with all of the other homeowners based on their notice of the history of the deed restrictions and the right which these documents vest in every landowner to enforce the provisions of the deeds as "dominant" holders of rights, making these restrictions, coupled with the reconveyance rights (a characteristic of a condition subsequent as compared to a covenant) a condition subsequent, and in today's parlance, a creation of third party beneficiary rights in the holders of all other properties in the development.

In all events, it is clear to this court that the deed restrictions and conditions

of ownership set forth therein are not "easements," that they are not subject to the "merger doctrine" and that they bind each and every property owner as well as the grantor and all of his successors in interest.

Finally, on this point, even though no "interpretation" of documents is needed to get to the above result, if one were to look to the "establishment documents," it is abundantly clear that it is not the purpose or intent of the grant of the lands in question "in trust" as reflected in all of the restrictions in issue that if the Association obtained or reacquired title to any of the parklands, the restrictions on the land which it acquired would disappear. Quite the opposite. The entire structure and intention of the grant and related documents from the 1020's onwards was that the Association (along with other owner enforcers) would be the preserver of the parklands. Under defendants' theory, the minute the Association acted to reclaim a parcel, which it was given a right to do only to enforce the parkland restrictions, suddenly, it would have the right and ability to strip that parcel of all restrictions crying "merger" and then to pass it back to the "miscreant" now cleansed of any restrictions. In fact, why stop with that parcel? Under defendants' merger theory, were the Association to receive back from the City all of the properties previously conveyed to the City, it could cry "merger" as to them all, strip all deeds of restrictions and sell them for private housing for a substantial sum.

It is true that this property was not "reclaimed" by the Association; it was transferred (sold) to the Association by the City (and School District) in a token transaction, but that makes no difference. The whole settlement was clearly designed to get around a court order that reaffirmed that the deed restrictions on the School District deed in issue (and others) were and are effective and to obviate the rights of all of the other property owners in this project to protect their interests. To this court's knowledge, albeit not specifically dealing with Area A, that judgment has never been reversed. The re-deeding of this land as well as its transfer by the Association was in violation of public policy, the deed restrictions, and the entire set of mutual obligations imposed on all involved with the land and deeds in the Palos Verdes

project and was an *ultra vires* act.

4. The Association has the right to conclusively interpret the C&Rs. The court also does not find this argument persuasive. Whatever its ability to interpret C&Rs, what its duties are with regard to the deed/ parkland restrictions in this case are not set forth only in the C&Rs. They are in all of the recorded documents in the history of the historic grant and the deeds themselves. These documents also speak in terms of rights to interpret in the Association, however, there is nothing in the language of the deed restrictions in issue to "interpret."

What the Association is trying to do here is tantamount to attempting to interpret that a deed which on its face says that title is granted to Mary Jones really means that title is granted to Frank Smith. There is nothing here to interpret. The deed restrictions in issue, before the Association sought to change them in their deed to defendant Lieb, were and are as clear as day. Not only that, but plaintiff has submitted evidence which has not been contradicted which, although it is not important to the court's decision on this point, shows that the Association interpreted the deed restrictions in issue as being clear and meaning exactly what they state--to wit, no sales other than to public entities and those able to run and maintain parkland with no use permitted except for parkland and the other uses specifically allowed on the deed.

In fact, this is the position advanced by the Association in case number BC 431020, and under principles of judicial estoppel, they are precluded from now advancing any contrary argument. The absolutely clear restrictions and requirements still apply today and the Association was bound to carry them out and will also be so bound once title to the property in issue is back in the Association.

Moreover, the rights of all other landowners to act on the deed restrictions are independent of any rights or interests that the Association might have and which they have every right to bring to a court for an independent judgment.

5. The MOU parties must all be joined including the School District. This is rejected. It is not an indispensable party. Its contract is not being voided in its absence. Some of the actions, which happen to be part of a promised performance in a contract it happens to have participated in, are simply being prohibited. What any and all parties to the MOU want to do about the fact that they cannot perform in some respects under their contract is left entirely up to them.

6. The Association can act in accord with the "Business Judgment Rule." In this court's view, there is no "business judgment" to be applied here. The Association, first and foremost is charged with the obligation to protect and carry out the property restrictions in issue. Since the deeds and other documents speak for themselves, the Association is bound as are all other property owners to follow them. In this court's view, the judgment in the earlier case which so found, absent that judgment having been set aside by court order or appeal, is still in effect, and even if not binding, since Area A was not in issue, this court agrees with the conclusion. There is nothing in any document that sets forth any right, by "interpretation" or otherwise to try and strip away the clear restrictions on the property in issue.

Moreover, any action which would, as is discussed elsewhere in this document, be allowed to stand for the principle that at its discretion, in the best interests of its "business," the Association could vitiate any and all deed restrictions, regardless of the independent rights and interests of all homeowners, is, in its ultimate potential outcome totally antithetical to the "business interests" of all homeowners. By eliminating deed restrictions, the Association would be acting to eliminate one of the most valuable interests all of the homeowners in this tract possess--i.e., the right to pass on title to property which, protected by the restrictions, will be a part of a development where green space is insured for the benefit of all. If this could be successfully done once, why not repeatedly, allowing the Association to convert parkland to private ownership by negotiating more repurchases from the City or even by exercising reclaiming rights, thereby increasing its "dues base" for economic

benefit to itself, but at a loss to all of the supposed-to-be protected individual homeowners in the development.

7.Deeds are to be supported. The court concurs. All deeds in this case complete with their restrictions are to be supported in that form as originally created and with all deed restrictions and conditions intact for all of the policy and other reasons stated herein. This does not include the deed to defendant Lieb which is an attempt to alter and destroy deed restrictions.

8. As to zoning laws or changes. The defense points out that the property in issue is in a tract F plan which allows for various uses, not limited to parks, and even possibly a private residence construction. The court's response is that this is totally immaterial. The fact that there is a zoning allowance for various uses has nothing whatsoever to do with actual deed restrictions, conditions subsequent and equitable servitudes. The properties in question have deed restrictions. Whatever is a generally possible use in a particular zone or area is overridden by the fact that as to properties with a specific deed restriction, the use that a property owner can put that property to is restricted --whatever may generally be possible within the particular zone.

9. This is not a trust case. Defendants argue that this land grant was not a trust and is not governed by authorities cited by plaintiff which involve "trust cases." However, the fact is that this development was created and vested from its outset in Bank of America as trustee (see Exhibit A, noted above). In addition, there is no need for a trust to be involved for once the deed restrictions were placed, they developed a life of their own, as governed by all of the recorded documents which govern them along with the restrictions of the faces of the deeds.[7]

[7]Defendants argue that the plaintiff relies only on the transfer documents of 1940 from the Association to the City. If it does, it is in error. All of the documents relating to this development, some of which neither side has decided to present to the court, are material,

10. The City Opposition and Cross-Motion. The City's entire argument appears to be that it is no longer a holder of title so it cannot be compelled to do anything and ought to be out of the case. This court does not agree since there remains a dispute between the parties in this case as to what can and cannot be done with regard to restricted properties, the one at issue where there is an issue as to whether or not title must or should pass back to the City, as well as other similar properties still held by the City with the same or similar deed restrictions as are in issue here where the plaintiffs do not want to see a similar act done in the future by the City in complicity with those seeking to strip these properties of their protections. Rights and duties remain in issue along with the need for declaratory and even injunctive relief.

III. CONCLUSION

If we follow the defense arguments in this case to their ultimate logical limit, and in this court's view, their necessary but unreasonable conclusion, what the Association is arguing at the end of the day is that the Association is entitled to sit down with the City at any time and accept a deed back of all of the parkland properties, restricted as to uses and ability to convey, and then simply eliminate all parkland restrictions on all deeds to which they apply and sell those lots relying inter alia on their "merger," "housing developments allowed under the "F" zoning provision" and "right to interpret" and "business judgment" arguments with no restrictions whatsoever. They, bottom line, are contending that, using their business judgment "right" and "right" to interpret they can and ultimately could interpret and "business" away all parkland limitations. Why not? If they could obtain $2,000,000 per lot, for example, and thereby enlarge the Associations budget plus obtain additional continuing fees from the new home owners might that be an exercise of "good "business judgment" for the Association as an entity? Perhaps, but it would be totally antithetical to everything intended by the original gift by the grantor, the grants and supporting documents, the creation of the Association to carry out the intents of the original grantor, the creation of the restricted deeds and

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relevant and important, and the court is not about to disregard evidence properly before it, even if the parties do not cite to it.

promised continuing parkland on which all homeowners invested in this community have a right to rely, etc. Such a end would in this court's view be and is simply untenable as both a matter of law and equity.

Because a summary judgment is not a final judgment, plaintiffs are to draft and submit a proposed final judgment consistent with what is expressed herein, along with any other supplementary supporting terms that they believe necessary to afford full relief plus their view as to whether or not the order to remove constructions can or cannot be legally excluded. (The court is concerned that to do so would be to do exactly what the Association and other defendants have tried to do and that is to stretch and alter the deed restrictions in this case even though the law prohibits doing so except in accord with the governing documents.) This draft is to be circulated at least 15 days before submission which is to occur on August 7, 2015 with any comments or objections to be filed and served at least 5 business days before the hearing on the Judgment to be held on August 10, 2015 at 9:30 a.m. in Department 12.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/06/14			DEPT. 86
HONORABLE Joanne O'Donnell BY ROBERT H. O'BRIEN	JUDGE	B. GREGG	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

12:00 pm	BS142768	Plaintiff Counsel	
	CITIZENS FOR ENFORCEMENT OF		NO APPEARANCES
	VS	Defendant Counsel	
	VS CITY OF PALOS VERDES ESTATES ET		

NATURE OF PROCEEDINGS:

NOTICE OF RULING OF MATTER TAKEN UNDER SUBMISSION

The Court, having taken the matter under submission on 1-3-2014, hereby makes its ruling as follows:

The Demurrer to the third cause of action is sustained without leave to amend.

At this time, Plaintiff has not presented any possible amendment that would establish a ministerial duty of the city to act as requested.

This case is now ordered transferred to Department 1 for re-assignment to a trial department, as there are now three remaining causes of action.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the
minute order
upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles

01-07-2014

MINUTES ENTERED
01/06/14
COUNTY CLERK

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/06/14			DEPT. 86
HONORABLE Joanne O'Donnell BY ROBERT H. O'BRIEN	JUDGE	B. GREGG	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

12:00 pm BS142768

Plaintiff Counsel: NO APPEARANCES

CITIZENS FOR ENFORCEMENT OF

VS

Defendant Counsel:

VS

CITY OF PALOS VERDES ESTATES ET

NATURE OF PROCEEDINGS:

California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 1-6-2014

Sherri R. Carter, Executive Officer/Clerk

By: B. GREGG

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LOS ANGELES, CA 90012

01/07/2014

MINUTES ENTERED
01/06/14
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/06/14			DEPT. 86
HONORABLE Joanne O'Donnell BY ROBERT H. O'BRIEN	JUDGE	B. GREGG	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

12:00 pm	BS142768	Plaintiff Counsel	
	CITIZENS FOR ENFORCEMENT OF		NO APPEARANCES
	VS	Defendant Counsel	
	VS CITY OF PALOS VERDES ESTATES ET		

NATURE OF PROCEEDINGS:

R.J. COMER ESQ
ARMBRUSTER GOLDSMITH & DELVAC
11611 SAN VICENTE BLVD., #900
LOS ANGELES, CA 90049

01/07/2014

MINUTES ENTERED
01/06/14
COUNTY CLERK