C E R T I F I C A T E O F M A I L I N G

L.A. Superior Court Central

Civil Division

CITIZENS FOR ENFORCEMENT OF PARKLAND COVENANTS VS. CITY OF PA	BS142768

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FILED
Superior Court of California
County of Los Angeles

JUN 29 2015

Sherri R. Carter, Executive Officer/Clerk
By Bettina M. Baker Deputy
Bettina M. Baker

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

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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 cirection 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 Lugllianis 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	NO APPEARANCES
	CITIZENS FOR ENFORCEMENT OF		
	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

CITIZENS FOR ENFORCEMENT OF

VS

VS

CITY OF PALOS VERDES ESTATES ET

Plaintiff Counsel: NO APPEARANCES

Defendant Counsel:

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

JEFFREY LEWIS ESQ
734 SILVER SPUR ROAD, #300
ROLLING HILLS ESTATES, CA 90274

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1230 ROSECRANS AVE., #110
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LEWIS BRISBOIS BISGAARD & SMITH
221 N. FIGUEROA STREET, #1200
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	NO APPEARANCES
	CITIZENS FOR ENFORCEMENT OF		
	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

01/06/2014

MINUTES ENTERED
01/06/14
COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL DISTRICT

PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT,

Plaintiff,

v.

PALOS VERDES HOMES ASSOCIATION, a California corporation; CITY OF PALOS VERDES ESTATES; and DOES 1 through 20,

Defendants.

Case No. BC431020

Assigned to the Honorable Richard Fruin, Department: 15

~~[PROPOSED]~~ JUDGMENT FOR DEFENDANT PALOS VERDES HOMES ASSOCIATION FOR QUIET TITLE AND DECLARATORY RELIEF

This action was tried to the Court sitting without a jury on March 29 and 30 and April 1 and 4, 2011, with argument on April 14, 2011 and supplemental argument on May 20, 2011. Jeffrey L. Parker of the law firm Robinson & Parker, LLP represented plaintiff Palos Verdes Peninsula Unified School District (the "School District"). Andrew J. Haley and Andrew S. Pauly, of the law firm Greenwald, Pauly, Foster & Miller, A Professional Corporation, represented defendant Palos Verdes Homes Association (the "Homes Association").

Based on the oral and documentary evidence presented, the written and oral argument of counsel, and having already filed a Statement of Decision on September 22, 2011, and good

EXHIBIT R

cause appearing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that judgment on the two causes of action in the School District's First Amended Complaint is entered *in favor of the Homes Association*, and *against the School District*, as follows:

1. This Judgment affects that real property located in the City of Palos Verdes Estates, County of Los Angeles, State of California commonly known as Lots C and D of Tract 7331 (the "Property") and legally described as:

LOTS C AND D OF TRACT 7331, IN THE CITY OF PALOS VERDES ESTATES AS PER MAP RECORDED IN BOOK 102 PAGE(S) 46 TO 50 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

AKA: APN 7542-002-900 AND 7542-002-901

2. As of the filing of the Complaint on February 1, 2010, the School District held and continues to hold its interest in the Property as a fee simple owner pursuant to that certain Grant Deed, dated December 7, 1938, from the Homes Association to the School District, recorded January 31, 1939 in Book 16374 Page 140 in the Official Records of Los Angeles County (the "1938 Grant Deed"), which Property was originally granted in fee simple to the Homes Association by Grant Deed, dated June 29, 1925 from Bank of America, as trustee, recorded June 30, 1925 in Book 4459 Page 123 in the Official Records of Los Angeles County (the "1925 Grant Deed").

3. The Property remains subject to the restrictions set forth in the 1925 Grant Deed (the "1925 Restrictions"), which 1925 Restrictions are valid and enforceable equitable servitudes against the Property enforceable by injunction by the dominant tenements of the 1925 Restrictions. The dominant tenements of the 1925 Restrictions are the residents of Tract 4400 (the City of Palos Verdes Estates) and Tract 6881 (the Miraleste district of Rancho Palos Verdes).

4. The Property also remains subject to the restrictions set forth in the 1938 Grant Deed (the "1938 Restrictions"), including that the Property may not be used for any purpose other than for the establishment and maintenance of public schools, parks, playgrounds

and/or recreation areas. The 1938 Restrictions are valid and enforceable equitable servitudes against the Property enforceable by injunction by the dominant tenements of the 1938 Restrictions. The dominant tenements of the 1938 Restrictions are the residents of Tract 4400 (the City of Palos Verdes Estates) and Tract 6881 (the Miraleste district of Rancho Palos Verdes).

5. The 1938 Grant Deed created a binding contract between the School District and the Homes Association, which contract restricted the use that the School District can make of the Property to only public schools, parks, playgrounds and/or recreation areas. This contract (including the use restrictions set forth therein) continues to remain valid and enforceable and a violation of the restrictions set forth in such contract would cause irreparable harm to the development plan for Tract 7331 – Lunada Bay – Palos Verdes Estate that can be judicially enjoined.

6. The Marketable Record Title Act, Civil Code §§ 880.020, *et seq.*, (the "MRTA") does not apply to the 1925 Restrictions or the 1938 Restrictions.

7. The Property also remains subject to all other conditions, covenants, restrictions and reservations of record, including, but not limited to, that certain Declaration No. 1 – Declaration of Establishment of Basic Protective Restrictions, Conditions, Covenants Reservations, Liens and Charges for Palos Verdes Estates, recorded July 5, 1923 in Book 2360, Page 231 of the Official Records of Los Angeles County (including all amendments thereto of record) ("Declaration No. 1") and that certain Declaration No. 21 of Establishment of Local Protective Restrictions, Conditions, Covenants, Reservations, Liens and Charges for Tract 7331 – Lunada Bay – Palos Verdes Estates, recorded September 29, 1924 in Book 3434 Page 165 of the Official Records of Los Angeles County (including all amendments thereto of record) ("Declaration No. 21").

8. Notwithstanding the School District's ownership of the Property, the Property remains subject to the same policies and procedures that the Homes Association applies to other properties in that area of the City of Palos Verdes as established under Declaration No. 1 and Declaration No. 21, including the Art Jury.

~~9. This Judgment shall be recorded and all of the terms and conditions herein shall run with the Property~~.

10. The School District shall take nothing on its First Amended Complaint.

11. The Homes Association is the prevailing party. The Court awards costs of $ 16,491.83 (MB) in favor of the Homes Association and against the School District pursuant to a timely filed and served Memorandum of Costs.

~~12. The Court awards reasonable attorneys' fees of $_____ in favor of the Homes Association and against the School District pursuant to a timely filed and served motion.~~

~~13. Interest on this Judgment shall accrue at the legal rate of 10% per annum from the date this Judgment is entered as allowed by law. The Homes Association shall further be entitled to all reasonable and necessary costs incurred in enforcing this Judgment as allowed by law.~~

DATED: September 22, 2011

Richard J. Fruin

HONORABLE RICHARD FRUIN
JUDGE OF THE SUPERIOR COURT

Respectfully submitted by:

DATED: August 22, 2011

GREENWALD, PAULY, FOSTER & MILLER,
A Professional Corporation
ANDREW S. PAULY (SBN 90145)
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By: _____
ANDREW J. HALEY
Attorneys for Defendant
PALOS VERDES HOMES ASSOCIATION

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1299 Ocean Avenue, Suite 400, Santa Monica, California 90401-1007.

On August 22, 2011, I served the foregoing document(s) described as **[PROPOSED] JUDGMENT FOR DEFENDANT PALOS VERDES HOMES ASSOCIATION FOR QUIET TITLE AND DECLARATORY RELIEF** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed to the addressee(s) as follows:

PLEASE SEE ATTACHED SERVICE LIST

☒ BY MAIL: I caused such envelope to be deposited in the mail at Santa Monica, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

☐ BY PERSONAL SERVICE: I personally delivered such envelope by hand to the offices of the addressee.

☐ BY FEDEX: The FedEx package tracking number for this envelope is _____, and the envelope was sent [mode] for receipt on [day], [date].

☐ BY ELECTRONIC MEANS: A courtesy copy of the above-referenced document was transmitted by ☐ facsimile and/or ☐ e-mail transmission; said transmission was reported as complete and without error.

☒ Executed on August 22, 2011, at Santa Monica, California.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

KATHY M. BARONE

SERVICE LIST

Palos Verdes Peninsula Unified School District v. Palos Verdes Homes Association, et al.

Los Angeles County Superior Court, Case No. BC431020

Jeffrey L. Parker, Esq.
Robinson & Parker LLP
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Co-Counsel for Defendant
PALOS VERDES HOMES ASSOCIATION
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CERTIFICATE OF SERVICE--I hereby certify that I delivered a true copy of the STATEMENT OF DECISION AND JUDGMENT FOR DEFENDANT ALOS VERDES HOMES ASSOCIATION FOR QUIET TITLE AND DECLARATORY RELIEF to counsel named below by placing a copy thereof in a sealed envelope addressed as shown below in such manner as to cause it to be deposited with postage prepaid in the U. S. Mail on the date shown below in the ordinary course

DATED: September 22, 2011

JOHN A. CLARKE, Executive Officer/Clerk

By: L Klein

L. KLEIN, DEPUTY CLERK

DEPARTMENT 15

ROBINSON & PARKER

JEFFREY L. PARKER

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TORRANCE, CA 90503

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ANDREW J. HALEY

1299 OCEAN AVE. SUITE 400

SANTA MONICA, CA 90401-9889

9/23/11

15

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT, Plaintiff, vs. PALOS VERDES HOMES ASSOCIATION, a California corporation; CITY OF PALOS VERDES ESTATES; and DOES 1 through 20, Defendants.	Case No. BC431020 **STATEMENT OF DECISION**

This dispute concerns whether Palos Verdes Peninsula Unified School District (the "School District") may sell two unimproved lots, known as Lots C and D, that were among thirteen parcels that the Palos Verdes Homes Association (the "Homes Association") deeded to the School District seventy years ago free of the restrictions that the Homes Association imposed in that **1938 Grant Deed**. The School District wants to sell the Lots for residential development; the deed restrictions require that the Lots be used for school sites or, alternatively, for recreational or park purposes. The School District could sell the two Lots for more than two million dollars if their use is not restricted.

The matter was tried to the court on March 29 and 30 and April 1 and 4, with final argument on April 14, 2011. Both parties submitted trial briefs. The court heard further argument on May 20, after which the School District and the Homes Association filed post-trial briefs. The matter stood

submitted on May 26, 2011.

Jeffrey L. Parker, of the law firm Robinson & Parker, LLP represented the School District at trial. Andrew J. Haley and Andrew S. Pauly, of the law firm Greenwald, Pauly, Foster & Miller, represented the Homes Association.

Signaling its importance to their organizations, Walker Williams, the School District Superintendent, attended the trial, as did Philip Frengs and Susan Van Every, respectively, the president and executive director for the Homes Association.

OPERATIVE COMPLAINT:

The First Amended Complaint ("FAC") is the operative complaint. Plaintiff School District therein seeks to quiet title to Lots C and D against any claim that the terms of the **1938 Grant Deed** and the earlier **1925 Grant Deed** restrict the use that may be made of the property. The School District makes three arguments:

(1) That the use restrictions that were imposed on the certain properties including Lots C and D by the **1925 Grant Deed** when Bank of America, as trustee,[1] conveyed them to the Homes Association were lost through the doctrine of merger when the Bank conveyed its residual interests to the Homes Association by its **1938 Quitclaim Deed.** See, FAC, para. 10, p. 5 @ 7-13.

(2) That any use restrictions on Lots C and D, arising from the **1925 Grant Deed** and the **1938 Grant Deed**, expired in 1987, by the operation of the Marketable Record Title Act ("MRTA"), Civil Code sections 885.010 - 885.070. See, FAC, para. 12.

(3) That any use restrictions on Lots C and D arising from the **1938 Grant Deed** are no longer enforceable "[1] given the overriding policy of permitting surplus school district property to be developed to the same extent as permitted on adjacent property, [2] given that other current and changed circumstances since recordation of the Deeds render enforcement of such restrictions inequitable and unreasonable, and [3] given that enforcement of such restrictions would not effectuate their purpose." See, FAC, para. 13.

[1] Palos Verdes Trust was the developer of Tracts 4400 and 6881; its conveyancing agent was Bank of America, as trustee for Palos Verdes Trust.

The Homes Association denied the material allegations in its answer and asserted various affirmative defenses.

CONCLUSIONS:

The court shall enter judgment for the Homes Association. The land-use restrictions imposed by the **1938 Grant Deed** remain valid and are judicially enforceable. The court's conclusions are supported by these findings:

The **1938 Grant Deed** created equitable servitudes in the title to Lots C and D that restricted their future use to school, recreational or park purposes. Lots C and D are among the properties that the Homes Association acquired title to through the **1925 Grand Deed**. That **1925 Deed** imposed land-use restrictions on the grantee, namely that the properties were to be used for "park purposes," and the later **1938 Grant Deed** referred to and incorporated those "conditions, restrictions and reservations of record" in its transfer to the School District. For that reason, Lots C and D remain subject to the "conditions, restrictions and reservations of record" imposed by the **1925 Grant Deed**, except as specifically modified in the **1938 Grant Deed.** The **1938 Grant Deed**, as the later instrument, is the operable deed. The equitable servitudes that are established in the **1938 Grant Deed** may be enforced by a court through equitable remedies.

The **1938 Grant Deed**, furthermore, constituted a contract between the Homes Association, as grantor, and the School District, as grantee, that restricted the use that the School District can make of Lots C and D to school use. The School District's sale of Lots C and D for residential use would violate the contract, and, because such a violation would cause irreparable harm to the Lunada Bay development plan, could be judicially enjoined.

The interest that Homes Association retained under the **1938 Grant Deed** is, moreover, a condition subsequent that is enforceable through an injunctive remedy.

The Marketable Record Title Act did not terminate the use restrictions that were created by the **1938 Grant Deed** because the MRTA does not apply to equitable servitudes, a condition subsequent or to contract rights that are enforceable by injunction.

//

DISCUSSION:

A. Sequence of Deeds.

The parties, during the trial, educated the court about the development of the original Tracts 4400 and 6881--areas that are today the City of Palos Verdes Estates and the Miraleste district (part of the City of Rancho Palos Verdes overlooking San Pedro). This litigation involves Tract 6888 and Tract 7331--these are subdivisions within the boundaries of the original tracts that encompass the Lunada Bay area of Palos Verdes Estates. Lots C and D are within Tract 7331.

The parties stipulated that 91 documents would be received into evidence. The court, accordingly, has reviewed recorded deeds and declarations, minutes of meetings of the boards of the Homes Association, of the School Board and of other political bodies, title reports, committee reports, development diagrams, area maps, plot plans and photographs, old letters, news clippings and school budgets.

Probably because of the wealth of the documented, historical information, there is little factual dispute between the parties. Their dispute lies in the legal principles that apply to interpret the language of the deeds in the chain of title for Lots C and D.[2]

The court shall provide a brief historical recital that is needed to understand the parties' arguments. The dispute centers on three conveyances that are recorded in the following deeds:

1. The **1925 Grant Deed** between trustee Bank of America, as grantor, and the Homes Association, as grantee, conveying various properties within the Palos Verdes development subject to land use restrictions (Exh. 4);

2. The **1938 Quitclaim Deed** between trustee Bank of America, as grantor, and the Homes Association, as grantee, covering any residual interest the Bank as trustee retained in the properties it transferred to the Homes Association in the **1925 Grant Deed** (Exh. 5.); and

---

[2] Lots C and D are located within the Lunada Bay development plan. Lot C fronts on Via Pacheco, and Lot D, behind to the east, fronts on Palos Verdes Drive West. The lots are each approximately 126 feet wide and 150 feet deep. See, FAC, para. 6. These Lots were originally envisioned to "form a mall, or connecting link, between the junior high and high school sites." See, Exh. 8, p. 14, Association's 11/3/38 minutes. Lots C and D have never been used by the School District for classrooms or for playing fields or other recreational uses. See, FAC, para. 7.

3. The **1938 Grant Deed** between the Homes Association, as grantor, and the School District, as grantee, conveying fee title to thirteen properties (totaling 120 acres) including Lots C and D subject to land use restrictions (Exh. 6.).

Tract 6888 and Tract 7331 were master-planned, in the 1920s, to provide park-like amenities for the benefit of its future residents. The developer, in 1923, published *Protective Restrictions Palos Verdes Estates (Tract 6888 and Tract 7331-Lunada Bay)* to explain the community plan and to establish the Homes Association and the Art Jury to implement the plan. The developer recorded the Protective Restrictions as declarations. Declaration No. 1, as recorded July 5, 1923, contains the restrictions to original Tracts 4400 and 6881. (Exh.2, p. PVHA 025.) Declaration 21, as recorded September 29, 1924, contains the restrictions applicable to Tract 7331 that contains, as mentioned, Lots C and D. (Exh. 2, p. PVHA 020.) (The Protective Restrictions, declarations and By-Laws for the Homes Association are all part of Exhibit 2. Exhibit 7 is a color-coded map of Palos Verdes Estates showing the land usages as established by the Protective Restrictions.)

Land use restrictions that were consistent with the Protective Restrictions were thereafter recited in the initial deeds for the properties that the developer sold. These restrictions, because they were recorded in the title chain, were intended to be binding on subsequent purchasers as equitable servitudes. Both of the experts who testified at trial--Karl Geier for the School District and Charles Hansen for the Homes Association--agree that the developer intended that the land use restrictions would "run with the land," that is, be binding on later purchasers as equitable servitudes.

The declarations placed Lots C and D into a Class F Use District, thus permitting them to be developed with a "single family dwelling." (Exh. 2, p. 038, Section 10.) The use restrictions on Lots C and D that are now in dispute were imposed in the **1925 Grant Deed** (Exh. 4) between trustee Bank of America and the Homes Association and the **1938 Grant Deed** (Exh. 6) between the Homes Association and the School District.

The **1925 Grant Deed**, by which trustee Bank of America conveyed various properties to the Homes Association, restricted the use of the conveyed properties as follows:

3. That the said realty is to be used and administered forever for park purposes ... for the benefit of the persons residing and living within the boundaries of the property known a ... "Palos Verdes Estates" under such regulations ... as may from time to time hereinafter be established by the Park Department of Palos Verdes Homes Association for the purpose of safeguarding said realty ... and for the further purpose of protecting the residents of the said Palos Verdes Estates from any uses of or conditions in or upon said realty which are, or may be, detrimental to the amenities of the neighborhood;....

The Bank of America, as trustee, retained under the **1925 Grant Deed** an express reversionary interest in the properties that it conveyed to the Homes Association. A reversionary right (now called a power of termination) provides to a grantor a means to enforce any land use restrictions that are imposed by deed; that is, if the grantee or a subsequent purchaser disregards the deed restrictions, the grantor, or its successors, could take back the ownership of the land.

By the **1938 Quitclaim Deed** the Bank of America, as trustee, transferred to the Homes Association any interest it retained in those properties which, in 1925, it had granted to the Homes Association. The intent of this **1938 Quitclaim Deed** was to transfer to the Homes Association any reversionary rights that the Bank still held to enforce the land use restrictions in the **1925 Grant Deed**.

The Homes Association, in 1938, transferred thirteen of the properties it had received from the Bank of America to the School District to be used as future school sites. The transfer was recorded in the **1938 Grant Deed**. That **1938 Grant Deed** included the restrictions over Lots C and D now in issue. The **Deed** reflects the School District paid $10 to the Homes Association for the 120 acres. The Homes Association was motivated, in part, to avoid any further obligation to pay property taxes to Los Angeles County on the properties it transferred to the School District. See,

Exh. 8, p.16-17, Association 11/30/38 minutes.[3]

The Homes Association's board, as it considered the transfer to the School District, deemed it prudent to request a quitclaim deed from the Bank to secure any interest the Bank retained in the properties that were to be conveyed to the School District. See, Exh. 8, p. 2 and p. 21, the Association's 1/18/38 and 2/27/40 minutes. The **1938 Quitclaim Deed** and the **1938 Grant Deed**, therefore, are part of the same transaction.

The **1938 Grant Deed** (Exh. 6) enlarges the uses permitted on the properties originally conveyed by the **1925 Grant Deed**. The **1925 Deed** restricted the use of the properties conveyed to park purposes, while **the 1938 Grant Deed** additionally allowed school use. The **1938 Grant Deed** reads in applicable part:

> *PALOS VERDES HOMES ASSOCIATION, a California corporation, in consideration of Ten Dollars ($10.00) to it in hand paid, receipt of which is hereby acknowledged, does hereby GRANT TO*
>
> *PALOS VERDES SCHOOL DISTRICT OF LOS ANGLES COUNTY*
>
> *all that real property in the County of Los Angeles, State of California, described as follows:*
>
> * * * * * *
>
> *Lots A, B, C and D of Tract 7331*
>
> * * * * * *
>
> *SUBJECT TO State and County taxes now due and/or delinquent;*
>
> *AND SUBJECT TO conditions, restrictions and reservations of record; and to the express condition that said realty shall not be*

[3] The Homes Association, in 1940, transferred the remainder of the properties it had received by the **1925 Grant Deed** to the newly formed City of Palos Verdes Estates. (Exh.13.)

used for any other purposes than for the establishment and maintenance of public schools, parks, playgrounds and/or recreation areas, and shall not be sold or conveyed except subject to conditions, restrictions and reservations of record and except to a park commission or other body suitably constituted by law to take, hold, maintain and regulate public parks and/or playgrounds; provided that easements may be granted over portions of said reality to the public for parkway and/or street purposes.

IN WITNESS WHEREOF, PALOS VERDES HOMES ASSOCIATION has caused this deed to be duly executed, by its officers thereunto authorized, this 7th day of December, 1938.

A resolution of the Board of Trustees of the Palos Verdes School District was appended to the **1938 Grant Deed**. It accepted the deed conditions. It reads:

Be it resolved that the Board of Trustees, Palos Verdes School District, approve and hereby accept the transfer of the seven school sites described in the deed duly executed by the Palos Verdes Homes Association to the above named school district on the 7th day of December, 1938.

The **1938 Grant Deed** did not expressly reserve a right of reversion in the Homes Association to enforce the use restrictions imposed by that **1938 Grant Deed,** but the **1938 Deed** does impose a condition subsequent that may be used to enforce the use restrictions.

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B. Legal Arguments.

The School District advances two main arguments for the termination of the use restrictions contained in the **1925 Grant Deed** and the **1938 Grant Deed**. Its first argument is that when the Homes Association, through the **1938 Quitclaim Deed**, acquired the reversionary interest in the use-limited properties that it conveyed to the School District by the **1938 Grant Deed**, the subservient interest (the fee interest that was subject to the use restrictions) and the dominant interest (the fee interest having the right to enforce the use restrictions) merged by operation of law, so that the Homes Association's transfer, later in 1938, of the properties to the School District was free of any enforceable land use restriction contained in the **1925 Grant Deed**. (This argument, however, is directly contrary to the express provisions in the **1938 Grant Deed**. That **Deed** incorporates by reference the "conditions, restrictions and reservations of record" and further provides that the properties conveyed "shall not be sold or conveyed except subject to the conditions, restrictions and reservations of record" and "except to a park commission or other public body suitably constituted by law to take, hold, maintain and regulate public parks and/or playgrounds." This language from the **1938 Grant Deed** has the effect of restating all of the land-use restrictions of record.)

The School District next argues that all use restrictions in the **1938 Grant Deed** (and any in the **1925 Grant Deed** that were not merged with the dominant interest and, thus, lost by the **1938 Quit Claim Deed**) were extinguished by Civil Code section 885.060(b), part of the Marketable Record Title Act. Section 885.060(b) reads:

> (b) Expiration of a power of termination pursuant to this chapter terminates the restriction to which the fee simple estate is subject and makes the restriction unenforceable by any other means, including, but not limited to, injunction and damages.

The School District's arguments are individually addressed below.

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97-233711

1. As between the parties to the 1938 Grant Deed--the School District and the Homes Association--the use restrictions on Lots C and D are enforceable by contract.

The language of the **1938 Grant Deed** imposes use restrictions on the properties that the Homes Association conveyed to the School District in unambiguous language:

> *PALOS VERDES HOMES ASSOCIATION ... does hereby GRANT TO*
>
> *PALOS VERDES SCHOOL DISTRICT OF LOS ANGLES COUNTY*
>
> *all that real property ...*
>
> * * * * * *
>
> *Lots A, B, C and D of Tract 7331*
>
> * * * * * *
>
> *AND SUBJECT TO conditions, restrictions and reservations of record; and to the express condition that said realty shall not be used for any other purposes than for the establishment and maintenance of public schools, parks, playgrounds and/or recreation areas, and shall not be sold or conveyed except subject to conditions, restrictions and reservations of record and except to a park commission or other body suitably constituted by law to take, hold, maintain and regulate public parks and/or playgrounds; ....*

The School District accepted the grant subject to the deed conditions by a duly adopted resolution that is annexed to the recorded **1938 Grant Deed**. The resolution is quoted above. (Exh. 6.) The minutes of the School District Board thirty-five years later, on January 31, 1974, acknowledged that promise, saying: "All the conditions in the original covenant were accepted by the school district." (Exh. 17 at p. SD535.)

The original parties to the **1938 Grant Deed** are the plaintiff and defendant now before the

court. The intent of those parties, at the time the conveyance was made, is clear and documented: the properties the Homes Association conveyed were to be used by the School District for school, recreational or park purposes.

The land use restrictions of the **1938 Grant Deed** are enforceable as a contract, as between the original parties to the contract, whether or not those conditions are also enforceable as equitable servitudes against future owners of Lots C and D. The leading treatise on California real estate advises: "When a covenant is contained in a deed or in a separate agreement between the original property owners, the parties are in privity of contract and it is immaterial *as to them* whether the covenant 'runs with the land,' since the covenant can be enforced between the parties under the usual principles of contract law." 8 Miller & Starr, Cal. Real Estate (3rd ed. 2009) section 24.2 (emphasis original). The Miller & Starr treatise cites for that proposition numerous decisions including Berryman v. Hotel Savoy Co. (1911) 160 Cal.559, 564 and 573 ("a covenant not running with the land may be for the benefit of property owned by the persons who may enforce it").

So, even if the Homes Association in its **1938 Grant Deed** did not expressly retain a power of termination to enforce the use restrictions provided in the **Deed**, the Homes Association could seek injunctive relief against a threat by the grantee to abrogate the restrictions. Deed restrictions are traditionally enforced through injunctive suits. See generally, Mullally v. Ojai Hotel Co. (1968) 286 Cal.App.2d 9; also 12 Witkin, Summary of California Law (10th ed.2005), Real Property, sections 440 and 451. Courts, of course, will decline to issue an equitable remedy to enforce unreasonable restrictions, but there is no reason to think that a court will be reluctant to enforce the deed restrictions that the School District accepted in the **1938 Grant Deed**. The School District in accepting the properties for school sites expressly agreed that the properties including Lots C and D "shall not be sold ... except subject to the conditions, restrictions and reservations of record and except to a park commission or other body suitably constituted by law" so that the properties shall be maintained as "public parks and/or playgrounds." The School District, in accepting Lots C and D, thus, assumed "a trust-like obligation" that is readily enforced in equity. "What is relevant is a public entity's heightened duty to act equitably when it accepts a conditional gift from a donor for the public's benefit." County of Solano v. Handerly (2007) 155 Cal.App.4th 566, 577 (deeds

conveying properties for fair grounds will be strictly construed to prevent the county from unilaterally changing the use).

The Marketable Record Title Act does not abrogate the Homes Association's right to enforce the **1938 Grant Deed** in contract because the MRTA, in its statutory language and legislative history, applies only to use restrictions that are sought to be enforced in equity against certain restrictions that are recorded. The MRTA has no application to deed use restrictions that are sought to be enforced by the original grantor against the original grantee. The use restrictions, in that circumstance, are legal rights that the original contracting parties bargained for.

2. The use restrictions on Lots C and D created by the 1938 Grant Deed are equitable servitudes and may be enforced by equitable remedies.

A grantor and grantee to a real estate conveyance may create land use limitations that are binding on future owners of the property by the language that is put in a recorded deed or declaration. Such limitations are called "equitable servitudes." Such deed limitations are enforceable against subsequent purchasers by the grantor, the grantor's successors, or benefitted property owners, if three conditions are met. The three conditions are that (1) the purchaser must have notice of the restrictions, (2) the restrictions must be part of a common plan including both properties, and (3) the parcel that is benefitted (the "dominant tenement") must be adequately identified in the public record. See, Citizens for Covenant Compliance v. Anderson (1995) 12 Cal.4th 345 (land use restrictions that create a common plan and are recorded in subdivision declarations, though not in subsequent deeds, are valid, "run with the land," and may be enforced through injunctive relief).

These conditions are met for the restrictions that the Homes Association imposed by the **1938 Grant Deed**. That Deed declares that the thirteen parcels conveyed, those including Lots C and D, were to be used for school sites or, alternatively, recreational or park purposes. The School District expressly agreed to such use restrictions in its resolution that accepted the properties. The School District argues that the **1938 Grant Deed** is too cursory to establish that its restrictions are part of a common plan. The court finds to the contrary because the **1938 Grant Deed** incorporates by reference "conditions, restrictions and reservations of record." There was "of record," i.e. in the title

chain, the declarations that contained the plan elements for the master-planned community. The **1925 Grant Deed** furthered that plan in conveying to the Homes Association properties that were intended in the master plan for schools and parks. The Homes Association, which was created in Declaration No. 1 (see Exh. 2) to protect the plan, represents the benefitted property owners and satisfies the requirement that the dominant tenement be identified.

Land use restrictions that are equitable servitudes may be enforced by injunctive relief, see Citizens for Covenant Compliance v. Anderson, supra, and it not necessary that the plaintiff in seeking injunctive relief also have a reversionary interest in the servitude property.

The School District's argues that a merger occurred when the Homes Association received from Bank of America, as trustee, the fee title, through the **1925 Grant Deed**, and later received through the **1938 Quitclaim Deed** any residual reversionary interest in the properties conveyed by the **1925 Grant Deed**, resulting--the School District argues-- in the loss of the reversionary power to enforce the land use restrictions. That argument, even if were correct, would not deprive the Homes Association of its independent ability to enforce the equitable servitudes by seeking injunctive relief. The court's view, however, is that any enforcement power available to the Homes District was not lost or diminished when it received the **1938 Quitclaim Deed**. Whether any merger occurs, so as to extinguish a subordinate real estate interest, depends on whether the parties intended to extinguish the subordinate interest. See, Sheldon v. La Brea Materials Co. (1932) 216 Cal 686, 692. The School District has offered no evidence that the Homes Association intended that the **1938 Quitclaim Deed** would reduce the enforcement powers that were then or subsequently available to it as a grantor to prevent violations of deed restrictions. The evidence, in fact, is contrary to the School District's position. The **1938 Quit Claim Deed** and the **1938 Grant Deed** were part of the same transaction, the purpose of which was to transfer to the School District properties that would be developed, as needed, into school sites. The Homes Association was deliberate in drafting the **1938 Grant Deed** to impose use restrictions on the properties it conveyed to the School District and even to specify that the School District could not sell or otherwise convey any of the properties except with use restrictions and even then only if conveyed to a public agency to maintain any such property as "public parks or playgrounds." Since the Homes Association solicited the **1938 Quit**

Claim Deed with the intention of conveying the thirteen properties to the School District in a manner that would restrict the future use of the properties, it is unlikely Homes Association intended that the **1938 Quit Claim Deed** would effect a merger between the dominant and servient interests so as to extinguish the enforcement powers that the Homes Association would need to have in order to insure that its grantee would comply with the use limitations.

The School District has not carried its burden of establishing that the parties to the **1938 Quit Claim Deed** intended that the transaction would extinguish any legal enforcement powers held by the Homes Association as the dominant tenement interest.

In summary, the **1938 Grant Deed** created equitable servitudes over Lots C and D for school, recreational and park purposes that may be equitably enforced by the Homes Association.

3. The Marketable Record Title Act did not nullify the equitable servitudes placed on Lots C and D by the 1938 Grant Deed.

The School District argues that any equitable servitudes imposed by the **1938 Grant Deed** were terminated, in 1987, by operation of the Marketable Record Title Act ("MRTA"). MRTA (Civil Code section 880.020 et seq.) provides that certain land use restrictions that are recorded in the title chain, specifically including reversionary interests, are to be terminated 30 years after their creation unless within five years from the enactment of MRTA a notice of intent to preserve is recorded in the chain of title. The statute provides: "Recordation of a notice of intent to preserve the interest in real property after the interest has expired ... does not preserve the interest." Civil Code section 880.310(a). Thus, the School District argues that any use restrictions on Lots C and D to the extent enforceable under the **1938 Grant Deed** was lost in 1987 when the Homes Association failed to record a notice of intent to assert the restrictions found in the **1938 Grant Deed**.

MRTA does not apply to the restrictions that were imposed under the **1938 Grant Deed**, and, therefore, does not terminate them for several reasons.

The interest that the Homes Association retained under the **1938 Grant Deed** was a condition subsequent rather than a covenant enforceable only through a reversionary right. The condition subsequent was not lost through the operation of the Marketable Record Title Act. The condition

subsequent is enforceable through an injunction remedy.

Secondly, the **1938 Grant Deed** imposed a contract restriction on the use that the School District could make of the real properties that the Homes Association transferred to the School District. The contract limitations remain in effect and are enforceable against the School District by an injunctive action. Contract limitations between parties in privity are not terminated by the Marketable Record Title Act. MRTA was enacted to clear property titles that are "unreasonable restraints on alienation and marketability of real property because the interests ... have been abandoned or have otherwise become obsolete." Civil Code section 880.020(a)(1). As between the original parties to the **1938 Grant Deed** the conditions under which the Homes Association transferred Lots C and D (and the other properties) are neither abandoned nor obsolete. The purposes that animate the property restrictions which the Homes Association imposed still remain. The Homes Association is asserting those purposes in this litigation.

Additionally, Civil Code section 880.240 states that "an interest of the state or a local public entity in real property" are not subject to the expiration or to expiration of record under the MRTA. The evidence received at trial included the fact that the City of Palos Verdes Estates owns numerous properties within the municipal boundaries, e.g. see Exhs. 12 and 13, some of those being properties it received from the Homes Association under the 1940 Grant Deed (see, Fn. 3, supra). As to those properties the City is a dominant interest holder with a right to enforce land-use restrictions that have been imposed by deed limitations on servient interest properties. MRTA, by its plain language, does not operate to terminate the use restrictions imposed on Lots C and D because those use restrictions are subservient to the dominant interest in the properties the City received from the Homes Association under the 1940 Grant Deed.

Finally, the Legislature, in 1990, adopted a clarifying amendment to the Marketable Record Title Act that demonstrates that the Legislature never the intended the MRTA should be construed to void equitable servitudes if those restrictions were enforceable by injunction. Civil Code section 885.060(b), as adopted originally with the MRTA in 1982, provides:

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(b) Expiration of a power of termination pursuant to this chapter terminates the restriction to which the fee simple estate is subject and makes the restriction unenforceable by any other means, including, but not limited to, injunction and damages.

Responding to criticism that section 885.060(b) could be read more broadly than was originally intended, the Legislature in 1990 enacted a subdivision (c) to better specify circumstances that were not within the MRTA. Section 885.060(c) provides:

(c) However, subdivision (b) does not apply to a restriction for which a power of termination has expired under this chapter if the restriction is also an equitable servitude alternately enforceable by injunction. Such an equitable servitude shall remain enforceable by injunction or any other available remedies, but shall not be enforceable by a power of termination. This subdivision does not constitute a change in, but is declaratory of the existing law.

For the Legislature to determine that subdivision (c) is declaratory of existing law clearly means, as a matter of statutory interpretation, that it was not the Legislature's intent in 1982 in adopting Civil Code section 885.060 that equitable servitudes that were enforceable by equitable remedies would be terminated.

The School District's argument that the Legislature's enactment of subdivision (c) could not resurrect what the Homes Association had already lost--an equitable servitude that was enforceable by an injunction--requires the conclusion that the Legislature intended to terminate such restrictions in its initial legislation. The Legislature, however, said in 1990 that such was not its intent. The School District's argument, furthermore, would have far-reaching applications. It would mean that all equitable servitudes created in the **1925 Grant Deed**, as well as the **1938 Grant Deed**, were nullified by the MRTA because there was no filing of any intent to preserve the restrictions for any

deed issued pursuant to the master plan for Palos Verdes Estates and Miraleste. The court, for these reasons, rejects the School District argument that the 1990 amendment to the MRTA (that is, the adoption of subdivision (c) to Civil Code section 885.060), is to be interpreted as a narrowing of the scope of the MRTA as adopted in 1982. Civil Code section 885.060 was always to be interpreted not to apply to deed restrictions that are enforceable by equitable, that is, by court-supervised, remedies.

For the same reasons, the use restrictions in the **1925 Grant Deed**, except as modified by the **1938 Grant Deed**, are also unaffected by MRTA and remain enforceable as equitable servitudes.

4. Neither "changed circumstances" nor statutory expressions of public policy nullify the deed restrictions applicable to Lots C and D.

Deed restrictions that impede development may be judicially abrogated "when a change in the neighborhood practically defeats the purpose of the restrictions and they are of no further benefit to the remaining property owners." Lincoln Sav. & Loan Assn. v. Riviera Estates Assn. (1970) 7 Cal.App.3d 449, 460. That is not the case here: the development of the Lunada Bay "neighborhood," from its beginnings in the 1920s, was implemented through a master plan.

The properties adjacent to Lots C and D were built out with residential construction after World War II, but that was envisioned in the original master plan. There have been, therefore, no "changed circumstances" "in the neighborhood" that have made the restrictions on the development of Lots C and D obsolete or inconsistent with the master plan.

Lots C and D may have been envisioned as providing a corridor, perhaps a student walkway, between the high school and the intermediate school. That use has not been realized, particularly as the City, in 2008, posted a no-crossing sign at Lot D to deter the mid-block crossing of heavily-traveled Palos Verdes Drive West. (See, Exh. 44.) Lots C and D, however, in their unimproved state, do provide open space and continue to be available for future school, recreation or park use--a high priority to the area residents and defended here by the Homes Association. A judicial termination of the **1938 Grant Deed** restrictions would foreclose the future development of Lots C and D for public purposes. The School District does not offer justification for the judicial abrogation

of the deed restrictions under any of three criteria that were articulated by the Supreme Court in Nahrstedt v. Lakeside Village Condominium Association (1994) 8 Cal. 4th 361. The Nahrstedt Court, speaking of restrictions in a common interest development, held that courts will enforce an equitable servitude "unless it violates public policy, it bears no rational relationship to the protection, preservation, operation or purpose of the affected land, or its harmful effects on land use are otherwise so disproportionate to its benefits to affected homeowners that it should not be enforced." Id. at 386. Even though Nahrstedt arose under the Davis-Sterling Common Interest Development Act (enacted in 1985), the Nahrstedt decision provides guidance for a court in ruling on whether a servitude that is imposed on one property for the benefit of nearby property owners should be preserved.

The School District points out that the Legislature has authorized the sale of surplus school property to supplement strained school budgets. See, Education Code sections 17455 and 17485 (enacted in 1996) and Government Code section 65852.9 (enacted in 1985). The Palos Verdes Peninsula Unified School District, like all school districts in California, has received inadequate funding from the State to fully accomplish its educational mission. The court, however, cannot accept the School District's implicit argument that these legislative enactments constitute a public policy that a school district may set aside deed restrictions applicable to surplus properties in order to realize a greater sale price. The court does not find any legislative intent in the cited statutes to nullify any equitable servitudes that encumbered the properties when the School District acquired them and particularly so as the School District acquired them through a donative deed. That argument is inconsistent with public policies expressed in County of Solano v. Handlery, supra.

The School District argues that the **1938 Grant Deed** was not donative, as the District paid $10 for the properties, and, therefore, the conveyance did not trigger the public policies associated with a gift or public dedication. See, Plt. Objections, filed 8/31/11, p.10. The $10 that the School District paid for the thirteen properties more probably was intended to satisfy the formal requirements for making a valid contract--a proverbial "peppercorn" to satisfy the consideration element for a binding contract--than any estimate of the properties' value. The Homes Association, in transferring the properties to the School District, avoided future property taxes, but that is

immaterial to whether the transfer was donative. A donor of real estate to a public agency will always avoid future property taxes (and likely obtain an income tax deduction as well).

The court finds instead, based on the language of the **1938 Grant Deed** and the Homes Association board minutes relating to the subject, that the Homes Association's intent was to make a gift of the properties to the School District so that they would be available as school sites as the community grew to fill out the master plan. The Association's board minutes reflect that the Association was motivated to offer the thirteen properties to the School District "in order to eliminate the possibilities of these properties passing into private hands by reason of tax delinquency." (See, Exh. 8, p. 17, referring to board discussion on 11/3/38.) The Homes Association then set in motion the legal process to transfer the properties to the School District but only after imposing restrictions in the deed so that the properties would be used as school sites and, if that purpose was not realized, that the properties could be conveyed to a public agency for use as "public parks or playgrounds." This scheme reflects a donative purpose on the part of the Homes Association.[4]

5. The Home Association's affirmative defenses are not material to the court's decision.

The court, having ruled that the Homes Association may enforce their deed restrictions on Lots C and D, finds it unnecessary to discuss the affirmative defenses that the Association raised in their answer, e.g. estoppel, laches and statute of limitations. See, Ans., filed April 5, 2011. The Homes Association argues, in support of its estoppel and laches defenses, that the School District's delay in filing this action to terminate the use restrictions established in the **1938 Grant Deed** prejudiced its ability to establish the parties' intent in that transaction through live testimony. Particularly, the Homes Association argues, the parties' intent would be determinative as to (1)

[4] The minutes further reflect a discussion that caused the Homes Association board to conclude that the properties could be transferred to the School District only if the transfer was without consideration. Otherwise, the board was told, a consent (waiver) to the transfer would be required from the "Trustor and Trustee of the Palos Verdes Trust." (See, Exh. 8, p. 17, referring to board discussion on 11/30/38.) This is further evidence that the $10 that was recited in the **1938 Grant Deed** is not to be thought of as being inconsistent with the transfer as being a gift from the Homes Association to the School District.

whether the parties intended the transaction to effect a merger and, thus, a resultant loss of a reversionary interest; and (2) whether the parties believed the Homes Association, as grantor, could enforce the deed limitations as equitable servitudes.

The School District, as long ago as 1981 received a legal opinion that the use restrictions "may be invalid and which outlined steps to take to change or challenge the Restrictions." Exh. 28, p. 2. The School District forwarded the legal opinion, when received, to the Homes Association and to the City. (See, Exh. 21 at SD565 and SD566-67.) The court does not know whether witnesses to the 1938 transaction between the Homes Association and the School District were alive 30 years ago. The court, in any event, has determined that the transaction documents are sufficient to resolve any questions as to the intent of the 1938 transaction.

ENTRY OF JUDGMENT:

The court on August 16, 2011 served its Statement of Tentative Decision. Both parties timely served requests for its modification. The court has incorporated revisions in this Statement of Decision that were suggested by the parties' comments to the Statement of Tentative Decision.

The grants judgment for the Homes Association as to plaintiff's cause of action to quiet title to Lots C and D.

The School District pleaded a second cause of action for declaratory relief to compel the City of Palos Verdes Estate to rezone and permit the development of Lots C and D as four single family residential lots. The School District dismissed the second cause of action before trial.

The Homes Association submitted, as ordered, a form of proposed judgment, to which the School District filed its objections. The court agrees with the objections to the extent that it has deleted from the proposed judgment paragraphs 9, 12 and 13 and has modified slightly paragraph 5. As so modified, the court has signed, entered and herewith serves a copy of Judgment for Defendant Palos Verdes Homes Association for Quiet Title and Declaratory Relief.

The court's deletion of paragraph 12 from the proposed judgment that provided that the Homes Association shall be entitled to reasonable attorney's fees does not determine that defendant Homes Association is not entitled to recover attorney's fees. The Homes Association may file a

motion seeking reasonable attorney's fees and therein establish any basis for their recovery.

The parties are directed to retrieve the exhibits and exhibit binders that have been retained by the Clerk promptly after the court signs and enters the Judgment.

The Clerk is directed to serve this Statement of Decision, together with the Judgment, by U.S. Mail on this date.

Dated: September 22, 2011

RICHARD L. FRUIN, JR.
Superior Court of California,
County of Los Angeles

RLF/ep/vj/ep
Palos Verdes.sd
9-22-11

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CERTIFICATE OF SERVICE--I hereby certify that I delivered a true copy of the STATEMENT OF DECISION AND JUDGMENT FOR DEFENDANT ALOS VERDES HOMES ASSOCIATION FOR QUIET TITLE AND DECLARATORY RELIEF to counsel named below by placing a copy thereof in a sealed envelope addressed as shown below in such manner as to cause it to be deposited with postage prepaid in the U. S. Mail on the date shown below in the ordinary course

DATED: September 22, 2011

JOHN A. CLARKE, Executive Officer/Clerk

By: L Klein

L. KLEIN, DEPUTY CLERK

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