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10 CITIZENS FOR ENFORCEMENT OF
11 PARKLAND COVENANTS and JOHN
12 HARBISON

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

15 CITIZENS FOR ENFORCEMENT OF
16 PARKLAND COVENANTS and JOHN
17 HARBISON,

18 Plaintiffs,

19 vs.

20 CITY OF PALOS VERDES ESTATES, a
21 municipal corporation; PALOS VERDES
22 HOMES ASSOCIATION, a California
23 corporation; ROBERT LUGLIANI and
24 DELORES A. LUGLIANI, as co-trustees
25 of THE LUGLIANI TRUST; THOMAS J.
26 LIEB, TRUSTEE, THE VIA
27 PANORAMA TRUST U/DO MAY 2,
28 2012 and DOES 1 through 20,

Defendants.

REC'D
DEC 05 2014
FILING WINDOW

) Case No.: BS142768

) (Assigned for all purposes to
) Hon. Barbara A. Meiers, Dept. 12)

) **[PROPOSED] ORDER GRANTING**
) **PLAINTIFFS' MOTION FOR SUMMARY**
) **JUDGMENT OR SUMMARY**
) **ADJUDICATION OR BOTH**

) Hearing Date: February 25, 2015
) Hearing Time: 10:30 a.m.
) Department: 12

) Action Filed: May 13, 2013
) Trial Date: None Set

BY FAX

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1 The Court, having read and considered the plaintiffs’ motion for summary judgment
2 or summary adjudication or both, all moving, opposition and reply papers as well as
3 argument thereon, hereby GRANTS the Motion for Summary Judgment as follows:

4 **Issue No. 1.** As to the First Cause of Action for Declaratory Relief against all
5 defendants there are no triable issues of material fact that the September 5, 2012 Deeds
6 (Instrument Numbers 20121327414 and 20121327415) violate the June 14, 1940 Deed
7 Restriction that the undeveloped real property to the North/Northwest of the residential
8 property at 900 Via Panorama (the “Panorama Parkland”) be used and administered
9 “forever” for park purposes.

10 **Issue No. 2.** As to the First Cause of Action for Declaratory Relief against all
11 defendants there are no triable issues of material fact that the September 2012 Deeds violate
12 the June 14, 1940 Deed Restriction that preclude structures on the Panorama Parkland.

13 **Issue No. 3.** As to the First Cause of Action for Declaratory Relief against all
14 defendants there are no triable issues of material fact that the September 2012 Deeds violate
15 the June 14, 1940 Deed Restriction that preclude conveyance or sale except to a body suitably
16 constituted by law to take, hold, maintain and regulate public parks.

17 **Issue No. 4.** As to the First Cause of Action for Declaratory Relief against all
18 defendants there are no triable issues of material fact that the September 2012 Deeds
19 authorize landscaping and construction in violation of the June 14, 1940 Deed Restrictions
20 that bar improvements that interfere with the use and maintenance of the Panorama Parkland
21 for park and recreation purposes

22 **Issue No. 5.** As to the Second Cause of Action for Waste of Public Funds/*Ultra*
23 *Vires* against the City, there are no triable issues of material fact that the June 14, 1940 Deeds
24 Created a public trust and that the City violated that trust by executing the September 2012
25 Deeds

26 **Issue No. 6.** As to the Second Cause of Action for Waste of Public Funds/*Ultra*
27 *Vires* against Defendant City of Palos Verdes Estates (“City”), there are no triable issues of
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1 material fact that based on the doctrine of collateral estoppel, the Plaintiffs are entitled to
2 judgment as a result of the prior litigation concerning these Deed Restrictions.

3 **Issue No. 7.** As to the defendants' Affirmative Defense of Lack of Standing, there
4 are no triable issues of fact regarding plaintiffs' right to assert claims against the defendants.

5 **Issue No. 8.** As to the defendants' Affirmative Defense of Non-Joinder, there are
6 no triable issues of fact regarding the Palos Verdes Peninsula Unified School District's
7 ("District") participation in this Action. The District was not a party to either of the
8 September 2012 deeds and is not necessary for the adjudication of issues in this case.

9 The Plaintiffs' third cause of action for nuisance is pled in the alternative to the first
10 two causes of action for declaratory relief and waste of public funds/ultra vires. The Court
11 accepts the Plaintiffs' request to dismiss without prejudice the third cause of action for
12 nuisance concurrent with the Court's entry of judgment in Plaintiffs' favor on the first two
13 causes of action.

14 The Court finds and declares that:

15 1. The quitclaim deed recorded September 5, 2012, Instrument Number
16 20121327414, by which the Panorama Parkland was conveyed from the City to defendant
17 Palos Verdes Homes Association (the "Association") is illegal and void.

18 2. The grant deed recorded September 5, 2012, Instrument Number
19 20121327415, by which the Panorama Parkland was conveyed from the Association to
20 Thomas Lieb is illegal and void.

21 3. The City is without the power or discretion to authorize the Panorama
22 Parkland for any use other than parkland or recreation uses.

23 4. The City and Association are hereby ENJOINED from authorizing or
24 agreeing to the erection, maintenance or permitting of any buildings, structures or
25 concessions on the Panorama Parkland except such as are properly incidental to the
26 convenient and/or proper use of said realty for park and/or recreation purposes
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