SEPARATE STATEMENT

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PLAINTIFFS'	DEFENDANTS'	PLAINTIFFS'
UNDISPUTED	RESPONSE AND	EVIDENCE IN REPLY
MATERIAL FACTS	SUPPORTING	
AND EVIDENCE	EVIDENCE	

Issue No. 1. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Violate the June 14, 1940 Deed Restriction that the Panorama Parkland be Used and Administered "Forever" for Park Purposes.

- 1. This litigation
 concerns the ownership
 and use of undeveloped
 parkland located on Via
 Panorama in the City of
 Palos Verdes (the
 "Panorama Parkland" or
 "Area A.")
- Declaration of John
 Harbison ("Harbison
 Decl."), ¶ 4; Exhibit 1
 [Second Amended
 Complaint].
- 1. **Disputed** as to characterization of land in question; Area A is not "parkland." Area A consists of Lots in three Tracts in Palos Verdes (Tract 8652, 26341 and 7540. (Exhibit 3 to Evidence In Support of Plaintiffs' Motion For Summary Judgment or Summary Adjudication or Both ("Plaintiffs' Evidence"). Each of those Tracts are part of the Business and Public Use Districts Class F under Declaration No. 1. (Declaration of Sid Croft In Support of Opposition
- 1. Given that the defendants agree that the 1940 restrictions apply to the property (See MF Nos. 33, 36, 37) there can be no dispute that the subject property is "parkland." MF No. 37 which is undisputed states: The June 14, 1940 deeds state that the transferred property "is to be used and administered forever for park and/or recreation purposes..." Moreover, the parties to the MOU, which is a contract, included a factual recital that the referenced property is City owned

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	to Plaintiffs' Motion for	parkland. (Ex. 12, p. 4
	Summary Judgment or	["900 Via Panorama
	Summary Adjudication or	("Via Panorama Property")
	Both ("Croft Decl.") ¶ 34;	is owned by the Property
	Exhibit A to Croft Decl.	Owner and located at the
	(Declaration No. 1).) The	end of a cul-du-sac and is
	Class F designation	adjacent to City-owned
	permits the following	parkland on three sides.").]
	uses:	This factual recital creates
		a conclusive presumption
	"no building, structure or premises shall	in the truth of the fact:
	be erected, constructed or designed or intended to	"The facts recited in a
	be used for any purpose other than that of a public	written instrument are
	or private school, playground, park,	conclusively presumed to
	aeroplane or dirigible landing field or accessory	be true as between the
	aerodrome or repair shop, public art gallery,	parties thereto, or their
	museum, library, firehouse, nursery, or	successors in interest"
	greenhouse or other public or semi-public building, or a single family dwelling."	(Evid. Code, § 622).
	Croft Decl. Exhibit A	
	(Article IV, Zoning,	
	Section 9, Business and	
	Public Use Districts Class	
	F). Given the broad array	
	of permitted uses, it is	

	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	R	DEFENDANTS' ESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
		inco	orrect to characterize	
		Are	ea A as "Parkland."	
2.	The Panorama	2.	Undisputed as to	2. Given that the
	Parkland is located to		location; Disputed	defendants agree that the
	the		as to	1940 restrictions apply to the
	North/Northwest of		characterization of	property (See MF Nos. 33,
	the residential		Area A as	36, 37) there can be no
	property at 900 Via		"parkland" (see	dispute that the subject
	Panorama, Palos		Defendants'	property is "parkland." MF
	Verdes Estates,		Response to Fact 1	No. 37 which is undisputed
	California 90274.		above).	states:
				The June 14, 1940 deeds
Ha	rbison Decl., ¶ 5; Exhibit			state that the transferred
2 [/	Area Map]; Exhibit 3			property "is to be used and
[Le	gal Description]; Exhibit			administered forever for
4 [I	Bolton Engineering Map].			park and/or recreation
				purposes"
				Moreover, the parties to
				the MOU, which is a
				contract, included a factual
				recital that the referenced
				property is City owned
				parkland. (Ex. 12, p. 4
				["900 Via Panorama
				("Via Panorama Property")

	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
			is owned by the Property
			Owner and located at the
			end of a cul-du-sac and is
			adjacent to City-owned
			parkland on three sides.").
			This factual recital creates
			a conclusive presumption
			in the truth of the fact:
			"The facts recited in a
			written instrument are
			conclusively presumed to
			be true as between the
			parties thereto, or their
			successors in interest"
			(Evid. Code, § 622).
3.	The Panorama	3. Undisputed as to	3. Given that the
	Parkland is an	description; Disputed	defendants agree that the
	irregularly shaped	as to characterization	1940 restrictions apply to
	parcel in the form of	of Area A as	the property (See MF Nos
	a crescent that wraps	"parkland" (see	33, 36, 37) there can be no
	around the	Defendants' Response	dispute that the subject
	residential property	to Fact 1 above).	property is "parkland."
	at 900 Via Panorama.		MF No. 37 which is
			undisputed states:
Harl	bison Decl., ¶ 5; Exhibit		The June 14, 1940 deeds

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
2 [Area Map]; Exhibit 3		state that the transferred
[Legal Description]; Exhibit		property "is to be used and
4 [Bolton Engineering Map].		administered forever for
		park and/or recreation
		purposes"
		Moreover, the parties to
		the MOU, which is a
		contract, included a factual
		recital that the referenced
		property is City owned
		parkland. (Ex. 12, p. 4
		["900 Via Panorama
		("Via Panorama Property")
		is owned by the Property
		Owner and located at the
		end of a cul-du-sc and is
		adjacent to City-owned
		parkland on three sides.").]
		This factual recital creates
		a conclusive presumption
		in the truth of the fact:
		"The facts recited in a
		written instrument are
		conclusively presumed to
		be true as between the

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
		parties thereto, or their
		successors in interest"
		(Evid. Code, § 622).
4. The boundaries of	4. Undisputed as to	4. Given that the
the Panorama	boundary description;	defendants agree that the
Parkland cross three	Disputed as to	1940 restrictions apply to
different tract lines	characterization of	the property (See MF Nos.
and, therefore, the	Area A as "parkland"	33, 36, 37) there can be no
Panorama Parkland	(see Defendants'	dispute that the subject
falls within the	Response to Fact 1	property is "parkland."
following three	above).	MF No. 37 which is
different tracts		undisputed states:
within the City of		The June 14, 1940 deeds
Palos Verdes Estates		state that the transferred
("City"): 7540, 8652		property "is to be used and
and 26341.		administered forever for
		park and/or recreation
Harbison Decl., ¶ 5; Exhibit		purposes"
2 [Area Map]; Exhibit 3		Moreover, the parties to
[Legal Description]; Exhibit		the MOU, which is a
4 [Bolton Engineering Map].		contract, included a factual
		recital that the referenced
		property is City owned
		parkland. (Ex. 12, p. 4
		["900 Via Panorama

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_	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
			("Via Panorama Property")
			is owned by the Property
			Owner and located at the
			end of a cul-du-sc and is
			adjacent to City-owned
			parkland on three sides.").]
			This factual recital creates
			a conclusive presumption
			in the truth of the fact:
			"The facts recited in a
			written instrument are
			conclusively presumed to
			be true as between the
			parties thereto, or their
			successors in interest"
			(Evid. Code, § 622).
5.	At no time has there	5. See Evidentiary	5. Harbison is a long time
	been signs or notices	Objection No. 4 to	resident of Palos Verdes
	posted on the	Harbison Decl. (lack of	Estates and lives on the
	Panorama Parkland	foundation; lack of	same street as the
	restricting access or	personal knowledge);	Panorama Parkland.
	use of the property	Irrelevant; Disputed as	Harbison's declaration
	to residents of the	to characterization of	establishes his personal
	City.	Area A as "parkland"	knowledge about the lack
		(see Defendants'	of signs on the park.

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
Harbison Decl., ¶ 9.	Response to Fact 1	Given that the defendants
	above).	agree that the 1940
		restrictions apply to the
		property (See MF Nos. 33,
		36, 37) there can be no
		dispute that the subject
		property is "parkland."
		MF No. 37 which is
		undisputed states:
		The June 14, 1940
		deeds state that the
		transferred property "is to
		be used and administered
		forever for park and/or
		recreation purposes"
		Moreover, the parties to
		the MOU, which is a
		contract, included a factual
		recital that the referenced
		property is City owned
		parkland. (Ex. 12, p. 4
		["900 Via Panorama
		("Via Panorama Property")
		is owned by the Property

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2		AND EVIDENCE		EVIDENCE	
3					Owner and located at the
4					end of a cul-du-sc and is
5					adjacent to City-owned
6					parkland on three sides.").]
7					This factual recital creates
8					a conclusive presumption
9					in the truth of the fact:
10					"The facts recited in a
11					written instrument are
12					conclusively presumed to
13					be true as between the
14					parties thereto, or their
15					successors in interest"
16					(Evid. Code, § 622).
17	6.	At no time has there	6.	See Evidentiary	6. Harbison is a long time
18		been signs or notices		Objection No. 5 to	resident of Palos Verdes
19		posted on the		Harbison Decl. (lack of	Estates and lives on the
20		Panorama Parkland		foundation; lack of	same street as the
21		restricting access or		personal knowledge);	Panorama Parkland.
22		use of the property		Irrelevant; Disputed as	Harbison's declaration
23		to members of the		to characterization of	establishes his personal
24		Palos Verdes Homes		Area A as "parkland"	knowledge about the lack
25		Association		(see Defendants'	of signs on the park.
26		("Association.")		Response to Fact 1	Given that the defendants
27				above).	agree that the 1940
28				- 10 -	

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
Harbison Decl., ¶ 10.		restrictions apply to the
		property (See MF Nos. 33,
		36, 37) there can be no
		dispute that the subject
		property is "parkland."
		MF No. 37 which is
		undisputed states:
		The June 14, 1940
		deeds state that the
		transferred property "is to
		be used and administered
		forever for park and/or
		recreation purposes"
		Moreover, the parties to
		the MOU, which is a
		contract, included a factual
		recital that the referenced
		property is City owned
		parkland. (Ex. 12, p. 4
		["900 Via Panorama
		("Via Panorama Property")
		is owned by the Property
		Owner and located at the
		end of a cul-du-sc and is

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			adjacent to City-owned
			parkland on three sides.").]
			This factual recital creates
			a conclusive presumption
			in the truth of the fact:
			"The facts recited in a
			written instrument are
			conclusively presumed to
			be true as between the
			parties thereto, or their
			successors in interest"
			(Evid. Code, § 622).
7.	On May 16, 1923,	7. Undisputed	7.
	the Association was		
	formed.		
Hart	oison Decl., ¶ 12.		
8.	On June 25, 1923,	8. Undisputed	8.
	the Association		
	enacted its bylaws.		
 Hart	oison Decl., ¶ 12;		
Exhi	bit 5, p. 39.		
9.	On July 5, 1923, the	9. Undisputed	9.
	developer for Palos		

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	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	Verdes Estates		
	recorded Declaration		
	No. 1 establishing		
	basic land use		
	restrictions for real		
	property within what		
	would later be		
	known as the City.		
Harb	ison Decl., ¶ 13;		
Exhi	bit 5, p. 13.		
10.	The land use	10. Undisputed	10.
	restrictions recorded		
	on July 5, 1923 were		
	amended and		
	supplemented several		
	times after July 5,		
	1923.		
Harb	ison Decl., ¶ 14.		
11.	On July 26, 1926,	11. Undisputed	11.
	Bank of America		
	recorded Declaration		
	No. 25 establishing		
	the conditions,		

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MA	PLAINTIFFS' JNDISPUTED TERIAL FACTS ND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	covenants and restrictions for Tract 8652.		
Harbis	on Decl., ¶ 15;		
Exhibi	t 5, p. 9.		
12.	Declaration No. 25	12. Undisputed as to	12. Defendants offer no
	describes the	quote; Disputed as	evidence to dispute. This
	purpose of the	phrased – the quote	dispute is contrived and
	Association as	does not state that it is	does not warrant denial of
	follows:	the "purpose of the	the motion.
Exhibi	To carry on the common interest and look after the maintenance of all lots and the welfare of all lot owners right from the beginning, a community association, with the name of Palos Verdes Homes Association, has been incorporated as a non-stock, non-profit body under the laws of California, in which every building site has one vote. It will be the duty of this body to maintain the parks, street planting and other community affairs, and to perpetuate the restrictions.	Association"	

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<u>M</u>	PLAINTIFFS' UNDISPUTED ATERIAL FACTS ND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
13.	Declaration No. 25	13. Disputed – Exhibit is	13. This "dispute" is
	provides that the	not Declaration No.	contrived. The quote
	land use restrictions	25, rather it is	provided by defendants
	"are for the benefit	"Amendment No. 10	also provides that the land
	of each owner of	to Declaration No. 20	use restrictions are for the
	land"	of Establishment and	benefit of each owner of
		Declaration No. 25 of	land.
Exhil	bit 5, p. 10.	Establishment" and	
		exhibit does not	See bolded portion of
		contain such quote on	defendants' quote below.
		page 10; rather the	
		correct quote under	"Now, Therefore, Know All Men By These
		"Amendment to	Presents: That Bank of America hereby certifies
		Declaration No. 20",	and declares that in addition and supplementa
		states:	to the basic plan set forth in said "Declaration No. 1 it has established and does
		"Now, Therefore,	hereby establish the local plan for the
		Know All Men By	1
		These Presents: That Bank of America	protection, maintenance, development and
		hereby certifies and declares that in	improvement of said Trac 8652, and has fixed and
		addition and	does hereby fix the local
		supplemental to the	protective restrictions,
		basic plan set forth in said "Declaration No.	conditions, covenants, reservations, liens and
		1" it has established	charges upon and subject
		and does hereby establish the local	to which all lots, parcels and portions of said tract
		plan for the	shall be held, leased or sol
			and/or conveyed by it as
		protection,	such owner, each and all
		maintenance, development and	of which is and are for the benefit of all of said
		improvement of said	tract and of each owner

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UNDISPUTED MATERIAL FACTS AND EVIDENCE	EVIDENCE Tract 8652, and has fixed and does hereby fix the 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 or tenements, as follows, to-wit:"	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 or tenements, as follows, to-wit:"
14. Declaration No. 25	14. Disputed –	14. This "dispute" is
provides that a	Declaration 25 is not	contrived. The quote
breach of the	at Exhibit 5, page 23,	provided by defendants
restrictions shall	rather it is	also provides that a breach
cause the property to	Declaration No. 1.	of the restrictions shall

	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	-	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	revert to the		Article VI, Section 6	cause the property to
	Association.		(page 23 of Exhibit 5)	revert to the Association.
			provides:	
Exhi	bit 5, § 6, pp. 22-23.		"A.1. 1. C. C.	See bolded portion of
			"A breach of any of the restrictions, conditions and covenants hereby established shall cause the real property upon which such breach occurs to revert to the Commonwealth Trust Company or its successor in interest as owner of the reversionary rights therein provided for, and the owner of such reversionary shall have the right of immediate re-entry upon such real property, in the event of any such breach;"	"A breach of any of the restrictions, conditions and covenants hereby established shall cause the real property upon which such breach occurs to revert to the Commonwealth Trust Company or its successor in interest as owner of the reversionary rights therein provided for, and the owner of such reversionary shall have the right of immediate re-entry upon such real property, in the event of any such breach;"
15.	Declaration No. 25	15.	Disputed –	15. This "dispute" is
	provides that any		Declaration 25 is not	contrived. The quote
	breach of the		at Exhibit 5, page 23,	provided by defendants
	restrictions can be		rather it is	also provides that any
	enjoined by the		Declaration No. 1.	breach of the land use
	Association or by any		Article VI, Section 8	restrictions can be enjoined
	property owner in		of Declaration No. 1	by the Association or by
	the Association.		(page 23 of Exhibit 5)	any property owner.
			does not provide for	See bolded portion of

	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	1 .	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
Exhi	bit 5, § 8, p. 23.		enjoining:	defendants' quote below
			"Every act or omission, where-by any restriction, condition or covenant in this declaration set forth, is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by Commonwealth Trust Company or its successors in interest and/or by Palos Verdes Homes Association, and/or any lot owner subject to the jurisdiction of the Homes Association; and such remedy shall be deemed cumulative and not exclusive."	"Every act or omission, where-by any restriction, condition or covenant in this declaration set forth, i violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by Commonwealth Trust Company or its successors in interest and/or by Palos Verdes Homes Association, and/or any lot owner subject to the jurisdiction of the Homes Association and such remedy shall be deemed cumulative and not exclusive."
16.	Declaration No. 25	16.	Disputed –	16. This "dispute" is
	provides that a		Declaration 25 is not	contrived. The quote
	breach of the		at Exhibit 5, page 23,	provided by defendants
	restrictions shall		rather it is	also provides that any
	constitute a nuisance		Declaration No. 1.	breach of the land use
	which may be abated		Article VI, Section 8	restrictions can be enjoine
	by either the		of Declaration No. 1	by the Association or by
	Association or any		(page 23 of Exhibit 5)	any property owner.
	lot owner subject to		is quoted in its	See bolded portion of
	the Association's		entirety above at	defendants' quote below
	jurisdiction.		Response to Fact No	"Every act or omission,

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY	
Exhibit 5, § 8, p. 23.	15.	where-by any restriction, condition or covenant in this declaration set forth, is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by Commonwealth Trust Company or its successors in interest and/or by Palos Verdes Homes Association, and/or any lot owner subject to the jurisdiction of the Homes Association; and such remedy shall be deemed cumulative and not exclusive."	
17. Declaration No. 25	17. Disputed –	17. This "dispute" is	
provides that the	Declaration 25 is not at	contrived. The quote	
provisions of the	Exhibit 5, page 23,	provided by defendants	
declaration "shall	rather it is Declaration	also provides that any	
bind and inure to the	No. 1. Article VI,	breach of the land use	
benefit of and be	Section 12 of	restrictions can be enjoined	
enforceable by" the	Declaration No. 1	by the Association or by	
Association or "by	(page 24 of Exhibit 5)	any property owner.	
the owner or owners	provides:	See bolded portion of	
of any property in said tract" Exhibit 5, § 12, p. 24.	"The provisions contained in this declaration shall bind and inure to the benefit of and be enforceable by Commonwealth Trust Company, Palos Verdes Homes Association, by the owner or owners of any property in said tract, their, and each	defendants' quote below "The provisions contained in this declaration shall bind and inure to the benefit of and be enforceable by Commonwealth Trust Company, Palos Verdes Homes Association, by the owner or owners of any property in said tract, their, and each of their, legal representatives, heirs, successors, assigns	

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PLAINTIFFS' DEFENDANTS' PLAINTIFFS'						
<u>UNDISPUTED</u>	RESPONSE AND	EVIDENCE IN REPLY				
MATERIAL FACTS AND EVIDENCE	SUPPORTING EVIDENCE					
	of their, legal representatives, heirs, successors, assigns and failure by the Commonwealth Trust Company, Palos Verdes Homes Association or any property owner, or their legal representatives, heirs, successors or assigns, 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."	and failure by the Commonwealth Trust Company, Palos Verdes Homes Association or any property owner, or their legal representatives, heirs, successors or assigns, 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."				
18. Plaintiff John Harbison ("Harbison") owns property located within the City. Harbison Decl., ¶ 2.	18. Undisputed	18.				
19. Harbison has owned property located within the City since 1992.	19. Undisputed	19.				
Harbison Decl., ¶ 2. 20. Harbison owns	20. Undisputed	20.				
property that is	20. Ondisputed	20.				

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<u>M</u>	PLAINTIFFS' UNDISPUTED IATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	subject to the		
	Association's		
	jurisdiction.		
Harb	oison Decl., ¶ 2.		
21.	Harbison is a	21. Undisputed	21.
	member of the		
	Association.		
Harb	oison Decl., ¶ 2.		
22.	Harbison is a	22. Undisputed	22.
	member of plaintiff		
	Citizens for		
	Enforcement of		
	Parkland Covenants		
	("CEPC.")		
Harb	oison Decl.,¶1.		
23.	Harbison has paid	23. Undisputed	23.
	property taxes		
	annually since		
	purchasing his		
	property in 1992.		
Harb	oison Decl.,¶2.		
24.	In the late 1930's, the	24. Undisputed; see	24. If the fact is

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
Association faced an	Evidentiary Objection	undisputed, the objections
overwhelming tax	No. 7 to Harbison	are meaningless. That said,
debt and the threat	Decl. (lack of	plaintiffs are entitled to
of foreclosure of its	foundation; lack of	rely on the verified
parklands.	personal knowledge).	pleadings as judicial
	Objection to Exhibit 1	admissions.
Harbison Decl., ¶ 16;	(SAC) to establish Fact	
Exhibit 1 [Second Amended	24. Exhibit 1 is	"When allegations in a
Complaint], ¶ 12; Exhibit	Plaintiffs' Second	complaint are admitted by
13, p. 2, li. 16-19 [Lugliani	Amended Complaint.	the answer (a) no evidence
and Lieb answer to second	Plaintiffs cannot rely	need be offered in their
amended complaint];	upon their own	support; (b) evidence is not
Exhibit 15, ¶ 12 [City's	pleading as evidence to	admissible to prove their
answer to second amended	support their motion.	untruth; (c) no finding
complaint].	(See College Hospital, Inc.	thereon is necessary; (d) a
	v. Superior Court (Crowell)	finding contrary thereto is
	(1994) 8 Cal. App. 4th	error." (Valerio v. Andrew
	704, 720.)	Youngquist Construction
		(2002) 103 Cal.App.4th
		1264, 1271)
		The references to the
		second amended complaint
		are for convenience only
		and the corresponding
		judicial admission by

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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3			defendants in their verified
4			answer is a binding
5			admission that cannot be
6			disputed.
7			
8			Here, the second amended
9			complaint, allege these
10			facts in a verified pleading
11			and all of the defendants
12			admitted the truth of these
13			facts in their verified
14			answer.
15	25. To avoid this result,	25. Undisputed; see	25. If the fact is
16	the Association	Evidentiary Objection	undisputed, the objections
17	deeded its parklands	No. 8 to Harbison	are meaningless. That said,
18	to the City and to the	Decl. (lack of	plaintiffs are entitled to
19	District between	foundation; lack of	rely on the verified
20	1938 and 1940.	personal knowledge).	pleadings as judicial
21		Objection to Exhibit 1	admissions. The
22		(SAC) to establish	references to the second
23		Fact 25. Exhibit 1 is	amended complaint are for
24	Harbison Decl., ¶ 17;	Plaintiffs' Second	convenience only and the
25	Exhibit 1 [Second Amended	Amended Complaint.	corresponding judicial
26	Complaint], ¶ 12; Exhibit	Plaintiffs cannot rely	admission by defendants in
27	13, p. 2, li. 16-19 [Lugliani	upon their own	their verified answer is a
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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
and Lieb answer to second	pleading as evidence	binding admission that
amended complaint];	to support their	cannot be disputed.
Exhibit 15, ¶ 12 [City's	motion. (See College	
answer to second amended	Hospital, Inc. v. Superior	"When allegations in a
complaint].	Court (Crowell) (1994)	complaint are admitted by
	8 Cal. App. 4 th 704,	the answer (a) no evidence
	720.)	need be offered in their
		support; (b) evidence is not
		admissible to prove their
		untruth; (c) no finding
		thereon is necessary; (d) a
		finding contrary thereto is
		error." (Valerio v. Andrew
		Youngquist Construction
		(2002) 103 Cal.App.4th
		1264, 1271)
		Here, the second amended
		complaint, allege these
		facts in a verified pleading
		and all of the defendants
		admitted the truth of these
		facts in their verified
		answer.
26. The Association has	26. Disputed as to	26. This is a contrived

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
no current ownership	characterization of land	"dispute." Defendants
of parklands.	at issue as "parkland"	own witness, attorney Sid
	(see Defendants'	Croft, declared that in the
Harbison Decl., ¶ 18.	Response to Fact 1	1940, the Association
	above); see Evidentiary	"deeded all lands under its
	Objection No. 9 to	control to the new City,
	Harbison Decl. (lack of	and the City thereafter
	foundation; lack of	took over the maintenance
	personal knowledge).	obligation of the
	Dispute as Irrelevant -	property." (Croft. Decl., ¶
	Plaintiff admits that the	20).
	Association is a body	
	that can hold parks	The cited deposition of
	within the meaning of	Harbison does not create a
	the deeds. (Declaration	dispute. He did not testify
	of Brant H Dveirin	that the Association
	("Dveirin Decl."),	currently owns property.
	Exhibit B (Harbison	
	Depo., pg. 45, lns. 19-	Harbison testified that the
	25; 46:1-6).)	Association is not a body
		that takes, holds and
		regulates parks. (Harbison
		Depo., p. 45, li. 6-9) He
		also testified that at one
		time the Association was a

	PLAINTIFFS' UNDISPUTED ATERIAL FACTS ND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
			body that maintained
			parks, and could do so
			again but the Association
			no longer does so.
			(Harbison Depo., p. 45, li.
			6-9) Harbison testified
			that it's "unlikely" that the
			Association would ever
			hold parkland again.
			(Harbison Depo., p. 46, li.
			3-7).
27.	Instead, the City has	27. Undisputed; see	27. If this fact is
	taken on both the	Evidentiary Objection	undisputed than the
	ownership of and	No. 10 to Harbison	evidentiary objections are
	stewardship of the	Decl. (lack of	meaningless and should be
	parks.	foundation; lack of	overruled.
		personal knowledge).	
Harb	ison Decl., ¶ 19.		Defendants own witness
			declared that in the 1940,
			the Association "deeded all
			lands under its control to
			the new City, and the City
			thereafter took over the
			maintenance obligation of
			the property." (Croft.

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE		DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY	
			Decl., ¶ 20).	
28.	The City has	28. Disputed as phrased.	28. This is a contrived	
	established a	The City has	"dispute." The stated fact	
	Parklands	established a Parklands	is true.	
	Commission.	Committee, which is an		
Harb	ison Decl., ¶ 20.	advisory body to the		
		City Council.		
		Declaration of Sheri Repp-		
		Loadsman ("Repp Decl."), ¶		
		5.		
29.	Applications by	29. Disputed . Only	This is a contrived	
	residents that would	applications for some	"dispute." The stated fact	
	impact parklands are	types of permits may	is true.	
	brought to the City's	be considered by the		
	Parkland	Parklands Committee		
	Commission and not	for the Committee's		
	the Association.	non-binding		
		recommendation to		
Harb	ison Decl., ¶ 21.	the City Council.		
		Repp Decl., ¶ 5. See		
		Evidentiary Objection No.		
		11 to Harbison Decl. (lack		
		of foundation and personal		
		knowledge).		
30.	Permits and	30. Disputed as	This is a contrived	

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE		DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	<u>PLAINTIFFS'</u> EVIDENCE IN REPLY	
	enforcement actions	incomplete. The City's	"dispute." The stated fact	
concerning parklands		permitting authority is	is true.	
	involve the City and	limited to issuing		
	not the Association.	permits under the		
		PVEMC. Likewise, the		
Harb	oison Decl., ¶ 22.	City only enforces		
		violations of the		
		PVEMC. The City		
		does not enforce		
		private deed		
		restrictions.		
		Repp Decl., ¶ 6. See		
		Evidentiary Objection No.		
		12 to Harbison Decl. (lack		
		of foundation and personal		
		knowledge).		
31.	The Association is	31. Disputed ; Irrelevant.	31. This is a contrived	
	no longer a body that	Plaintiff admits that the	"dispute." There is no	
	takes, holds,	Association is a body	evidence that at anytime	
	maintains and	that can hold parks	after 1940, the Association	
	regulates public parks	within the meaning of	holds or maintains public	
	and has not done so	the deeds. (Dveirin	parks.	
	since 1940.	Decl., Exhibit B		
		(Harbison Depo., pg.	Defendants own witness,	
Harb	oison Decl., ¶ 23.	45, lns. 19-25; 46:1-6).)	attorney Sid Croft,	

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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	INVESTIGE.	SAC, pg. 15, para 36.c	declared that in the 1940,
4		states that "the	the Association "deeded all
5		ASSOCIATION has	lands under its control to
6		the right and	the new City, and the City
7		affirmative duty to	thereafter took over the
8		enforce its reversion	maintenance obligation of
9		rights to Area A."	the property." (Croft.
10		Plaintiffs' SAC	Decl., ¶ 20).
11		pleading is in direct	
12		dispute with Plaintiff	The cited deposition of
13		Harbison's declaration	Harbison does not create a
14		that the Association is	dispute. He did not testify
15		not a body that can	that the Association
16		hold title to Area A.	currently owns property.
17		Harbison Decl., ¶ 23.	Harbison testified that the
18		Regardless as to	Association is not a body
19		whether the 1940s	that takes, holds and
20		Deeds apply, the 1940	regulates parks. (Harbison
21		Deeds do not require	Depo, p. 45, li. 6-9) He also
22		the Association to	testified that at one time the
23		currently take, hold,	Association was a body that
24		maintain and regulate	maintained parks, and could
25		parks – only to have	do so again but the
26		the legal ability to do	Association no longer does
27		so. SAC, pg. 7, para.	so. (Harbison Depo, p. 45,
28		- 29 -	

	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	-	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
			14.iii. ["it shall be	li. 6-9) Harbison testified
			the duty of [the	that it 's "unlikely" that the
			Association] maintain	Association would ever hold
			the parks"];	parkland again. (Harbison
			Harbison Decl., ¶ 30;	Depo., p. 46, li. 3-7).
			Exhibit 6, p. 9, \P 5	
			[June 14, 1940 deed	
			for Lot A of Tract	
			7540]; Exhibit 7, p. 5,	
			¶ 5 [June 14, 1940	
			deed for Lot A of	
			Tract 8652] [The June	
			14, 1940 deeds state	
			that the transferred	
			property "shall not be	
			sold or conveyed, in	
			whole or in	
			partexcept to a	
			body suitably	
			constituted by law to	
			take, hold, maintain	
			and regulate public	
			parks"	
32.	On June 14, 1940,	32.	Undisputed.	32. If this fact is
	the Association		Objection to Exhibit	undisputed than the

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
conveyed a number	1 (SAC) to establish	evidentiary objections are
of parks to the City	Fact 32. Exhibit 1 is	meaningless and should be
in multiple grant	Plaintiffs' Second	overruled.
deeds.	Amended Complaint.	
	Plaintiffs cannot rely	Defendants own witness
Harbison Decl., ¶ 24;	upon their own	declared that in the 1940,
Exhibit 1 [Second Amended	pleading as evidence	the Association "deeded all
Complaint], ¶ 12; Exhibit 6,	to support their	lands under its control to
p. 3, Item 5 [June 14, 1940	motion. (See College	the new City, and the City
deed for Lot A of Tract	Hospital, Inc. v. Superior	thereafter took over the
7540]; Exhibit 7, p. 2, Item	Court (Crowell) (1994)	maintenance obligation of
7 (b), [June 14, 1940 deed	8 Cal. App. 4 th 704,	the property." (Croft.
for Lot A of Tract 8652];	720.)	Decl., ¶ 20).
Exhibit 13, p. 2, li. 16-19		
[Lugliani and Lieb answer to		
second amended complaint];		
Exhibit 15, ¶ 12 [City's		
answer to second amended		
complaint].		
33. The properties	33. Undisputed as to	33. Given that the
conveyed by the	conveyance; Disputed	defendants agree that the
Association to the	as to characterization	1940 restrictions apply to
City on June 14,	of Area A as	the property (See MF Nos.
1940 included the	"parkland" (see	33, 36, 37) there can be no

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
Panorama Parkland.	Defendants' Response	dispute that the subject
	to Fact 1 above).	property is "parkland."
Harbison Decl., ¶ 24;	Objection to Exhibit 1	MF No. 37 which is
Exhibit 1 [Second Amended	(SAC) to establish Fact	undisputed states:
Complaint], ¶ 12; Exhibit 6,	33. Exhibit 1 is	The June 14, 1940
p. 3, Item 5 [June 14, 1940	Plaintiffs' Second	deeds state that the
deed for Lot A of Tract	Amended Complaint.	transferred property "is to
7540]; Exhibit 7, p. 2, Item	Plaintiffs cannot rely	be used and administered
7 (b), [June 14, 1940 deed	upon their own	forever for park and/or
for Lot A of Tract 8652];	pleading as evidence to	recreation purposes"
Exhibit 13, p. 2, li. 16-19	support their motion.	
[Lugliani and Lieb answer to	(See College Hospital, Inc.	Moreover, the parties to
second amended complaint];	v. Superior Court (Crowell)	the MOU, which is a
Exhibit 15, ¶ 12 [City's	(1994) 8 Cal. App. 4th	contract, included a factual
answer to second amended	704, 720.)	recital that the referenced
complaint].		property is City owned
		parkland. (Ex. 12, p. 4
		["900 Via Panorama
		("Via Panorama Property")
		is owned by the Property
		Owner and located at the
		end of a cul-du-sc and is
		adjacent to City-owned
		parkland on three sides.").]
		This factual recital creates

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	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	<u>]</u>	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
				a conclusive presumption
				in the truth of the fact:
				"The facts recited in a
				written instrument are
				conclusively presumed to
				be true as between the
				parties thereto, or their
				successors in interest"
				(Evid. Code, § 622).
34.	The properties	34.	Undisputed as to the	34. If the fact is
	conveyed by the		fact; objection to the	undisputed, the evidentiary
	Association to the		certain evidence: see	objection is meaningless
	City on June 14,		Evidentiary Objection	and should be overruled.
	1940 included Lot A		No. 13 to Harbison	Notably the stated fact is
	of Tract 7540.		Decl. (lack of	supported by the
			foundation; lack of	defendants' own witness,
Harb	ison Decl., ¶ 25;		personal knowledge);	attorney Sid Croft, who
Exhi	bit 1 [Second Amended		none of the following	declares that in 1940 "the
Com	plaint],¶12; Exhibit 6,		cited exhibits	Association deeded all
p. 3,	Item 5 [June 14, 1940		establish the fact at	lands under its control the
deed	for Lot A of Tract		issue - Exhibit 7, p. 2,	new CityThe transfer of
7540]; Exhibit 7, p. 2, Item		Item 7 (b), [June 14,	the properties to the City
7 (b).	, [June 14, 1940 deed		1940 deed for Lot A	was accomplished with two
for L	ot A of Tract 8652];		of Tract 8652];	(2) deeds from the
Exhi	bit 13, p. 2, li. 16-19		Exhibit 13, p. 2, li.	Association, dated June

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
[Lugliani and Lieb answer to	16-19 [Lugliani and	1940 ("1940 Deeds"),
second amended complaint];	Lieb answer to	which are exhibits 6 and 7
Exhibit 15, ¶ 12 [City's	second amended	to Plaintiffs' Evidence.
answer to second amended	complaint]; Exhibit	Those deeds include Lot A
complaint].	15,¶ 12 [City's	of Tracts 8652 and 7540.
	answer to second	(Croft Decl., ¶ 20).
	amended complaint].	The original evidence
	Objection to Exhibit	submitted by plaintiffs do
	1 (SAC) to establish	support this material fact.
	Fact 34. Exhibit 1 is	
	Plaintiffs' Second	That said, plaintiffs are
	Amended Complaint.	entitled to rely on the
	Plaintiffs cannot rely	verified pleadings as
	upon their own	judicial admissions.
	pleading as evidence	
	to support their	"When allegations in a
	motion. (See College	complaint are admitted by
	Hospital, Inc. v. Superior	the answer (a) no evidence
	Court (Crowell) (1994)	need be offered in their
	8 Cal. App. 4 th 704,	support; (b) evidence is not
	720.)	admissible to prove their
		untruth; (c) no finding
		thereon is necessary; (d) a
		finding contrary thereto is
		error." (Valerio v. Andrew

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<u>M</u>	PLAINTIFFS' UNDISPUTED IATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPL
			Youngquist Construction
			(2002) 103 Cal.App.4th
			1264, 1271)
			The references to the
			second amended complai
			are for convenience only
			and the corresponding
			judicial admission by
			defendants in their verifie
			answer is a binding
			admission that cannot be
			disputed.
			Here, the second amende
			complaint, allege these
			facts in a verified pleading
			and all of the defendants
			admitted the truth of thes
			facts in their verified
			answer.
35.	The properties	35. Undisputed as to the	35. If the fact is
	conveyed by the	fact; objection to the	undisputed, the evidentia
	Association to the	certain evidence: see	objection is meaningless
	City on June 14,	Evidentiary Objection	and should be overruled.

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
1940 included Lot A	No. 14 to Harbison	Notably the stated fact is
of Tract 8652.	Decl. (lack of	supported by the
	foundation; lack of	defendants' own witness,
Harbison Decl., ¶ 26;	personal knowledge);	attorney Sid Croft, who
Exhibit 1 [Second Amended	none of the following	declares that in 1940 "the
Complaint], ¶ 12; Exhibit 6,	cited exhibits establish	Association deeded all
p. 3,	the fact at issue –	lands under its control the
Item 5 [June 14, 1940 deed	Exhibit 6, p. 3, Item 5	new CityThe transfer of
for Lot A of Tract 7540];	[June 14, 1940 deed	the properties to the City
Exhibit 7, p. 2, Item 7 (b),	for Lot A of Tract	was accomplished with two
[June 14, 1940 deed for Lot	7540]; Exhibit 13, p.	(2) deeds from the
A of Tract 8652]; Exhibit	2, li. 16-19 [Lugliani	Association, dated June
13, p. 2, li. 16-19 [Lugliani	and Lieb answer to	1940 ("1940 Deeds"),
and Lieb answer to second	second amended	which are exhibits 6 and 7
amended complaint];	complaint]; Exhibit	to Plaintiffs' Evidence.
Exhibit 15, ¶ 12 [City's	15,¶ 12 [City's	Those deeds include Lot A
answer to second amended	answer to second	of Tracts 8652 and 7540.
complaint].	amended complaint].	(Croft Decl., ¶ 20).
	Objection to Exhibit	
	1 (SAC) to establish	The original evidence
	Fact 35. Exhibit 1 is	submitted by plaintiffs do
	Plaintiffs' Second	support this material fact.
	Amended Complaint.	
	Plaintiffs cannot rely	That said, plaintiffs are
	upon their own	entitled to rely on the

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	pleading as evidence	verified pleadings as
	to support their	judicial admissions.
	motion. (See College	
	Hospital, Inc. v. Superior	"When allegations in a
	Court (Crowell) (1994)	complaint are admitted by
	8 Cal. App. 4 th 704,	the answer (a) no evidence
	720.)	need be offered in their
		support; (b) evidence is no
		admissible to prove their
		untruth; (c) no finding
		thereon is necessary; (d) a
		finding contrary thereto is
		error." (Valerio v. Andrew
		Youngquist Construction
		(2002) 103 Cal.App.4th
		1264, 1271)
		The references to the
		second amended complain
		are for convenience only
		and the corresponding
		judicial admission by
		defendants in their verified
		answer is a binding
		admission that cannot be

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	PLAINTIFFS' UNDISPUTED IATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
			disputed.
			Here, the second amended
			complaint, allege these
			facts in a verified pleading
			and all of the defendants
			admitted the truth of these
			facts in their verified
			answer.
36.	The June 14, 1940	36. Undisputed as to the	36. No facts are offered by
	deeds conveying	1940s Deeds;	defendants here nor is the
	property from the	Disputed as to the	mischaracterization
	Association to the	characterization of the	described. This opposition
	City included	Deed terms.	is insufficient to create a
	restrictions on the		triable issue of fact.
	future use and		
	ownership of the		
	conveyed property.		
Harb	oison Decl., ¶ 27;		
Exhi	bit 6, pp. 7, 9 and 10		
June	e 14, 1940 deed for Lot		
A of	Tract 7540]; Exhibit 7,		
pp. 4	, 7 and 8 [June 14, 1940		
deed	for Lot A of Tract		

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<u>M</u>	PLAINTIFFS' UNDISPUTED LATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAIN'TIFFS' EVIDENCE IN REPLY
8652].		
37.	The June 14, 1940	37. Undisputed.	37.
	deeds state that the		
	transferred property		
	"is to be used and		
	administered forever		
	for park and/or		
	recreation		
	purposes"		
Harb	oison Decl., ¶ 28;		
Exhi	bit 6, p. 7 [June 14,		
1940	deed for Lot A of		
Tract	t 7540]; Exhibit 7, p. 4		
[]une	e 14, 1940 deed for Lot		
A of	Tract 8652].		
38.	The June 14, 1940	38. Undisputed.	38.
	deeds state that as to		
	the transferred real		
	property "no		
	buildings, structures		
	or concessions shall		
	be erected,		
	maintained or		
	permitted" on the		

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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	property "except		
4	such as are properly		
5	incidental to the		
6	convenient and/or		
7	proper use of said		
8	realty for park		
9	and/or recreation		
10	purposes."		
11			
12	Harbison Decl., ¶ 29;		
13	Exhibit 6, p. 9, ¶ 4 [June 14,		
14	1940 deed for Lot A of		
15	Tract 7540]; Exhibit 7, p. 5,		
16	¶ 4 [June 14, 1940 deed for		
17	Lot A of Tract 8652].		
18	39. The June 14, 1940	39. Disputed as	39. The omitted language
19	deeds state that the	incomplete. Complete	does not warrant denial of
20	transferred property	section states:	the motion.
21	"shall not be sold or	"except to a body	
22	conveyed, in whole	suitably constituted by law to take, hold,	
23	or in partexcept to	maintain and regulate public parks;	
24	a body suitably	provided, that portions of said realty	
25	constituted by law to	may be dedicated to the public for	
26	take, hold, maintain	parkway and/or street purposes."	
27	and regulate public	Exhibit 6, p. 9, ¶ 5	

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
parks"	[June 14, 1940 deed	
	for Lot A of Tract	
Harbison Decl., ¶ 30;	7540]; Exhibit 7, p. 5,	
Exhibit 6, p. 9, ¶ 5 [June 14,	¶ 5 [June 14, 1940	
1940 deed for Lot A of	deed for Lot A of	
Tract 7540]; Exhibit 7, p. 5,	Tract 8652]	
¶ 5 [June 14, 1940 deed for		
Lot A of Tract 8652].		
40. The June 14, 1940	40. Disputed as phrased;	40. The deed language
deeds state that, with	the 1940s Deeds do	speaks for itself.
written permission	not require a permit to	
from the Association	be obtained:	
and a permit from the City, a property owner abutting the park may construct paths or landscaping on the conveyed property as a means of improving access to or views from such property. Such improvements must not impair or interfere with the use	"That said municipality or other body having jurisdiction may, by and with the written approval of Palos Verdes Art Jury first obtained, permit the owner of a lot abutting on said realty to construct and/or maintain paths, steps and/or other landscape improvements, as a means of egress from and ingress to said lot or for the improvement of views under such rules and regulations as will not, in the opinion of said municipality or other body and of Palos	

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said rea	aintenance of alty for park recreation es.		Verdes Art Jury, impair or interfere with the use and maintenance of said realty for park and/or recreational purposes, as herein-before set forth."	
			Exhibit 6, p. 9, \P 6	
Harbison Dec	l.,¶ 31;		[June 14, 1940 Deed	
Exhibit 6, p. 9	,¶6 [June 14,		for Lot A of Tract	
1940 deed for	Lot A of		7540]; Exhibit 7, p. 5,	
Tract 7540]; E	xhibit 7, p. 5,		¶ 6 [June 14, 1940	
¶ 6 [June 14, 1	940 deed for		Deed for Lot A of	
Lot A of Trac	t 8652].		Tract 8652].	
			See Evidentiary	
			Objection No. 15 to	
			Harbison Decl. (lack	
			of foundation; lack of	
			personal knowledge).	
41. The Jun	ne 14, 1940	41.	Disputed as phrased	41. The quoted language
deeds s	tate that none		– the 1940s Deeds do	confirms that in 1940, the
of the t	ise or		not prohibit any	Association eliminated its
owners	hip		modification of the	own ability to modify
restrict	ions set forth		covenants and	restrictions.
in the J	une 14, 1940		restrictions, only	
deeds r	may be		modification via	
change	d by the City		certain procedures:	
or the	Association		"That none of the	

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Association complies with its own internal procedures for modifying land use	conditions, restrictions, covenants and reservations set forth in paragraphs 3 to 6, inclusive, hereof may be changed or modified by the procedure established	
bestrictions and obtains the written consent of two-thirds of the property owners. In Decl., ¶ 32; 6, p. 9, ¶ 7 [June 14, ed for Lot A of 540]; Exhibit 7, p. 5, e 14, 1940 deed for f Tract 8652].	in Section 3 or Article VI of said Declaration of Establishment of Basic Protective Restrictions, and in that certain section, entitled "Modification of Restrictions", of Declarations Nos. 2, 4, 5, 6, 12 and 27 of Establishment of Local Protective Restrictions hereinafter referred to." Exhibit 6, p. 9, ¶ 7 [June 14, 1940 Deed for Lot A of Tract 7540]; Exhibit 7, p. 5, ¶ 7 [June 14, 1940 Deed for Lot A of Tract 8652 See Evidentiary Objection No. 16 to Harbison Decl. (lack of foundation; lack of	
The June 14, 1940 leeds state any preach of the use or	42. Undisputed; Incorrect citation to evidence – neither p. 10 of Exhibit 6 nor page 6 of Exhibit 7 provide support for	42.
le	eeds state any	personal knowledge). 42. Undisputed; Incorrect eds state any ceach of the use or where the description is a second of the use or ceach of the use

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
revert to the"	should be to page 9 of	
Association.	Exhibit 6 and page 5 of	
	Exhibit 7.	
Harbison Decl., ¶ 33;		
Exhibit 6, p. 10 [June 14,		
1940 deed for Lot A of		
Tract 7540]; Exhibit 7, p. 6		
[June 14, 1940 deed for Lot		
A of Tract 8652].		
43. The June 14, 1940	43. Undisputed.	43.
deeds state that the		
deed restrictions		
"inure to and pass		
with said property		
and each and every		
parcel of land		
therein, and shall		
apply to and bind the		
respective successors		
in interest of the		
parties hereto, and		
areimposed upon		
said realty as a		
servitude in favor of		
said property and		

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
each and every parcel		
of land therein as the		
dominant tenement		
or tenements."		
Harbison Decl., ¶ 34;		
Exhibit 6, p. 10 [June 14,		
1940 deed for Lot A of		
Tract 7540]; Exhibit 7, p. 6		
[June 14, 1940 deed for Lot		
A of Tract 8652].		
44. The June 14, 1940	44. Disputed . The June	44. This dispute is
deeds do not contain	14, 1940 Deed	contrived. The 1940
any express provision	(Plaintiffs' Evidence	deeds do not contain any
authorizing the City	Exhibit) at page 3,	express provision
or Association to	section 2, incorporates	authorizing the City or
"swap" parkland	the provisions,	Association to "swap"
properties.	covenants, restrictions	parkland properties.
	and covenants of 1931	Defendants offer no
Harbison Decl., ¶ 35;	Deed from Bank of	contrary evidence. Instead,
Exhibit 6 [June 14, 1940	America to Palos	defendants rely on
deed for Lot A of Tract	Verdes Homes	completely different
7540]; Exhibit 7 [June 14,	Association (book	documents, signed earlier
1940 deed for Lot A of	10494, page 360.	in time and provide more
Tract 8652].	(Croft Decl. Exh. B).	general powers of the
	The 1931 Deed	Association to convey

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	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
		expressly provides that	properties. Specifically,
		the Palos Verdes	defendants rely on 1931
		Homes Association can	deeds for this "swap"
		"re-convey title to	authority. Plaintiffs do not
		portions of said realty	dispute the fact that the
		in exchange for	Association had broad
		other lands." (Croft	powers in 1931 to swap
		Decl. Exhibit B,	properties. The
		Section 5).	Association self-limited
		Not a proper fact; see	that "swap" power nine
		Evidentiary Objection	years later in 1940 when it
		No. 17 to Harbison	deeded the Panorama
		Decl. (lack of	Parkland to the City. The
		foundation; lack of	"forever park" and other
		personal knowledge);	restrictions were so
		Disputed as to	important to the
		characterization of	Association that the
		land at issue as	Association took the extra
		"parkland" (see	step of imposing a two-
		Defendants'	thirds voting requirement
		Response to Fact 1	to release the restrictions.
		above).	
45.	The June 14, 1940	45. Not a proper fact; see	45. Defendants have
	deeds do not contain	Evidentiary Objection	offered no evidence in
	any express provision	No. 18 to Harbison	opposition to this fact.
		16	

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	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	<u>PLAINTIFFS'</u> EVIDENCE IN REPLY
	authorizing the City	Decl. (lack of	
	or Association to	foundation; lack of	
	convey parks as part	personal knowledge).	
	of a resolution of		
	litigation.		
Harb	oison Decl.,¶ 36;		
Exhi	bit 6 [June 14, 1940		
deed	for Lot A of Tract		
7540]; Exhibit 7 [June 14,		
1940	deed for Lot A of		
Tract	t 8652].		
46.	The June 14, 1940	46. Not a proper fact; see	46. Defendants have
	deeds do not contain	Evidentiary Objection	offered no evidence in
	any express provision	No. 19 to Harbison	opposition to this fact.
	authorizing the City	Decl. (lack of	
	or Association to	foundation; lack of	
	convey parks to fund	personal knowledge).	
	budgetary shortfalls		
	for school districts.		
Harb	oison Decl., ¶ 37;		
Exhi	bit 6 [June 14, 1940		
deed	for Lot A of Tract		
7540]; Exhibit 7 [June 14,		

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1 2	<u>M</u>	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	1940	deed for Lot A of		
4	Tract	t 8652].		
5	47.	The City passed	47. Undisputed.	47.
6		Resolution No. 12		
7		formally accepting		
8		the deeds and		
9		confirming the land		
0		use restrictions.		
1				
2	Harb	ison Decl., ¶ 38,		
3	Exhi	bit 8 [Resolution No.		
4	12].			
5	48.	Resolution No. 12	48. Undisputed; see	48.
6		re-states verbatim	Responses to Facts 40	
7		each of the land use	and 41 (Disputed).	
8		restrictions set forth		
9		in Fact Numbers 37		
0		through 43 above.		
1				
2	Harb	ison Decl., ¶ 38;		
.3	Exhi	bit 8, pp. 11-12		
4	[Resc	olution No. 12].		
5	49.	The City's Municipal	49. Not a proper fact.	49. The municipal code
5		Code makes it clear	Disputed . The cited	sections speak for
7		that a private	PVEMC sections do	themselves. Plaintiffs

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
person's use of	not state this. PVEMC	request that their
public parkland for	17.32.050, Violation –	unopposed request for
private purposes is a	Nuisance, states:	judicial notice be granted.
city nuisance. (City of	Any building or structure erected or	
PVE Mun. Code, §§	maintained, or any	
17.32.050,	use of property, contrary to these	
18.16.020).	provisions of this title and PVEMC Title <u>18</u> shall be unlawful and	
Request for Judicial Notice,	a public nuisance and	
Exhibits A and B.	the city attorney shall,	
Dainotts 11 and D.	upon order of the city council,	
	immediately commence action or	
	actions, proceeding	
	or proceedings for	
	the abatement, removal and	
	enjoinment thereof,	
	in the manner	
	provided by law, and	
	shall take such other	
	steps and shall apply	
	to such court or	
	courts as may have	
	jurisdiction to grant	
	such relief as will	
	abate or remove such	
	building, structure or	
	use, and restrain and	
	enjoin any person from setting up,	
	erecting or	
	maintaining such	
	building or structure,	
<u> </u>	- 49 -	

<u>M</u>	PLAINTIFFS' UNDISPUTED IATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
		or using any property contrary to the provisions of this title and PVEMC Title 18. It shall be the right and duty of every citizen to participate and assist the city officials in the enforcement of the provisions of this title	
		and PVEMC Title <u>18</u> . PVEMC 18.16.020 simply	
		states the various uses allowed in the OS zone.	
		See Request for Judicial	
		Notice, Exhibit E.	
		Disputed as to	
		characterization of land in	
		question as "parkland" (see	
		Defendants' Response to	
		Fact 1 above).	
50.	The City Municipal	50. Not a proper fact;	50. The municipal code
	Code declares it is	Immaterial; Disputed	sections speak for
	the "right and duty"	as incomplete. In order	themselves. Plaintiffs
	of all residents to	to bring an	request that their
	"participate and	enforcement action	unopposed request for
	assist the city	under the PVEMC, the	judicial notice be granted.
	officials" in the	City Council must first	
	enforcement of the	declare a nuisance, and	

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	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	City's zoning and	then order the City	
	building codes. (City	Attorney to commence	
	of PVE Mun. Code,	an action to abate the	
	§ 17.32.050).	nuisance.	
Requ	est for Judicial Notice,	Request for Judicial Notice,	
Exhil	bit A.	Exhibit E.	
51.	Similarly the	51. Not a proper fact;	51. The municipal code
	Municipal Code	Immaterial; Disputed	sections speak for
	requires the city	as incomplete. In order	themselves. Plaintiffs
	attorney to	to bring an	request that their
	commence legal	enforcement action	unopposed request for
	proceedings and take	under the PVEMC, the	judicial notice be granted.
	other legal steps to	City Council must first	
	remove illegal	declare a nuisance, and	
	structures and abate	then order the City	
	illegal uses of public	Attorney to commence	
	parklands. (City of	an action to abate the	
	PVE Mun. Code, §	nuisance.	
	17.32.050).	Request for Judicial Notice,	
		Exhibit E.	
Requ	est for Judicial Notice,	Disputed as to	
Exhil	bit A.	characterization of land in	
		question as "public	
		parkland" (see Defendants'	

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<u>M</u>	PLAINTIFFS' UNDISPUTED IATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
		Response to Fact 1 above).	
52.	The prior and	52. Irrelevant; see	52. The parties to the
	current owners of	Evidentiary Objection	MOU, which is a contract,
	900 Via Panorama	No. 20 to Harbison	included a factual recital
	have paid for and	Decl. (lack of	that the referenced
	constructed	foundation; no	property is City owned
	encroachments on	personal knowledge);	parkland and that the
	the Panorama	Evidentiary Objection	Luglianis have encroached
	Parkland by erecting	No. 21to Harbison	on it (Ex. 12, p. 4
	or maintaining	Decl. (lack of	["the prior owner
	landscaping and	foundation, lack of	installed a series of
	improvements	personal knowledge).	retaining walls to stabilize
	without City	Disputed as to	the Via Panorama
	approval.	characterization of	Property. This installation
		Area A as "parkland"	was done without a
Harb	oison Decl., ¶¶ 39-45;	(see Defendants'	permitin City-owned
Exhi	bit 1 [Second Amended	Response to Fact 1	parkland, the Property
Com	plaint],¶20; Exhibit	above). Objection to	Owners landscaped and
15,¶	20 [City's answer to	Exhibit 1 (SAC) to	improved Area A,
secor	nd amended complaint;	establish Fact 52.	including placing a gazebo
Exhi	bit 16 [1972 letter from	Exhibit 1 is Plaintiffs'	and other accessory, non-
Asso	ciation]; Exhibit 17	Second Amended	habitable structures. At
[July	18, 2003 letter from	Complaint. Plaintiffs	the City's direction,
City]	; Exhibit 18 [August 11,	cannot rely upon their	Property Owners removed
2003	City memo by Allan	own pleading as	the structures encroaching

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
Rigg]; Exhibit 19 [April 14,	evidence to support	the City's parkland.'').]
2009 letter from City];	their motion. (See	
Exhibit 20 [September 19,	College Hospital, Inc. v.	This factual recital creates
2011 letter from City].	Superior Court (Crowell)	a conclusive presumption
	(1994) 8 Cal. App. 4th	in the truth of the fact:
	704, 720.)	"The facts recited in a
		written instrument are
		conclusively presumed to
		be true as between the
		parties thereto, or their
		successors in interest"
		(Evid. Code, § 622).
		Plaintiffs are entitled to
		rely on the verified
		pleadings as judicial
		admissions.
		"When allegations in a
		complaint are admitted by
		the answer (a) no evidence
		need be offered in their
		support; (b) evidence is not
		admissible to prove their
		untruth; (c) no finding

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
		thereon is necessary; (d) a
		finding contrary thereto is
		error." (Valerio v. Andrew
		Youngquist Construction
		(2002) 103 Cal.App.4th
		1264, 1271)
		The references to the
		second amended complaint
		are for convenience only
		and the corresponding
		judicial admission by
		defendants in their verified
		answer is a binding
		admission that cannot be
		disputed.
		Here, the second amended
		complaint, allege these
		facts in a verified pleading
		and all of the defendants
		admitted the truth of these
		facts in their verified
		answer.

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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	53. In late 1972, the	53. Irrelevant; Disputed as	53. This is a contrived
4	Association wrote to	incomplete. Complete	dispute. The omitted
5	the City about the	quote is:	language does not warrant
6	parkland on Lot A,		denial of the motion.
7	Tract 8652. The	"If the City finds justification for the	
8	Association's 1972	continued existence or use of the paved	
9	letter stated that the	driveway, etc., within the parkland please advise the Board so	
10	Board of Directors	that further	
11	for the Association	consideration may be given the matter."	
12	had determined that	Exhibit 16	
13	"the use of parkland	In addition, the	
14	for the benefit of a	driveway in question	
15	single private	was used for Fire and	
16	residence is not	Police Access	
17	consistent with the	(Exhibit 17).	
18	intent of the deed	Disputed as to	
19	restrictions and such	characterization of	
20	use should be	Area A as "parkland"	
21	disallowed"	(see Defendants'	
22		Response to Fact 1	
23	Harbison Decl., ¶ 40;	above).	
24	Exhibit 16, [1972 letter by	abovej.	
25	Patricia Gribben of		
26	Association to City].		
27			

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1 2	<u>M</u> <u>A</u>	PLAINTIFFS' UNDISPUTED ATERIAL FACTS ND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	54.	On July 18, 2003, the	54. Undisputed; Irrelevant;	54. No reply required.
4		City sent the	Incorrect citation to	
5		Luglianis a letter	evidence – Exhibit 18	
6		requesting that the	is not the letter cited;	
7		Luglianis remove	rather Exhibit 17 is the	
8		encroachments on	correct letter.	
9		the "City parklands		
10		adjacent to the west		
11		side" of the property		
12		at 900 Via Panorama.		
13				
14	Harb	ison Decl.,¶41;		
15	Exhil	oit 18 [July 18, 2003		
16	letter].		
17	55.	On April 14, 2009,	55. Undisputed; Irrelevant.	55. No reply required
18		Allan Rigg, the then-		
19		Public Works and		
20		Planning Director,		
21		wrote to the		
22		Luglianis and		
23		requested that all		
24		"unauthorized		
25		encroachments on		
26		City Parkland		
27		Adjacent to 900 Via		

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2	AND EVIDENCE	EVIDENCE	
3	Panorama" be		
4	removed.		
5	Harbison Decl., ¶ 43;		
6	Exhibit 19, [April 14, 2009		
7	letter by Allan Rigg].		
8	56. On September 19,	56. Undisputed; Irrelevant.	56. No reply required
9	2011, the City sent		
10	the Luglianis a "final		
11	notice" requesting		
12	that the Luglianis		
13	remove "non-		
14	permitted		
15	encroachments and		
16	debris located on the		
17	City's Parkland."		
18			
19	Harbison Decl., ¶ 44;		
20	Exhibit 20 [September 19,		
21	2011].		
22	57. The September 19,	57. Undisputed; Irrelevant	57. No reply required
23	2011 "final notice"		
24	by the City to the		
25	Luglianis requested		
26	that the Luglianis		
27	remove "any fences,		

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE		DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	walls, landscape, tree		
	houses, and any		
	other man-made		
	items beyond your		
	property line."		
Exhi	ibit 20 [September 19,		
2011	letter by City].		
58.	The encroachment	58. Disputed – see	58. The parties to the
	on the Panorama	Evidentiary Objections	MOU, which is a contract,
	Parkland includes	No. 21 to Harbison	included a factual recital
landscaping, a		Decl. (lack of	that the referenced
	baroque wrought-	foundation; lack of	property is City owned
	iron gate with stone	personal knowledge).	parkland and that the
	pillars and lion	Exhibit 18 is not	Luglianis have encroached
	statutes, a winding	properly authenticated	on it (Ex. 12, p. 4
	stone driveway,	and does not contain	["the prior owner
	dozens of trees	facts as set forth in	installed a series of
	(some of which are	Fact 103 (see	retaining walls to stabilize
	as high as 50 feet), a	Evidentiary Objection	the Via Panorama
	now-overgrown	No. 31); Exhibit 18	Property. This installation
	athletic field half the	does not contain facts	was done without a
	size of a football	as set forth in Fact 58;	permitin City-owned
	field, a 21-foot-high	Irrelevant. Disputed	parkland, the Property
	retaining wall and	as to characterization	Owners landscaped and

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE		DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
other retaining walls.		of Area A as	improved Area A,
	The stone pillars and	"parkland" (see	including placing a gazebo
	lion statutes are	Defendants' Response	and other accessory, non-
	within the City's	to Fact 1 above).	habitable structures. At
	easements and right		the City's direction,
	of way.		Property Owners removed
Harb	ison Decl., ¶ 45;		the structures encroaching
Exhi	bit 18 [August 11, 2003		the City's parkland.").]
City 1	memo by Allan Rigg].		
			This factual recital creates
			a conclusive presumption
			in the truth of the fact:
			"The facts recited in a
			written instrument are
			conclusively presumed to
			be true as between the
			parties thereto, or their
			successors in interest"
			(Evid. Code, § 622).
59.	At the April 19, 2012	59. Disputed as phrased –	59. Defendants' re-
	meeting of the	Resolution 166	characterization of this fact
	Association's board	(Exhibit 21) provides	does not warrant denial of
	of directors, the	the Palos Verdes	the motion.
	Association	Homes Association	

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	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	considered and	board's authorization	
	approved an	to execute the "Final	
	agreement to convey	Draft Memorandum of	
	the Panorama	Understanding" or	
	Parkland to Thomas	"MOU", a global	
	Lieb.	settlement agreement	
		not a mere agreement	
На	rbison Decl., ¶ 47;	to convey the Area A	
Ex	hibit 21 [Resolution 166,	to Thomas Lieb.	
Da	ted April 19, 2012].	Disputed as to	
		characterization of	
		Area A as "parkland"	
		(see Defendants'	
		Response to Fact 1	
		above).	
60.	On May 8, 2012, the	60. Undisputed; see	60. No reply required to
	City held a city	Evidentiary Objection	this "undisputed" fact.
	council meeting to	No. 22 to Harbison	
	consider whether to	Decl. (lack of	
	convey the Panorama	foundation; lack of	
	Parkland to Thomas	personal knowledge).	
	Lieb.	Disputed as to	
		characterization of	
На	rbison Decl., ¶ 48.	Area A as "parkland"	
		(see Defendants'	

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	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE		DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
			Response to Fact 1	
			above).	
61.	The City did not post	61.	Undisputed;	61. If this fact is
	a sign at the		Irrelevant. See	undisputed, the evidentiary
	Panorama Parkland		Evidentiary Objection	objections are meaningless
	to publicize that the		No. 23 to Harbison	and should be overruled.
	proposed		Decl. (lack of	This fact is based on the
	conveyance of the		foundation; lack of	City's own responses to
	Panorama Parkland		personal knowledge).	special interrogatories.
	would be discussed		Disputed as to	
	at the May 8, 2012		characterization of	
	city council meeting.		Area A as "parkland"	
			(see Defendants'	
Har	bison Decl., ¶ 49;		Response to Fact 1	
Exh	ibit 25, p. 2, li. 23-24		above).	
[Spe	ecial Interrogatories to			
City]; Exhibit 26, p. 5, li. 25-			
27 [City's Response to			
Spec	cial Interrogatories].			
62.	The City did not	62.	. Undisputed; Irrelevant.	62. If this fact is
	perform a mailing of		See Evidentiary	undisputed, the evidentiary
	notices to the		Objection No. 24 to	objections are meaningless
	neighbors adjacent to		Harbison Decl. (lack of	and should be overruled.
	the Panorama		foundation; lack of	This fact is based on the
	Parkland to publicize		personal knowledge).	City's own responses to

<u>M</u>	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAIN'TIFFS' EVIDENCE IN REPLY
	that the proposed	Disputed as to	special interrogatories.
	conveyance of the	characterization of	
	Panorama Parkland	Area A as "parkland"	
	would be discussed	(see Defendants'	
	at the May 8, 2012	Response to Fact 1	
	city council meeting.	above).	
Harb	ison Decl., ¶ 50;		
Exhil	bit 25 p. 3, li. 2-3		
[Spec	cial Interrogatories to		
City];	Exhibit 26, p. 6, li. 8-9		
[City	s Response to Special		
Inter	rogatories].		
63.	The City did not	63. Undisputed; Irrelevant.	63. If this fact is
	publish a notice in	See Evidentiary	undisputed, the evidentiar
	any local newspapers	Objection No. 25 to	objections are meaningles
	to publicize that the	Harbison Decl. (lack of	and should be overruled.
	proposed	foundation; lack of	This fact is based on the
	conveyance of the	personal knowledge).	City's own responses to
	Panorama Parkland	Disputed as to	special interrogatories.
	would be discussed	characterization of	
	at the May 8, 2012	Area A as "parkland"	
	city council meeting.	(see Defendants'	
Harb	ison Decl.,¶51;	Response to Fact 1	
Exhil	bit 25, p. 2, li. 27-28	above).	

	PLAINTIFFS' UNDISPUTED IATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
[Spec	cial Interrogatories to		
City]	; Exhibit 26, p. 6, li. 1-2		
[City	's Response to Special		
Inter	rogatories].		
64.	At the May 8, 2012	64. Undisputed; cited	64. If this fact is
	city council meeting,	evidence does not	undisputed, the evidentiary
	the City approved	establish Fact 64	objections are meaningless
	the conveyance of	(Exhibit 12 does not	and should be overruled.
	the Panorama	set forth when the City	This fact is based on the
	Parkland.	approved the MOU or	City's own responses to
		the conveyance); see	special interrogatories.
Harb	oison Decl., ¶ 52;	Evidentiary Objection	
Exhi	bit 12 [The MOU].	No. 26 to Harbison	
		Decl. (lack of	
		foundation; lack of	
		personal knowledge).	
		Disputed as to	
		characterization of	
		Area A as "parkland"	
		(see Defendants'	
		Response to Fact 1	
		above).	
65.	By quitclaim deed	65. Undisputed as to 2012	65. No reply required to
	recorded September	Quitclaim Deed.	this "undisputed" fact.

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	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	- -	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	5, 2012, Instrument		Disputed as to	
	Number		characterization of	
	20121327414, the		Area A as "parkland"	
	Panorama Parkland		(see Defendants'	
	was conveyed from		Response to Fact 1	
	the City to the		above).	
	Association.			
Harb	ison Decl., ¶ 54;			
Exhil	bit 9 [September 5,			
2012	Quitclaim Deed].			
66.	By grant deed	66.	Undisputed as to	66. Given that the
	recorded September		2012 Grant Deed.	defendants agree that the
	5, 2012, Instrument		Disputed as to	1940 restrictions apply to
	Number		characterization of	the property (See MF Nos
	20121327415, the		Area A as "parkland"	33, 36, 37) there can be no
	Association		(see Defendants'	dispute that the subject
	conveyed the		Response to Fact 1	property is "parkland."
	Panorama Parkland		above).	MF No. 37 which is
	to Thomas Lieb.			undisputed states:
				The June 14, 1940 deeds
Harb	ison Decl., ¶ 55;			state that the transferred
Exhil	bit 10 [September 5,			property "is to be used and
2012	Grant Deed].			administered forever for
				park and/or recreation

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
		purposes"
		Moreover, the parties to
		the MOU, which is a
		contract, included a factual
		recital that the referenced
		property is City owned
		parkland. (Ex. 12, p. 4
		["900 Via Panorama
		("Via Panorama Property")
		is owned by the Property
		Owner and located at the
		end of a cul-du-sc and is
		adjacent to City-owned
		parkland on three sides.").]
		This factual recital creates
		a conclusive presumption
		in the truth of the fact:
		"The facts recited in a
		written instrument are
		conclusively presumed to
		be true as between the
		parties thereto, or their
		successors in interest"
		(Evid. Code, § 622).

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	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPL
67.	The September 5,	67. Disputed . Exhibit 9	67. The quoted language
	2012 quitclaim deed	(The 2012 Quitclaim	does not create a triable
	states in paragraph 6	Deed) states: "Upon	issue of fact.
	that although the	obtaining any and all	
	Panorama Parkland	required permits and	
	is to remain open	approvals from the	
	space, should the	Grantor, Grantee	
	owner of the	(Palos Verdes Homes	
	Panorama Parkland	Association) may	
	obtain the necessary	construct any of the	
	permits and	following". The	
	approvals from the	grantee is not Lieb.	
	City, Lieb "may	Exhibit 9, p. 1.	
	construct any of the	Disputed as to	
	following: a gazebo,	characterization of	
	sports court,	Area A as "parkland"	
	retaining wall,	(see Defendants'	
	landscaping,	Response to Fact 1	
	barbeque, and/or	above).	
	any other		
	uninhabitable		
	'accessory		
	structure,'"		
Harb	ison Decl., ¶ 56;		

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	PLAINTIFFS' UNDISPUTED ATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAIN'TIFFS' EVIDENCE IN REPLY
Exh	ibit 9, p. 2,¶ 6		
[Sep	tember 5, 2012		
Quit	claim Deed].		
68.	The September 5,	68. Undisputed as to 2012	69. The quoted language
	2012 grant deed	Grant Deed, though	does not create a triable
	states in paragraph 2	quote is incomplete:	issue of fact.
	that although the	"it is the intent of the	
	Panorama Parkland	parties, subject to	
	is to remain open	compliance with the	
	space "it is the intent	requirements for such	
	of the partiesthat	development of	
	[Thomas Lieb] may	accessory structures	
	construct any of the	of the City and	
	following: a gazebo,	Grantor that [Thomas	
	sports court,	Lieb] may construct	
	retaining wall,	any of the following:	
	landscaping,	a gazebo, sports	
	barbeque, and/or	court, retaining wall,	
	any other	landscaping,	
	uninhabitable	barbeque, and/or any	
	'accessory	other uninhabitable	
	structure,'''	'accessory structure,' .	
		Grantee shall apply	
Harl	oison Decl., ¶ 57;	for approval of any	
Exh	ibit 10, p. 2, ¶ 2	such permitted	

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAIN'TIFFS' EVIDENCE IN REPLY
[September 5, 2012 Grant	structures by the	
Deed].	Grantor and the City	
	in accordance with	
	standard procedure	
	and in conformance	
	with applicable	
	covenants,	
	ordinances, and	
	codes."	
	Disputed as to	
	characterization of Area A	
	as "parkland" (see	
	Defendants' Response to	
	Fact 1 above).	
69. Lieb is an individual.	69. Disputed as phrased.	69. Plaintiffs are entitled to
	Thomas Lieb is not an	rely on the verified
Harbison Decl., ¶¶ 58-59;	individual, but is the	pleadings as judicial
Exhibit 13, p. 1, li. 4-10	"Trustee, The Via	admissions.
[Lugliani and Lieb answer to	Panorama Trust U/Do	
second amended complaint].	May 2, 2012" in this	"When allegations in a
	action. Cited evidence	complaint are admitted by
	does not support Fact	the answer (a) no evidence
	Number 69 - page 1 is	need be offered in their
	the caption page of the	support; (b) evidence is no
	verified answer.	admissible to prove their

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
		untruth; (c) no finding
		thereon is necessary; (d) a
		finding contrary thereto is
		error." (Valerio v. Andrew
		Youngquist Construction
		(2002) 103 Cal.App.4th
		1264, 1271)
		The references to the
		second amended complaint
		are for convenience only
		and the corresponding
		judicial admission by
		defendants in their verified
		answer is a binding
		admission that cannot be
		disputed.
		Here, the second amended
		complaint, alleges that Lieb
		is an individual and all of
		the defendants admitted
		the truth of these facts in
		their verified answer.

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1		PLAINTIFFS' UNDISPUTED IATERIAL FACTS	DEFENDANTS' RESPONSE AND SUPPORTING	PLAINTIFFS' EVIDENCE IN REPLY
$\begin{bmatrix} 2 \\ 2 \end{bmatrix}$		AND EVIDENCE	EVIDENCE	70
3	70.	Lieb is the trustee of	70. Undisputed.	70.
4		the VIA		
5		PANORAMA		
6		TRUST U/DO		
7		MAY 2, 2012		
8		("Panorama Trust").		
9	Harb	ison Decl., ¶ 58;		
10	Exhi	bit 22, p. 1, ¶ 1.1 [Via		
11	Pano	rama Trust		
12	Agre	ement].		
13	71.	The Panorama Trust	71. Undisputed;	71. No reply required to
14		is an estate planning	Irrelevant; see	this "undisputed" fact.
15		instrument for the	Evidentiary Objection	
16		benefit of the	No. 28 to Harbison	
17		children of Dr. and	Decl. (lack of	
18		Mrs. Lugliani.	foundation; lack of	
19			personal knowledge).	
20	Harb	ison Decl., ¶ 58;		
21	Exhi	bit 22, p. 1, ¶ 1.1, p. 7,		
22	¶ 1.1	1 [Via Panorama Trust		
23	Agre	ement].		
24	72.	The Panorama Trust	72. Not a Proper Fact;	72. Defendants have
25		is not "a body	Improper Legal	offered no evidence to
26		suitably constituted	Conclusion; see	suggest that the Panorama
27		by law to take, hold,	Evidentiary Objection	Trust is a body suitably
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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
maintain and regulate	No. 28 to Harbison	constituted by law to own
public parks"	Decl. (lack of	and regulate parks.
	foundation; lack of	
Harbison Decl., ¶ 58;	personal knowledge).	
Exhibit 22, p. 1, ¶ 1.1, p. 7,		
¶ 1.11 [Via Panorama Trust		
Agreement].		
73. The current owners	73. Disputed as phrased.	73. Defendants offer no
of the Panorama	See Evidentiary	actual evidence to dispute
Parkland intend to	Objection Nos. 29-30	this fact.
use that property for	to Harbison Decl. (lack	
private uses.	of foundation; lack of	
Harbison Decl., ¶¶ 59-60;	personal knowledge).	
Exhibit 24, pp. 2-3 [March	As set forth in Exhibits	
7, 2013 Rocky & Wahl	23 and 24, the property	
letter]; Exhibit 23, pp. 1-2	remains subject to an	
[February 19, 2013 City	open space easement.	
Staff Report to Planning	Disputed as to	
Commission].	characterization of	
	Area A as "parkland"	
	(see Defendants'	
	Response to Fact 1	
	above).	
74. In February 2013,	74. Irrelevant. Disputed	74. Defendants offer no
the current owners	as phrased. See	actual evidence to dispute

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPL
of the Panorama	Evidentiary Objection	this fact.
Parkland applied to	Nos. 29-30 to	
the City for a zone	Harbison Decl. (lack of	
change to change the	foundation; lack of	
zoning from Open	personal knowledge).	
Space to R-1 and to	As set forth in Exhibits	
obtain "after the	23 and 24, an	
fact" approval for	application was	
various accessory	submitted to the City	
structures on the	to allow for a Zone	
Panorama Parkland.	Change in keeping with	
Harbison Decl., ¶¶ 59-60;	the approved and	
Exhibit 24, pp. 2-3 [March	executed MOU.	
7, 2013 Rockey & Wahl	Disputed as to	
letter]; Exhibit 23, pp. 1-2	characterization of	
[February 19, 2013 City	Area A as "parkland"	
Staff Report to Planning	(see Defendants'	
Commission].	Response to Fact 1	
	above).	
Issue No. 2. The Court S	hould Grant Summary Adjudi	ication of the Declaratory
Relief Cause of Action Be	cause the September 2012 De	eds Violate the June 14,
1940 Deed Restriction Precluding Structures on the Panorama Parkland.		
75. The June 14, 1940	75. Undisputed.	75.
deeds state that as to		

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS	DEFENDANTS' RESPONSE AND SUPPORTING	PLAINTIFFS' EVIDENCE IN REPLY
AND EVIDENCE	EVIDENCE	
property "no		
buildings, structures		
or concessions shall		
be erected,		
maintained or		
permitted" on the		
property "except		
such as are properly		
incidental to the		
convenient and/or		
proper use of said		
realty for park		
and/or recreation		
purposes."		
Harbison Decl., ¶ 29;		
Exhibit 6, p. 9, ¶ 4 [June 14,		
1940 deed for Lot A of		
Tract 7540]; Exhibit 7, p. 5,		
¶ 4 [June 14, 1940 deed for		
Lot A of Tract 8652].		
76. The prior and current	76. Irrelevant; see	76. Defendants offer no
owners of 900 Via	Evidentiary	actual evidence to dispute
Panorama have paid for	Objection No. 20 to	this fact.
and constructed	Harbison Decl.	

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
encroachments on the	(lack of foundation;	Plaintiffs are entitled to
Panorama Parkland by	no personal	rely on the verified
erecting or maintaining	knowledge);	pleadings as judicial
landscaping and	Evidentiary	admissions.
improvements without	Objection No. 21 to	
City approval.	Harbison Decl.	"When allegations in a
	(lack of foundation,	complaint are admitted by
Harbison Decl., ¶¶ 39-45;	lack of personal	the answer (a) no evidence
Exhibit 1 [Second Amended	knowledge).	need be offered in their
Complaint], ¶ 20; Exhibit	Disputed as to	support; (b) evidence is not
15, ¶ 20 [City's answer to	characterization of	admissible to prove their
second amended complaint;	Area A as	untruth; (c) no finding
Exhibit 16 [1972 letter from	"parkland" (see	thereon is necessary; (d) a
Association]; Exhibit 17	Defendants'	finding contrary thereto is
[July 18, 2003 letter from	Response to Fact 1	error." (Valerio v. Andrew
City]; Exhibit 18 [August 11,	above). Objection	Youngquist Construction
2003 City memo by Allan	to Exhibit 1 (SAC)	(2002) 103 Cal.App.4th
Rigg]; Exhibit 19 [April 14,	to establish Fact 76.	1264, 1271)
2009 letter from City];	Exhibit 1 is	
Exhibit 20 [September 19,	Plaintiffs' Second	The references to the
2011 letter from City].	Amended	second amended complaint
	Complaint.	are for convenience only
	Plaintiffs cannot	and the corresponding
	rely upon their own	judicial admission by
	pleading as evidence	defendants in their verified

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	to support their	answer is a binding
	motion. (See College	admission that cannot be
	Hospital, Inc. v.	disputed.
	Superior Court	
	(Crowell) (1994) 8	Here, the second amended
	Cal. App. 4 th 704,	complaint, alleges these
	720.)	facts and defendants
		admitted the truth of these
		facts in their verified
		answer.
		The parties to the MOU,
		which is a contract,
		included a factual recital
		that the referenced
		property is City owned
		parkland and that the
		Luglianis have encroached
		on it (Ex. 12, p. 4
		["the prior owner
		installed a series of
		retaining walls to stabilize
		the Via Panorama
		Property. This installation
		was done without a

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE]	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
			permitin City-owned
			parkland, the Property
			Owners landscaped and
			improved Area A,
			including placing a gazebo
			and other accessory, non-
			habitable structures. At
			the City's direction,
			Property Owners removed
			the structures encroaching
			the City's parkland.").]
			This factual recital creates
			a conclusive presumption
			in the truth of the fact:
			"The facts recited in a
			written instrument are
			conclusively presumed to
			be true as between the
			parties thereto, or their
			successors in interest"
			(Evid. Code, § 622).
77. By quitclaim deed	77.	Undisputed as to	77. No reply required to
recorded September 5,		2012 Quitclaim Deed.	this "undisputed" fact.

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
2012, Instrument	Disputed as to	
Number 20121327414,	characterization of	
the Panorama Parkland	Area A as "parkland"	
was conveyed from the	(see Defendants'	
City to the Association.	Response to Fact 1	
	above).	
Harbison Decl., ¶ 54;		
Exhibit 9 [September 5,		
2012 Quitclaim Deed].		
78. By grant deed recorded	78. Undisputed as to	78. No reply required to
September 5, 2012,	2012 Grant Deed.	this "undisputed" fact.
Instrument Number	Disputed as to	
20121327415, the	characterization of	
Association conveyed	Area A as	
the Panorama Parkland	"parkland" (see	
to Thomas Lieb.	Defendants'	
	Response to Fact 1	
Harbison Decl., ¶ 55;	above).	
Exhibit 10 [September 5,		
2012 Grant Deed].		
79. The September 5, 2012	79. Disputed . Exhibit 9	79. The quoted language
quitclaim deed states in	(The 2012 Quitclaim	does not create a triable
paragraph 6 that	Deed) states: "Upon	issue of fact sufficient to
although the Panorama	obtaining any and all	deny the motion.

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3	Parkland is to remain	required permits and	
4	open space, should the	approvals from the	
5	owner of the Panorama	Grantor, Grantee	
6	Parkland obtain the	(Palos Verdes Homes	
7	necessary permits and	Association) may	
8	approvals from the City,	construct any of the	
9	Lieb "may construct any	following". The	
10	of the following: a	grantee is not Lieb.	
11	gazebo, sports court,	Exhibit 9, p. 1.	
12	retaining wall,	Disputed as to	
13	landscaping, barbeque,	characterization of	
14	and/or any other	Area A as "parkland"	
15	uninhabitable 'accessory	(see Defendants'	
16	structure,'"	Response to Fact 1	
17	Harbison Decl., ¶ 56;	above).	
18	Exhibit 9, p. 2, ¶ 6		
19	[September 5, 2012		
20	Quitclaim Deed].		
21	80. The September 5, 2012	80. Undisputed as to	80. The quoted language
22	grant deed states in	2012 Grant Deed,	does not create a triable
23	paragraph 2 that	though quote is	issue of fact sufficient to
24	although the Panorama	incomplete:	deny the motion.
25	Parkland is to remain	"it is the intent of the	
26	open space "it is the	parties, subject to	
27	intent of the	compliance with the	

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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	partiesthat [Thomas	requirements for such	
4	Lieb] may construct any	development of	
5	of the following: a	accessory structures	
6	gazebo, sports court,	of the City and	
7	retaining wall,	Grantor that [Thomas	
8	landscaping, barbeque,	Lieb] may construct	
9	and/or any other	any of the following:	
10	uninhabitable 'accessory	a gazebo, sports	
11	structure,'"	court, retaining wall,	
12	Harbison Decl., ¶ 57;	landscaping,	
13	Exhibit 10, p. 2, ¶ 2	barbeque, and/or any	
14	[September 5, 2012 Grant	other uninhabitable	
15	Deed].	'accessory structure,' .	
16		Grantee shall apply	
17		for approval of any	
18		such permitted	
19		structures by the	
20		Grantor and the City	
21		in accordance with	
22		standard procedure	
23		and in conformance	
24		with applicable	
25		covenants,	
26		ordinances, and	
27		codes."	
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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	RI	EFENDANTS' ESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	Dispu	ted as to	
	charact	terization of Area A as	
	"parkla	and" (see Defendants'	
	Respon	nse to Fact 1 above).	
81. The current owners of	81.	Disputed as	81. The references to an
the Panorama Parkland		phrased. See	open space easement is
intend to use that		Evidentiary	misleading. In fact, the
property for private uses.		Objection Nos. 29-	2012 deeds state that the
		30 to Harbison	open space easement
Harbison Decl., ¶¶ 59-60;		Decl. (lack of	"does not include a right to
Exhibit 24, pp. 2-3 [March		foundation; lack of	public access." Hence, the
7, 2013 Rockey & Wahl		personal	facts relied on by
letter]; Exhibit 23, pp. 1-2		knowledge). As set	defendants do not actually
[February 19, 2013 City		forth in Exhibits 23	create a triable issue of
Staff Report to Planning		and 24, the property	fact.
Commission].		remains subject to	
		an open space	
		easement.	
		Disputed as to	
		characterization of	
		Area A as	
		"parkland" (see	
		Defendants'	
		Response to Fact 1	
		above).	

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
82. In February 2013, the	82. Irrelevant.	82. Defendants offer no
current owners of the	Disputed as	evidence other than the
Panorama Parkland	phrased. See	plaintiffs' exhibits 23 and
applied to the City for a	Evidentiary	24. They do not explain
zone change to change	Objection Nos. 29-	how the stated fact is
the zoning from Open	30 to Harbison	disputed by defendants'
Space to R-1 and to	Decl. (lack of	"evidence."
obtain "after the fact"	foundation; lack of	
approval for various	personal	
accessory structures on	knowledge). As set	
the Panorama Parkland.	forth in Exhibits 23	
	and 24, an	
Harbison Decl., ¶¶ 59-60;	application was	
Exhibit 24, pp. 2-3 [March	submitted to the	
7, 2013 Rockey & Wahl	City to allow for a	
letter]; Exhibit 23, pp. 1-2	Zone Change in	
[February 19, 2013 City	keeping with the	
Staff Report to Planning	approved and	
Commission].	executed MOU.	
	Disputed as to	
	characterization of	
	Area A as	
	"parkland" (see	
	Defendants'	
	Response to Fact 1	

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	R	DEFENDANTS' ESPONSE AND SUPPORTING EVIDENCE	<u>PLAINTIFFS'</u> EVIDENCE IN REPL
		above).	
83. In late 1972, the	83.	Irrelevant; Dispute	83. Defendants offer no
Association wrote to the		as to	evidence to dispute this
City about the parkland		characterization –	fact.
on Lot A, Tract 8652.		letter is undated and	
The Association's 1972		quote is incomplete:	
letter stated that the		"If the City finds	
Board of Directors for		justification for the	
the Association had		continued existence	
determined that "the use		or use of the paved	
of parkland for the		driveway, etc.,	
benefit of a single		within the parkland	
private residence is not		please advise the	
consistent with the		Board so that	
intent of the deed		further	
restrictions and such use		consideration may	
should be disallowed"		be given the	
		matter."	
Harbison Decl., ¶ 40;		In addition, the	
Exhibit 16, [1972 letter by		driveway in	
Patricia Gribben of		question was used	
Association to City].		for Fire and Police	
		Access (Exhibit 17).	
		Disputed as to	
		characterization of	

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	Area A as	
	"parkland" (see	
	Defendants'	
	Response to Fact 1	
	above).	

Issue No. 3. The Court Should Grant Summary Adjudication of the Declaratory Relief Cause of Action Because the September 2012 Deeds Violate the June 14, 1940 Deed Restriction Precluding Conveyance or Sale Except to a Body Suitably Constituted by Law to Take, Hold, Maintain and Regulate Public Parks.

84. In the late 1930's, the	84. Disputed as to	84. If the fact is
Association faced an	characterization of	undisputed, the objections
overwhelming tax debt	land at issue as	are meaningless. That said,
and the threat of	"parkland" (see	plaintiffs are entitled to
foreclosure of its	Defendants'	rely on the verified
parklands.	Response to Fact 1	pleadings as judicial
	above); see	admissions.
Harbison Decl., ¶ 16;	Evidentiary	
Exhibit 1 [Second Amended	Objection No. 7 to	"When allegations in a
Complaint], ¶ 12; Exhibit	Harbison Decl.	complaint are admitted by
13, p. 2, li. 16-19 [Lugliani	(lack of foundation;	the answer (a) no evidence
and Lieb answer to second	lack of personal	need be offered in their
amended complaint];	knowledge).	support; (b) evidence is not
Exhibit 15, ¶ 12 [City's	Objection to	admissible to prove their
answer to second amended	Exhibit 1 (SAC) to	untruth; (c) no finding
complaint].	establish Fact 84.	thereon is necessary; (d) a

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	Exhibit 1 is	finding contrary thereto is
	Plaintiffs' Second	error." (Valerio v. Andrew
	Amended	Youngquist Construction
	Complaint.	(2002) 103 Cal.App.4th
	Plaintiffs cannot	1264, 1271)
	rely upon their own	
	pleading as evidence	The references to the
	to support their	second amended complaint
	motion. (See College	are for convenience only
	Hospital, Inc. v.	and the corresponding
	Superior Court	judicial admission by
	(Crowell) (1994) 8	defendants in their verified
	Cal. App. 4 th 704,	answer is a binding
	720.)	admission that cannot be
		disputed.
		Here, the second amended
		complaint, allege these
		facts in a verified pleading
		and all of the defendants
		admitted the truth of these
		facts in their verified
		answer.
85. To avoid this result, the	85. Undisputed as to	85. If the fact is
Association deeded its	fact; see Evidentiary	undisputed, the objections

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
parklands to the City and	Objection No. 8 to	are meaningless. That said,
to the District between	Harbison Decl.	plaintiffs are entitled to
1938 and 1940.	(lack of foundation;	rely on the verified
	lack of personal	pleadings as judicial
Harbison Decl., ¶ 17;	knowledge).	admissions.
Exhibit 1 [Second Amended	Disputed as to	
Complaint], ¶ 12; Exhibit	characterization of	"When allegations in a
13, p. 2, li. 16-19 [Lugliani	land at issue as	complaint are admitted by
and Lieb answer to second	"parkland" (see	the answer (a) no evidence
amended complaint];	Defendants'	need be offered in their
Exhibit 15, ¶ 12 [City's	Response to Fact 1	support; (b) evidence is not
answer to second amended	above). Objection	admissible to prove their
complaint].	to Exhibit 1 (SAC)	untruth; (c) no finding
	to establish Fact 85.	thereon is necessary; (d) a
	Exhibit 1 is	finding contrary thereto is
	Plaintiffs' Second	error." (Valerio v. Andrew
	Amended	Youngquist Construction
	Complaint.	(2002) 103 Cal.App.4th
	Plaintiffs cannot	1264, 1271)
	rely upon their own	
	pleading as evidence	The references to the
	to support their	second amended complaint
	motion. (See College	are for convenience only
	Hospital, Inc. v.	and the corresponding
	Superior Court	judicial admission by

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPL
	(Crowell) (1994) 8	defendants in their verified
	Cal. App. 4 th 704,	answer is a binding
	720.)	admission that cannot be
		disputed.
		Here, the second amended
		complaint, allege these
		facts in a verified pleading
		and all of the defendants
		admitted the truth of thes
		facts in their verified
		answer.
86. The Association has no	86. Disputed as to	86. Given that the
current ownership of	characterization of	defendants agree that the
parklands.	land in question as	1940 restrictions apply to
	parkland (see	the property (See MF Nos
Harbison Decl., ¶ 18.	Defendants'	33, 36, 37) there can be no
	Response to Fact 1	dispute that the subject
	above); see	property is "parkland."
	Evidentiary	MF No. 37 which is
	Objection No. 9 to	undisputed states:
	Harbison Decl.	The June 14, 1940 deeds
	(lack of foundation;	state that the transferred
	lack of personal	property "is to be used an
	knowledge).	administered forever for

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	Dispute as	park and/or recreation
	Irrelevant - Plaintiff	purposes"
	admits that the	Moreover, the parties to
	Association is a	the MOU, which is a
	body that can hold	contract, included a factual
	parks within the	recital that the referenced
	meaning of the	property is City owned
	deeds. (Dveirin	parkland. (Ex. 12, p. 4
	Decl., Exhibit B	["900 Via Panorama
	(Harbison Depo.,	("Via Panorama Property")
	pg. 45, lns. 19-25;	is owned by the Property
	46:1-6).)	Owner and located at the
		end of a cul-du-sac and is
		adjacent to City-owned
		parkland on three sides.").]
		This factual recital creates
		a conclusive presumption
		in the truth of the fact:
		"The facts recited in a
		written instrument are
		conclusively presumed to
		be true as between the
		parties thereto, or their
		successors in interest"
		(Evid. Code, § 622).

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	<u> </u>	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
87. Instead, the City has	87.	Undisputed; see	87. If this fact is
taken on both the		Evidentiary Objection	undisputed the objection
ownership of and		No. 10 to Harbison	has no merit and should be
stewardship of the parks.		Decl. (lack of	overruled.
otewardship of the parities		foundation; lack of	Overraied.
Harbison Decl., ¶ 19.		personal knowledge).	
88. The City has established	88.	Disputed as	88. This is a contrived
a Parklands		phrased. The City	"dispute." The stated fact
Commission.		has established a	is true.
G01111110010111		Parklands	10 true.
Harbison Decl., ¶ 20.		Committee, which	
Transison Been, 201		is an advisory body	
		to the City Council.	
		Repp Decl., ¶ 5.	
89. Applications by residents	89.	Disputed. Only	89. This is a contrived
that would impact		applications for some	"dispute." The stated fact
parklands are brought to		types of permits (i.e.,	is true.
the City's Parkland		only those that	
Commission and not the		require City Council	
Association.		approval) may be	
		considered by the	
Harbison Decl., ¶ 21.		Parklands Committee	
) II -		for the Committee's	
		non-binding	

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	recommendation to	
	the City Council.	
	Repp Decl., ¶ 5. See	
	Evidentiary Objection No.	
	11 to Harbison Decl.	
90. Permits and	90. Disputed as	90. This is a contrived
enforcement actions	incomplete. The	"dispute." The stated fact
concerning parklands	City's permitting	is true.
involve the City and not	authority is limited	
the Association.	to issuing permits	
	under the PVEMC.	
Harbison Decl., ¶ 22.	Likewise, the City	
	only enforces	
	violations of the	
	PVEMC. The City	
	does not enforce	
	private deed	
	restrictions.	
	Repp Decl., ¶ 6. See	
	Evidentiary Objection No.	
	22 to Harbison Decl.	
91. The Association is no	91. Disputed ;	91. This is a contrived
longer a body that takes,	Irrelevant. Plaintiff	"dispute." There is no
holds, maintains and	admits that the	evidence that at anytime
regulates public parks	Association is a	after 1940, the Association

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
and has not done so	body that can hold	holds or maintains public
since 1940.	parks within the	parks.
	meaning of the	
Harbison Decl., ¶ 23.	deeds. (Dveirin	Defendants own witness,
	Decl., Exhibit B	attorney Sid Croft,
	(Harbison Depo.,	declared that in the 1940,
	pg. 45, lns. 19-25;	the Association "deeded all
	46:1-6).) Regardless	lands under its control to
	as to whether the	the new City, and the City
	1940s Deeds apply,	thereafter took over the
	the 1940 Deeds do	maintenance obligation of
	not require the	the property." (Croft.
	Association to	Decl., ¶ 20).
	currently take, hold,	
	maintain and	The cited deposition of
	regulate parks –	Harbison does not create a
	only to have the	dispute. He did not testify
	legal ability to do so.	that the Association
	SAC, pg. 7, para.	currently owns property.
	14.iii. ["it shall be	
	the duty of [the	Harbison testified that the
	Association]	Association is not a body
	maintain the	that takes, holds and
	parks"]; Harbison	regulates parks. (Harbison
	Decl., ¶ 30; Exhibit	Depo, p. 45, li. 6-9) He

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	\mathbf{R}	EFENDANTS' ESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
		6, p. 9, ¶ 5 [June 14,	also testified that at one
		1940 deed for Lot A	time the Association was a
		of Tract 7540];	body that maintained
		Exhibit 7, p. 5, ¶ 5	parks, and could do so
		[June 14, 1940 deed	again but the Association
		for Lot A of Tract	no longer does so.
		8652] [The June 14,	(Harbison Depo., p. 45, li.
		1940 deeds state	6-9) Harbison testified
		that the transferred	that it 's "unlikely" that the
		property "shall not	Association would ever
		be sold or	hold parkland again.
		conveyed, in whole	(Harbison Depo., p. 46, li.
		or in part <u>except</u>	3-7).
		to a body suitably	
		constituted by law	
		to take, hold,	
		maintain and	
		regulate public	
		parks	
92. On June 14, 1940, the	92.	Undisputed.	92. If this fact is
Association conveyed a		Objection to	undisputed, the evidentiar
number of parks to the		Exhibit 1 (SAC) to	objection is meaningless
City in multiple grant		establish Fact 92.	and should be withdrawn.
deeds.		Exhibit 1 is	Plaintiffs are entitled to
		Plaintiffs' Second	rely on verified pleadings

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
Harbison Decl., ¶ 24;	Amended	and the defendants
Exhibit 1 [Second Amended	Complaint.	responses to those
Complaint], ¶ 12; Exhibit 6,	Plaintiffs cannot	pleadings.
p. 3, Item 5 [June 14, 1940	rely upon their own	
deed for Lot A of Tract	pleading as evidence	
7540]; Exhibit 7, p. 2, Item	to support their	
7 (b), [June 14, 1940 deed	motion. (See College	
for Lot A of Tract 8652];	Hospital, Inc. v.	
Exhibit 13, p. 2, li. 16-19	Superior Court	
[Lugliani and Lieb answer to	(Crowell) (1994) 8	
second amended complaint];	Cal. App. 4 th 704,	
Exhibit 15, ¶ 12 [City's	720.)	
answer to second amended		
complaint].		
93. The June 14, 1940 deeds	93. Disputed as	93. The omitted language
state that the transferred	incomplete quote:	does not warrant denial of
property "shall not be	"except to a body	the motion
sold or conveyed, in	suitably constituted	
whole or in partexcept	by law to take, hold,	
to a body suitably	maintain and regulate	
constituted by law to	public parks;	
take, hold, maintain and	provided, that	
regulate public parks"	portions of said realty	
Harbison Decl., ¶ 30;	may be dedicated to	
Exhibit 6, p. 9, ¶ 5 [June 14,	the public for	

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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	1940 deed for Lot A of	parkway and/or street	
4	Tract 7540]; Exhibit 7, p. 5,	purposes."	
5	¶ 5 [June 14, 1940 deed for		
6	Lot A of Tract 8652].		
7	94. By quitclaim deed	94. Undisputed as to 2012	94. No response required
8	recorded September 5,	Quitclaim Deed.	to this "undisputed fact."
9	2012, Instrument	Disputed as to	
10	Number 20121327414,	characterization of Area	
11	the Panorama Parkland	A as "parkland" (see	
12	was conveyed from the	Defendants' Response to	
13	City to the Association.	Fact 1 above).	
14			
15	Harbison Decl., ¶ 54;		
16	Exhibit 9 [September 5,		
17	2012 Quitclaim Deed].		
18	95. By grant deed recorded	95. Undisputed as to	95. No response required
19	September 5, 2012,	2012 Grant Deed.	to this "undisputed fact."
20	Instrument Number	Disputed as to	
21	20121327415, the	characterization of	
22	Association conveyed	Area A as "parkland"	
23	the Panorama Parkland	(see Defendants'	
24	to Thomas Lieb.	Response to Fact 1	
25		above).	
26	Harbison Decl., ¶ 55;		
27	Exhibit 10 [September 5,		

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	<u>]</u>	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
2012 Grant Deed].			
96. Lieb is an individual.	96.	Disputed as phrased.	96. Plaintiffs are entitled to
		Thomas Lieb is not	rely on the verified
Harbison Decl., ¶¶ 58-59;		an individual, but is	pleadings as judicial
Exhibit 13, p. 1, li. 4-10		the "Trustee, The Via	admissions.
[Lugliani and Lieb answer to		Panorama Trust	
second amended complaint].		U/Do May 2, 2012"	"When allegations in a
		in this action. Cited	complaint are admitted by
		evidence does not	the answer (a) no evidence
		support Fact 69 –	need be offered in their
		Exhibit 13, page 1 is	support; (b) evidence is not
		the caption page of	admissible to prove their
		the Verified Answer.	untruth; (c) no finding
			thereon is necessary; (d) a
			finding contrary thereto is
			error." (Valerio v. Andrew
			Youngquist Construction
			(2002) 103 Cal.App.4th
			1264, 1271)
			The references to the
			second amended complaint
			are for convenience only
			and the corresponding
			judicial admission by

1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	MAD EVIDENCE	EVIDENCE	defendants in their verified
4			answer is a binding
5			admission that cannot be
6			disputed.
7			
8			Here, the second amended
9			complaint, alleges that Lieb
10			is an individual and all of
11			the defendants admitted
12			the truth of these facts in
13			their verified answer.
14			
15	97. Lieb is the trustee of the	97. Undisputed.	97. No response required
16	VIA PANORAMA		to this "undisputed" fact.
17	TRUST U/DO MAY 2,		
18	2012 ("Panorama		
19	Trust'').		
20			
21	Harbison Decl., ¶ 58;		
22	Exhibit 22, p. 1, ¶ 1.1 [Via		
23	Panorama Trust		
24	Agreement].		
25	98. The Panorama Trust is	98. Undisputed;	98. No response required
26	an estate planning	Irrelevant; see	to this "undisputed" fact.
27	instrument for the	Evidentiary	
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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	R	DEFENDANTS' ESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	benefit of the children of		Objection No. 28 to	
4	Dr. and Mrs. Lugliani.		Harbison Decl. (lack	
5			of foundation; lack of	
6	Harbison Decl., ¶ 58;		personal knowledge).	
7	Exhibit 22, p. 1, ¶ 1.1, p. 7,			
8	¶ 1.11 [Via Panorama Trust			
9	Agreement].			
10	99. The Panorama Trust is	99.	Not a Proper Fact;	99. Defendants have
11	not "a body suitably		Improper Legal	offered no evidence to
12	constituted by law to		Conclusion; see	suggest that the Panorama
13	take, hold, maintain and		Evidentiary	Trust is a body suitably
14	regulate public parks"		Objection No. 28 to	constituted by law to own
15			Harbison Decl. (lack	and regulate parks
16	Harbison Decl., ¶ 58;		of foundation; lack of	
17	Exhibit 22, p. 1, ¶ 1.1, p. 7,		personal knowledge).	
18	¶ 1.11 [Via Panorama Trust			
19	Agreement].			
20	100. The current owners	100.	Disputed as phrased.	100. Defendants offer no
21	of the Panorama		See Evidentiary	actual evidence to dispute
22	Parkland intend to use		Objection Nos. 29-30	this fact.
23	that property for private		to Harbison Decl.	
24	uses.		(lack of foundation;	
25			lack of personal	
26	Harbison Decl., ¶¶ 59-60;		knowledge). As set	
27	Exhibit 24, pp. 2-3 [March		forth in Exhibits 23	

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
7, 2013 Rockey & Wahl	and 24, the property	
letter]; Exhibit 23, pp. 1-2	remains subject to an	
[February 19, 2013 City	open space easement.	
Staff Report to Planning	Disputed as to	
Commission].	characterization of	
	Area A as "parkland"	
	(see Defendants'	
	Response to Fact 1	
	above).	
101. In February 2013,	101. Disputed as phrased.	101. Defendants offer no
the current owners of	See Evidentiary	actual evidence to dispute
the Panorama Parkland	Objection Nos. 29-30	this fact.
applied to the City for a	to Harbison Decl.	
zone change to change	(lack of foundation;	
the zoning from Open	lack of personal	
Space to R-1 and to	knowledge). As set	
obtain "after the fact"	forth in Exhibits 23	
approval for various	and 24, an application	
accessory structures on	was submitted to the	
the Panorama Parkland.	City to allow for a	
	Zone Change in	
Harbison Decl., ¶¶ 59-60;	keeping with the	
Exhibit 24, pp. 2-3 [March	approved and	
7, 2013 Rockey & Wahl	executed MOU, and	
letter]; Exhibit 23, pp. 1-2	as required by the	

such property. Such

\mathbf{M}	PLAINTIFFS' UNDISPUTED ATERIAL FACTS ND EVIDENCE	-	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPL
[Febr	uary 19, 2013 City		PVEMC. Disputed	
Staff 1	Report to Planning		as to characterization	
Commission].			of Area A as	
			"parkland" (see	
			Defendants'	
			Response to Fact 1	
			above).	
that	Bar Improvements th	at Inte	erfere with the Use and	
that Parl	1 0	at Inte	erfere with the Use and	Maintenance of the
that Pari	Bar Improvements th	at Into	erfere with the Use and on Purposes.	Maintenance of the 102. The fact as stated by
that Parl 102.	t Bar Improvements the kland for Park and Red The June 14, 1940	at Into	erfere with the Use and on Purposes. Disputed as phrased;	Maintenance of the 102. The fact as stated by
that Parl 102. de	t Bar Improvements the kland for Park and Red The June 14, 1940 teeds state that, with	at Into	erfere with the Use and on Purposes. Disputed as phrased; 1940s Deeds do not	Maintenance of the 102. The fact as stated by plaintiffs is accurate. The language quoted by
that Parl 102. de	t Bar Improvements the kland for Park and Red The June 14, 1940 eeds state that, with	at Into	erfere with the Use and on Purposes. Disputed as phrased; 1940s Deeds do not require a permit to be obtained: "That said	Maintenance of the 102. The fact as stated by plaintiffs is accurate. The language quoted by
that Pari 102. de wr th	t Bar Improvements the kland for Park and Red The June 14, 1940 eeds state that, with ritten permission from e Association and a	at Into	erfere with the Use and on Purposes. Disputed as phrased; 1940s Deeds do not require a permit to be obtained: "That said municipality or other body having	Maintenance of the 102. The fact as stated by plaintiffs is accurate. The language quoted by defendants does not create
that Parl 102. de wr th	t Bar Improvements the kland for Park and Red The June 14, 1940 eeds state that, with ritten permission from e Association and a ermit from the City, a	at Into	Purposes. Disputed as phrased; 1940s Deeds do not require a permit to be obtained: "That said municipality or other body having jurisdiction may, by and with the written	Maintenance of the 102. The fact as stated by plaintiffs is accurate. The language quoted by defendants does not creat
that Parl 102. de wr th pe	t Bar Improvements the kland for Park and Red The June 14, 1940 eeds state that, with ritten permission from the Association and a termit from the City, a troperty owner abutting	at Into	erfere with the Use and on Purposes. Disputed as phrased; 1940s Deeds do not require a permit to be obtained: "That said municipality or other body having jurisdiction may, by and with the written approval of Palos Verdes Art Jury first	Maintenance of the 102. The fact as stated by plaintiffs is accurate. The language quoted by defendants does not creat
that Pari 102. de wi th pe th	t Bar Improvements the kland for Park and Red The June 14, 1940 eds state that, with ritten permission from the Association and a termit from the City, a toperty owner abutting the park may construct	at Into	Purposes. Disputed as phrased; 1940s Deeds do not require a permit to be obtained: "That said municipality or other body having jurisdiction may, by and with the written approval of Palos Verdes Art Jury first obtained, permit the owner of a lot	Maintenance of the 102. The fact as stated by plaintiffs is accurate. The language quoted by defendants does not creat
that Pari 102. de wr th pe pr th pa	t Bar Improvements the kland for Park and Red The June 14, 1940 ends state that, with ritten permission from the Association and a termit from the City, a teoperty owner abutting the park may construct this or landscaping on	at Into	Purposes. Disputed as phrased; 1940s Deeds do not require a permit to be obtained: "That said municipality or other body having jurisdiction may, by and with the written approval of Palos Verdes Art Jury first obtained, permit the owner of a lot abutting on said realty to construct and/or	102. The fact as stated by plaintiffs is accurate. The language quoted by defendants does not creat
that Pari 102. de with pe th pari th pari	t Bar Improvements the kland for Park and Red The June 14, 1940 reds state that, with ritten permission from the Association and a remit from the City, a roperty owner abutting the park may construct this or landscaping on the conveyed property as	at Into	Purposes. Disputed as phrased; 1940s Deeds do not require a permit to be obtained: "That said municipality or other body having jurisdiction may, by and with the written approval of Palos Verdes Art Jury first obtained, permit the owner of a lot abutting on said realty	Maintenance of the 102. The fact as stated by plaintiffs is accurate. The language quoted by defendants does not crea

improvements, as a means of egress from

	PLAINTIFFS'	DEFENDANTS'	PLAINTIFFS'
1	<u>UNDISPUTED</u>	RESPONSE AND	EVIDENCE IN REPLY
2	MATERIAL FACTS AND EVIDENCE	SUPPORTING EVIDENCE	
3	improvements must not	and ingress to said lot	
4	impair or interfere with	or for the improvement of views under such	
5	the use and maintenance	rules and regulations as will not, in the	
6	of said realty for park	opinion of said municipality or other	
7	and/or recreation	body and of Palos Verdes Art Jury,	
8	purposes.	impair or interfere with the use and	
9		maintenance of said realty for park and/or	
10	Harbison Decl., ¶ 31;	recreational purposes, as herein-before set	
11	Exhibit 6, p. 9, ¶ 6 [June 14,	forth." Exhibit 6, p. 9, ¶ 6	
12	1940 deed for Lot A of		
13	Tract 7540]; Exhibit 7, p. 5,	[June 14, 1940 Deed for Lot A of Tract	
14	¶ 6 [June 14, 1940 deed for		
15	Lot A of Tract 8652].	7540]; Exhibit 7, p. 5,	
16		¶ 6 [June 14, 1940	
17		Deed for Lot A of	
18		Tract 8652].	
19		See Evidentiary Objection	
20		No. 15 to Harbison	
21		Declaration (lack of	
22		foundation; lack of personal	
23		knowledge). Disputed as to	
24		characterization of Area A as	
25		"parkland".	
26	103. The encroachment	103. Disputed – see	103. Defendants offer no
27	on the Panorama	Evidentiary Objections No.	evidence to dispute this
28	Parkland includes	21 to Harbison Decl. (lack	fact. Moreover, the parties
20		99	

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
landscaping, a baroque	of foundation; lack of	to the MOU, which is a
wrought-iron gate with	personal knowledge).	contract, included a factual
stone pillars and lion	Exhibit 18 is not properly	recital that the referenced
statutes, a winding stone	authenticated and does not	property is City owned
driveway, dozens of	contain facts as set forth in	parkland and that the
trees (some of which are	Fact 103 (see Evidentiary	Luglianis have encroached
as high as 50 feet), a	Objection No. 31);	on it (Ex. 12, p. 4
now-overgrown athletic	Irrelevant. Disputed as to	["the prior owner
field half the size of a	characterization of Area A	installed a series of
football field, a 21-foot-	as "parkland" (see	retaining walls to stabilize
high retaining wall and	Defendants' Response to	the Via Panorama
other retaining walls.	Fact 1 above).	Property. This installation
The stone pillars and		was done without a
lion statutes are within		permitin City-owned
the City's easements and		parkland, the Property
right of way.		Owners landscaped and
		improved Area A,
Harbison Decl., ¶ 45;		including placing a gazebo
Exhibit 18 [August 11, 2003		and other accessory, non-
City memo by Allan Rigg].		habitable structures. At
		the City's direction,
		Property Owners removed
		the structures encroaching
		the City's parkland.").]

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
		This factual recital creates
		a conclusive presumption
		in the truth of the fact:
		"The facts recited in a
		written instrument are
		conclusively presumed to
		be true as between the
		parties thereto, or their
		successors in interest"
		(Evid. Code, § 622).
		Plaintiffs are entitled to
		rely on the verified
		pleadings as judicial
		admissions.
		"When allegations in a
		complaint are admitted by
		the answer (a) no evidence
		need be offered in their
		support; (b) evidence is not
		admissible to prove their
		untruth; (c) no finding
		thereon is necessary; (d) a
		finding contrary thereto is

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	RE S	EFENDANTS' ESPONSE AND UPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
			error." (Valerio v. Andrew
			Youngquist Construction
			(2002) 103 Cal.App.4th
			1264, 1271)
			The references to the
			second amended complaint
			are for convenience only
			and the corresponding
			judicial admission by
			defendants in their verified
			answer is a binding
			admission that cannot be
			disputed.
			Here, the second amended
			complaint, allege these
			facts in a verified pleading
			and all of the defendants
			admitted the truth of these
			facts in their verified
			answer.
104. The September 5,	104.	Disputed . Exhibit 9	104. The quoted language
2012 quitclaim deed		The 2012 Quitclaim	does not actually conflict

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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	_	DEFENDANTS' ESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	states in paragraph 6 that		Deed) states: "Upon	with this fact.
4	although the Panorama		obtaining any and all	
5	Parkland is to remain		required permits and	
6	open space, should the		approvals from the	
7	owner of the Panorama		Grantor, Grantee	
8	Parkland obtain the		(Palos Verdes Homes	
9	necessary permits and		Association) may	
10	approvals from the City,		construct any of the	
11	Lieb "may construct any		following ". The	
12	of the following: a		grantee is not Lieb.	
13	gazebo, sports court,		Exhibit 9, p. 1.	
14	retaining wall,		Disputed as to	
15	landscaping, barbeque,		characterization of	
16	and/or any other		Area A as "parkland"	
17	uninhabitable 'accessory		(see Defendants'	
18	structure,'"		Response to Fact 1	
19	Harbison Decl., ¶ 56;		above).	
20	Exhibit 9, p. 2, ¶ 6			
21	[September 5, 2012			
22	Quitclaim Deed].			
23	105. The September 5,	105.	Undisputed as to	105. The omitted language
24	2012 grant deed states in		2012 Grant Deed,	does not create a triable
25	paragraph 2 that		though quote is	issue of fact.
26	although the Panorama		incomplete:	
27	Parkland is to remain		"it is the intent of the	

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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	open space "it is the	parties, subject to	
4	intent of the	compliance with the	
5	partiesthat [Thomas	requirements for such	
6	Lieb] may construct any	development of	
7	of the following: a	accessory structures	
8	gazebo, sports court,	of the City and	
9	retaining wall,	Grantor that [Thomas	
10	landscaping, barbeque,	Lieb] may construct	
11	and/or any other	any of the following:	
12	uninhabitable 'accessory	a gazebo, sports	
13	structure,'"	court, retaining wall,	
14		landscaping,	
15	Harbison Decl., ¶ 57;	barbeque, and/or any	
16	Exhibit 10, p. 2, ¶ 2	other uninhabitable	
17	[September 5, 2012 Grant	'accessory structure,'.	
18	Deed].	Grantee shall apply	
19		for approval of any	
20		such permitted	
21		structures by the	
22		Grantor and the City	
23		in accordance with	
24		standard procedure	
25		and in conformance	
26		with applicable	
27		covenants,	

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
	ordinances, and	
	codes."	
	Disputed as to	
	characterization of	
	Area A as "parkland"	
	(see Defendants'	
	Response to Fact 1	
	above).	
106. The current owners	106. Disputed as phrased.	106. Defendants offer no
of the Panorama	See Evidentiary	actual evidence to dispute
Parkland intend to use	Objection Nos. 29-30	this fact.
that property for private	to Harbison Decl.	
uses.	(lack of foundation;	
	lack of personal	
Harbison Decl., ¶¶ 59-60;	knowledge). As set	
Exhibit 24, pp. 2-3 [March	forth in Exhibits 23	
7, 2013 Rockey & Wahl	and 24, the property	
letter]; Exhibit 23, pp. 1-2	remains subject to an	
[February 19, 2013 City	open space easement.	
Staff Report to Planning	Disputed as to	
Commission].	characterization of	
	Area A as "parkland"	
	(see Defendants'	
	Response to Fact 1	
	above).	

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	1 <u>R</u>	DEFENDANTS' EESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
107. In February 2013,	107.	Disputed as phrased.	107. Defendants offer no
the current owners of		See Evidentiary	actual evidence to dispute
the Panorama Parkland		Objection Nos. 29-30	this fact.
applied to the City for a		to Harbison Decl.	
zone change to change		(lack of foundation;	
the zoning from Open		lack of personal	
Space to R-1 and to		knowledge). As set	
obtain "after the fact"		forth in Exhibits 23	
approval for various		and 24, an application	
accessory structures on		was submitted to the	
the Panorama Parkland.		City to allow for a	
		Zone Change in	
Harbison Decl., ¶¶ 59-60;		keeping with the	
Exhibit 24, pp. 2-3 [March		approved and	
7, 2013 Rockey & Wahl		executed MOU.	
letter]; Exhibit 23, pp. 1-2		Disputed as to	
[February 19, 2013 City		characterization of	
Staff Report to Planning		Area A as "parkland"	
Commission].		(see Defendants'	
		Response to Fact 1	
		above).	
108. In late 1972, the	108.	Irrelevant; dispute as	108. Defendants offer no
Association wrote to the		to characterization –	actual evidence to dispute
City about the parkland		letter is undated and	this fact. The quoted
on Lot A, Tract 8652.		quote is incomplete:	language supports the fact

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PLAINTIFFS' UNDISPUTED	DEFENDANTS' RESPONSE AND	PLAINTIFFS' EVIDENCE IN REPLY
MATERIAL FACTS	SUPPORTING	EVIDENCE IN REPLI
AND EVIDENCE	EVIDENCE	
The Association's 1972	"If the City finds justification for the continued existence	as phrased.
letter stated that the	or use of the paved	
Board of Directors for	driveway, etc., within the parkland please advise the Board so	
the Association had	that further	
determined that "the use	consideration may be given the matter."	
of parkland for the		
benefit of a single	In addition, the	
private residence is not	driveway in question	
consistent with the	was used for Fire and	
intent of the deed	Police Access.	
restrictions and such use	(Exhibit 17)	
should be disallowed"	Disputed as to	
Harbison Decl., ¶ 40;	characterization of	
Exhibit 16, [1972 letter by	Area A as "parkland"	
Patricia Gribben of	(see Defendants'	
Association to City].	Response to Fact 1	
	above).	

Issue No. 5. The Court Should Grant Summary Adjudication of the Waste of Public Funds/Ultra Vires Cause of Action Because there are no Triable Issues of Material Fact that the June 14, 1940 Deeds Created a Public Trust and that the City Violated that Trust by Executing the September 2012 Deeds.

109. The properties	109. Disputed as to	109. The stated fact is
conveyed by the	characterization of	supported by the
Association to the City	Area A as "parkland"	defendants' own witness,
on June 14, 1940	(see Defendants'	attorney Sid Croft, who

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
included the Panorama	Response to Fact 1	declares that in 1940 "the
Parkland.	above). Objection to	Association deeded all
	Exhibit 1 (SAC) to	lands under its control the
Harbison Decl., ¶ 24;	establish Fact 109.	new CityThe transfer of
Exhibit 1 [Second Amended	Exhibit 1 is Plaintiffs'	the properties to the City
Complaint], ¶ 12; Exhibit 6,	Second Amended	was accomplished with two
p. 3, Item 5 [June 14, 1940	Complaint. Plaintiffs	(2) deeds from the
deed for Lot A of Tract	cannot rely upon	Association, dated June
7540]; Exhibit 7, p. 2, Item	their own pleading as	1940 ("1940 Deeds"),
7 (b), [June 14, 1940 deed	evidence to support	which are exhibits 6 and 7
for Lot A of Tract 8652];	their motion. (See	to Plaintiffs' Evidence.
Exhibit 13, p. 2, li. 16-19	College Hospital, Inc. v.	Those deeds include Lot A
[Lugliani and Lieb answer to	Superior Court (Crowell)	of Tracts 8652 and 7540.
second amended complaint];	(1994) 8 Cal. App. 4th	(Croft Decl., \P 20).
Exhibit 15, ¶ 12 [City's	704, 720.)	Plaintiffs are entitled to
answer to second amended		rely on the verified
complaint].		pleadings as judicial
		admissions.
		"When allegations in a
		complaint are admitted by
		the answer (a) no evidence
		need be offered in their
		support; (b) evidence is not
		admissible to prove their

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
		untruth; (c) no finding
		thereon is necessary; (d) a
		finding contrary thereto is
		error." (Valerio v. Andrew
		Youngquist Construction
		(2002) 103 Cal.App.4th
		1264, 1271)
		The references to the
		second amended complaint
		are for convenience only
		and the corresponding
		judicial admission by
		defendants in their verified
		answer is a binding
		admission that cannot be
		disputed.
		Here, the second amended
		complaint, allege these
		facts in a verified pleading
		and all of the defendants
		admitted the truth of these
		facts in their verified
		answer.

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
110. By quitclaim deed	110. Undisputed as to	110. No response required
recorded September 5,	2012 Quitclaim.	to this "undisputed" fact.
2012, Instrument	Disputed as to	
Number 20121327414,	characterization of	
the Panorama Parkland	Area A as "parkland"	
was conveyed from the	(see Defendants'	
City to the Association.	Response to Fact 1	
Harbison Decl., ¶ 54;	above).	
Exhibit 9 [September 5,		
2012 Quitclaim Deed].		
111. The City passed	111. Undisputed	111.
Resolution No. 12		
formally accepting the		
deeds and confirming		
the land use restrictions.		
Harbison Decl., ¶ 38,		
Exhibit 8 [Resolution No.		
12].		
Issue No. 6. The Court Should Grant Summary Adjudication of the Waste of		
Public Funds/Ultra Vires	Cause of Action based on the	e Doctrine of Collateral
Estoppel Because of the I	Prior Litigation Concerning th	nese Deed Restrictions.
112. In 1949, the City	112. Disputed . This is a	112. Defendants have
litigated substantially	legal conclusion, not	offered no facts in
identical deed	a fact.	opposition.

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
restrictions in Roberts v. City of Palos Verdes Estates (1949) 93 Cal.App.2d 545 ("Roberts.") Roberts v. City of Palos Verdes		
Estates (1949) 93 Cal.App.2d 545.		
"that except as provided above, no buildings, structures or concessions shall be erected, maintained or permitted upon the said realty, except such as, (in the opinion of the Park Department of Palos Verdes Homes Association), are properly incidental to the convenient and/or proper use of said realty for park purposes."	113. Irrelevant.	113. Defendants have offered no facts in opposition.

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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	(Roberts, at 546).		
4	114. In the Roberts case,	114. Irrelevant. This is a	114. Defendants have
5	the City argued that it	legal conclusion, not	offered no facts in
6	could substitute its "best	a fact.	opposition.
7	judgment" for the use of		
8	the park for the express		
9	terms of the deed.		
10			
11	(Roberts, at 546-47).		
12			
			tootton on to the Attimmetime
13 14		hould Grant Summary Adjudinuse there is no Triable Issue	
		use there is no Triable Issue	
14	Defense of Standing Beca	use there is no Triable Issue	
14 15 16	Defense of Standing Beca	use there is no Triable Issue Assert Claims.	of Fact Regarding CEPC
14 15 16 17	Defense of Standing Beca and Harbison's Right to A	use there is no Triable Issue Assert Claims.	of Fact Regarding CEPC
14 15 16 17	Defense of Standing Becaute and Harbison's Right to A 115. Lieb and the Luglianis have asserted	use there is no Triable Issue Assert Claims.	of Fact Regarding CEPC
14 15 16 17 18	Defense of Standing Becauth and Harbison's Right to A 115. Lieb and the Luglianis have asserted as their fourth	use there is no Triable Issue Assert Claims.	of Fact Regarding CEPC
14 15	Defense of Standing Because and Harbison's Right to A 115. Lieb and the Luglianis have asserted as their fourth affirmative defense that	use there is no Triable Issue Assert Claims.	of Fact Regarding CEPC
14 15 16 17 18 19 20	Defense of Standing Because and Harbison's Right to A 115. Lieb and the Luglianis have asserted as their fourth affirmative defense that Plaintiffs have no	use there is no Triable Issue Assert Claims.	of Fact Regarding CEPC
14 15 16 17 18 19 20 21	Defense of Standing Because and Harbison's Right to A 115. Lieb and the Luglianis have asserted as their fourth affirmative defense that Plaintiffs have no	use there is no Triable Issue Assert Claims.	of Fact Regarding CEPC
14 15 16 17 18 19 20 21	Defense of Standing Because and Harbison's Right to A 115. Lieb and the Luglianis have asserted as their fourth affirmative defense that Plaintiffs have no standing in this matter.	use there is no Triable Issue Assert Claims.	of Fact Regarding CEPC
14 15 16 17 18 19 20 21 22 23 24	Defense of Standing Because and Harbison's Right to A 115. Lieb and the Luglianis have asserted as their fourth affirmative defense that Plaintiffs have no standing in this matter. Exhibit 13 [Lieb and	use there is no Triable Issue Assert Claims.	of Fact Regarding CEPC
14 15 16 17 18 19 20 21 22 23	Defense of Standing Because and Harbison's Right to A 115. Lieb and the Luglianis have asserted as their fourth affirmative defense that Plaintiffs have no standing in this matter. Exhibit 13 [Lieb and Lugliani answer to second	use there is no Triable Issue Assert Claims.	of Fact Regarding CEPC

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
affirmative defense that		
Plaintiffs have no		
standing in this matter.		
Exhibit 14 [Association's		
answer to second amended		
complaint].		
117. The City has asserted	117. Undisputed	117.
as its eighth affirmative		
defense that Plaintiffs		
have no standing in this		
matter.		
Exhibit 15 [City's answer to		
second amended complaint].		
118. Plaintiff John	118. Undisputed	118.
Harbison ("Harbison")		
owns property located		
within the City.		
Harbison Decl., ¶ 2;		
Harbison Decl., ¶ 2; Exhibit		
14,¶9 [Association's		
Answer to Complaint];		
Exhibit 15, ¶ 9 [City's		
Answer to Second		
Amended Complaint].		

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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	119. Harbison has owned	119. Undisputed	119.
4	property located within		
5	the City since 1992.		
6			
7	Harbison Decl., ¶ 2.		
8	120. Harbison owns	120. Undisputed	120.
9	property that is subject		
10	to the Association's		
11	jurisdiction.		
12			
13	Harbison Decl., ¶ 2; Exhibit		
14	14, ¶ 9 [Association's		
15	Answer to Complaint];		
16	Exhibit 15, ¶ 9 [City's		
17	Answer to Second		
18	Amended Complaint].		
19	121. Harbison is a	121. Undisputed	121.
20	member of the		
21	Association.		
22			
23	Harbison Decl., ¶ 2; Exhibit		
24	14,¶9 [Association's		
25	Answer to Complaint];		
26	Exhibit 15, ¶ 9 [City's		
27	Answer to Second		

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	Ī	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
Amended Complaint].			
122. Harbison is a	122.	Undisputed	122.
member of plaintiff			
Citizens for			
Enforcement of			
Parkland Covenants.			
Harbison Decl., ¶ 1.			
123. Harbison has paid	123.	Undisputed	123.
property taxes annually			
since purchasing his			
property in 1992.			
Harbison Decl., ¶ 2.			
124. The Association's	124.	Disputed as phrased.	124. The omitted language
bylaws state that its		Complete quote	does not alter the fact
members shall be		states:	asserted.
constituted of "all who		"The members of this corporation shall be	
hold legal title of record"		all who hold legal title of record to any such	
to any lot located within		building site or who, while holding a	
Palos Verdes Estates.		contract for the purchase of any such	
(By-Laws, 24 Art. I, §		building site from the Commonwealth Trust	
1(c).) "Such building title		Company, shall reside upon the building site	
shall be the sole		described in such contract. Such	
qualification for		holding of legal title or such residence shall be the sole	

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE membership in the [Association]." Exhibit 5, p. 30, Art I, §	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE qualification for membership in the corporation. Contract holders shall establish their right to membership to the	PLAINTIFFS' EVIDENCE IN REPLY
1(c).	satisfaction of the Secretary of this corporation."	
	Exhibit 5, p. 30, Art I, § 1(c).	
Issue No. 8. The Court S Defense of Non-Joinder E District's Participation in	hould Grant Summary Adjudi Because there is no Triable Is this Action.	ication as to the Affirmative sue of Fact Regarding the
125. The Association has	125. Undisputed	125.
asserted as its seventh		
affirmative defense that		
there is an indispensible		
party missing from this		
action.		
Exhibit 14 [Association's		
Answer to Second		
Amended Complaint].		
126. The City has asserted	126. Undisputed	126.
as its thirteenth		
affirmative defense that		
there is an indispensible		
party missing from this		
action.		
Exhibit 15 [City's Answer to		

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PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE		DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
Second Amended			
Complaint].			
127. On April 11, 2014,	127.	Undisputed	127.
the Court issued a			
minute order containing			
a tentative ruling on			
defendants' demurrers			
and motions to strike.			
Lewis Decl., ¶ 7; Exhibit 27 [April 11, 2014 minute order].			
128. On May 21, 2014 the	128.	Undisputed	128.
Court confirmed that the			
April 11, 2014 tentative			
ruling would be the final			
ruling of the Court.			
Lewis Decl., ¶ 7; Exhibit 28			
[May 21, 2014 Reporter's			
Transcript].			
129. The April 11, 2014	129.	Not a proper fact;	129. The court's ruling
order included the		Incorrect citation to	appears at Exhibit 27

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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	following ruling by the	evidence – Exhibit 28	(mistakenly identified as
4	Court: "The matters	does not contain the	Exhibit 28) at page 12 of
5	now before this court do	quote or the April 11,	the exhibit (9 of the order).
6	not depend, in this	2014 order.	
7	Court's view, on the		Defendants offer no
8	MOU and who were or		contrary evidence.
9	were not parties to it."		
10			
11	Exhibit 28, p. 9, li. 13-14		
12	[May 21, 2014 Reporter's		
13	Transcript].		
14	130. The April 11, 2014	130. Not a proper fact;	130. The court's ruling
15	order included the	Incorrect citation to	appears at Exhibit 27
16	following ruling by the	evidence – Exhibit 28	(mistakenly identified as
17	Court: "The parties to	does not contain the	Exhibit 28) at page 12 of
18	the MOU made a deal	quote or the April 11,	the exhibit (9 of the order).
19	and took the risk that	2014 order.	
20	what they were doing		Defendants offer no
21	would not be challenged		contrary evidence.
22	or, if challenged, the		
23	challenge would not be		
24	successful. That		
25	challenge is what they		
26	are now facing, but the		
27	MOU, in this court's		

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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPLY
3	view, does not need to	BYIDEITOE	
4	be vacated or set aside		
5	for the restrictions		
6	allegedly tied to [the		
7	Panorama Parkland] to		
8	be enforced if they have		
9	been or are being		
10	violated. The private		
11	agreement of parties to		
12	the MOU does not bind		
13	others with an interest or		
14	preclude a court from		
15	acting"		
16	Exhibit 28, p. 8, li. 28 – p. 9,		
17	li. 5 [May 21, 2014		
18	Reporter's Transcript].		
19	131. On May 1, 2014, the	131. Undisputed.	131.
20	plaintiffs requested		
21	dismissal, without		
22	prejudice, of the Palos		
23	Verdes Peninsula		
24	Unified School District		
25	("District.")		
26			
27	Lewis Decl., ¶ 8; Exhibit 29		

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1 2	PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDAN RESPONSE A SUPPORTIN EVIDENC	EVIDENCE IN REPLY NG
3	[Notice of Entry of	LVIDLING	
4	Dismissal].		
5	132. On May 5, 2014, the	132. Undisputed.	132.
6	clerk entered the		
7	dismissal of the District.		
8			
9	Lewis Decl., ¶ 8, Exhibit 29		
10	[Notice of Entry of		
11	Dismissal]		
12	133. On May 7, 2014,	133. Undisputed.	133.
13	plaintiffs served notice		
14	of the dismissal of the		
15	District.		
16	Lewis Decl., ¶ 8; Exhibit 29		
17	[Notice of Entry of		
18	Dismissal].		
19	134. On October 31,	134. Undisputed,	134. No response required
20	2014, plaintiffs'	Irrelevant.	to this "undisputed" fact.
21	stipulated to leave to file		
22	a cross-complaint against		
23	the District.		
24	Lewis Decl., ¶ 9; Exhibit 30		
25	[October 31, 2014 letter by		
26	Lewis to Dveirin].		
27	135. No defendant has	135. Undisputed,	135. No response required
28		-120-	

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND EVIDENCE	DEFENDANTS' RESPONSE AND SUPPORTING EVIDENCE	PLAINTIFFS' EVIDENCE IN REPI
filed a cross-complaint in this matter.	Irrelevant.	to this "undisputed" fact
Lewis Decl., ¶ 9.		
136. No defendant took any action in response to the request for entry of dismissal.	136. Undisputed, Irrelevant.	136. No response require to this "undisputed" fact
Lewis Decl., ¶ 9.		
137. No defendant has accepted plaintiffs' stipulation for leave to file a cross-complaint against the District.	137. Undisputed, Irrelevant.	137. No response require to this "undisputed" fact

DEFENDANTS' ADDITIONAL FACTS AND EVIDENCE

DEFENDANTS' ADDITIONAL FACTS AND EVIDENCE		<u>P</u>	PLAINTIFFS' RESPONSE AND SUPPORTING EVIDENCE	
1.	At least 10 members of the Citizens	1.	Undisputed.	
	for Enforcement of Parkland and			
	Covenants are not residents of Palos			
	Verdes Estates.			
Dvei	rin Decl., Exhibit A (Plaintiffs'			
Responses to Special Interrogatories, Set				
One Propounded by Defendant Palos				
Verdes Homes Association, Response to				
Special Interrogatory No. 1 [pg. 2, lns. 17-				
18]).)				
2.	Area A (as legally described in	2.	Undisputed but irrelevant because the	
	Plaintiffs' Evidence, Exhibit 3) is		later in time 1940s deeds declared that	
	part of Business and Public Use		the property was to be used as	
	Districts Class F under Declaration		parkland forever.	
	No. 1.	Harbi	son Decl., ¶ 28; Exhibit 6, p. 7 [June 14,	
		1940	deed for Lot A of Tract 7540]; Exhibit	
Croft Decl. ¶ 11; Exhibit A to Croft Decl.		7, p. 4	[June 14, 1940 deed for Lot A of Tract	
[Declaration No. 1].		8652].		
3	. Plaintiff Harbison did not did not file	3.	Undisputed but irrelevant. Harbison	
	a recall petition or take any other		was not required to file a recall	
	administrative action to contest or		petition as a prerequisite to suit.	
	challenge the Association's decision			
	to enter into the MOU.			
-122-				

DEFENDANTS' ADDITIONAL FACTS AND EVIDENCE	PLAINTIFFS' RESPONSE AND SUPPORTING EVIDENCE
Dveirin Decl., Exhibit B (Harbison Depo.,	
pgs. 137, ln. 8-138, ln. 16.)	
4. The Association is a body duly	Defendants own witness, attorney
constituted to take and hold parkland	Sid Croft, declared that in the 1940,
within the meaning of the 1940	the Association "deeded all lands
deeds.	under its control to the new City,
Dveirin Decl., Exhibit B (Harbison Depo.,	and the City thereafter took over the
pg. 45, lns. 19-25; 46:1-6.)	maintenance obligation of the
	property." (Croft. Decl., ¶ 20).
	Harbison did not testify that the
	Association currently owns parkland
	property.
	Harbison testified that the Association
	is not a body that takes, holds and
	regulates parks. (Harbison Depo, p.
	45, li. 6-9) He also testified that at one
	time the Association was a body that
	maintained parks, and could do so
	again but the Association no longer
	does so. (Harbison Depo, p. 45, li. 6-
	9) Harbison testified that it 's
	"unlikely" that the Association would
	ever hold parkland again. (Harbison
	Depo., p. 46, li. 3-7).

DATED: May 22, 2015

BROEDLOW LEWIS LLP

By: _

Attorneys for Plaintiffs CITIZENS FOR ENFORCEMENT OF PARKLAND COVENANTS and JOHN HARBISON