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Exempt from fees pursuant
to Government Code § 6103

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES—CENTRAL DISTRICT

CITIZENS FOR ENFORCEMENT OF
PARKLAND COVENANTS, an
unincorporated association; JOHN
HARBISON, an individual

Plaintiffs and Petitioners,

v.

CITY OF PALOS VERDES ESTATES, a
municipal corporation; PALOS VERDES
HOMES ASSOCIATION, a California
corporation,

Defendants and Respondents,

CASE NO. BS142768

**CITY'S REPLY IN SUPPORT OF ITS
MOTION FOR SUMMARY
JUDGMENT, OR IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

Date: May 29, 2015
Time: 10:30 a.m.
Dept.: 12

Hon. Barbara A. Meiers

Petition and Complaint Filed: May 13, 2013

ROBERT LUGLIANI and DOLORES A.
LUGLIANI, as co-trustees of THE
LUGLIANI TRUST; THOMAS J. LIEB,
TRUSTEE, THE VIA PANORAMA TRUST
U/DO MAY 2, 2012 and DOES 1 through
20,

Defendants and Real Parties in
Interest.

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Plaintiffs oppose the City's Motion for Summary Judgment ("MSJ") by contending, in essence, that, because it accepted deed restricted property (Area A), the City is required to own that property in perpetuity as a "public trust." From that faulty premise, Plaintiffs argue that any attempt to convey the property back to the grantor-Association is an "*ultra vires*" act. Plaintiffs are incorrect on both counts. First, because the 1940 grant deed contained a reversionary clause in favor of the grantor – the Homes Association – no "public trust" was created as a matter of law. *Walton v. City of Red Bluff* (1991) 2 Cal.App.4th 117, 125-26. Second, whether or not the deed created a "public trust," the City's decision to allow deed restricted property to revert to the grantor cannot be "*ultra vires*." *Save the Welwood Murray Memorial Library Com. v. City Council* (1989) 215 Cal.App.3d 1003, 1017 ("*Welwood*").

The Opposition implicitly misstates the applicable standard of review at summary judgment by asking the Court to treat as binding its ruling on the City's demurrer. Plaintiffs'

1 Additional Material Facts in Dispute (“AMF”) 44 and 45 actually attempts to cast these
2 rulings as “facts” that would defeat the City’s MSJ. In essence, Plaintiffs are seeking to have
3 the Court transform the standard of review from demonstrating triable issues of material fact
4 per C.C.P. § 437c(c) to one in which all Plaintiffs must do is plead a claim for relief. The
5 Court’s ruling on demurrer is not the “law of the case” for purposes of summary judgment.

6 **II. ARGUMENT**

7 **A. The 2012 Deed from the City Back to the Association Does Not Violate the** 8 **1940 Deed Restrictions**

9 As Plaintiffs have now admitted, the Association can hold parklands and the
10 conveyance back to the Association did not violate the 1940 Deeds. *See* Declaration of
11 Brant Dveirin in Support of Defendant Palos Verdes Homes Association et al.’s Joint
12 Opposition to Plaintiffs’ Motion for Summary Judgment (“Co-Defendant’s Opposition”),
13 Exhibit B (Deposition of John Harbison at 45:19-25; 46:1-6.) This recent admission on the
14 part of Plaintiff Harbison is common sense and is the inescapable conclusion based on the
15 1923 Articles of Incorporation of the Association attached as Exhibit 5 to the SAC: “It will
16 be the duty of this body to maintain the parks, street planning and other community affairs,
17 and to perpetuate the restrictions.” SAC, Ex. 5 at 3. Declaration No. 1, Article II, Section 4,
18 Powers of the Homes Association, page 19 states:

19 The Association shall have the right and power to do and/or perform any of the
20 following things, for the benefit, maintenance and improvement of the property
21 and owners thereof at any time within the jurisdiction of the Homes
22 Association, to wit: (a). To maintain, purchase, construct, improve, repair,
23 prorate, care for, own/and or dispose of parks, parkways, playgrounds, open
24 space and recreational areas....for the use and benefit of the owners of and/or
25 for the improvement and development of the property herein referred to...

26 SAC, Ex. 5 at 16 (emphasis added).

27 This language in the 1940 Deed restrictions is intended to prevent the City from
28 unilaterally transferring the property to private ownership or private development without
consent of the Association. As previously stated, the Association maintained a right of
reverter as a remedy to enforce the 1940 Deed restrictions applicable to the City. If the main

1 remedy for a violation of this provision is reversion of title to the Association, then the
2 parties did not contemplate that conveyance back to the Association could ever be
3 considered a breach of the restriction. Plaintiffs nevertheless ask this Court to ignore reason
4 and instead accept the irony that would result from Plaintiffs' newly proffered interpretation.

5 Plaintiffs also ignore their own pleadings. The SAC states that the "effect of the
6 attempted conveyance on September 5, 2012 was to trigger the reversion of title to Area A
7 back to the Association". SAC ¶36(b). The SAC specifically seeks a judicial declaration to
8 this effect. *See* SAC ¶40(c). If Plaintiffs' retained the right to "enforce" the restrictions as
9 they claim (Opp. at 6) that right would be to enjoin the City's use of the property in
10 contravention to the 1940 Deeds – not its lack of ownership. The City does *not* argue that it
11 was free to convey the property to "whomever it wanted": the City conveyed Area A to the
12 grantor that held the reversionary interest. Plaintiffs have not offered a single authority or
13 legal theory to cast doubt on the validity of this transfer.¹

14 **B. Plaintiffs Misapprehend the Merger Doctrine Applicable to this Case**

15 The 2012 Deed from the City to the Association states that "this Deed shall not cause
16 the Property to be merged with any adjacent lot". SAC, Exhibit 9 at 3, SAC ¶8; AMF No.
17 32. This recitation in the Deed prohibits a *physical merger* with adjacent lots – it does not
18 affect the provisions of future, non-possessionary interests as set forth in Civil Code sections
19 805 and 811. Plaintiffs' reliance on the Judgment for Defendant Palos Verdes' Homes
20 Association in case No. BC431020 – a case that dealt with certain 1938 grant deeds not at
21 issue in this litigation – for the proposition that every lot owner in the City holds the
22 dominant tenements is mis-placed.

23
24 ¹ The reliance on *Foxen* for the proposition that the transfer was *ultra vires* is misplaced. *Foxen*, a
25 personal injury case, simply stands for the proposition that "the acts of a municipal corporation done
26 *ultra vires* are absolutely void and it follows, as an inevitable deduction, that persons injured because
27 of such acts have no recourse against the municipality." *Foxen v. City of Santa Barbara* (1913) 166
28 Cal. 77, 82. The City has the legal authority to transfer real property, so its acts challenged in this
case are not *ultra vires* even if they violated the deed restrictions (which they did not).

1 Plaintiffs' cases are not on point here. *Leggio v. Haggerty* (1965) 231 Cal.App.2d
2 873 concerned recorded easements for water rights held by several owners. See *id.* at 875-
3 78. Likewise, *Tract Development Services, Inc. v. Kepler* (1988) 199 Cal.App.3d 1374 dealt
4 with initial subdivision deeds and recorded easements for ingress and egress thereon. See *id.*
5 at 1379. Here, there is no evidence that each lot owner in the City holds an "easement" over
6 Area A within the meaning of Civil Code section 811. Plaintiffs tacitly concede this in their
7 argument that "at least" their "interest in enforcement" survived the 2012 quitclaim deed.
8 Opp. at 8:15-16. Plaintiffs offer no authority for the proposition that an "interest in
9 enforcement" of CC&Rs is an easement or similar future non-possessory interest within the
10 meaning of section 811. Plaintiffs' reliance on *Kolodge v. Boyd* (2001) 88 Cal.App.4th 349
11 is similarly misplaced – that case deals with merger as applied to liens and deeds of trust,
12 i.e., when a lienholder acquires fee ownership in the real property. See *id.* at 362. *Kolodge*
13 does not apply to the extinguishment of future, non-possessory interests that occur because
14 of the merger of the dominant and servient tenements. In any event, this is not a question of
15 fact that would defeat the City's MSJ because, true or not, the City was entitled to return
16 Area A back to the grantor-Association.

17 **C. Plaintiffs' Action for Waste of Public Funds Fails as a Matter of Law: No**
18 **"Public Trust" Was Created by the 1940 Deeds Because They Were**
19 **Subject to a Reversionary Interest and Transferring Area A Back to the**
20 **Grantor Cannot Be "Ultra Vires"**

21 As a matter of law, neither the transfer of Area A to the Association nor the
22 consideration of a rezone application constitutes an *ultra vires* act within the meaning of the
23 statute prohibiting the waste of public funds. Plaintiffs' reliance on authorities involving the
24 misuse of public property is of no import. The SAC does not allege that the City is currently
25 using Area A for any purpose inconsistent with the deed restrictions, nor could it. The City
26 is not using the property at all. Instead, Plaintiffs attempt to state a claim based on the fact
27 that the City is simply not owning Area A. Throughout this litigation, Plaintiffs rely most
28 heavily on the *Welwood* case for their "*ultra vires*" argument; the *Welwood* Court
specifically states that a city's decision to allow property to revert to the grantor cannot be

1 “*ultra vires.*” *Save the Welwood Murray Memorial Library Com, supra*, 215 Cal.App.3d at
2 1017 (“An injunction will *not* lie to prevent City from making an express legislative
3 determination that it would be in the best interests of City and its citizens to cease using the
4 property for library purposes, and to allow the property to revert to the grantors' heir”).

5 All of the cases cited by Plaintiffs involved public entities attempting to actually use
6 property that they currently owned in a manner inconsistent with terms of the dedication to
7 the general public (where the grantor had not retained a reversionary interest). See *County of*
8 *Solano v. Handlery* (2007) 155 Cal.App.4th 566 (county sought to make alternative use of
9 land that had been quitclaimed to it for public fairground purposes with no reversionary
10 interest); *Big Sur Properties v. Mott* (1976) 62 Cal.App.3d 99 (state statute authorizing
11 rights-of-way for private access across public parkland under certain circumstances is not
12 applicable to property that has been donated to the state for exclusive use as a public park; no
13 reversionary interest); *City of Hermosa Beach v. Superior Court* (1964) 231 Cal.App.2d 295
14 (holding that a taxpayer had standing to maintain an action to prevent the construction of a
15 road over property restricted from such use and dedicated “as a public pleasure ground”);
16 *Save the Welwood Murray Memorial Library Com. v. City Council, supra*, 215 Cal.App.3d
17 1003 (city could not commercially develop property dedicated to it to “continue and forever
18 maintain the Palm Springs Free Public Library”); *Roberts v. City of Palos Verdes Estates*
19 (1949) 93 Cal. App. 2d 545 (action challenging interpretation of deed restrictions placed on
20 park land regarding placement of buildings for park purposes); *Griffith v. Dep't of Pub.*
21 *Works* (1956) 141 Cal. App.2d 376 (action to enjoin City, that accepted dedication of land
22 purely for park purposes, from using portion of it as a freeway).

23 None of the cases cited by Plaintiffs stand for the proposition that the City cannot
24 transfer deed restricted property back to the grantor. The circumstances under which a
25 public entity's use of property in contravention of deed restrictions may be an *ultra vires* act
26 is not before this Court. Suffice it to say that, *where the grantor does not retain a right of*
27
28

1 reversion, courts may imply a public trust to assure the wishes of the grantor.² The deed at
2 issue here, however, includes a right of reversion. But more to the point, this lawsuit does
3 not challenge the City's use of the property; it challenges its right to return the property to
4 the original grantor.

5 **D. Plaintiffs' 11th Hour Attempts to Transform Its Waste of Public Funds**
6 **Claim into a Challenge to the Adequacy of Consideration in the MOU**
7 **Should be Rejected**

8 The MOU is a four-party agreement advancing a number of different interests. The
9 City received a reaffirmation from the School District of the deed restrictions along with the
10 District abandoning its efforts to develop parkland, a mechanism to avoid lights on the high
11 school athletic field which conflict with the City's dark-skies policies, lots C&D that are flat
12 and suitable for public park purposes along with \$100,000 to maintain the park, and a
13 conservation easement over Area A. *See* SAC, Ex. 12 (MOU at 4-7). The City Council was
14 satisfied that the MOU conferred sufficient benefit to its residents. Plaintiffs now take issue
15 with the adequacy of the consideration that the City received in the MOU, questioning the
16 relative benefits and values of the various exchanges among the parties. *See* AMF 46-56.

17 Plaintiffs cannot use Code of Civil Procedure section 526a to challenge whether the
18 City got a good-enough deal. The statute allows the taxpayer to challenge or illegal
19 government action that otherwise would go unchallenged because of standing requirements.
20 "To state a claim, the taxpayer must allege specific facts and reasons for the belief the
21 expenditure of public funds sought to be enjoined is illegal." *Coshov v. City of Escondido*
22 (2005) 132 Cal.App.4th 687, 714. Because the City may lawfully transfer property back to
23 the grantor and receive parkland from the Association, the waste of public funds claim fails.
24 Plaintiffs' attempt to use CCP 526a to have this Court substitute its judgment for the City
25 Council's judgment regarding the adequacy of the consideration in the MOU is improper and

26 ²*Welwood, supra*, (1989) 215 Cal.App.3d 1003, based its holding in part on Code of Civil Procedure
27 section 526(a)(7) which allows an injunction where the obligation arises from a "trust" as an
28 exception to Civil Code section 3423 prohibition against enjoining legislative acts. However,
Welwood was decided before *Walton v. City of Red Bluff* (1991) 2 Cal.App.4th 117, 125-126, which
held that a grant of property subject to a reversionary interest does not create a "trust".

1 should be rejected.

2 **E. Plaintiffs Are Improperly Attempting to Invalidate the 2012 MOU**

3 Heretofore, Plaintiffs have attempted to maintain the fiction that they do not seek to
4 invalidate the 2012 MOU, which was their explanation for not naming the School District in
5 the SAC, even though it was a party to the MOU. Plaintiffs' SAC contends they only seek to
6 unwind the 2012 deeds and ask the Court to only look at the deeds and 1940 Deed language
7 in isolation. But now Plaintiffs appear to have reversed course and instead seek to invalidate
8 the MOU. For example, Plaintiffs *for the first time* assert that "The four-party memorandum
9 of understanding ("MOU") that contractually bound the City and Association to this
10 transaction called for several interrelated, contractually required actions...the City signed the
11 MOU consenting to all of these transactions." Opp. at 1. Plaintiffs list some of the key
12 terms including payment to the School District of \$1.5 million. *Id.* Plaintiffs argue against
13 their own SAC when they state "The Court need not limit its review of the facts in this case
14 to the single deed between the City and the Association." Opp. at 2; *see also* AMF 46-52.
15 On the one hand, Plaintiffs move for summary judgment against the Defendants on their
16 affirmative defense of failure to join an indispensable party (the School District) on the
17 theory that the District is not a necessary party. Yet here, Plaintiffs are challenging the MOU
18 and the various transactions that it authorized. Plaintiffs demand that the 2012 Deeds
19 regarding Area A (from the City to the Association and from the Association to Lugliani) be
20 declared "illegal, void and of no legal effect." SAC at p. 19. To undo the conveyances
21 specifically called for in the MOU unquestionably places the MOU at issue and seeks to
22 invalidate certain mandatory obligations in the MOU. As such, all parties to the MOU are
23 necessarily indispensable parties to this action.

24 **F. The City Objects to Plaintiffs' Additional Material Facts in Dispute as Set**
25 **Forth in Co-Defendants' Separate Statement of Disputed and Undisputed**
26 **Material Facts**

27 Plaintiffs' Additional Material Facts ("AMF") are either identical to or substantially
28 similar those that Plaintiffs included in their Separate Statement ("SS") in support of

1 Plaintiffs' Motion for Summary Judgment, Summary Adjudication or Both, or are otherwise
2 improper, irrelevant and/or immaterial. The City has joined in Co-defendants' Separate
3 Statement of Disputed and Undisputed Material Facts; as the objections are fully set forth
4 therein, the City does not repeat them here.

5 AMF 17-27 are the same as SS 26-31, 37, 39, 44-46; AMF 28 and 29 are the same as
6 SS 77 and 66, respectively. AMF 30 (that the 2012 quitclaim deeds were recorded
7 simultaneously) is irrelevant and immaterial. AMF 31 is the same as SS 79. AMF 32
8 (statements in the 2012 deed from the City to the Association regarding physical merger of
9 parcels) and 33 (that Plaintiffs were not a party to the 2012 Deeds) are both irrelevant and
10 immaterial. AMF 34-38 are the same as SS 69-73; AMF 39 is the same as SS 40. AMF 40
11 (regarding lot owners' standing) is a legal conclusion. AMF 41-42 are the same as SS 18-19;
12 AMF 43 is the same as SS 20. AMF 44-45 (minute order/tentative ruling on City's
13 demurrer) is not a fact and is immaterial to the City's MSJ.

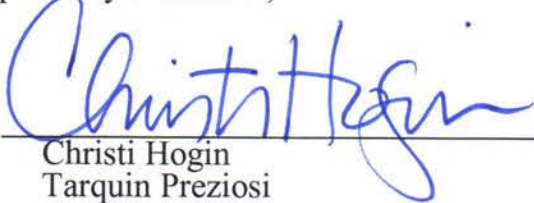
14 **III. CONCLUSION**

15 For the foregoing reasons, the City respectfully requests that this Court grant the
16 City's Motion for Summary Judgment, or in the Alternative, Summary Adjudication.

17
18
19 Dated: May 22, 2015

Respectfully submitted,

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21 By:


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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1230 Rosecrans Avenue, Suite 110, Manhattan Beach, CA 90266.

On May 22, 2015, I served the foregoing documents described as:

**CITY'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT,
OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

on the interested party or parties in this action by placing the original thereof enclosed in sealed envelopes with fully prepaid postage thereon and addressed as follows:

PLEASE SEE SERVICE LIST ATTACHED

- ☒ **VIA EMAIL.** I caused such document as described above, to be transmitted via E-Mail to the offices of the addressee(s).
- ☐ **VIA FACSIMILE.** I caused such document to be transmitted via facsimile to the offices of the addressee(s).
- ☐ **VIA OVERNIGHT DELIVERY.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the address(es) stated above. I placed the envelope or package for collection and overnight delivery at a regularly utilized drop box of the overnight delivery carrier.
- ☒ **VIA U.S.MAIL.** I enclosed the above described documents in a sealed envelope or package addressed to the person(s) listed above or on the attached; caused such envelope with postage thereon fully prepared to be placed in the United States mail at Los Angeles, California.

I am readily familiar with the Jenkins & Hugin, LLP's practice of collection and processing correspondence for outgoing mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon prepaid at Manhattan Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

- ☒ **STATE.** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ **FEDERAL.** I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service is made.

Executed this 22nd day of May, 2015, at Manhattan Beach, California.

Wendy Hoffman
WENDY HOFFMAN

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