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Palos Verdes Estates, CA 90274

(Space Above Line For Recorder's Use Only)

RECORDING FEES EXEMPT PURSUANT
TO GOVERNMENT CODE SECTION 27383_____
City Clerk
(Seal)**MEMORANDUM OF UNDERSTANDING****AMONG****PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT****PALOS VERDES HOMES ASSOCIATION, INC.****CITY OF PALOS VERDES ESTATES****AND****THOMAS J. LIEB, TRUSTEE, THE VIA PANORAMA TRUST U/DO MAY 2, 2012,
TOGETHER WITH TRUSTS FOR THE BENEFIT OF RELATED PARTIES****REGARDING****RESOLUTION OF ENFORCEABILITY OF DEED RESTRICTIONS ON PROPERTY
OWNED BY PVPUSD AND OF ENCROACHMENT IN CITY PARKLAND NEAR 900
VIA PANORAMA AND DISPOSITION OF CERTAIN OPEN SPACE PROPERTIES
(LOTS C & D)**

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made and entered into by and among the PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT (“School District”); The PALOS VERDES HOMES ASSOCIATION, a California corporation (“Homes Association”); the CITY OF PALOS VERDES ESTATES (“City”); and THOMAS J. LIEB, TRUSTEE, THE VIA PANORAMA TRUST U/DO MAY 2, 2012, TOGETHER WITH TRUSTS FOR THE BENEFIT OF RELATED PARTIES, the owners of 900 Via Panorama in Palos Verdes Estates (“Property Owners”), all of which are collectively referred to herein as the “Parties” or individually as “Party.”

R E C I T A L S

WHEREAS, all properties within the City are subject to certain protective restrictions, commonly referred to as Covenants, Conditions & Restrictions or CC&Rs. Certain properties within the City are also subject to use restrictions based on requirements imposed on those properties in the grant deeds conveying the properties which limited the use of the properties to public schools, parks, playgrounds or recreation areas. Specifically, in 1925, the original developers of the Palos Verdes Peninsula conveyed to the Homes Association by grant deed (the “1925 Grant Deed”) various lots subject to deed restrictions which limited the use of the properties to public schools, parks, playgrounds or recreations areas. In 1938, the Homes Association conveyed 13 properties (“1938 Conveyed Properties”) in the City to the School District’s predecessor-in-interest subject to the same use restrictions stated in the 1925 Grant Deed.¹

WHEREAS, two of the 1938 Conveyed Properties were Lots C & D of Tract 7331. Lot C is approximately 19,984 square feet and Lot D is approximately 17,978 square feet. Lots C & D are flanked on either side by houses located between 2032-2100 Via Pacheco and 2037-2101 Palos Verdes Drive West. Like all School District owned property in the City, Lots C & D are zoned OS (Open Space) and designated Class F pursuant to the use restrictions described above. The 1938 Grant Deed also included a right of reversion providing that ownership of Lots C & D could revert back to the Homes Association if the property was not used in compliance with the deed restrictions.

WHEREAS, to clarify the School District’s rights with regard to Lots C & D, the School District filed a lawsuit against the City and the Homes Association, Los Angeles County

¹The 13 lots conveyed in the 1938 grant deed are grouped into seven properties. Those seven properties are commonly known to residents as (i) Malaga Cove Administration Center; (ii) Valmonte Early Learning Academy; (iii) Lunada Bay Elementary ; (iv) Palos Verdes High School; (v) Montemalaga Elementary; (vi) Margate (Palos Verdes Intermediate School and playing fields at Campo Verde) and (vii) via Zurita property (George Allen Field). In 1988, the via Zurita property was transferred from the District to the Homes Association and from the Homes Association to the City, so that it is currently under City ownership. However, the 1988 transfer establishes a reversionary interest in the District under certain circumstances.

Superior Court Case No. BC4311020. The lawsuit has two causes of action. The first is to “quiet title” and is against only the Homes Association. That cause of action addresses whether the use restrictions on Lots C & D are still enforceable. The second cause of action is for declaratory relief and was against both the City and the Homes Association. The School District sought a court order declaring that (a) the Homes Association cannot prevent the subdivision of Lots C & D and (b) the School District is not subject to the City’s ordinary hearing procedures for rezoning and subdivision applications and that Government Code section 65852.9 compels the rezoning and subdivision of Lots C & D without public hearing. The School District dismissed the City from this latter claim and applied to the City for rezoning.

WHEREAS, in the summer 2010, the School District applied to the City to re-zone Lots C & D from OS to R-1 in order to facilitate the sale of Lots C & D. The School District sought to take advantage of Government Code section 65852.9, which affords the School District the right to rezoning under certain circumstances. The City held a public hearing to consider the application and tabled the matter until the court determined whether the deed restrictions (which precluded residential development) were valid and enforceable.

WHEREAS, following approximately four and a half days of trial in spring 2011, on September 22, 2011, the trial court entered judgment (“Judgment”) for the Homes Association in the School District’s lawsuit. The Judgment is attached hereto as **Exhibit 1**. The trial court held, among other things, that the use restrictions contained in the 1925 Grant Deed and reiterated in the 1938 Grant Deed are valid and enforceable against the School District as to Lots C & D. The Court further held that Lots C & D remain subject to all applicable protective restrictions. As the prevailing party, the Homes Association was awarded costs of \$16,491.83. The Homes Association also filed a motion with the trial court seeking to recover \$291,701.25 in attorneys’ fees. That motion was denied on February 14, 2012, which denial is appealable.

WHEREAS, while the Judgment is only applicable to Lots C & D, the Judgment additionally implies that all properties, including the 1938 Conveyed Properties owned by the School District by the 1938 Grant Deed remain subject to the restrictions set forth in the 1925 Grant Deed by which the properties were originally granted to the Homes Association. The Judgment also implies that all properties also remain subject to the restrictions set forth in the 1938 Grant Deed, including but not limited to the restriction that the properties may not be used for any purpose other than for the establishment and maintenance of public schools, parks, playgrounds or recreation areas which restrictions are valid and enforceable equitable servitudes against the Property. The 1925 Grant Deed and 1938 Grant Deed are attached as **Exhibit 2**. A school site in the Miraleste district within the city of Rancho Palos Verdes was also included in the 1925 deed, and conveyed to the School District in 1929. This MOU only affects the rights and obligations of the parties with respect to properties within the City of Palos Verdes Estates.

WHEREAS, the School District appealed the Judgment and that appeal is currently pending in the Second Appellate District Court bearing Case No. B23744. The Homes Association also filed a cross-appeal, which is currently pending in the same court. The Homes Association has the right to also file an appeal of the trial court’s denial of its fee motion and

intends to do so. The initial lawsuit, appeal, cross-appeal, and attorneys' fees motion are collectively referred to in this MOU as the "Litigation."

WHEREAS, State law provides that the School Board may vote to exempt itself from compliance with the City's zoning regulations for classroom facilities under Government Code Section 53094, which may include athletic fields, under certain circumstances; and the City believes that outdoor institutional lighting warrants careful review to determine neighborhood compatibility and avoid any adverse land use impacts.

WHEREAS, the School District no longer intends to use Lots C & D for school, park, playground or recreation purposes.

WHEREAS, 900 Via Panorama ("Via Panorama Property") is owned by the Property Owners and located at the end of a cul-du-sac and is adjacent to City-owned parkland on three sides. To the North/Northwest of the Via Panorama Property, the prior owner installed a series of retaining walls to stabilize the Via Panorama Property. This installation was done without a permit. The Property Owners have applied to the City for an encroachment permit to allow the retaining walls to remain and be maintained by the Property Owners. To the West of the Via Panorama Property, in the area shown as Area A on the attached **Exhibit 3**, in 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 on the City's parkland. Property Owners desire to make Area A part of the Via Panorama Property. Area A is approximately 75,930 square feet and roughly equivalent in size and value to Lots C & D, although less useful as parkland because Area A is less accessible than Lots C & D. Having Lots C & D be restricted to open space is a key element of the City's General Plan.

WHEREAS, the Parties have reached agreement to achieve their respective goals and wish to memorialize the agreement in this MOU.

NOW, THEREFORE, based on the above recitals, the Parties do hereby agree as follows:

ARTICLE I – Purpose of MOU and Parties' Authority to Enter

- A. Purpose of MOU:** The purpose of this MOU is to memorialize the Parties' agreement and create binding obligations which are intended to (1) reaffirm application of the use restrictions and protective restrictions on the 1938 Conveyed Properties owned by the School District in the City which were conveyed subject to use restrictions by the Homes Association, to the extent set forth herein; (2) create a mechanism for the Parties to resolve the Litigation without further expense; (3) subject future lighting on the athletic field for Palos Verdes High School ("PVHS") to the City's zoning regulations and the approval of the Homes Association, as set forth in the protective restrictions and described in Article II below; (4) resolve the encroachments into City parkland from the

Property Owners, including establishing responsibility for maintaining retaining walls and (5) establish Lots C & D as an open space area within the City.

- B. Authority to Enter into MOU:** The School District has the authority to enter into this MOU pursuant to the California Education Code. The Homes Association, through its Board, has authority to enter into this MOU by virtue of Article 3 of its by-laws. The City has authority to enter into this MOU, which is within the scope of its police powers. The Property Owners are authorized to act on behalf of the Via Panorama Family Trust pursuant to the trust instrument.

ARTICLE II – Obligations of the School District.

- A. Affirms application of all protective and use restrictions to the 1938 Conveyed Properties and agrees to process for application of deed restrictions as to all 1938 Conveyed Properties deeded to School District by Homes Association and owned by School District in the City.** To clarify the responsibility of the Parties, the School District agrees that the use and protective restrictions set forth in the Judgment and the grant deeds attached as **Exhibit 2** apply to properties owned by the School District, including, but not necessarily limited to, the 1938 Conveyed Properties in the City. However, as long as the School District is in compliance with its obligations under this MOU and does not exempt itself from the City's zoning regulations for the purpose of installing lights² on the athletic field at PVHS except as allowed under this MOU, the Parties agree that the process for School District use of the 1938 Conveyed Properties shall be consistent with the structural approval process followed by the School District and Homes Association regarding improvements to the 1938 Conveyed Properties prior to the Litigation. The past practice has been that the School District will give notice of its projects by providing a courtesy copy of the plans to the Homes Association for comment within 30 days or as far in advance as practicable.

With the exception of the use or installation of lights on the athletic field at PVHS without the consent of the City, the Homes Association agrees that it shall not exert jurisdiction or seek fees associated with School District improvements to any of the 1938 Conveyed Properties, or otherwise impede or restrict any improvements to any of the 1938 Conveyed Properties, as long as those improvements are consistent with the grant deed restriction in **Exhibit 2**. This MOU does not convey any additional rights on the Homes Association that are not specifically set forth in any applicable use restrictions. This MOU does convey certain procedural advantages to the School District that the School District acknowledges are afforded to the School District in consideration for and only so long as the School District does not install or otherwise use lights at PVHS without the consent of the City.

² For purposes of this MOU, "install" shall mean the use or installation of permanent or temporary lights.

- B. Agrees to subject lights at PVHS athletic field to City's zoning regulations and Homes Association approval process as set forth in the protective restrictions.** The School District has no present plans to install or use lights on the athletic field at PVHS, located in the City. Should the School District wish to use or install lights on the field at PVHS, notwithstanding state law which currently allows the School District to exempt itself from the City's zoning regulations under Government Code Section 53094 under certain circumstances and with respect to classroom facilities or any other contrary provision of law, the School District agrees that, with regard to athletic field at PVHS only, it will not utilize the exemption process under Government Code Section 53094. With regard to the athletic field at PVHS only, the School District will comply with requirements to obtain whatever permits or approvals are required by the then-current City zoning regulations and, notwithstanding any prior practice or any contrary provision of this MOU, obtain approval from the Homes Association before and as a prerequisite to installing or otherwise using any lights, whether temporary or permanent, on the athletic fields at PVHS. The required approval from the Homes Association will be in accordance with the process as set forth in the protective restrictions.

In the event that the School District is mandated to install or use lights at the PVHS athletic field in order to maintain its athletic programs or for any other reason ("Mandate"), the School District may, without penalty, exempt itself from the City's zoning regulations under Government Code Section 53094. For purposes of this MOU a Mandate is defined as a requirement, rule or other obligation applied by the California Department of Education ("CDE"), California Interscholastic Federation ("CIF") or any other entity that has jurisdiction over School District athletic programs or School District facilities and programs in general, but which is not the School District itself or any entity to which the School District directly appoints members or representatives and which Mandate is also applicable to other similarly situated districts and may not be satisfied by any equivalent alternative field or other reasonable means.

Should the School District install lights at the PVHS athletic field, as alternative consideration for this MOU, the School District shall pay to the City an amount equal to the appraised value of Lots C & D as of the date of this MOU. Such amount shall be paid to the City within 10 days of the filing of a Notice of Completion for the installation of the lights at the PVHS athletic field.

Should the School District install lights at the PVHS athletic field, the Homes Association may enforce compliance with the protective restrictions, including but not limited to, exerting jurisdiction and imposing fees associated with School District improvements relating to the lights and any other improvements to all and any 1938 Conveyed Properties.

- C. Reversion of Lot C& D's Ownership to Homes Association.** The trial court found that the use restrictions in the 1925 and 1938 Deeds are valid and enforceable against the School District. The 1925 Grant Deed by which the 1938 Conveyed Properties were

originally granted to the Homes Association originally included a right of reversion if Lots C & D were not used in compliance with the deed restrictions. Thus, the Parties agree that Lots C & D will revert back to the Homes Association, pursuant to the terms of this MOU. The School District and Homes Association will execute and deliver any necessary documents to effectuate that end. The reversion shall occur on the Closing Date, as defined below.

- D. Dismisses appeal and allows Judgment to be final.** Within 10 days of the close of escrow on the transfer of Lots C & D to the Homes Association ("Closing Date"), School District shall file with the court a request to dismiss the appeal and cause the Judgment to be final.

ARTICLE III – Obligations of the Homes Association

- A. Dismisses cross-appeal and any appeal concerning attorneys' fees motion.** Within 10 days of receipt of the School District's request to dismiss its appeal and cause the Judgment to be final, the Homes Association shall file with the Court of Appeal a request to dismiss its cross-appeal and appeal of the Court's denial of the Homes Association's attorneys' fees motion, if filed by that date.
- B. Land Exchange.** Concurrent with the Closing Date, the Homes Association shall exchange with the City ownership of Lots C & D for ownership of Area A.
- C. Transfer \$100,000 to City to defray the costs of maintenance of Lots C & D or other open space.** Within 5 days of the sale of Area A, Homes Association shall pay City \$100,000 to compensate the City for the cost of maintenance of Lots C & D and other costs incurred in connection with the matters that are the subject of this MOU, which funds may be used for any municipal purpose.
- D. Sale of Area A.** The Homes Association shall sell Area A, subject to the use restrictions set forth in **Exhibit 3**, to the Property Owners for \$500,000, concurrent with the Closing Date.
- E. Warranty of title transferred.** As of the date of the transfer of Area A, the Homes Association represents and warrants to Property Owners that the condition of Area A does not violate any recorded covenant, condition or declaration enforceable by the Homes Association, which could allow the exercise of any reversionary interest to the Homes Association in Area A.

ARTICLE IV – Obligation of the City

- A. Exchange Area A (subject to the deed restrictions in Exhibit 4) for C & D with Homes Association, concurrent with the Closing Date.**

ARTICLE V – Obligations of the Property Owners

- A. **Apply for after-the-fact permits for retaining walls installed by Property Owners' predecessor-in-interest.** Property Owners shall apply for planning approvals and city permits to allow them to maintain the retaining walls located as shown on **Exhibit 3**.
- B. **Obtain an appraisal of Lots C& D and of Area A.** In order to effectuate the property transfers contemplated by this MOU, prior to the land exchange between the City and the Homes Association, Property Owners shall obtain appraisals of Lots C & D and Area A, which appraisals shall meet the standards required by the City.
- C. **Purchase Area A.** Property Owners shall purchase Area A from the Homes Association for \$500,000. Area A shall be subject to deed restrictions as set forth in substantial form in **Exhibit 4**.

ARTICLE VI – Litigation Stay; no admission; other lawsuits

- A. **Stay litigation:** Implementation of some of the obligations of this MOU will require preparation of legal documents and, in some cases, action by bodies subject to state open meeting laws or other constraints that will require time. The Parties do not wish to incur any unnecessary legal fees or other litigation costs while this MOU is being implemented. To that end, the Parties agree to cooperate in requesting, if necessary, that the Court stay the current Litigation described herein by filing an appropriate stipulation to stay the Litigation for 90 days. Nothing herein shall prohibit a Party from perfecting or preserving any appeal rights while the Parties are performing their obligations under this MOU.
- B. **No Admission:** The entry into this MOU by the Parties shall not be construed to represent any admission by any Party with respect to the subject or sufficiency of any Party's claims or any defenses thereto, except to the extent provided herein.
- C. **Other Lawsuits:** The Parties represent that other than the Litigation described herein, there are no other lawsuits filed between or among them involving the subject matter of this MOU.

ARTICLE VII – Term of MOU

- A. **Term of MOU:** The term of this MOU shall begin upon its approval by the Parties and shall remain in effect, unless terminated earlier. During the term of this MOU, the Parties agree to negotiate, in good faith, modifications to the MOU that may be reasonably necessary to assure implementation of the obligations of the Parties set forth in this MOU.
- B. **Termination:** This MOU may be terminated by any Party, prior to the recording of the MOU only, by giving written notice in accordance with the notice provisions in Article

VIII(A) hereof. Termination by the City or School District shall be effective only upon a duly noticed public meeting conducted by the City or the School Board. Prior to any termination becoming effective the terminating Party shall cooperate with the non-terminating Parties to wind down any transactions related to this MOU and agrees to execute and deliver all such documents and instruments as may be necessary and appropriate to effectuate the termination of this MOU and resolution of any ongoing transactions related to this MOU.

C. Timing of obligations: The Parties will act in good faith to meet this timeline. The timeline is estimated to be:

- Closing Date: School District transfers Lots C & D to Homes Association
Homes Association exchanges Lots C & D with City for City's Area A
Homes Association sells Area A to Property Owner
- Within 5 Days of Closing Date: Homes Association pays City \$100,000.00
- Within 10 days of Closing Date: All Parties dismiss any pending Litigation

ARTICLE VIII – General Provisions

A. Notices: Any notices or other communication required or permitted by this MOU shall be in writing and shall be delivered to the Representatives of the Party at the addresses set forth below. Parties shall promptly notify each other of any change of contact information provided below. Written notice shall include notice delivered via email. A notice shall be deemed to have been received on (a) the date of delivery, if delivered by hand during regular business hours, or by confirmed facsimile or by email; or (b) on the third business day following deposit in the United States mail, postage prepaid to the addresses set forth below:

To the School Board: Walker Williams
Palos Verdes Peninsula Unified School District
375 Via Almar
Palos Verdes Estates, CA 90274
310-896-3408
williams@pvpusd.k12.ca.us

and

Terry Tao
Chief Counsel
Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Suite 300
Cerritos, CA 90703
562-653-3200
ttao@aalrr.com

To the Homes Association:

Palos Verdes Homes Association
320 Palos Verdes Drive West
Palos Verdes Estates, CA 90274
pvha.aj@verizon.net

and

Sidney F. Croft
3858 Carson #127
Torrance, CA 90503
(310) 316-8090
sfcroftlaw@aol.com

and

Andrew S. Pauly, Esq.
Andrew J. Haley, Esq.
Greenwald, Pauly, Foster & Miller
A Professional Corporation
1299 Ocean Avenue, Suite 400
Santa Monica, CA 90274
Phone: (310) 451-8001
Fax: (310) 395-5961
Email: apauly@gpfm.com
Email: ahaley@gpfm.com

To the City:

Judy Smith
City Manager
City of Palos Verdes Estates
40 Palos Verdes Drive West
Palos Verdes Estates, CA 90274
Phone: (310) 378-0383
Fax:
Email: jsmith@pvestates.org

and

Christi Hogin
Jenkins & Hogin, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, CA 90266
Phone: (310) 643-8448
Fax: (310) 643-8441
Email: chogin@localgovlaw.com

To Property Owners:

Thomas J. Lieb
25550 Hawthorne Blvd.
Torrance, CA 90505

- B. Relationship of the Parties:** The Parties are and shall remain at all times as to each other, wholly independent entities. No Party to this MOU shall have power to incur any debt, obligation, or liability on behalf of another Party or otherwise act as an agent of another Party except as expressly provided to the contrary by this MOU.
- C. Cooperation, Further Acts:** Parties shall cooperate fully with one another to attain the purposes of this MOU.
- D. Amendments:** All amendments must be in writing, approved and executed by all Parties.
- E. Reservation of Rights:** Each Party shall be solely responsible and liable in connection with its actions associated with its responsibilities under this MOU. For purposes of this MOU, the relationship of the Parties is that of independent entities and not as agents of each other or as joint venturers or partners. The Parties shall maintain sole and exclusive control over their personnel, agents, consultants, and operations. Nothing in this MOU is intended to limit the legal authority or responsibilities of the Parties, except as agreed to herein.
- F. Third Parties:** Nothing in this MOU is intended to create duties or obligations to or rights in third parties to this MOU.
- G. Dispute Resolution:** The Parties agree to attempt to informally resolve any disputes that arise with respect to this MOU prior to terminating the MOU by notifying the other Party if a dispute arises and identifying the issues in dispute. Each Party reserves its rights if informal dispute is not effective.
- H. Governing Law:** This MOU is governed by, interpreted under and construed and enforced in accordance with the laws of the State of California.
- I. Authorized signatures:** The Parties hereby represent and warrant that their respective signatory of this MOU is duly authorized to execute and bind the agency for which he or she signs.
- J. Time is of the Essence:** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this MOU.
- K. Counterparts:** This MOU may be executed in counterparts and all such executed counterparts shall constitute one MOU which shall be binding upon all of the Parties, notwithstanding that all of the Parties are not signatories to the original or same counterpart. For purposes of this MOU, a faxed or emailed signature on a counterpart

shall be fully binding as though it was an original signature; provided, however, that the Parties shall provide original-ink signed signatures of the documents referenced herein that are intended to be recorded.

- L. Binding Agreement; Successors and Assigns:** This MOU shall be binding on all Parties. This MOU shall be binding upon and inure to the benefit of the successors and assigns of the Parties.
- M. Entire Agreement:** This MOU sets forth in full the terms of agreement between the Parties and is intended as the full, complete and exclusive contract governing the subject matter of this MOU. This MOU supersedes all other discussions, promises, representations, warranties, agreements and understandings between the Parties with respect to the subject matter hereof.
- N. Right to Cure:** In the event that any party believes that another materially has breached any obligations under this MOU, such party shall so notify the breaching party in writing. The breaching party shall have thirty days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected.
- O. Legal Counsel.** Each of the parties to this MOU has received independent legal advice from such Party's respective attorneys with respect to the advisability of executing this MOU. The Parties are entering into this MOU wholly of their own free will and volition.

IN WITNESS WHEREOF, the Parties to this MOU have caused this MOU to be executed on their behalf as of the date specified below, respectively, as follows:

FOR THE SCHOOL DISTRICT:

Dated: _____, 2012


Walker Williams, Superintendent

APPROVED AS TO FORM:

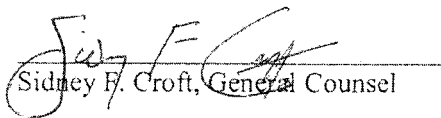
Terry Tao, General Counsel

FOR THE HOMES ASSOCIATION:

Dated: May 4, 2012


Dale Hoffman, President

APPROVED AS TO FORM:


Sidney F. Croft, General Counsel

FOR THE CITY:

Dated: _____, 2012

George F. Bird, Jr., Mayor

ATTEST:

Judy Smith

APPROVED AS TO FORM:

Christi Hogin, City Attorney

FOR THE PROPERTY OWNERS:

Dated: _____, 2012

Thomas J. Lieb, Trustee,
the Via Panorama Trust u/do May 2, 2012

APPROVED AS TO FORM:

Jay Rockey, Rockey & Wahl LLP

**MEMORANDUM OF UNDERSTANDING
EXHIBIT LIST**

EXHIBIT 1: Judgment in Case No. BC431020

EXHIBIT 2: Protective Restrictions Palos Verdes Estates
1925 Grant Deed
1938 Grant Deed

EXHIBIT 3: Area A

EXHIBIT 4: Deed Restrictions Applicable to Area A

EXHIBIT 1

CONFORMED COPY
ORIGINAL FILED IN
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 22 2011

John D. White, Executive Clerk
BY Y. L. Klein, Deputy
Clerk

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

PALOS VERDES PENINSULA UNIFIED
SCHOOL DISTRICT,

Plaintiff,

v.

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

Defendants.

Case No. BC431020

Assigned to the Honorable Richard Fruin,
Department: 15

**PROPOSED JUDGMENT FOR
DEFENDANT PALOS VERDES
HOMES ASSOCIATION FOR QUIET
TITLE AND DECLARATORY RELIEF**

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

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

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

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

7 LOTS C AND D OF TRACT 7331, IN THE CITY OF PALOS
 8 VERDES ESTATES AS PER MAP RECORDED IN BOOK 102
 9 PAGE(S) 46 TO 50 INCLUSIVE OF MAPS, IN THE OFFICE OF
 10 THE COUNTY RECORDER OF SAID COUNTY
 11 AKA: APN 7542-002-900 AND 7542-002-901

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

20 3. The Property remains subject to the restrictions set forth in the 1925 Grant
 21 Deed (the "1925 Restrictions"), which 1925 Restrictions are valid and enforceable equitable
 22 servitudes against the Property enforceable by injunction by the dominant tenements of the
 23 1925 Restrictions. The dominant tenements of the 1925 Restrictions are the residents of
 24 Tract 4400 (the City of Palos Verdes Estates) and Tract 6881 (the Miraleste district of
 25 Rancho Palos Verdes).

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

1 and/or recreation areas. The 1938 Restrictions are valid and enforceable equitable servitudes
2 against the Property enforceable by injunction by the dominant tenements of the 1938
3 Restrictions. The dominant tenements of the 1938 Restrictions are the residents of Tract
4 4400 (the City of Palos Verdes Estates) and Tract 6881 (the Miraleste district of Rancho
5 Palos Verdes).

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

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

15 7. The Property also remains subject to all other conditions, covenants,
16 restrictions and reservations of record, including, but not limited to, that certain Declaration
17 No. 1 – Declaration of Establishment of Basic Protective Restrictions, Conditions, Covenants
18 Reservations, Liens and Charges for Palos Verdes Estates, recorded July 5, 1923 in Book
19 2360, Page 231 of the Official Records of Los Angeles County (including all amendments
20 thereto of record) (“Declaration No. 1”) and that certain Declaration No. 21 of Establishment
21 of Local Protective Restrictions, Conditions, Covenants, Reservations, Liens and Charges for
22 Tract 7331 – Lunada Bay – Palos Verdes Estates, recorded September 29, 1924 in Book
23 3434 Page 165 of the Official Records of Los Angeles County (including all amendments
24 thereto of record) (“Declaration No. 21”).

25 8. Notwithstanding the School District’s ownership of the Property, the Property
26 remains subject to the same policies and procedures that the Homes Association applies to
27 other properties in that area of the City of Palos Verdes as established under Declaration No.
28 1 and Declaration No. 21, including the Art Jury.

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

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

4 11. The Homes Association is the prevailing party. The Court awards costs of
 5 \$ _____ in favor of the Homes Association and against the School District
 6 pursuant to a timely filed and served Memorandum of Costs.

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

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

14 DATED: September 22, 2011

Richard Fruin
 HONORABLE RICHARD FRUIN
 JUDGE OF THE SUPERIOR COURT

17 Respectfully submitted by:

18 DATED: August 22, 2011

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