Second Civil Numbers B267816 and B270442

In the Court of Appeal of the State of California

SECOND APPELLATE DISTRICT
DIVISION TWO

CITIZENS FOR ENFORCEMENT
OF PARKLAND COVENANTS, *et al*.,

Plaintiffs and Respondents,

v.

CITY OF PALOS VERDES ESTATES, *et al.*,

Defendants and Appellants.

PETITION FOR REHEARING OF THE PALOS VERDES HOMES ASSOCIATION

Appeal from the Superior Court of the State of California,
For the County of Los Angeles,
Los Angeles Superior Court Case No. BS142768
Honorable Barbara A. Meiers, Judge

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To the Honorable Acting Presiding Justice, and to the Honorable Associate Justices, of the Court of Appeal of the State of California, Second Appellate District, Division Two:

Defendant and appellant Palos Verdes Homes Association ("the "Association") respectfully petitions for rehearing of this court's decision of January 30, 2018. This appeal raises difficult and challenging issues. The Association believes this court's analysis is flawed, and the matter should be reheard for the following reasons.

LEGAL ARGUMENT

I.

The Palos Verdes Homes Association Had the Power to Sell the Subject Property in 2012, Under the Recorded 1923 Declaration of the Commonwealth Trust Company and the 1923 Governing Documents of the Association, as Properly Interpreted by the Association, and the Power Cannot Be Restricted by Any Subsequent Deed or Transaction.

The court has run afoul of *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal.4th 345 ("*Citizens for Covenant Compliance*"), when it upholds Bank of America's unilateral rescission of equitable servitudes that were recorded in the original declaration, binding every member to the authority of the Palos Verdes Home Association. Members are bound by the Association's power to transfer park land under Article II, section 4, unless those restrictions are amended in accordance with Article VI. They could not be unilaterally amended once the declaration has been recorded and the first lot has been sold. They were not amended.

In *Citizens for Covenant Compliance*, the high court held that "if a declaration establishing a common plan of ownership of property in a subdivision and containing restrictions upon the use of the property as part of the common plan is recorded before the execution of the contract of sale, describes the property it is to govern, and states that it is to bind all purchasers and their successors, subsequent purchasers who have constructive notice of the recorded declaration are deemed to intend and agree to be bound by, and to accept the benefits of, the common plan; the restrictions, therefore, are not unenforceable merely because they are not additionally cited in a deed or other document at the time of sale." (*Id.* at p. 349.) The court made

it clear these restrictions "are not effective, that is, they do not 'spring into existence,' until an actual conveyance subject to them is made. The developer could modify or rescind any recorded restrictions *before* the first sale." (*Id.* at p. 365 (emphasis added).)

Citizens for Covenant Compliance requires reversal of the judgment for one simple reason. Bank of America, standing in the shoes of the original declarant as its successor in interest, *could not* bypass the procedures for amending recorded restrictions. The undisputed evidence shows the bank followed the Article VI, section 3 amendment procedures in 1926, just a few years before transferring park land to the Association, when it recorded Declaration No. 25. Yet, it disregarded *those same procedures* a few years later in its 1931 grant deed, curtailing the Association's ability to transfer park land under Article II, section 4.

Article II, section 4 of the original declaration created equitable servitudes binding *every lot owner* within the development to certain restrictions, including the Association's authority over park land and its authority to conclusively interpret the restrictions. [12 CT 2887-2888.] Bank of America even incorporated these restrictions into the 1931 grant deed. [12 CT 2936-2940.]

Just because the bank intended to preserve park land in Palos Verdes Estates does not mean this court should have given effect to land restrictions that violated the original declaration. It should have been obvious that one of the goals of the Palos Verdes Homes Association is to preserve park land. The reason the Association is now before this court is that it incurred heavy financial losses battling the Palos Verdes Unified School District ("School District") to *preserve* land restrictions on valuable park land. Good intentions do not alter the fact that Bank of America could not unilaterally amend the original declaration without complying with the proper amendment procedures.

Surprisingly, this court does not even acknowledge the legal effect of the bank's 1940 quitclaim deed conveying all reversionary interests to the Association. [12 CT 2941-2943.] At that point in time, the Association owned fee simple title, free of the deed restrictions.

If the Bank wanted to amend the Palos Verdes Homes Association's powers under Article II, Section 4, it needed to submit the matter to a majority vote, and have the successful amendment recorded, or record an amendment stating that it was majority owner, in accordance with Article VI, section 3. Short of following that procedure, the 1931 deed restrictions are invalid. *Citizens for Covenant Compliance* demonstrates that no subsequent deed restriction violating the governing documents could form the basis for this action.

The decision to given plenary authority over park land to the Association is reinforced in the Articles of Incorporation [12 CT 2910-2912] and Section 14(b) of the Bylaws, which state that park land cannot be sold without the Association's consent. [12 CT 2924.] The court's decision also overrides these governing documents without any proper amendment.

To make matters worse, this court disregards the wide latitude the Commonwealth Trust Company gave the Association concerning interpretation of the governing documents, including land restrictions. Under Article VI, section 11, the Association's interpretation is to be "final and conclusive." [12CT 2908-2909.] No limitation is in view, and that language also has never been amended. The Association's interpretation that it had authority to transfer Area A under the original declaration arises from the plain meaning of Article II, section 4, as well as the Association's Articles of Incorporation and Bylaws. This court should not have set aside the Association's interpretation in place of its own, especially where the plaintiffs did

not even offer an alternative interpretation of the original declaration on appeal.

Since Bank of America never properly amended the original declaration to limit the Association's ability to transfer park land, the restrictive covenants contained in the 1931 grant deed were void and of no effect under *Citizens for Covenant Compliance.*

II.

The Duty of the Palos Verdes Homes Association to Maintain Parks and Perpetuate Restrictions, if Any, Refers Generally to All of the Property to Be Acquired by the Association, and the Association Had Only a Duty to Use the Best Judgment of Its Board in Light of the Circumstances, Including the Value of Any Parcel of Property Acquired as Park Land, the Expense of Preserving That Parcel Versus Other Parcels, and the Financial Resources of the Association.

This court has lost sight of the fact that the duty of the Palos Verdes Homes Association to maintain park land and perpetuate restrictions is cast in general terms covering *all* park land, not only Area A. Repetition of that duty in later declarations—such as Declaration No. 25—did not create park land restrictions, since park land restrictions only appear in Bank of America's 1931 grant deed. Moreover, this court could not usurp the Palos Verdes Homes Association's discretion to decide what was in the best interests of its members and the park land as a whole. At a minimum, there are triable issues of material fact as to whether the Association's transfer of Area A to secure restrictions on more valuable park land was appropriate under the circumstances.

The duty to maintain park land was imposed on all park land within the jurisdiction of the Palos Verdes Homes Association when the original declaration was recorded. The language of Declaration No. 1 is cast in general terms, and does not single out any particular parcel. The duty to maintain park land does not include a duty to hold such land in perpetuity, especially where such land has *never* been used as a public park and never could be, due to its topography.

This court could not properly read Bank of America's 1931 deed restrictions back into earlier declarations to create an earlier obligation to perpetuate restrictions. The duty of the Palos Verdes Homes Association to maintain park land and perpetuate restrictions arose in 1923, the year the Association was created and Declaration No. 1 was recorded. Although the original declaration contained a number of land use restrictions, *there were no park land restrictions*, only a duty to perpetuate restrictions actually contained in the recorded declarations. Neither the original declaration, nor Declaration No. 25, recorded a few years later, contained park land restrictions. Declaration No. 25 merely repeated the duty contained in the original declaration. Thus, both the original and subsequent declarations could only be referring to a duty to perpetuate restrictions then in existence, not park land restrictions that are alleged to have arisen eight years later. Governing documents are interpreted with the same rules applicable to contracts (*Fourth La Costa Condominium Owners Assn v. Seith* (2008) 159 Cal.App.4th 563, 595), and it was error for the court to read the 1931 park land restrictions back into those earlier declarations.

Moreover, this court is not free to reinterpret the original declaration to grant plaintiffs' summary judgment motion. Its narrow interpretation is not supported by the express terms of Article II, Section 4. The Commonwealth Trust Company conferred broad discretion on the Palos Verdes Homes Association to use its best

judgment, in light of the circumstances. The Association's Board was entitled to balance the value of Lot A against the value of Lots C and D in deciding that it was in the best interests of both the members and the land to preserve more valuable parcels over one that was less valuable. Moreover, the Board had a duty to preserve the financial resources of the Palos Verdes Homes Association on behalf of its members.

Put differently, there is *nothing* in the original declaration imposing an absolute duty on the Palos Verdes Homes Association to enforce deed restrictions on a particular piece of property, regardless of the circumstances. On page 15 of its opinion, this court narrowly interprets the Palos Verdes Homes Association's right and power under Article II, Section 4, subdivision (a) to "maintain, purchase, construct, improve, repair, prorate, care for, own, and/or dispose of parks, parkways, playgrounds, open spaces and recreation areas . . . for the use and benefit of the owners of and/or for the improvement and development of the property herein referred to" as excluding the transfer of Area A to the Luglianis because "the property would no longer be for the 'use and benefit' of the property owners." [Opinion p. 15.]

This court offers no reason for overriding the Association's discretion or for the court's conclusion that there was an absolute duty to perpetuate restrictions on every parcel of park land, regardless of the circumstances. There are triable issues whether the Palos Verdes Homes Association transferred Area A to preserve deed restrictions on Lots C and D for the benefit and improvement of the property and owners. The transfer of Area A preserved more valuable land in exchange for land that never was and could never function as a park. The public benefit is obvious.

This court's interpretation of Article II, Section 4, subdivision (i), to the effect that the ability of the Palos Verdes Homes

Association to transfer real property excludes the "grant deeds", is not supported by the language. The Association has the right "[t]o acquire by gift, purchase, lease or otherwise acquire and to own, hold, enjoy, operate, maintain, and to *convey*, *sell*, lease, *transfer*, mortgage and otherwise encumber, dedicate for public use and/*or otherwise dispose of*, *real* and/or *personal property either within or without* the boundaries of said property." (Emphasis added.) [12 CT 2887-2888.]

This language is exceedingly broad and does not restrict "the Association to dispose of real property that it acquires by a means other than via the subject grant deeds." If the Commonwealth Trust Company intended such a restriction, it would have expressly limited the Association's ability to transfer park land acquired by the Bank of America in the original declaration. This court's interpretation nullifies the equitable servitudes of Article II, section 4. It is wrong.

This court distinguishes *Butler v. City of Palos Verdes* (2005) 135 Cal.App.4th 174, 183-184, where the court refused to override the Palos Verdes Homes Association's business judgment, deferring to the Association whether to allow peafowl in the City parks. Here, this court refuses to defer to the Association's transfer of useless park land, which is clearly authorized under the original declaration and governing documents.

This court should have interpreted the original declaration in the light most favorable to the Palos Verdes Homes Association, which was the party opposing summary judgment. This court did the exact opposite, refusing to recognize triable issues of material fact which are clearly apparent from the documents.

In effect, the court's interpretation means that the Palos Verdes Homes Association has no legal right to compromise litigation challenging the deed restrictions and that such compromise is illegal, ineffective, and void. The duty to enforce the deed restriction is

rendered absolute, even if the Association may go bankrupt litigating deed restrictions. The court's position is not reasonable, and contravenes the public policy of this state to encourage settlement of litigation.

The court's reliance on *Roberts v. Palos Verdes Estates* (1949) 93 Cal.App.2d 545, 547 to impose the 1940 park land restrictions on the Association, even though the Association placed those restrictions in the City's deed, is surprising. *Roberts* does not preclude the Palos Verdes Homes Association from transferring Area A to the Luglianis, because that case involved the city's storage of vehicles on park land, which violated the park land restrictions. This case does not involve the City's violation of the 1940 grant deeds. A case is not authority for propositions not considered in the decision. (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1015.)

Even the appellate court in *Save the Welwood Murray Memorial Library Committee v. City Council of the City of Palm Springs* (1989) 215 Cal.App.3d 1003, 1012-1016 ("*Welwood*") observed that deed restricted property could be transferred back to the original grantor if the city no longer wished to use the property in accordance with the deed restrictions.

Under *Welwood,* the City was not required to hold Area A in perpetuity. Once Area A was reconveyed to the Palos Verdes Home Association, the Association held fee title, and thereafter, Area A was subject to the Association's discretionary authority under Article II, section 4. An original grantor holding a reversionary interest is simply not bound by land restrictions it places in the grantee's deed. The 1940 grant deeds bind the City, not the Palos Verdes Homes Association, to park land restrictions. The City was free to transfer Area A back to the Association, and the Association had authority under the governing documents to decide what to do with the land.

The court's opinion does not do justice to the original declaration. This stems from its failure to consider *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal.4th 345, which is binding authority that sets forth guiding principles requiring reversal of the judgment.

III.

The Board of the Palos Verdes Homes Association Properly Settled the Lawsuit Brought by the Palos Verdes Unified School District in the Best Interests of the Association's Members, Because the Settlement Preserved Open Space, Park Land, and Certain Deed Restrictions to the Extent Possible, Because It Preserved the Association's Resources and Solvency, and Because the Board's Decision to Settle Was Within Its Discretion Under the Business Judgment Rule and the Judicial Deference Rule.

It has already been shown that the right of the Palos Verdes Home Association to transfer park land could not be altered by Bank of America's 1931 grant deed. It has also been shown that the 1931 park land restrictions could not be read back into the 1923 original declaration and 1926 amendment to Declaration No. 25 to obligate the Association to perpetuate park land restrictions not yet in existence. These fundamental errors led this court to conclude the Association's decision to transfer Area A was "not entitled to any sort of deference." (Opinion, page 13.) The uncontradicted evidence shows there are, at a minimum, triable issues whether the Palos Verdes Homes Association properly exercised its business judgment to settle the litigation the way it did.

The multi-party settlement struck a balance between competing interests and was a good deal for all, including every member of the Association. The declaration of Mr. Croft presented undisputed evidence of the Association's decision to transfer Area A to the Luglianis, and raised a triable issue of material fact as to whether the multi-party settlement was protected by the business judgment and judicial deference rules. The Palos Verdes Homes Association achieved its litigation objectives, but lost its motion to recover attorneys' fees, and was facing the long road of an appeal and cross-appeal. The Association wanted to preserve the restrictions on Lots C and D, which were centrally located within the community, and of greater value to the members. There was a risk of reversal on appeal and those lots could have been lost forever.

The Association was less concerned with Area A, which was useless as park land. No member of the Association ever complained about longstanding encroachments on Area A until after the settlement was reached. The settlement not only cut potential losses, but preserved important restrictions on the remaining lots owned by the School District without further expense. Further, the City desired to be relieved of the potential liability associated with maintaining the 21 foot retaining walls on the hillside property. [12 CT 2810; 9 CT 2157.] The Association properly exercised its discretion to enforce restrictions for the greater good of the whole community and for the greater good of the Association.

The law favors settlement of lawsuits. This court ignores this principle. If the court's opinion becomes final, more litigation will be the result.

The multi-party settlement was authorized under sections 4(n) and 4(t) of Article II, which empower the Palos Verdes Homes Association to defend and settle litigation on behalf of its members. Those sections do not impose an absolute duty to enforce

restrictions—even if they did apply to Area A—to the extent of bankrupting the Association. It makes little sense to hold that a title issue can never be compromised or that the Association has an obligation to hold land forever, regardless of the circumstances.

Although the Croft declaration raised triable issues that should have defeated summary judgment, this court relied on *Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1121, fn. 3, pointing out that an order tentatively rejecting an expert declaration is not appealable. However, Mr. Croft was a percipient witness to the settlement, not only an expert witness. The Palos Verdes Homes Association appealed from the final judgment, which included the trial court's statement of decision improperly ignoring portions of Mr. Croft's declaration establishing the Association's power and discretion to transfer Area A.

On appeal, the Association briefed the issue of the effect of the Croft declaration extensively, pointing out the trial court's failure to explain why Mr. Croft's declaration failed to create triable issues of fact, which is required under the summary judgment statute. (*Code of Civil Procedure* section 437c, subd. (g).) Regrettably, this court has ignored the issue.

At a minimum, triable issues exist as to whether the Palos Verdes Homes Association's decision to settle the School District litigation the way it did is entitled to protection under the business judgment and judicial deference rules. The settlement was proper and should be enforced.

IV.

The Plaintiffs Are Bound by the Settlement of the School District Litigation, so as to Bar the Present Lawsuit.

The Palos Verdes Homes Association had the power to enter into the settlement agreement, including the transfer of Area A to the Luglianis. The settlement was binding on each of the Association's members, effectively ending the litigation brought to enforce the governing documents.

This court refused to bind plaintiffs to the multi-party settlement under the res judicata principles set forth in *Duffy v. Superior Court* (1992) 3 Cal.App.4th 425, finding the Association violated the park land restrictions. Those deed restrictions were invalid, as demonstrated above, and the settlement was res judicata as to the present action. As the appellate court in *Duffy* pointed out, an Association may undertake litigation to enforce the governing documents in its own name without joining individual members. This includes the duty to settle when it is in the interests of the both an Association and its members. As *Duffy* points out, if individual members do not intervene to vigorously press their own interests, they are bound by the outcome resolving the litigation. (*Id.* at pp. 423-433.) This would include the Association's settlement of the litigation.

It cannot be denied that the Palos Verdes Homes Association had a good faith dispute with the School District concerning validity of deed restrictions on lots owned by the School District. After learning of the proposed settlement, not a single Association member intervened demanding that the litigation continue at the appellate level. The present lawsuit was filed only *after* the Association exercised its business judgment to settle the costly dispute. The Association did not have a duty to continue litigating the issue at the

expense of its own financial stability, at a considerable cost to its members. (*Kovich v. Paseo Del Mar Homeowners' Assn.* (1977) 41 Cal.App.4th 863, 867; *Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 864, 875.) The Association's members were bound by the settlement, and this court was not free to overturn it.

By undoing the settlement and affirming the trial court's injunction as to Area A only, this Court requires the Association to hold the property, which is a restraint on alienation. It requires the removal of mature trees in violation of Article II, section 4, and Article V, section 7, and it imposes premises liability upon the Association, arising from its new-found duty to maintain Area A's steep slopes and retaining wall. Even as amended by the court, the present injunction tramples upon the Association's rights under the governing documents.

This court claims members objecting to the proposed settlement at public hearings were given no mechanism to challenge the settlement, but the governing documents do not require membership approval.[1] Dissenting members needed to intervene in the action, as *Duffy* makes clear, or they needed to invoke the recall petition procedures set forth in the Bylaws. [8 CT 1925-1926; 13 CT 3073-3075.] The Bylaws provide no other mechanism for after-the-fact challenges to a Board decision, and it is undisputed the Bylaws are binding on every Association member. Objecting members, including Mr. Harbison, chose to do *nothing* until after the ink on the settlement had dried.

[1] On appeal, the Palos Verdes Homes Association had pointed out that some residents voiced objections to the settlement at public meetings solely for the purpose of showing these residents were aware of the proposed settlement and could have availed themselves of Bylaw remedies.

The settlement was binding upon every Association member. As it stands, the court's opinion means no settlement is ever final, even when a party such as the Association is forced to defend its members' interests in protracted litigation.

V.

The Reconveyance of the Subject Property to the Palos Verdes Homes Association in 2012 Resulted in a Merger of Title and the Extinguishment of the Alleged Deed Restrictions at Issue, in Accordance with *Civil Code* Sections 805 and 811, Because a Deed Restriction is Simply One Type of Easement That Is Subject to These Statutes.

This court quickly dismissed the issue of whether merger of title arose from the City's reconveyance of Area A to the Palos Verdes Homes Association by stating that deed restrictions are not easements. *Civil Code* sections 805 and 811 do contemplate *negative easements*, which are deed restrictions, or burdens that attach to land. California courts have long recognized that deed restrictions are negative easements. (*Sackett v. Los Angeles City School District of Los Angeles County* (1931) 118 Cal.App. 254, 257; *Griesen v. City of Glendale* (1930) 209 Cal.524, 531.)

More recently, the Court of Appeal recognized that the equitable servitudes otherwise known as conservation easements (*Civil Code* sections 815.1, 815.2; 1353, 1354) "are negative easements that impose specific restrictions on the use of the property." (*Wooster v. Department of Fish and Game* (2012) 211 Cal.App.4th 1020, 1026.) Simply stated, deed restrictions are negative easements, and they can be extinguished when a reconveyance causes a merger of title. This court gave no explanation for ignoring these controlling legal authorities.

As applicable here, the Palos Verdes Homes Association conveyed Area A to the City in 1940, subject to park land restrictions, and retained a right of reversion. [8 CT 1939, 1946.] When the City reconveyed the land back to the Association in 2012, the Association regained fee title, and under the merger doctrine, the deed restrictions on Area A, which were negative easements, extinguished by operation of law. Unfortunately, this court distinguished easements from deed restrictions by relying on semantics, not the law, attempting to eliminate a triable issue of fact that should have defeated summary judgment. The court also ignored the fact that much of those same 1940 deed restrictions were placed on Area A in the form of a conservation easement, when the land was transferred to the Luglianis.

VI.

The Absence of an Indispensable Party, the Palos Verdes School District, Deprived the Court of Jurisdiction, and This Court Should Reverse the Judgment for Lack of Jurisdiction.

Whether a party's contractual interests have been impaired presents a question of law. Dodging the indispensability analysis under *Deltakeeper v. Oakdale Irrigation Dist.* (2001) 94 Cal.App.4th 1092, 1106, this court concluded the trial court's indispensability determination was not an abuse of discretion because the Association based its analysis on speculation the Luglianis would seek a return of their consideration.

Voiding the grant deeds that provided the consideration for the multi-party settlement effectively voided the entire settlement. The Luglianis, the City, and the Association would have never been in the position of having to settle anything if the School District had not challenged park land restrictions in the first place. The land exchange

was conditioned on the performance of the School District, the Luglianis, the City, and the Palos Verdes Homes Association, each of which made various concessions. To say that the School District was not an indispensable party to the settlement ignores the reality of the transaction, the litigation that divided the City's residents, and the drain on the Association's resources. The plaintiffs created the problem by voluntarily dismissing the School District from this action, yet the resulting lack of jurisdiction is ignored by this court.

In an action seeking to void a contract, each of the parties are indispensable, since their interests would invariably be affected by a judgment rendering the contract void. (*Martin v. City of Corning* (1972) 25 Cal.App.3d 165, 169.) When a contract has been voided, the court restores the parties to the position they were in before they entered into the contract, by restoring consideration. (*Village Northridge Homeowners Assn. v. State Farm Fire & Casualty Co.* (2010) 50 Cal.4th 913, 921.) The Luglianis *might* seek the return of monetary consideration paid to the School District, since all of the parties should be returned to the position they were in before they entered into a contract which has been voided. The Association *might* seek to remove the obligations assumed in the settlement.

Pursuant to rule 8.200(a)(5) of the *Rules of Court*, the Palos Verdes Homes Association adopts and incorporates by reference the petition for rehearing filed February 14, 2018, by Robert Lugliani, Dolores A. Lugliani, Thomas J. Lieb, and The Via Panorama Trust ("the Luglianis").

For the reasons stated above, and in the petition for rehearing of the Luglianis, this court's analysis of the indispensable party issue cannot withstand analysis.

The indispensability determination was erroneous as a matter of law and the trial court was without jurisdiction to void the settlement agreement without the presence of the School District.

VII.

The Plaintiffs Are Not Entitled to Attorneys' Fees, Because the Public Does Not Benefit From the Judgment of the Trial Court.

No attorneys' fees should have been awarded, since the City's residents did not benefit from the "enforcement of an important right affecting the public interest." (*Vasquez v. State of California* (2003) 45 Cal.4th 243, 250-251.) Precluding the Palos Verdes Homes Association from exercised its authority under the original declaration serves no public benefit. Rather, upholding the provisions of the original declaration and the governing documents enforces important rights affecting the public interest.

Moreover, the trial court's injunction, even when limited to Area A, imposes costly obligations on the Association that will affect all members in the form of special assessments. The injunction requires the Association to commit waste—at its own expense—by removing shrubbery and trees. It imposes an obligation upon the Association to maintain the slope and retaining walls, which raises issues of premises liability. The present judgment does not preserve park land restrictions because the 2012 grant deed heavily restricted Area A as open space. All remaining park land is still subject to the 1940 deed restrictions. Regardless of who owns Area A, it will never function as a public park for the benefit of City residents. Plainly, the judgment does not benefit the public. Moreover, there could be no public benefit arising from enforcing deed restrictions that are not drawn in conformity with the original declaration.

VIII.

Conclusion.

For each of the foregoing reasons, the Palos Verdes Homes Association respectfully requests this court grant a rehearing on the foregoing issues. Thereafter, the judgment of the superior court should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 8.204(c)

I, the undersigned, Roy G. Weatherup, declare that:

I am a partner in the law firm of Lewis Brisbois Bisgaard & Smith LLP, counsel of record for defendant and appellant Palos Verdes Homes Association.

This certificate of compliance is submitted in accordance with rule 8.204 (c) of the California *Rules of Court*.

This Petition For Rehearing of the Palos Verdes Homes Association was produced with a computer. It is proportionately spaced in 14 point Times Roman typeface. This brief contains 4,939 words, including footnotes.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California on February 14, 2018.

/s/ Roy G. Weatherup
Roy G. Weatherup

CALIFORNIA STATE COURT PROOF OF SERVICE

Citizens for Enforcement of Parkland and Covenants v. City of Palos Verdes Estates (Case No. Second Civil B267816)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, California 90071.

On February 14, 2018, I served the following document(s): **PETITION FOR REHEARING OF THE PALOS VERDES HOMES ASSOCIATION** on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

SEE ATTACHED SERVICE LIST

The documents were served by the following means:

☒ (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and:

☒ Placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

☒ (BY ELECTRONIC SERVICE VIA TRUEFILING) Based on a court order, I caused the above-entitled document to be served through TrueFiling, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the TrueFiling Receipt/Confirmation will be filed, deposited, or maintained with the original documents in this office.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 14, 2018 at Los Angeles, California.

/s/ Tina Wallace
Tina Wallace

SERVICE LIST

Citizens for Enforcement of Parkland Covenants v. Lugliani
Second Civil B267816

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