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REF./FILE NO.

June 10, 2003

59156-0001

VIA HAND-DELIVERY

Honorable Mike Reilly, Chairman,
and Members of the California Coastal Commission
California Coastal Commission
45 Fremont Street, 20th Floor
San Francisco, California 94105

Re: **Appeal No. A-5-PPL-99-225**
425 Mt. Holyoke Three-Way Land Division, Pacific Palisades
Hearing Date: June 11, 2003
Agenda Item No. W 9a

Dear Honorable Reilly and Members of the California Coastal Commission:

This office represents Darla and Stan Jones and their partnership, Mount Holyoke Homes, the property owner and applicant in the above-referenced case. This letter responds to recent allegations by the Appellant and her legal representative that there is a "deed restriction" on the subject lot that prohibits development on the lot.

The alleged "deed restriction" is unenforceable pursuant to California Civil Code Section 885.010 through 885.060. Specifically, the restriction is contained in a 1935 corporation grant deed from the Palisades Corporation to Katherine G. Young and Marie L. Young, as joint tenants (the "1935 Deed"). A true and correct copy of the 1935 Deed is attached for your reference. The 1935 Deed states that the breach of any of the restrictions set forth in the deed "shall cause said premises to revert to the Grantor" and shall give the Grantor "the immediate right of re-entry upon said premises" This clause constitutes a "power of termination" (see Civil Code Section 885.010), which expires at the later of the following times:

- (1) Thirty years after the date the instrument reserving, transferring, or otherwise evidencing the power of termination is recorded; or

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- (2) Thirty years after the date a notice of intent to preserve the power of termination is recorded, if the notice is recorded within the time prescribed in paragraph (1).

Civil Code Section 885.030.

In this case, a notice of intent to preserve the power of termination was not recorded. Thus, the deed restriction expired in 1965, thirty years after the 1935 Deed was recorded, and is now unenforceable pursuant to Civil Code Section 885.060, which provides in relevant part as follows:

- (a) Expiration of a power of termination pursuant to this chapter makes the power unenforceable and is equivalent for all purposes to a termination of the power of record and a quitclaim of the power to the owner of the fee simple estate
- (b) Expiration of a power of termination pursuant to this chapter terminates the restriction to which the fee simple estate is subject and makes the restriction unenforceable by any other means, including, but not limited to, injunction and damages.

Emphasis added.

Although the restriction is clearly unenforceable under the provisions of the California Civil Code cited above, the following points are also relevant:

- The lot located immediately north of the subject property (435 Mount Holyoke Avenue) was originally part of the property that was subject to the restrictions contained in the 1935 Deed. Significantly, a house was built on this property in 1956 in apparent "violation" of the restriction. Thus, any right to enforce the restriction was waived many years ago.
- Even if the deed restriction was still in effect, neither the Appellant nor any other project opponent would have standing to enforce it. The "right of reverter" was reserved by the Grantor, Palisades Corporation, to itself and its assigns, and does not create any rights in third parties. The Palisades Corporation went out of business in the 1930's.

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- The Appellant did not raise the "deed restriction" issue in her appeal, and the issue was not identified in the Coastal Commission's "substantial issue" determination. Indeed, although the appeal has been pending since 1999, the Appellant, apparently for strategic reasons, waited until last week -- the proverbial "eleventh hour" -- to raise this issue before the Coastal Commission. Such tactics should not be countenanced.

In summary, the alleged deed restriction is unenforceable and has no bearing whatsoever on the ability of the applicant to develop three homes on the subject property.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "John M. Bowman". The signature is fluid and cursive, with a large initial "J" and "B".

JOHN M. BOWMAN of
Jeffer, Mangels, Butler & Marmaro LLP

JMB:dg

Enclosure

cc (w/encl.): Ralph Faust, Esq. (via facsimile)
Ms. Pam Emerson
Ms. Deborah Lee (via hand delivery)
Mr. Al Padilla

were given and their respective addresses being as follows: and WHEREAS, said unpaid sums still remaining wholly unpaid on April 19, 1935, said Trustee did at the time and place of sale fixed as aforesaid, then and there sell, at public auction, to said Grantee, the highest and best bidder therefor, the property hereinafter described, for the sum of \$2721.56 cash, lawful money of the United States, by the satisfaction pro tanto of the indebtedness then secured by said Deed of Trust. NOW, THEREFORE, said Grantor, as such Trustee, in consideration of the premises and of the sum above mentioned bid and paid by said Grantee, the receipt whereof is hereby acknowledged, and by virtue of the authority vested in it by said Deed of Trust does, by these presents, Grant, Convey, Assign, and Transfer, but without warranty as to title, possession, liens or incumbrances, or any warranty, express or implied, unto the Grantee that property situate in the City of Inglewood, County of Los Angeles, State of California, described as follows:

Lot Number Seven (7) of Block Two Hundred Thirteen (213) of Palm Place, as per map recorded in Book 7, Page 68 of Maps, in the office of the County Recorder of said County.

IN WITNESS WHEREOF, said Los Angeles Trust & Safe Deposit Company, as Trustee, has this day caused its name to be hereunto affixed by its Officers thereunto duly authorized by resolution of its Board of Directors.

(Corporate Seal)
Approved Beck
LAS 1836

LOS ANGELES TRUST & SAFE DEPOSIT COMPANY, Trustee
By J. Veenhuyzen, Vice-President
By A. F. Huntly, Assistant Secretary

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES)ss. On this 20th day of April, 1935, before me, a Notary Public in and for said County and State, personally appeared J. VEENHUYZEN, known to me to be the Vice-President, and A. F. HUNTLY, known to me to be the Assistant Secretary of the Los Angeles Trust & Safe Deposit Company, the corporation that executed the within and foregoing instrument as Trustee and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same as such Trustee.

WITNESS my hand and official seal.

(Notarial Seal)
in and for said County and State.

E. Howlett, Notary Public

#521 Copy of original recorded at request of Grantee, Apr. 29, 1935, 10:19 A.M. Copyist
#6, Compared G.L. Logan, County Recorder, by V. Stamper Deputy
\$1.80 - 12. S.

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U.S.I.R.S. \$3.00 cancelled.

CORPORATION GRANT DEED

PALISADES CORPORATION, a corporation organized under the laws of the State of Nevada, and having its principal place of business at Los Angeles, California, party of the first part (hereinafter called the "Grantor"), in consideration of the sum of Ten Dollars (\$10.00), the receipt whereof is hereby acknowledged, does hereby grant to KATHRINE C. YOUNG and MARIE L. YOUNG, as joint tenants, party of the second part (hereinafter called the "Grantee"), all that certain real property situate in the City of Los Angeles, County of Los Angeles, State of California, described as follows, to-wit:

PARCEL 1. Lot Number One (1), Block Number Thirteen (13), in Tract 9300, as per map of said tract recorded in Map Book 125, Pages 55 et seq., Records of Los Angeles County;

PARCEL 2. A part of Lot "B" of Tract No. 9300, as per map recorded in Book 125, pages 55 to 78 of Maps, Records of Los Angeles County, more particularly described as follows: Commencing at the most Easterly corner of Lot 1 in Block 13, of said Tract No. 9300; thence following the Southeasterly line of said Lot 1, S 56°-13'-44" W. 220.22 feet to the most Southerly corner of said Lot 1; thence S 6° 03' 17" W. 191.26 feet, more or less, to a point which is N 11° 13' 44" E. 60.00 feet from the Northwesterly corner of Lot 10, in Block 2 of said Tract No. 9300; thence S 78° 46' 16" E. 175.00 feet more or less to a point in an Easterly line of said Lot "B", said point being N 11° 13' 44" E. 60.00 feet from the Northeasterly corner of said Lot 10; thence following the lines of Lot "B" N 11° 13' 44" E. 304.37 ^{feet} more or less to the beginning of a curve concave to the Southwest and having a radius of 45.26 feet; thence along said curve 62.78 feet to the point of beginning.

PARCEL 1 subject to a ten (10) foot easement in rear for sanitary sewer.

Subject to conditions, restrictions, reservations and rights of way of record and

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subject to all liens for taxes and assessments; and all levies of Municipal Improvement Districts Nos. 11, 31 and 60; and subject to the following express covenants, conditions, restrictions and reservations, which shall apply to and run with said land, and shall be perpetual and apply to and be forever binding upon the Grantee, his, her or its heirs, executors, administrators, successors or assigns, and are imposed upon said land as an obligation, or charge against the same for the benefit of the Grantor herein named, its successors and assigns, and which are as follows, to-wit:

1. No buildings or structures of any kind or nature whatsoever shall be moved upon said property without the consent in writing of the Grantor, its successors or assigns. Immediately upon completion thereof, all buildings or structures and every part thereof, constructed of wood, including the roofs of buildings erected on said premises, shall be painted or stained.

No building or other structure shall be erected or the erection thereof begun on said premises until the plans and specifications thereof shall have been first presented to and approved in writing by the Grantor, its successors or assigns, as to outward appearance and design.

2. The premises shall be used for a private dwelling house or residence only, and not for any hotel, apartment house, mercantile or other business purposes, except as may be otherwise provided herein. The Grantee shall not sell or permit the sale thereon of alcoholic beverages, tobacco, drugs, or other merchandise; nor make or permit the making of any alcoholic beverage therein, nor shall the Grantee permit the premises to be used for any business or occupation which may violate any ordinance or law of the City of Los Angeles, the County of Los Angeles, or the State of California, or of the United States, nor permit the premises to be occupied by any person not of the Caucasian race other than as guests or servants.

3. The Grantee agrees to care for and maintain or replace if removed trees and shrubs which the Grantor, its successors or assigns, has or may plant in the parking on the street frontage of the premises herein conveyed. The Grantee shall keep the premises in a sanitary condition, and free of weeds and rubbish.

4. No more than the number of buildings of a given type and no buildings of any type other than those indicated below shall be erected or allowed to remain on the aforesaid Lot 1 Block 13, Tract 9300, to-wit: One building, designed for single residence costing not less than \$4,000.00. No residence shall be constructed on Parcel Two (2) unless it is a part of and attached to the residence constructed on Parcel One (1).

Nothing in this section is intended or shall be construed as preventing the erection of a private storage garage or garages, or other necessary and appurtenant outbuildings, upon said lot after plans and specifications for the same have been approved in writing by the Grantor, its successors or assigns. All buildings shall comply with the requirements of the City of Los Angeles and the State of California. Buildings to be used as garages and other outbuildings shall not be used as residences except while any dwelling house on the said lot or lots is being erected, during which time of construction they may be temporarily occupied as a residence but not longer than six (6) months.

The restrictions mentioned in this section shall apply only to the property described herein. The allowance of any other or difference restrictions or reservations on any other lot in said tract or any violation of the same shall not affect the restrictions or reservations imposed hereby on the lot hereby conveyed.

Failure to object to a breach or non-observance of any of the terms or covenants, conditions or restrictions mentioned herein shall not be treated as a waiver of such terms or covenants, conditions, or restrictions as to any future or other breach thereof, or of any other restriction nor shall any length of time during which such non-observance of such breach continues be considered a consent thereto nor as in anywise waiving the right of the Grantor to enforce observance thereof at any time, and the benefit of any estoppel arising out of such delay is hereby waived.

The breach of any of the aforesaid covenants, conditions and restrictions shall cause said premises to revert to the Grantor, its successors or assigns, each of whom respectively shall have the right of immediate re-entry upon said premises in the event of any

such breach. Provided also that the breach of any of said covenants, conditions and restrictions shall not defeat or render invalid any mortgage or deed of trust made in good faith for value as to said premises or any improvements thereon or any part thereof, but purchasers at any sale made thereunder shall be bound thereafter by all the covenants, conditions and restrictions aforesaid, and shall keep, perform and observe the same.

It is mutually understood and agreed that these covenants, conditions, reservations, and restrictions shall be binding upon the successors, heirs, administrators, executors, devisees and assigns of the parties hereto.

IN WITNESS WHEREOF, the said party of the first part has caused its corporate name and seal to be affixed by its President and Secretary thereunto, duly authorized this 9th day of April, nineteen hundred and thirty-five.

(Corporate Seal)
Louis L.R. Evans)

PALISADES CORPORATION,
By Geo. A. J. Howard, President
And L. A. Rentsch, Secretary

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES)ss. On this 9th day of April, 1935, before me, the undersigned, a Notary Public in and for said County, personally appeared Geo. A. J. Howard, known to me to be the President, and L. A. Rentsch, known to me to be the Secretary of PALISADES CORPORATION, the Corporation that executed the within and foregoing instrument, and known to me to be the persons who executed the within instrument on behalf of the Corporation therein named and acknowledged to me that such Corporation executed the same. WITNESS my hand and official seal the day and year in this certificate first above written.

(Notarial Seal) Louis L. R. Evans, Notary Public
in and for the County of Los Angeles, State of California. My Commission Expires March 23, 1937.

#221 Copy of original recorded at request of Title Guar. & Tr. Co., Apr. 30, 1935, 8:30 A.M.
Copyist #6, Compared C.L. Logan, County Recorder, by *V. Stamper* (44) Deputy
\$2.00 - 15. S.

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ASSIGNMENT OF COMMUNITY OIL AND GAS LEASE

KNOW ALL MEN BY THESE PRESENTS: That Sam B. Herndon Oil Company, Ltd., Assignor herein, for and in consideration of the sum of Ten (\$10.00) Dollars and other valuable consideration, the receipt of which is hereby acknowledged, does hereby sell, assign, transfer and set over unto Herndon Development Company, Ltd., Assignee herein, that certain community oil and gas lease dated October 15, 1931, executed by various owners of Lots included in the following described area as Lessors in favor of Sam B. Herndon Oil Company, Ltd., as Lessee; and covering property included within the following described area, to-wit: All of the Lots in Blocks 7, 8, 9 and 12, and Lots 7 to 17, both inclusive, in Block 11, Tract 9809, as platted and recorded in the office of the County Recorder of Los Angeles County, in Book 145 of Maps, at pages 91 to 96, inclusive.

Lots 5 to 14, both inclusive, and Lots 42 to 51, both inclusive, in Block 9, Tract 9167, as platted and recorded in the office of the County Recorder of Los Angeles County in Book 172, page 45, et seq., of Maps.

All of the Lots in Block 4, Tract 9578, as platted and recorded in the office of the County Recorder of Los Angeles County in Book 173 of Maps at pages 32 and 33.

Assignor further does hereby sell, assign, transfer and set over unto Assignee all counterparts of said community lease, whether executed prior or subsequent to this date, or whether such counterpart was executed by Assignor herein as Lessee or by Herndon Development Company, Ltd., as Assignee of Sam B. Herndon Oil Company, Ltd., as Lessee.

Assignor makes no warranty of title, except that it has not conveyed, other than to Assignee, any of the lease hold estate acquired by it in and to the above described premises. Assignee hereby assumes and agrees to perform in the manner and at the time required in said lease all of the terms, covenants and conditions required of Assignor as the Lessee therein, and hereby indemnifies and agrees to save Assignor harmless from any damage or loss in any way resulting from any breach of Assignee in the performance of said lease or any other injury or damage which may in any way arise thereunder.

It is the intention and purpose of this instrument to confirm and perfect that assignment made by the Assignor herein to the Assignee herein on April 4, 1932, and this instrument shall sell, assign, transfer and set over unto Assignee herein any interest in said lease that was not assigned by said assignment of April 4, 1932, and is now held or shall