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August 20, 2015

Palisair Home Owners Association  
Tract Committee  
P.O. Box 901  
Pacific Palisades, CA 90272

Re: Danny Seo, 1111 Las Pulgas Place, Lot 2, Tract No. 19890

Members of the Committee:

This firm represents Danny Seo, beneficial owner of the above-described parcel of real property. Mr. Seo proposes to demolish the existing single family residence on the property and build an entirely new single family home.

William Nicholas owns the adjoining property at 1119 Las Pulgas Place and objects to Mr. Seo's plans. He claims entitlement to a view that would be impaired by Mr. Seo's new home. When Mr. Seo previously appeared before you and negotiated a possible compromise with Mr. Nicholas, he had not retained legal counsel. Because Mr. Seo had not been fully advised as to his rights, all his prior offers to compromise his proposed plans are withdrawn. Mr. Seo presents to you once more his original plan for construction of a new residence on the subject lot. There is no legal basis on which you may reject the proposal for the following reasons.

The City of Los Angeles does not have a view protection ordinance applicable to Pacific Palisades. Accordingly, the only view protection available for persons in the area must be found in the terms of a contract. That contract is the Restrictions of the Palisair Home Owners Association imposed on lots in tracts 15944, 15948 and 19890. The currently applicable set of Restrictions states, in Recital H on page 2, that it is intended to, among other things, "clarify the provisions regarding view obstructions".

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However, the 22 page document barely mentions view obstruction and does not apply at all what Mr. Seo proposes to do with his property.<sup>1</sup>

Mr. Seo is putting a brand new residence on the subject lot, after completely demolishing the existing residence. His proposed residence has more than 2,000 square feet and a front entrance facing the street; its height will not exceed 15 ½ feet from finished grade and the new construction will fall within the front and side setback requirements. In short, he complies with all the clearly expressed and objective requirements of the Restrictions as well as the building requirements of the City of Los Angeles.

Under Article IV, Section 2 of the Restrictions, Mr. Seo is required to submit plans to the Committee for approval. In reviewing them, the Committee must act in good faith. (Article III, Section 2). The Committee cannot reject a plan on the basis of a whim or be arbitrary or capricious in its actions. Rather, there must be some reasonable and objective basis for any action set out in the Restrictions.

There is nothing in the Restrictions with respect to view obstruction for construction of an entirely new residence aside from the above-mentioned size, height and setback restrictions. The only place where obstruction of view is specifically addressed is Article III, Section 9 which provides that fences, walls, hedges, and trees shall not be placed "in such a location that they unreasonably obstruct or unreasonably diminish the quality and nature of the view from any other land in this or an adjoining tract". If the Committee finds that the "nature or quality of the view is unreasonably diminished, unreasonably obstructed by fences etc. or by trees" they must be removed, cut down or cut back. This provision does not apply to what is proposed to be done by Mr. Seo.

The only other basis in the Restrictions for denial based on view obstruction is found in the middle paragraph on page 10 which states, in relevant part:

"The erection, alteration, maintenance, location or relocation of any clothes line, pole, fence, hedge, mast, aerial or antenna for radio or television, or other structure of a similar or dissimilar nature whether separate or integral part of the dwelling, such as a residence addition, shall be disapproved or desisted from whenever such structure because of

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<sup>1</sup> We understand the Committee is considering changes to the Restrictions which may impact Mr. Seo's application for approval. Any such change would be inapplicable to his proposal which has been before you for months.

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its kind, shape, color, height, material or location in the opinion of the Tract Committee would be unsightly, or detrimental to, or unreasonably obstruct or unreasonably diminish the nature or quality of the view from any other land in this or an adjoining tract, or otherwise tend to lower the value of any land of the tract."

The review of plans set out in Article IV, Section 2(a) shows five different scenarios which prohibit approval. None of them covers the proposed construction of an entirely new residence, nor does the above-noted language.

It is fundamental that any detriment to a property owner's rights under a contract should be clear and explicit. There is no such clear and explicit power in the Tract Committee to disapprove a plan for a new home on the basis of a possible view obstruction.

In addition to the fact that my client has not violated any of the Restrictions by his proposed construction, Mr. Nicholas has no entitlement to an unobstructed view because that view was created as the result of a criminal act. There is a stump of a California live oak tree immediately adjacent to the property line between the two lots. We have retained a professional arborist who, based on photographic evidence, has opined that the subject tree was 10-15 years old when it was reduced to a stump, probably around 2011. Trimming of the tree apparently commenced around 2006. Absent those actions, the tree would currently have reached a height of 18-22 feet with a spread of 8-12 feet, and would have ultimately lived 50-70 years with the same height and a spread of 35-50 feet. Had the tree been left unmolested it would have substantially blocked the "entitled" view of Mr. Nicholas.

To our knowledge no permit was obtained for destruction of this tree and under Los Angeles Municipal Code Section 12.21(A)(12), an unpermitted destruction of a protected oak is a criminal act. It would be difficult enough for this Committee to base its decision in rejecting a proposed plan without any specific factual basis in the Restrictions. It would be outrageous to base such "view protection" on a view that was created as the result of a crime.

It is my understanding that the Committee will convene a special meeting to address Mr. Seo's application. We suggest it be on the week of September 14.

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In an effort to be conciliatory Mr. Seo previously agreed to make modifications to his plans to accommodate Mr. Nicholas. However, Mr. Nicholas refused to compromise. Accordingly, we have no choice but to go forward. Mr. Seo is still willing to make any reasonable compromise that would not adversely affect his ocean view, but not to the extent that Mr. Nicholas has demanded.

Very truly yours,

  
Richard R. Terzian

RRT:jda

cc: William Nicholas  
1119 Las Pulgas Place

LA #4844-8873-6807 v1