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M E M O R A N D U M

TO: Homestead Parcel Owners

FROM: Matthew Davis

RE: Homestead Litigation

As you may know numerous Homestead homeowners have complained to 18 Paradise LLP about the recent increase in the monthly fee for Homestead parcel owners. A $25 monthly fee was established in 1992 when Homestead had only 33 lots, and it was not increased until 2005. The original developer (James Wynstra – Homestead Northwest Inc.) sold the development in 2010, and it was sold again to Mao Hua (Morris) Chen of 18 Paradise in 2013. 18 Paradise increased the fee from $36 in 2019 to $93 per month for 2020.

When discussions with 18 Paradise's agent MJ Management failed to obtain any relief from this huge increase, your neighbors hired Andersson Cross Border Law Corporation of Bellingham and Davis Leary PLLC of Seattle to file a class action lawsuit against 18 Paradise and the people who run it. The purpose of the lawsuit is to prevent further misappropriation and to recover fees fraudulently taken by 18 Paradise. A satisfactory resolution would result in the conveyance of the common areas to a properly organized homeowners association.

If the court certifies the case as a class action, you will be affected by the outcome of the lawsuit. *Class members are entitled to the benefit of any decision but have* ***no liability or obligations***. We are providing this Memorandum to homeowners to inform them about the lawsuit and to welcome their participation. You may already know much of this information, and you should feel free to skip parts you do not need.

History of Homestead.

Prior to 1992, the land that is now Homestead was open farmland well outside the center of Lynden. James Wynstra acquired a large assemblage of land and applied to develop a Planned Residential Development (PRD). A PRD is a plat that includes a mix of uses and improvements. The Homestead PRD was built around a new golf course with amenities.

Lynden adopted its ordinance for PRDs just a few months beforehand, and Homestead was the city's first. The City made up the process as it went, and the project did not strictly meet all requirements of the code. One requirement of the PRD ordinance was the creation of a homeowners association to manage common areas, but as is normal practice Wynstra was to retain ownership of the common areas until the PRD was substantially complete. The City agreed to this in a preliminary agreement with Wynstra. The ordinance requires a final PRD Agreement between the City and the Developer, but none was ever completed. As a result, Wynstra continued to own the common areas and charge the owners $25 per month for maintenance long past substantial completion.

Between 1992 and 2010, Homestead expanded from 33 lots to over 600 units. As new plats were added to the Homestead PRD, they were subjected to the CC&Rs. Increased parcels resulted in correspondingly less Common Open Space. Those common areas were to be maintained with the monthly fee. A number of condominiums were constructed as well, and they manage their own common areas and have virtually no Common Open Space. However, the condominium owners are charged the same monthly fee. By 2010, the monthly fee from all homeowners totaled over $15,000 per month, and after the recent increase to $93, 18 Paradise is charging Homestead owners more than $55,000 per month.

Maintenance Performance

According to the CC&Rs, all costs and expenses of maintenance of and improvements to the Common Open Space are to be paid by the Declarant. Maintenance includes things such as maintenance of entry signs and landscape, mailbox surrounds, streetlight electrical power bills, and maintenance of lights not maintained by the City of Lynden. In addition, the PRD ordinance states that private streets shall be maintained with the homeowner fee.

The CC&Rs state that the maintenance shall be done to a very high standard. In fact, maintenance has been slipshod at best, and homeowners have had to pay for things like street resurfacing and snow removal themselves. Many of the common areas have been ignored altogether.

Amendments to CC&Rs

In 2019, 18 Paradise recorded two amendments to the CC&Rs without obtaining city approval as is required. The original CC&Rs state that the Declarant can unilaterally amend the CC&Rs until the common areas are conveyed to a homeowners association, and since that has not occurred, 18 Paradise amended the CC&Rs without notice or consulting affected owners.

The Sixth Amendment allowed 18 Paradise to charge special assessments in addition to the monthly fee. 18 Paradise followed that up with a special assessment of $83 allegedly for storm damage. This Amendment contradicts the provision in the CC&Rs that the Declarant would pay the cost of maintenance, and it ignored the fact that 18 Paradise already was charging more than the cost to maintain the common areas. Homestead owners were charged and paid $83 pursuant to this Amendment and are currently at risk of future special assessments.

The Seventh Amendment was recorded in December 2019, and it *retroactively* increased the monthly fee by 5% for every year since 1993. That increased the fee from $36 to $93 per month. The CC&Rs do allow the Declarant to increase the fee by up to 5% per year, but they set forth a specific procedure that requires notice in December of the year before the increase. The 7th Amendment violates that provision.

Complaints and Negotiations

Several Homestead owners got together to address these increases in the fees. They formed the Homestead Homeowners Advisory Group (HOAG) to work together and present a unified position to negotiate away the increase and bring about a fair method for the common open spaces to be handled. Several contacts were made via meeting and phone with MJ Management (representatives of 18 Paradise) and its attorney, but 18 Paradise refused to rescind the 6th and 7th Amendments or promise to perform the required maintenance.

Lawsuit

When those negotiations failed, members of the HOAG contacted qualified attorneys to discuss their options. After interviewing and investigating a number of law firms, several

members of the HOAG elected to retain Andersson Cross Border Law Corporation of Bellingham and Davis Leary PLLC of Seattle. Counsel suggested that a class action lawsuit would be most effective because every affected owner would receive the benefit of the action.

After extensive investigation, counsel proposed filing a lawsuit against 18 Paradise and its owners Chen, Mount Tai Investment, Inc., and Mount Emei Investment, Inc. as well as MJ Management, Mick O'Bryan and Josh Williams because of their personal involvement in promoting the illegal scheme.

The lawsuit was filed on May 29, 2020. It alleges that the defendants have engaged in deceptive and unfair conduct, have violated the terms of the CC&Rs and PRD Ordinance, and that 18 Paradise holds the common areas for the benefit of the owners. The primary relief sought is an order for 18 Paradise to convey the common areas to a homeowners association.

Chen made a tactical decision to transfer the case to federal court in Seattle. Counsel believes that the case should be tried in Whatcom County and are taking steps to have it remanded to state court. In the meantime, the lawsuit has commenced, and counsel is preparing for trial.

Class Action

A class action is a special kind of lawsuit where a large number of people have the same claim or are in the same situation. Here, over 600 homeowners are charged the monthly fee, and all of them are in the same position. It would make no sense to have 600 separate lawsuits with the risk of inconsistent decisions, so the law allows a court to decide all of the claims at once.

The class is defined by the court in an order. We expect that to be all owners who are subject to the monthly fee under the CC&Rs. If the court approves the class action, you will be notified.

Class members are given the right to opt out of the class action. People who opt out do not get the benefit of the lawsuit and may bring their own lawsuit if they wish. Class members have no risk of liability concerning the lawsuit. Defendants may not assert counterclaims against class members, and class members cannot be liable for attorney fees.

The vast majority of cases settle, and counsel are optimistic that this case will settle to our parcel owners' satisfaction. An important aspect of class actions is that a settlement would affect the rights of all class members. For that reason, all class members must be notified of any proposed settlement, and the court must approve it after allowing class members to comment.

Although you are not required to participate in the class action, you have the right to do so. Also, any class member may retain their own attorney to represent them in the lawsuit. Class members are welcome to participate in the action to the degree they want. In cases like this, class members often have important knowledge of relevant facts, and counsel will make it easy for class members to share what they know.

Next Steps

Lawsuits typically take about a year to go to trial, but there is no set schedule. Our immediate plans are to file motions for approval of the class action and **for the preliminary injunction stopping 18 Paradise from collecting fees until the lawsuit is resolved**, or to allow homeowners to pay their monthly fee to the trust fund while the lawsuit is pending. That process may take a month because of the court's schedule with the pandemic.

After our initial motions are decided we will begin the discovery phase, which means obtaining the relevant records and information. That process likely will take about six months. Typically, parties bring motions to decide the case without trial once discovery is complete.

Again, most lawsuits settle without going to trial. We have started settlement discussions with the defendants, but we cannot proceed until they are ready. A delay in settlement discussions is normal and should not be seen as a negative indicator.

Sincerely,

Matthew F. Davis