

# Memorandum of Response to the Proposal

## Proposal 1

Record an Amendment Eight to the Homestead covenants, conditions, and restrictions (“CC&R’s”) that supersedes Amendment Seven.

## Response 1

The Proposal does not identify who would file the 8<sup>th</sup> Amendment to the CC&R’s. 18 Paradise? Or Mr. Scholten as part of some post-closing agenda? Would the proposed amendment be presented to the homeowners for discussion and ratification prior to filing? Or would 18 Paradise proceed to illegally file the amendment as it did for the 6<sup>th</sup> and 7<sup>th</sup> Amendments?

## Proposal 1(a)

Amendment Eight would provide as follows

a. New maintenance fee structure:

- i. Detached-home owners whose property abuts the Homestead golf course would pay a \$90.00 monthly maintenance fees;
- ii. Detached-homeowners whose property does not abut the Homestead golf course would pay a \$70.00 monthly maintenance fee;
- iii. Duplex/multiplex/condominium homeowners whose buildings abut the golf course would pay a \$60.00 monthly maintenance fee;
- iv. Duplex/multiplex/condominium homeowners whose buildings do not abut the golf course would pay a \$36.00 monthly maintenance fee; and
- v. Homeowners in the Meadow Greens and Vacation International areas would pay a \$20.00 maintenance fee.

## Response 1(a)

It is of course possible that once 18 Paradise permits the organization of a legitimate Homestead Owners Association (“HOA”), the members of said HOA may in fact vote to accept the above fee proposal. But 18 Paradise continues to block the establishment of a legitimate HOA. The overwhelming majority of Homestead parcel owners favor the establishment of a legitimate HOA.

## Proposal 1(b)

b. Revise Section 3.5(f) of the CCRs to (1) abolish retroactive fee raises, and (2) provide that fees may only be raised five percent (5%) per year or equal to the annual cost-of-living increase, whichever is greater.

## Response 1(b)

This proposal is an admission that the 7<sup>th</sup> amendment implementing a 158% retroactive fee, without the required homeowner ratification, is illegal.

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## Proposal 1(c)

c. There will be a three-year freeze on maintenance fee increases.

## Response 1(c)

A legitimate HOA may agree that this proposal is reasonable.

## Proposal 1(d)

d. Revise CCR Section 3.3 to provide that maintenance fee money may be used for:

- i. Common open space;
- ii. Entry signs, landscaping, and mailbox surrounds;
- iii. Streetlight electrical power bills and maintenance of lights;
- iv. Stormwater system (ponds, culverts);
- v. Sidewalks and walking paths in Homestead not managed by City;
- vi. Tree removal and servicing within Homestead PRD; and
- vii. Golf Course management and upkeep.

## Response 1(d)

The requirement to revise CC&R's Section 3.3 is an admission that maintenance fee money has not been used for authorized purposes. That said the itemized points are addressed below.

- i. Common open space;

A legitimate HOA would likely agree that maintenance fees may be used for Common Open Space ("COS"), as that term has been recognized by Whatcom County Superior Court.

- ii. Entry signs, landscaping, and mailbox surrounds;

A legitimate HOA would likely agree that this maintenance item comports with the current CC&R's.

- iii. Streetlight electrical power bills and maintenance of lights;

A legitimate HOA would likely agree that this maintenance item comports with the current CC&R's.

- iv. Stormwater system (ponds, culverts);

There is no requirement in the current CC&R's requiring homeowners to pay for any stormwater system. The stormwater system running through the Homestead Planned Residential Development (the "PRD") is owned and operated by the City of Lynden ("City"). Each parcel owner in the PRD pays the City a monthly stormwater maintenance fee. The **stormwater system** running through the golf course is utilized by six neighborhoods outside of Homestead, three

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miles of public streets, and the golf course itself, all of whom make no additional payments over their monthly stormwater fees to the City. Homestead residents are not interested in being the only citizens of Lynden paying for a stormwater system for the benefit of other non-contributing citizens.

In order to obtain approval for the PRD, the original owner of the golf course, the Declarant, promised the City that it would satisfactorily maintain its golf course water hazards which ultimately flow through golf course culverts back into the City's stormwater system. 18 Paradise is the successor Declarant until it permits a legitimate HOA to be established. 18 Paradise continues to block organization of a legitimate HOA.

A legitimate HOA would likely sit down with the owner of the golf course and the City and discuss the municipal stormwater issues.

- v. Sidewalks and walking paths in Homestead not managed by City;

A legitimate HOA would likely agree that this expense comports with the current CC&R's. Through discovery in the Lawsuit a clearer picture has emerged of exactly which sidewalks and pathways are already managed by the City.

- vi. Tree removal and servicing within Homestead PRD; and

A legitimate HOA would likely agree that this expense comports with the current CC&R's.

- vii. Golf Course management and upkeep.

Current CC&R's do not permit the expenditure of ANY maintenance fees on the golf course management and upkeep. The original developer clearly intended to keep the golf course for its own use and its own profit; separate from the COS.

That said, it is possible that a legitimate HOA would agree to sit down with the City and the golf course owners to discuss the issue. The members the Homestead community and the City of Lynden obtain approximately the same intangible benefit by proximity to an operating golf course.

The problem with Mr. Scholten's proposal is that he wants to force the Homestead owners to finance his purchase of the golf course. He has based his offer to purchase the golf course on the assumption that he will be able to continue to milk unaccountable fees from homeowners, rather than on the true operational value of the course. In other words, Mr. Scholten appears determined to overpay for the golf course based on inflated revenues from 18 Paradise's ill-gotten maintenance fees.

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## Proposal 2

2. An unincorporated advisory board will be formed to assist and meet with golf course owner/manager.

### Response 2

An unincorporated advisory board is not a legitimately organized HOA. It was contemplated in Section 4.3 of the CC&R's to facilitate dialogue with the PRD developers prior to the proper organization an HOA when the development was complete. The PRD has been complete for at least a decade. An unincorporated advisory board was never intended to operate in place of a legitimately organized HOA. Lynden City ordinance requires that each PRD have a legitimate HOA. Homestead is the only PRD in Lynden with no HOA.

## Proposal 2(a)

a. The buyer envisions the board meet annually to discuss any upcoming fee increases and special assessments, if needed, along with other homeowner concerns.

### Response 2(a)

This proposal does not comport with the Washington Uniform Common Interest Ownership Act RCW 64.90 which requires annual budgets and special assessments to comply with RCW 64.90.525 – which requires ratification by the homeowners. Furthermore, the CC&R's state "Board" shall mean the Board of Directors of the Homestead Owners Association. The method for organizing the Board is set out in Section 4 of the CC&R's including the requirement of a members meeting and the nomination and election of seven board directors by the members. 18 Paradise continues to block the organization of a legitimate HOA and Board.

## Proposal 3

3. Special assessments may not be implemented unless approved by the majority vote of the advisory board.

### Response 3

This proposal does not comport with the Washington Uniform Common Interest Ownership Act RCW 64.90 which requires that special assessments comply with RCW 64.90.525(3) which reads as follows:

*(3) The board, at any time, may propose a special assessment. The assessment is effective only if the board follows the procedures for ratification of a budget described in subsection (1) of this section **and the unit owners do not reject the proposed assessment**. The board may provide that the special assessment may be due and payable in installments over any period it determines and may provide a discount for early payment.*

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Furthermore, the CC&R's state "Board" shall mean the Board of Directors of the Homestead Owners Association. The method for organizing the Board is set out in Section 4 of the CC&R's including the requirement of a members meeting and the nomination and election of seven board directors by the members. 18 Paradise continues to block the organization of a legitimate HOA and Board.

## Proposal 4

4. The declarant will retain ownership of the common open space.

## Response 4

Private ownership of COS is prohibited by City of Lynden ordinance. If current Declarant 18 Paradise and its possible successor wish to retain private ownership of COS, then they must adhere to Lynden Code 19.29.090 and provide assurances and a formula whereby to the COS will be turned over to a legitimate HOA.

## Proposal 5

5. In the event that the new buyer elects to sell the golf course, the advisory group would be notified and would be provided with a period of time to form a buying group from the Homestead community. We envision this could be reflected in a document similar to a first right of refusal.

## Response 5

What does this have to do with settling the Lawsuit?

## Proposal 6

6. The Court must approve a class action settlement binding on all class members consistent with the above framework and thereby dismiss the current litigation with prejudice.

## Response 6

Counsel for the class action will immediately present a negotiated settlement of the Lawsuit to the court, as soon as 18 Paradise agrees to same.