

RE: Apes Hill Club Homeowners Association Inc ("HOA"); Garden Wall Villa Association Inc ("Garden Wall"); Apes Hill (Barbados) Inc f/k/a Plantation Sanctuary Inc ("PSI") d/b/a/ Apes Hill Club and the current PSI Appointed Directors of the HOA

April 20, 2023

Dear Fellow Members of the HOA, Mr. Sunil Chatrani and C. Anthony Audain, KC:

The Apes Hill Benevolent Society Inc (“Society”) supports the development of the Apes Hill Club Development (“Development”) by PSI provided the rights of the Members of the HOA and Garden Wall are fully protected and the mistakes of the past regarding the management of the HOA and Garden Wall are not repeated.

We have come to understand that PSI abuses its status as the de facto controlling Member of both the HOA and Garden Wall and as the owner of the Apes Hill Club by operating the Apes Hill Club, the HOA, and Garden Wall as one combined private enterprise for the benefit of PSI, to the detriment of approximately 100 other Members of the HOA and Garden Wall (collectively “Other Members”).

The Board of Directors of the HOA which is composed of directors and/or employees of PSI, functions under the direction of PSI, provides no transparency regarding the operation and management of the HOA and refuses to answer most questions that are presented to it by the Members of the HOA.

Accordingly, the Members of the Board of Directors of the Society have had to retain independent counsel at their expense (“Counsel”) to conduct investigations of both the HOA and Garden Wall to ascertain how PSI was able to take control of the HOA and Garden Wall without any legal authority to do so.

Counsel has uncovered to date the following relevant facts from these investigations:

(1) Under the Bylaws of the HOA and Garden Wall, up until the “Turnover Date”, any vacancy in the directors of the HOA and Garden Wall can only be filled by the remaining “First Directors” or by the

respective Members of each association at its next annual general meeting.

(2) On 3 February 2020 Apes Hill Development SRL, the “Developer” named in the Bylaws of the HOA sold, through Republic Bank (Barbados) Limited acting as mortgagee, all its properties in the Development and attempted to assign its developmental rights, to the extent that it had any, in the Development to PSI (“Turnover Date”). The Developer never had the right to appoint the Directors of the HOA or Garden Wall and therefore could not assign that right to PSI.

(3) On the Turnover Date:

(a) Garden Wall was responsible, amongst other things, for maintenance of Common Property and the outside of all Villas and pools in the Garden Wall Phase of the Development and the HOA was responsible for all security, pest control and garbage removal as well as the maintenance of the remaining Common Property in Development.

(b) the HOA and Garden Wall had covenants and restrictions running with the lands in the Development to and from the lot owners requiring that upon the sale of the last residential lot in the Development owned by the Developer all Common Property in the Development was to be conveyed to the appropriate homeowner’ association, namely the HOA or Garden Wall.

(c) all the known First Directors of the HOA and Garden Wall died or resigned without appointing successor First Directors to operate the HOA and Garden Wall.

(4) On the Turnover Date, it was thus incumbent upon PSI to convey all Common Property in the Development to either the HOA or Garden Wall and since there were no known First Directors then in office, for the membership of the HOA and Garden Wall to be convened to elect Directors for each of the HOA and Garden Wall in accordance with their respective Bylaws.

(5) NEVERTHELESS, PSI, after taking control of the books and records of both the HOA and Garden Wall:

(a) appointed without authority, the Board of Directors for the HOA (“PSI Appointed Directors”).

(b) caused also without any authority Garden Wall to cease operations.

(c) denied Other Members access to the books and records of the HOA and Garden Wall.

- (d) caused the HOA to be operated without transparency or accountability to the Other Members.**
- (e) caused the HOA to keep inadequate corporate records (including the names and current addresses of its Members) and issue financial statements without the approving opinion of its auditor because its auditor was not “able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion.”**
- (f) caused the HOA to operate for the benefit of PSI, waive dues owed by PSI to the HOA and enact the 2021 Rules of the HOA which purport, amongst other things, to make PSI the Developer of the Development; make all Members of the HOA members of the Apes Hill Club, a private golf club that is owned and operated by PSI; and relieve the PSI Appointed Directors of the fiduciary duties that all directors have, or persons purporting to act as its directors have, to the HOA and its Members.**
- (g) prevented the Members of the HOA from electing the Board of Directors of the HOA.**
- (h) failed to convey all Common Property in the Development to either the HOA or Garden Wall.**
- (i) re-subdivided the Development without notice to, input from or the consent of the Other Members.**
- (j) granted a first mortgage lien on the Common Property to secure in part a BD\$40,000,000 loan it had apparently secured for the development of the Apes Hill Club.**

Counsel has advised, among other things, that:

- (a) the forgoing facts constitute acts of oppression by PSI against the Other Members.**
- (b) any actions taken by the PSI Appointed Directors of the HOA in favor of PSI constitute, amongst other things, a conflict of interest that cannot be waived and that such actions are null and void ab initio, including their attempted enactment of the 2021 HOA Rules.**
- (c) PSI must pay Membership dues to the HOA and Garden Wall.**
- (d) all Members of the HOA and Garden Wall are entitled to full access to their respective register of members and to have sight of adequate accounting records.**
- (e) the Members of the HOA have the right to elect the Directors of the HOA.**
- (f) the Members of Garden Wall have the right to elect the Directors of Garden Wall.**

(g) PSI must now convey the Common Property to the HOA and Garden Wall.

Over the past few years, the Directors of the Society have asked numerous questions, suggested ways to avoid the mistakes of the past and attempted to meet with PSI, the HOA and Garden Wall to address serious concerns regarding the management of the HOA and Garden Wall only to be met with silence or replies from their counsel that disregard the provisions of the constating documents of the HOA and Garden Wall.

Accordingly, the Directors of the Society have had no choice but to prepare a Fixed Claim and Affidavit in Support of the Fixed Claim with 37 Exhibits (collectively the “Pleadings”) against the HOA, Garden Wall, PSI, and the current PSI Appointed Directors of the HOA (collectively the “Defendants”) and submit the Pleadings for filing in the Supreme Court of Barbados in the High Court of Justice on 22 March 2023.

In the interim, on 19 April 2023 the Directors of the Society received the attached email from the attorney for the PSI apparently acting on behalf of the HOA, indicating that the HOA has now decided to allow Members of the HOA in “good standing” to elect one or more Directors to the Board Directors of the HOA!

This apparent change of direction requires us to now ask the current PSI Appointed Directors of the HOA, who are also Directors of PSI, on behalf of the Members of the Society who are all Members of the HOA, if they are willing to meet before 29 April 2023 with the Directors of the Society and respective counsel, to discuss the resolution of outstanding concerns?

We shall endeavor to keep all Members of HOA fully apprised of the litigation as it progresses in the High Court of Justice and if we receive a response to our question from the HOA and PSI.

**Yours Faithfully,
Paul Lamb
President
The Apes Hill Benevolent Society, Inc**

Dear Member,

We write on behalf of the Board of Directors of the Apes Hill Club Homeowners Association Inc. (the "Association") to inform you of the date and time for the Annual General Meeting of Members (the "AGM").

The AGM will be held on Wednesday, May 17th, 2023 at 10:00 a.m. via Zoom. A link for the meeting will be circulated to all homeowners, in good financial standing closer to the date of the meeting.

There will be a seat on the Board of Directors up for election at the AGM. If you are interested in serving on the Board of Directors of the Association, kindly complete and submit the enclosed Nomination Form no later than **Wednesday, May 10th, 2023**. All completed Nomination Forms should be sent to info@bynoemartinez.com. If you wish to nominate another Member to serve on the Board of Directors of the Association, the Nomination Form should be completed and submitted as hereinbefore stated.

We enclose for your attention the Notice & Agenda for the AGM. All meeting materials will be circulated to Members prior to the date of the AGM.

If you are unable to attend the AGM in person, please execute and return the proxy, enclosed herewith, giving another individual or homeowner the power to vote on your behalf at the AGM no later than **Wednesday, May 10th, 2023**. Please note that all properties which are owned by companies **must** submit an executed proxy in order to attend and vote at the AGM.

If you have any questions, please do not hesitate to contact Ms. Ruan C. Martinez at Bynoe Martinez Services Inc. at 246-626-0111 or by email at rmartinez@bynoemartinez.com.

We look forward to seeing you all at the AGM on May 17th, 2023.

Best Regards,
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