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Via E-mail: steve@sanjuanrivervillage.com

Steve Wilkins
San Juan River Village POA

Re: 2019 Annual Meeting – Election of Board of Directors

Dear Steve:

I have had an opportunity to review the ballots and proxies tendered at the July 21, 2019 Annual Meeting of the San Juan River Village Property Owners Association. Six candidates were nominated for a five-member board. Written ballots were presented to members who personally appeared. Twenty-one written ballots were returned. In addition, several “Proxy Ballots” were tendered. The question presented is whether the “proxy ballots” are valid.

The San Juan River Village Property Owners Association (“SJR”) is a nonprofit corporation. As such, it is governed by both the Colorado Revised Nonprofit Corporation Act (“CNCA”) and the Colorado Common Interest Ownership Act (“CCIOA”).

CCIOA permits voting by proxy, referring to the provisions of CNCA for proxy voting. C.R.S. §38-33.3-310. CNCA permits a vote by proxy by having a member sign an appointment form – which is a written statement of the appointment to the proxy authorizing the proxy to act on behalf of the member. The proxy may be transmitted electronically. The proxy becomes effective when delivered to the nonprofit corporation. C.R.S. §7-127-203.

A proxy, however, is not a “proxy ballot.” Ballots must be presented to members by SJRV – not by other members. An action by written ballot must comply with the CNCA. To be valid, the “written ballot” must be presented by the corporation with an explanation stating the number of written ballots that need to be returned to meet a quorum, together with the number of approvals needed to approve each matter (other than the election of directors), and state the date when the written ballot must be received, and be accompanied by written information sufficient to permit each person casting a ballot to reach an informed decision on the matter. C.R.S. §7-127-109.

The “proxy ballots” were not presented to members by SJRV. Rather, the “proxy ballots” were presented by candidates. The “proxy ballots” did not include a complete list of nominated candidates for the election process. The “proxy ballots” solicited by Robert Soniat only included a vote for Robert Soniat – and did not list the names of the other

five candidates. The “proxy ballots” solicited by Julene Campbell included the names of five candidates, but excluded the name of Robert Soniat. In addition, the proxies given to Julene Campbell were authorized by members by email, but do not include signatures of the members providing the proxy. The “proxy ballots” solicited by Robert Soniat included only his name as a candidate, but otherwise complied with the proxy statute. However, the inclusion of the sentence: “The Proxy shall vote as follows for the Board of Directors: ROBERT SONIAT” in the proxies solicited by Mr. Soniat invalidate an otherwise valid proxy.

SJRV may accept or reject the vote of a member under a good faith review standard. C.R.S. §7-127-204. Although it appears the members who issued proxies to Julene Campbell and Robert Soniat did in fact voluntarily provide them with their proxy, the forms used do not comply with the CNCA. C.R.S. §7-127-203. Additionally, CCIOA requires that votes for contested positions on the executive board be taken by secret ballot. C.R.S. §38-33.3-310(1)(b)(A).

My recommendation is that the Board disqualify all votes issued at the July 21, 2019 meeting. A new election may be had by calling a Special Meeting for that purpose or issuing all Members entitled to vote with a written ballot. The new election is valid if the number of returned ballots meets the quorum requirement. The Bylaws of SJRV establish that a quorum is met if one-third of the Members (whose assessments are paid up) appear in person or by proxy. I do not know the number of eligible votes in SJRV.

The rules of a “secret ballot” are as follows:

Ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be unit owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the board or another person presiding during that portion of the meeting. The volunteers shall not be board members and, in the case of a contested election for a board position, shall not be candidates.

The “secret ballot” method is difficult to use for a mail-in meeting because the voting member’s name needs to be identified to verify the ballot.

Attached is a simple proxy form which can be used if a member wishes to appoint a proxy to vote for them at an Association meeting. As many ballots may be issued to the proxy as the number of valid proxies given to them. For example, if 10 voting members give their proxy to Julene Campbell, she can be given 11 ballots at the special meeting. The ballots should not be signed by the property owner. Rather, a list of eligible voting members should be made for the meeting, with a numbered ballot issued to that member for cross-reference.

Please let me know if you have any additional questions.

Sincerely,
/s/Tracy J. Cross
Tracy J. Cross

Enc.