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June 28, 2016

Board of Directors  
Diamondhead Country Club and  
Property Owners Association  
7610 Country Club Circle  
Diamondhead, MS 39525

RE: Challenge to Election Results

Dear Board Members:

This letter serves as our opinion on matters relating to the challenge by Carl Necaie of the results of the election held at the DPOA's annual membership meeting on June 18, 2016. Although we believe the answers to the questions at hand are clear, we note that there are *critical* problems relating to the DPOA's election procedures and the way those procedures are implemented. We have called many of those problems to the attention of the DPOA Board and staff over the past several years, but most of them have not been addressed.

The close election results this year indicate that the Diamondhead community is deeply divided. That division makes the situation all the more urgent. If the DPOA does not take steps to carefully review, correct, and improve its election procedures, there is little doubt that problems will continue to occur. We therefore include at the end of this letter, a list of the issues we have identified and advice and recommendations for going forward.

## I. BRIEF SUMMARY OF OPINIONS

Each of these opinions is discussed in detail, with citation to applicable authority, in Section IV.

- Donald Laird's election as President became final at the membership meeting on June 18, 2016, and he immediately took office.
- The recounts conducted June 22, 2016, are invalid.
- A valid recount may be ordered now only by majority vote of the membership at a special meeting held no later than September 30, 2016.

## II. STATEMENT OF RELEVANT FACTS

### A. *Appointment of John Fletcher and Kelsey Johnson as Election Co-Chairs*

At some point during early 2016, the Board appointed John Fletcher and Kelsey Johnson as co-chairs for the election. There are no recorded minutes of the appointment, so nothing further is known about the appointment.

### B. *Preparation of Election Instructions for Audit Firm*

In mid-April 2016, we were engaged by Mark Boyd to assist in the preparation of election instructions for the audit firm of Ericksen, Krentel and LaPorte. Mark provided us with the set of instructions used in the past and asked that we help update them with regard to absentee voting. Members voted in 2015 to amend the Bylaws to allow absentee voting, and the 2016 election was the first to implement absentee balloting. That change required significant revision of the election instructions. In addition to making revisions relating to absentee voting, we also helped clarify other existing procedures.

The 2016 Election Instructions cover the following topics:

- How members may deliver Absentee Ballots and Proxy Forms prior to the annual meeting
- How the audit firm should verify and count Absentee Ballots and Proxy Forms received prior to the annual meeting
- How lockboxes should be delivered to the Tellers Committee the day of the meeting
- The schedule for the day of the annual meeting
- Procedures for checking in members at the polls

- Procedures for distributing ballots and proxy forms
- Monitoring of the election by candidates
- How the Tellers Committee should tabulate the votes
- How election records should be retained

We were not engaged to conduct a critical evaluation of the existing procedures; however, in the course of working on the election instructions, we identified several problems relating to the POA's handling of elections. Some of these problems can be addressed only by amending the Bylaws. Those issues were called to the attention of Mark Boyd in May 2016, and it was agreed that it was impossible to address them this election cycle. We informed Mark that we would prepare a letter to the Board notifying it of the problems identified so that the Board could take steps to address them prior to the next election cycle.

The 2016 Election Instructions were approved by the Election Co-Chairs Fletcher and Johnson before they were sent to the audit firm.

*C. Membership Meeting Held Saturday, June 18, 2016*

The annual membership meeting was held Saturday, June 18, 2016. The meeting was called to order at 9:00 A.M., and shortly thereafter, the meeting was recessed and the polls were opened for voting. After the votes were tallied, Evelyn Necaie sealed the envelopes containing the ballots and proxy forms with packing tape. The sealed envelopes were placed in boxes, which also were sealed with packing tape. The envelopes and boxes were sealed in the presence of the Tellers Committee. The Election Instructions submitted to the audit firm directed that the envelopes also be signed by a teller; however, that was not done.

John Fletcher reconvened the meeting at 4:00 P.M. We have reviewed the Secretary's recording of the meeting. The following is a verbatim transcript of Fletcher's statement, in its entirety, at that time:

We're back in session from our recess and what we have for y'all is the results of the election. It was an amazing election. It had quite a turnout, and there was very little confusion. There was a little bit but not much. But y'all are gonna be amazed with the results. I was.

For President: Donald Laird, 638 votes. Carl Necaie, 636 votes. Two votes difference.

Vice President: Shane Finley, 538 and Vincent Tuccio, 548. John Deffes, 132.

Treasurer: Kelly Allen, 690. Joe Murray, 575.

Secretary: Betty Blakeney, 650. Nancy Sislow, 610.

And I'm not gonna read all the directors. I'll tell you the ones that won in the order in which they won.

For Director: Jerome Tullier, 569. Dick Nolan, 560. Teresa Ertel, 515.

There was quite a few others that were up there close but, you know, 40, 50 votes. It wasn't like the President, a two-vote difference. So you know the old saying, your vote might be the one that counts. It could have been in this election.

All right. Do I have a motion to adjourn?

At approximately 4:02 P.M., the motion to adjourn was made, seconded and approved by the members. It is not disputed that there was no challenge to the election results, and no request for a recount, made during the meeting.

After the annual meeting, Mark Boyd took the boxes containing the election records to the DPOA offices located at 7610 Country Club Circle and stored them in a credenza outside his office. Essential office and maintenance staff have access to the area where the records were stored.

Prior to the recount held Wednesday, June 22, 2016, Jim Tonglet of Ericksen, Krentel and LaPorte certified the election results that Fletcher announced at the annual meeting.

*D. Necaise Request for Recount Delivered Monday, June 20, 2016*

Carl Necaise personally delivered a letter to the DPOA offices at approximately 8:30 A.M. Monday morning. The letter requested a recount of the votes cast in the election for DPOA president. Mark Boyd sent the letter to the Election Co-Chairs, John Fletcher and Kelsey Johnson. Later that morning, Fletcher agreed to the recount, and Mark Boyd notified the two candidates by certified mail. Fletcher did not consult with Johnson in determining whether there should be a recount. Election Co-Chair Kelsey Johnson had no role in authorizing the recount but was later informed that a recount had been scheduled to take place.

*E. Recount Held on Wednesday, June 22, 2016*

On the morning of June 22, 2016, Mark Boyd removed the two sealed boxes containing the ballots and other election records from their storage place at 7610 Country Club Circle and took them to the conference room in the old POA offices located at 5300 Diamondhead Circle. The following parties were in attendance: John Fletcher, Mark Boyd, Carl Necaie, Donald Laird, Lindsay L'Ecuyer (observer for Necaie), Dick Nolan (observer for Necaie), Charles Ingraham (observer for Laird), Jim Tonglet (audit firm), Jennifer Fletcher (audit firm), and two other unidentified persons with the audit firm.

At 9:15 A.M., Mark unsealed the boxes in the presence of all assembled and removed the sealed envelopes. The envelopes containing the Proxies, Official Ballots, and Absentee Ballots were unsealed, one at a time, and recounted by the audit firm personnel. The recount tally was 637 votes for Necaie and 636 for Laird.

One ballot contained in the envelope of Official Ballots was identified as having the number '2' at the top highlighted in purple. For the reasons explained in Section II.F below, Mark Boyd believed the ballot should be counted as two votes. The audit firm then did a second recount, tallying the ballot in question as two votes, which yielded a tie vote of 637-637.

A lengthy, and reportedly heated, discussion ensued regarding the ballot in question, but no resolution was reached. At that point, John Fletcher contacted us and requested that we provide an opinion. Mark Boyd then resealed the envelopes containing the ballots and proxy forms, placed them in the boxes, and resealed the boxes. He then returned the sealed boxes to his office at 7610 Country Club Circle, where they presently remain.

*F. Facts Relating to the Ballot in Question*

Mark Boyd has given a written statement regarding what happened with the ballot in question. He explained that, during the voting, a member was given one ballot for each "member account number" the member had. However, proxy holders were not given separate ballots if they were casting proxy votes for multiple members and intended to cast them all for the same candidates. In those latter cases, the proxy holder received one ballot with the number of votes being cast written at the top and highlighted in purple. Boyd stated that, after the meeting, an unidentified staff member admitted mixing up the procedures. Boyd was informed that a member with multiple account numbers, who was not casting proxy votes, was given a single ballot with the number of member accounts marked at the top of the ballot and highlighted in purple.

We asked Mark why a member might have multiple member accounts and multiple member numbers. He explained that in many cases, but not all, a member who owns more than one piece of property in Diamondhead is assigned an additional member number for each additional piece of property. Some members have as many as four separate member numbers and are allowed to cast a separate ballot for each number. As discussed below in Section V.A.1 this procedure appears to be a clear violation of DPOA's Charter and Bylaws, which state that each member of DPOA may cast only one vote in elections for officers and directors.

This problem is not an issue only with regard to the ballot in question, but according to Mark, has been the procedure used in DPOA elections for many years. Mark states that he does not have any legal opinion on file that supports this procedure and says that, to his knowledge, none of his predecessors have questioned its legality or legitimacy. Mark believes that "somewhere in history it was decided this was acceptable practice."

*G. Further Events of June 22-26, 2016*

On June 22, 2016, Rick Tubertini advised John Fletcher that we would look into the question of who serves as president of DPOA while disputes relating to the election are resolved. Contrary to reports, we have never expressed the opinion to John Fletcher that he remained President of DPOA after the annual meeting on June 18, 2016.

On June 24, 2016, Fletcher sent an email to various persons, including the newly elected Board members, stating that he "only announced the unofficial tallies" of the vote at the annual meeting. The email then stated the "winners" of the election, including Carl Necaise as president, based on the "latest official" tallies.

On June 25, 2016, Fletcher sent an email to DPOA staff member Nancy Perkins, directing her to send out an eblast and post to the DPOA website a statement which began as follows:

Since the election was close in regards to the Presidents [sic] Position I deliberately did not announce the winners at the members meeting. I only announced the unofficial tallies. So based on the latest official tallies the winners are as follows:

President: Carl Necaize 637 votes

...

The statement continued to list the vote count for the winners of the other officer and director elections. Mark Boyd advised Perkins that, under Fletcher's own reasoning, he was no longer DPOA President and therefore had no authority to direct a staff member to send an eblast or post a statement to the website. To our knowledge, the eblast was never sent, and the statement was never posted to the website.

On Sunday, June 26, 2016, Fletcher sent the following email to Rick Tubertini:

Since you indicated we could not meet Monday 6/27/2016 at 3:00 PM, I did my own research and with a previous Email from your office (I sent you a copy) have made a decision regarding the validity of the ballot:  
[sic]

Therefore I am withdrawing my request for any guidance regarding the Diamondhead 2016 Election and do not require any Guidance.  
Thanks for your past assistance.

The email was signed by Fletcher as "President/Past President." It should be noted that Rick did not tell Mr. Fletcher the Board could not meet on Monday, June 27, 2016. Upon receiving Fletcher's email on Sunday, Rick forwarded it to Mark Boyd and advised Boyd that we had been working on the issues relating to the election for the previous few days and that we expected to submit our opinion the afternoon of June 27. Rick asked Boyd to confirm whether or not we should complete our study of the issues and prepare a written legal opinion. Boyd, in his capacity as General Manager, authorized us to "provide an opinion that would help resolve this matter."

Although Fletcher's June 26 email fails to state the basis of his decision, it appears from another email we received from Fletcher on June 24, 2016, that he based his decision on Article 7 of the POA Charter, which provides that each member is vested with the "right to one vote in the election of all officers." His reference to "a previous Email" from our office refers to our email from February 2016 where we reaffirmed our opinion that Article 7 requires DPOA to allow members not in good standing to vote in officer elections, an opinion we originally provided in July 2013.

### III. CONTROLLING AUTHORITIES

The issues addressed in our opinions set forth in Section IV are governed by the DPOA Bylaws (Revised April 2016) and *Robert's Rules of Order, Newly Revised* (11<sup>th</sup> Ed.) (Da Capo 2011). Section 3.9 of the Bylaws provides that *Robert's Rules* governs all matters relating to the conduct of membership meetings. Elections take place during the annual membership meeting and therefore must conform to the procedures in *Robert's Rules*. Thus, the primary sources of authority for all matters relating to DPOA elections are the Bylaws and *Robert's Rules*. The Board of Directors, Election Chair, or DPOA staff may develop additional procedures to facilitate the election, but those procedures may not conflict with the Bylaws or *Robert's Rules*.

Under Section 4.1 of the Bylaws, the Election Chairperson "shall conduct the election in accordance with the election procedures." The authority of the Election Chair therefore is limited to only that necessary to carry out the election procedures. For purposes of Section 4.1, the "election procedures" are limited to those covered by (1) the Bylaws, (2) *Robert's Rules*, and (3) any additional procedures to facilitate the election, as long as those procedures do not conflict with the Bylaws or *Robert's Rules*.

### IV. OPINIONS

A. *Opinion No. 1: Donald Laird's election as President became final at the membership meeting on June 18, 2016, and he immediately took office.*

After the votes were tallied by the audit firm during the annual meeting, meeting chair John Fletcher reconvened the meeting and announced the election results. He announced to the membership that Donald Laird had received 638 votes and Carl Necaie had received 636 votes. According to *Robert's Rules*, an election to an office becomes final immediately if the candidate is present when the results are announced at the meeting or if he has consented to his candidacy. *Robert's Rules* §46. There is no dispute that Donald Laird consented to his candidacy as President. *Robert's Rules* further provides that an "officer-elect takes possession of his office immediately upon his election's becoming final..." §46. Laird's election therefore was final upon the announcement of the election results at the meeting, and took possession of the office of President immediately.

Mr. Fletcher now claims that, upon reconvening the meeting after the votes were tallied, he "only announced the unofficial tallies" of the vote and did not intend to declare the winners. These claims are not supported by the recording of the meeting. Fletcher made clear that he was providing the "results" of the election,

stating “what we have for y’all is the results of the election” and telling the membership “y’all are gonna be amazed with the results.” When announcing the new directors, he stated that he would read “the ones that *won* in the order in which they *won*.” (Emphasis supplied.) At no point were the tallies described as “unofficial.”

Also of importance, as discussed further in Section IV.B, there was no motion for a recount made at the annual meeting, nor did anyone at the meeting raise a point of order to contest the announced results of the election.

*B. Opinion No. 2: The recounts conducted June 22, 2016, are invalid.*

According to *Robert’s Rules*, “the voting body itself is the ultimate judge of election disputes, [and] only that body has the authority to resolve them in the absence of a bylaw or special rule of order...” §46. When an election has been conducted at a membership meeting, even the Board of Directors of the organization has no authority to “direct a recount concerning the announced election result.” §46.

*Robert’s Rules* §45 sets forth the procedure required for obtaining a recount:

A recount may be ordered by the voting body, by a majority vote, at the same session at which the voting result was announced.... A recount may also be ordered at a special session properly called for that purpose, if held within a quarterly time interval of the session at which the voting result was announced and before the next regular session.

Under section 45, a recount of the 2016 POA election would be valid only if it were (1) ordered by a majority vote of the membership, and (2) the membership ordered the recount at either (a) the same annual meeting where the voting result was announced, or (b) a duly called and noticed special meeting held within three months of the 2016 annual meeting. The recounts conducted June 22, 2016, do not conform with the requirements of *Robert’s Rules*, as incorporated in the DPOA Bylaws, and therefore are not valid.

Carl Necaise submitted his request for a recount two days after the annual meeting was adjourned. The recounts were authorized by John Fletcher and not ordered by a majority vote of the membership. Fletcher had no authority to order the recounts. All recounts must be ordered by the voting body—in this case, the DPOA membership. Even if Fletcher were acting in his capacity as Election Chair when he ordered the recount, he still lacked the authority to take any action not in conformity with *Robert’s Rules*, including directing a recount without first obtaining a majority vote of the membership.

Because the recounts were not valid, the issue of the disputed ballot is moot. However, in the interest of thoroughly addressing the questions raised, we note that *Robert's Rules* §45 sets forth the following procedure:

If the meaning of one or more ballots is doubtful, they can be treated as illegal if it is impossible for them to affect the results; but if they may affect the result, the tellers report them to the chair, who immediately submits to the assembly the question of how these ballots should be recorded. When reporting doubtful ballots, the tellers must be careful whenever possible not to show how the decision would affect any of the candidates.

Here again, only the voting body has the authority to decide how the ballot at issue should be counted. Disputes relating to ballots must be decided by the membership. If the manner in which DPOA's elections are conducted make it impractical to follow this procedure for dealing with disputed ballots, DPOA should consider ways to amend its Bylaws to provide an alternative procedure. But for now, the current Bylaws and provisions of *Robert's Rules* are binding.

If you or Mark Boyd would like our advice regarding notice to Carl Necaie that the recounts were invalid, we are happy to offer our assistance.

C. *Opinion No. 3: A valid recount may be ordered now only by majority vote of the membership at a special meeting held no later than September 30, 2016.*

As noted in Section IV.B above, *Robert's Rules* requires a recount to be ordered by the voting body, by a majority vote, either at the same meeting where the election results were announced or at a duly called and noticed special meeting "held within a quarterly time interval" of the meeting where the election results were announced. §45. According to *Robert's Rules*, a special meeting would be "held within a quarterly time interval" if it were held "at any time during or before the third calendar month after the calendar month in which [the annual meeting was held]." §9. The third calendar month after the annual meeting will be September. Therefore, at this point, the only method by which a valid recount can be conducted is by majority vote of the members at a special meeting held no later than September 30, 2016.

In addition, if a special meeting is held and the membership orders a recount, the recount should be conducted during the special meeting so that the members may decide how to count the disputed ballot, as discussed in Section IV.B above.

Questions have been raised regarding whether the integrity of the ballots, proxy forms, and other voting records has been preserved in the time since the annual meeting. Specific concerns relate to the fact that the audit firm did not retain custody of the election records after the annual meeting. Instead, the records were sealed in the presence of the tellers and then stored by Mark Boyd in the POA offices.

The retention of election records is addressed in *Robert's Rules* §45:

After completion of an election or balloting on a motion, unless the voting body directs otherwise, the tellers place the ballots and tally sheets in the custody of the secretary, who keeps them under seal until the time within which a recount may be ordered expires, and then destroys them.

*Robert's Rules* does not require the audit firm to retain election records. The *Rules* also do not direct a specific manner or standard for the sealing of records. The DPOA governing members or staff are therefore free to establish any method for sealing elections records. After this year's election, DPOA staff sealed the records with packing tape in the presence of the tellers. Although the tellers were directed to sign the sealed records, they did not do so; however, the tellers' signature is not required by *Robert's Rules*.

The requirements of *Robert's Rules* §45 were not following perfectly, though. The records were not placed in the custody of the new DPOA secretary; instead, they were stored in the DPOA offices by Mark Boyd. We do not believe that fact automatically renders the ballots tainted. The question of whether the election records retain sufficient integrity for a recount is one for the voting body to decide. If a special meeting of members is held to determine whether to order a recount, the members may consider and weigh all the facts relating to the sealing and storage of the records after the annual meeting, as well as their unsealing and resealing during the recounts held June 22. Only the membership has the authority to decide whether the records are too tainted for a recount.

## **V. FURTHER ADVICE AND RECOMMENDATIONS**

In examining the manner in which the 2016 election was conducted, and the aftermath of the election, we found numerous troubling issues relating to DPOA's election procedures and the manner in which those procedures are carried out by the meeting chair, the Election Chair, DPOA staff, and the audit firm representatives. We strongly advise the DPOA to conduct a comprehensive review of

its election procedures and take steps to *at least* correct the critical issues identified in Section V.A.

A. *Critical Election Problems*

We have identified the following *critical* problems with DPOA's election procedures. We strongly advise that you take steps to address these issues. The failure to correct these issues will leave future election results vulnerable to challenges.

If you would like us to provide further advice or assistance in addressing these problems, we would be happy to work with you on that.

1. *Allow one vote per member, not member account, in electing officers.*

We understand that in all DPOA elections in recent years, members have been allowed to cast one vote for each "member account" they have. This procedure has allowed some members who own more than one lot to cast multiple votes for officers. This procedure appears to be a clear violation of Article 7 of the DPOA Charter, which allows one vote per member in officer elections, and Section 3.7 of the DPOA Bylaws, which allows one vote per member in both officer and director elections. Mark Boyd tells us this is a longstanding procedure of the DPOA, but he stated that he does not know the authority for the policy and does not have any legal opinion on file relating to it.

Our opinion is that a member who owns multiple lots should be allowed only one vote in officer and director elections, regardless of how many member accounts or member numbers they have. We understand that one member may be given multiple numbers based on particular language of conveyance contained in their deeds. However, we have not been provided with the specifics of that practice of assigning member numbers. We strongly advise that this procedure be reviewed and evaluated for conformance to the Charter and Bylaws.

We note that this practice was an issue with regard to the ballot disputed at the invalid recount session held June 22, as discussed in Section II.F. However, this issue would not have affected *only* the disputed ballot; rather, it would have affected *all* members who hold multiple member numbers and who cast a ballot for each number.

2. *Do not allow absentee voting on propositions unless the Bylaws are changed.*

At the 2015 annual meeting, the members voted to amend Section 3.7 to allow absentee voting. The amendment allows for absentee voting “in any election of DPOA officers and directors” but does not allow for absentee voting on propositions. We did not represent the DPOA at the time the amendment was drafted, so we are not certain whether the omission of propositions from absentee voting was an oversight or if there was a reason for it.

This problem was not an issue in this year’s election because there were no propositions on the ballot. However, in a year when propositions are to come before the members for a vote, absentee ballots may not be used for the propositions unless the Bylaws are amended to allow it.

3. *Carefully determine whether the proper quorum exists.*

At the annual meeting, the meeting chair has the responsibility to determine whether a quorum exists. Determining whether a proper quorum exists is crucial because any action taken without a quorum, including the results of an election, is null and void. Without a quorum, the only actions that may be taken at the meeting are votes on motions to adjourn, recess, or take measures to obtain a quorum. *Robert’s Rules §40.*

In DPOA’s case, the issue of determining a quorum is fairly complicated due to provisions of the Bylaws and the Mississippi Nonprofit Corporation Act. There are different quorum requirements that apply to (1) officer and director elections, (2) votes on propositions known to members in advance of the meeting, and (3) any matters not described in the meeting notice. It is absolutely essential that DPOA staff and/or the audit firm and/or the Election Chair and/or the meeting chair keep careful count of the members present at the meeting in person or by proxy *and* the number of lots represented by those members so that the meeting chair will know whether a quorum exists for the different purposes, as applicable.

- a. *For purposes of officer and director elections, determine the quorum based on the number of members, not lots.*

According to DPOA Bylaws Section 3.6, a quorum requires the presence, in person or by proxy, of “fifteen (15%) percent of the members.” Our understanding is that the audit firm and DPOA staff have been determining the quorum by using only a count of *lots* represented at the meeting, rather than *members*, for all purposes relating to election. This practice must be changed. The quorum

requirement for the election of officers and directors should be based on the number of members present at the meeting in person or by proxy and the number of members who have submitted valid absentee ballots. The number of member *accounts* also could be used, as long as a member with multiple accounts is counted only once.

Based on our review of the records of this year's annual meeting, there appears to be no doubt that a quorum of members existed for purposes of the election of officers and directors.

- b. For purposes of propositions known to members in advance of the meeting, determine the quorum based on members present in person or by proxy but not members voting absentee.*

Whereas the voting power for purposes of the election of officers and directors is based on members, the voting power on propositions is based on lots under Section 3.7 of the Bylaws. However, as already noted, Section 3.6 provides that the quorum requirement for membership meetings is based on the number of members present in person or by proxy. Arguably, these sections of the Bylaws are in conflict, but in our opinion, the plain language of Section 3.6 means that the determination of the quorum for purposes of propositions should be based on a count of members, even though the voting power on propositions is based on lots. However, as noted in Section V.A.2, absentee ballots may not be cast on propositions. Therefore, for purposes of propositions, absentee ballots should not be considered. The determination of the quorum should be based only on a count of persons present in person or by proxy.

The forum requirement discussed in this section also would apply to action on any matters stated in the meeting notice that are not on the ballot in the form of a proposition.

- c. For action on any matters raised at the annual meeting that are not stated in the meeting notice, there must be a quorum of 1/3 of the voting power.*

As we previously advised in our letter to the DPOA President dated May 20, 2013, Section 79-11-217(4) of the Mississippi Nonprofit Corporation Act imposes a quorum requirement of 1/3 of the "voting power" for all matters not described in the meeting notice, including all motions from the floor raised for the first time at the meeting. Section 3.7 of the Bylaws gives members in good standing one vote for each lot owned on "any matter other than the election of Officers and Directors." Therefore action on any motions from the floor during the annual meeting requires

not only the 15%-of-members quorum mandated by Section 3.6 of the Bylaws, but *also* the presence, in person or by proxy, of members who own 1/3 of the total number of lots owned by members in good standing (not 1/3 of all lots). For purposes of determining these quorums, absentee ballots may not be counted.

For example, in order for the results of the election of officers and directors to be valid, you need a quorum of only 15% of members to vote in person, by proxy, or by absentee ballot. But if the election results are announced and a member makes a motion for a recount, or if the chair presents a disputed ballot to the members for consideration, then those matters may not be voted on unless there is *also* a quorum of members who own 1/3 of the total number of lots owned by members in good standing, and those members must be present in person or by proxy—absentee ballots do not count. The potential for such situations makes it crucial that DPOA properly track the count of members present at the meeting in person or by proxy, as well as the number of lots represented, so that the meeting chair will know whether a quorum exists to allow voting on matters not described in the meeting notice.

4. *Observe the procedures of Robert's Rules of Order for the conduct of annual meetings and elections.*

As explained in Section III above, Section 3.9 of the DPOA Bylaws provides that *Robert's Rules of Order* governs all matters relating to the conduct of membership meetings, including elections. The failure to observe proper parliamentary procedure can result in actions taken at the meeting being null and void. Therefore, it is essential that the chair of the annual meeting (usually the President), the outgoing Secretary, and the Election Chair all are familiar with the basic requirements of *Robert's Rules* and that a copy of the current, complete edition of *Robert's Rules* is available to consult during the meeting.

The DPOA Board might also consider appointing a staff person to serve as parliamentarian. The parliamentarian would be required to have an strong command of *Robert's Rules* (either through self-study or outside education) in order to serve in an advisory capacity during membership meetings and elections. Having the parliamentarian be a staff member would allow their expertise to carry forward over the years as administrations change.

B. *Further Advice and Recommendations*

There are several other ways DPOA could clarify or improve its election procedures. The following issues are not critical but should be considered by DPOA as part of a comprehensive review and evaluation of its election procedures.

1. *Enforcement of election rules and procedures*

In working on the Election Instructions for the audit firm, we learned that DPOA staff try to strike a balance between enforcing election rules and accommodating members who request exceptions to the rules. For example, certain accommodations were made to allow members to deliver completed proxy forms or absentee ballots in ways not offered to the general membership. In election matters, allowing exceptions to rules—even ones that appear trivial—can result in challenges based on differential treatment. We therefore recommend that DPOA staff, the Election Chair, and the audit firm all be advised to enforce election rules and procedures in a consistent way that applies to all members. DPOA members who may be used to receiving special accommodations should be advised that the rules relating to the election will be strictly enforced.

2. *Recordkeeping*

We have recurring concerns about the manner in which DPOA records are kept, including those relating to elections. Of particular note in this matter, there were no meeting minutes reflecting the Board's appointment of the Election Co-Chairs. All meetings of the Board, the membership, or any committee at which *any* action takes place *must* be documented by minutes, and those minutes must be permanently kept on file at the DPOA offices in a way that makes them accessible. The meeting minutes *must* record every vote and the action taken.

The minutes of these meetings are part of the DPOA's official legal records. They are the historical record of the DPOA and must not be destroyed. The decisions of the membership and the Board continue to be binding unless they are overturned by a later vote. Therefore, it is essential that such decisions be available to the DPOA staff and Board, as well as legal counsel representing DPOA.

We advise indexing the minutes of all past meetings (Board, membership, and committees) and keeping those indexes up to date at all times. We also advise numbering all pages of the minute books consecutively to ensure that records are kept complete and that any missing pages will be obvious.

Also, to the extent DPOA has any concerns about the manner in which election records are sealed and stored after the annual meeting, it should consider implementing new election procedures to address those concerns. Many additional measures to preserve the integrity of the records could be implemented without amending the Bylaws.

Sincerely,

HAILEY, MCNAMARA, HALL,  
LARMANN & PAPAIE, LLP

A handwritten signature in black ink, appearing to read "John Gutierrez". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

H. John Gutierrez  
Richard B. Tubertini

cc: Mark Boyd, DPOA General Manager