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June 11, 2021

Jessica H. Miller, Esq.  
LAW FIRM OF JESSICA H. MILLER LLC  
595 Canyon Blvd.  
Suite 9  
Boulder, CO 80302

Re: Roosevelt Ridge Homeowners Association, Inc.  
Records Request Pursuant to C.R.S. § 38-33.3-317 and the Association's Inspection and Copying of Records Policy

Dear Ms. Miller:

I am perplexed by your continued refusal to discuss numerous legal issues with me and to, instead, avoid communicating with me altogether. You are required to act in the best interests of the Roosevelt Ridge Homeowners Association, Inc. ("Association"), and not the individual board members.

I am requesting that you agree to speak with me early next week to resolve these issues.

1. Board's Failure to Comply with CRS 38-33.3-317 Concerning Our Clients' Records Request.

As you well know, our clients demanded the production of electronic records and the inspection and copying of other records pursuant to CRS 38-33.3-317 and the Association's records inspection policy. Per the inspection policy, the Association was required to produce the electronic records and make all other requested records available for inspection by no later than this past Tuesday, June 8, 2021, at 9:00 a.m. However, we have not received any electronic records or any communication from you or the Board that the records are available for inspection. As such, the Association, through the Board, is currently in breach of the Declaration and Section 317 of CCIOA.

Please confirm the Board will produce the electronic records immediately and advise as to when next week such records will be available for inspection and copying by our clients.

2. Board's Installation of Unapproved Election Rules Pursuant to Your Legal Advice.

This week, our clients learned from the Board that the ballots for the upcoming election would include blank spaces for owner's to fill in candidates even though such a rule was not discussed and approved at the last Board meeting and, instead, the Board did adopt a rule at the last Board meeting that candidates were required to submit their nominations with candidate letters by no later than 5:00 p.m. on June 3, 2021. Specifically, Ted Bertele, in his motion at the Board meeting, stated as follows:

“So, in the past, we’ve done mail-in ballots. I believe that’s the appropriate mechanism that we should use, and so what I’m proposing is that from here until the third of June, which gives you about a week, Members can write a letter of intent or a director-candidacy letter and submit it to the board. The board will collect all them. Umm, and then, and by five o’clock on the third we’ll present this, we’ll distribute this, these notes to the membership. Later today so everyone has this, but by five o’clock on the third, intent to run and a candidacy letter is due. Once the board has collected that. And when we get a letter we will confirm receipt of it. That way you know that it went to us we’ll confirm receipt, send it back to you; we have it.”

At that Board meeting, the Board proceeded to vote and approve the proposed election rules, including this rule. At no time during that meeting did the Board ever approve any rule that the Association would accept candidates nominated after 5:00 p.m. on June 3<sup>rd</sup> by way of fill-in-the-blank lines in the ballots. It is our understanding that no prior ballot for election for the Association’s board contained any similar blanks to be completed. This appears an unwarranted attempt by the Board, which includes Ted Bertele who is running for re-election, to try to get a specific slate of candidates unknown to many of the members to be elected.

In its email to the membership entitled “2021 Election Process” outlining the approved election rules, the Board states:

“6/3/21, 5:00 pm MDT — Call for candidates, any member who intends to run must contact the BOD via HOA email (rooseveltridgebod@gmail.com) and state that they would like to run for a board position by this deadline. The candidate may provide a letter to the community to be distributed with all the other candidate letters, there is no obligation to do so. The HOA will provide confirmation of receipt via email.”

In fact, Mr. Bertele failed to comply with the Board’s rules as he submitted his candidacy and candidate statement a day late. However, as he submitted his candidacy for re-election, he was required to disclose a conflict and not participate in any vote on any election rules after the May 25<sup>th</sup> Board meeting, which would leave the Board with only one Board member who could have participated in any attempt by the Board to act without a meeting. As one Board member is not enough to approve any such act, the act is invalid.

More troubling is the Board’s statement that you advised the Board to include the fill-in-the-blank lines in the ballot. As you have provided Mr. Bertele personal advice concerning his liability for outstanding assessments on Lots 1 and 3 and Parcel C, as he admitted during the last Board meeting, you would need to abstain from providing any legal advice which may provide Mr. Bertele, and the other Board member, the ability to try to sway votes in such a way that could allow Mr. Bertele to avoid liability for outstanding assessments through the re-election of Mr. Bertele and other currently unknown Board members supportive of Mr. Bertele and the proposed Settlement Agreement. Further, to do so in a matter for the Board to approve such a rule outside of a Board meeting called for the purpose of setting such election rules is improper.

This clearly is an attempt by the Board to further delay any finality of the Board election and a change in the current Board. The Board, and you, had to expect that our clients would challenge this invalid rule in which case the Board would try to place the blame of any delay on our clients so the current Board members could continue to maintain their Board positions as long as possible. However, please be advised that our clients will not allow such misconduct to continue.

As such rule is invalid and that portion of the ballot is invalid, unauthorized, and ineffective, any votes made by owners for candidates who did not provide their candidacy timely must be disregarded in the count. Insofar as the Board considers Mr. Bertele's candidacy timely, our client will not contest that decision. As such, only four candidates may be elected to the three open positions on the Board.

If you do not agree, please explain the basis for your position and on what basis did the Board have the right to approve such new rules outside of the May 25<sup>th</sup> Board meeting. Also, pursuant to Section 317 of CCIOA and the Association's records inspection policy, please accept this as a new request for the production of the following records in electronic format or for inspection and copying as required by Section 317 of CCIOA and the records inspection policy by no later than 9:00 a.m. on Friday, June 18, 2021: (a) all written communications, including emails, related to the act by the Board approving the acceptance of candidates for the Board after June 3, 2021 at 5:00 p.m. and all votes in favor of such act; (b) all written communications, including emails, related to the act by the Board approving the inclusion of fill-in-the-blank lines in the ballots for the upcoming election of directors and all votes in favor of such act; and (c) all written communications between the Board, or either current director on the Board, and you or your firm related to each of these acts.

As to the latter request, the Board waived the attorney-client communication privilege by advising the membership that such new rules were adopted through advice of counsel.

### 3. Your Continued Representation of the Association.

We are perplexed by your apparent decision that you may continue to represent the Association as legal counsel. At the last Board meeting, Mr. Bertele made it clear that he was present during discussions and otherwise privy to communications in which you provided legal advice concerning the outstanding assessments to Lots 1 and 3, which he owns, and participated in the negotiations, preparation and consideration of the proposed Settlement Agreement which you drafted and upon which you provide legal advice. Such advice included Mr. Bertele's liability and responsibility for outstanding assessments. In fact, such advice would also be relevant to whether or not the Board provided notices to Mr. Bertele per the Association's collection policy and whether or not the Board, in turn, suspended Mr. Bertele's (and Lone Pine's) right to vote at this upcoming election.


The latter directly impacts this upcoming Board election and Mr. Bertele's possibility of re-election and whether he is in good standing with the Association in order to serve.

However, it is clear that you continue to advise Mr. Bertele and the Board on all matters affecting the Association, including matters personal to Mr. Bertele and involving conflicting interest transactions involving Mr. Bertele.

Please immediately withdraw as counsel for the Association or provide us with an explanation as to why you believe you are not conflicted out of continuing to represent the Association in these matters.

I look forward to discussing these matters with you. Please contact me and let me know your availability on Monday (June 14<sup>th</sup>) or Tuesday (June 15<sup>th</sup>) to discuss these matters further. I hope you do not continue to hide from addressing these matters with me.

Very truly yours,



LEE H. FREEDMAN

For The Firm

cc: Charles and Deborah Nolan