STEVE SISOLAK Governor

STATE OF NEVADA



MICHAEL J BROWN Director

SHARATH CHANDRA Administrator

DEPARTMENT OF BUSINESS AND INDUSTRY REAL ESTATE DIVISION

www.red.nv.gov

April 1, 2019

Certified No. 7018 1130 0001 8302 3907

Leach Kern Gruchow Atten: John E. Leach, Esq. 2525 Box Canyon Dr. Las Vegas, Nevada 89128

Re: NRED v. THOMAS KELLY Case No: 2018-395

Mr. Leach:

Enclosed herewith you will find the STIPULATION AND ORDER FOR SETTLEMENT OF DISCIPLINARY ACTION entered by the Nevada Commission for Common-Interest Communities and Condominium Hotels at the meeting held March 12, 2019 in Las Vegas, Nevada.

- 1. Mr. Kelly shall pay a fine in the amount of five thousand dollars (\$5,000.00) in thirty (30) days.
- 2. Mr. Kelly shall complete ten (10) hours of continuing education in courses approved by the Commission within six (6) months.

FINE DUE DATE: MAY 7, 2019 EDUCATION DUE DATE: OCTOBER 2, 2019

Submit your payment to the address below. Checks or money orders are to be made payable to the "Nevada Real Estate Division".

Nevada Real Estate Division 3300 West Sahara Avenue, Suite 350 Las Vegas, Nevada 89102

There are two copies of this letter enclosed, one copy is marked "Remittance Copy" and should be returned with your check or money order to the Nevada Real Estate Division. The purpose of the remittance copy is to assure proper posting of fines to your disciplinary file.

Please note that Division staff does not have the authority to extend the due date for your fine or education requirements that have been ordered by the Commission. If you find that you are unable to meet the required due date, you will need to request in writing that you be placed on the agenda for a Commission hearing in which the respondent will be allowed to request an extension from the Commission. This request should be made several months prior to the due date.

Please contact me if you-have questions regarding this matter.

Sincerely Tetalyn Lewis

Administration Section Manager Telephone: (702) 486-4036 Email: Teralyn.Lewis@red.nv.gov

Cc: Sharath Chandra, Administrator Compliance Michelle Briggs, Senior Deputy Attorney General

3300 W. Sahara Avenue, Suite 350, Las Vegas, Nevada 89102-3203Telephone: (702) 486-4606Fax: (702) 486-40671818 E. College Parkway, Suite 110, Carson City, Nevada 89706-7986Telephone: (775) 684-1900Fax: (775) 687-4868

1	BEFORE THE COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS STATE OF NEVADA		
2			
3	Sharath Chandra, Administrator, Real	Case Nos. 2018-395	
4	Estate Division, Department of Business & Industry, State of Nevada,	FILED	
5	,		
6	Petitioner,	APR 01 2019	
7	vs.	NEVADA COMMISSION OF COMMON INTEREST COMMUNITIES	
8	Thomas Kelly,	AND CERICONINHUM HOTELS	
9	Respondent.	GAD	
10			
	STIPULATION AND ORDER FOR		
11	SETTLEMENT OF DISCIPLINARY ACTION		
12	Petitioner, Real Estate Division of the Department of Business and Industry, State of		
13	Nevada (the "Division"), through its Adm	inistrator, Sharath Chandra, and Respondent,	

13 Nevada (the "Division"), through its Administrator, Sharath Chandra, and Respondent,
14 Thomas Kelly enter into this STIPULATION AND ORDER FOR SETTLEMENT OF
15 DISCIPLINARY ACTION ("Stipulation and Order") as follows.

JURISDICTION

1. During all relevant times mentioned in the complaint, KELLY held, and currently holds, a supervisory community manager certificate from the Division (CAM.000025.SUPR) and is, therefore, subject to the jurisdiction of the Division and the provisions of NRS Chapters 116 and 116A and NAC Chapters 116 and 116A.

FACTUAL ALLEGATIONS ALLEGED IN THE COMPLAINT

2. Beginning in December 2017, the Division opened three investigations against Riverwalk Homeowners Association (the "Association") based on complaints filed with the Division and began requesting documents from its community manager, RESPONDENT THOMAS KELLY.

3. After receiving three letters from the Division, on or about January 29, 2018,
KELLY called the investigator and asked for an extension to February 2, 2018, which was
given.

14. The Division received no response and sent a fourth letter dated February 21,22018.

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5. Receiving no response to the fourth letter, the Division opened this investigation against KELLY for impeding the Division's investigation.

6. The Division sent letters dated April 5, 2018, June 6, 2018, and September 7, 2018 to RESPONDENT to as many addresses as the investigator could find, but received no response.

VIOLATIONS OF LAW

ALLEGED IN THE COMPLAINT

7. KELLY violated NRS 116A.630(10) and NAC 116A.320 by failing to cooperate with the Division in resolving complaints filed with the Division.

12 8. KELLY violated NRS 116A.640(2)(a) and NAC 116A.345(2)(a) by impeding or
13 otherwise interfering with an investigation of the Division by failing to comply with a
14 request of the Division to provide documents.

9. KELLY violated NRS 116A.640(2)(c) and NAC 116A.345(2)(c) by impeding or
otherwise interfering with an investigation of the Division by concealing facts or documents
relating to the business of a client.

18 10. KELLY violated NAC 116A.355(2)(f) by committing an act of unprofessional 19 conduct by failing to cooperate with the Division in the investigation of a complaint 20 including, without limitation, failure to produce any document, book or record in the 21 possession or control of the community manager after the Division requests the production 22 of such document, book or record in the course of an investigation of a complaint.

11. KELLY violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(a)) by
committing professional incompetence by demonstrating a significant lack of ability,
knowledge or fitness to perform a duty or obligation owed to a client.

26 12. KELLY violated NAC 116A.355(1)(a)(2) (through NAC 116A.355(3)(b)) by
27 committing professional incompetence by failing to exercise reasonable skill and care with
28 respect to a duty or obligation owed to a client.

1	13.	KELLY violated NAC 116A.355(1)(a)(1) and (2) (through NAC 116A.355(4)(g))		
2	by committ	by committing unprofessional conduct or professional incompetence by failing to act in the		
3	best interes	sts of the Association.		
4	14.	KELLY violated NRS 116A.630(1)(a) and NAC 116A.320 by failing to act as a		
5	fiduciary in his relationship with the Association.			
6	15. KELLY violated NRS 116A.630(1)(b) and NAC 116A.320 by failing to exercise			
7	ordinary and reasonable care in the performance of his duties.			
8	16. KELLY violated NRS 116A.630(2)(a) and NAC 116A.320 by failing to comply			
9	with state laws.			
10	DISCIPLINE AUTHORIZED			
11	Pursuant to the provisions of NAC 116A.360 the Commission has discretion to impose			
12	discipline as it deems appropriate, including, but not limited to one or more of the following			
13	actions:			
14	1.	Revoke or suspend the certificate;		
15	2.	Refuse to renew or reinstate the certificate;		
16	3.	Place the community manager on probation;		
17	4.	Issue a reprimand or censure to the community manager;		
18	5.	Impose a fine of not more than \$5,000 for each violation of a statute or		
19	regulation;			
20	6.	Require the community manager to pay restitution;		
21	7.	Require the community manager to pay the costs of the investigation and		
22	hearing;			
23	8.	Require the community manager to obtain additional education relating to the		
24	management of common-interest communities; and			
25	9.	Take such other disciplinary action as the Commission deems appropriate.		
26	The Commission may order one or any combination of the discipline described above.			
27	SETTLEMENT			
28	17.	KELLY shall pay an administrative fine in the amount of \$5,000. Payment of		

1 the fine shall be due 30 days from the date this Stipulation and Order is signed by the 2 Commission. The fine shall bear interest at the rate of 5.5% per annum beginning on the 3 day after it becomes due. KELLY shall be in default of the terms of this Stipulation and 4 Order if the fine is not paid in full within 90 days from the date this Stipulation and Order 5 is signed by the Commission.

6 18. KELLY shall complete 10 hours of continuing education in courses approved by
7 the Commission within 6 months from the date this Stipulation and Order is signed by the
8 Commission.

9 19. The Division agrees not to pursue any other or greater remedies or fines in
10 connection with KELLY'S alleged conduct referenced herein.

11 20. KELLY and the Division agree that once this Stipulation is approved and fully
12 complied with by KELLY, the Division will close this matter.

13 21. This Stipulation and Order includes any claims that could have been included
14 in a supplemental or amended complaint arising from the same operative facts, transactions
15 and occurrences in existence as of the effective date of this agreement. However, this
16 Stipulation and Order does not include claims arising from facts or circumstances which
17 have been concealed by KELLY.

18 22. KELLY agrees that if the terms and conditions of this Stipulation and Order
19 are not met, the Division may, at its option, rescind this agreement and proceed with
20 prosecuting the Complaint before the Commission.

21 23. KELLY agrees and understands that by entering into this Stipulation and 22 Order, KELLY is waiving his right to a hearing at which KELLY may present evidence in his defense, his right to a written decision on the merits of the Complaint, his right to 23 24 reconsideration and/or rehearing, appeal and/or judicial review, and all other rights which may be accorded by the Nevada Administrative Procedure Act, the Nevada Uniform 25 26 Common-Interest Ownership Act and accompanying regulations, and the federal and state 27 constitutions. KELLY understands that this Stipulation and Order and other 28 documentation may be subject to public records laws. The Commission members who review

this matter for approval of this Stipulation and Order may be the same members who ultimately hear, consider and decide the Complaint if this Stipulation and Order is not performed by KELLY.

24. Each party shall bear its own attorney's fees and costs.

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25. <u>Stipulation is Not Evidence.</u> Neither this Stipulation and Order nor any statements made concerning this Stipulation and Order may be discussed or introduced into evidence at any hearing on the Complaint, if the Division must ultimately present its case based on the Complaint filed in this matter.

9 26. <u>Release.</u> In consideration of execution of this Stipulation, RESPONDENT KELLY for himself, his heirs, executors, administrators, successors, and assigns, hereby 10 releases, remises, and forever discharges the State of Nevada, the Department of Business 11 12 and Industry and the Division, and each of their respective members, agents, employees 13 and counsel in their individual and representative capacities, from any and all manner of 14 actions, causes of action, suits, debts, judgments, executions, claims, and demands whatsoever, known and unknown, in law or equity, that RESPONDENT KELLY ever had, 15 now has, may have, or claim to have, against any or all of the persons or entities named in 16 17 this section, arising out of or by reason of the Division's investigation, this disciplinary action, and all other matters relating thereto. 18

Indemnification. RESPONDENT KELLY hereby indemnifies and holds 19 27. 20 harmless the State of Nevada, the Department of Business and Industry, the Division, and 21 each of their respective members, agents, employees and counsel in their individual and 22 representative capacities against any and all claims, suits, and actions brought against said 23 persons and/or entities related to the Release set forth above, including against any and all 24 expenses, damages, and costs, including court costs and attorney fees, which may be sustained by the persons and/or entities named in this section as a result of said claims, 25 suits, and actions. 26

27 28. KELLY has signed and dated this Stipulation only after reading and
28 understanding all terms herein.

	Real Estate Division,
1	Department of Business & Industry, State of Nevada
2	Thomas Kelly
3 4	By:
4 5	Approved by:
6	AARON FORD
7	Attorney General
8	By: By: By:
9	Michelle D. Briggs Senior Deputy Attorney General John E. Leach, Esq. Leach, Kern, Gruchow
10	555 E. Washington Ave. Ste 39002525 Box Canyon DriveLas Vegas, Nevada 89101Las Vegas, Nevada 89128(702) 486-3420Attorney for Thomas Kelly
11	(702) 486-3420 Attorney for Thomas Kelly Attorneys for Real Estate Division
12	
13	
14	IT IS ORDERED that the foregoing STIPULATION AND ORDER FOR
15	SETTLEMENT OF DISCIPLINARY ACTION is approved in full.
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17	DATED: March, 2019.
18	Commission for Common-Interest Communities and Condominium Hotels,
19 20	Department of Business & Industry, State of Nevada
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22	By: Michael Burke, Chairman
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1	DATED: March 20_, 2019.	DATED: March, 2019.	
2	Real Estate Division, Department of Business & Industry		
3	Department of Business & Industry, State of Nevada	Thomas Kelly	
4	By:		
5	Sharath Chandra, Administrator	r	
6	Approved by:		
7	AARON FORD		
8	Attorney General		
9	By: Michelle D. Briggs	By: John E. Leach, Esq.	
10	Senior Deputy Attorney General 555 E. Washington Ave. Ste 3900	Leach, Kern, Gruchow 2525 Box Canyon Drive	
11	Las Vegas, Nevada 89101 (702) 486-3420	Las Vegas, Nevada 89128 Attorney for Thomas Kelly	
12	Attorneys for Real Estate Division	n	
13			
14			
15		e foregoing STIPULATION AND ORDER FOR	
16	SETTLEMENT OF DISCIPLINARY	ACTION is approved in full.	
17			
18	DATED: March, 2019.		
19 20		Commission for Common-Interest Communities and Condominium Hotels,	
20		Department of Business & Industry, State of Nevada	
21			
23		By: Michael Burke, Chairman	
24		Michael Burke, Chairman	
25			
26			
27			
28			

DATED: March 20, 2019. DATED: March , 2019. 1 **Real Estate Division**, 2 Department of Business & Industry, State of Nevada 3 Thomas Kelly 4 By: Sharath Chandra, Administrator 5 6 Approved by: 7 AARON FORD **Attorney General** 8 9 By: By: Michelle D. Briggs John E. Leach, Esq. 10 Senior Deputy Attorney General Leach, Kern, Gruchow 555 E. Washington Ave. Ste 3900 2525 Box Canyon Drive 11 Las Vegas, Nevada 89101 Las Vegas, Nevada 89128 (702) 486-3420 Attorney for Thomas Kelly 12 Attorneys for Real Estate Division 13 14 15 IT IS ORDERED that the foregoing STIPULATION AND ORDER FOR 16 SETTLEMENT OF DISCIPLINARY ACTION is approved in full. 17 DATED: March 22, 2019. 18 19 **Commission for Common-Interest** Communities and Condominium Hotels, 20 Department of Business & Industry, State of Nevada 21 22 VICECHAIR 23 Michael Burke, Chairman 24 25 26 27 28