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1 BEFORE THE COMMISSION FOR COMMON-INTEREST
2 COMMUNITIES AND CONDOMINIUM HOTELS
3 STATE OF NEVADA

4 Sarath Chandra, Administrator,
5 Real Estate Division, Department of
6 Business & Industry, State of Nevada,

Case No. 2021-761 and 2021-696

7 Petitioner,

FILED

8 vs.

NOV 29 2022

9 Dayton Valley Community Association,
10 Dennis Drury, Carla Cole, Sandy Mass,
11 Joan Latimer, Steve Gallisdorfer, James
12 Kepler, Michelle Carr,

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

13 Respondents.

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14 **RESPONSE TO COMPLAINT FOR DISCIPLINARY ACTION**

15 Respondents, Dayton Valley Community Association (“DVCA”), Dennis Drury, Carla
16 Cole, Sandy Mass, Joan Latimer, Steve Gallisdorfer, James Kepler and Michel Carr (collectively
17 “Respondents”), by and through their attorneys, Gayle A. Kern, Esq., of Leach Kern Gruchow
18 Anderson Song, hereby respond to the Commission's Complaint for Disciplinary Action
19 (“Complaint”) filed November 3, 2022.

20 **JURISDICTION AND NOTICE**

21 1. Answering Paragraph 1 of the Complaint, the Respondents deny that the same
22 members of the Board were serving as Board members of DVCA at all relevant times of the
23 matters regarding the allegations in the Complaint. Respondents allege that Board members of
24 DVCA include: 2021: Dennis Drury, Paula Darragh, Doug Kreie, Amy Puzzo, Joe Hughes,
25 Sandy Mass, Joan Latimer, Steve Gallisdorfer, Leandra Carr, Carla Cole, Jim Kepler; 2020:
26 Dennis Drury, Sandy Mass, Paula Darragh, Amy Puzzo, Doug Kreie, Mary Farias, Gene Cowles,
27 Margaret Banse, Joseph Hughes; 2019: Dennis Drury, Sandy Mass, Gene Cowles, Paula
28 Darragh, Doug Kreie, Kim Staley, Wray Brett; 2018: Mike Becker, Bruce Theil, Karen Ryan,
Paula Darragh, Kim Staley, Gene Cowles, Wray Brett; 2017: Diane Lucius, Bob Grant, Mike

1 Becker, Bruce Theil, Karen Ryan, Paula Darragh, Kim Staley, Gene Cowles, Wray Brett; Eddie
2 Hult, Steve Markoe, Diane Lucius, John Loveless, Kim Staley, Bruce Thiel, Bob Grant; 2015:
3 Eddie Hult, Steve Markoe, Floye Baxter, Diane Lucius, John Loveless, Kim Staley; 2014: Ed
4 Messineo, Steve Markoe, Paula Darragh, Floye Baxter, Diane Lucius, Charles Thayer; 2013:
5 Eddie Hult, Ed Messineo, Steve Markoe, Paula Darragh, Mike Becker, Floye Baxter, Marc
6 Andrews; 2012: Eddie Hult, Ed Messineo, Marc Andrews, Mike Becker, Floye Baxter, Steve
7 Markoe; 2011: Eddie Hult, Marc Andrews, Floye Baxter, Mike Becker, Steve Markoe, Holly
8 Thomason, Ed Messineo; 2010: Charlie Duke, Eddie Hult, Gordon Huntley, Steve Markoe, Rich
9 Martinez, Jerry Miller; 2009: Charlie Duke, Gordon Huntley, Steve Markoe, Rich Martinez,
10 Eddie Hult, Jerry Miller; 2008: Charlie Duke, Eddie Hult, Gordon Huntley, Steve Markoe, Lori
11 McLean, Rich Martinez; 2007: Charlie Duke, Gene Anderly, Eugenio Antonelli, Barbara Manna,
12 Gordon Huntley, Steve Markoe, Lori McLean. Respondents deny the common-interest
13 community is located in Las Vegas, Nevada. Respondents allege the common-interest
14 community is located in Dayton, Nevada.

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17 2. Answering Paragraph 2 of the Complaint, Respondents admit.

18 **FACTUAL ALLEGATIONS**

19 3. Answering Paragraph 3 of the Complaint, Respondents admit.

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21 4. Answering Paragraph 4 of the Complaint, the Respondents deny that the same
22 members of the Board were serving as Board members of DVCA at all relevant times of the
23 matters raised in the Complaint. Respondents allege that Board members of DVCA include:
24 2021: Dennis Drury, Paula Darragh, Doug Kreie, Amy Puzzo, Joe Hughes, Sandy Mass, Joan
25 Latimer, Steve Gallisdorfer, Leandra Carr, Carla Cole, Jim Kepler; 2020: Dennis Drury, Sandy
26 Mass, Paula Darragh, Amy Puzzo, Doug Kreie, Mary Farias, Gene Cowles, Margaret Banse,
27 Joseph Hughes; 2019: Dennis Drury, Sandy Mass, Gene Cowles, Paula Darragh, Doug Kreie,
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1 Kim Staley, Wray Brett; 2018: Mike Becker, Bruce Theil, Karen Ryan, Paula Darragh, Kim
2 Staley, Gene Cowles, Wray Brett; 2017: Diane Lucius, Bob Grant, Mike Becker, Bruce Theil,
3 Karen Ryan, Paula Darragh, Kim Staley, Gene Cowles, Wray Brett; Eddie Hult, Steve Markoe,
4 Diane Lucius, John Loveless, Kim Staley, Bruce Thiel, Bob Grant; 2015: Eddie Hult, Steve
5 Markoe, Floye Baxter, Diane Lucius, John Loveless, Kim Staley; 2014: Ed Messineo, Steve
6 Markoe, Paula Darragh, Floye Baxter, Diane Lucius, Charles Thayer; 2013: Eddie Hult, Ed
7 Messineo, Steve Markoe, Paula Darragh, Mike Becker, Floye Baxter, Marc Andrews; 2012: Eddie
8 Hult, Ed Messineo, Marc Andrews, Mike Becker, Floye Baxter, Steve Markoe; 2011: Eddie
9 Hult, Marc Andrews, Floye Baxter, Mike Becker, Steve Markoe, Holly Thomason, Ed Messineo;
10 2010: Charlie Duke, Eddie Hult, Gordon Huntley, Steve Markoe, Rich Martinez, Jerry Miller;
11 2009: Charlie Duke, Gordon Huntley, Steve Markoe, Rich Martinez, Eddie Hult, Jerry Miller;
12 2008: Charlie Duke, Eddie Hult, Gordon Huntley, Steve Markoe, Lori McLean, Rich Martinez;
13 2007: Charlie Duke, Gene Anderly, Eugenio Antonelli, Barbara Manna, Gordon Huntley, Steve
14 Markoe, Lori McLean.
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17 5. Answering Paragraph 5 of the Complaint, the Respondents admit that Dennis
18 Drury was President of the Association from September 2018 through April of 2022 and that
19 James Kepler is currently a Director and allege he was elected in 2021. Respondents allege that
20 the current Board President is Michelle Carr.
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22 6. Answering Paragraph 6 of the Complaint, Respondents admit. Respondents allege
23 that Bates Nos. CICC 0015-0016 is a duplicate of CICC 0047-0049.

24 7. Answering Paragraph 7 of the Complaint, Respondents deny the quoted language
25 constitutes the Candidacy Disclosure Statement. Respondents allege that there are many
26 statements in the Candidacy Disclosure Statement submitted by Respondent Kepler, but the
27 quoted language is included in the Disclosure Statement.
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8. Answering Paragraph 8 of the Complaint, Respondents allege the Candidacy Disclosure Statement reflects Respondent Kepler’s involvement in the community and the adjacent golf course and denies the allegations that are inconsistent.

9. Answering Paragraph 9 of the Complaint, the Respondents deny that Respondent Kepler has an ownership interest in the guard shack and the road located at the Palmer Gate exit. Respondents allege the guard shack and the road located at the Palmer Gate exit is Common Area under the Governing Documents of DVCA and the responsibility of DVCA. Respondents allege that many different entities own land within the Association over which the roadways are located, including, but not limited to, Tour Specs Golf Management, LLC.

10. Answering Paragraph 10 of the Complaint, the Respondents deny that Tour Specs Golf Management, LLC aka Dayton Valley Golf Course owns the guard shack and the road located at the Palmer Gate exit. Respondents allege the guard shack and the road located at the Palmer Gate exit is part of the Common Area under the Governing Documents of DVCA and the responsibility of DVCA. Respondents allege that the guard shack and the road located at the Palmer Gate exit are part of the roadways within the common-interest community and subject to the control and responsibility of the DVCA pursuant to the Governing Documents. Respondents allege that many different entities own land within the Association over which the roadways are located, including, but not limited to, Tour Specs Golf Management, LLC. Respondents allege that the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Dayton Valley Country Club, recorded July 23, 2010, as Document No. 462667 (the “Declaration”) states the Subdivision Map shall mean all of the recorded maps for any portion of the Development. *See* Declaration, Section 1.42 (Bates No. DVCA0012). The complete Declaration is attached as Bates Nos. DVCA0001-0051. Respondents allege there are 25 applicable maps for the common-interest community. The recorded Maps are attached as Bates

1 Nos. DVCA0052-0106. The Assessor has also provided a depiction of the subdivision (Assessor
2 Maps) that show the roadways throughout the subdivision. (Bates Nos. DVCA0107-0131). The
3 Development includes all of the real property described including all of the Improvements. *See*
4 Declaration, Section 1.21 (Bates No. DVCA0010).

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6 Respondents allege all roads identified in the Reserve Studies are clearly identified on the
7 recorded maps. Examples of the Reserve Studies for the past decade are attached as Bates Nos.
8 DVCA0132-0548. Respondents allege the Reserve Studies identify the following: Bayhill Drive
9 Entry, Bayhill Circle, Augusta Court, Glen Eagles Court, Pebble Beach Court, Doral Court,
10 Riviera Court, Cypress Court, Spyglass Court, St. Andrews Drive, Kingsbarn Court, Carnoustie
11 Court, Pestwick Court, Murfield Court, Canterbury Court, Cypress Point, Inverness Court,
12 Poppy Hill Court, Lakeview Drive, Moore Avenue, Palmer Drive Entry, Palmer Drive, La Costa
13 Avenue, La Costa Court, La Costa Circle, Sawgrass Court, Sawgrass Lane, Royal Toon Drive,
14 Dornoch Court, Birkdale Court, La Quinta Court, Champions Drive, Torrey Pines, Stonehaven
15 Court, Grayhawk Drive, Grayhawk Court, Lytham Court, St. Georges Court, Lahinch Court,
16 Portrusa Court, Turnberry Court, Ballybunion Drive, Gullane Court, Ballybunion Court, Riviera
17 Court The Gallery, Cruden Bay Drive The Gallery, Turnberry Court The Gallery, Wentworth
18 Circle The Gallery.
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21 Respondents allege the Bayhill Drive Entry and the Palmer Drive Entry are clearly
22 identified as the gates at both of these entry points to the gated community. Respondents allege
23 the Division has no basis to assert that Palmer Drive and Palmer Drive Entry should be treated
24 differently than all of the other roadways and entry points/gates. Respondents allege the
25 Division has no basis to assert that the Association does not have the obligation to maintain all of
26 the roads and entry gates.

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28 Respondents assert the allocation of funds for the maintenance and repair for all of the

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streets within the community did not start when Respondent Kepler was elected to the Board. Respondents allege in accordance with the specific requirements of the County and the Declaration, the Association has maintained the private streets and the gates for over three decades and such maintenance does not confer any personal profit or compensation to any member of the DVCA, including but not limited to Respondent Kepler.

Respondents allege specifically, and by way of example, Palmer Drive is identified on the maps for Unit 2E (Bates Nos. DVCA0549-0550); Unit 4 (Bates Nos. DVCA0551-0554); Boundary Line Adjustment Document 141060 (Bates No. DVCA0555); Record of Survey 305473 (Bates No. DVCA0556); Unit 5C (Bates Nos. DVCA0557-0558); Unit 5D (identified as road easement) (Bates Nos. DVCA0559-0560); Unit 7B (identified as Lakeview or Future) (Bates Nos. DVCA0561-0562); Parcel Map 1623, Document No. 102038 (Bates Nos. DVCA0563-0564). Respondents allege although the roads are clearly identified on the recorded subdivision maps and the members of DVCA and the Association itself have easements across the roads, they were not conveyed to the Association. Respondents allege that contrary to the position of NRED, whether the roads, which are not separate parcels, were conveyed or not is irrelevant. Respondents allege some of the roadways do not show any ownership because Lyon County does not identify roads within subdivisions that are required to have an association maintain be separate parcels. The checkerboard of ownership is illustrated by the snapshots from the Assessor’s website. (Bates Nos. DVCA0565-0599). Respondents allege the obligation for maintenance of the roads is set forth in the Declaration and has been met for over 30 years by all members of the Board over the three decades. Respondents allege the election of Mr. Kepler had nothing to do with the maintenance of Palmer Drive or the Palmer Drive Entry, including the gate and gatehouse.

Respondents allege Lyon County does not assign parcel numbers to roads and does not

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require any subdivision be developed with the roads formed as separate parcels. Respondents allege recorded easement deeds over the roads within DVCA have contained both metes and bounds descriptions of the roadways. *See e.g.* Bates Nos. DVCA0606-0610 Exhibit “A” to the 2010 Access and Utility Easement Deed, as well as the summary descriptions of the roads contained on Exhibit "A" to the 2014 Grant of Access and Utility Easement Deed (Bates Nos. DVCA0618-0623).

Respondents allege the Declaration is clear that the Association is responsible for the maintenance of the roads. Respondents allege Paragraph 7.1(d) of the Declaration (Bates No. DVCA0027) states quite clearly that DVCA is responsible for maintaining all roadways within the Development, whether owned or not by the Association:

(d) Roadways. The Association shall maintain and keep in good repair all roadways within the Development, which are owned by the Association not located on individual Lots or otherwise maintained by the ***County or over which the Association and Owners have an access easement*** by reason of their deed or this Declaration.

(Emphasis added.)

Respondents allege that contrary to the position of NRED, Common Area includes the real property located within the private roadway easements. *See* Declaration, Section 1.15 (Bates No. DVCA0010). Respondents allege the roads are identified as an Improvement within the subdivision. *See* Declaration, Section 1.25 (Bates Nos. DVCA0010-0011). Respondents allege the Project includes the real property within the geographic boundaries of the Development. *See* Declaration, Section 1.33 (Bates No. DVCA0011). Respondents allege that contrary to the NRED position the roads are owned by the golf course owner, Tour Specs, the golf course actually has an easement over all the roadways for the golf carts. *See* Declaration, Section 4.15(f) (Bates No. DVCA0019). Respondents allege if the golf course owned and was responsible for the roadways, the Declaration would not have provided for an easement in favor

1 of the golf course. Respondents allege the golf course needs an easement from the Association
2 because all roadways, including Palmer Drive, are the responsibility of the Association.

3 Respondents allege NRS 116.3107(1) provides that except to the extent provided by the
4 declaration, an association has an obligation to provide for the maintenance repair and
5 replacement of the common elements. Respondents allege NRS 116.017 defines “common
6 elements” to mean any real estate within a planned community which is owned or leased by the
7 association, other than a unit and any other interests in real estate for the benefit of units’ owners
8 which are subject to the declaration. *See* NRS 116.017(1)(b) and (2). Respondents allege as an
9 example, “other interest in real estate” would include an access easement and the roadways
10 identified on the various subdivision maps for DVCA.

11 Respondents allege NRS 116.31152(3)(a) provides in pertinent part that an association’s
12 reserve study must include “the major components of the common elements *and any other*
13 *portion of the common-interest community that the association is obligated to maintain,*
14 *repair, replace or restore.*” (emphasis added)

15 Respondents allege, pursuant to NRS 116, an association may have an obligation to
16 maintain property which belongs to another entity. Respondents allege the Declaration provides
17 in pertinent part as follows regarding the Common Area and the Association’s responsibility for
18 roadway maintenance:
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21 Article 1, Section 1.15 Common Area. “Common Area” *shall mean all real*
22 *property owned or maintained by the Association for the common use and*
23 *enjoyment of the Owners and Residents of the Development. The Common Area*
24 *for the Development shall be identified in the Supplemental Declaration*
25 *Recorded with the filing of the Subdivision Map for each Parcel within the*
26 *Development and shall consist of* certain lots identified within parcels 1
27 through 14 as recorded on maps in the Office of the Recorder of Lyon County,
28 State of Nevada and *the real property located within the private roadway*
easements. Each Common Area lot is a “Common Element” as defined by NRS
116.017.

(Emphasis added.) Bates No. DVCA0010.

1 Respondents allege in regard to particular Association maintenance responsibilities,
2 Article 7, Section 7.1 of the Declaration provides:

3 ...The Association shall have the following maintenance responsibilities:

4 ...(b) Other Association Property. The Association shall maintain, repair, and
5 replace all other real and personal property that may be acquired by the
6 Association, keeping such property in good condition and repair...

7 (d) Roadways The Association shall maintain and keep in good repair all
8 roadways within the Development, which are owned by the Association not
9 located on individual Lots or otherwise maintained by the County *or over which*
10 *the Association and Owners have an access easement by reason of their deed or*
11 *this Declaration.*

12 (Emphasis added.) Bates No. DVCA0027. Respondents allege pursuant to NRS 116.2109(1)
13 “plats” or final maps are part of the Declaration. Respondents allege pursuant to Nevada statutes
14 and Declaration consistent therewith, the Association’s Common Area includes real property
15 owned by another entity, i.e. the roads, over which the Association and the Owners have an
16 access easement.

17 Respondents allege the NRED failed to review the necessary documents in concluding
18 Palmer Drive and the guard shack are not part of the Common Area of the DVCA. Respondents
19 allege properly understanding that Palmer Drive and the guard shack are Common Areas of the
20 Association requires the review of a number of documents for which a visual orientation is
21 useful. Respondents allege the guard shack and the entrance side of Palmer Drive are on 016-
22 361-35, and the exit side of the road is on 016-361-70. *See* Bates No. DVCA0640 (Aerial
23 Photograph of intersection of Palmer Drive and Dayton Valley Road). Bates No. DVCA0641
24 depicts the entirety of APN 016-361-70. Bates No. DVCA0642 depicts the entirety of APN 016-
25 361-35, which is most of the land constituting the golf course. Respondents allege as the aerial
26 photograph demonstrates, the golf course winds through the community and portions of several
27 of the major roads of the Association cross it. *See also* Bates No. DVCA0642, assessor
28 depictions of the subdivision depicting the checkerboard ownership of the Common Area

1 roadways.

2 Respondents allege the real estate comprising both the Association and the golf course
3 had a series of developers/owners over the years. Respondents allege during the periods critical
4 to this analysis, both were owned by the same entities. Respondents allege the Association’s
5 original Declarant, John Lawrence (Nevada) LLC (“John Lawrence”) recorded the First
6 Amended and Restated Declaration of Covenants, Conditions and Restrictions for Dayton Valley
7 Country Club on May 18, 1990, as Document No. 133393. Bates Nos. DVCA0643-0696
8 Respondents allege on May 5, 1993, John Lawrence recorded a “Notice of Addition of
9 Land/Declaration of Annexation of Dayton Valley Country Club Units 2B and 4” as Document
10 No. 161015 (Bates Nos. DVCA0697-0705) annexing Unit 4 (“Supplemental Declaration”)
11 being:
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13 Those portions of the West ½ of Section 17 and the Southeast ¼ of Section 18,
14 Township 16 North, Range 22 East, M.D.B.&M. in the County of Lyon, State of
15 Nevada being more particularly described as follows:
16 ***All of the lands which lie within the Boundaries of Dayton Valley Country Club
Unit 4 as said subdivision is shown per File No. 156206*** of the Official Records
17 of said Lyon County.

18 The Plat Map of Unit 4, File No. 156206 is attached as Bates Nos. DVCA0706-0709.
19 Respondents allege on June 7, 1995, John Lawrence filed a “Parcel Map for John Lawrence”
20 granting forever ***“those permanent easements for access . . . shown hereon.”*** See Bates Nos.
21 DVCA0710-0715. Respondents allege this Parcel Map refers to what is now APN 016-361-35,
22 the parcel on which the entry side of Palmer Drive and the guard shack are located. Respondents
23 allege at the top of page 2 of this Parcel Map, where the current Palmer Drive intersects with
24 Dayton Valley Road, is a note which states ***“Exist public utility, sanitary sewer, drainage and
25 access easement per doc #156206”*** (i.e. the Unit 4 Final Map). Bates No. DVCA0711.
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27 Respondents allege in 1998 John Lawrence conveyed numerous parcels including the
28 subject parcels to ComLaw. See Bates Nos. DVCA0716-0727 1998 JL Deed to COMLAW.

1 Respondents allege on April 19, 1999, ComLaw recorded the Parcel Map for ComLaw No. 445
2 as File No. 232541 which pertains to APN 016-361-70 and includes a depiction of Palmer Drive
3 with the following note:

4 ***Private Road per Document No. 156206. Private access road . . . roadway and***
5 ***drainage maintained by homeowners association.***

6 *See* Bates Nos. DVCA0728-0729 ComLaw Map. Respondents allege access easements in favor
7 of the Association exist on both APNs 016-361-35 and 016-361-70 in exchange for the
8 Association’s obligation to maintain Palmer Drive. Respondents allege the easement is provided
9 for in the Plat Map for Unit 4, and the Supplemental Declaration which annexes Unit 4 refers to
10 the land as said subdivision is shown on the Plat Map.

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12 11. Answering Paragraph 11 or the Complaint, Respondents allege that according to
13 the public records, Reliance Golf Management LLC was the Manager of the limited liability
14 company known as Tour Specs Golf Management, LLC and Respondent Jim Kepler is one of the
15 Managers of the limited liability company known as Reliance Golf Management Dayton Valley
16 Management, LLC (CICC0198-0190) and denies the allegations of Paragraph 11 that are
17 inconsistent with this information. Respondents allege that under Nevada law, Managers are not
18 necessarily managing members and to be a Manager does not require the person be a member of
19 the limited liability company. Respondents allege that all of the limited liability companies
20 relevant to the Dayton Valley Golf Course are managed by Managers, not managing members.
21 Respondents allege Respondent Kepler is a minority member of Tour Specs Golf Management,
22 LLC.

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25 12. Answering Paragraph 12 of the Complaint, Respondents deny the allegations.
26 Respondents allege Respondent Kepler is a minority member of Tour Specs Golf Management,
27 LLC. Respondents allege that under Nevada law, Managers are not necessarily managing
28 members and to be a Manager does not require the person be a member of the limited liability

1 company. Respondents allege that all of the limited liability companies relevant to the Dayton
2 Valley Golf Course are managed by Managers, not managing members.

3 13. Answering Paragraph 13 of the Complaint, Respondents deny the allegations and
4 allege the Dayton Valley Golf Course is owned by Tour Specs Golf Management, LLC.

5 14. Answering Paragraph 14 of the Complaint, Respondents admit.

6 15. Answering Paragraph 15 of the Complaint, Respondents are without information
7 and belief as to the truth of the allegations and based thereon deny the same.

8 16. Answering Paragraph 16 of the Complaint, Respondents alleges there are
9 numerous statements and accusations in the Intervention Affidavit from Joseph Hughes and
10 based thereon denies the allegations.

11 17. Answering Paragraph 17 of the Complaint, Respondents alleges there are
12 numerous statements and accusations in the Intervention Affidavit from Joseph Hughes and
13 based thereon denies the allegations.

14 18. Answering Paragraph 18 of the Complaint, Respondents are without information
15 and belief as to the truth of the allegations and based thereon deny the same. Respondents allege
16 that CICC 0117-0120 is a copy of a letter dated July 1, 2021 from the attorney for the DVCA.
17 Respondents allege NRS 116.31034(10)(a)(2) states as follows: “The *person* stands to gain any
18 personal profit or compensation of any kind from a matter before the executive board of the
19 association. . . .” Respondents allege Mr. Kepler confirms he has not received any personal
20 profit or compensation of any kind from any matter before the Board of the Association.
21 Respondents allege Tour Specs Golf Management, LLC owns the real property upon which the
22 golf course is situated. Respondents allege the Manager of Tour Specs Golf Management, LLC
23 as included in the records of the Nevada Secretary of State is Reliance Golf Management, LLC.
24 Respondents allege Reliance Golf Management, LLC is a Nevada limited Liability Company.
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1 Respondents allege the attorney for Reliance Golf Management, LLC, Mr. Locke, advises that
2 Reliance Golf Management, LLC owns Reliance Golf Management Dayton Valley Management,
3 LLC and that it has a Consulting Agreement with Tour Specs Golf Management, LLC to run the
4 golf course.

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6 19. Answering Paragraph 19 of the Complaint, Respondents allege the Letter of July
7 1, 2021 specifically references the “notice of intention to file Form 530 Intervention Affidavit”
8 dated June 25, 2021 and to the extent any allegations are not consistent with this, such
9 allegations are denied.

10 20. Answering Paragraph 20 of the Complaint, Respondents deny the allegations.
11 Respondents allege that on January 15, 2020, DVCA entered into a Landscape Maintenance
12 Easement. A copy of the Landscape Maintenance Easement is attached as Bates Nos.
13 DVCA0730-0738. Respondents allege the owner of the property subject to the Landscape
14 Maintenance Easement in 2019 and 2020 was Dayton Valley Golf Course, LLC. Bates No.
15 DVCA0730. Respondents allege, on information and belief, Thomas P. Duncan was the
16 manager of Dayton Valley Golf Course, LLC. Respondents allege the Landscape Maintenance
17 Easement was first addressed in July of 2019. Respondents allege the property at issue in the
18 Landscape Maintenance Easement was not the property on or around the Palmer gate exit and
19 had nothing to do with the guard shack. *See* Bates Nos. DVCA0737-0738. Respondents allege
20 that in 2019, two years before Respondent Kepler was elected to the Board, the 2019 Board was
21 concerned about portions of the golf course that Dayton Valley Golf Course LLC did not
22 maintain and had no intention to do so because it was of no benefit to the golf course to maintain
23 the areas in question. Respondents allege the Board had received numerous complaints from
24 members of the community regarding the areas depicted in Exhibit A to the Landscape
25 Maintenance Easement, none of which involve Palmer Drive or the gate. *See* Bates No.
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1 DVCA0737-0738. Respondents allege that because Dayton Valley Golf Course LLC did not
2 benefit from the landscaping in those areas, the golf course did not desire to provide any
3 maintenance. Respondents allege, on the other hand, various Owners had expressed concern to
4 the Board that the lack of maintenance was a concern and that the Owners would benefit from
5 such landscaping. Respondents allege that under the Second Amended Declaration, the
6 Association did not have affirmative maintenance responsibilities on the areas in question, if the
7 Board determined it was beneficial to have the landscaping done, there would need to be a
8 Landscape Maintenance Easement executed and recorded.
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10 Respondents allege the 2019 Board determined it was in the best interests of the
11 Association, not the golf course, to have the right, but not the obligation to maintain the areas
12 that were of concern by members of the Association. Respondents allege that as a result of this
13 determination, a Landscape Maintenance Easement was prepared and recorded on January 15,
14 2020. Bates Nos. DVCA0730-0738. Respondents allege that approximately a year later, the
15 issue arose again. Respondents allege the Board discussed and voted on whether it was still of a
16 benefit to the Association to exercise its rights under the Landscape Maintenance Easement.
17 Respondents allege, in January of 2021, a majority of the Board determined it was not of a
18 benefit to the Association and the Association no longer exercised its rights to maintain the
19 landscaping areas identified in the Landscape Maintenance Easement. Respondents allege that
20 there is no information that the decision was to benefit the golf course, but rather was done solely
21 to benefit the owners that complained about the areas identified in Exhibit A to the Landscape
22 Maintenance Easement. Respondents allege that the golf course saw no benefit to the
23 maintenance of the areas in question and that the members of the Association derived the sole
24 benefits from the maintenance of the areas in question.
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27 21. Answering Paragraph 21 of the Complaint, Respondents deny the allegations.
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Respondents allege the Board had received numerous complaints from members of the community regarding the areas depicted in Exhibit A to the Landscape Maintenance Easement, none of which involve Palmer Drive or the gate. *See* Bates Nos. DVCA0737-0738.

22. Answering Paragraph 22 of the Complaint, Respondents deny the allegations. Respondents allege the Landscape Maintenance Easement was first addressed in July of 2019.

23. Answering Paragraph 23 of the Complaint, Respondents deny the allegations. Respondents allege the Board had received numerous complaints from members of the community regarding the areas depicted in Exhibit A to the Landscape Maintenance Easement, none of which involve Palmer Drive or the gate. *See* Bates Nos. DVCA0737-0738.

24. Answering Paragraph 24 of the Complaint, Respondents deny the allegations. Respondents allege the Board had received numerous complaints from members of the community regarding the areas depicted in Exhibit A to the Landscape Maintenance Easement, none of which involve Palmer Drive or the gate. *See* Bates Nos. DVCA0737-0738.

25. Answering Paragraph 25 of the Complaint, Respondents deny the allegations. Respondents allege the Board had received numerous complaints from members of the community regarding the areas depicted in Exhibit A to the Landscape Maintenance Easement, none of which involve Palmer Drive or the gate. *See* Bates Nos. DVCA0737-0738.

26. Answering Paragraph 26 of the Complaint, Respondents deny the allegations. Respondents allege the Board had received numerous complaints from members of the community regarding the areas depicted in Exhibit A to the Landscape Maintenance Easement, none of which involve Palmer Drive or the gate. *See* Bates Nos. DVCA0737-0738. Respondents allege that at all relevant times of the Landscape Maintenance Easement the property was owned by Dayton Valley Golf Course LLC and was not then, nor is it now, owned by Respondent James Kepler.

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27. Answering Paragraph 27 of the Complaint, Respondents deny the allegations. Respondents admit the areas depicted in Exhibit A to the Landscape Maintenance Easement, none of which involve Palmer Drive or the gate (Bates Nos. DVCA0737-0738) were no longer maintained by the DVCA as allowed under the Landscape Maintenance Agreement.

28. Answering Paragraph 28 of the Complaint, Respondents deny the allegation that the NRED properly took action in connection with the matters raised in the Complaint. Respondents admit that the Division improperly opened an investigation regarding the Association’s maintenance of Common Area and improperly investigated the lawful compliance by DVCA of the governing documents and Nevada law.

29. Answering Paragraph 29 of the Complaint, Respondents admit that the Division demanded responses to various allegations and demanded documents within ten (10) calendar days. CICC 0113-0115. Respondents allege that CICC 0113-0115 is a duplicate of CICC 0161-0163. Respondents allege this demand was unreasonable and demonstrated an improper application of NRS 116.31034. Respondents allege NRS 116.31034 provides that any member of the Association may be a candidate for the Board, except for specifically identified circumstances. Respondents allege Respondent Kepler is an Owner within DVCA and lawfully allowed to be a candidate absent facts indicating that the person: (1) resides in a unit with, is married to, is domestic partners with, or is related by blood, adoption or marriage within the third degree of consanguinity or affinity to another person who is also a member of the executive board or is an officer of the association; (2) stands to gain any personal profit or compensation of any kind from a matter before the executive board of the association; or (3) the person’s spouse or the person’s parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association. See NRS 116.31034(10). Respondents allege a potential conflict of interest is not included in the identified situations when a person may not be

1 a candidate. Respondents allege the issue regarding a potential conflict of interest is identified in
2 the necessary disclosures. Respondents allege NRS 116. 31034 (9) identifies disclosures that
3 must be made by a candidate for the Board. Respondents allege this provision states in pertinent
4 part:

5
6 “Each person who is nominated as a candidate for membership on the executive
7 board pursuant to subsection 4 must: (a) Make a good faith effort to **disclose** any
8 financial, business, professional or personal relationship or interest that would
9 result or would appear to a reasonable person to result in a potential
conflict of interest for the candidate if the candidate were to be elected to serve
as a member of the executive board.” **[Emphasis Added]**.

10 Respondents allege the disclosure of a potential conflict one way or the other is not included in
11 NRS 1116.31034(10) as one of the identified grounds for preventing a member be a candidate.
12 Respondents allege it is up to the membership to decide whether or not to elect any owner within
13 the community to the Board, absent any of the three circumstances in NRS 116.31034(10).
14 Respondents allege absent the identified grounds for prohibiting a member from being a
15 candidate being present, an Association may not refuse to allow the person to be a candidate.

16
17 Respondents allege the Division fails to identify any matter that would result in personal
18 profit to or compensation by Respondent Kepler. Respondents allege the Division fails to
19 provide any contract or identification of any contractual relationship between Respondent Kepler
20 and DVCA that would preclude him from serving on the Association’s Board. Respondents
21 allege the Division did not assert any information regarding such a contractual relationship or
22 contract and/or personal profit or compensation Respondent Kepler would receive from a
23 particular matter. Respondents allege the Division has no facts or information that DVCA makes
24 monetary payments to Respondent Kepler that would result in a personal profit or compensation
25 to Respondent Kepler.
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27 30. Answering Paragraph 30 of the Complaint, Respondents admit that the Division
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1 demanded responses to various allegations and demanded documents within ten (10) calendar
2 days of the date of the letter sent. CICC 0113-0115.

3 31. Answering Paragraph 31 of the Complaint, Respondents admit that a substantive
4 response was sent to Christy Staffen with the Division by letter dated August 20, 2021. CICC
5 0108-0112. Respondents allege CICC 0108-0112 is duplicated at CICC 0146-0150.
6

7 32. Answering Paragraph 32 of the Complaint, Respondents admit that a substantive
8 response was sent to Christy Staffen with the Division by letter dated August 20, 2021. CICC
9 0108-0112. Respondents allege CICC 0108-0112 is duplicated at CICC 0146-0150. Respondents
10 assert that the duplicative demands by the Division were expensive and prejudicial to the DVCA.
11 Respondents assert that the Division refused to provide any rationale or reason or support for the
12 investigation.
13

14 33. Answering Paragraph 33 of the Complaint, Respondents deny that there was any
15 admission, but rather Respondents assert that the duplicative demands were prejudicial to
16 DVCA.

17 34. Answering Paragraph 34 of the Complaint, Respondents deny that there was a
18 demand, but rather a substantive legal response was provided and DVCA stated at CICC0112:
19 “Based on the facts and information presented, [it] is our hope that you will close this matter.
20 Mr. Hughes, a candidate in an election that included 16 candidates for 7 positions, had a personal
21 interest in having fewer competitors. The challenges were without merit and, more importantly,
22 did not involve any of the disqualifying matters identified in NRS 116.31034(10). The law
23 recognizes that except in those limited circumstances, any unit owner may be a candidate for
24 election to the Board of a common interest community. Disqualification is a serious and
25 exceptional issue that should not be treated lightly. The unsupported allegations of some vague
26 and unsubstantiated claim of personal profit or compensation when there is no evidence of any
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compensation of any kind by the Association in all the years of its existence should form the basis of a disqualification. We look forward to your continuing professional courtesies. If there is anything you would like to discuss, please do not hesitate to contact me.”

35. Answering Paragraph 35 of the Complaint, Respondents deny Respondent Kepler is the owner of Tour Specs Golf Management and Dayton Valley Golf Course. Respondents allege that according to the public records, Reliance Golf Management LLC is the manager of the limited liability company known as Tour Specs Golf Management, LLC and Respondent Jim Kepler is the Manager of the limited liability company known as Reliance Golf Management Dayton Valley Management, LLC (CICCC0198-0190) Respondents deny that Respondent Kepler receives any personal profit or compensation of any kind from a matter before the executive board of the association. Respondents assert that the Division’s characterization of maintenance of the Common Area roadways and Palmer gate constitutes personal profit or compensation to Respondent Kepler is contrary to the DVCA required maintenance of the Common Area roadways and both gates, including Palmer Drive as set forth in the governing documents, Reserve Studies and Nevada law.

36. Answering Paragraph 36 of the Complaint, Respondents deny the allegations. Respondents allege that on January 15, 2020, DVCA entered into a Landscape Maintenance Easement. A copy of the Landscape Maintenance Easement is attached as Bates Nos. DVCA0730-0738. Respondents allege the owner of the property subject to the Landscape Maintenance Easement in 2019 and 2020 was Dayton Valley Golf Course, LLC. Bates No. DVCA0730. Respondents allege, on information and belief, Thomas P. Duncan was the manager of Dayton Valley Golf Course, LLC. Respondents allege the Landscape Maintenance Easement was first addressed in July of 2019. Respondents allege the property at issue in the Landscape Maintenance Easement was not the property on or around the Palmer gate exit and

1 had nothing to do with the guard shack. *See* Bates Nos. DVCA0737-0738. Respondents allege
2 that in 2019, two years before Respondent Kepler was elected to the Board, the 2019 Board was
3 concerned about portions of the golf course that Dayton Valley Golf Course LLC did not
4 maintain and had no intention to do so because it was of no benefit to the golf course to maintain
5 the areas in question. Respondents allege the Board had received numerous complaints from
6 members of the community regarding the areas depicted in Exhibit A to the Landscape
7 Maintenance Easement, none of which involve Palmer Drive or the gate. *See* Bates Nos.
8 DVCA0737-0738. Respondents allege that because Dayton Valley Golf Course LLC did not
9 benefit from the landscaping in those areas, the golf course did not desire to provide any
10 maintenance. Respondents allege, on the other hand, various Owners had expressed concern to
11 the Board that the lack of maintenance was a concern and that the Owners would benefit from
12 such landscaping. Respondents allege that under the Second Amended Declaration, the
13 Association did not have affirmative maintenance responsibilities on the areas in question, if the
14 Board determined it was beneficial to have the landscaping done, there would need to be a
15 Landscape Maintenance Easement executed and recorded.

18 Respondents allege the 2019 Board determined it was in the best interests of the
19 Association, not the golf course, to have the right, but not the obligation to maintain the areas
20 that were of concern by members of the Association. Respondents allege that as a result of this
21 determination, a Landscape Maintenance Easement was prepared and recorded on January 15,
22 2020. Bates Nos. DVCA0730-0738. Respondents allege that approximately a year later, the issue
23 arose again. Respondents allege the Board discussed and voted on whether it was still of a
24 benefit to the Association to exercise its rights under the Landscape Maintenance Easement.
25 Respondents allege, in January of 2021, seven months before Respondent Kepler was a member
26 of the Board, a majority of the Board determined it was not of a benefit to the Association and
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1 the Association no longer exercised its rights to maintain the landscaping areas identified in the
2 Landscape Maintenance Easement. Respondents allege that there is no information that the
3 decision to have the Landscape Maintenance Easement was to benefit the golf course, but rather
4 was done solely to benefit the owners that complained about the areas identified in Exhibit A to
5 the Landscape Maintenance Easement. Respondents that the golf course saw no benefit to the
6 maintenance of the areas in question and that the members of the Association derived the sole
7 benefits from the maintenance of the areas in question.
8

9 37. Answering Paragraph 37 of the Complaint, Respondents admit that the 2019
10 Board determined the Landscape Maintenance Easement was in the best interest of the
11 Association. Respondents deny the remaining allegations. Respondents allege that according to
12 the public records, Reliance Golf Management LLC is the manager of the limited liability
13 company known as Tour Specs Golf Management, LLC and Respondent Jim Kepler is the
14 Manager of the limited liability company known as Reliance Golf Management Dayton Valley
15 Management, LLC (CICC 0198-0190).
16

17 38. Answering Paragraph 38 of the Complaint, Respondents admit that a Compliance
18 Demand Letter was sent to DVCA. Bates Nos. CICC 0143-0145. Respondents allege the
19 demand/directive that the members of the Board remove a director is contrary to Nevada law.
20

21 Respondents allege NRS 116.31036(1) provides the basis for removal of directors by the
22 members of the Association. Respondents allege there is no provision in NRS 116 that gives
23 authority to the Board to remove another director. Respondents allege although NRS 116 is silent
24 as to whether the Board could exercise discretion under the Bylaws to remove a director, on
25 information and belief the NRED previously determined that a Board could choose to exercise
26 such discretion if there is some provision in the Bylaws that allows for removal of a director.
27 Respondents allege this NRED determination is irrelevant here, however, as the Bylaws of
28

1 Dayton Valley do not allow the Board to remove Respondent Kepler, a director, in these
2 circumstances.

3 Respondents allege the Bylaws of Dayton Valley at Art. VI, Section 3 states:

4 ...The entire Board *or any individual Director may be removed from*
5 *office*, with or without cause, *at any duly called, noticed and held annual or*
6 *special meeting of the Members*, at which a quorum is present, by a majority of
7 the total Members, at which a quorum is present, by a majority of the total votes
8 present at such meeting either in person or by proxy, and entitled to vote,
9 provided, however the [sic] *unless the entire Board is removed from office by*
10 *the vote of the Members* of the Association, *no individual Director shall be*
11 *removed prior to the expiration of his term of office* if the votes cast against
12 removal or not consenting in writing to such removal would be sufficient to elect
13 the Director if voted cumulatively at an election at which the same number of
14 votes were cast and the entire number of Directors authorized at the time of the
15 most recent election of the Director were then being elected.

16 A Director who has been elected to office solely by the votes of Members
17 other than Declarant may be removed from office prior to the expiration of his
18 term of office *only by a vote of at least simple majority of the voting power*
19 *residing in Members* other than Declarant.

20 *In the event that any member of the Board shall be absent for four (4)*
21 *consecutive regular meetings of the Board of Directors*, the Board *may*, by
22 action taken at the meeting during which said fourth absence occurs, declare the
23 office of said absent Director to be vacant.

24 (Emphasis added). The Bylaws are attached as Bates Nos. DVCA0739-0757. Respondents
25 allege the demand that the Board remove Respondent Kepler as a Board member is not allowed
26 under Nevada law.

27 Respondents allege the Division’s threat against the remaining members of the Board to
28 sanction them for refusing to remove a director also constitutes a directive that is not allowed
under NRS 116 or the Bylaws of Dayton Valley. Respondents allege the threat is not because
Respondent Kepler was absent from four (4) consecutive meetings, as provided for in Art. VI,
Section 3. Respondents allege four (4) consecutive absences are the only circumstances which
allow that the Board “may” take action to declare a position on the Board to be vacant.
Respondents allege even this provision does not allow the remaining Directors to remove a

1 Board member. Respondents allege regardless, those are not the facts here and, even if they
2 were, the language of the Bylaws does not make the declaration of the office to be vacant by the
3 Board mandatory.

4 39. Answering Paragraph 39 of the Complaint, Respondents admit the
5 Division did not understand the subdivision and mistakenly asserted that there was an annexation
6 issue. Respondents allege this subdivision has been in existence for thirty years and the issue is
7 not one of annexation. Respondents allege the guard shack and the road located at the Palmer
8 Gate exit is Common Area under the Governing Documents of DVCA and the responsibility of
9 DVCA. Respondents allege that the guard shack and the road located at the Palmer Gate exit are
10 part of the roadways within the common-interest community and subject to the control and
11 responsibility of the DVCA pursuant to the Governing Documents. Respondents allege that the
12 Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for
13 Dayton Valley Country Club, recorded July 23, 2010, as Document No. 462667 (the
14 “Declaration”) states the Subdivision Map shall mean all of the recorded maps for any portion of
15 the Development. *See* Declaration, Section 1.42 (Bates No. DVCA0012). The complete
16 Declaration is attached as Bates Nos. DVCA0001-0051. Respondents allege there are 25
17 applicable maps for the common-interest community. The maps are attached as Bates Nos.
18 DVCA0052-0106. The Development includes all of the real property described including all of
19 the Improvements. *See* Declaration, Section 1.21 (Bates No. DVCA0010).

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22
23 Respondents allege all roads identified in the Reserve Studies are clearly identified on the
24 recorded maps. Reserve Studies are attached as Bates Nos. DVCA0132-0548. Palmer Drive is
25 identified on the maps for Unit 2E (Bates Nos. DVCA0549-0550); Unit 4 (Bates Nos.
26 DVCA0551-0554); Boundary Line Adjustment Document 141060 (Bates No. DVCA0555);
27 Record of Survey 305473 (Bates No. DVCA0556); Unit 5C (Bates Nos. DVCA0557-0558); Unit
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1 5D (identified as road easement) (Bates Nos. DVCA0559-0560); Unit 7B (identified as
2 Lakeview or Future) (Bates Nos. DVCA0561-0562); Parcel Map 1623, Document No. 102038
3 (Bates Nos. DVCA0563-0564). Respondents allege although the roads are clearly identified on
4 the recorded subdivision maps and the members of DVCA and the Association itself have
5 easements across the roads, they were not conveyed to the Association. Respondents allege that
6 contrary to the position of NRED, whether the roads, which are not separate parcels, were
7 conveyed or not is irrelevant. Respondents allege the obligation for maintenance of the roads is
8 set forth in the Declaration and has been met for over 30 years by all members of the Board over
9 the three decades. Respondents allege the election of Mr. Kepler had nothing to do with the
10 maintenance of Palmer Drive or the Palmer Drive Entry, including the gate and gatehouse.

11
12 Respondents allege Lyon County does not assign parcel numbers to roads. Respondents
13 allege recorded easement deeds over the roads within DVCA have contained both metes and
14 bounds descriptions of the roadways. *See e.g.l.* Bates Nos. DVCA0606-0610 Exhibit “A” to the
15 2010 Access and Utility Easement Deed, as well as the summary descriptions of the roads
16 contained on Exhibit "A" to the 2014 Grant of Access and Utility Easement Deed (Bates Nos.
17 DVCA0618-0623).

18
19 Respondents allege the Declaration is clear that the Association is responsible for the
20 maintenance of the roads. Respondents allege Paragraph 7.1(d) of the Declaration (Bates No.
21 DVCA0027) states quite clearly that DVCA is responsible for maintaining all roadways within
22 the Development, whether owned or not by the Association:
23

24 (d) Roadways. The Association shall maintain and keep in good repair all
25 roadways within the Development, which are owned by the Association not
26 located on individual Lots or otherwise maintained by the *County or over which*
27 *the Association and Owners have an access easement* by reason of their deed or
28 this Declaration.

(Emphasis added.)

1 Respondents allege that contrary to the position of NRED, Common Area includes the
2 real property located within the private roadway easements. *See* Declaration, Section 1.15 (Bates
3 No. DVCA0010). Respondents allege the roads are identified as an Improvement within the
4 subdivision. *See* Declaration, Section 1.25 (Bates Nos. DVCA0010-0011). Respondents allege
5 the Project includes the real property within the geographic boundaries of the Development. *See*
6 Declaration, Section 1.33 (Bates No. DVCA0011). Respondents allege that contrary to the
7 NRED position the roads are owned by the golf course owner, Tour Specs, the golf course
8 actually has an easement over all the roadways for the golf carts. *See* Declaration, Section
9 4.15(f) (Bates No. DVCA0019). Respondents allege if the golf course owned and was
10 responsible for the roadways, the Declaration would not have provided for an easement in favor
11 of the golf course. Respondents allege the golf course needs an easement from the Association
12 because all roadways, including Palmer Drive, are the responsibility of the Association.
13

14
15 Respondents allege NRS 116.3107(1) provides that except to the extent provided by the
16 declaration, an association has an obligation to provide for the maintenance, repair and
17 replacement of the common elements. Respondents allege NRS 116.017 defines “common
18 elements” to mean any real estate within a planned community which is owned or leased by the
19 association, other than a unit and any other interests in real estate for the benefit of units’ owners
20 which are subject to the declaration. *See* NRS 116.017(1)(b) and (2). Respondents allege as an
21 example, “other interest in real estate” would include an access easement.
22

23 Respondents allege NRS 116.31152(3)(a) provides in pertinent part that an association’s
24 reserve study must include “the major components of the common elements *and any other*
25 *portion of the common-interest community that the association is obligated to maintain, repair,*
26 *replace or restore.”* (emphasis added)
27

28 Respondents allege, pursuant to NRS 116, an association may have an obligation to

1 maintain property which belongs to another entity. Respondents allege the Declaration provides
2 in pertinent part as follows regarding the Common Area and the Association’s responsibility for
3 roadway maintenance:

4 Article 1, Section 1.15 Common Area. "Common Area" shall mean all real
5 property owned or maintained by the Association for the common use and
6 enjoyment of the Owners and Residents of the Development. The Common
7 Area for the Development shall be identified in the Supplemental Declaration
8 Recorded with the filing of the Subdivision Map for each Parcel within the
9 Development or in the Declaration of Annexation for any property being annexed
10 to the Development *and shall consist of* certain lots identified within parcels 1
11 through 14 as recorded on maps in the Office of the Recorder of Lyon County,
12 State of Nevada and *the real property located within the private roadway*
13 *easements*. Each Common Area lot is a "Common Element" as defined by NRS
14 116.017.

(Emphasis added.) Bates No. DVCA0010.

15 Respondents allege in regard to particular Association maintenance responsibilities,
16 Article 7, Section 7.1 of the Declaration provides:

17 ...The Association shall have the following maintenance responsibilities:
18 ...(b) Other Association Property. The Association shall maintain, repair, and
19 replace all other real and personal property that may be acquired by the
20 Association, keeping such property in good condition and repair...
21 (d) Roadways The Association shall maintain and keep in good repair all
22 roadways within the Development, which are owned by the Association not
23 located on individual Lots or otherwise maintained by the County *or over which*
24 *the Association and Owners have an access easement by reason of their deed or*
25 *this Declaration*.

(Emphasis added.) Bates No. DVCA0027. Respondents allege pursuant to NRS 116.2109(1)
26 “plats” or final maps are part of the Declaration. Respondents allege pursuant to Nevada statutes
27 and Declaration consistent therewith, the Association’s Common Area includes real property
28 owned by another entity, i.e. the roads, over which the Association and the Owners have an
access easement.

Respondents allege the NRED failed to review the necessary documents in concluding
Palmer Drive and the guard shack are not part of the Common Area of the DVCA. Respondents

1 allege properly understanding that Palmer Drive and the guard shack are Common Areas of the
2 Association requires the review of a number of documents for which a visual orientation is
3 useful. Respondents allege the guard shack and the entrance side of Palmer Drive are on 016-
4 361-35, and the exit side of the road is on 016-361-70. *See* Bates No. DVCA0640 Aerial
5 Photograph of intersection of Palmer Drive and Dayton Valley Road. Bates No. DVCA0641
6 depicts the entirety of APN 016-361-70. Bates No. DVCA0642 depicts the entirety of APN 016-
7 361-35, which is most of the land constituting the golf course. Respondents allege as the aerial
8 photograph demonstrates, the golf course winds through the community and portions of several
9 of the major roads of the Association cross it. *See also* Bates Nos. DVCA0565-0599, assessor
10 depictions of the subdivision depicting the checkerboard ownership of the Common Area
11 roadways.

12
13 Respondents allege the real estate comprising both the Association and the golf course
14 had a series of developers/owners over the years. Respondents allege during the periods critical
15 to this analysis, both were owned by the same entities. Respondents allege the Association's
16 original Declarant, John Lawrence (Nevada) LLC ("John Lawrence") recorded the First
17 Amended and Restated Declaration of Covenants, Conditions and Restrictions for Dayton Valley
18 Country Club on May 18, 1990, as Document No. 133393. Bates Nos. DVCA0643-0696
19 Respondents allege on May 5, 1993, John Lawrence recorded a "Notice of Addition of
20 Land/Declaration of Annexation of Dayton Valley Country Club Units 2B and 4" as Document
21 No. 161015 (Bates Nos. DVCA0697-0705) annexing Unit 4 ("Supplemental Declaration")
22 being:
23

24
25 Those portions of the West ½ of Section 17 and the Southeast ¼ of Section 18,
26 Township 16 North, Range 22 East, M.D.B.&M. in the County of Lyon, State of
27 Nevada being more particularly described as follows:

28 ***All of the lands which lie within the Boundaries of Dayton Valley Country Club
Unit 4 as said subdivision is shown per File No. 156206 of the Official Records
of said Lyon County.***

1 The Plat Map of Unit 4, File No. 156206 is attached as Bates Nos. DVCA0706-0709.
2 Respondents allege on June 7, 1995, John Lawrence filed a “Parcel Map for John Lawrence”
3 granting forever “*those permanent easements for access . . . shown hereon.*” See Bates Nos.
4 DVCA0710-0715. Respondents allege this Parcel Map refers to what is now APN 016-361-35,
5 the parcel on which the entry side of Palmer Drive and the guard shack are located. Respondents
6 allege at the top of page 2 of this Parcel Map, where the current Palmer Drive intersects with
7 Dayton Valley Road, is a note which states “*Exist public utility, sanitary sewer, drainage and*
8 *access easement per doc #156206*” (i.e. the Unit 4 Final Map). Bates No. DVCA0711.
9

10 Respondents allege in 1998 John Lawrence conveyed numerous parcels including the
11 subject parcels to ComLaw. See Bates Nos. DVCA0716-0727 1998 JL Deed to COMLAW.
12 Respondents allege on April 19, 1999, ComLaw recorded the Parcel Map for ComLaw No. 445
13 as File No. 232541 which pertains to APN 016-361-70 and includes a depiction of Palmer Drive
14 with the following note:
15

16 ***Private Road per Document No. 156206.*** Private access road . . . ***roadway and***
17 ***drainage maintained by homeowners association.***

18 See Bates Nos. DVCA0728-0729 ComLaw Map. Respondents allege access easements in favor
19 of the Association exist on both APNs 016-361-35 and 016-361-70 in exchange for the
20 Association’s obligation to maintain Palmer Drive. Respondents allege the easement is provided
21 for in the Plat Map for Unit 4, and the Supplemental Declaration which annexes Unit 4 refers to
22 the land as said subdivision is shown on the Plat Map.
23

24 40. Answering Paragraph 40 of the Complaint, Respondents deny the allegations.
25 Respondents allege the Division failed to properly apply NRS 116.31034(10) and failed to
26 comprehend the Common Area roadways regarding DVCA. Respondents allege Palmer Drive,
27 and the Palmer Gate are part of the subdivision and there is no annexation required.
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41. Answering Paragraph 41 of the Complaint, Respondents are without information upon which to know the truth of the allegations and based thereon deny the same.

42. Answering Paragraph 42 of the Complaint, Respondents deny the allegations. Respondents allege the Division stated: “The Division reserves the right to reopen its investigation should such action be warranted.” CICC0144.

43. Answering Paragraph 43 of the Complaint, Respondents admit that there was not a removal of Respondent Kepler from the Board and admit Respondent Kepler did not resign from the Board. Respondents allege that the Compliance Demand Letter was unlawful and in violation of the DVCA’s governing documents, NRS 116 and Nevada law.

44. Answering Paragraph 44 of the Complaint, Respondents admit that a letter was sent to Christy Staffen dated September 29, 2021.

45. Answering Paragraph 45 of the Complaint, Respondents admit there were numerous statements of analysis and admit that Respondents advised the Division that it incorrectly concluded the issue was one of annexation.

46. Answering Paragraph 46 of the Complaint, Respondents deny that they did not provide significant information regarding the formation of the subdivision and the inclusion of all roadways on the 25 maps as part of the subdivision. Respondents allege this subdivision has been in existence for thirty years and the issue is not one of annexation. Respondents allege the guard shack and the road located at the Palmer Gate exit is Common Area under the Governing Documents of DVCA and the responsibility of DVCA. Respondents allege that the guard shack and the road located at the Palmer Gate exit are part of the roadways within the common-interest community and subject to the control and responsibility of the DVCA pursuant to the Governing Documents. Respondents allege that the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Dayton Valley Country Club, recorded July 23, 2010,

1 as Document No, 462667 (the “Declaration”) states the Subdivision Map shall mean all of the
2 recorded maps for any portion of the Development. *See* Declaration, Section 1.42 (Bates No.
3 DVCA0012). The complete Declaration is attached as Bates Nos. DVCA0001-0051 Respondents
4 allege there are 25 applicable maps for the common-interest community. The maps are attached
5 as Bates Nos. DVCA0052-0106. The Development includes all of the real property described
6 including all of the Improvements. *See* Declaration, Section 1.21 (Bates No. DVCA0010).

7
8 Respondents allege all roads identified in the Reserve Studies are clearly identified on the
9 recorded maps. Reserve Studies are attached as Bates Nos. DVCA0132-0548. Specifically, and
10 by way of example, Palmer Drive is identified on the maps for Unit 2E (Bates Nos. DVCA0549-
11 0550); Unit 4 (Bates Nos. DVCA0551-0554); Boundary Line Adjustment Document 141060
12 (Bates No. DVCA0555); Record of Survey 305473 (Bates No. DVCA0556); Unit 5C (Bates
13 Nos. DVCA0557-0558); Unit 5D (identified as road easement) (Bates Nos. DVCA0559-0560);
14 Unit 7B (identified as Lakeview or Future) (Bates Nos. DVCA0561-0562); Parcel Map 1623,
15 Document No. 102038 (Bates Nos. DVCA0563-0564). Respondents allege although the roads
16 are clearly identified on the recorded subdivision maps and the members of DVCA and the
17 Association itself have easements across the roads, they were not conveyed to the Association.
18 Respondents allege that contrary to the position of NRED, whether the roads, which are not
19 separate parcels, were conveyed or not is irrelevant. Respondents allege the obligation for
20 maintenance of the roads is set forth in the Declaration and has been met for over 30 years by all
21 members of the Board over the three decades. Respondents allege the election of Mr. Kepler had
22 nothing to do with the maintenance of Palmer Drive or the Palmer Drive Entry, including the
23 gate and gatehouse.

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26 Respondents allege Lyon County does not assign parcel numbers to roads. Respondents
27 allege recorded easement deeds over the roads within DVCA have contained both metes and
28

1 bounds descriptions of the roadways. *See e.g.l.* Bates Nos. DVCA0606-0610 Exhibit “A” to the
2 2010 Access and Utility Easement Deed, as well as the summary descriptions of the roads
3 contained on Exhibit "A" to the 2014 Grant of Access and Utility Easement Deed (Bates Nos.
4 DVCA0618-0623).

5 Respondents allege the Declaration is clear that the Association is responsible for the
6 maintenance of the roads. Respondents allege Paragraph 7.1(d) of the Declaration (Bates No.
7 DVCA0027) states quite clearly that DVCA is responsible for maintaining all roadways within
8 the Development, whether owned or not by the Association:
9

10 (d) Roadways. The Association shall maintain and keep in good repair all
11 roadways within the Development, which are owned by the Association not
12 located on individual Lots or otherwise maintained by the ***County or over which***
13 ***the Association and Owners have an access easement*** by reason of their deed or
14 this Declaration.

15 (Emphasis added.)

16 Respondents allege that contrary to the position of NRED, Common Area includes the
17 real property located within the private roadway easements. *See* Declaration, Section 1.15 (Bates
18 No. DVCA0010). Respondents allege the roads are identified as an Improvement within the
19 subdivision. *See* Declaration, Section 1.25 (Bates Nos. DVCA0010-0011). Respondents allege
20 the Project includes the real property within the geographic boundaries of the Development. *See*
21 Declaration, Section 1.33 (Bates No. DVCA0011). Respondents allege that contrary to the
22 NRED position the roads are owned by the golf course owner, Tour Specs, the golf course
23 actually has an easement over all the roadways for the golf carts. *See* Declaration, Section
24 4.15(f) (Bates No. DVCA0019). Respondents allege if the golf course owned and was
25 responsible for the roadways, the Declaration would not have provided for an easement in favor
26 of the golf course. Respondents allege the golf course needs an easement from the Association
27 because all roadways, including Palmer Drive, are the responsibility of the Association.
28

1 Respondents allege NRS 116.3107(1) provides that except to the extent provided by the
2 declaration, an association has an obligation to provide for the maintenance, repair and
3 replacement of the common elements. Respondents allege NRS 116.017 defines “common
4 elements” to mean any real estate within a planned community which is owned or leased by the
5 association, other than a unit and any other interests in real estate for the benefit of units’ owners
6 which are subject to the declaration. See NRS 116.017(1)(b) and (2). Respondents allege as an
7 example, “other interest in real estate” would include an access easement.
8

9 Respondents allege NRS 116.31152(3)(a) provides in pertinent part that an association’s
10 reserve study must include “the major components of the common elements *and any other*
11 *portion of the common-interest community that the association is obligated to maintain, repair,*
12 *replace or restore.*” (emphasis added)
13

14 Respondents allege, pursuant to NRS 116, an association may have an obligation to
15 maintain property which belongs to another entity. Respondents allege the Declaration provides
16 in pertinent part as follows regarding the Common Area and the Association’s responsibility for
17 roadway maintenance:

18 Article 1, Section 1.15 Common Area. “Common Area” **shall mean all real**
19 **property owned or maintained by the Association for the common use and**
20 **enjoyment of the Owners and Residents of the Development. The Common**
21 **Area for the Development shall be identified in the Supplemental Declaration**
22 Recorded with the filing of the Subdivision Map for each Parcel within the
23 Development or in the Declaration of Annexation for any property being annexed
24 to the Development **and shall consist of** certain lots identified within parcels 1
through 14 as recorded on maps in the Office of the Recorder of Lyon County,
State of Nevada and **the real property located within the private roadway**
easements. Each Common Area lot is a “Common Element” as defined by NRS
116.017.

25 (Emphasis added.) Bates No. DVCA0010.

26 Respondents allege in regard to particular Association maintenance responsibilities,
27 Article 7, Section 7.1 of the Declaration provides:
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...The Association shall have the following maintenance responsibilities:
...(b) Other Association Property. The Association shall maintain, repair, and replace all other real and personal property that may be acquired by the Association, keeping such property in good condition and repair...
(d) Roadways The Association shall maintain and keep in good repair all roadways within the Development, which are owned by the Association not located on individual Lots or otherwise maintained by the County *or over which the Association and Owners have an access easement by reason of their deed or this Declaration*.

(Emphasis added.) Bates No. DVCA0027. Respondents allege pursuant to NRS 116.2109(1) “plats” or final maps are part of the Declaration. Respondents allege pursuant to Nevada statutes and Declaration consistent therewith, the Association’s Common Area includes real property owned by another entity, i.e., the roads, over which the Association and the Owners have an access easement.

Respondents allege the NRED failed to review the necessary documents in concluding Palmer Drive and the guard shack are not part of the Common Area of the DVCA. Respondents allege properly understanding that Palmer Drive and the guard shack are Common Areas of the Association requires the review of a number of documents for which a visual orientation is useful. Respondents allege the guard shack, and the entrance side of Palmer Drive are on 016-361-35, and the exit side of the road is on 016-361-70. *See* Bates No. DVCA0640 Aerial Photograph of intersection of Palmer Drive and Dayton Valley Road. Bates No. DVCA0641 depicts the entirety of APN 016-361-70. Bates No. DVCA0642 depicts the entirety of APN 016-361-35, which is most of the land constituting the golf course. Respondents allege as the aerial photograph demonstrates, the golf course winds through the community and portions of several of the major roads of the Association cross it. *See also* Bates Nos. DVCA0565-0599, assessor depictions of the subdivision depicting the checkerboard ownership of the Common Area roadways.

Respondents allege the real estate comprising both the Association and the golf course

1 had a series of developers/owners over the years. Respondents allege during the periods critical
2 to this analysis, both were owned by the same entities. Respondents allege the Association’s
3 original Declarant, John Lawrence (Nevada) LLC (“John Lawrence”) recorded the First
4 Amended and Restated Declaration of Covenants, Conditions and Restrictions for Dayton Valley
5 Country Club on May 18, 1990, as Document No. 133393. Bates Nos. DVCA0643-0696
6 Respondents allege on May 5, 1993, John Lawrence recorded a “Notice of Addition of
7 Land/Declaration of Annexation of Dayton Valley Country Club Units 2B and 4” as Document
8 No. 161015 (Bates Nos. DVCA0697-0705) annexing Unit 4 (“Supplemental Declaration”)
9 being:
10

11 Those portions of the West ½ of Section 17 and the Southeast ¼ of Section 18,
12 Township 16 North, Range 22 East, M.D.B.&M. in the County of Lyon, State of
13 Nevada being more particularly described as follows:

14 ***All of the lands which lie within the Boundaries of Dayton Valley Country Club
Unit 4 as said subdivision is shown per File No. 156206*** of the Official Records
of said Lyon County.

15 The Plat Map of Unit 4, File No. 156206 is attached as Bates Nos. DVCA0706-0709.
16 Respondents allege on June 7, 1995, John Lawrence filed a “Parcel Map for John Lawrence”
17 granting forever “***those permanent easements for access . . . shown hereon.***” See Bates Nos.
18 DVCA0710-0715. Respondents allege this Parcel Map refers to what is now APN 016-361-35,
19 the parcel on which the entry side of Palmer Drive and the guard shack are located. Respondents
20 allege at the top of page 2 of this Parcel Map, where the current Palmer Drive intersects with
21 Dayton Valley Road, is a note which states “***Exist public utility, sanitary sewer, drainage and
22 access easement per doc #156206***” (i.e. the Unit 4 Final Map). Bates No. DVCA0711.
23

24 Respondents allege in 1998 John Lawrence conveyed numerous parcels including the
25 subject parcels to ComLaw. See Bates Nos. DVCA0716-0727 1998 JL Deed to COMLAW.
26 Respondents allege on April 19, 1999, ComLaw recorded the Parcel Map for ComLaw No. 445
27 as File No. 232541 which pertains to APN 016-361-70 and includes a depiction of Palmer Drive
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1 with the following note:

2 ***Private Road per Document No. 156206. Private access road . . . roadway and***
3 ***drainage maintained by homeowners association.***

4 See Bates Nos. DVCA0728-0729 ComLaw Map. Respondents allege access easements in favor
5 of the Association exist on both APNs 016-361-35 and 016-361-70 in exchange for the
6 Association’s obligation to maintain Palmer Drive. Respondents allege the easement is provided
7 for in the Plat Map for Unit 4, and the Supplemental Declaration which annexes Unit 4 refers to
8 the land as said subdivision is shown on the Plat Map.

9
10 47. Answering Paragraph 47 of the Complaint, Respondents deny that it asserted that
11 there was any fault associated with the lack of a separate parcel for the roadways. Respondents
12 affirmatively stated that it is simply a fact that there is not a separate parcel or parcels for the
13 roadways, but rather they are depicted on the various recorded maps for the subdivision.

14 48. Answering Paragraph 48 of the Complaint, Respondents admit that
15 communication with Lyon County, including the District Attorney and Community Outreach
16 Director to brainstorm possible actions with respect to the Division’s position. Respondents
17 allege that the Lyon County officials reiterated the roadways are not separate parcels and the
18 roadways were annexed to the Association by virtue of the maps and documents approved when
19 the subdivision was accepted. Respondents allege Lyon County acknowledged DVCA maintains
20 all roadways as required by the approved maps, easements and governing documents.

21
22 49. Answering Paragraph 49 of the Complaint, Respondents deny that there is a
23 problem. Respondents allege that the requirement the DVCA maintain all roadways as required
24 by the approved maps, easements, and governing documents.

25
26 50. Answering Paragraph 50 of the Complaint, Respondents deny that the ownership
27 of Palmer Drive or any other of the many roadways within DVCA is relevant. Respondents
28 allege that the requirement the DVCA maintain all roadways as required by the approved maps,

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easements, and governing documents.

51. Answering Paragraph 51 of the Complaint, Respondents deny that ensuring they comply with the requirements under the approved maps, easements, governing documents and Nevada law does not provide any compensation or benefit to Respondent Kepler.

52. Answering Paragraph 52 of the Complaint, Respondents admit that since its inception, DVCA has lawfully complied with its obligation to maintain all of the roadways and gates within the common interest community, including Palmer Drive and Palmer Gate.

53. Answering Paragraph 53 of the Complaint, Respondents admit that it maintains the Common Area as defined in the Declaration and denies that it maintains property it does not own that is not subject to a recorded agreement or the governing documents.

54. Answering Paragraph 54 of the Complaint, Respondents admit that there is nothing in Nevada law that requires resignation from the Board when there is no personal profit to compensation to an individual Board member.

55. Answering Paragraph 55 of the Complaint, Respondents admit that the budget includes expenses for the Common Areas of the Association. Respondents allege that the obligations under the Declaration include, but are not limited to, maintenance of the roadways and landscaping.

56. Answering Paragraph 56 of the Complaint, Respondents deny that there is any distinction by and between any of the Common Area and the inclusion of Palmer Drive and Palmer Gate are required under the Declaration, other governing documents, maps, easements and Nevada law.

57. Answering Paragraph 57 of the Complaint, Respondents deny that there was any admission that all of the roadways and gates, including Palmer Drive and Palmer Gate are not Common Area. Respondents allege that ownership of the Common Area is irrelevant, and all

1 Common Area must be maintained. Respondents allege that all roadways and gates must be
2 maintained. Respondents allege the Declaration provides in pertinent part as follows regarding
3 the Common Area and the Association’s responsibility for roadway maintenance:

4 Article 1, Section 1.15 Common Area. "Common Area" **shall mean all real**
5 **property owned or maintained by the Association for the common use and**
6 **enjoyment of the Owners and Residents of the Development. The Common**
7 **Area for the Development shall be identified in the Supplemental Declaration**
8 Recorded with the filing of the Subdivision Map for each Parcel within the
9 Development or in the Declaration of Annexation for any property being annexed
10 to the Development **and shall consist of** certain lots identified within parcels 1
11 through 14 as recorded on maps in the Office of the Recorder of Lyon County,
12 State of Nevada and **the real property located within the private roadway**
13 **easements**. Each Common Area lot is a "Common Element" as defined by NRS
14 116.017.

15 (Emphasis added.) Bates No. DVCA0010.

16 Respondents allege in regard to particular Association maintenance responsibilities,
17 Article 7, Section 7.1 of the Declaration provides:

18 ...The Association shall have the following maintenance responsibilities:
19 ...**(b) Other Association Property**. The Association shall maintain, repair, and
20 replace all other real and personal property that may be acquired by the
21 Association, keeping such property in good condition and repair...
22 **(d) Roadways** The Association shall maintain and keep in good repair all
23 roadways within the Development, which are owned by the Association not
24 located on individual Lots or otherwise maintained by the County **or over which**
25 **the Association and Owners have an access easement by reason of their deed or**
26 **this Declaration**.

27 (Emphasis added.) Bates No. DVCA0027 Respondents allege pursuant to NRS 116.2109(1)
28 “plats” or final maps are part of the Declaration. Respondents allege pursuant to Nevada statutes
and Declaration consistent therewith, the Association’s Common Area includes real property
owned by another entity, i.e., the roads, over which the Association and the Owners have an
access easement.

58. Answering Paragraph 58 of the Complaint, Respondents deny each and every
allegation. Respondents allege the violation which the NRED alleges rests on the premise that

1 the Association’s maintenance of Palmer Drive and the guard shack on Palmer Drive somehow
2 constitutes *personal* profit or compensation of any kind from a matter before the executive board
3 of the association because the land on which the road and the guard shack are located belong to
4 Tour Specs Golf Management, LLC (“Tour Specs”). Reliance Golf Management, LLC
5 (“Reliance”) is the Manager of Tour Specs and Respondent Kepler, a Unit’s Owner in DVCA, is
6 the Manager of Reliance. A copy of the deed evidencing Respondent’s Kepler’s ownership of a
7 Unit and giving rise to his right to be a member of the Board as provided in NRS 116.31034 is
8 attached as Bates. Nos. DVCA0758-0760.

10 Respondents allege NRED’s flawed presumption is but for the Association’s maintenance
11 of this road, Tour Specs Golf Management, LLC would have to pay for its upkeep, which would
12 in turn reduce its profitability, which would in turn reduce the amount of profit or compensation
13 which accrues to Respondent Kepler. Respondents allege this presumption ignores all of the
14 Governing Documents which require the Association to maintain all of the roadways including,
15 but not limited to, Palmer Drive. Respondents also allege that the Division ignored and refused
16 to respond substantively to numerous communications from Respondents providing corrections
17 to the flawed conclusions of the Division. Copies of additional communications are included as
18 Bates Nos. DVCA0761-0919 Respondents allege it is a leap to say that Mr. Kepler, who owns a
19 home in Dayton Valley and is eligible to be on the Board, is somehow prohibited because of a
20 tangential interest in either Tour Specs or Reliance.
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23 Respondents allege the Division has taken the position in the past that the spouse of an
24 association employee (not the community manager but simply someone at the level of a
25 receptionist or club monitor) could not serve on the board because their spouse’s paycheck
26 constituted “personal profit or compensation.” Respondents allege this situation is not the same.
27 Respondents allege Respondent Kepler is multiple degrees removed from the entity which is
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1 allegedly deriving a profit or compensation from the Association’s maintenance of Palmer Drive.
2 Respondents allege there is no evidence of any profit or compensation to Tour Specs or Reliance.
3 Respondents allege even assuming for purposes of argument that there is some monetary benefit,
4 it still does not follow that Respondent Kepler is receiving personal profit or compensation.

5 Respondent alleges if this were the standard, NRED would seek to prohibit a Unit Owner
6 from running for the Board who, for example:

- 7 • Owns a lot which includes a drainage easement maintained by the association because the
8 association’s maintenance of this property which it does not own constitutes personal
9 profit or compensation to the owner;
- 10 • Is employed by the local municipality which requires an association to maintain the
11 public street median adjacent to the association because the owner receives a paycheck
12 from the municipality which would otherwise have to pay for this upkeep; and
- 13 • Is employed by a declarant still building homes in the community because he receives a
14 paycheck from the declarant.

15 Respondents allege even assuming for the sake of argument that Respondent Kepler’s
16 relationship as a Manager of an LLC that manages another LLC is “personal” enough that money
17 the LLC does not spend somehow compensates him, it is black letter law that the beneficiary of
18 the easement (i.e. the Association) is responsible for maintaining the easement unless the terms
19 of the easement provide otherwise. *See* Restatement (Third) of Property (Servitudes) § 4.13
20 (2000). Respondents allege it is Nevada law per NRS 116, fundamental real property law, and
21 the uncontroverted facts as established herein, therefore, that control here. Respondents allege
22 Tour Specs, Reliance, and ultimately Respondent Kepler are irrelevant to the Association’s
23 maintenance obligations which it has met for three decades, and the directive to the Board for the
24 removal of Respondent Kepler is without legal authority.
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1 Respondents allege the Division may be attempting to apply the “6 degrees of separation
2 from Kevin Bacon” premise in this situation. Respondents allege any human being can trace a
3 tangential relationship back to another in six or fewer connections. Respondents allege that is a
4 slippery slope which has no place under Nevada law in determining whether an owner can serve
5 on their homeowners association Board. Respondents allege the facts and the law also do not
6 support the conclusion that Respondent Kepler derives any personal profit or compensation
7 whatsoever from work which the Association is obligated under the Governing Document to
8 perform, let alone a personal benefit which would preclude him from serving on the Board.
9

10 **VIOLATIONS OF LAW**

11 59. Answering Paragraph 59 of the Complaint, Respondents deny each and every
12 allegation.

13 60. Answering Paragraph 60 of the Complaint, Respondents deny each and every
14 allegation.

15 61. Answering Paragraph 61 of the Complaint, Respondents deny each and every
16 allegation.

17 62. Answering Paragraph 62 of the Complaint, Respondents deny each and every
18 allegation.
19

20 **AFFIRMATIVE DEFENSES**

21 1. Petitioner’s Complaint fails to state a claim upon which relief may be validly
22 granted against Respondents.
23

24 2. Respondents acted in accordance with statutory authority and is privileged and
25 protected by applicable Nevada law, the Governing Documents of DVCA and Chapter 116 of the
26 Nevada Revised Statutes.
27

28 3. Petitioner violated the Respondents’ Due Process rights afforded by the United

1 States and Nevada Constitutions.

2 4. Petitioner’s Complaint is barred by the Doctrine of Unclean Hands.

3
4 5. Petitioner’s Complaint is contrary to public policy.

5
6 6. Petitioner’s Complaint is barred by mistake.

7 7. Petitioner’s Complaint is barred by the failure to comply with the public duties
8 required by a state agency charged with understanding the facts and issues relevant to this matter.

9
10 8. Petitioner’s Complaint is barred by Petitioner’s conduct.

11 9. Petitioner’s Complaint is barred by hindrance of Respondents’ actions.

12 10. Petitioner’s Complaint is barred as a result of Petitioner’s failure to provide all
13 information related to the investigation to Respondents.

14
15 11. Petitioner’s Complaint is barred by Petitioner’s lack of authority.

16 12. Petitioner’s Complaint is barred because at all times, Respondents complied with
17 all statutory requirements.

18
19 13. Petitioner’s Complaint is barred because at all times, Respondents complied with
20 all requirements of a common interest community in Nevada.

21
22 14. Petitioner’s Complaint is barred because at all times, Respondents complied with
23 the requirements of the Governing Documents.

24
25 15. At all times herein mentioned, Respondents performed their duties in good faith
26 and in a manner in which any ordinarily prudent association and its members would use.

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28 16. Pursuant to the provisions of Rule 11 of the Nevada Rules of Civil Procedure, at
the time of the filing of Respondents’ Response, all possible affirmative defenses may not have

1 been alleged inasmuch as insufficient facts and other relevant information is unknown at this
2 time. Respondents reserve the right to amend this Response to allege additional affirmative
3 defenses if subsequent investigation warrants the same.
4

5 **LIST OF WITNESSES**

- 6 1. Terry Wheaton, Chief Compliance Audit Investigator
7 State of Nevada Department of Business and Industry
8 Real Estate Division
9 3300 West Sahara Avenue, Suite 350
10 Las Vegas, NV 89102

11 Relevance of Testimony: Mr. Wheaton will testify as to the investigation conducted and
12 the information included and not included in the review by the Division. Mr. Wheaton will
13 review the exhibits provided with the Response and detail the conclusions reached by the
14 Division.

- 15 2. Christy Staffen, Compliance Audit Investigator II
16 Office of the Ombudsman for Owner in Common
17 Interest Communities and Condominium Hotels
18 1818 E. College Parkway, Suite 110
19 Carson City, NV 89706

20 Relevance of Testimony: Ms. Staffen will testify as to the investigation conducted and
21 the information included and not included in the review by the Division. Ms. Staffen will
22 review the exhibits provided with the Response and detail the conclusions reached by the
23 Division.

- 24 3. James Kepler
25 Dayton Valley Community Association Board Member
26 681 St. Andrews Drive
27 Dayton, NV 89403

28 Relevance of Testimony: Mr. Kepler will confirm his status as a unit's owner within
DVCA and will address the allegations made by the Division regarding the roadways within the
subdivision.

