



1 Ward (“Response”). *See* EXHIBIT 1 and 2. The Association had completed the 2020 Draft Audit  
2 and 2021 Draft Audit, but they were not finalized because of a procedural error in that the  
3 Association’s management company erroneously neglected to return the signed Letter of  
4 Representation which must be executed in order to prompt the CPA to provide the final copy of  
5 the audit. The Association further alleges that the 2020 and 2021 Audit did not find any fraudulent  
6 information and that there has been no harm to the Association. As of the time the Complaint was  
7 filed, this issue was resolved.  
8

9 3. Answering Paragraph 3 of the Complaint, Respondent admits the 2022 Audit was  
10 not timely completed. Respondent alleges that the 2022 Audit was completed on or about June 10,  
11 2024. *See* EXHIBIT 3. The Association further alleges that the 2022 Audit did not find any  
12 fraudulent information, and that there has been no harm to the Association. As of the time the  
13 Complaint was filed, this matter was resolved. Further, the Board and management are taking  
14 affirmative steps at ensuring future audits are timely finalized. As of the date of this Answer, the  
15 2023 Draft audit has been completed and is pending Board approval. *See* EXHIBIT 4.  
16

17 4. Answering Paragraph 4 of the Complaint, Respondent admits that the 2019 CPA  
18 Audit was approved in May 2022. This allegation regarding the adoption of the 2019 Audit was  
19 not included in the Division’s Investigation, as set forth in the March 26, 2024 correspondence  
20 from Investigator Wheaton. As of the time the Complaint was filed, this matter was resolved.  
21

22 5. Answering Paragraph 5 of the Complaint, Respondent admits that in its April 23,  
23 2024 Response, it explained that its 2020, 2021 and 2022 Annual Audits were not timely finalized.  
24 However, as of the filing of this Complaint, all of the just-referenced Audits have been finalized  
25 and adopted by the Board, and as a result, these issues no longer exist.  
26

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**B. Inadequate Budget Preparation**

6. Answering Paragraph 6 of the Complaint, Respondent admits that the Audit states that “[b]udgeting practices result[ed] in various and net losses each year.”

7. Answering Paragraph 6 of the Complaint, Respondent admits that it reported inconsistent information between its approved and ratified budget from the Budget-to-Actual statements for the year 2022 but denies reporting inconsistent information in 2021.

8. Paragraph 8 of the Complaint does not require a response because the documents speak for themselves.

9. Answering Paragraph 9 of the Complaint, Respondent admits this allegation. Respondent asserts its decision on the rate of assessments was based on advice received from its former community manager. *See* CICC 000013. Respondent asserts it has taken affirmative steps to correct this issue as evidenced by the Board’s August 12, 2024 approval of an amended 2024 Budget, which was ratified by the membership on August 28, 2024. *See* EXHIBIT 5.

10. Answering Paragraph 10 of the Complaint, Respondent admits that in 2022, the Board supplied two separate budgets to the Division indicating different budget information, which Respondent attributes to prior management’s poor record keeping. However, Respondent confirms that the Owners have been billed the amounts included in the final approved budgets.

11. Answering Paragraph 11 of the Complaint, Respondent admits that the 2023 Reserve Budget lists the reserve special assessment contribution as an “Other Expense.” The 2024 Reserve Budget correctly lists the Reserve Contribution as Investment Income. *See* EXHIBIT 5.

Investment Income													
4905 – Reserve Contribution Income	9,167	9,166	9,167	9,167	9,166	9,167	9,167	9,166	7,917	7,917	7,917	7,917	105,001
4906 – Reserve Contribution Income 2	13,917	13,916	13,917	13,917	13,916	13,917	13,917	13,916	13,917	13,917	13,916	13,917	167,000
4910 – Interest Earned - Reserve Accounts	0	0	0	0	0	0	0	0	250	250	250	250	1,000
Total Investment Income	23,084	23,082	23,084	23,084	23,082	23,084	23,084	23,082	22,084	22,084	22,083	22,084	273,001
Total Reserves Income	23,084	23,082	23,084	23,084	23,082	23,084	23,084	23,082	22,084	22,084	22,083	22,084	273,001

///

1           12.     Answering Paragraph 12 of the Complaint, Respondent admits that it stated in its  
2     Response that there were errors in some of the information sent out to the Owners but that the  
3     Owners have been billed the amounts included in the final budgets and, on information and belief,  
4     no complaints have been received from any of the Owners regarding the process or the charges  
5     each year.

6  
7           13.     Answering Paragraph 13 of the Complaint, Respondent admits that it stated it  
8     identified issues in regard to proper record keeping. The Board understands that it has fiduciary  
9     duties to the Association but alleges that the primary cause for the record keeping issues is the fact  
10    that the Association has gone through multiple management companies with multiple community  
11    manager changes during the period at issue. The Association proposed in its Response to the  
12    Division that it supply it with future records for a specified period of time as determined by the  
13    Division in order to establish that the Association and its management company is correcting the  
14    issue and has modified its record keeping practices to comply with Nevada law.

15  
16                   **C.     Failure to Adequately Contribute to Reserve Account**

17           14.     Answering Paragraph 14 of the Complaint, Respondent admits this allegation but  
18     asserts that it has retained Better Reserve Consultants, LLC (“BRC”) to complete an updated  
19     Reserve Study and funding plan which it is prepared to follow. *See* EXHIBIT 6.

20  
21           15.     Answering Paragraph 15 of the Complaint, Respondent admits this allegation but  
22     asserts that it is working with its Reserve Study Specialist, BRC, and an updated Reserve Study  
23     and Funding Plan has been completed in order for the Association to work toward adequately  
24     funding its reserves. *See* EXHIBIT 6.

25           16.     Answering Paragraph 16 of the Complaint, Respondent admits this allegation  
26     but asserts that the deferred contributions to reserves are currently being tracked on the  
27     Association’s financial reports. *See* EXHIBIT 7 (Draft July financial package).

28

1           17.     Answering Paragraph 17 of the Complaint, Respondent admits this allegation but  
2 asserts its current management company is consistently showing all deferred contributions as an  
3 Accounts Payable owed to the Reserve. *See* EXHBIIT 7.

4           18.     Answering Paragraph 18 of the Complaint, Respondent admits this allegation but  
5 asserts that having changed management companies, this allegation is resolved.

6           19.     Answering Paragraph 19 of the Complaint, Respondent admits this allegation but  
7 asserts the financials prepared by its current management company accurately reflect the due  
8 to/from amounts. *See* EXHIBIT 7.

9           20.     Answering Paragraph 20 of the Complaint, Respondent admits that it conceded to  
10 issues with recordkeeping and regularly transferring reserves but asserts that it is making changes  
11 to its practices to correct the situation moving forward.

12                           **D.     Frequency Shortcomings of Executive Session Meetings**

13           21.     Answering Paragraph 21 of the Complaint, Respondent admits that the Audit states  
14 that it appears the Association held only one executive session meeting of the executive board in  
15 2021. However, NRS 116.31083 does not require a certain number of executive session meetings  
16 where the Board may only discuss the limited topics permitted under NRS 116.31085. Rather,  
17 subsection 1 of NRS 116.31083 requires that the Board meet “at least once every quarter, and not  
18 less than once every 100 days.” The Association asserts that it unfortunately has had multiple  
19 transitions between actual managers within the same management company as well as  
20 management company changes, and due to these multiple transitions, there has been a lack of  
21 proper record keeping and some of the records are unable to be located. The Board is and has been  
22 holding meetings as required by NRS (at least once every 100 days) and at each meeting they hold  
23 an open meeting and an executive Session.

24           22.     Answering Paragraph 22, Respondent admits that Meeting Minutes were missing  
25  
26  
27  
28

1 for (a) The October 25, 2021 Executive Session; (b) November 15, 2021 Budget Ratification; and  
2 (c) 2021 and 2022 Annual Unit Owner's Meeting. Respondent asserts, on information and belief,  
3 that despite not having records of minutes, all meetings occurred. Respondents further assert that  
4 that the primary cause for the record keeping issues is the fact that the Association has gone  
5 through multiple management companies with multiple community manager changes during the  
6 period at issue. The Association proposed in its Response to the Division that it supply it with  
7 future records for a specified period of time as determined by the Division in order to establish  
8 that the Association and its management company are correcting the issue and have modified its  
9 record keeping practices to comply with Nevada law.

10  
11 23. Answering Paragraph 23, Respondent admits that in its Response, it admitted its  
12 shortcomings in meeting minute record keeping. However, the Association asserts that  
13 recordkeeping going forward will be in compliance and proposes the cure set forth in paragraph  
14 22 above.

15  
16 **E. Delinquent Omitted Invoices, Receipts, Check Images and Electronic**  
17 **Payments.**

18 24. Answering Paragraph 24, Respondent responds as follows:  
19  
20 a. Respondent admits that it did not provide the AvidPay Log for 2021-22  
21 during the Audit, but asserts that the AvidPay Log was, in fact, provided to the Division on April  
22 29, 2024 as part of its Supplement to Investigator Ward. *See* EXHIBIT 8. Therefore, at the time  
23 the Complaint was filed, this matter was fully resolved.

24 b. Respondent admits that it did not provide the 2021 and 2022 check images  
25 during the Audit but asserts that copies of both the front and back of the checks for the same time  
26 period were, in fact, provided to the Division on April 29, 2024 as part of its Supplement to  
27 Investigator Ward. *See* EXHIBIT 9. Therefore, at the time the Complaint was filed, this matter  
28 was fully resolved.

1 c. Respondent admits that it did not provide 2021-2022 invoices and receipts  
2 for Eugene Burger Management (EBMC) during the Audit, but asserts that the invoices were, in  
3 fact, provided to the Division on April 23, 2024 as part of its Response. *See* EXHIBIT 10.  
4 Therefore, at the time the Complaint was filed, this matter was fully resolved.

5 d. Respondent admits that it did not provide the 2021 and 2022 budget  
6 ratification packages, and asserts that these records cannot be located.

7  
8 **F. Inadequate Insurance Crime Policy**

9 25. Paragraph 25 of the Complaint does not require a response because the document  
10 speaks for itself.

11 26. Paragraph 26 of the Complaint does not require a response because the document  
12 speaks for itself.

13 27. Answering Paragraph 27, Respondent admits this allegation. Respondent asserts  
14 that it has obtained new crime insurance which is now in place. *See* EXHIBIT 11.

15 28. Answering Paragraph 28, Respondent admits that in its Response it stated that the  
16 Board was unaware of their responsibility to maintain a certain level of crime insurance.  
17 Respondent asserts that the Board is now aware of its responsibilities.

18  
19 **G. Cash Balances Not Fully Insured**

20 29. Answering Paragraph 29, Respondent admits that its financial statements  
21 demonstrated cash balances in 2023 that exceeded FDIC coverage limits but Respondent asserts  
22 this issue is in the process of being corrected. The Association’s community manager has initiated  
23 the process to open an Insured Cash Sweep (“ICS”) account. There have been delays caused by  
24 the process to open an Insured Cash Sweep (“ICS”) account. There have been delays caused by  
25 the Association’s banking team in processing the request and delays on the part of the  
26 Association’s bank that has attributed to this issue not being resolved as of the time of this Answer,  
27 but as of August 29, 2024 the Association has escalated the request to its top supervisor with its  
28

1 banking team to open the ICS account which will ensure that their funds are property FDIC  
2 insured.

3 30. Answering Paragraph 30, Respondent admits that as of August 31, 2023, the  
4 maximum loss at risk was approximately \$84,239.

5 **VIOLATIONS OF LAW**

6  
7 31. Answering Paragraph 31 of the Complaint, Respondent admits to the violation in  
8 that its audits were not timely completed but asserts it has taken affirmative steps to resolve this  
9 issue.

10 32. Answering Paragraph 32 of the Complaint, Respondent admits to the violation of  
11 NRS 116.457(b) and (c) relating to the timely completion of annual audits and submission to the  
12 Division, but denies that the preparation, contents and qualification of the auditor were in violation.

13 33. Answering Paragraph 33 of the Complaint, Respondent denies a violation of NRS  
14 116.3102(1)(b), which references that the Association shall adopt and amend budgets, collect  
15 assessments for common expenses and invest funds for the association, and does not pertain to  
16 proper record keeping.

17  
18 34. Answering Paragraph 34 of the Complaint, Respondent admits a violation of NRS  
19 116.31151 to the extent it refers to distributing inconsistent budget information to the membership  
20 in 2022 due to poor record keeping.

21  
22 35. Answering Paragraph 35 of the Complaint, Respondent admits to the Association's  
23 poor record keeping but denies a violation of NRS 116.3103 because the executive board  
24 reasonably relied on its management companies to properly complete the administrative tasks of  
25 proper record retention and that the Board's actions are protected by the business-judgment rule.

26 36. Answering Paragraph 36 of the Complaint, Respondent admits to the violation and  
27 acknowledges that its reserve account is underfunded but asserts it has taken affirmative steps to  
28



1 resolve this issue by complying with the Reserve Study Specialist recommendations in the updated  
2 Reserve Study. *See* EXHIBIT 6.

3 37. Answering Paragraph 37 of the Complaint, Respondent acknowledges poor record  
4 keeping and irregular reserve transfers. However, it denies a violation of NAC 116.415 which  
5 references the contents of the reserve budget and an explanation of the difference between the  
6 actual funding and required funding to satisfy the statutory adequate funding requirement.  
7

8 38. Answering Paragraph 38 of the Complaint, Respondent admits it failed to maintain  
9 records in regard to requested meeting minutes but asserts the required meetings did take place in  
10 accord with NRS 116.30183.

11 39. Answering Paragraph 39 of the Complaint, Respondent asserts this is allegation is  
12 a duplicate of paragraph 38 and no response is required.

13 40. Answering Paragraph 40 of the Complaint, Respondent denies a violation of NRS  
14 NRS 116.31153. This alleged violation was not identified in the Investigation. However, attached  
15 as EXHIBIT 12 is a true and correct copy of a snippet from the Association’s “Strongroom”  
16 software program, which is used in conjunction with AvidPay, of two invoices, chosen at random  
17 and the approval process for same. The Strongroom software requires dual board approval for each  
18 invoice before AvidPay processes a payment and cuts a check. Once an invoice is approved by  
19 two board members, AvidPay affixes one electronic signature on the check to be issued.  
20

21 41. Answering Paragraph 41 of the Complaint, Respondent denies this allegation and  
22 asserts it provided the Division with the requested information of the AvidPay Log for 2021-2022  
23 and copies of both the front and back of checks for the same time period on April 29, 2024. *See*  
24 EXHIBITS 8 and 9.  
25

26 42. Answering Paragraph 42 of the Complaint, Respondent admits this allegation.

27 43. Answering Paragraph 43 of the Complaint, Respondent admits this allegation.  
28

1 **DISCIPLINE AUTHORIZED**

2 With respect to the “Discipline Authorized,” Respondent acknowledges that the  
3 Commission has the authority to impose sanctions set forth therein.

4 **PROPOSED RESOLUTION/SETTLEMENT**

5  
6 **A. Continued submission of requested documents.**

7  
8 1. Audits: The Board and management have been advised of the importance of  
9 ensuring that the annual audits are completed in a timely manner in accordance with Nevada law,  
10 including following through and returning an executed Letter of Representation in order to receive  
11 the final copy of the Audit, which attributed to the prior untimely completion of audits. As part of  
12 a settlement, the Association is prepared to supply future audits upon receipt for to the Division or  
13 Commission on a regular basis, as determined by the Commission.

14  
15 2. Budgets and Reserve Studies: The Association proposes that it supply the  
16 Division or Commission with future budgets and updated Reserve Studies for a specified period  
17 of time as determined by the Commission in order to establish that the Association has corrected  
18 this issue. Enclosed for the Commission’s review is the proposed 2025 Budget which was drafted  
19 to ensure the Association would be able to adhere to the proposed funding plan. Assuming no  
20 unforeseen changes in expenses, this proposed assessment level could potentially remain the same  
21 for the upcoming four years and the Association would be able to properly following the adopted  
22 plan herein.. See EXHIBIT 13.

23  
24 3. Crime Insurance: The Association proposes to supply the Division or  
25 Commission with Certificates of Insurance confirming adequate crime insurance on a regular  
26 basis, as determined by the Commission. The Association is adopting a change in their policy to  
27 ensure their Crime Insurance is at an amount that covers three months of assessments plus the  
28

1 amount in their reserve account in accord with Nevada law. The Association will be reviewing this  
2 on an annual basis, during the budget process, and will make adjustments accordingly to comply  
3 with Nevada law.

4  
5 4. Insuring Cash Balances: The Association has experienced delays in opening an  
6 ICS account but has expedited a request with their top supervisor with the banking team to insure  
7 its cash balances in accord with FDIC requirements. Once all funds are insured under FDIC (or  
8 equivalent) the Association will provide the Division or Commission with evidence of same and  
9 proposes to provide confirmation that funds are FDIC insured on a regular basis, for a period of  
10 time as determined by the Commission.

11  
12 **B. Compliance with Nevada law through a Funding Plan.**

13 NRS 116.3115(2) provides, in pertinent part, as follows (emphasis added):

14  
15 (b) The association shall establish adequate reserves, funded on a reasonable  
16 basis, for the repair, replacement and restoration of the major components of the  
17 common elements and any other portion of the common-interest community that  
18 the association is obligated to maintain, repair, replace or restore. . . *The*  
19 *association may comply with the provisions of this paragraph through a funding*  
20 *plan that is designed to allocate the costs for the repair, replacement and*  
21 *restoration of the major components of the common elements* and any other  
22 portion of the common-interest community that the association is obligated to  
23 maintain, repair, replace or restore *over a period of years if the funding plan is*  
24 *designed in an actuarially sound manner which will ensure that sufficient money*  
25 *is available when the repair, replacement and restoration of the major*  
26 *components of the common elements* or any other portion of the common-interest  
27 community that the association is obligated to maintain, repair, replace or restore  
28 are necessary. . .

Based on the express language of the statute, an association with an underfunded reserve  
account is in compliance with the law, if the association’s board has adopted a “funding plan” that  
is “designed in an actuarially sound manner which will ensure that sufficient money is available  
when the repair, replacement, and restoration of the major components of the common elements .  
. . are necessary.” The objective of a funding plan is to: (a) adequately fund the reserve account,

(b) address the current “due to/from” financial accounting entry, (c) address the scheduled reserve study expenditures, and (d) comply with the maximum annual assessment increases permitted by the Declaration.

The proposed funding plan is based on the Association’s current financial position. A snippet of the proposed Funding Plan in the 2025 Full Reserve Study is below:

Recommended Reserve Contribution										
Year Funded	Beginning of Year Balance	Spc Rsv Assessmt	Annual Transfer	Member Mo Pmt	Annual Expenditures	Interest Earned	Income Tax	End of Year Balance	% Funded	Fully Funded (100%)
2024	\$299,908.23	\$55,668.00	\$94,407.00	\$124.88	\$87,700.00	\$2,999.00	\$899.70	\$364,382.53	32.66	\$1,115,752.00
2025	\$364,382.53	* \$167,000.00	\$120,000.00	\$158.73	\$156,927.01	\$3,644.00	\$1,093.20	\$497,006.32	44.05	\$1,128,151.16
2026	\$497,006.32	* \$167,000.00	\$120,000.00	\$158.73	\$267,786.31	\$4,970.00	\$1,491.00	\$519,699.01	50.01	\$1,039,130.70
2027	\$519,699.01	* \$167,000.00	\$120,000.00	\$158.73	\$125,776.10	\$5,197.00	\$1,559.10	\$684,560.81	62.63	\$1,093,109.12
2028	\$684,560.81	* \$167,000.00	\$120,000.00	\$158.73	\$145,190.64	\$6,846.00	\$2,053.80	\$831,162.37	73.32	\$1,133,624.25
2029	\$831,162.37	\$0.00	\$150,000.00	\$198.41	\$190,561.47	\$8,312.00	\$2,493.60	\$796,419.30	70.11	\$1,135,893.35

\* Special Reserve Assessment 2025, 2026, 2027, 2028 = \$92,500/yr Due-to-From Payment, \$74,500/year Special Reserve Assessment

Respondent recognizes it needs to address its due to/from balance, which is mainly attributed to Respondent not properly raising the assessment amount to have sufficient funds to transfer to the reserves. To correct this issue, the Association’s updated 2024 Budget, which was ratified by the membership on August 28, 2024, increased assessments for the remainder of the fiscal year by approximately 47% from \$390 per unit, per month, to \$542 per unit, per month. In addition, there is a special reserve assessment included in the amount of \$221 per unit, per month.

Respondent does not presently have the funds in its operating account to commence paying down the due to/from balance. In order to address this, the new and updated financing plan recognizes and acknowledges the Association’s current financial position and includes a \$167,000 special reserve assessment for the years 2025, 2026, 2027 and 2028. Out of the special reserve assessment, \$92,500 will go towards paying down the outstanding due to/from balance and \$74,500 will be a transfer to the reserves. The Reserve Study Specialist agreed that this amount will pay the outstanding due to/from balance and also allow for sufficient transfers to the reserves,

1 and that this plan will bring the Association’s reserves to 73.32% funded by 2028. At which time,  
2 the Association will no longer need a Special Reserve Assessment.

3 The Association’s proposed 2025 Budget is attached as EXHIBIT 13. This proposed  
4 Budget contemplates a \$43.00 increase in the annual assessments from \$542 per unit, per month,  
5 to \$585 per unit, per month, in addition to the special reserve assessment in the amount of \$221  
6 per unit, per month. The 2026, 2027 and 2028 Budgets will not require any further increases in  
7 annual assessments, barring any unforeseen changes in expenses, but will be reviewed annually  
8 by the Board as required and adopted and ratified per NRS 116.

9  
10 As part of this settlement, the Association agrees to return and report the status of the  
11 funding plan to the Division or Commission on a regular basis, as determined by the Commission.

12 The Association believes that if the Commission accepts this funding plan, the Association  
13 will be in compliance with NRS 116.3115(2).

14 Pursuant to NRS 239B.030 and 603A.040, the undersigned does hereby affirm that the  
15 ***Response to Complaint for Disciplinary Action***, filed in the above-entitled case (Case No. 2024-  
16 137 does not contain the social security number of any person.

17  
18 DATED this 30<sup>th</sup> day of August, 2024.

19 LEACH KERN GRUCHOW SONG

20  
21 By: /s/ Sophie A. Karadanis, Esq.  
22 SOPHIE A. KARADANIS, ESQ.  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW SONG, hereby certified that on 30<sup>th</sup> of August, 2024, she served a true and correct copy of the foregoing, RESPONSE TO COMPLAINT FOR DISCIPLINARY ACTION, by:

- Depositing for mailing, in a sealed envelope, U.S. postage prepaid, at Reno, Nevada
- Personal Delivery
- Facsimile
- Federal Express/Airborne Express/Other Overnight Delivery
- Reno Messenger Service
- Electronic Service – via E-Mail

Addressed as follows:

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Christal P. Keegan, Esq.  
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