

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

3 SHARATH CHANDRA, Administrator,
4 REAL ESTATE DIVISION, DEPARTMENT
5 OF BUSINESS AND INDUSTRY, STATE
6 OF NEVADA,

6 Petitioner,

7 vs.

7 VISTA DEL SUR TOWNHOUSE
8 ASSOCIATION
9 (Entity Number 1094-1985),

9 Respondents.

Case No. 2023-394

FILED

NOV 22 2024

NEVADA COMMISSION FOR
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS



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11 **AMENDED RESPONSE TO COMPLAINT FOR DISCIPLINARY ACTION**

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13 Respondent, Visa Del Sur Townhouse Association, (“Respondent” or “Association”), by
14 and through its attorney, Donna A. Zanetti, Esq., of Leach Kern Gruchow Song, hereby submits
15 its amended response to the Commission's Complaint for Disciplinary Action (“Complaint”) filed
16 October 17, 2024 (“Amended Response”).

17 **JURISDICTION AND NOTICE**

18 Respondent admits the allegations contained in the preliminary paragraph.

19 **FACTUAL ALLEGATIONS**

20 1. Answering Paragraph 1 of the Complaint, Respondent admits that the Division
21 conducted an audit for the Association.

22 **A. Delinquent CPA Reviews and Audits**

23 2. Answering Paragraph 2 of the Complaint, Respondent admits that in response to
24 the Division’s January 22, 2023 [sic] letter it stated that it only had CPA audits for 2014 and 2017.
25 Respondent alleges that a correction is required to that statement in that it has final audits or
26 reviews for the periods ending February 28, 2014; 2015; 2016 and 2017. Respondent alleges that
27 it has since completed the 2022 and 2023 audits. Respondent further alleges that it has contracted
28 with a CPA and signed audit Engagement Letters for the years ending February 28, 2018; 2019;

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1 2020; and 2021 and when these audits are finalized it will have 10 years of audits, that being the
2 record retention period required by NRS 116.31175(7). See **EXHIBITS 1-10**, CPA Audits,
3 Reviews and Signed Engagement Letters for years ending 2014 through 2023.

4 3. Answering Paragraph 3 of the Complaint, Respondent admits that its budget
5 requires it to have a CPA Review or CPA Audit performed annually.

6 4. Answering Paragraph 4 of the Complaint, Respondent admits that in response to
7 the Division’s October 12, 2023 letter it admitted that audits had not been done.

8 5. Answering Paragraph 5 of the Complaint, Respondent admits that in response to
9 the Division’s January 22, 2023 [sic] letter it claimed the Board approved the Engagement Letter
10 for its 2022 Audit. Respondent alleges that the 2022 Audit has since been issued and the adjusting
11 journal entries for the audit made; thereby addressing the comment in the 2023 Audit that “audit
12 entries from the prior year issued audit were not posted to the internal financial statements,” which
13 statement was correct at the time the auditor was reviewing the records for the 2023 audit. See
14 **EXHIBIT 9 and EXHIBIT 15**.

15 6. Answering Paragraph 6 of the Complaint, Respondent admits that in response to
16 the Division’s January 22, 2023 [sic] letter it stated that it anticipated that it would approve the
17 Engagement Letter for the 2023 Audit. Respondent alleges that the 2023 Audit has since been
18 issued. See **EXHIBIT 10**.

19 7. Answering Paragraph 7 of the Complaint, Respondent admits that in response to
20 the Division’s January 22, 2023 [sic] letter it stated that the Association felt like it was the
21 responsibility of their prior management company to have had the audits completed. However,
22 Respondent acknowledges that the Association’s Board of Directors is responsible under NRS 116
23 and NAC 116.405(8)(a) for causing the Association to comply with all applicable federal, state
24 and local laws and regulations and the governing documents of the association, which would
25 include ensuring that the annual audit or review occurs.

26 **B. Low Reserve Funding**

27 8. Answering Paragraph 8 of the Complaint, Respondent admits that in response to
28 the Division’s October 12, 2023 letter it stated that “the reserve fund is extremely under funded.”

1 Respondent alleges that as of September 30, 2024, the balance in its reserve account was \$139,023
2 which includes the amounts in both the Reserve Cash FCB 7188 account and the Settlement Patio
3 Homes FCB 7196 account. Respondent further alleges that the \$76,968 in the Settlement Patio
4 Homes account is the remaining balance of a 2004 construction defect settlement pertaining to the
5 “patio homes,” which are one of two housing types in the Association, and that these funds are
6 properly part of the reserves set aside to pay for the replacement, repair or restoration of those
7 components of the patio home Unit exteriors which the Association maintains. See **EXHIBIT 16**,
8 Order. Respondent alleged in its Answer that it had a full reserve study with site visit completed
9 for Fiscal Year 3/1/25-2/28/26. See **EXHIBIT 11**. However, Respondent further alleges that it has
10 since approved a revised full reserve study with site visit for Fiscal Year 3/1/25-2/28/26 dated
11 September 27, 2024 and that in this Amended Response, “Updated 2025 Reserve Study” shall
12 mean and refer to the September 27, 2024 version which supersedes and replaces the prior version
13 which was **EXHIBIT 11**. See **EXHIBIT 17**, Updated 2025 Reserve Study, dated September 27,
14 2024 and **EXHIBIT 18**, Unanimous Written Consent Approving Updated 2025 Reserve Study
15 dated September 27, 2024. Respondent further alleges that it is following the reserve funding
16 plan in the full reserve study because at its meeting on October 23, 2024, the Board approved a
17 special reserve assessment in the recommended amount of \$184,800. See **EXHIBIT 12**, Board
18 Meeting Minutes Draft, 10/23/24. Respondent alleges that the Updated 2025 Reserve Study
19 provides for the same special reserve assessment as the prior version. Respondent alleges that it
20 has prepared a draft budget for fiscal year 2025-2026 which incorporates the annual transfer and
21 special reserve assessment amounts in the Updated 2025 Reserve Study (see **EXHIBIT 19**);
22 however, due to its fiscal year, the Board will approve the annual budget in January 2025 and,
23 consistent with NRS 116.31151(1), the budget ratification meeting will be held in late January or
24 early February 2025 for the fiscal year which starts March 1, 2025. Respondent alleges that the
25 Board understands its obligation to budget for and make an annual transfer (exclusive of the special
26 reserve assessment) sufficient to fund reserves in accordance with the funding plan in the Updated
27 2025 Reserve Study and subsequent annual updates.

28 9. Answering Paragraph 9 of the Complaint, Respondent admits that in response to

1 the Division's January 22, 2023 [sic] letter it stated that it "currently has \$48,584.09 in their reserve
2 account" but that the [2023] reserve study [update] shows the year-end balance should be
3 \$170,504.56 (or approximately 28.89% funded).

4 10. Answering Paragraph 10 of the Complaint, Respondent admits that in response to
5 the Division's January 22, 2023 [sic] letter it stated that the [2023] reserve study [update] shows
6 the year-end balance to be 100% funded and it should be \$653,549.72 (or approximately 7.43%
7 funded).

8 11. Answering Paragraph 11 of the Complaint, Respondent admits that in response to
9 the Division's January 22, 2023 [sic] letter it stated in a response to the Division that it had spent
10 \$255,000 on repairs.

11 **C. Failure to Adequately Contribute to Reserve Account**

12 12. Answering Paragraph 12 of the Complaint, Respondent admits that NRED's audit
13 concluded that its records revealed increased due-to reserve balances year-over-year. Respondent
14 alleges that the 2022-2023 Audit determined that reserves owed the operating account and that the
15 due-to reserves balance was an error, stating in pertinent part: "Interfund Receivables and
16 Payables: *As of February 28, 2022, the Association's reserve fund owed the operating fund*
17 *\$16,359.*" (emphasis added) See **EXHIBIT 9**, page 8. Respondent alleges that management has
18 corrected the error as of the August 31, 2024 financial statement. See **EXHIBIT 13**, Balance Sheet.
19 Respondent further alleges that the Board has executed a unanimous written consent to be ratified
20 at its December 2024 meeting to clear the interfund receivable. See **EXHIBIT 20**.

21 13. Answering Paragraph 13 of the Complaint, Respondent admits that in response to
22 the Division's January 22, 2023 [sic] letter it stated that starting with the new budget the Board
23 had increased their assessment to be able to increase the amount deposited into the reserve account.

24 14. Answering Paragraph 14 of the Complaint, Respondent admits that in response to
25 the Division's January 22, 2023 [sic] letter it stated that the [2023] reserve study stated an annual
26 transfer of \$125,000 and it planned on transferring that amount to the reserves. Respondent alleges
27 that the Updated 2025 Reserve Study requires an annual transfer of \$110,000 and a special reserve
28 assessment of \$36,960 for FY 2024-25 totaling \$146,960.00. See **EXHIBIT 17**, page 27.

1 Respondent further alleges that by fiscal year end it will transfer that amount to reserves.

2 15. Answering Paragraph 15 of the Complaint, Respondent admits that in response to
3 the Division’s January 22, 2023 [sic] letter it stated the Board intends not to proceed with any
4 improvements until the reserve account is built up.

5 16. Answering Paragraph 16 of the Complaint, Respondent admits that on or about
6 October 12, 2023, the Division sent the RESPONDENT its first request for information letter with
7 a deadline to respond by October 26, 2023.

8 17. Answering Paragraph 17 of the Complaint, Respondent admits that on or about
9 January 22, 2024, the Division sent the RESPONDENT a follow-up to its original request for
10 information.

11 18. Answering Paragraph 18 of the Complaint, Respondent admits that on or about
12 February 23, 2024, the Division issued a Letter of Instruction regarding its responsibility to
13 maintain compliance.

14 19. Answering Paragraph 19 of the Complaint Respondent admits that on or about
15 August 2, 2024, the Division informed the Association that the case would be forwarded to the
16 Commission on the outstanding violations.

17 **VIOLATIONS OF LAW**

18 20. Answering Paragraph 20 of the Complaint, Respondent admits to the violation of
19 NRS 116.31133(1)(b) and/or (c) in that its reviews/audits were not timely completed but asserts it
20 has taken affirmative steps to resolve this violation by signing engagement letters for the missing
21 audits and completing the 2021-22 audit and the 2022-23 audit so that when the audits are complete
22 it will have 10 years of audits in the Association’s records. See **EXHIBITS 1-10**.

23 21. Answering Paragraph 21 of the Complaint, Respondent admits to the violation of
24 NRS 116.31152 of having low reserve funding but asserts it has taken affirmative steps to resolve
25 this issue by commissioning a full reserve study with site visit for FY 2025-26, and then levying a
26 special reserve assessment in the amount recommended by the reserve study. See **EXHIBITS 17**
27 **and 12**. Respondent further asserts that it will meet the annual transfer and special reserve
28 assessment transfer amounts for FY 2024/2025 as provided in the Updated 2025 Reserve Study.

1 Respondent asserts that it has drafted its 2025-2026 budget to provide for the annual transfer and
2 special reserve assessment specified in the Updated 2025 Reserve Study and will distribute this
3 budget (or an amended budget including these same annual transfer and special reserve assessment
4 amounts) to each Owner for ratification no less than 30 and no more than 60 days before the March
5 1 beginning of its fiscal year as required by NRS 116.31151(1). See **EXHIBIT 19**, 2025-2026
6 Draft Budget. Respondent asserts that if the amount in its reserve account is not consistent with
7 the end of year balance of the Updated 2025 Reserve Study, it will levy an additional special
8 reserve assessment to make up the difference.

9 22. Answering Paragraph 22 of the Complaint, Respondent acknowledges that the
10 financial statements submitted to the Division showed a violation of NRS 116.31152(b) for failing
11 to adequately address its due-to-reserve balance owed but asserts that it has taken affirmative steps
12 to resolve this issue by having management make the adjusting journal entries required per the
13 2022-2023 audit which included correcting the “due-to-reserves balance to a “due-to-operating
14 balance.” See **EXHIBIT 13**. Respondent further asserts that in the course of conducting its audit
15 NRED did not identify that the Association was withdrawing reserve funds to pay for operating
16 expenses. Upon information and belief, the error with the due to/from account was simple human
17 error exacerbated by changes in management companies and managers. Finally, Respondent
18 asserts that the Board has executed a unanimous written consent, which it will ratify at its
19 December Board meeting, to “write-off” the “due-to-operating” amount of \$16,359.00 so that once
20 adjusted the Association’s balance sheet will no longer include a “due-to/from” amount. See
21 **EXHIBIT 20**, Unanimous Written Consent Clearing Interfund Receivable.

DISCIPLINE AUTHORIZED

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

PROPOSED RESOLUTION/SETTLEMENT

A. Continued Submission of Requested Documents.

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27 The Board and management have been advised of the importance of ensuring that the
28 annual audits are completed in a timely manner in accordance with Nevada law. The Association

1 has taken action to cause the required adjusting journal entries for FY 2021- 2022 to be made and
2 has executed a unanimous written consent to clear the interfund receivable from its balance sheet.
3 As part of a settlement, the Association will provide the Division or the Commission with copies
4 of the issued audits for the years ending February 28, 2018; 2019; 2020; and 2021 as those audits
5 are completed and evidence that the adjusting journal entries for these audits have been made as
6 well as for the 2023 Audit accepted by the Board on October 23, 2024. See **EXHIBIT 12**. Once
7 these audits are completed the Association will have 10 years of audits consistent with NRS
8 116.31175(7). The Association offers to provide the Division or the Commission with copies of
9 the signed CPA engagement letters, subsequently issued audits and evidence of the adjusting
10 journal entries having been made for each of these audits for the next five years beginning with
11 FY 2024-25 as further evidence of its intent to comply going forward. This proposed
12 resolution/settlement is summarized in the attached Compliance Plan. See **EXHIBIT 21**.

13 **B. Compliance with Nevada Law through a Funding Plan.**

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

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 .

1 . . are necessary.” The objective of a funding plan is to: (a) adequately fund the reserve account,
2 (b) address any current “due to/from” financial accounting entry, (c) address the scheduled reserve
3 study expenditures, and (d) comply with the maximum annual assessment increases permitted by
4 the Declaration.

5 The Association has completed an Updated 2025 Reserve Study and has levied a special
6 reserve assessment in the amount recommended in the reserve study. See **EXHIBITS 18 and 12**.
7 The Association will levy any additional special reserve assessment necessary to make up any
8 difference between the end of year balance in the reserve study and the end of year balance in its
9 reserve account in order to comply with the funding plan in its reserve study. The Association has
10 provided a draft 2025-26 budget (see **EXHIBIT 19**) but due to the Association’s fiscal year, which
11 starts on March 1, that budget will not be proposed to the Owners for ratification until 2025.
12 However, as part of this settlement, the Association proposes to provide the Division or the
13 Commission with a copy of the 2025-26 Board approved budget and Owner ratified budget (if
14 different) on or before March 1, 2025.

15 As part of this settlement, the Association proposes that for a period of five years
16 commencing with the 2025-26 Fiscal Year, it supply the Division or Commission with (a) a copy
17 of its annual reserve update, (b) the Board approved budget and Owner ratified budget (if different)
18 for the upcoming fiscal year; and (c) its year end unaudited financial statement so that the Division
19 or Commission can verify that the Association is budgeting for reserve assessments pursuant to its
20 reserve study funding plan and is collecting and depositing the reserve assessments into its reserve
21 account. Receipt of the financial statements should also provide notice to the Division or
22 Commission regarding any future issues with “due-to-reserve” balances, which at the time of this
23 Answer have been corrected pursuant to the August 2024 balance sheet. This proposed
24 resolution/settlement is summarized in the attached Compliance Plan. See **EXHIBIT 21**.

25 Based on its earnest attempt to come into compliance with the statutory audit requirements
26 and the steps taken to adequately fund reserves, the Association asks that the Commission not
27 impose fines or the costs of its investigation.

28 Pursuant to NRS 239B.030 and 603A.040, the undersigned does hereby affirm that the

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Amended Response to Complaint for Disciplinary Action, filed in the above-entitled case (Case No. 2023-394) does not contain the social security number of any person.

DATED this 22nd day of November, 2024.

LEACH KERN GRUCHOW SONG

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CERTIFICATE OF SERVICE

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Pursuant to NRCP 5(b), the undersigned, an employee of LEACH KERN GRUCHOW SONG, hereby certified that on 14th of November, 2024, she served a true and correct copy of the foregoing, AMENDED 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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