#### BEFORE THE COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS STATE OF NEVADA

SHARATH CHANDRA, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS AND INDUSTRY, STATE OF NEVADA, Petitioner,

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DEL REY ESTATES HOMEOWNERS ASSOCIATION, (Entity Number C11413-1995)

Respondent.

Case No. 2023-929



APR 1 5 2024 NEVADA COMMISSION FOR COMMON INTEREST COMMUNITIES AND CONDOMINIUM HOTELS MQallo

#### COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF HEARING

14 The Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division"), by and through its counsel, Aaron D. Ford, Attorney General of 15 16 the State of Nevada, and Christal P. Keegan, Deputy Attorney General, hereby notifies Del Rey Estates Homeowners Association ("RESPONDENT") of an administrative hearing 17 before the Commission for Common-Interest Communities and Condominium Hotels. 18 State of Nevada, which is to be held pursuant to Chapters 233B and Chapters 116 of the 19 Nevada Revised Statutes ("NRS") and Chapter 116 of the Nevada Administrative Code 20 21("NAC"). The purpose of the hearing is to consider the allegations stated below and to 2.2 determine if an administrative penalty will be imposed on the RESPONDENT pursuant 23to the provisions of NRS and NAC including, but not limited to NRS 116.785 and 24 NRS 116.790.

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## JURISDICTION AND NOTICE

During all relevant times, RESPONDENT is a small, planned community of ten (10) units located in Las Vegas, Clark County, Nevada (Entity No. C11413-1995) and is, therefore, subject to the provisions of Chapter 116 of each the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC") (hereinafter collectively referred to as "NRS 116") and are subject to the jurisdiction of the Division, and the Commission for Common-Interest Communities pursuant to the provisions of NRS 116.750.

FACTUAL ALLEGATIONS

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1. On or about November 1, 2023, the Division received a homeowner complaint against the RESPONDENT executive board. *Exhibit 2, CIC 010*.

7 2. Therefore, on or about November 16, 2023, the Division opened an
8 investigation against the RESPONDENT, with a deadline to respond by December 1, 2023.
9 *Exhibit 3, CIC 036-038.*

10 3. On December 1, 2023, RESPONDENT failed to respond to the Division.
11 Exhibit 3, CIC 039-041.

12 4. Therefore, on or about December 5, 2023, in the Division's second attempt
13 to the RESPONDENT, it extended the deadline to respond by December 19, 2023.
14 *Exhibit 3, CIC 039-041.*

15 5. On or about December 27, 2023, RESPONDENT Brian K. Berman as
16 its Board President finally remitted his untimely response to the Division. *Exhibit 4*,
17 *CIC 047-051*.

At all times relevant, RESPONDENT'S Board was comprised of three (3)
 members, Board President Berman, Secretary Dean Allen, and Treasurer John
 Hernandez. Exhibit 1, CIC 002, and Exhibit 4, CIC 068.

7. At all times relevant, President Berman was also acting as the
RESPONDENT'S attorney and custodian of records. *Exhibit 1, CIC 002, Exhibit 4, CIC 072.*

8. RESPONDENT President Berman represented that the Association is run
by him and Secretary Allen. *Exhibit 4, CIC 068.*

9. RESPONDENT President Berman represented Treasurer Hernandez moved
to Georgia and "has not been involved with association affairs in a number of years." *Exhibit 4, CIC 068.*

10. At all times relevant, the RESPONDENT President Berman admitted "there has not been an annual meeting in a number of years" but claimed "it is not for want of trying". Exhibit 4, CIC 050.

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11. In a letter to the homeowners dated February 20, 2018, RESPONDENT President Berman indicated the last four annual meetings were attempted, claiming quorum prevented it from holding elections and conducting official business. Exhibit 4, CIC 050.

8 12. As a result, RESPONDENT President Berman stated: "I have basically given 9 up trying." Exhibit 4, CIC 050.

10 **RESPONDENT** President Berman advised the Division "that there are no 13. 11 meeting minutes, no election records, no financial statements and no budgets from the 12 requested timeframe [January 1, 2020, to present]." Exhibit 4, CIC 064.

13 14. RESPONDENT President Berman admitted "[t]here has never been a 14 reserve study." Exhibit 4, CIC 065.

15 **RESPONDENT** President Berman reasoned its 25-year history established 15. 16 that a professionally prepared reserve study was an entirely unnecessary expenditure. 17 Exhibit 4, CIC 065.

18 16. Despite missing from RESPONDENT'S bank statements, President Berman 19 produced a check copy of Check #1080 dated March 3, 2021, to "Brian Berman, Chtd." with 20President Berman as the sole signatory. *Exhibit 5, CIC 314.* 

2117. **RESPONDENT** President Berman represented to the Division that he only reimbursed himself for "\$22.30 reimbursement for postage" and "a reimbursement for the 23Association's Nevada Secretary of State annual filings." Exhibit 5, CIC 073.

24 18. But carbon copy of duplicate Check #1068 dated February 20, 2019, to "Brian 25K. Berman" indicated otherwise. Exhibit 5, CIC 324.

26 19. The carbon copy of duplicate check #1075 dated July 1, 2020, to "Dean Allen" 27 with "void" written in black ink contradicts other evidence of a note that it was paid: "pd 287/1/20." Exhibit 5, CIC 331, and CIC 304.

20. Subsequently, a carbon copy of duplicate check #1077 dated July 2, 2020, was made to "Dean Allen." *Exhibit 5, CIC 333*.

21. Other carbon copies of duplicate checks (#s1083 dated July 31, 2021, to "Brian K. Berman" and check #1093 dated June 15, 2023, to "Brian K. Berman") do not indicate the requisite number of signatures. *Exhibit 5, CIC 339, and CIC 349.* 

22. RESPONDENT'S letters demonstrate Berman signed in his capacity as President but utilized his law firm's letterhead. *Exhibit 4, CIC 062–063.* 

## VIOLATIONS OF LAW

23. RESPONDENT violated NRS 116.31083(1) by admission for failing to adhere to all meeting requirements, including failing to conduct annual meetings, hold elections, and/or keep records of board decisions.

24. RESPONDENT violated NRS 116.3108(1), (3), (4), (5), and/or (6) by admission for failing to adhere to all annual meeting requirements, including notices, meeting minutes, agendas, financial statements, or budgets and/or election records.

25. RESPONDENT violated NRS 116.31153 by failing on numerous occasions to have the requisite number of signatures required to withdraw association funds.

26. RESPONDENT violated NRS 116.31151 by admission for failing to adhere to the requirement to prepare budgets.

27. RESPONDENT violated NRS 116.3115 by admission for never doing a reserve study over the course of 25 years.

28. RESPONDENT violated NRS 116.3103(1) by and through President Berman's for misusing his law firm's letterhead in communications.

# **DISCIPLINE AUTHORIZED**

Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS 116.790, the Commission has discretion to take any or all of the following actions:

1.Issue an order directing RESPONDENT to cease and desist from continuing1.to engage in the unlawful conduct that resulted in the violation.

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2. Issue an order directing RESPONDENT to take affirmative action to correct any conditions resulting from the violation.

3. Impose an administrative fine of up to \$1,000 for each violation by RESPONDENT.

4. IF RESPONDENT IS FOUND TO HAVE KNOWINGLY AND WILLFULLY COMMITTED A VIOLATION of NRS or NAC 116 AND it is in the best interest of the Association, such RESPONDENT may be removed from his/her position as a director and/or officer.

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5. Order an audit of the ASSOCIATION, at the expense of the ASSOCIATION.

6. Require RESPONDENT to pay the costs of the proceedings incurred by the Division, including, without limitation, the cost of the investigation and reasonable attorney's fees.

13 7. Take whatever further disciplinary action as the Commission
14 deems appropriate.

The Commission may order one or any combination of the discipline described above. If the Commission finds that the RESPONDENT knowingly and willfully violated the provisions of NRS or NAC 116, the Commission may order that RESPONDENT be personally liable for all fines and costs imposed.

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## NOTICE OF HEARING

PLEASE TAKE NOTICE that a disciplinary hearing has been set to consider this Administrative Complaint against the above-named RESPONDENT in accordance with Chapters 233B and 116 of the Nevada Revised Statutes and Chapter 116 of the Nevada Administrative Code.

THE HEARING WILL TAKE PLACE at the Commission meeting(s) scheduled for June 11-13, 2024, beginning at approximately 9:00 a.m. each day, or until such time as the Commission concludes its business. The Commission meeting will be held at the Nevada State Business Center, 3300 W. Sahara Avenue, 4th Floor, Nevada Room, Las Vegas, Nevada 89102 on June 11 and 12, 2024, with videoconferencing to Department of Business and Industry, Division of Insurance, 1818 E. College Parkway, Suite 103, Carson City, Nevada 89706. The Commission meeting will be held at the Nevada State Business Center. 3300 W. Sahara Avenue, 4th Floor, Tahoe Room, Las Vegas, Nevada 89102 on June 13, 2024, with videoconferencing to Department of Business & Industry, Division of Insurance, 1818 E. College Parkway, suite 103, Carson City, Nevada 89706.

STACKED CALENDAR: Your hearing is one of several hearings that may be scheduled at the same time as part of a regular meeting of the Commission that is expected to take place on June 11-13, 2024. Thus, your hearing may be continued until later in the day or from day to day. It is your responsibility to be present when your case is called. If you are not present when your hearing is called, a default may be entered against you and the Commission may decide the case as if all allegations in the complaint were true. If you need to negotiate a more specific time for your hearing in advance because of coordination with an out of state witness or the like, please call Maria Gallo, Commission Coordinator, at (702) 486-4074.

YOUR RIGHTS AT THE HEARING: Except as mentioned below, the hearing is an open meeting under Nevada's Open Meeting Law and may be attended by the public. After the evidence and arguments, the Commission may conduct a closed meeting to discuss your alleged misconduct or professional competence. You are entitled to a copy of the transcript of the open and closed portions of the meeting, although you must pay for the transcription. As a RESPONDENT, you are specifically informed that you have the right to appear and be heard in your defense, either personally or through your counsel of choice. At the hearing, the Division has the burden of proving the allegations in the complaint and will call witnesses and present evidence against you. You have the right to respond and to present relevant evidence and argument on all issues involved. You have the right to call and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter relevant to the issues involved.

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You have the right to request that the Commission issue subpoenas to compel witnesses to testify and/or evidence to be offered on your behalf. In making this request, you may be required to demonstrate the relevance of the witness' testimony and/or evidence. Other important rights and obligations, including your obligation to answer the complaint, you have are listed in NRS Chapter 116 and NAC Chapter 116, including without limitation, NRS 116.770 through 116.780, and NAC 116.500 through NAC 116.635 and NRS Chapter 233B.

8 Note that under NAC 116.575, not less than five (5) working days before a hearing, 9 **RESPONDENT** must provide to the Division a copy of all reasonably available documents 10 that are reasonably anticipated to be used to support his position, and a list of witnesses 11 RESPONDENT intends to call at the time of the hearing. Failure to provide any document 12 or to list a witness may result in the document or witness being excluded from 13 **RESPONDENT'S** defense. The purpose of the hearing is to determine if the 14 RESPONDENT have violated the provisions of NRS 116, and to determine what 15 administrative penalty is to be assessed against RESPONDENT.

DATED this 2 day of April 2024. REAL ESTATE-DIVISION. 17 18 19 By: 20 21 22 23 DATED this 12th day of April 2024.

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DEPARTMENT OF BUSINESS AND INDUSTRY, STATE OF NEVADA

SHARATH CHANDRA. Administrator 3300 W. Sahara Ave. Ste 350 Las Vegas, Nevada 89102 (702) 486-4033

AARON D. FORD Attorney General

akeegan By:

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