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Attorney for Defendant Glastonbury Landowners Association, Inc.

MONTANA SIXTH JUDICIAL DISTRICT, PARK COUNTY

DANIEL and VALERY O'CONNELL)	
(for and on behalf of GLA landowners),)	Cause No. DV-12-164
)	
Petitioners,)	
)	
vs.)	RESPONSE TO WRIT OF
)	PROHIBITION and WRIT
GLASTONBURY LANDOWNERS ASSOCIATION,)	OF MANDAMUS
INC. Board of Directors,)	
)	
Respondents.)	
)	

Comes now, Respondent Glastonbury Landowner's Association, Inc.'s Board of Directors (hereinafter referred to as "Glastonbury") and responds to the Petitioners "Writ of Prohibition and Writ of Mandamus" (hereinafter referred to as "Writ") as follows:

PARTIES, JURISDICTION AND VENUE

1. Glastonbury admits that Daniel and Valery O'Connell (the "O'Connells") own real property within the Glastonbury subdivisions and are members of the Association. Glastonbury denies that it does business in Park County as it is a non-profit and does not conduct for profit "business". Glastonbury is without sufficient information to form a belief as to the rest of the allegations contained in ¶ 1 of Petitioner's Writ, and therefore deny the allegations.

2. Glastonbury admits that the Board of Directors are the elected Directors for Glastonbury. Glastonbury is without sufficient information to form a belief as to the rest of the allegations contained in ¶ 2 of Petitioner's Writ, and therefore deny the allegations.
3. Glastonbury admits to the allegations contained in ¶ 3.
4. Glastonbury admits to the allegations contained in ¶ 4.
5. Glastonbury denies to the allegations contained in ¶ 5.
6. Glastonbury denies to the allegations contained in ¶ 6.

II. PETITION FOR WRIT OF PROHIBITION

1. Glastonbury admits that the O'Connells have filed a document entitled writ of prohibition and affirmatively allege that the filing speaks for itself. Glastonbury denies the remaining allegations contained in ¶1.
2. Glastonbury denies the allegations contained in ¶2.

STATEMENTS OF FACTS and DISCUSSION OF ISSUE regarding Minnick Contract

Introductory (unnumbered) paragraph: Glastonbury admits that O'Connells accurately copied the text of §27-27-101 and deny the remaining allegations of this paragraph.

3. Glastonbury admits that it entered a contract with Minnick Management on June 1, 2012 which states that Minnick has "the exclusive right to operate, control and manage the certain property known as the Community of Glastonbury in Emigrant, Montana." Glastonbury is without sufficient information to form a belief as to the rest of the allegations contained in ¶ 3 of Petitioners' Writ, and therefore deny the allegations.
4. Glastonbury denies the allegations contained in ¶ 4 of Petitioners' Writ.
5. Glastonbury denies the allegations contained in ¶ 5 of Petitioners' Writ.
6. Glastonbury admits that the O'Connells are requesting that the GLA proceeding with

- Minnick is to be arrested. Glastonbury denies the remaining allegations contained in ¶6.
7. Glastonbury admits that the small portions of the documents quoted seem to be accurate quotes. Glastonbury denies the remaining allegations contained in ¶7.
 8. Glastonbury admits that the portions of the Articles quoted seem to be accurate quotes, with the full texted quote being, “To have and exercise such further purposes and powers, or to be limited in the exercise of its powers, as may be further provided from time to time in such Bylaws.” Glastonbury admits that the O’Connell’s accurately quoted portions of VI B of the Bylaws. Glastonbury denies the remaining allegations contained in ¶8.
 9. Glastonbury denies the allegations contained in ¶ 9 of Petitioners’ Writ.
 10. Glastonbury denies the allegations contained in ¶ 10 of Petitioners’ Writ.

The Erickson Contract STATEMENT OF FACTS and DISCUSSION OF ISSUES

1. Glastonbury admits that, after notice and hearings consistent with the governing documents, the variance granted to the Ericksons allows four residences on Parcel 91 which was conditioned upon deed restrictions barring any building of a residence on Parcel 90 in perpetuity. Glastonbury denies the remaining allegations contained in ¶1 of Petitioners’ Writ.
2. Glastonbury denies the allegations contained in ¶ 2 of Petitioners’ Writ.
3. Glastonbury denies the allegations contained in ¶ 3 of Petitioners’ Writ.
4. Glastonbury denies the allegations contained in ¶ 4 of Petitioners’ Writ.
5. Glastonbury admits that the portions of the Masterplan and Covenants cited are accurate partial quotes. Glastonbury denies the remaining allegations contained in ¶ 5 of Petitioners’ Writ.

6. Glastonbury denies the allegations contained in ¶ 6 of Petitioners' Writ.
7. Glastonbury denies the allegations contained in ¶ 7 of Petitioners' Writ.
8. Glastonbury denies the allegations contained in ¶ 8 of Petitioners' Writ.
9. Glastonbury denies the allegations contained in ¶ 9 of Petitioners' Writ.

III. PETITION FOR A WRIT OF MANDAMUS

1. Glastonbury admits that the O'Connells have filed a document entitled Writ of Mandamus. Glastonbury denies the remaining allegations contained in ¶1 of Petitioners' Writ.
2. Glastonbury admits that the Bylaws cited in part are accurate partial quotes. Glastonbury denies the remaining allegations contained in ¶2 of Petitioners' Writ.
3. Glastonbury admits that the MCA 35-2-118(1) is correctly cited, in part. Glastonbury denies the remaining allegations contained in ¶3 of Petitioners' Writ.
4. Glastonbury admits the quoted portion of the Bylaw is correctly quoted, excepted for the added emphasis. Glastonbury denies the remaining allegations contained in ¶4 of Petitioners' Writ.
5. Glastonbury admits that Covenant 11.05 is correctly quoted. Glastonbury denies the allegations contained in ¶5.
6. Glastonbury admits the quoted portion of the Covenant 11.06 is correctly quoted, excepted for the added emphasis. Glastonbury denies the remaining allegations contained in ¶6 of Petitioners' Writ.
7. Glastonbury denies the allegations contained in ¶7 of Petitioners' Writ.
8. Glastonbury denies the allegations contained in ¶8 of Petitioners' Writ.
9. Glastonbury denies the allegations contained in ¶9 of Petitioners' Writ.

AFFIRMATIVE DEFENSES

First Affirmative Defense – Ripeness

All claims involving the Ericksons are not ripe as no variance agreement was ever been executed. At this time, the Ericksons have not met the conditions of the variance and cannot proceed under the variance. Therefore, as the conditions of the variance which is the basis for all of the Erickson claims are not met and Erickson cannot proceed pursuant to the variance, these claims are not ripe.

Second Affirmative Defense –

If the variance conditions had been met by the Ericksons, the documents governing Glastonbury allow for the variance and Glastonbury would have followed all of the proper procedures in granting the variance.

Third Affirmative Defense

The Glastonbury governing documents allow Glastonbury to hire a management company to manage the affairs of Glastonbury.

Fourth Affirmative Defense

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

Fifth Affirmative Defense

Defendant denies each and every allegation not specifically admitted herein.

Sixth Affirmative Defense

The claims asserted against Defendants in Plaintiff's Complaint are barred by the equitable doctrines of estoppel, laches, and/or waiver.

Seventh Affirmative Defense

Defendant reserves the right to rely on any further affirmative defenses which may become available or apparent during the course of discover and reserve the right to amend his Answer to assert any such defense.

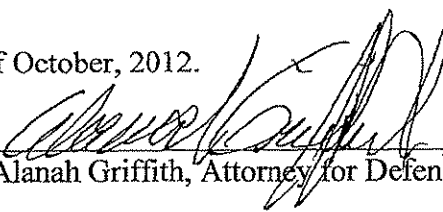
APPLICATION OF AFFIRMATIVE DEFENSES

At this time, Defendant is uncertain as to which affirmative defenses may apply if this case proceeds to trial. Defendant will dismiss any affirmative defense(s) at the pretrial conference which do not appear to be reasonably supported by the facts and/or law. The purpose of raising these affirmative defenses is not to create defenses where no bases for such defenses exist. Rather, it is in recognition that the pleadings, discovery and trial preparation require examination and evaluation of evolving facts and law. The decision maker, whether it be a judge or jury, should have available for consideration all applicable defenses.

WHEREFORE, Defendants, having fully responded to Plaintiff's Complaint filed herein, Defendants pray for the following:

1. The Court deny the request for a writ of mandamus;
2. The Court deny the request for a writ of prohibition;
3. Judgment be entered in favor of Defendants and against Plaintiff;
4. That Plaintiff take nothing by way of its Petition;
5. For an award of Defendant's reasonable attorney's fees, costs and disbursements incurred herein; and
6. For such other and further relief as the Court deems just and proper.

Respectfully submitted this 15 day of October, 2012.

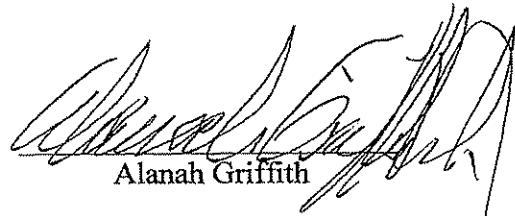
By 
Alanah Griffith, Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of October, 2012, a true and correct copy of the foregoing, was mailed, postage prepaid and by email, to the following counsel of record:

Daniel and Valery O'Connell
P.O. Box 77
Emigrant, MT 59027

Daniel O'Connell: dko@mac.com
Val O'Connell: valoc@mac.com


Alanah Griffith