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10 Glastonbury Landowners
11 Association, Inc.

7 **MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY**

8 DANIEL and VALERY O'CONNELL (for and
9 on behalf of GLA landowners),

Cause No.: DV-12-789C

10 Plaintiffs,

**DEFENDANTS' REPLY BRIEF IN
SUPPORT OF ITS MOTION TO CHANGE
VENUE**

11 v.

12 GLASTONBURY LANDOWNERS
13 ASSOCIATION, INC. Board of Directors,

14 Defendants.

15 COMES NOW the Defendantst Glastonbury Landowners Association, Inc. Board of Directors
16 (GLA), by and through its attorney of record, and submits this reply to Plaintiff's Answer to GLA's
17 Motion to Change Venue to the Montana Sixth Judicial District, Park County.
18

19 **ARGUMENT**

20 When determining venue, the general rule for a civil action is that venue is proper in the county
21 of the defendant's residence. Mont. Code Ann. § 25-2-118. A defense of improper venue may be made
22 by motion before filing an answer. Mont. R. Civ. P. 12(b). Mont. Code Ann. § 25-2-114. A Montana
23 Corporation resides in the county where it has its principal place of business. *Burlington N. R. Co. v.*
24 *Ford*, 504 U.S. 648, 651 (1992). Residency does not arise in any county where a corporation happens to
25 do business but only occurs in the county where it has its principal place of business. *Mapston v. Joint*
26 *Sch. Dist. No. 8*, 227 Mont. 521, 523, 740 P.2d 676, 677 (1987).
27
28

1) **GLA's residence is in Park County**

Here, it is clear that GLA's principal place of business, and thus its residence, is within Park County. The GLA was formed by owners of property within Park County as a mutual benefit nonprofit corporation to administer and maintain roads and common areas within the area encompassed by the GLA. Membership in the GLA is contingent on owning certain real property in Park County governed by the Declaration of Covenants. All the property encompassed by GLA is located within Park County. All of GLA's duties relevant to the property are executed in Park County. GLA's board resides in Park County and conducts its meetings there. (See Aff. of Richard Bolen, Nov. 1, 2012 attached as Exhibit A). The simple fact that GLA may contract with a third-party located in Gallatin County does not change GLA's residence, especially when that third-party is not party to this suit.

Here, Plaintiffs argue that GLA's principal place of business is in Gallatin County because it contracts with Minnick Management, Inc. (Minnick), a homeowner association management company. Minnick administers GLA's business under the direction and supervision of the GLA board. Plaintiffs argue this makes Minnick the "defacto GLA Board." However, they present no evidence to refute the affidavit of GLA's president Richard Bolen which establishes that GLA has its principal place of business in Park County.

While the GLA has contracted with Minnick for some administrative functions, the majority of those functions occur within Park County such as collection of assessments, filing liens, communicating with members, attending and taking minutes at meetings. (See Minnick Contract attached as Exhibit B and also attached to Pl.'s Br.). Minnick's primary offsite duties include bookkeeping, record maintenance, and handling mailings. In essence, Minnick provides administrative support. The GLA Board specifically retains responsibility for the most important tasks such as oversight for maintenance, landscaping, and snow removal contracts; working with utilities; insurance claims; on-site services; and

1 covenant enforcement. (See Exhibit B at 3). Further, the GLA Board handles all litigation matters,
2 including the multiple lawsuits filed by Plaintiffs.

3 Plaintiffs have also admitted that venue is proper in Park County in parallel proceedings. In a
4 Petition for Writs of Mandamus and Prohibition filed on September 24, 2012 in Park County (See
5 Exhibit C), Plaintiffs state the GLA “conducts business primarily in Park County, Montana.” (Exhibit C
6 at ¶ 1). Also, Plaintiffs allege “Venue is properly with this Court [Park County] in as much as this
7 petition is directed at elected GLA Directors of this county, to compel action and prohibition, on their
8 part, in their office capacity.” (Exhibit C at ¶ 4). The Complaint in this case is similarly directed at the
9 GLA Board, and Plaintiffs should be held to their affirmations to Montana Sixth Judicial District that
10 venue is proper in Park County.
11

12
13 Change of venue to Park County is proper because that is GLA’s residence. Further, all the
14 parties reside in Park County and Plaintiffs’ other lawsuits have been filed there as well. Legally it is the
15 correct venue and moving this suit will further judicial economy.

16 **2) This action is for a TRO and permanent injunction against GLA, not Minnick**

17 Plaintiffs also argue that this action arises out of the contract between GLA and Minnick. (See
18 Exhibit B). They further argue that this contract is performed in Gallatin County (where Minnick’s
19 offices are located) making it a proper venue under Mont. Code Ann. § 25-2-121. This argument fails
20 for several reasons.
21

22 Plaintiffs make much of the contract between GLA and Minnick Management, but ultimately,
23 their complaint asks the Court not to resolve some dispute between GLA and Minnick regarding the
24 Minnick contract, but to temporarily and permanently enjoin GLA and its agents from charging
25 members assessments for guest houses and to temporarily and permanently enjoin GLA and its agents
26
27
28

1 from conducting business until an election can be held according to the terms Plaintiffs desire. (See Pl.'s
2 Com. at ¶¶ 45-50).

3 There is no dispute over the contract between GLA and Minnick. Rather Plaintiffs are disputing
4 whether GLA acted within the authority granted by its governing documents, and they seek a Court
5 injunction for what they claim are abuses of GLA's authority. Indeed, Plaintiffs claim itself is not
6 proper as what they are really asking for is declaratory relief regarding the scope of authority granted
7 the GLA under its governing documents, but that argument is more fully explored in GLA's Motion to
8 Dismiss.

9
10 Here, the Minnick contract is not at issue. What is at issue are assessments and voting of GLA
11 members as evidenced by Plaintiffs' Complaint. Even if the subject of this suit was the Minnick
12 contract, Plaintiffs' argument would still fail because as explained above, the "principal activity" in the
13 contract occurs in Park County, making it the place of performance and the proper venue under Mont.
14 Code Ann. § 25-2-121.

15
16 **3) The GLA's governing documents, not its third-party contracts, are at issue**

17 Plaintiffs allege "the GLA Board again abused its authority and governing documents when it
18 voted to charge its members with a new annual assessment for all guest houses." (See Pl.'s Com. at ¶ 7).
19 Plaintiffs also argue GLA conducted its election wrong under its governing documents. In their brief
20 opposing GLA's Motion to Change Venue, Plaintiffs state "...this TRO is to restrain GLA Defendant's
21 alleged bylaw/covenant breach of covenants."

22
23 Clearly, Plaintiffs are alleging the GLA has violated its own governing documents—Articles of
24 Incorporation, By-Laws, and Declaration of Covenants. These are the documents at issue, and if they
25 are deemed contracts for venue purposes, then Park County is obviously the proper venue because
26 "performance" under these documents is in Park County, and they affect real property only within Park
27
28

1 County. Venue is proper in Park County pursuant to Mont. Code Ann. § 25-2-121 because it is the place
2 of performance of the GLA By-Laws and Covenants which Plaintiffs allege the GLA Board has
3 breached.


4 **CONCLUSION**

5 For the reasons stated above, GLA's Motion to Change Venue to the Montana Sixth Judicial
6 District, Park County should be granted.
7

8 DATED this 29th day of November, 2012.

9
10 BROWN LAW FIRM, P.C.
11 315 North 24th Street
12 P.O. Drawer 849
13 Billings, MT 59103-0849

14 BY

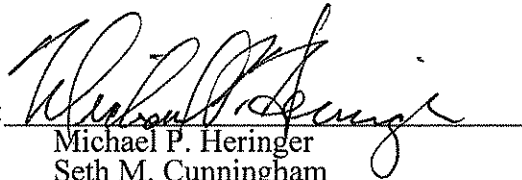

15 Michael P. Heringer
16 Seth M. Cunningham
17 *Attorneys for Glastonbury*
18 *Landowners Association, Inc.*

19 **CERTIFICATE OF SERVICE**

20 I hereby certify that a true and correct copy of the foregoing was duly served by U.S. mail,
21 postage prepaid, and addressed as follows this 29th day of November, 2012:

22
23 Daniel and Valery O'Connell
24 PO Box 77
25 Emigrant, MT 59027
26 *Plaintiffs pro se*

27 By:


28 Michael P. Heringer
Seth M. Cunningham

Alanah Griffith
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Attorney for Defendant Glastonbury Landowners Association, Inc.

MONTANA EIGHTEEN JUDICIAL DISTRICT, GALLATIN COUNTY

DANIEL and VALERY O'CONNELL
(for and on behalf of GLA. landowners).

Petitioners.

vs.

GLASTONBURY LANDOWNERS ASSOCIATION,
INC., Board of Directors.

Respondents.

Cause No. DV-12-789C

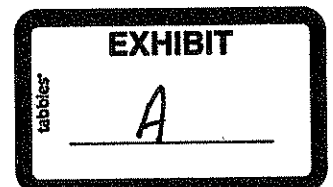
AFFIDAVIT IN SUPPORT
MOTION TO MOVE FOR
IMPROPER VENUE AND
MOTION TO DISMISS FOR
FAILURE TO STATE A
CLAIM AND BRIEF

THE STATE OF MONTANA §

COUNTY OF GALLATIN PARK §

Richard Balen, being first duly sworn upon oath, deposes and says that:

1. I am the President of the Glastonbury Landowner's Association, Inc. (Glastonbury)
2. As the President, I am familiar with Glastonbury's non-profit operations.
3. In this case, Glastonbury's principle place of business is Park County.
4. It is registered in Park County.
5. All of the property the Association oversees and maintains is in Park County.
6. All of its Board Members live in Park County.



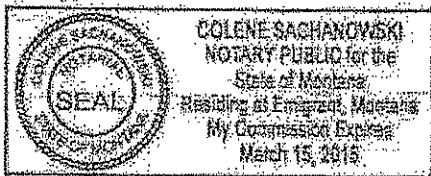
7. The corporation's annual, regular and special meetings take place in Park County.

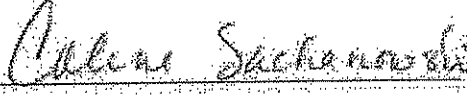
8. Glastonbury is a Park County non-profit owner's association.

Further, Affiant saith not.


Richard Bolen, Affiant

SIGNED under oath before me on November 1st, 2012.




Notary Public, State of Montana
Residing In:
My Commission Expires: /

MINNICK MANAGEMENT, INC
HOME OWNERS ASSOCIATION MANAGEMENT AGREEMENT

1
2
3 This Property Management Agreement is made and entered into on June 1, 2012 between
4 Minnick Management, Inc. and Glastonbury Landowners Association, Inc., hereinafter called
5 GLA. GLA hereby appoints and grants Minnick Management Inc. the exclusive right to operate,
6 control and manage the certain property known as the Community of Glastonbury in Emigrant,
7 Montana.

8
9 Minnick Management Inc. accepts the appointment and grants, and agrees to use due diligence in
10 the performance of this Agreement and to furnish the services of its firm for the operation and
11 management of the Property.

12
13 The term of this Agreement shall commence as of June 1, 2012 and shall continue until
14 December 1, 2012. This Management Agreement shall automatically renew for one year periods
15 unless 30 days written notice is given prior to end of contracted period. At any time, either party
16 may terminate this contract by way of 60 days written notice.

17
18 GLA hereby grants Minnick Management Inc. the authority and power to perform any and all
19 lawful actions necessary for the accomplishment of services outlined below.

20
21 **Financial Management:**

22 Accounts will remain in separate bank accounts, managed through QuickBooks.

23
24 **Collection/Disbursement of Monies**

- 25 • Collect GLA assessments (produce & mail annual and/or quarterly statements for
26 assessments; warning, collection, and lien letters using GLA templates, etc.).
- 27 • Coordinate with title companies for collection of assessments at closing.
- 28 • File liens on delinquent landowners.
- 29 • Process accounts payable and accounts receivable on a monthly basis.
- 30 • Maintain and reconcile GLA operating and reserve accounts.
- 31 • Prepare checks for designated director to sign and/or forward bills to get approval
32 to pay.

33
34 **Reporting**

- 35 • Produce monthly financial statements, PDFs by e-mail & hard copies for Board
36 meetings.
- 37 • Produce year-end financial reports
- 38 • Prepare/present annual operating budget for approval as the Board directs.
- 39 • Coordinate the annual tax return with the GLA accountant.
- 40 • Coordinate and assist in any audits.
- 41 • File annual corporation tax with the State.
- 42 • Provide to the Board additional information such as custom reports, lists or other
43 particular information as requested by the Board

EXHIBIT

B

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Employee/Independent Contractor Accounting & Reporting

- Maintain Employee and Independent Contractor records
- Request Independent Contractor Exemption Certificate, SS#, EIN# or other required information for proper administration
- Receive invoices approved to pay from designated director(s) and prepare checks for designated director to sign.
- Handle payroll processing including checks, pay stubs and reporting.
- File all required tax forms for both Employees and Independent Contractors according to good business practices and legal compliance.

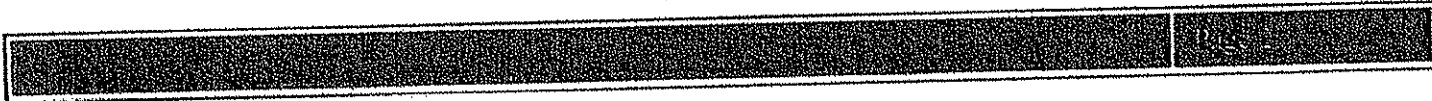
Administrative Management:

Association Records

- Hard copy storage & scan to upload on SharePoint as appropriate.
- Maintain landowner membership records in QuickBooks.
- Maintain landowner hard copy correspondence records for financial management matters listed above.
- Maintain landowner hard copy record of correspondence mailed out and/or received on matters other than financial management.
- Track project review status and covenant violation resolution. *Not included: project reviews &/or decisions.*
- Only previous year's financial records needed for GLA management, but can store other necessary GLA hard copy records (all boxes should be clearly labeled with contents & dates included in each box)

Meetings

- Prepare for and attend 1 monthly Board meeting and the annual meeting and election; advise concerning streamlined, consistent policies & procedures; offer examples or templates. *Not included: research or creating the policies, forms and procedures.* Exclusion or inclusion of attendance and minutes-taking for special meetings beyond the regularly scheduled, or any other services not specified, will be subject to mutual agreement by Minnick Management and the GLA Board.
- Two representatives at meetings; one to take minutes.
- Provide copies of agenda & hand-outs for Board and annual meetings.
- Provide copies of materials to be included in landowner binders for meetings.
- Assist in agenda development by handling agenda item requests from Board and landowners which are then given to designated director to incorporate into agenda.
- Produce meeting minutes for board meetings with designated director.
- Annual meeting and election mailings: Assist in producing and mailing out appropriate materials for Nomination mailing in September, and Candidate mailing with ballots in October. Receive mail from nominees and compile information for Board/Committees to handle in creating content of Candidate mailing.
- Annual meeting and election: oversee election process; volunteer crew and ballot collection; tally and reporting, including absentee & proxy.



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Communications

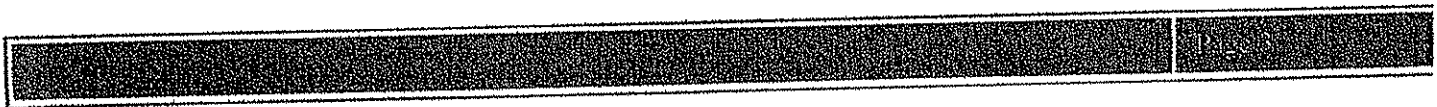
- Maintain records of all Board and landowner meetings
- Serve as a point of contact for landowners via phone, e-mail, U.S. Mail, delivery service, or in person, and provide answers to basic landowner inquiries such as general association information or account questions.
- As appropriate, forward communication or information received to designated board contact, or to other directors/committees as agreed upon, in a timely fashion via phone, e-mail, fax, or other means, depending on the nature of the item or communication received.
- For issues relating to covenant violations or other particular matters, correspond with landowners as directed by the Board and signed by the Board.
- Mail out Welcome Packet for new landowners as directed by the Board.
- Website updates on SharePoint.
- Duplicate newsletter and mail out with quarterly statements or as directed by the Board.
- Keep track of mailing lists used for mailings for possible future reference.
- Handling emergency communications such as wildfire, natural disasters would be done in addition to regular fees, with cap on total hours set beforehand; rate to be worked out when service details are agreed upon.

Site Management:

- Establish open communication with all homeowners to help respond to service requests.
- Board/Committees to handle oversight or contracts for landscape or building maintenance, snow removal, etc.
- Board/Committees to handle working with utility services, etc.
- Board/Committees to handle insurance claims.
- Board/Committees to handle drive-throughs and on-site services.
- Board/Committees will handle covenant enforcement. Management will administrate enforcement correspondence signed by the Board.

GLA agrees to abide by the following:

1. Provide all documentation and records required by Minnick Management Inc. to manage and operate the property. Board of Directors will supply or create requested notices, newsletters, or other written correspondence to be sent to owners. In cases where precedence has been set and the appropriate previously created notice or letter accepted by Board is available, Minnick Management Inc. will automatically use such letter unless otherwise instructed by Board.
2. Indemnify and hold Minnick Management Inc. harmless from all costs, expenses, suits, liability, damages, and claims of every type, including but not limited to those arising out of injury or death of any person(s), in any way relating to the management or operation of the property by Minnick Management Inc. or any person employed by Minnick Management Inc., or the



134 performance or exercise of any of the duties, power, or authorities herein or hereafter granted
135 to Minnick Management, except to the extent due to the negligence of Minnick Management
136 Inc. or any person in Minnick Management Inc.'s firm.
137

- 138 3. To provide adequate liability and property damage insurance adequate to protect the property
139 and to name Minnick Management Inc. as additional insured if requested.
140

141 **General Terms:**

142
143 Minnick Management Inc. must provide Worker's Compensation insurance for all employees
144 utilized for labor services provided to GLA.

145
146 Minnick Management Inc. will provide the Board of Directors a proof of their own general liability
147 and other operating insurance as well as a copy of their Property Management License upon
148 request.
149

150 **The Minnick Management Inc. fee structure:**

151
152 GLA agrees to pay Minnick Management Inc. as follows:

- 153 1. Management Fee in the amount of \$4.75/land division per month.
- 154 2. Postage, printing & reproduction copy, office supply & like office incidental expenditures
155 incurred directly from the administration of the association. All copies are tracked for the
156 month and billed at ten cents each, and postage at cost; no other office supply fees unless
157 mutually agreed upon.
- 158 3. Full membership mailings: charge for envelopes, copies & postage but not for stuffing and
159 mailing. The GLA generally has 6 full membership mailings/yr (4 quarterly statements &
160 newsletter; 2 annual meeting/election materials).
- 161 4. In the event that GLA requests Minnick Management Inc. to take on work exceeding the
162 usual and normal management responsibilities then a fee shall be agreed upon for such
163 services before the work begins. Standard management does not include the coordination
164 of construction and/or repairs, additional mileage, modernization, restorations,
165 rehabilitations, insurance claim repair supervision, obtaining tax & legal advice or other
166 counseling.
- 167 5. 50% of all collected late fees from delinquent homeowners become property of Minnick
168 Management, Inc. For accounts that have been delinquent prior to Minnick Management,
169 Inc. being involved, only those late fees which accrue to the account during a 6-month
170 retroactive time period will be eligible for the 50% disbursement to Minnick Management,
171 Inc. when such fees are collected.
- 172 6. \$50 per lien filing plus clerk and recorders filing fees shall be collected by Minnick
173 Management, Inc. for any liens filed on delinquent homeowners. \$30 per lien release filing
174 plus clerk and recorders filing fees. Lien Filing and Release Fees are charged back to the
175 homeowner.
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[Handwritten Signature]

Minnick Management, Inc.

6/1/2012

Date

[Handwritten Signature]

GLA President

6/1/2012

Date

Daniel & Valery O'Connell-PRO SE
P.O. Box 77
Emigrant, Mt. 59027
406-577-6339
dko@mac.com

PARK COUNTY CLERK
OF DISTRICT COURT
JUNE LITTLE

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BY JUDI BARNETT
~~JUDI BARNETT~~

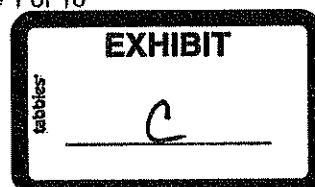
MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

DANIEL & VALERY O'CONNELL) Cause No. DV 12-164
for & on behalf of GLA members)
)
Petitioners,)
)
v.) **PETITION FOR:**
) **WRIT OF PROHIBITION, &**
GLASTONBURY LANDOWNERS') **WRIT OF MANDAMUS**
ASSOCIATION, INC. ;)
Board of Directors)
)
Respondent(s))

Come now Petitioners, Daniel & Valery O'Connell, and pray this Court for issuance of a Writ of Mandamus, AND a Writ of Prohibition, on grounds more fully set forth below. This Petition is brought pursuant to §27-26-101, §27-27-101, *et seq*, MCA and is based upon the attached Affidavits of Petitioners—Daniel and Valery O'Connell, on behalf of members of Glastonbury Landowners Association (herein called the GLA), the attached Exhibits and any further evidence that may be adduced in the event a hearing is held hereon. In support of this Petition, Petitioners aver as follows:

I. PARTIES; JURISDICTION; and VENUE

1. Daniel and Valery O'Connell are landowners and necessarily members of the GLA, Inc. who conducts business primarily in Park County, Montana at the time the petition was filed.



2. Respondent—the GLA, Inc. Board of Directors—are the elected Directors for the GLA Association, whose official duties regarding this petition per §, MCA require them to conduct the business and affairs of the administration on behalf of the Petitioners and other GLA members.
3. Jurisdiction is properly with this Court pursuant to GLA contracts involving property interest for §70-1-301, and proceedings of the GLA Board for §27-26-102, and §27-27-101.
4. Venue is properly with this Court in as much as this petition is directed at elected GLA Directors of this county, to compel action and prohibition, on their part, in their official capacity.
5. Inasmuch as there is no other plain, speedy and adequate remedy in the ordinary course of law to compel Respondents to accept and perform their GLA duties delegated to Minnick, a writ of mandamus is the proper mechanism for doing so—particularly in light of the facts that their refusal to act within the scope of their mandatory duties and limited powers, as set forth below, impugns the rights of Petitioner(s), if all other prerequisites delegated to the Minnick Management, Inc. contract AND/or Erickson contracts are met, and will place undue time constraints upon all Petitioner(s) constitutional right to “possessing and protecting [their] property.”
6. Also, inasmuch as there is no other plain, speedy and adequate remedy in the ordinary course of law to arrests the current proceedings of the GLA corporation board of directors- Respondents when such proceedings are without or in excess of the jurisdiction of such GLA corporation board of Directors, a writ of prohibition is the proper mechanism for doing so—particularly in light of the facts that their refusal to act within the scope of their mandatory duties and limited powers, as set forth below, impugns the rights of Petitioner(s), if all other prerequisites delegated to the Minnick Management, Inc. contract AND/or Erickson contracts are met, and will place undue time constraints upon all Petitioner(s) constitutional right to “possessing and protecting [their] property.”

II. PETITION FOR WRIT OF PROHIBITION

1. The Petitioners seek a writ of prohibition directing the Respondent—The GLA, Inc. Board of Directors, in its capacity as the GLA Administrator, to be prohibited from exercising the two contracts entered into with Pete and Cyrese Erickson; and also prohibit their exercise of the contract entered into with Minnick Management, Inc. (see such contracts included with attached affidavit).

2. Except by a vote of 51% of GLA members, a contract can not nullify existing GLA governing documents that run with the land. Yet numerous GLA bylaws and covenants below are being nullified, and/or violated by two contracts entered into by the GLA Inc. with GLA landowners called the Ericksons to prohibit any residential building use of their parcel 90 and more. Also, another contract between the GLA and Minnick Management, Inc. delegates away most GLA powers and/or duties to Minnick Management, a for-profit corporation, for which the GLA illegally gave Minnick the “exclusive right right to operate, control, and manage the certain property known as the Community of Glastonbury in Emigrant, Montana;” for which the same properties have always been owned, operated, controlled, and managed by GLA landowners.

STATEMENT OF FACTS and DISCUSSION OF ISSUES regarding Minnick Contract

It is within this Courts jurisdiction per 27-27-101, MCA. to “arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.”

3. In the last 15 years that the GLA, Inc. has existed, the only agents hired by the GLA outside of committees has been agents and contractors hired to maintain GLA roads and do research and accounting work, until the GLA hired Minnick Management Inc. On June 1, 2012, the GLA entered into a contract with an Minnick Management, Inc. now in effect. On page 1 of this signed contract, the GLA gave Minnick “the exclusive right to operate, control, and manage the certain property known as the Community of Glastonbury in Emigrant, Montana.”

4. The primary problem with this first paragraph of this Minnick contract is that the GLA does not have the exclusive authority over any GLA member owned property, nor allow another

corporation for profit “to operate, control, and manage” all landowners properties within the GLA.

This is because the GLA owns NO property of it own within the GLA boundaries, but is given the limited duty and easement rights to maintain and care only for GLA member owned roads, and six or more common land parcels owned jointly by all GLA members or landowners.

In other words, the GLA has no exclusive right “to operate, control, and manage” any property within the GLA. Thus without landowners permission, the GLA can not delegate away to Minnick such control and maintenance of all landowners properties. Also except for common land owned by all landowners as members, all GLA members have exclusive ownership rights of their own respective parcels as landowners within the Glastonbury Landowners Association.

Which means the GLA has no authority to give away such control and maintenance of any properties within the GLA boundaries to another corporation such as Minnick as stated in Minnick contract paragraph 1; which is a violation of landowners rights afforded under Title 70 of the Montana Code Annotated and Mt. constitution, Art. II Section 3 right to “possessing and protecting property;” but the Minnick contract granting them the “exclusive right to operate, control, and manage” GLA landowners properties may constitute a taking or illegal possession of such private property & rights as contrary to this constitutional right above, and contrary to Title 70 MCA and GLA governing documents herein.

5. Therefore the Petitioners as GLA landowners and on behalf of other GLA landers or members, requests this Court to arrest such proceedings delegated by the GLA defendants to Minnick in its

contract enacted outside of the limited jurisdiction of the GLA corporation and Board of Directors, as follows:

6. Included on pages 1-3 of the Minnick contract summarized below, the Petitioners request all such GLA proceedings with Minnick are to be arrested, as listed in that Minnick contract:

Including “collection of GLA assessments”, “file liens” against members, “pay [GLA] bills,” “prepare annual budget,” “pay taxes,” “handle payroll,” do most “GLA administrative duties,” “take meeting minutes,” “interact with landowners” wanting to contact the GLA Board for various reasons such as “send letters” to members and conduct GLA elections such as “ballot collection, tally, and reporting,” keep & maintain all “GLA records” and “respond to all basic landowner inquires” and “covenant violations,” and oversight “management of GLA... on-site services,” “contractors,” “contracts,” and “administrate covenant enforcement ...”

7. The GLA Articles, which reign supreme over all governing documents, holds the GLA liable to its members for “breach of duties to members” and willful “neglect of duties” to members. **Yet in this the same GLA/Minnick contract on page 3, it requires the GLA to “2. indemnify and hold Minnick Management Inc. harmless from all costs, expenses, suits, liability, damages, and claims of every type ... not limited to ...injury” to landowners.**

But such exemption for Minnick’s liability creates unnecessary liability upon the GLA who is thus responsible for its agent Minnick’s liability, per this GLA Article VIII above.

8. Also GLA Article IV(E) states that the GLA Board and Corporation are “to be limited in the exercise of its powers, as may be further provided from time to time in such Bylaws.”

Notice that all of the GLA duties (#6 above) delegated to Minnick are contrary to the Following Bylaws and more:

Bylaw VI B. General Powers and Duties. The business and affairs of the Association shall be managed by the Board of Directors. Such Directors shall in all cases act as a Board which shall have the powers and duties **necessary** for the administration of the affairs of the Association and may do all such acts or things as are not by law or by the Covenants, Bylaws or Articles of Incorporation directed to be exercised and done by the Members. The Board shall be regularly convened and shall act by majority vote of those

members present at a meeting, unless provided otherwise herein or in the Articles of Incorporation. Such powers and duties of the Board shall include, but not be limited to, the following:

1. Conduct, manage and control the affairs and business of the Association;
3. Fix, levy, collect and enforce the payment of common charges and assessments to Members required to carry out the duties and obligations of the Association, including, without limitation, the operation and maintenance of the community common property and roads;
4. Issue quarterly statements of account on the assessments and take necessary and appropriate action to collect assessments from Members and common charges from the Members, including the filing of liens and prosecuting foreclosures as provided in the Covenants or by law;
6. Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, supervise and prescribe the duties and fix compensation, if any, as **necessary**, of all officers, agents, employees, or committee members of the Association;
8. Have the **right to delegate such powers as may be necessary** to carry out the function of the Board to committees as the Board of Directors designates from time to time by resolution as provided in these Bylaws;
9. Enforce obligations of the Members to the Association as provided in the Covenants;
12. Pay the expenses of the Association, including all taxes or assessments;
13. Keep records in a good and businesslike manner of all assessments made, all expenditures and the status of each Member's accounts, and make such records accessible at reasonable times to all Members;
14. Do any and all things **necessary** to carry into effect these Bylaws and to implement the purposes and exercise the powers as stated in the Articles of Incorporation, Covenants, Bylaws, Rules and any Land Use Master Plan adopted pursuant to the Covenants;
15. Negotiate and enter into agreements with public agencies, officers, boards, commissions, departments and bureaus of federal, state and local governments **to carry out the above powers, duties and responsibilities**; and
16. Adopt Rules from time to time for the conduct of any meeting, election or vote in a manner that is not inconsistent with any provisions of the Covenants, Articles of Incorporation or these Bylaws.

9. These specific GLA duties above are restricted to do what is **"necessary to carry out the above powers, duties and responsibilities."** Also part 6 & 8 above restricts **"delegation of GLA duties to committees"** of Directors, or **"prescribe the duties ... as necessary**, of all officers, agents, employees, or committee members of the Association."

Thus when the GLA entered into a contract to transfer or delegate most GLA duties to Minnick Management, Inc., it violated its limited powers to delegate only "necessary" duties to committees or to agents that necessarily require skills not possessed by 12 GLA Board members such as an accountant agent (CPA) to handle GLA financial accounts and budget reports.

10. Also these GLA Bylaws dictate that the Board and any contract, such as the Minnick contract, can not change nor limit the land use, rights, privileges, duties, and responsibilities of the GLA, including Bylaw Article VI (14) that states that the GLA Board has a duty to **"do any and all things necessary to carry into effect these bylaws and to implement the purposes and exercise the powers AS STATED in the Articles of Incorporation, Covenants, Bylaws, Rules, and any Land Use Master Plan adopted pursuant to the Covenants."**

Therefore such GLA contract proceedings with Minnick Mnagement, Inc. are without or in excess of the jurisdiction of such GLA corporation board of Directors; thus warrant a writ of prohibition against the GLA Directors as the proper mechanism for doing so—particularly in light of the facts that their refusal to act within the scope of their mandatory Association duties and limited powers, as set forth above, impugns the rights of Petitioner(s), if all other prerequisites delegated to the Minnick Management, Inc. contract are met.

The Erickson Contract STATEMENT OF FACTS and DISCUSSION OF ISSUES:

1. For the Erickson contracts, one of its stated purposes says the GLA grants the Ericksons requested variances that allowed four residences instead of the allowable 2 on original undivided parcel 91 (contrary to Masterplan 1.1*). On pg. +++++, it states such condition for granting such variances are in exchange for requiring the Ericksons to never build residences on their adjoining

original undivided parcel 90 and also requires the Ericksons to enter into a restrictive easement to never sell their parcel 90 separately from parcel 91; which contractually enjoins the two parcels that are both still legally divided parcels.

2. **GLA Bylaw IV(B)** states, "the rights, privileges, duties, and responsibilities of membership in the Association (membership interest) . . . shall run with the land."

The GLA Board must carry into effect these rights and can not restrict such land use to build on Ericksons parcel 90 afforded under this Bylaw, Covenants and the Master Plan cited below; and for which GLA/Erickson contract is for "inperpetuity," but was not approved by 51% of members for contracts more than 5 years as required per GLA Bylaw VI(B)(2).

3. Even if a landowner agrees to limit their parcel land use as this contract did, this land use limitation is not allowed in the GLA governing documents and therefore must be necessarily enacted by vote of at least 51% of GLA members (per Bylaw VI(B)(2)) to nullify such covenants, Masterplan, Bylaws and Articles; yet not be contrary to them in any case.

4. However, both Ericksons parcels 90 & 91 are yet legally separated and thus subject to the GLA Masterplan 1.1 and other governing documents in effect before this Erickson/GLA contract took effect "in perpetuity" to grant the building of 4 residences instead of the 2 maximum allowable residences per GLA Masterplan 1.1* for each legally separate and original undivided parcel.

* GLA Masterplan 1.1 says in part, "Maximum residential development for an Original undivided Parcel is limited to one (1) single-family residence and one (1) additional single residence, both owned by the Landowner who owns the parcel. A formal subdivision, prepared and approved in accordance with the applicable regulations set forth by the Association Board, Park County and the Montana Department of Environmental Quality (DEQ) must be completed in order to further subdivide to limits shown in Residential Topographical Areas and Density Schedule."

5. Furthermore, Masterplan 4.0 only allows, " In granting a variance, the Association Board may attach conditions it finds necessary to achieve compliance with the criteria set forth in this Master Plan." And Covenant 6.01, requires, "The Association shall conditionally or unconditionally approve the [resident building] plans and make recommendations deemed necessary or advisable, **UNLESS**: a. The plans are incomplete, are in violation of or are not in accordance with these covenants, the Master Plan, or any rule or regulation adopted in accordance therewith; c. The plan or proposed structure is unlawful in any way."

Thus, the GLA conditions above for granting Ericksons variances are in violation of Masterplan 1.1, 4.0, Covenant 6.01 and as Masterplan 4.0 requires, also did not achieve compliance with the criteria set forth in this Masterplan section 1.1 above for limiting residences to 2 houses; and GLA/Erickson contract must be prohibited, as contrary to these and more GLA governing documents.

6. In fact, as the O'Connells are common land joint owners of an adjoining parcel to the Ericksons parcels (see attached maps). However the O'Connells were repeatedly denied their requested neighborhood review as required by Masterplan 4.1*, so further makes any variance or conditions of contract with the Ericksons contrary to O'Connells' rights afforded by this and other Masterplan requirements above.

*All variance requests to... 3) that may adversely affect neighbors will go through a variance review procedure that includes Neighborhood as well as Association Board review... The Association Board will hold a hearing of all parties concerned..." (Note: the Erickson/GLA contract easement to allow four residences on parcel 91 likely impaired members benefit of enjoyment of adjoining common lands reflected in the "scenic, environmental, aesthetic and cultural" values served by the Masterplan restriction to limit 2 residences per adjoining parcel 91.)

7. Also note the **Uniform Statutory Rule Against Perpetuities (72-2-1002 & 1005, MCA.)** as also contrary to this "in perpetuity" contract between the GLA and Ericksons. This Erickson **IN PERPETUITY**" contract length is also contrary to and did violate **Bylaw VI.(B)(2) requiring a vote of "51% of members" for such contracts" in excess of 5 years,"** because the **GLA members did not approve of such Erickson contract.**

The GLA corporation Board by denying the Ericksons to build on its parcel 90 thus denied this and more Bylaws and denied the GLA Master Plan which allows for land use for lots 90 and 91 called "Upper Forested Area" including:

GLA Masterplan 1.1. This illegal condition upon Ericksons parcel 90 in exchange for GLA granting several variances (negatively impacting the adjacent common land) to the Ericksons parcels 90 & 91, thus illegally nullified these and several other governing Bylaws and Covenants.

8. The GLA/Erickson contract also created a so called "easement" that burdens and enjoins parcels 91 & 90 contrary to allowable easements listed in **70-17-101, MCA, and contrary to the Bylaws and covenants that run with this land stipulating that legally separate parcels are afforded equal and separate rights.**

***Bylaw IV(B) was amended to read in Part, "Each of the following separated units of property, whether held by one or more than one landowner, shall constitute a separate and distinct Membership Interest that is entitled to one vote and to all other rights, privileges, duties and responsibilities as set forth in the Covenants and in these Bylaws:**

a. A parcel (as defined in Section 3.22 of the Covenants); b. An undivided tenancy-in-common interest ..."

Altogether, both of the 2 Erickson/GLA contracts (attached to the affidavit) must be necessarily prohibited because they violate several GLA governing documents and Masterplan restrictions,

arbitrary and capriciously deny or restrict GLA member property rights, and deny their constitutional property rights afforded to members and landers within the GLA and contrary to the above state statute rights per Title 70 for property use, servitudes, burdens, restrictions, and easement limitations.

9. Therefore to arrests the current proceedings of the GLA corporation board of directors- Respondents when such proceedings are without or in excess of the jurisdiction above of such GLA corporation board of Directors, a writ of prohibition is the proper mechanism for doing so- particularly in light of the facts that their refusal to act within the scope of their mandatory duties and limited powers, as set forth above, impugns the rights of Petitioner(s), if all other prerequisites delegated to the Minnick Management, Inc. contract AND/or Erickson contracts are met.

III. PETITION FOR WRIT OF MANDAMUS

1. The Petitioners seek a writ of mandamus directing the Respondent- The GLA, Inc. Board of Directors, in its capacity as the GLA Administrator, to perform the required GLA duties so given to Minnick Management, Inc. on grounds that the GLA limited powers only allows the GLA to control and manage the GLA corporation and non other. Per Bylaw VI(B) above the GLA can only delegate duties only "as necessary" such as road maintenance and accounting duties, thus excludes all other duties given to Minnick as the Minnick contract lists such as:

"collection of GLA assessments", "file liens" against members, "pay [GLA] bills," "prepare annual budget," "pay taxes," "handle payroll," do most "GLA administrative duties," "take meeting minutes," "interact with landowners" wanting to contact the GLA Board for various reasons such as "send letters" to members and conduct GLA elections such as "ballot collection, tally, and reporting," keep & maintain all "GLA records" and "respond to all basic landowner inquires" and "covenant violations," and oversight

“management of GLA... on-site services,” “contractors,” “contracts,” and “administrative covenant enforcement ...”

Again for the past 15 years except for road maintenance and accounting, the 12 GLA Board of Directors have personally and collectively performed all these GLA duties listed above. Thus proving that it is not “necessary” to delegate all such duties to Minnick.

2. However, this is exactly what the Minnick contract has caused to happen now, as contrary to GLA Bylaw VI B. requirements that the business and affairs of the Association shall be managed by the [GLA] Board of Directors” or delegate powers only to “committees” as necessary, and delegate duties to agents only as “necessary.”*

*Bylaw VI(B) part 6. “Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, supervise and prescribe the duties and fix compensation, if any, as necessary, of all officers, agents, employees, or committee members of the Association;”

part 8. “Have the right to delegate such powers as may be necessary to carry out the function of the Board to committees as the Board of Directors designates from time to time by resolution as provided in these Bylaws;”

3. Together with the requisite supporting affidavit, this writ of mandamus complies with the requisites of Title 27 Chapter 26 & § 35-2-118(1) as follows:

35-2-118(1) “Unless its articles of incorporation provide otherwise, a corporation ... has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power: ... (j) to conduct its activities, locate offices, and exercise the powers granted by this chapter in the state or out of the state; ... (n) to impose dues, assessments, admission, and transfer fees upon its members; ... (p) to carry on a business; or (q) to do all things necessary or convenient consistent with law to further the activities and affairs of the corporation.... “

These and other limitations, obligations, or GLA/Minnick contract objects therein can NOT be transferred or granted as they would have the effect of nullifying the intent and purpose of

existing laws above and requirements of Title 35, Chapter 2 for non-profit corporations to be directly administered by its Board of Directors (as elected by its members); which law regulations and rights of the GLA corporation and its members are also required under existing GLA Bylaws & Covenants above, and include Bylaw VI(B) cited above that states, "The business and affairs of the Association shall be managed by the Board of Directors."

Thus this Bylaw VI does not allow the GLA Directors to delegate almost entirely its many duties and powers to another corporation, Minnick Management, Inc.

4. Also Bylaw VII.(E-H) requires such GLA Director officers to, " perform such other duties as are incident to his office or are properly required of him by the Board or President."

Such powers AND duties incident to the office of GLA Treasurer, yet illegally delegated to Minnick are listed in the Minnick contract (page 1-2) under the headings of, "Collection/ disbursement of Monies," "Reporting" "Employee/Independent Contractor Accounting & Reporting."

5. In fact Covenant 11.05 requires in part, that "The Association is and shall be a fiduciary in the allocation, application and use of assessment funds. The Association has a duty to perform the responsibilities provided in these covenants to the best of its ability and to the extent that assessment funds reasonably allow."

Such powers AND duties incident to the office of GLA Secretary, yet illegally delegated to Minnick are listed in the Minnick contract (page 2-3) under the headings of; "Administrative Management," "Association Records," "Meetings," "Communications," & "Site Mnagement."

6. Furthermore, Covenant 11.06 states in part, "... The Association may bring an action at law against a Landowner to collect delinquent assessments, penalties and interest and/or to foreclose on the lien against the parcel, and there shall be added to the amount of such assessment the costs of collecting the same or foreclosing the lien thereof, including reasonable attorney's fees."

Nowhere in the GLA Covenants or Bylaws does it allow collection of assessments to be turned over for collection of unpaid collections; such as to a collection agency or to another corporation, Minnick, to "collect delinquent assessments, penalties and interest." This duty as stated in covenant 11.06 above, falls upon the Association (and treasurer) to "collect delinquent assessments, penalties and interest."

7. This GLA covenant above requires the GLA Association to also collect "collect... penalties and interest" from delinquent homeowners, not to be collected by a collection agency nor another corporation such as Minnick, as their contract demands. This covenant above does NOT allow "50% of collected late fees from delinquent homeowners [to] become property of Minnick Management, Inc." (see Minnick contract page 4, part 5). **Yet in exchange for Minnick performing all these same GLA duties and more, the GLA agreed to give away its duty, powers to Minnick to collect the same fees.**

The member ran non-profit GLA Association was not created to have other corporations collect or give away such fees, nor stick its members with inordinate fees that collection agencies typically charge which can double or triple the penalties and interests amounts for late assessment fees.

8. It is no excuse, nor is it "necessary" to delegate any GLA power or duties performed for the last 15 years and for which the 12 GLA Board of Directors now simply "don't want to

do,” or perform. But such was the excuse verbally stated by the GLA Directors at its May 2012 Board meeting.

Therefore as pursuant to 27-26-101, MCA., et al., except for delegated duties for road maintenance and accounting duties not able to be done by the GLA Treasurer, this writ of mandamus is necessary to compel the GLA Association Board of Directors to take back, carry out, and perform all such powers and duties it delegated to Minnick in the Minnick contract.

Note: GLA defendant Directors were personally involved in the termination of their own duties to members and entering into a Contract with Minnick and Ericksons and thus Petitioners argue this conduct was tortious based on: (1) the fact the GLA Board defendants ratified a decision to wait until the contracts had been signed to inform members, (2) but did not inform members of their intent to give most of the GLA duties over to Minnick.

The Mt. Supreme Court held in *Phillips*. “Corporate officers or directors are privileged to interfere with or induce breach of the corporation’s contracts or business relations with others as long as their actions are in good faith and for the best interests of the corporation.” *Phillips*, 187 Mont. at 425, 610 P.2d at 158 (citations omitted); accord *Bottrell*, 237 Mont. at 25, 773 P.2d at 708-09.

9. Thus Petitioners also request a writ of Mandamus to otherwise “induce breach of the corporation’s contracts” with Minnick and the Ericksons, as in the best interest of the GLA corporation, since all these contracts violate governing documents, and/or state statutes, and/or unconstitutional, and adverse to GLA members property possession and rights as cited herein.

IV. PRAYER FOR RELIEF

Wherefore, in light of all of the foregoing, Petitioners respectfully pray this Court for issuance of a writ of mandamus directing Respondents to perform its duties and powers otherwise delegated to Minnick Management; and otherwise cancel the Minnick contract and cancel two illegal contracts with the Ericksons, which is the subject of this petition as to form and/or content. Petitioners also bid this Court for a writ of Prohibition arresting the proceedings listed

within those Erickson contracts AND the Minnick contracts; or until such time as a hearing can prove why the GLA should breach those contracts, as would be in the best interest of the GLA corporation.

Petitioners also request an Order requiring Respondent to pay Petitioners' reasonable fees and costs incurred in bringing of this Petition and any other relief this court deems is acceptable.

Respectfully submitted this 24th day of September, 2012.

By;


Valery O'Connell


Daniel O'Connell