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10 *Glastonbury Landowners*
11 *Association, Inc.*

7 **MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY**

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

10 Plaintiffs,

11 v.

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

14 Defendants.

Cause No.: DV-2012-220¹

**DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES**

15 COME NOW the above named Defendants Glastonbury Landowners Association, Inc. Board of
16 Directors (GLA) and Answer Plaintiffs' Petition for Temporary & Permanent Restraining Order
17 (Petition) as follows:

- 18 1. GLA denies the allegations in paragraph one of Plaintiffs' Petition.
- 19 2. GLA admits the first sentence of paragraph two of Plaintiffs' Petition. GLA denies the
20 allegation in the second sentence of Plaintiffs' Petition.
- 21 3. GLA denies that the allegation in paragraph three of Plaintiffs' Petition is an accurate list
22 of the GLA Board of Directors.
- 23 4. GLA denies the allegations in paragraph four of Plaintiffs' Petition.
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- 25
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28 ¹ This action was originally filed in Gallatin County under Cause No. DV-12-789C. Judge Brown ordered venue changed to Park County on December 18, 2012.

1 5. GLA denies the allegations in paragraph five of Plaintiffs' Petition, and asserts that
2 jurisdiction and venue are proper in the Montana Sixth Judicial District Court, Park County.

3 6. GLA admits the first sentence of paragraph six of Plaintiffs' Petition. GLA denies the
4 remainder of the allegations in paragraph six of Plaintiffs' Petition.

5 7. GLA denies the allegations in paragraph seven of Plaintiffs' Petition.

6 8. GLA denies the allegations in paragraph eight of Plaintiffs' Petition.

7 9. GLA denies the allegations in paragraph nine of Plaintiffs' Petition.

8 10. GLA denies the allegations in paragraph ten of Plaintiffs' Petition.

9 11. GLA denies the allegations in paragraph 11 of Plaintiffs' Petition.

10 12. GLA denies the allegations in paragraph 12 of Plaintiffs' Petition.

11 13. GLA denies the allegations in paragraph 13 of Plaintiffs' Petition.

12 14. GLA denies the allegations in paragraph 14 of Plaintiffs' Petition.

13 15. GLA denies the allegations in paragraph 15 of Plaintiffs' Petition.

14 16. GLA denies the allegations in paragraph 16 of Plaintiffs' Petition.

15 17. GLA denies the allegations in paragraph 17 of Plaintiffs' Petition.

16 18. GLA denies the allegations in paragraph 18 of Plaintiffs' Petition.

17 19. GLA denies the allegations in paragraph 19 of Plaintiffs' Petition.

18 20. GLA denies the allegations in paragraph 20 of Plaintiffs' Petition.

19 21. GLA denies the allegations in paragraph 21 of Plaintiffs' Petition.

20 22. GLA denies the allegations in paragraph 22 of Plaintiffs' Petition.

21 23. GLA denies the allegations in paragraph 23 of Plaintiffs' Petition.

22 24. GLA denies the allegations in paragraph 24 of Plaintiffs' Petition.

23 25. GLA denies the allegations in paragraph 25 of Plaintiffs' Petition.

1 26. In regards to the first sentence of paragraph 26 of Plaintiffs' Petition, GLA admits that it
2 authorized Minnick Management to distribute the 2012 election ballots. GLA lacks sufficient
3 information or belief to admit or deny the validity of Plaintiff's "Exhibit C" or the remaining allegations
4 in paragraph 26 of Plaintiffs' Petition, and there denies them both.

5 27. GLA denies the allegations in paragraph 27 of Plaintiffs' Petition.

6 28. GLA denies the allegations in paragraph 28 of Plaintiffs' Petition.

7 29. GLA denies the allegations in paragraph 29 of Plaintiffs' Petition.

8 30. GLA denies the allegation in paragraph 30 of Plaintiffs' Petition that there were "extra"
9 votes. GLA admits that the assessment of GLA voting procedures provided by attorney Alanah Griffith
10 (filed as "Exhibit D" to Plaintiffs' Affidavit in Support of Restraining Order) and partially quoted in
11 paragraph 30 of Plaintiffs' Petition is a correct and legal interpretation of GLA's governing documents
12 and the GLA Board of Director's authority to interpret and implement those governing documents.
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15 31. GLA denies the allegations of paragraph 31 of Plaintiffs' Petition, and further GLA
16 denies that the alleged quotations in paragraph 31 are accurate quotations of its governing documents.
17

18 32. GLA denies the allegations in paragraph 32 of Plaintiffs' Petition.

19 33. GLA denies the allegations in paragraph 33 of Plaintiffs' Petition.

20 34. GLA denies the allegations in paragraph 34 of Plaintiffs' Petition.

21 35. GLA denies the allegations in paragraph 35 of Plaintiffs' Petition.

22 36. GLA denies the allegations in paragraph 36 of Plaintiffs' Petition.

23 37. GLA restates its answers to paragraphs one through 36 in response to paragraph 37 of
24 Plaintiffs' Petition.
25

26 38. GLA denies the allegations in paragraph 38 of Plaintiffs' Petition.

27 39. GLA denies the allegations in paragraph 39 of Plaintiffs' Petition.
28

1 40. GLA denies the allegations in paragraph 40 of Plaintiffs' Petition.

2 41. GLA restates its answers to paragraphs one through 40 in response to paragraph 41 of
3 Plaintiffs' Petition.

4 42. GLA denies the allegations in paragraph 42 of Plaintiffs' Petition.

5 43. GLA denies the allegations in paragraph 43 of Plaintiffs' Petition.

6 44. GLA denies the allegations in paragraph 44 of Plaintiffs' Petition.

7 45. GLA denies the Plaintiffs are entitled to the relief sought in paragraphs 45 through 50 of
8 Plaintiffs' Petition.
9

10 **AFFIRMATIVE DEFENSES**

11 **FIRST AFFIRMATIVE DEFENSE**

12 Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

13 **SECOND AFFIRMATIVE DEFENSE**

14 The GLA Board of Directors has acted within the power granted by its governing documents
15 and within their power to interpret governing documents.

16 **THIRD AFFIRMATIVE DEFENSE**

17 Plaintiffs' claims are barred by the doctrine of unclean hands.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 Defendants relied upon the advice of counsel.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 Plaintiffs have failed to exhaust their remedies under the existing By-Laws and have instead
22 resorted to unnecessary litigation.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 Plaintiffs' claims are barred by the doctrines of laches, estoppel, waiver, and acquiescence.

25 **SEVENTH AFFIRMATIVE DEFENSE**

26 Some or all of Plaintiffs' claims are not properly brought under Montana's Uniform Declaratory
27 Judgment Act.
28

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 Defendants are entitled to costs and attorney fees under the Uniform Declaratory Judgment Act
3 and pursuant to the various by-laws and covenants at issue in this matter.

4 **NINTH AFFIRMATIVE DEFENSE**

5 Defendants deny every allegation not specifically admitted.
6
7

8 **RESERVATION**

9 Defendants reserve the right to rely on any further affirmative defenses which may become
10 available or apparent during the course of discovery and reserve the right to amend this Answer
11 accordingly.

12 **WHEREFORE** Defendants Glastonbury Landowners Association, Inc. Board of Directors request
13 judgment as follows:

14 1. That Plaintiffs takes nothing by way of their Petition and the same be dismissed with
15 prejudice;

16 2. For Defendants costs and attorneys fees in defending this matter either through the
17 exercise of statutory law, common law, or pursuant to provisions in the individual corporate documents
18 governing the Glastonbury Landowners Association, Inc.;

19
20 3. For such further and other relief as the Court deems equitable and just.

21 DATED this 17th day of January, 2013.

22
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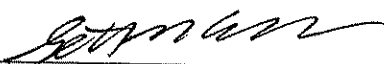
28 Michael P. Heringer
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Attorneys for Glastonbury
Landowners Association, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was duly served by U.S. mail, postage prepaid, and addressed as follows this 17th day of January, 2013:

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
Plaintiffs pro se

By: 

Michael P. Heringer
Seth M. Cunningham