Daniel & Valery O'Connell –**PRO SE**
~~P.O. Box 77~~ PO Box 774
~~Emigrant, Mt. 59027~~ Cayucos, CA. 93430
406-577-6339

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

Daniel K. O'Connell & Valery A. O'Connell & on behalf of themselves as members of Glastonbury Landowners Association.	Cause No. DV–12–220
Plaintiff(s),	
v.	**MOTION FOR SUMMARY JUDGMENT & MOTION TO ENJOIN CASES**
Glastonbury Landowners Association, Inc. Board of Directors	
Defendant(s)	

COME now Plaintiffs & GLA members-Daniel and Valery O'Connell, and pursuant to M.R.Civ. P., Rule 56 & Rule 12(a)(1)(A), do hereby submit this MOTION FOR SUMMARY JUDGMENT & MOTION TO JOIN CASES;" in the interest of justice to enjoin this case DV-12-164 and pending Writ case-DV-12-164 both having all the same parties, and to limit Court's time, parties time, save money, and limit liability to all parties.

This Summary Judgment motion is justified pursuant Rule 56, M.R.Civ.P. below, since no material facts are in dispute regarding the guest house assessment claim, and current Board election practices (claim #2), and the GLA/Minnick contracts (joiner claim #3). In granting this summary judgment, the court need only agree that the GLA Defendants governing documents (within TRO complaint "Exhibit CD") are absent any specific language or lack authority, thus do not allow guest house assessments, do not allow 3 votes per membership interest per Board

election, and do not allow the GLA to abrogate and sell its powers and duties over to another corporation called Minnick Management Corporation.

Rule 56. Summary Judgment.

(a) By a Claiming Party. A party claiming relief may move, with or without supporting affidavits, for summary judgment on all or part of the claim.

(b) By a Defending Party. A party against whom relief is sought may move, with or without supporting affidavits, for summary judgment on all or part of the claim.

(c) Time for a Motion, Response, and Reply; Proceedings.

(1) These times apply unless the court orders otherwise:

(A) a party may move for summary judgment at any time;

(B) a party opposing the motion must file a response, and any opposing affidavits, within 21 days after the motion is served or a responsive pleading is due, whichever is later; and

(C) the movant may file a reply within 14 days after the response is served.

(2) ***Hearing.***

(A) The right to a hearing is waived unless a party requests a hearing within 14 days after the time for filing a reply brief has expired.

(B) The court may set a hearing on its own motion.

(3) The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

(d) Case Not Fully Adjudicated on the Motion.

(1) ***Establishing Facts***. If summary judgment is not rendered on the whole action, the court should, to the extent practicable, determine what material facts are not genuinely at issue. The court should so determine by examining the pleadings and evidence before it and by interrogating the attorneys. It should then issue an order specifying what facts -- including items of damages or other relief -- are not genuinely at issue. The facts so specified must be treated as established in the action.

(2) ***Establishing Liability.*** An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages.

(e) Affidavits; Further Testimony.

(1) ***In General.*** A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The court may permit an affidavit to be supplemented or opposed by depositions, answers to interrogatories, or additional affidavits.

(2) ***Opposing Party's Obligation to Respond.*** When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must -- by affidavits or as otherwise provided in this rule -- set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

(f) When Affidavits Are Unavailable. If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) deny the motion;

(2) order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or

(3) issue any other just order.

(g) **Affidavits Submitted in Bad Faith.** If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court must order the submitting party to pay the other party the reasonable expenses, including attorney fees, it incurred as a result. An offending party or attorney may also be held in contempt.

FACTUAL ARGUMENTS AND BRIEF

Background History: This case represents one of five complaints filed by members in less than 2 years against GLA Board Defendants for continued violations of its governing documents costing the Association more than $50,000. GLA Defendants continue to use member assessments to defend against their breach of duties. Case DV-11-193 & counter-claim were settled by a settlement agreement giving O'Connells and members all claims for relief. For case DV-11-114, O'Connells won a appeal to the Supreme Court; for which costly motion to dismiss was reversed and remanded back to Judge Cybolski's court to be fully heard on its merits. That leaves this case and a pending Writ case (DV-12-164) having the same parties and similar claims for relief which should be enjoined together in the interest of justice, time, & money.

On September 24, 2012, GLA Members and Plaintiffs filed and served a pending omplaint (DV-12-164) in Park County for Writs of Prohibition & Mandamus against GLA Board Defendants to prohibit GLA/Erickson contracts and GLA/Minnick contracts and mandate the GLA Board perform its GLA duties required by its governing contracts. This is because most of their GLA authority & duties were abrogated to Minnick to perform in violation of its GLA governing contracts with members. Soon after that filing, all Erickson contracts with the GLA were cancelled, but in December 2012, the GLA partially amended and renewed their illegal Minnick contract.
On October 15, 2012, the GLA Defendants timely answered that pending Writ complaint.
On October 22, 2012, GLA Member/Plaintiffs filed this case (formerly DV-12-789C) in Gallatin County for Temp. & Permanent Injunction against the GLA Corp. and Board of Directors to retrain, reverse and prevent a multiplicity of covenant, bylaw contract violations regarding two new issues 1. restrain new assessment charges starting 2013 for the first time ever upon member guest houses 2. retrain current and future unauthorized/illegal GLA election practices since 2011.
On Oct. 23, 2012, this complaint & summons served on GLA Defendants by a process server.
On Nov. 6, 2012, Defendants submitted 2 timely motions: 1.venue change motion, 2. and motion to dismiss only half of the petition regarding election practice/fraud; falsely assuming lack of status quo due to 16 years of repeatedly using the same illegal election practice giving members up to 3 votes per membership interest per Board election.

On Nov. 16, 2012, Plaintiffs submitted their "Reply to GLA's TRO motions" GLA's venue change motion & answer to GLA's motion to dismiss 1/2 the TRO Petition (re; elections).
On Nov. 26, 2012, Defendants submitted a change of council notice. GLA Defendants have now changed council 3 times in less than 2 years, presumably because they keep losing.
On Nov. 29, 2012, Defendants submitted their Reply brief for Venue change.
On Dec. 1, 2012, Plaintiffs submitted notice agreeing with venue change to Park County.
On Dec. 4, 2012, Plaintiffs filed a "Motion for Declaratory Judgment & Notice To Join TRO."
On Dec. 18, 2012, Hon. Judge Brown's Order granted venue change to Park County.
On Dec. 19, 2012, Defendants submitted their "Response to Plaintiffs' Motion For Declaratory Judgment & Notice To Join TRO;"
On Dec. 28, 2012, Plaintiffs submitted a response to its declaratory motions.
On Jan. 9, 2013 Court's Order denied Plaintiffs declaratory motions and Ordered GLA Defendants to answer the TRO complaint.
On Jan. 18, 2012 Plaintiffs faxed/filed this Summary Judgment Motion, Joiner Motion, and Appeal Motion.

Specific authority for this summary judgment relief is per rule 56 above & as follows:

The Mt. Supreme Court ruling in *Glacier Tennis Club at the Summit, LLC v. Treweek Constr. Co., Inc.*, 2004 MT 70, ¶ 21, 320 Mont. 351, ¶ 21, 87 P.3d 431, ¶ 21 (citations omitted), "the party moving for summary judgment has the initial burden of proving that there are no genuine issues of material fact that would permit a non-moving party to succeed on the merits of the case, and if the moving party meets that burden, then the non-moving party must provide substantial evidence that raises a genuine issue of material fact in order to avoid summary judgment in favor of the moving party." Glacier, ¶ 21 (citations omitted). "Once it is established that no genuine issues of material fact exist, the district court must then determine whether the moving party is entitled to judgment as a matter of law."

In *Bordas v. Virginia Ranches Assoc.*, 2004 MT 342 at ¶17 Bordas Bylaws states,

"Each original owner or owners or subsequent purchaser . . . in the above described subdivision shall be eligible to belong to the Association. Upon payment of assessments levied by the Board of Directors during a fiscal year said owner or owners shall be considered paid members of the Association and shall be entitled to one (1) vote for each parcel of land owned."

At ¶15-17; "B*ordas* pointed out, Montana law requires strict construction of restrictive covenants. Town & Country Estates Association v. Slater (1987), 227 Mont. 489, 492, 740 P.2d 668, 670-71." Thus the Supreme Court upheld Bordas claim that the District Court correctly determined that the Original Covenants the Eligibility Clause made membership permissive only and nothing in those covenants compels Subdivision property owners to become Association members.

This Mt. Supreme Court case above and others below requires strict construction of restrictive covenants and established that issuance of summary judgment is based only upon the

court's finding that: **1. there are no disputes of "material" fact requiring a trial to resolve, and 2. in applying the law to the undisputed facts, one party is clearly entitled to judgment.**

Blacks Law defines a "material fact" as one which, 'depending upon what the factfinder believes "really happened," could lead to judgment in favor of one party, rather than the other.

Below are 3 material facts/claims not in dispute for this Summary Judgment relief:

Note: GLA Governing Documents (Exhibit CD), Defendants" Nov.2012 newsletter, emails, affidavits, and exhibits attached to the TRO & Writ complaints are factual evidence for summary relief and are hereby included for this motion as if fully set forth herein;

1. The GLA Defendants Nov. 2012 newsletter and emails (attached to the TRO complaint) claim its election practices since 2011-2012 and before this allows each member to cast 3 votes instead of one vote (per parcel/membership interest) on the matter of annual Board elections. The GLA Defendants pleadings do not dispute that its GLA bylaws/covenants ("Exhibit CD") gives no specific authority to cast up to 3 votes per parcel for Board elections.

For this 1st issue, Summary judgment is justified, because what is not in dispute is the GLA's actions to give up to 3 votes for each membership (interest/parcel) and the GLA' s own emails & Nov. 2012 newsletter admits they lack any specific authority in the bylaw/covenants to give up to 3 votes for each membership (interest/parcel).

2. The GLA Defendants newsletter also admit to charging new assessment charges starting 2013 for the first time ever upon members new and existing guest houses. This summary judgment motion is allowed for this guest house claim for Defendants failure to defend or otherwise answer this claim pursuant to M.R.C.P., Rule 12(c), MCA."**Motion for Judgment on the Pleadings.** After the pleadings are closed -- but early enough not to delay trial -- a party may move for judgment on the pleadings."

As clearly stated in Plaintiffs declaratory motion at ¶13, Defendants did not deny that, "Defendants motion asked only that the election fraud claim be dismissed, but not the guest

house assessment claim." It is thus prima facia evidence that only the election fraud issue was part of Defendants motion to dismiss. The Defendants were thus required by Nov. 6, 2012 to give answer but failed to do so nor otherwise defend against Plaintiffs other complaint issue regarding illegal guest house assessments.

Therefore per rule 12(a)(1)(A) above, pleadings are closed and not in dispute regarding this guest house assessment claim; which is properly before this court to grant declaratory relief and now this summary judgement relief to restrain GLA's unauthorized new guest house assessments imposed suddenly upon many members.

3. This joiner motion is just for a 3rd material fact and claim not in dispute in that case (DV-12-164) and added for this summary judgment motion, since all pleadings are complete for the GLA/Minnick contract claim and all other issues in that case were settled upon cancellation of the Erickson contracts.

In that case and its one remaining claim to be enjoined, no material facts are at issue since the GLA bylaws/covenants & Minnick contract are prima facia evidence for such claim. Also, GLA Defendants admit to entering into contracts with Minnick Management Corp.. All parties agree that the many GLA duties, powers and responsibilities listed in that GLA/Minnick contract and amended contract (Dec. 2012) were given over to another corporation to perform-Minnick Corporation.

Thus it is prima facia evidence that the GLA/Minnick contract abrogates many GLA powers and duties over to another corporation-MinnickMinnick to operate, and/or control, and/or manage members' private properties and association duties and responsibilities.

More importantly, the pleadings are closed and GLA Defendants' answer to this Writ case claim do not dispute that its GLA bylaws/covenants gives no **specific** authority to abrogate its powers and duties over to another corporation-MinnickMinnick Corp. Thus the Plaintiff members joiner motion is warranted and thus included for summary judgment relief herein, since Defendants do not deny they lack specific authority in the bylaw/covenants to abrogate any its powers and duties over to another corporation-Minnick, and the GLA/Minnick contracts should be deemed illegal without any such specific authority.

Material Facts/Claim #1-annual GLA Board elections regarding member votes. This 1st claim, summary judgment is justified, because what is not in dispute is the GLA's actions giving members ballots (attached to the TRO complaint) asking for up to 3 votes for each membership (interest/parcel). Also not in dispute, the GLA lacks any specific authority in the bylaw/ covenants to allow up to 3 votes for each membership (interest/parcel).

The GLA Nov. newsletter states the GLA Board allows its members to cast **"up to 3 votes"** per membership/parcel or **"one vote per position"** instead of one vote. This newsletter, GLA Ballots, and GLA Bylaw/Covenants within and attached to the TRO complaint are prima fascia evidence that all 12 Board seats will get votes this way and never be eliminated as explained in the TRO complaint.

However, this makes the GLA Board the de facto decider of how many Board Directors serve on the Board each year as 12, which is contrary to covenant 3.20 and Bylaw VI(A) below because the Board can be a few as 4 seats. Bylaw VI(A) says "the actual number of Directors shall be those who have been nominated and elected;" and in Covenant 3.20, "a separate and

distinct Membership Interest ... is entitled to one (1) vote." (Note: North and South Glastonbury voting districts cast votes for their respective Board candidates annually and separately.)

This bylaw and covenant are annually violated by the GLA, since NO such authority gives the GLA Board the right to give members "**up to 3 votes**" or "**one vote per position.**" The number of Board seats should also be determined by the number of candidates "nominated and elected" which can be as few as 4 candidates and a maximum of 12 Board members. But the GLA Board long ago decided members should cast votes for all 12 Board seats contrary to this bylaw. This specific GLA action is also contrary to Bylaws V(B), V(F), & VI(D) (cited in the TRO).

If this election practice is stopped and only one whole vote is allowed per membership / parcel (not 3), this results in 2/3 less votes needed to win election to the Board. This is helpful for new or less known or less popular candidates to win election; which explains why the current flawed election practice has allowed 12 seats and the same Board members to remain on the Board for 6 or more years. GLA members/Plaintiffs thus seek this summary judgment relief for a preliminary and permanent injunction, pursuant to Mont. Code Ann. § 27-19-101 et. seq., enjoining this election claim #1 above, and claim #2 below to stop charging its members new assessments for guest houses for the first time ever after 16 years.

Material Facts/Claim #2- new Guest house assessments. Such guest house assessments together with all other assessments are now illegally collected and payable to another corporation called Minnick Management that without authority was given most GLA powers and duties

contrary to Bylaws and Covenants; such as Covenant 11.03 that demands assessments be given to the GLA, not another corporation (& introduces possible theft).

The TRO/affidavit statements of material facts support this summary motion because GLA Board defendants continue to adamantly insist that they are entitled to charge members new assessments for guest houses in disregard for GLA Covenants 11.03(b), 3.12, and Masterplan 6.0 as cited in the TRO complaint.

The GLA's undisputed actions of collecting new guest house assessments exceed its contract authority, rewrite and/or misinterpret its contracts, and/or violate its covenant/bylaw contracts, and breach their duty to members and the Association pursuant to GLA Art. VIII.." This is because a guest house is determined by its intended design and use as defined in GLA Covenant/Masterplan 6.0 which says a guest house is "intended for occasional guest use and not as a permanent residence, not to exceed 1,200 square feet;" Such guest house is thus not a dwelling unit; which dwelling unit is defined by Covenant 3.12 that states its intended "for occupancy by a single family" and not restricted in size or use. In fact, there is no specific language in the GLA bylaws/covenants that allows guest house assessments, because a guest house is distinct from and defined differently than a "dwelling unit." The TRO complaint at pages 4-5 explains further;

"the Supreme Court demands lower Courts interpret restrictive covenants [and Bylaws] by looking first to the language of the covenant to ascertain its meaning. If the language is clear and explicit, the language will govern. The language of restrictive covenants should be understood in its ordinary and popular sense." Toavs, 934 P.2d at 166-67.

The Montana Supreme Court also, "stated in Higdem v. Whitham (1975), 167 Mont. 201, 208-09, 536 P.2d 1185, 1189, that restrictive covenants should not be extended by implication or enlarged by construction and, in Jarrett v. Valley Park, Inc. (1996), 277 Mont. 333, 341, 922 P.2d

485, 489, that the district court could not "broaden" a covenant by adding that which was not contained therein."

Similar actions by the GLA should be retrained, because such language (underlined) below is not found in any of the GLA governing documents. Without the members authority, the GLA defendants illegally "enlarged" or "broadened" GLA Covenants and Bylaws by adding that which was not contained therein. Thus the GLA Board Defendants "extended by implication or enlarged by construction" and "broadened the covenants" and bylaws below by adding that which was not contained therein;" such as justifying new assessments by construing Guest houses to be the same as "dwelling units;" and construed Covenant 3.20 to mean 3 votes for each membership interest, for "three separate Board positions."

The MT. Supreme Court further "noted, restrictive covenants are construed under the same rules as are other contracts. Newman v. Wittmer (1996), 277 Mont. 1, 6, 917 P.2d 926, 929. In that respect, it is well settled that "[w]here the language of an agreement is clear and unambiguous and, as a result, susceptible to only one interpretation, the duty of the court is to apply the language as written." Carelli v. Hall (1996), 279 Mont. 202, 209, 926 P.2d 756, 761 (citing Audit Services, Inc. v. Systad (1992), 252 Mont. 62, 65, 826 P.2d 549, 551). If the terms of the contract are clear, "there is nothing for the courts to interpret or construe" and the court must determine the intent of the parties from the wording of the contract alone. Wray v. State Compensation Ins. Fund (1994), 266 Mont. 219, 223, 879 P.2d 725, 727; Martin v. Community Gas & Oil Co. (1983), 205 Mont. 394, 398, 668 P.2d 243, 245. See also Toavs v. Sayre (1997), 281 Mont. 243, 245-46, 934 P.2d 165, 166-67. Accord Fox Farm Estates Landowners v. Kreisch (1997), 285 Mont. 264, 268-69, 947 P.2d 79, 82.

Like *Carelli* cited above, the language of the GLA Bylaws, Covenants or "agreements are clear and unambiguous and, as a result, "susceptible to only one interpretation." There is nothing for the courts to interpret or construe and the only duty of the court is simply to apply the GLA bylaw/covenant language "as written" & restrain the undisputed GLA actions not authorized therein its governing documents. Thus again, there is no specific language in the GLA bylaws/ covenants that allows guest house assessments, much less 3 votes per membership, much less the Minnick contract cited in the Writ case summarized below for this case joiner motion & summary judgment motion.

Also as the GLA Association is a non-profit corp. subject to the Montana Nonprofit Corporation Act (MNCA) Section 35-2-113, et seq., MCA, especially 35-2-517 & 35-2-536;

35-2-517. Member's liability for dues, assessments, and fees. A member may become liable to the corporation for dues, assessments, or fees. However, an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments, or fees does not, of itself, create liability.

35-2-536. Voting entitlement generally. (1) Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members.

(2) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, their acts with respect to voting have the following effect:

(a) if only one votes, the act binds all; and

(b) if more than one votes, the vote is divided on a pro rata basis.

This statute **35-2-517., MCA.** applies to this case limiting member liability for a guest house assessments created only by 51% of member votes to adopt new guest house assessments, not by the Board's new unauthorized demands as is the case here; and voting entitlement per statute **35-2-536** above applies here also and allows only one vote on each matter or Board election, not three votes as is the current GLA election practice contrary to this statute.

Material Facts/claim #3-GLA/Minnick Contract All parties agree and admit that the GLA Respondents entered into the contract with Minnick on June 1, 2012 (see GLA's Reply brief page 2, ¶ 3 of that case DV-12-164). All parties further agree that since June 2012, all such GLA powers and duties listed in that Minnick contract are currently being exercised by Minnick Management Corp.. The GLA also does not deny that Petitioner members are the same landowners whose property is impacted by this GLA/Minnick contract, for which another corporation-Minnick Management Corp. was hired to 'exclusively operate, and/or control and/or manage all such GLA properties' which includes all members private properties.

Plaintiffs (members) filed a writ (DV-12-164) to oppose this GLA/Minnick contract because the GLA bylaw/covenants and GLA/Minnick contract are prima facia evidence that the GLA does not have such authority to abrogate its GLA Boards powers and duties over to another

corporation-Minnick Mangament Corp., according its governing documents as sworn to in the Writ affidavits (which affidavits are included herein as if attached for this motion).

Montana statute §35-2-414, MCA. part 2-3 states, "Requirements for duties of a board, ... (2) Except as provided in this chapter or subsection (3), all corporate powers are exercised by or under the authority of the board, and the affairs of the corporation managed under the direction of its board. (3) The articles may authorize a person or persons to exercise some or all of the powers that would otherwise be exercised by a board..."

This applicable state statute above and the GLA Articles/Bylaws/Covenants do not allow others to exercise the powers of the GLA Board. In fact, "only committees of directors" can be given GLA powers per GLA Bylaw Art. IV E. which states GLA Corporation is,

> "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;" including GLA Bylaw VI, part 8 that says the GLA is limited in the "right to delegate such powers as may be necessary to carry out the function of the Board to committees;" which committees are pursuant to GLA Bylaw VI (I) "**Only Committees of Directors** constituted pursuant to the Montana Nonprofit Corporation Act may exercise the authority or powers of the Board of Directors and they may do so only to the extent authorized by the Board." (emphasis added).

This GLA Bylaw above is also congruent with Montana statute §35-2-414, MCA. part 2 stating, "Requirements for duties of a board, ... (2) Except as provided in this chapter or subsection (3), all corporate powers are exercised by or under the authority of the board, and the affairs of the corporation managed under the direction of its board. (3) The articles may authorize a person or persons to exercise some or all of the powers that would otherwise be exercised by a board..."

These GLA bylaw/covenants above entered into with its members were violated when the GLA Defendants abrogated its powers AND duties over to another corporation-Minnick Management; which GLA/Minnick contract is prima facia evidence of such undisputed GLA Defendant actions.

Conclusion

Members/Plaintiffs thus pray, in the interest of justice, time, and money, that this one remaining claim for case DV-12-164 be enjoined with this case as the same parties and same

summary judgment relief for material facts not in dispute. Also this is because GLA Defendants contracts with Minnick Management should be judged illegal & terminated due to lack of authority to transfer therein such GLA powers and duties over to another corporation. The GLA Respondent should also be ordered to assume and perform its own duties therein that Minnick contract and more as according to its association governing documents. Members further pray that the GLA Board Respondents should not to be indemnified for defending this claim and others thereby abrogating its Board duties and powers expressly written in its governing documents.

Plaintiffs pray GLA Respondents can and should be held individually, collectively, and financially liable as pursuant to its own GLA Article VIII. for such 'breach of duties and breach of loyalty to the members and Association, lack of ordinary care of members property, funds, or negligent misconduct.'

Also as the GLA Association is a non-profit corp. subject to the Montana Nonprofit Corporation Act (MNCA) Section 35-2-113, et seq., MCA, especially 35-2-517 & 35-2-536 that allows only one vote on each matter or Board election, and denies member liability for guest house assessments without 51% of member votes.

Like the Supreme Court case-*Carelli* cited above, the language of the GLA Bylaws, Covenants or "agreements are clear and unambiguous and, as a result, "susceptible to only one interpretation." There is nothing for the courts to interpret or construe" and the only duty of the court is simply to apply the GLA bylaw/covenant language as written & restrain the undisputed GLA actions not authorized therein its governing documents. Tthere is no specific language in the GLA bylaws/covenants that allows guest house assessments, much less 3 votes per

membership, much less the Minnick contract cited in the Writ case (for this case joiner motion) & summary judgment motion.

The court need only agree that the GLA Defendants governing documents (within TRO complaint "Exhibit CD") are absent any specific language or lack authority, thus **1.** do not allow guest house assessments, **2.** do not allow 3 votes per membership interest per Board election, and **3.** do not allow the GLA to abrogate and sell its powers and duties over to another corporation called Minnick Management Corporation.

Numerous Supreme Court cases cited above give authority to grant summary judgment in part of in whole for any or all of these 3 claims since there are no disputes of "material" fact requiring a trial to resolve, and in applying the law to the undisputed facts, Plaintiffs are clearly entitled to judgment "on all of part of the claims." Also Per rule 56 "a party may move for summary judgment at any time."

DATED this 18th day of January, 2013.

Signed _____ Signed: _____
Daniel O'Connell Valery O'Connell

Certificate of Service

We, Daniel & Valery O'Connell, swear that a true and correct copy of forgoing document(s) were sent to the following parties via certified mail on this same day to:

Sixth Judicial District Clerk of Court
414 E. Callender St.
Livingston, Mt. 59047

and faxed at 12:30 to 406-222-4128
The GLA attorney of record:
Brown Law Firm, P.C.
315 N. 24th St. (PO Drawer 849)
Billings, MT. 59103-0849

By _____ By: _____
Daniel O'Connell Valery O'Connell